Education and Culture DG

EUROPEAN COMMISSION

WHITE PAPER ON SPORT

Sport

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FOREWORD BY COMMISSIONER JÁN FIGEL'

Dear sport friend,

The White Paper which you are holding in your hands is the Commission's contribution to the European debate on the importance of sport in our daily lives. This is the first time that sport-related issues have been addressed in such a comprehensive manner at EU level.

Europe is the cradle of the Olympic idea. Sport attracts the vast majority of European citizens and most of the popular international sport disciplines and competitions are practised here. Sport fulfils an important societal role which adds to its sporting and economic dimensions. It provides services which are vital to the well-being of society. Public actors, including the European Union, have thus a significant responsibility for supporting sport. This has been acknowledged at the highest European political level in various political statements, such as the 1997 Amsterdam Declaration and the 2000 Nice Declaration.

The European Commission started its dialogue with sport organisations sixteen years ago, when it launched the first European Sport Forum in 1991. Since then, calls addressed to the Commission have increased to become more involved in this area at European level. In 2005 the Commission set up a consultation framework with the sport movement and Member States entitled "The EU & Sport: Matching Expectations". Within this framework, governmental and non-governmental stakeholders asked the Commission to reinforce the promotion of European sport, and its special characteristics in EU policy-making, as well as to achieve more legal clarity.

For all these reasons, I considered that the time was right for the Commission to issue a strategy paper on sport, setting out policy guidelines in this area. To this end, I have been listening attentively to sport stakeholders and Member State authorities. Several conferences and ministerial meetings have taken place. The White Paper is thus the result of a long consultation process with the organised sporting world.

The main aim of the White Paper is to mainstream and thus support sport into other policies of the EU and to set the conditions for improved governance in European sport by providing guidance for the application of EU rules. In light of the mandate given by the European Council of June 2007 for the Intergovernmental Conference to foresee a Treaty provision on

sport, the Commission may, if necessary and appropriate, indicate further steps in the context of a new Treaty provision.

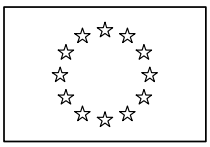
The White Paper is accompanied by an Action Plan named after the founder of the modern Olympic movement, Pierre de Coubertin. It will guide the Commission in its sport-related activities during the coming years. There is also a Staff Working Document named "Background and Context", in which you will find more detailed information on the various issues raised in the White Paper. This document contains also annexes on sport and EU competition as well as internal market rules. Finally you will find an "impact assessment" of the initiative which describes the reasons and the process that led to the decision to prepare a White Paper on Sport.

I am convinced that this White Paper will enhance the visibility of sport in EU policy-making, increase awareness of the specific needs of the sport sector and make an active and practical contribution for the benefit of sport.

Yours sincerely,

Ján Figel'

European Commissioner responsible for sport



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WHITE PAPER

WHITE PAPER ON SPORT

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1. INTRODUCTION

"*Sport is part of every man and woman's heritage and its absence can never be compensated for.*" – Pierre de Coubertin[1]

Sport[2] is a growing social and economic phenomenon which makes an important contribution to the European Union's strategic objectives of solidarity and prosperity. The Olympic ideal of developing sport to promote peace and understanding among nations and cultures as well as the education of young people was born in Europe and has been fostered by the International Olympic Committee and the European Olympic Committees.

Sport attracts European citizens, with a majority of people taking part in sporting activities on a regular basis. It generates important values such as team spirit, solidarity, tolerance and fair play, contributing to personal development and fulfilment. It promotes the active contribution of EU citizens to society and thereby helps to foster active citizenship. The Commission acknowledges the essential role of sport in European society, in particular when it needs to bring itself closer to citizens and to tackle issues that matter directly to them.

However, sport is also confronted with new threats and challenges which have emerged in European society, such as commercial pressure, exploitation of young players, doping, racism, violence, corruption and money laundering.

This initiative marks the first time that the Commission is addressing sport-related issues in a comprehensive manner. Its overall objective is to give strategic orientation on the role of sport in Europe, to encourage debate on specific problems, to enhance the visibility of sport in EU policy-making and to raise public awareness of the needs and specificities of the sector. The initiative aims to illustrate important issues such as the application of EU law to sport. It also seeks to set out further sports-related action at EU level.

This White Paper is not starting from scratch. Sport is subject to the application of the *acquis communautaire* and European policies in a number of areas already have a considerable and growing impact on sport.

The important role of sport in European society and its specific nature were recognised in December 2000 in the European Council's Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies (the "Nice Declaration"). It points out that sporting organisations and Member States have a primary responsibility in the conduct of sporting affairs, with a central role for sports federations. It clarifies that sporting organisations have to exercise their task to organise and promote their particular sports "with due regard to national and Community legislation". At the same time, it recognises that, "even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the

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[1] Pierre de Coubertin (1863-1937), French pedagogue and historian, founder of the modern Olympic Games.

[2] For the sake of clarity and simplicity, this White Paper will use the definition of "sport" established by the Council of Europe: "all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels."

code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured." The European institutions have recognised the specificity of the role sport plays in European society, based on volunteer-driven structures, in terms of health, education, social integration, and culture.

The European Parliament has followed the various challenges facing European sport with keen interest and has regularly dealt with sporting issues in recent years.

In preparing this White Paper, the Commission has held numerous consultations with sport stakeholders on issues of common interest as well as an on-line consultation. They have demonstrated that considerable expectations exist concerning the role of sport in Europe and EU action in this area.

This White Paper focuses on the societal role of sport, its economic dimension and its organisation in Europe, and on the follow-up that will be given to this initiative. Concrete proposals for further EU action are brought together in an Action Plan named after Pierre de Coubertin which contains activities to be implemented or supported by the Commission. A Staff Working Document contains the background and context of the proposals, including annexes on Sport and EU Competition Rules, Sport and Internal Market Freedoms, and on consultations with stakeholders.

2. THE SOCIETAL ROLE OF SPORT

Sport is an area of human activity that greatly interests citizens of the European Union and has enormous potential for bringing them together, reaching out to all, regardless of age or social origin. According to a November 2004 Eurobarometer survey[3], approximately 60% of European citizens participate in sporting activities on a regular basis within or outside some 700,000 clubs, which are themselves members of a plethora of associations and federations. The vast majority of sporting activity takes place in amateur structures. Professional sport is of growing importance and contributes equally to the societal role of sport. In addition to improving the health of European citizens, sport has an educational dimension and plays a social, cultural and recreational role. The societal role of sport also has the potential to strengthen the Union's external relations.

2.1 Enhancing public health through physical activity

Lack of physical activity reinforces the occurrence of overweight, obesity and a number of chronic conditions such as cardio-vascular diseases and diabetes, which reduce the quality of life, put individuals' lives at risk and are a burden on health budgets and the economy.

The Commission's White Paper "A Strategy for Europe on Nutrition, Overweight and Obesity related health issues"[4] underlines the importance of taking pro-active steps to reverse the decline in physical activity, and actions suggested in the area of physical activity in the two White Papers will complement each other.

As a tool for health-enhancing physical activity, the sport movement has a greater influence than any other social movement. Sport is attractive to people and has a positive image.

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[3] Special Eurobarometer (2004): The Citizens of the European Union and Sport.

[4] COM(2007)279 final of 30.5.2007

However, the recognised potential of the sport movement to foster health-enhancing physical activity often remains under-utilised and needs to be developed.

The World Health Organisation (WHO) recommends a minimum of 30 minutes of moderate physical activity (including but not limited to sport) per day for adults and 60 minutes for children. Public authorities and private organisations in Member States should all contribute to reaching this objective. Recent studies tend to show that sufficient progress is not being made.

(1) The Commission proposes to develop new physical activity guidelines with the Member States before the end of 2008.

The Commission recommends strengthening the cooperation between the health, education and sport sectors to be promoted at ministerial level in the Member States in order to define and implement coherent strategies to reduce overweight, obesity and other health risks. In this context, the Commission encourages Member States to examine how to promote the concept of active living through the national education and training systems, including the training of teachers.

Sport organisations are encouraged to take into account their potential for health-enhancing physical activity and to undertake activities for this purpose. The Commission will facilitate the exchange of information and good practice, in particular in relation to young people, with a focus on the grassroots level.

(2) The Commission will support an EU Health-Enhancing Physical Activity (HEPA) network and, if appropriate, smaller and more focussed networks dealing with specific aspects of the topic.

(3) The Commission will make health-enhancing physical activity a cornerstone of its sport-related activities and will seek to take this priority better into account in relevant financial instruments, including:

- The 7th Framework Programme for Research and Technological Development (lifestyle aspects of health);
- The Public Health Programme 2007-2013;
- The Youth and Citizenship programmes (cooperation between sport organisations, schools, civil society, parents and other partners at local level);
- The Lifelong Learning Programme (teacher training and cooperation between schools).

2.2 Joining forces in the fight against doping

Doping poses a threat to sport worldwide, including European sports. It undermines the principle of open and fair competition. It is a demotivating factor for sport in general and puts the professional under unreasonable pressure. It seriously affects the image of sport and poses a serious threat to individual health. At European level, the fight against doping must take into account both a law-enforcement and a health and prevention dimension.

(4) Partnerships could be developed between Member State law enforcement agencies (border

guards, national and local police, customs etc.), laboratories accredited by the World Anti-Doping Agency (WADA) and INTERPOL to exchange information about new doping substances and practices in a timely manner and in a secure environment. The EU could support such efforts through training courses and networking between training centres for law enforcement officers.

The Commission recommends that trade in illicit doping substances be treated in the same manner as trade in illicit drugs throughout the EU.

The Commission calls on all actors with a responsibility for public health to take the health-hazard aspects of doping into account. It calls on sport organisations to develop rules of good practice to ensure that young sportsmen and sportswomen are better informed and educated of doping substances, prescription medicines which may contain them, and their health implications.

The EU would benefit from a more coordinated approach in the fight against doping, in particular by defining common positions in relation to the Council of Europe, WADA and UNESCO, and through the exchange of information and good practice between Governments, national anti-doping organisations and laboratories. Proper implementation of the UNESCO Convention against Doping in Sport by the Member States is particularly important in this context.

(5) The Commission will play a facilitating role, for example by supporting a network of national anti-doping organisations of Member States.

2.3 Enhancing the role of sport in education and training

Through its role in formal and non-formal education, sport reinforces Europe's human capital. The values conveyed through sport help develop knowledge, motivation, skills and readiness for personal effort. Time spent in sport activities at school and at university produces health and education benefits which need to be enhanced.

Based on experience gained during the 2004 European Year of Education through Sport, the Commission encourages support for sport and physical activity through various policy initiatives in the field of education and training, including the development of social and civic competences in accordance with the 2006 Recommendation on key competences for lifelong learning.[5]

(6) Sport and physical activity can be supported through the Lifelong Learning programme. Promoting participation in educational opportunities through sport is thus a priority topic for school partnerships supported by the Comenius programme, for structured actions in the field of vocational education and training through the Leonardo da Vinci programme, for thematic networks and mobility in the field of higher education supported by the Erasmus programme, as well as multilateral projects in the field of adult training supported by the Grundtvig programme.

(7) The sport sector can also apply for support through the individual calls for proposals on the implementation of the European Qualifications Framework (EQF) and the European

[5] Recommendation of the European Parliament and of the Council, of 18 December 2006, on key competences for lifelong learning (Official Journal L 394 of 30.12.2006).

Credit System for Vocational Education and Training (ECVET). The sport sector has been involved in the development of the EQF and has been selected for financial support in 2007/2008. In view of the high professional mobility of sportspeople, and without prejudice to Directive 2005/36/EC on the mutual recognition of professional qualifications, it may also be identified as a pilot sector for the implementation of ECVET to increase the transparency of national competence and qualification systems.

(8) The Commission will introduce the award of a European label to schools actively involved in supporting and promoting physical activities in a school environment.

In order to ensure the reintegration of professional sportspersons into the labour market at the end of their sporting careers, the Commission emphasises the importance of taking into account at an early stage the need to provide "dual career" training for young sportsmen and sportswomen and to provide high quality local training centres to safeguard their moral, educational and professional interests.

The Commission has launched a study on the training of young sportsmen and sportswomen in Europe, the results of which could feed into the abovementioned policies and programmes.

Investment in and promotion of training of young talented sportsmen and sportswomen in proper conditions is crucial for a sustainable development of sport at all levels. The Commission stresses that training systems for talented young sportsmen and sportswomen should be open to all and must not lead to discrimination between EU citizens based on nationality.

(9) Rules requiring that teams include a certain quota of locally trained players could be accepted as being compatible with the Treaty provisions on free movement of persons if they do not lead to any direct discrimination based on nationality and if possible indirect discrimination effects resulting from them can be justified as being proportionate to a legitimate objective pursued, such as to enhance and protect the training and development of talented young players. The ongoing study on the training of young sportsmen and sportswomen in Europe will provide valuable input for this analysis.

2.4 Promoting volunteering and active citizenship through sport

Participation in a team, principles such as fair-play, compliance with the rules of the game, respect for others, solidarity and discipline as well as the organisation of amateur sport based on non-profit clubs and volunteering reinforce active citizenship. Volunteering in sport organisations provides many occasions for non-formal education which need to be recognised and enhanced. Sport also provides attractive possibilities for young people's engagement and involvement in society and may have a beneficial effect in helping people steer away from delinquency.

There are, however, new trends in the way people, particularly the young, practice sport. There is a growing tendency to practise sport individually, rather than collectively and in an organised structure, which is resulting in a declining volunteer base for amateur sport clubs.

(10) Together with the Member States, the Commission will identify key challenges for non-profit sport organisations and the main characteristics of services provided by these organisations.

(11) The Commission will support grassroots sport through the Europe for Citizens programme.

(12) The Commission will furthermore propose to encourage young people's volunteering in sport through the Youth in Action programme in fields such as youth exchanges and voluntary service for sporting events.

(13) The Commission will further develop exchange of information and best practice on volunteering in sport involving Member States, sport organisations and local authorities.

(14) In order to understand better the specific demands and needs of the voluntary sport sector in national and European policy making, the Commission will launch a European study on volunteering in sport.

2.5 Using the potential of sport for social inclusion, integration and equal opportunities

Sport makes an important contribution to economic and social cohesion and more integrated societies. All residents should have access to sport. The specific needs and situation of under-represented groups therefore need to be addressed, and the special role that sport can play for young people, people with disabilities and people from less privileged backgrounds must be taken into account. Sport can also facilitate the integration into society of migrants and persons of foreign origin as well as support inter-cultural dialogue.

Sport promotes a shared sense of belonging and participation and may therefore also be an important tool for the integration of immigrants. It is in this context that making available spaces for sport and supporting sport-related activities is important for allowing immigrants and the host society to interact together in a positive way.

The Commission believes that better use can be made of the potential of sport as an instrument for social inclusion in the policies, actions and programmes of the European Union and of Member States. This includes the contribution of sport to job creation and to economic growth and revitalisation, particularly in disadvantaged areas. Non-profit sport activities contributing to social cohesion and social inclusion of vulnerable groups can be considered as social services of general interest.

The Open Method of Coordination on social protection and social inclusion will continue to include sport as a tool and indicator. Studies, seminars, conferences, policy proposals and action plans will include access to sport and/or belonging to social sport structures as a key element for analysis of social exclusion.

(15) The Commission will suggest to Member States that the PROGRESS programme and the Lifelong Learning, Youth in Action and Europe for Citizens programmes support actions promoting social inclusion through sport and combating discrimination in sport. In the context of cohesion policy, Member States should consider the role of sports in the field of social inclusion, integration and equal opportunities as part of their programming of the European Social Fund and the European Regional Development Fund, and they are encouraged to promote action under the European Integration Fund.

The Commission furthermore encourages Member States and sport organisations to adapt sport infrastructure to take into account the needs of people with disabilities. Member States and local authorities should ensure that sport venues and accommodations are accessible for

people with disabilities. Specific criteria should be adopted for ensuring equal access to sport for all pupils, and specifically for children with disabilities. Training of monitors, volunteers and host staff of clubs and organisations for the purpose of welcoming people with disabilities will be promoted. In its consultations with sport stakeholders, the Commission takes special care to maintain a dialogue with representatives of sportspeople with disabilities.

(16) The Commission, in its Action Plan on the European Union Disability Strategy, will take into account the importance of sport for disabled people and will support Member State actions in this field.

(17) In the framework of its Roadmap for Equality between Women and Men 2006-2010, the Commission will encourage the mainstreaming of gender issues into all its sports-related activities, with a specific focus on access to sport for immigrant women and women from ethnic minorities, women's access to decision-making positions in sport and media coverage of women in sport.

2.6 Strengthening the prevention of and fight against racism and violence

Violence at sport events, especially at football grounds, remains a disturbing problem and can take different forms. It has been shifting from inside stadiums to outside, including urban areas. The Commission is committed to contributing to the prevention of incidents by promoting and facilitating dialogue with Member States, international organisations (e.g. Council of Europe), sport organisations, law enforcement services and other stakeholders (e.g. supporters' organisations and local authorities). Law enforcement authorities cannot deal with the underlying causes of sport violence in isolation.

The Commission also encourages the exchange of best practice and of operational information on risk-supporters among police services and/or sport authorities. Particular importance will be given to police training on crowd management and hooliganism.

Sport involves all citizens regardless of gender, race, age, disability, religion and belief, sexual orientation and social or economic background. The Commission has repeatedly condemned all manifestations of racism and xenophobia, which are incompatible with the values of the EU.

(18) As regards racist and xenophobic attitudes, the Commission will continue to promote dialogue and exchange of best practices in existing cooperation frameworks such as the Football against Racism in Europe network (FARE).

The Commission recommends sport federations to have procedures for dealing with racist abuse during matches, based on existing initiatives. It also recommends strengthening provisions regarding discrimination in licensing systems for clubs (see section 4.7).

The Commission will:

(19) Promote, in accordance with the domestic and EU rules applicable, the exchange of operational information and practical know-how and experience on the prevention of violent and racist incidents between law enforcement services and with sport organisations;

(20) Analyse possibilities for new legal instruments and other EU-wide standards to prevent public disorder at sport events;

(21) Promote a multidisciplinary approach to preventing anti-social behaviour, with a special focus given to socio-educational actions such as fan-coaching (long-term work with supporters to develop a positive and non-violent attitude);

(22) Strengthen regular and structured cooperation among law enforcement services, sport organisations and other stakeholders;

(23) Encourage the use of the following programmes to contribute to the prevention of and fight against violence and racism in sport: Youth in Action, Europe for Citizens, DAPHNE III, Fundamental Rights and Citizenship and Prevention and Fight against Crime;

(24) Organise a high level conference to discuss measures to prevent and fight violence and racism at sport events with stakeholders.

2.7 Sharing our values with other parts of the world

Sport can play a role regarding different aspects of the EU's external relations: as an element of external assistance programmes, as an element of dialogue with partner countries and as part of the EU's public diplomacy.

Through concrete actions, sport has a considerable potential as a tool to promote education, health, inter-cultural dialogue, development and peace.

(25) The Commission will promote the use of sport as a tool in its development policy. In particular, it will:

- Promote sport and physical education as essential elements of quality education and as a means to make schools more attractive and improve attendance;
- Target action at improving access for girls and women to physical education and sport, with the objective to help them build confidence, improve social integration, overcome prejudices and promote healthy lifestyles as well as women's access to education;
- Support health promotion and awareness-raising campaigns through sport.

When addressing sport in its development policies, the EU will make its best effort to create synergies with existing programmes of the United Nations, Member States, local authorities and private bodies. It will implement actions that are complementary or innovative with respect to existing programmes and actions. The memorandum of understanding signed between the Commission and FIFA in 2006 to make football a force for development in African, Caribbean and Pacific countries is an example in this respect.

(26) The EU will include, wherever appropriate, sport-related issues such as international players' transfers, exploitation of underage players, doping, money-laundering through sport, and security during major international sport events in its policy dialogue and cooperation with partner countries.

Rapid visa and immigration procedures for, in particular, elite sportspersons from non-EU countries are an important element to enhance the EU's international attractiveness. In addition to the on-going process of concluding visa facilitation agreements with third countries and the consolidation of the visa regime applicable to members of the Olympic

family during Olympic Games, the EU needs to develop further (temporary) admission mechanisms for sportspersons from third countries.

The Commission will pay particular attention to the sport sector:

(27) When implementing the recently presented Communication on circular migration and mobility partnerships with third countries;

(28) When elaborating harmonised schemes for the admission of various categories of third country nationals for economic purposes on the basis of the 2005 Policy Plan on Legal Migration.

2.8 Supporting sustainable development

The practice of sport, sport facilities and sport events all have a significant impact on the environment. It is important to promote environmentally sound management, fit to address *inter alia* green procurement, greenhouse gas emissions, energy efficiency, waste disposal and the treatment of soil and water. European sport organisations and sport event organisers should adopt environmental objectives in order to make their activities environmentally sustainable. By improving their credibility on environmental matters, responsible organisations could expect specific benefits while bidding to host sport events as well as economic benefits related to a more rationalised use of natural resources.

The Commission will:

(29) Use its structured dialogue with leading international and European sport organisations and other sport stakeholders to encourage them and their members to participate in the Eco Management Audit Scheme (EMAS) and Community Eco-Label Award schemes, and promote these voluntary schemes during major sport events;

(30) Promote green procurement in its political dialogue with Member States and other concerned parties;

(31) Raise awareness, through guidance developed in cooperation with relevant stakeholders (policy makers, SMEs, local communities), about the need to work together in partnership at the regional level to organise sport events in a sustainable way;

(32) Take sport into account as part of the "Information and Communication" component of the new LIFE+ programme.

3. THE ECONOMIC DIMENSION OF SPORT

Sport is a dynamic and fast-growing sector with an underestimated macro-economic impact, and can contribute to the Lisbon objectives of growth and job creation. It can serve as a tool for local and regional development, urban regeneration or rural development. Sport has synergies with tourism and can stimulate the upgrading of infrastructure and the emergence of new partnerships for financing sport and leisure facilities.

Although sound and comparable data on the economic weight of sport are generally lacking, its importance is confirmed by studies and analyses of national accounts, the economics of large-scale sporting events, and physical inactivity costs, including for the ageing population.

A study presented during the Austrian Presidency in 2006 suggested that sport in a broader sense generated value-added of 407 billion euros in 2004, accounting for 3.7% of EU GDP, and employment for 15 million people or 5.4% of the labour force.[6] This contribution of sport should be made more visible and promoted in EU policies.

A growing part of the economic value of sports is linked to intellectual property rights. These rights relate to copyright, commercial communications, trademarks, and image and media rights. In an increasingly globalised and dynamic sector, the effective enforcement of intellectual property rights around the world is becoming an essential part of the health of the sport economy. It is also important that recipients are guaranteed the possibility to have distance access to sport events at cross-border level within the EU.

On the other hand, notwithstanding the overall economic importance of sport, the vast majority of sporting activities takes place in non-profit structures, many of which depend on public support to provide access to sporting activities to all citizens.

3.1 Moving towards evidence-based sport policies

The launch of policy actions and enhanced cooperation on sport at EU level needs to be underpinned by a sound knowledge base. The quality and comparability of data need to be improved to allow for better strategic planning and policy-making in the area of sport.

Governmental and non-governmental stakeholders have repeatedly called upon the Commission to develop a European statistical definition of sport and to coordinate efforts to produce sport and sport-related statistics on that basis.

(33) The Commission, in close cooperation with the Member States, will seek to develop a European statistical method for measuring the economic impact of sport as a basis for national statistical accounts for sport, which could lead in time to a European satellite account for sport.

(34) In addition, specific sport-related information surveys should continue to take place once every few years (e.g. Eurobarometer polls), in particular to provide non-economic information which cannot be provided on the basis of national statistical accounts for sport (e.g. participation rates, data on volunteering, etc.).

(35) The Commission will launch a study to assess the sport sector's direct contribution (in terms of GDP, growth and employment) and indirect contribution (through education, regional development and higher attractiveness of the EU) to the Lisbon Agenda.

(36) The Commission will organise the exchange of best practices among Member States and sports federations concerning the organisation of large sport events, with a view to promoting sustainable economic growth, competitiveness and employment.

3.2 Putting public support for sport on a more secure footing

Sport organisations have many sources of income, including club fees and ticket sales, advertising and sponsorship, media rights, re-distribution of income within the sport

[6] D. Dimitrov / C. Helmenstein / A. Kleissner / B. Moser / J. Schindler: *Die makroökonomischen Effekte des Sports in Europa*, Studie im Auftrag des Bundeskanzleramts, Sektion Sport, Wien, 2006

federations, merchandising, public support etc. However, some sport organisations have considerably better access to resources from business operators than others, even if in some cases a well-functioning system of redistribution is in place. In grassroots sport, equal opportunities and open access to sporting activities can only be guaranteed through strong public involvement. The Commission understands the importance of public support for grassroots sport and sport for all, and is in favour of such support provided it is granted in accordance with Community law.

In many Member States sport is partly financed through a tax or levy on state-run or state-licensed gambling or lottery services. The Commission invites Member States to reflect upon how best to maintain and develop a sustainable financing model for giving long-term support to sports organisations.

(37) As a contribution to the reflection on the financing of sport, the Commission will carry out an independent study on the financing of grassroots sport and sport for all in the Member States from both public and private sources, and on the impact of on-going changes in this area.

In the field of indirect taxation, the EU's VAT legislation is laid down in Council Directive 2006/112/EC, which aims at ensuring that the application of Member State legislation on VAT does not distort competition or hinder the free movement of goods and services. The Directive provides for both the possibility for Member States to exempt certain sport-related services and, where exemption does not apply, the possibility to apply reduced rates in some cases.

(38) Given the important societal role of sport and its strong local anchoring, the Commission will defend maintaining the existing possibilities of reduced VAT rates for sport.

4. THE ORGANISATION OF SPORT

The political debate on sport in Europe often attributes considerable importance to the so-called "European Sport Model". The Commission considers that certain values and traditions of European sport should be promoted. In view of the diversity and complexities of European sport structures it considers, however, that it is unrealistic to try to define a unified model of organisation of sport in Europe. Moreover, economic and social developments that are common to the majority of the Member States (increasing commercialisation, challenges to public spending, increasing numbers of participants and stagnation in the number of voluntary workers) have resulted in new challenges for the organisation of sport in Europe. The emergence of new stakeholders (participants outside the organised disciplines, professional sports clubs, etc.) is posing new questions as regards governance, democracy and representation of interests within the sport movement.

The Commission can play a role in encouraging the sharing of best practice in sport governance. It can also help to develop a common set of principles for good governance in sport, such as transparency, democracy, accountability and representation of stakeholders (associations, federations, players, clubs, leagues, supporters, etc.). While doing so the

Commission will draw on previous work[7]. Attention should also be paid to the representation of women in management and leadership positions.

The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners. Nonetheless, dialogue with sports organisations has brought a number of areas to the Commission's attention, which are addressed below. The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected, and is ready to play a facilitating role or take action if necessary.

4.1 The specificity of sport

Sport activity is subject to the application of EU law. This is described in detail in the Staff Working Document and its annexes. Competition law and Internal Market provisions apply to sport in so far as it constitutes an economic activity. Sport is also subject to other important aspects of EU law, such as the prohibition of discrimination on grounds of nationality, provisions regarding citizenship of the Union and equality between men and women in employment.

At the same time, sport has certain specific characteristics, which are often referred to as the "specificity of sport". The specificity of European sport can be approached through two prisms:

- The specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, or the need to ensure uncertainty concerning outcomes and to preserve a competitive balance between clubs taking part in the same competitions;

- The specificity of the sport structure, including notably the autonomy and diversity of sport organisations, a pyramid structure of competitions from grassroots to elite level and organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis, and the principle of a single federation per sport;

The case law of the European courts and decisions of the European Commission show that the specificity of sport has been recognised and taken into account. They also provide guidance on how EU law applies to sport. In line with established case law, the specificity of sport will continue to be recognised, but it cannot be construed so as to justify a general exemption from the application of EU law.

As is explained in detail in the Staff Working Document and its annexes, there are organisational sporting rules that – based on their legitimate objectives – are likely not to breach the anti-trust provisions of the EC Treaty, provided that their anti-competitive effects, if any, are inherent and proportionate to the objectives pursued. Examples of such rules would be "rules of the game" (e.g. rules fixing the length of matches or the number of players on the field), rules concerning selection criteria for sport competitions, "at home and away from

[7] E.g. the "Rules of the Game" conference organised in 2001 by FIA and the EOC and the Independent European Sport Review carried out in 2006.

home" rules, rules preventing multiple ownership in club competitions, rules concerning the composition of national teams, anti-doping rules and rules concerning transfer periods.

However, in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its Meca-Medina ruling.[8] The Court provided a clarification regarding the impact of EU law on sporting rules. It dismissed the notion of "purely sporting rules" as irrelevant for the question of the applicability of EU competition rules to the sport sector.

The Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition rules, provided that these effects are proportionate to the legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual features of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport sector.

4.2 Free movement and nationality

The organisation of sport and of competitions on a national basis is part of the historical and cultural background of the European approach to sport, and corresponds to the wishes of European citizens. In particular, national teams play an essential role not only in terms of identity but also to secure solidarity with grassroots sport, and therefore deserve to be supported.

Discrimination on grounds of nationality is prohibited in the Treaties, which establish the right for any citizen of the Union to move and reside freely in the territory of the Member States. The Treaties also aim to abolish any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. The same prohibitions apply to discrimination based on nationality in the provision of services. Moreover, membership of sports clubs and participation in competitions are relevant factors to promote the integration of residents into the society of the host country.

Equal treatment also concerns citizens of States which have signed agreements with the EU that contain non-discrimination clauses, and who are legally employed in the territory of the Member States.

(39) The Commission calls on Member States and sport organisations to address discrimination based on nationality in all sports. It will combat discrimination in sport through political dialogue with the Member States, recommendations, structured dialogue with sport stakeholders, and infringement procedures when appropriate.

The Commission reaffirms its acceptance of limited and proportionate restrictions (in line with EU Treaty provisions on free movement and European Court of Justice rulings) to the principle of free movement in particular as regards:

[8] Case C-519/04P, *Meca Medina v. Commission*, ECR 2006, I-6991. For more details, see the Staff Working Document.

- The right to select national athletes for national team competitions;
- The need to limit the number of participants in a competition;
- The setting of deadlines for transfers of players in team sports.

(40) As regards access to individual competitions for non-nationals, the Commission intends to launch a study to analyse all aspects of this complex issue.

4.3 Transfers

In the absence of transfer rules, the integrity of sport competitions could be challenged by clubs recruiting players during a given season to prevail upon their competitors. At the same time, any rule on the transfer of players must respect EU law (competition provisions and rules on the free movement of workers).

In 2001, in the context of the pursuit of a case concerning alleged infringements of EC competition law and after discussions with the Commission, football authorities undertook to revise FIFA Regulations on international football transfers, based on compensation for training costs incurred by sports clubs, the creation of transfer periods, the protection of school education of underage players, and guaranteed access to national courts.

The Commission considers such a system to constitute an example of good practice that ensures a competitive equilibrium between sport clubs while taking into account the requirements of EU law.

The transfer of players also gives rise to concerns about the legality of the financial flows involved. To increase transparency in money flows related to transfers, an information and verification system for transfers could be an effective solution. The Commission considers that such a system should only have a control function; financial transactions should be conducted directly between the parties involved. Depending on the sport, the system could be run by the relevant European sport organisation, or by national information and verification systems in the Member States.

4.4 Players' agents

The development of a truly European market for players and the rise in the level of players' salaries in some sports has resulted in an increase in the activities of players' agents. In an increasingly complex legal environment, many players (but also sport clubs) ask for the services of agents to negotiate and sign contracts.

There are reports of bad practices in the activities of some agents which have resulted in instances of corruption, money laundering and exploitation of underage players. These practices are damaging for sport in general and raise serious governance questions. The health and security of players, particularly minors, has to be protected and criminal activities fought against.

Moreover, agents are subject to differing regulations in different Member States. Some Member States have introduced specific legislation on players' agents while in others the applicable law is the general law regarding employment agencies, but with references to

players' agents. Moreover, some international federations (FIFA, FIBA) have introduced their own regulations.

For these reasons, repeated calls have been made on the EU to regulate the activity of players' agents through an EU legislative initiative.

(41) The Commission will carry out an impact assessment to provide a clear overview of the activities of players' agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options.

4.5 Protection of minors

The exploitation of young players is continuing. The most serious problem concerns children who are not selected for competitions and abandoned in a foreign country, often falling in this way in an irregular position which fosters their further exploitation. Although in most cases this phenomenon does not fall into the legal definition of trafficking in human beings, it is unacceptable given the fundamental values recognised by the EU and its Member States. It is also contrary to the values of sport. Protective measures for unaccompanied minors in Member State immigration laws need to be applied rigorously. Sexual abuse and harassment of minors in sport must also be fought against.

(42) The Commission will continue to monitor the implementation of EU legislation, in particular the Directive on the Protection of Young People at Work. The Commission has recently launched a study on child labour as a complement to its monitoring of the implementation of the Directive. The issue of young players falling within the scope of the Directive will be taken into account in the study.

(43) The Commission will propose to Member States and sport organisations to cooperate on the protection of the moral and physical integrity of young people through the dissemination of information on existing legislation, establishment of minimum standards and exchange of best practices.

4.6 Corruption, money laundering and other forms of financial crime

Corruption, money laundering and other forms of financial crime are affecting sport at local, national and international levels. Given the sector's high degree of internationalisation, corruption in the sport sector often has cross-border aspects. Corruption problems with a European dimension need to be tackled at European level. EU anti-money laundering mechanisms should apply effectively also in the sport sector.

(44) The Commission will support public-private partnerships representative of sports interests and anti-corruption authorities, which would identify vulnerabilities to corruption in the sport sector and assist in the development of effective preventive and repressive strategies to counter such corruption.

(45) The Commission will continue to monitor the implementation of EU anti-money laundering legislation in the Member States with regard to the sport sector.

4.7 Licensing systems for clubs

The Commission acknowledges the usefulness of robust licensing systems for professional clubs at European and national levels as a tool for promoting good governance in sport. Licensing systems generally aim to ensure that all clubs respect the same basic rules on financial management and transparency, but could also include provisions regarding discrimination, violence, protection of minors and training. Such systems must be compatible with competition and Internal Market provisions and may not go beyond what is necessary for the pursuit of a legitimate objective relating to the proper organisation and conduct of sport.

Efforts need to concentrate on the implementation and gradual reinforcement of licensing systems. In the case of football, where a licensing system will soon be compulsory for clubs entering European competitions, action needs to concentrate on promoting and encouraging the use of licensing systems at national level.

(46) The Commission will promote dialogue with sport organisations in order to address the implementation and strengthening of self-regulatory licensing systems.

(47) Starting with football, the Commission intends to organise a conference with UEFA, EPFL, Fifpro, national associations and national leagues on licensing systems and best practices in this field.

4.8 Media

Issues concerning the relationship between the sport sector and sport media (television in particular) have become crucial as television rights are the primary source of income for professional sport in Europe. Conversely, sport media rights are a decisive source of content for many media operators.

Sport has been a driving force behind the emergence of new media and interactive television services. The Commission will continue to support the right to information and wide access for citizens to broadcasts of sport events, which are seen as being of high interest or major importance for society.

The application of the competition provisions of the EC Treaty to the selling of media rights of sport events takes into account a number of specific characteristics in this area. Sport media rights are sometimes sold collectively by a sport association on behalf of individual clubs (as opposed to clubs marketing the rights individually). While joint selling of media rights raises competition concerns, the Commission has accepted it under certain conditions. Collective selling can be important for the redistribution of income and can thus be a tool for achieving greater solidarity within sports.

The Commission recognises the importance of an equitable redistribution of income between clubs, including the smallest ones, and between professional and amateur sport.

(48) The Commission recommends to sport organisations to pay due attention to the creation and maintenance of solidarity mechanisms. In the area of sports media rights, such mechanisms can take the form of a system of collective selling of media rights or, alternatively, of a system of individual selling by clubs, in both cases linked to a robust solidarity mechanism.

5. FOLLOW-UP

The Commission will follow up on the initiatives presented in this White Paper through the implementation of a structured dialogue with sport stakeholders, cooperation with the Member States, and the promotion of social dialogue in the sport sector.

5.1 Structured dialogue

European sport is characterised by a multitude of complex and diverse structures which enjoy different types of legal status and levels of autonomy in Member States. Unlike other sectors and due to the very nature of organised sport, European sport structures are, as a rule, less well developed than sport structures at national and international levels. Moreover, European sport is generally organised according to continental structures, and not at EU level.

Stakeholders agree that the Commission has an important role to play in contributing to the European debate on sport by providing a platform for dialogue with sport stakeholders. Wide consultation with "interested parties" is one of the Commission's duties according to the Treaties.

In view of the complex and diverse sports culture in Europe, the Commission intends to involve notably the following actors in its structured dialogue:

- European Sport Federations;
- European umbrella organisations for sport, notably the European Olympic Committees (EOC), the European Paralympic Committee (EPC) and European non-governmental sport organisations;
- National umbrella organisations for sport and national Olympic and Paralympic Committees;
- Other actors in the field of sport represented at European level, including social partners;
- Other European and international organisations, in particular the Council of Europe's structures for sport and UN bodies such as UNESCO and the WHO.

(49) The Commission intends to organise the structured dialogue in the following manner:

- EU Sport Forum: an annual gathering of all sport stakeholders;
- Thematic discussions with limited numbers of participants.

(50) The Commission will also seek to promote greater European visibility at sporting events. The Commission supports the further development of the European Capitals of Sport initiative.

5.2 Cooperation with Member States

Cooperation among Member States on sport at EU level takes place in informal ministerial meetings, as well as at the administrative level by Sport Directors. A Rolling Agenda for sport was adopted by EU Sport Ministers in 2004 to define priority themes for discussions on sport among the Member States.

(51) In order to address the issues listed in this White Paper, the Commission proposes to strengthen existing cooperation among the Member States and the Commission.

Based on a proposal from the Commission, Member States may wish to reinforce the mechanism of the Rolling Agenda, for example:

- To jointly define priorities for sport policy cooperation;
- To report regularly to EU Sport Ministers on progress.

Closer cooperation will require the regular organisation of Sport Ministers and Sport Directors meetings under each Presidency, which should be taken into account by future 18-month Presidency teams.

(52) The Commission will report on the implementation of the "Pierre de Coubertin" Action Plan through the mechanism of the Rolling Agenda.

5.3 Social dialogue

In the light of a growing number of challenges to sport governance, social dialogue at European level can contribute to addressing common concerns of employers and athletes, including agreements on employment relations and working conditions in the sector in accordance with EC Treaty provisions.

The Commission has been supporting projects for the consolidation of social dialogue in the sport sector in general as well as in the football sector. These projects have created a basis for social dialogue at European level and the consolidation of European-level organisations. A Sectoral Social Dialogue Committee can be established by the Commission on the basis of a joint request by social partners. The Commission considers that a European social dialogue in the sport sector or in its sub-sectors (e.g. football) is an instrument which would allow social partners to contribute to the shaping of employment relations and working conditions in an active and participative way. In this area, such a social dialogue could also lead to the establishment of commonly agreed codes of conduct or charters, which could address issues related to training, working conditions or the protection of young people.

(53) The Commission encourages and welcomes all efforts leading to the establishment of European Social Dialogue Committees in the sport sector. It will continue to give support to both employers and employees and it will pursue its open dialogue with all sport organisations on this issue.

The support that the Member States should make available for capacity building and joint actions of social partners through the European Social Fund in the convergence regions should also be used for capacity building of the social partners in the sport sector.

6. CONCLUSION

The White Paper contains a number of actions to be implemented or supported by the Commission. Together, these actions form the "Pierre de Coubertin" Action Plan which will guide the Commission in its sport-related activities during the coming years.

The White Paper has taken full advantage of the possibilities offered by the current Treaties. A mandate has been given by the European Council of June 2007 for the Intergovernmental Conference, which foresees a Treaty provision on sport. If necessary, the Commission may return to this issue and indicate further steps in the context of a new Treaty provision.

The Commission will organise a conference to present the White Paper to sport stakeholders in the autumn of 2007. Its findings will be presented to EU Sport Ministers by the end of 2007. The White Paper will also be presented to the European Parliament, the Committee of the Regions and the Economic and Social Committee.

COMMISSION OF THE EUROPEAN COMMUNITIES

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ACTION PLAN "PIERRE DE COUBERTIN"

Accompanying document to the

WHITE PAPER ON SPORT

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ACTION PLAN "PIERRE DE COUBERTIN"

The White Paper on Sport contains a number of proposed actions to be implemented or supported by the Commission. These actions are brought together in the present Action Plan, named after Pierre de Coubertin. The Action Plan will guide the Commission in its sport-related activities during the coming years while fully taking into account and respecting the principle of subsidiarity and the autonomy of sport organisations.

A. The societal role of sport
A.1. Public health and physical activity
(1) Together with the Member States, develop new physical activity guidelines. (2) Support an EU Health-Enhancing Physical Activity network and, if appropriate, smaller and more focused networks dealing with specific aspects of the topic. (3) Mobilise the 7th Framework Programme for Research and Technological Development (RTD), the EU Public Health Programme, the Youth and Citizenship programmes and the Life-Long Learning (LLL) Programme.
A.2. Fight against doping
(4) Support partnerships through training courses and networking between training centres for law enforcement officers. (5) Facilitate a coordinated EU approach in the fight against doping, e.g. by supporting a network of national anti-doping organisations.
A.3. Education and training
(6) Promote participation in educational opportunities through sport under the Lifelong Learning Programme (Comenius, Erasmus, Leonardo da Vinci, Grundtvig). (7) Identify projects for the implementation of the European Qualification Framework (EQF) and the European Credit System for Vocational Education and Training (ECVET) in the sport sector. (8) Introduce the award of a European label to schools actively supporting physical activities. (9) Complete the analysis of rules requiring that teams include a certain quota of locally trained players.
A.4. Volunteering in sport, active citizenship and non-profit sport organisations
(10) Together with Member States, identify key challenges for non-profit sport organisations and the main characteristics of services provided by these organisations. (11) Support grassroots sport through the Europe for Citizens Programme. (12) Encourage young people's volunteering in sport through the Youth in Action

Programme. (13) Develop the exchange of information and best practice on volunteering in sport. (14) Launch a study on volunteering in sport.
A.5. Social inclusion in and through sport
(15) Mobilise the Progress, Lifelong Learning, Youth in Action and Europe for Citizens programmes as well as the European Social Fund, the European Regional Development Fund and the European Integration Fund to support actions promoting social inclusion and integration through sport and combating discrimination in sport. (16) In the Action Plan on the European Union Disability Strategy, take into account the importance of sport for disabled people and support Member State actions in this field. (17) In the framework of the Roadmap for Equality between Women and Men 2006-2010, encourage the mainstreaming of gender issues into sports-related activities, with a specific focus on access to sport for immigrant women and women from ethnic minorities, women's access to decision-making positions in sport and media coverage of women in sport.
A.6. Prevention of and fight against racism and violence in sport
(18) As regards racism and xenophobia, promote dialogue and exchange of best practices in the existing cooperation framework. (19) Promote, in accordance with national and EU rules applicable, the exchange of operational information and practical know-how and experience on the prevention of violent and racist incidents between law enforcement services and with sport organisations. (20) Analyse possibilities for new legal instruments and other EU-wide standards to prevent public disorder at sport events. (21) Promote a multidisciplinary approach to preventing anti-social behaviour, with a special focus given to socio-educational actions such as fan-coaching (long-term work with supporters to develop a positive and non-violent attitude). (22) Strengthen regular and structured cooperation among law enforcement services, sport organisations and other stakeholders. (23) Encourage the use of the following programmes, to contribute to the prevention of and fight against violence and racism in sport: Youth in Action, Europe for Citizens, DAPHNE III, Fundamental Rights and Citizenship and Prevention and Fight against Crime. (24) Organise a high level conference to discuss measures contributing to prevent and fight violence and racism in sport events with stakeholders.
A.7. Sport in the Union's external relations
(25) Promote the use of sport as a tool in the EU's development policy. (26) Include sport-related issues in policy dialogue and cooperation with partner countries

when appropriate. Promote sport as an element of the EU's public diplomacy. (27) Pay particular attention to the sport sector when implementing the recently presented Communication on circular migration and mobility partnerships with third countries. (28) Pay particular attention to the sport sector when elaborating harmonised schemes for the admission of various categories of third country nationals for economic purposes on the basis of the 2005 Policy Plan on Legal Migration.
A.8. Sustainable development
(29) Encourage the participation of sport stakeholders in the Eco Management Audit Scheme (EMAS), Community Eco-Label Award schemes and green procurement, and promote these schemes during major sport events in cooperation with Member States, sport organisations and organisers. (30) Promote green procurement in the political dialogue with Member States and other concerned parties. (31) Raise awareness, through guidance developed in cooperation with relevant stakeholders (policy makers, SMEs, local communities), about the need to work together in partnership at the regional level to organise sport events in a sustainable way. (32) Take sport into account in the new Life+ programme.
B. The economic dimension of sport
B.1. Economic impact of sport
(33) Together with Member States, develop a European statistical method for measuring the economic impact of sport. (34) Conduct specific sport-related surveys to provide non-economic information on sport. (35) Launch a study to assess the sport sector’s contribution to the Lisbon Agenda. (36) Organise the exchange of best practices concerning the organisation of large sport events.
B.2. Public support for sport
(37) Carry out a study on the financing of grassroots sport and sport for all in the Member States from both public and private sources, and on the impact of on-going changes in this area. (38) Defend the possibilities of reduced VAT rates for sport.
C. The organisation of sport
C.1. Free movement and nationality
(39) Combat discrimination based on nationality in all sports through political dialogue,

recommendations, structured dialogue with stakeholders and infringement procedures when appropriate. (40) Launch a study on access to individual sport competitions for non-nationals.
C.2 Players' agents
(41) Carry out an impact assessment to provide a clear overview of the activities of players' agents in the EU and an evaluation of whether action at EU level is necessary, which will also analyse the different possible options.
C.3. Protection of minors
(42) Continue to monitor the implementation of EU legislation, in particular the Directive on the Protection of Young People at Work. (43) Propose to Member States and sport organisations to cooperate on the protection of the moral and physical integrity of young people through the dissemination of information on existing legislation, establishment of minimum standards and exchange of best practices.
C.4. Corruption, money-laundering and other financial crime
(44) Support public-private partnerships representative of sports interests and anti-corruption authorities, which would identify vulnerabilities to corruption in the sport sector and assist in the development of effective preventive and repressive strategies to counter such corruption. (45) Continue to monitor the implementation of EU anti-money laundering legislation in the Member States with regard to the sport sector.
C.5. Licensing systems
(46) Establish a dialogue with sport organisations on self-regulatory licensing systems for clubs/teams. (47) Starting with football, organise a conference with UEFA, EPFL, Fifpro, national associations and national leagues on existing licensing systems and best practices in this field.
C.6. Media
(48) Recommend to sport organisations to pay due attention to the creation and maintenance of solidarity mechanisms for an equitable redistribution of income between clubs and between professional and amateur sport.
D. Follow-up
D.1. Structured dialogue with sport stakeholders
(49) Provide for a more efficient dialogue structure on sport at EU level, including the organisation of an annual European Sport Forum and thematic discussions with targeted

audiences, European sport stakeholders in particular. (50) Promote greater European visibility at sporting events and support the further development of the European Capitals of Sport initiative.
D.2. Cooperation with Member States
(51) Propose to the Member States to strengthen political cooperation on sport through a reinforced Rolling Agenda, common priorities and regular reporting to EU Sport Ministers. (52) Report on the implementation of the Action Plan through the mechanism of the Rolling Agenda.
D.3. Social dialogue
(53) Encourage efforts leading to the establishment of European Social Dialogue Committees in the sport sector, and support employers and employees in this respect.

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THE EU AND SPORT: BACKGROUND AND CONTEXT

Accompanying document to the

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1. INTRODUCTION

The purpose of this Staff Working Document is to present the background, context and, where necessary, rationale of the proposals presented in the Commission's White Paper on Sport.

This document does not repeat the proposals presented in the White Paper and should therefore be read in conjunction with the latter. For ease of reference, the numbering of the sections of this document follows that of the White Paper as much as possible.

The White Paper marks the first time that the Commission is addressing sport-related issues in a comprehensive and coherent manner. It builds on a period of more than two decades during which sport has gradually become a topic on the European agenda.

The "Adonino Report" of the Committee for "the Europe of the Citizens" (1985) was the first Community document to recognise the importance of sport in European society and was endorsed by the Milan European Council in 1985. It initiated campaigns to raise public awareness of belonging to the Community by way of sport.

The Commission adopted a Communication to the Council and the European Parliament on the European Community and Sport in 1991[1] and a Report to the European Council with a view to safeguarding current sport structures and maintaining the social function of sport within the Community framework in 1999[2]. More recently, the Commission also presented a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU action in the field of Education through Sport: building on EYES 2004 achievements[3].

The Heads of State and Government of the European Union adopted two Declarations on the occasion of the adoption of the Amsterdam Treaty (1997)[4] and of the Nice Treaty (2000)[5] to emphasise the social significance of sport and recognise its special characteristics. The "Nice Declaration" points out that sporting organisations and the Member States have a primary responsibility in the conduct of sporting affairs[6] but recognises that, "even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured."

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1 SEC (91) 1438 Final of 31 July 1991

2 COM (1999) 644 Final of 10 December 1999

3 COM(2005) 680 final of 22 December 2005

4 Declaration n°29 attached to the Amsterdam treaty: "The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport."

5 Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies.

6 At the same time it clarifies that the sporting organisations have to exercise their task to organise and promote their particular sports "with due regard to national and Community legislation".

The results of the 2004 Intergovernmental Conference included sport among the “areas of supporting, coordinating or complementary action”.[7] The relevant article in the agreed text (Article III-282) recalled that the "Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function", and pointed out that "Union action shall be aimed at developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sport, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen."

The European Parliament has repeatedly paid attention to European sport issues in recent years, most recently by adopting a resolution on the future of professional football in Europe.[8]

While preparing the White Paper the Commission has analysed a large number of relevant documents, such as e.g. the report and conclusions of the "Rules of the Game" conference on governance in sport organised in Brussels on 26-27 February 2001 by FIA and the European Olympic Committees[9] and the "Independent European Sport Review 2006", a document published at the initiative of the UK Presidency and financed by UEFA[10].

2. THE SOCIETAL ROLE OF SPORT

Sport is one of the areas of human activity that most concern and bring together the citizens of the European Union. Due to its capacity to reach out to everyone, regardless of age or social origin, sport can play various roles in European society:

– A health-promotion role: sport is often associated with the improvement of the public health of European citizens. It can play a role in the treatment of obesity and other health-related disorders. In an ageing society physical activity can have a positive impact on the health of the elderly.

– An educational role: sport can help in a number of ways in the education and training of children, young people and adults. Alongside the purely physical aspects, the social and educational values of sport also play an essential role, e.g. learning to be part of a team and to accept the principle of fair play. The European Union proclaimed 2004 as the "European year of Education through Sport" (EYES).[11]

– A social role: the vast network of clubs, associations and federations across Europe contributes to making sport the most important area of voluntary activity in Europe and provides a fertile ground for social inclusion.

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7 Article I-17

8 European Parliament resolution of 29 March 2007 on the future of professional football in Europe. See also the EP draft report on the role of sport in education (2007/2086 (INI)).

9 http://www.governance-in-sport.com/

10 http://www.independentfootballreview.com/

11 Decision n° 291/2003/EC of the European Parliament and of the Council of 6 February 2003 establishing the European Year of Education through Sport 2004

– A recreational role: a Eurobarometer survey[12] conducted in November 2004 showed that 38% of EU citizens practiced a sportive activity at least once a week.

– A cultural role: the Amsterdam Treaty Conference emphasised sport's role in forging identity and bringing people together.

2.1. Sport, physical activity and public health

Sport and physical activity can make a major contribution to health promotion and disease prevention in areas such as overweight and obesity, diabetes and cardio-vascular diseases. The number of children affected by overweight and obesity is estimated to be rising by more than 400,000 a year, adding to the approximately 14 million EU citizens who are already overweight (including at least 3 million children).[13] Lack of physical activity and the occurrence of overweight and obesity have become a major societal problem. It is increasingly putting individuals at risk and is an economic burden as a result of the impact on health budgets and lower productivity due to the sub-optimal fitness in the workforce. It is estimated that obesity accounts for up to 7% of EU health care costs, and this amount will further increase given the rising obesity trend.[14]

In its White Paper "A Strategy for Europe on Nutrition, Health, Overweight and Obesity related health issues" the Commission calls upon sports organisations to work with public health groups to promote physical activity particularly among target populations such as young people or low socio-economic groups.

The recognised potential of the sport movement in fostering health-enhancing physical activity needs to be developed. The sport movement has a greater outreach than any other social movement. People view sport as attractive and it carries a positive image. However, sport organisations often focus narrowly on running a particular sport and their wider potential as regards health-enhancing physical activity remains under-utilised.

At EU level, the relation between sport and health is closely connected with the notion of Health-Enhancing Physical Activity (HEPA). This concept was defined in the framework of a Community-funded project in 1995-96[15], which led to the launch of a HEPA Network.[16] The Network is still active[17] and the HEPA concept has since then been energetically promoted by the World Health Organisation (WHO) and its Member States.

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[12] Special Eurobarometer (2004): The Citizens of the European Union and Sport. http://ec.europa.eu/public_opinion/archives/ebs/ebs_213_report_en.pdf

[13] COM (2005) 637 final, Green paper "Promoting healthy diets and physical activity: a European dimension for the prevention of overweight, obesity and chronic diseases"

[14] See, e.g., J. Fry and W. Finlay: "The prevalence and costs of obesity in the EU", in Proceedings of the Nutrition Society, 2005, 64 (3): 359-362.

[15] Project co-financed by DG V (Employment, Industrial Relations and Social Affairs), Directorate for public health and safety at work

[16] UK Institute for Health Promotion and Research (1996): Promotion of Health-Enhancing Physical Activity: development of a European strategy, network and action programme. Report on the meeting on Health-Enhancing Physical Activity: a preparatory European meeting, Tampere, Finland, April 12-14, 1996.

[17] European network for the promotion of health-enhancing physical activity (HEPA Europe): http://www.euro.who.int/transport/modes/20050520_1

The World Health Organisation recommends 30 minutes of moderate physical activity per day to enhance health and prevent diseases.[18] Some studies tend to show that even more physical activity can be recommended. This suggests that guidelines to promote physical activity in the EU would be useful. Such guidelines could propose different recommendations for different age groups, such as children, adults and elderly people.

A Commission study on "young people's lifestyles and sedentariness and the role of sport" concluded that a network strategy is needed to halt the current alarming trend of rapidly rising overweight and obesity levels.[19] While it is important to address nutritional issues, physical activity (including sport) is equally crucial. Some studies show that it is not so much a higher calorie intake that causes overweight, particularly among children, but above all a lack of physical activity.

On the basis of the Commission study, conclusions were adopted at the meeting of Member State Sport Ministers in Luxembourg in April 2005. These "Luxembourg Recommendations" have led to a decision by Ministers to create a Working Group on Sport & Health (Liverpool, September 2005). Nine Member States currently participate in this Working Group with the objective to exchange good practices and develop physical activity guidelines. The mobilisation of the sport sector and the strengthening of school sport and physical activities are the key elements on the agenda.

The Commission has been keen to encourage sport organisations to join its Diet, Physical Activity and Health Platform[20] – an open, multi-stakeholder forum where industry, NGO and consumer organisations have committed themselves to actions to participate in the combat of obesity. Sport organisations have joined with their commitments, mainly on increased physical activity.

The link between sport and health goes far beyond the fight against overweight and obesity. Sport can make an excellent contribution to the reduction of other non-communicable health hazards, such as the risks posed by alcohol, tobacco, cholesterol, cardiovascular diseases, metabolic syndrome and cancer. Sport also supports psychological well-being. Potentially negative health effects of sport in the form of sport-related injuries have to be avoided through proper education and information.

Physical activity encompasses a range of activities from organised sports to "active commuting" or outdoor activities such as gardening. Pro-active steps need to be taken to reverse the decline in physical activity levels brought about by numerous factors in recent decades, such as the greater use of cars, other technologies such as computers and the internet, and other forms of sedentary activities, such as watching television and playing computer games.

Health-enhancing physical activity could be promoted at all levels and in a wide range of sectors, such as urban planning and building projects, transport, education, family and youth, the economic sphere, research, as well as in the workplace to improve employees' health and performance and reduce absenteeism. Physical activity as a determinant for health plays a

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[18] http://www.euro.who.int/eprise/main/WHO/Progs/WHD/FactSheets/20020319_1

[19] Study on young people's lifestyles and sedentariness and the role of sport in the context of education and as a means of restoring the balance, University of Paderborn and Duisburg/Essen. http://ec.europa.eu/sport/documents/lotpaderborn.pdf

[20] http://ec.europa.eu/health/ph_determinants/life_style/nutrition/platform/platform_en.htm

particular role in urban and transport planning, for example by allowing more people to go to work on foot or by bicycle.

2.2. The fight against doping

Doping poses an important threat to European sports as it compromises the principle of open and equal competitions. It is demotivating for the amateur and puts the professional under unreasonable pressure. It also negatively affects the image of sport.

Doping also poses a serious threat to individual and public health. It has led to serious long-term degradation of individuals' health in the past and in some documented cases it has entailed serious conditions of permanent ill-health, disability or even death. Even among amateurs, doping is practised at unprecedented levels, which makes it difficult to follow and even more difficult to police. A special problem is posed in relation to children and young people as it is know that many start taking doping substances at an increasingly young age.

With regard to doping, responsibilities are distributed unsystematically because sport is organised differently in different Member States, because the degree of autonomy of sport organisations varies, because the problem tends to be defined differently and because bodies at several levels – international, national, regional and local – claim responsibility and authority. There are calls for action from various sides.[21] Action at EU level should complement that of other actors, but without changing the existing allocation of competences.[22]

In Member States, doping may be regulated by national law, rules from private organisations or any combination of these. Some Member States have doping laws, others do not. The 1989 Convention of the Council of Europe and the 2005 UNESCO Convention are the only hard law at international level. The World Anti-Doping Agency (WADA), set up in 1999, is a private law body although half of its board members represent governments.

Doping has been on the EU agenda on a number of occasions, which is reflected in numerous documents from all EU institutions. The 1992 Olympics in Barcelona and Albertville saw actions on the spot as well as a code of conduct. The 1998 Tour de France led to a Community Support Plan[23] which promoted pilot projects in the field of the fight against doping, co-financed by the EU, for two years. Important development work in the field of laboratory analysis was funded from the research budget under the now discontinued HARDOP and CAFDIS programmes.[24] Political cooperation has included various meetings inside and outside of the EU, as well as regular contacts with the Council of Europe and UNESCO. Finally, the ECJ ruling in the Meca-Medina case was also connected with the question of doping in sport.[25]

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21 Including from the European Parliament, most recently in its Resolution on combating doping in sport, 14 April 2005, OJ C 33, E/590, 2006

22 E.g., Article 152 of the EC Treaty, on public health, gives the Community a complementary role in preventing and reducing all drugs-related health damage.

23 December 1999 – Communication from the Commission to the Council, the European Parliament, the Economic and social committee and the Committee of the regions (COM (1999) 643; Communication from Mrs Reding in agreement with Mr Byrne: Community support plan to combat doping in sport.

24 HARDOP: Harmonisation of methods and measurements in the fight against doping) (1998-9); CAFDIS: Concerted action in the fight against doping in sport) (1998-9).

25 Case C-519/04 of 18 July 2006

Doping practices involving illegal substances pose a serious threat to social order, including criminal justice issues, and to the integrity of the sporting community. They rely on a generalised and systematic breach of law practised by persons acting within networks. Many substances used for doping are covered by national legislation on illicit drugs and/or international drug conventions. While the possession of these substances may be illegal, they are often easily available. In this respect, a remarkable enforcement deficit can be observed. For the criminal community, the trade in doping substances can offer an attractive mixture of low risk and high return on investments. Trade in doping substances is often not subject to severe punishment.

The EU would benefit from a more coordinated approach in the fight against doping, in particular by defining common positions in relation to WADA, UNESCO and the Council of Europe, and through the exchange of information and good practice between Governments, national anti-doping organisations and laboratories.

Partnerships could also be developed between Member State law enforcement agencies (border guards, national and local police, customs etc.), laboratories accredited by the World Anti-Doping Agency (WADA) and INTERPOL to exchange information about new doping substances and practices in a timely manner and in a secure environment.

The negative health effects of doping should be taken into account in public health and drugs policies. Sport organisations should develop rules of good practice to ensure that young sportsmen and sportswomen are better informed and educated of doping substances, prescription medicines which may contain them, and their health implications.

2.3. The role of sport in education and training

The European Year of Education through Sport (EYES 2004) was launched to promote education through sport in formal and non-formal education and as a vehicle for social inclusion, in order to develop knowledge and skills by encouraging cooperation between educational institutions and sport organisations. 167 projects (out of 1643 applications) were co-financed through EYES' €12.3m budget. In its subsequent Communication to the European institutions, the Commission acknowledged the need to build on the European Year's achievements.

The Council, in its Resolution of 17 December 1999 on the non-formal education dimension of sporting activities in the EU Youth programme[26], called upon the Commission, in cooperation with the Member States, to devise a coherent approach in order to exploit the educational potential of sport, considering that sporting activities can have a pedagogical value which contributes to strengthening civil society. The non-formal education dimension has been backed by the European Parliament, which has underlined the educational and social value of sport as well as its role in combating racism and xenophobia.

The important role played by schools and the need for health education and physical education are also outlined as priority themes in the White Paper "A Strategy for Europe on Nutrition, Overweight and Obesity related health issues".

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[26] Resolution of the Council and of the Ministers of the Ministers for Youth meeting within the Council of 17 December 1999 on the non-formal education dimension of sporting activities in the European Community youth programmes.

Sport and physical education

Many stakeholders are concerned about the situation of sport and physical activity in schools in view of declining physical activity trends among young people and the corresponding rise in sedentary behaviour and obesity. Concrete physical and mental health problems can be addressed in part by ensuring a sufficient timeframe for sport and physical activity in schools, either inside or outside the school curriculum. Curriculum time allocation for physical education is a concern in some countries. Since 2002, there has been an overall reduction in average time allocation for physical education in both primary (from 121 minutes to 109 minutes per week) and secondary school curricula (from 117 to 101 minutes per week) across the EU.[27] This is particularly worrying since it is estimated that up to 80% of school-age children only practice physical activity at school, while it is recommended that they have at least one hour of light physical activity every day.[28]

For the purpose of strengthening physical activity in schools outside the school curriculum, innovative solutions should be explored, such as cooperation agreements between schools and sport clubs.

University sport also plays an important role in promoting health and physical activity as well as intercultural dialogue, as demonstrated by the summer and winter Universiades organised by the International University Sport Organisation (FISU).

Formal education could take better advantage of the values conveyed through sport to develop knowledge, motivation, skills, readiness for personal effort and also social abilities such as teamwork, solidarity, tolerance, fair play and the ability to lose. Time spent in sport activities, be it during school time or extra-curricular activities, can produce health and education benefits which need to be enhanced. The establishment of links between sport and formal and non-formal education to make better use of the educational potential of sport is also a key issue in view of the new integrated life-long learning strategy.

Sport and physical activity can be encouraged through various policy initiatives in the field of education and training, including the development of social and civic competences in accordance with the 2006 Recommendation on Key Competences for Lifelong Learning. This Recommendation mentions in particular that "personal and social well-being requires an understanding of how individuals can ensure optimum physical and mental health, including as a resource for oneself and one's family, and knowledge of how a healthy lifestyle can contribute to this". The development of social and civic competences could therefore be supported through the exchange of best practices in this context.

The training of young sportspeople

A Commission study on the training of young sportsmen and sportswomen in Europe is ongoing.[29] This study will identify training centres' common quality criteria as regards

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27 European Parliament study: "Current situation and prospects for physical education in the European Union", February 2007.

28 Commission on Culture and Education of the European Parliament, meeting of 10 April 2007 on "the role of sport in education"

29 Public contract DG EAC/14/06, awarded by open procedure following publication of the prior information notice on 17.05.2006 (OJ/S S 93 No 98918-2006) and of the contract notice on 18.07.2006 (OJ S 134-143268).

education, training and/or vocational reintegration, evaluation, protection of minors, and ages of transfers. The initiative is linked to the need to ensure the possibility of so-called dual careers for top-level sportspeople, given that the lifespan of their sport career tends to be limited.

In 2005, UEFA introduced rules concerning players in the club competitions it organises (European Champions' League and UEFA Cup). The rules gradually require clubs in UEFA competitions to have locally trained players on the teams they present for UEFA matches. "Locally trained" means that the player must have spent at least 3 years between the ages of 15 and 21 in his club or in another club of the same country. There is no nationality condition. The idea is to promote training of young players and to encourage clubs to invest in training of young people and not only in transfers of players.

The Commission is completing its analysis of the compatibility with Community law of rules requiring that teams include a certain quota of locally trained players. The results of the mentioned study on the training of young sportsmen and sportswomen in Europe will contribute to this analysis.

Vocational education and training

Vocational education and training in the sport sector in Europe involves multiple stakeholders (Member States, local authorities, sport employers, sport employees, sport organisations, VET providers) and tends to be fragmented. However, the potential for growth is important, and sport could play its part in fulfilling the objectives of the Lisbon Strategy for growth and employment, all the more so since most sport-based economic activities tend to be labour-intensive and the jobs are often locally based.

The VOCASPORT study[30] commissioned by the European Commission in 2004 estimated that the sport sector employed around 800,000 professionals in the then 25 Member States of the EU. The rate of employment growth was considerable in the last decade, with an estimated growth of 57% in the period 1990-1998. Moreover, millions of volunteers are involved in the sport sector in the EU. The growth of the sector is correlated to the growing demand for sport and physical activities. At the same time, the demand for a more professionalized approach to sport activities has created a need for a more highly trained workforce.

Worker mobility tends to be high in the sport sector, including mobility between Member States, which can lead to problems concerning the recognition of qualifications of foreign workers. These characteristics of the sport sector need to be seen in the context of new Europe-wide initiatives in the field of Vocational Education and Training (VET). However, it should be noted that VET systems in sport tend to be specific and largely autonomous from global VET systems in most Member States, with the involvement of ministries responsible for sport and/or of sport federations in the definition of qualifications in the sport sector.

The European Parliament and the Council adopted on 7 September 2005 a Directive on the Recognition of Professional Qualifications[31] to promote the free movement of professionals,

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[30] http://ec.europa.eu/sport/documents/lotvocasport_en.pdf

[31] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf.
Directive 2005/36/EC consolidates, simplifies and modernises 15 existing directives adopted between 1975 and 1999. It was adopted on 07.09.2005 and must be implemented in Member States by 20.10.2007.

while ensuring an adequate level of qualifications and of protection of the health and security of consumers. The Commission will continue to ensure, in accordance with the mentioned Directive, that the freedom of movement of workers is not hampered by undue restrictions on the recognition of qualifications in the sport sector. Under this Directive, professional associations also have the possibility to work at common platforms[32] as well as professional cards[33].

2.4. Volunteering, non-profit sport organisations and active citizenship

2.4.1. Volunteering

Voluntary activity forms the basis for the organisation, administration and implementation of sport activities in all EU Member States. Voluntary sport organisations provide the backbone of the entire sport structure. Figures suggest that there are around 10 million volunteers active in about 700,000 sport clubs throughout the EU. In some Member States, more than 10% of adults voluntarily engage in the sport sector, and in most countries sport constitutes one of the key areas of voluntary work. Moreover, volunteering in sport must be considered as one of the cornerstones of the characteristics of sport in Europe. These facts make it an important theme for discussion at EU level, beyond the general discussion on 'volunteering in Europe'.

The Member States have expressed support for promoting voluntary sport structures in an EU context. In its Nice Declaration (2000), the European Council called on Member States to encourage voluntary services in sport by means of measures providing appropriate protection for and acknowledging the economic and social role of volunteers, with the support, where necessary, of the Community. Two years later, EU Sport Ministers recognised in the "Aarhus Declaration on Voluntary Work in Sport"[34] the significant contribution of voluntary work to sport and its economic value.

Directive 2005/36/EC provides for a system of automatic recognition of qualifications for professions whose conditions of training have been harmonised (doctors, nurses, midwives, dentists, veterinarians, pharmacists) and also for architects. For the other professions, the system is based on mutual trust. The underlying principle is that once a person is qualified to exercise a profession in a Member State this person should be authorised to exercise the same profession in another Member State. The procedures as well as the five levels of qualifications fixed under Directive 2005/36/EC have been designed on the basis of this principle. For professions of the craft, commerce and industry area, the procedure is based primarily on recognition of professional experience. For the other professions, the following procedure applies: The Host Member State competent authorities have the obligation not only to recognise qualifications classified in the same level of the Directive as the national qualification but also qualifications classified in the immediately lower level of the Directive. In principle, qualifications must be recognised without any additional requirement. However, if substantial differences between qualifications are identified and that such substantial differences cannot be compensated by professional experience or supplementary training (e.g. seminars, lifelong learning etc.), compensatory measures can be imposed on migrants (a test or training period at the choice of the migrant).

[32] The common platform is defined in the Directive as 'a set of criteria which make it possible to compensate for the widest range of substantial differences which have been identified between the training requirements in at least two thirds of the Member States including all the Member States that regulate this profession.

[33] According to Recital 32 of the 2005/36/EC Directive, the 'professional card should make it possible to monitor the career of professionals who establish themselves in various Member States. Such cards could contain information, in full respect of data protection provisions, on the professional's qualifications (university or institution attended, qualifications obtained, professional experience), his legal establishment, penalties received relating to his profession and the details of the relevant competent authority.'

[34] http://ec.europa.eu/sport/sport-and/others/docs/concl_arhus-200211-voluntary_en.pdf

In 2004, EU Sport Ministers decided to put volunteering in sport among the key issues of the then adopted EU Rolling Agenda for Sport. At their meeting in Liverpool, EU Sport Ministers called upon future Presidencies “to follow up their discussion of volunteering in sport, by developing proposals for promoting and sustaining the voluntary sector in sport, which they acknowledge to be vital to the sustainability of amateur sport in particular”. The Finnish Presidency made volunteering in sport one of its priority themes, with a particular interest in the role and status of voluntary non-profit sport organisations. The Ministerial Conference in Brussels in November 2006 agreed on the establishment of a Working Group "Non-profit Sport Organisations" to address, inter alia, the specificities of the voluntary sport sector. Specific inter-ministerial working groups already exist in some EU Member States, e.g. Sweden and Finland.

The EU is putting increasing emphasis on objectives and policies which create solidarity within the EU and secure opportunities for all citizens. The Commission has defined its overall strategic objectives accordingly. Voluntary activities in the sport sector strengthen social cohesion and inclusion and promote local democracy and active citizenship. Voluntary activities in sport also have a socio-economic value in terms of GDP and if converted in e.g. full-time employment. There is also an implicit economic value: without volunteers sport activities would come at a much higher cost and many of the social activities related to sport would disappear.

2.4.2. Non-profit sport organisations

Organised sport in almost all EU Member States is built on specific non-profit making governing structures at grassroots level. These are self-governing independent structures, heavily reliant on the commitment of volunteers, with specific forms of legal personality or status that provide the precondition for a range of financial and fiscal advantages.

Although not exclusively altruistic, activities of non-profit (sport) organisations are usually undertaken without any profit-making intention or dimension. However, due to the decrease in the amount of donations and government funds and in order to survive, the majority of non-profit sport organisations need to raise revenues from some kind of commercial activity. This enables them to effectively fulfil their social goals, i.e. to reinvest in the social cause, without being subject to investors' accountability and control. However, despite the focus on the attainment of socially beneficial goals, they thus pursue economic activities, which are subject to EU law.

The EU legal framework does not specifically address non-profit (sport) organisations. Under EU law it is not the nature of the organisation, but the nature of the activity that it pursues, which is usually considered to determine whether competition and Internal Market provisions apply. Regarding, for instance, the application of EU competition law, non-profit organisations are subject to it if they operate as undertakings because they engage in economic activities by offering goods and services in the common market. An intention to generate profits is not a prerequisite for economic activity within the meaning of EU competition law. However, an infringement of EU competition law requires that the conduct in question may affect trade between Member States. This may often be excluded for non-profit sport organisations in view of their local character.

2.4.3. Active citizenship

Sport can be a useful tool in terms of active citizenship. Approximately 70 million Europeans, many of them young people, are members of sport clubs. Sport can have an educational role through its values. Participation in a team, principles such as fair-play, compliance with the rules of the game and respect for others, solidarity and discipline as well as the organisation of amateur sport based on clubs and volunteering reinforce active citizenship. Sport also provides attractive possibilities for young people's engagement and involvement in social life.

The potential of sport in the fields of youth and citizenship is challenged by new trends in sport participation, particularly among young people. There is a growing tendency to practise sport individually, rather than collectively and in an organised structure, and a declining volunteer base for amateur sport clubs as well as a shorter average period for a volunteer's involvement in a given club. Nevertheless, the importance of organised sport in promoting active citizenship must be duly taken into account.

2.5. Social inclusion and equal opportunities

2.5.1. Social inclusion and integration

Sport can be an effective tool for social inclusion. Among its objectives in the fight against poverty and exclusion, the Council adopted the objective "to develop, for the benefit of people at risk of exclusion, services and accompanying measures which will allow them effective access to education, justice and other public and private services, such as culture, sport and leisure."[35]

The Nice Declaration underlines that "sporting activity should be accessible to every man and woman, with due regard for individual aspirations and possibilities". It also recognises that "for the physically or mentally disabled, the practice of physical and sporting activities provides a particularly favourable opening for the development of individual talent, rehabilitation, social integration and solidarity and, as such, should be encouraged."

In March 2006, the European Council adopted a new framework for the social protection and social inclusion process. Based on the Nice objectives, sport can be included in the new objective "access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion, and fighting all forms of discrimination leading to exclusion".[36]

In the framework of the European Year for Education through Sport (EYES) 2004, a study on education, sport and multiculturalism and more than 25 operational projects were directly oriented at integrating socially disadvantaged groups. The evaluation of EYES 2004[37] and the follow up ensured by the European Commission has shown the importance of implementing the Amsterdam and Nice declarations, especially concerning the social function of sport.

The accessibility of sport activity needs to be ensured for all citizens. For this purpose, the specific needs and situation of under-represented groups must be addressed, and the special role that sport can play for disabled persons and gender equality must be taken into account.

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35 http://ec.europa.eu/employment_social/social_inclusion/docs/approb_en.pdf

36 http://ec.europa.eu/employment_social/social_inclusion/docs/2006/objectives_en.pdf

37 http://ec.europa.eu/dgs/education_culture/evalreports/sport/2005/aees/aeesrep_en.pdf

At the same time there is a need to better use the potential of sport as an instrument for social inclusion in the policies, actions and programmes of the European Union and Member States. This includes the potential of sport as an employment creation factor, particularly in disadvantaged areas. Also in this light, sport activities contributing to social cohesion and to social inclusion of vulnerable groups can be considered as social services of general interest.

The social inclusion strand of the 2006-2008 National Reports on Strategies for Social Protection and Social Inclusion highlights the importance of participating in sport activities as a means to prevent and tackle social exclusion of children on the one hand, and on the other hand as a tool for promoting the integration of immigrants and social inclusion of ethnic minorities.

In the September 2005 communication "A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union"[38] it is underlined that frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Measures which help to promote a shared sense of belonging and participation may be instrumental in promoting integration. In this context, it is important to make available spaces for sport and support sport-related activities in order to allow immigrants and the host society to interact together in a positive way.

2.5.2. People with disabilities

Citizens with disabilities represent around 10% of the population of the EU. They are confronted with specific difficulties concerning access to sport.

The European Commission established an EU Disability Action Plan (DAP)[39] for 2004-2010 to ensure coherent policy follow-up to the European Year of People with Disabilities 2003[40] in the enlarged Union. Three operational objectives are central to the DAP: (1) full implementation of the Employment Equality Directive[41]; (2) successful mainstreaming of disability issues in relevant Community policies; and (3) improving accessibility for all. The Commission also adopted a European Action Plan 2006-2007[42] as the second step of its disability strategy.

The Declaration on the specific characteristics of sport and its social function in Europe, adopted in Nice in December 2000, underlines that "sporting activity should be accessible to every man and woman, with due regard for individual aspirations and possibilities". It also recognises that "for the physically or mentally disabled, the practice of physical and sporting activities provides a particularly favourable opening for the development of individual talent, rehabilitation, social integration and solidarity and, as such, should be encouraged."

A number of Commission activities for disabled persons have involved sport. The European Year of People with Disabilities 2003[43] financed sports events, and as part of the European Year of Education through Sport 2004[44], several projects on the integration of people with

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38 COM (2005) 389

39 COM(2003) 650 final, 30/10/2003

40 Council decision of 3 December 2001 on the European Year of People with Disabilities 2003

41 Directive 2000/78/EC of 27/11/2000 (OJ L 303 of 2/12/2000, p.16)

42 COM (2005) 604 final, 28/11/2005

43 Council decision n°2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003

44 http://www.eyes-2004.info/

disabilities through sports were funded. The Commission organised an experts' meeting on equal opportunities in sport[45] in 2005 to identify key needs, trends, and fields of action. The Youth programme has supported sport activities for young people with disabilities.

The concept of equal opportunities in sports for people with disabilities is based on three fundamental pillars: (a) access to sports premises as sportspeople, (b) access to sports premises as spectators, and (c) support for people with disabilities who wish to practice sport (e.g. the cost of equipment, training of staff and adapting facilities). It seeks to demonstrate that the educational and social values of sport also matter to people with disabilities. In this light, sport (both competitive and recreational) is a cross-cutting tool for integration, job creation and equality for people with disabilities.

Founded as the International Paralympic Committee's European Committee in 1991, the European Paralympic Committee (EPC) adopted its current name in 1999. The EPC awards, controls and supervises European championships and cup events in 12 sports for four disability groups (visually impaired, athletes with cerebral palsy, athletes with intellectual disability and athletes with a physical disability).

Special Olympics Europe/Eurasia (SOEE) provides opportunities in sport for 425,000 individuals with intellectual disabilities and coordinates the participation of European athletes in the quadrennial Special Olympics World Games.

The Commission ensures that EPC and SOEE are involved in all its consultation activities directed towards sport stakeholders.

Access to sport remains a problematic issue facing disabled people, both with regard to their access to sport activities as sportspeople, and their access to sport premises as sportspeople and/or spectators. In particular, boys and girls with disabilities do not enjoy the same opportunities to practise sport as their able-bodied peers, particularly in physical education classes in school with their classmates. Consequently, they do not pick up the habit to practise sport at an early age.

2.5.3. The gender dimension

The gender dimension of equal opportunities is mainstreamed into all EU policies. The Commission adopted its *Roadmap for equality between women and men 2006-2010*[46] in March 2006. Although figures differ and are not available in all Member States, there is a general impression of under-representation, to varying degrees, of women in sport, in terms of participation in sport, the organisation and management of sport activities, leadership positions in sport, and media coverage of competitions involving sportswomen.

2.6. The prevention of and fight against racism and violence

European cooperation in the fight against violence in sport was strengthened after the Heysel stadium tragedy in 1985. The European Commission has actively promoted the development of improved violence prevention for international sporting events, focusing on two key objectives:

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45 http://ec.europa.eu/sport/doc/report_eac78-00_en.pdf

46 http://ec.europa.eu/employment_social/publications/2006/ke7205596_en.pdf

– Establishing common standards on safety and public order through the exchange of experience and best practice between the Member States;

– Enhancing operational cooperation related to the exchange of information on football supporters at risk, or likely to be violent, in accordance with data protection rules.

In this respect, Council Decision 2002/348/JHA of 25/4/2002[47] introduced binding obligations on the establishment of national football information points. These information points are intended to improve cooperation and information exchange between police forces and other competent authorities combatting football-related violence. The Evaluation Report on the implementation of this decision concluded that the Member States should set up the relevant structures, which have since played an effective role in the exchange of important data among relevant services.

To facilitate and bring uniformity to this cooperation, a handbook was adopted by a Council Resolution[48], with recommendations on useful measures to prevent and control violence and disturbances in connection with football matches with an international dimension.

Moreover, based on the experience of some Member States, the Council adopted another Resolution inviting the Member States to, inter alia, examine the possibility of introducing stadium bans and to supplement the bans with penalties for non-compliance.

The preparations for the 2006 World Cup in Germany were discussed at regular meetings of football experts in the framework of the Police Cooperation Working Group (PCWG). The issues discussed related to the quality control of exchanged information, regular disorder assesments and modalities of transferred information.

Council Presidencies organised other regular expert meetings to efficiently tackle hooliganism. Working contacts with UEFA have also been established.

The role of the Council of Europe in the field of prevention of violence in sport is significant. In August 1985 was adopted the European Convention on Spectator Violence and Misbehaviour at Sports Events and in Particular at Football Matches.[49] Under the Convention, Parties undertake to co-operate and encourage similar co-operation between public authorities and independent sports organisations to prevent violence and control the problem of violence and misbehaviour by spectators at sport events. To this end, the Convention sets out a number of measures, such as in particular close co-operation between police forces involved; prosecution of offenders and application of appropriate penalties; strict control of ticket sales; restrictions on the sale of alcoholic drinks; appropriate design and physical fabric of stadiums to prevent violence and allow effective crowd control and crowd safety. A Standing Committee established by the Convention is empowered to make recommendations to the Parties concerning measures which should be taken. The Convention has been signed by all EU Member States and ratified by all but two.

Future EU policy development on violence in sport should be based on two complementary pillars: law enforcement and prevention. A multidisciplinary approach is needed to efficiently

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47 OJ L 121, 8/5/2002

48 Council Resolution of 6/12/2001 (OJ C 22, 24/1/2002) and Council resolution of 4/12/2006 (OJ C 322, 29/12/2006)

49 http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CM=8&DF=&CL=ENG

and effectively tackle the problem, in association with all the stakeholders, including clubs and supporters' associations.

One of the main sources of violence and anti-social behaviour (e.g. insults, unfavourable treatment etc.) is **discrimination based on race**, religion or ethnic groups. It manifests itself in different forms but the core issues remain consistent.

The Commission has repeatedly rejected and condemned all manifestations of racism, xenophobia and anti-Semitism, as these phenomena are incompatible with the values on which the EU is founded. The Hague Programme, adopted in November 2004, recalls the firm commitment of the EU to oppose any form of racism.

On the basis of a Commission proposal, Member States reached, at the JHA Council held in April 2007, political agreement on the Framework Decision on Combating Racism and Xenophobia. The purpose of the Framework Decision is to approximate Member States' legislation and to ensure that racism and xenophobia are punishable in all Member States by effective, proportionate and dissuasive criminal penalties. The Framework Decision criminalises intentional conduct such as incitement to violence or hatred towards a group of people, or a person belonging to a group, defined on the basis of race, colour, descent, religion or belief, national or ethnic origin, as well as the public condoning, denial or gross trivialisation of crimes against humanity and war crimes. Incitement to violence or hatred will also be punishable if committed by public dissemination or distribution of tracts, pictures or other material. The conduct is criminalised insofar as it is threatening, abusive, insulting or carried out in a manner likely to disturb public order. Racist and xenophobic motivation is regarded as an aggravating circumstance in the determination of the penalty applicable to any type of criminal offence. The Framework Decision also provides for liability of legal persons.

A European Monitoring Centre on Racism and Xenophobia (EUMC) was established to tackle racial discrimination effectively. It was replaced on 1 March 2007 by the Fundamental Rights Agency (FRA) which will continue to work on racism, xenophobia and related intolerance.

The first European anti-racist football network, "Football Against Racism in Europe - FARE"[50], was founded at a seminar sponsored by the European Commission, "Networking against Racism in European Football", in Vienna in February 1999. More than 40 different organisations including anti-racist sport projects, fan clubs, players' unions, football associations and ethnic minority groups from 13 European countries affirmed their commitment to fight all forms of discrimination in football. The European Programme against Discrimination sponsored the FARE work programme 2002-2004.

Media coverage of mass sports such as football or basketball has enabled racist chants, signs, flags, and slogans to spread widely. Most of the initiatives taken by different stakeholders have focused on football. The European Parliament adopted a declaration on tackling racism in football in March 2006 and recognised in its recent resolution on the future of professional football that many incidents of racism and violence continue to take place in and around football stadiums.

[50] http://www.farenet.org/

All stakeholders must engage in dialogue to raise awareness of the damaging effect of racist and violent behaviour in sport and to promote exchanges of best practice, based on existing initiatives.

2.7. Sport in the EU's external relations

Sport can play a role regarding two different aspects of the EU's external relations:

– It can play a role in easing relations with partner countries and be an element of the dialogue with them as part of the EU's public diplomacy;

– If agreed with the beneficiary countries, it can be an element of the EU's external assistance programmes.

Regarding the first aspect, cooperation in the field of sport has the potential to contribute to better international relations in other, unrelated areas. At the same time, sport has acquired a global dimension and deserves to be included in a policy dialogue on such issues as international players' transfers, trafficking in underage players and players from developing countries, doping, money-laundering through sport, and security during major international sport events. Finally, there is a potential for cooperation in the field of sport research (possibly including the fight against doping), outside the scope of assistance programmes, with other countries that have reached a high level of knowledge in this field.

Regarding the second aspect, sport could be included in external assistance programmes as a means to promote education, health, socio-economic development, and peace and ethnic reconciliation. While projects are financed in the framework of the EU's enlargement and European neighbourhood policies, sport-related projects are particularly useful in the pursuit of the UN Millenium Development Goals.[51] The European Parliament's Resolution of 1 December 2005 on development and sport highlights the link between physical education, sport and the Millennium Goals.

The Commission and FIFA have recently signed a Memorandum of Understanding (MoU)[52] to make football a tool for development in African, Caribbean and Pacific countries (ACP). The MoU covers a wide range of areas, from the promotion of children's rights, anti-discrimination and social integration, to health and post-conflict reconstruction.

There are examples of concrete projects in this area that have been financed through the various financial instruments of the EU's external action. The financial contribution from the

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[51] The Millennium Development Goals (MDGs) that all countries are aiming to reach by 2015 are:
- Reduce extreme poverty: cut by 50% the amount of people living on $1 a day.
- Offer universal primary education: make sure every child in the world completes six years of schooling.
- Promote gender equality: eliminate gender inequality in all levels of education.
- Reduce child mortality rates: reduce by two thirds the mortality rate among children under five.
- Improve maternal health: Reduce by three quarters the maternal mortality ratio.
- Combat HIV/AIDS, malaria and other diseases: Halt and reverse the spread of HIV/AIDS as well as incidences of malaria and tuberculosis.
- Ensure environmental sustainability: reverse loss of environmental resources; reduce by half the proportion of people without sustainable access to safe drinking water; achieve significant improvement in lives of at least 100 million slum dwellers, by 2020.
- Develop a global partnership for development: increase jobs for youth, access to affordable drugs, increase aid, reduce tariffs and debts for the poorest countries, bridge the digital divide.

[52] IP/06/968 of 9 July 2006

EU budget to sport-related initiatives in ACP countries is estimated to have been approximately €34 million over the past 10 years.

The potential of sport for peace and development has been recognised by the United Nations through the General Assembly's resolutions 58/5, 58/6 and 60/9 on sport as a means to promote education, health, development and peace. These resolutions proclaimed 2005 the International Year of Physical Education and Sport and paved the way for the creation of the office of the Special Adviser to the Secretary-General on Sport for Development and Peace and of the United Nation's inter-agency Working Group on Sport for Development and Peace.[53]

Some Member States are also engaged in multilateral structures combining political dialogue and external assistance for sport issues such as the Conference of French-speaking Ministers for Youth and Sport (CONFEJES)[54], the Commonwealth Sports Ministers Meetings[55], and the Consejo Iberamericano del Deporte[56].

Major international sport organisations have also developed their own assistance programmes, such as Olympic Solidarity[57] of the International Olympic Committee, FIFA's Goal Project[58], and the Meridian Project[59] between the Union Européenne de Football Association (UEFA) and the Confédération Africaine de Football (CAF). Non-governmental organisations have also been created in the specific field of solidarity through sport, such as, for example, "Right to Play"[60], which focuses on ethnic reconciliation in the Balkans and the Caucasus, or "Sports Sans Frontières"[61].

The potential of sport as a means to promote education, health, development and peace, although recognised in many policy documents and studies, needs to be properly addressed through concrete actions in the EU's external relations. Synergies should be achieved with existing programmes of the United Nations, Member States, local authorities and private bodies.

2.8. The environmental dimension of sport

The practice of sport activities can affect the environment. For example, sport events can have significant impacts on the use of natural resources, generation of waste and loss of biodiversity. On the other hand, the environment can also affect the practice of sport as environmental conditions can compromise sport activities and performance. For example, warmer climate conditions in Europe in 2007 have affected the practice of winter sports. An unhealthy environment may affect not only professional athletes but may also hinder the motivation of individuals to pursue sport in the first place. Water pollution, air pollution,

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53 The United Nations Educational, Scientific and Cultural Cultural organisation (UNESCO) continues to be the lead agency for sport-related issues in the United Nations system but the Working Group brings also together other agencies with significant experience using sport in their work, including ILO, WHO, UNDP, UNV, UNEP, UNHCR, UNICEF, UNODC and UNAIDS.

54 http://www.confejes.org/

55 http://www.thecommonwealth.org/subhomepage/143537/

56 http://www.coniberodeporte.org/

57 http://www.olympic.org/uk/organisation/commissions/solidarity/index_uk.asp

58 http://www.fifa.com/goal/index_E.html

59 http://www.uefa.com/uefa/keytopics/kind=32/index.html

60 http://www.righttoplay.com/

61 http://www.sportsansfrontieres.org/

stratospheric ozone deterioration, habitat loss, toxic waste, pesticide residues, noise, traffic emissions, climate change and indoor air quality are among the threats to the safe and enjoyable practice of sport.

Sport practice, facilities and events have a significant impact on the environment. The "greening" of sport can best be achieved through environmentally sound management, capable of addressing *inter alia* green procurement, greenhouse gas emissions, waste disposal and the treatment of soil and water. Responsible organisations could also expect specific benefits by improving their credibility on environmental matters while bidding to host sport events, as well as economic benefits related to a more rationalised use of natural resources.

Major sport events can act as promoters of sport as well as of social and environmental values. Thanks to the passion it generates, the world of sport is capable of spreading these positive values. Major sport events should therefore be regarded by European society not just as an economic opportunity but also as an opportunity for disseminating cultural, social and environmental values with a view to generating growth and sustainable development.

It is important that public administrations, sport organisations and the sporting goods industry acknowledge the need for environmental sustainability as a way to develop their policies and businesses. In particular, European sport organisations and event organisers should adopt ambitious environmental objectives in order to make their activities environmentally sustainable. The EU has adopted the following tools for this purpose, thus enabling public and private organisations to upgrade their environmental credentials.

In 2001, the EU adopted a regulation[62] allowing both public and private organisations to implement the Eco-Management and Audit Scheme (EMAS). EMAS is a voluntary instrument which gives acknowledgement to organisations that improve their environmental performance on a continuous basis. More than twenty organisations have registered in the framework of EMAS for their sporting activities. Examples relate to the 2006 Winter Olympic and Paralympic Games which published a guidance document for applying EMAS to sport events[63], the Nürburgring Formula 1 circuit in Germany, and the FIFA World Football Championship 2006, where two of the stadiums obtained EMAS registration.

Participation in EMAS can notably provide the following benefits to sport organisations:

– Enhanced legal certainty through a compliance check with environmental legislation;

– Resource savings on environmental costs;

– Added credibility and confidence vis-à-vis local authorities, local communities and other stakeholders;

– Added credibility when submitting their candidacy for the organisation of sport events.

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62 Regulation (EC) N° 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)

63 http://ec.europa.eu/environment/emas/pdf/guidance/guidance09_en.pdf

In 2000, the EU adopted a regulation on a revised Community Eco-Label Award Scheme.[64] This is a voluntary scheme designed to encourage businesses to market products and services that are friendly to the environment and to allow European consumers - including public and private purchasers - to easily identify them.

The Commission has also adopted a non-binding handbook on environmental public procurement ("Buying green!").[65] This document is particularly pertinent for local authorities that are planning to award contracts for the construction or renovation of sport facilities.

Where plans or projects are necessary, e.g. urban development projects such as the construction of infrastructure for the organisation of sport events, competent authorities and concerned parties need to implement the Environmental Impact Assessment Directive[66] and the Strategic Environmental Assessment Directive[67].

3. THE ECONOMIC DIMENSION OF SPORT

Sport is a dynamic and fast-growing sector with an underestimated macro-economic impact. Although sound and comparable data are generally lacking, this is confirmed by different studies and analyses of national accounts (impact on value-added and purchasing power; impact on employment), the economics of large-scale sporting events, physical inactivity costs, including for the ageing population (health care cost reduction, health promotion), and by sector specific analysis (e.g. sport and tourism as economic drivers). The further globalisation, commercialisation and professionalisation of sport go hand in hand with increased sport sponsoring, sale of broadcasting rights and ticket sales. Sport structures and leisure facilities, especially at local level, will require innovative investment and reconfiguration to meet the evolving sport and physical activity needs of the 21st century.

Sport has been identified as a growth area offering job potential. According to a European study commissioned in 2004[68], the sports sector (NACE group 92.6) accounted for some 800,000 jobs[69] in the EU-25. The UK alone accounted for more than 30% of aggregate employment in the field of sport, followed by Germany with 13% and France with 12.5%.

Since 1980, the total number of jobs classified under sporting activities (NACE group 92.6) has tripled. The main reasons for this trend are:

– The reallocation of income to health and leisure activities;

– The development of sporting activities which affect a wider part of the population (young people, elderly, people with disabilities) and meet a variety of needs (leisure, entertainment, health, education);

– Changes in the supply of sport.

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64 Regulation (EC) N° 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community Eco-label Award Scheme

65 http://ec.europa.eu/environment/gpp/pdf/int.pdf

66 Council Directive 97/11/EC of 3 March 1997 OJ L 073 of 14.03.1997

67 Council Directive 2001/42/EC of 21.07.2001 OJ L 197 of 21.07.2001

68 VOCASPORT 2004.

69 Main occupation but not always full-time.

It is difficult to estimate the aggregate employment growth of the sector because of different national methods used to classify statistical information. However, in the past ten years the aggregate volume of sport-related employment is estimated to have grown by about 60%.[70]

There are large disparities within the EU. Main professional occupation in the sector as a percentage of the active population varies between 0.11% in Poland and 0.94% in the UK. Moreover, volunteers are not visible in official labour statistics related to sport.

3.1. Statistics

The sport sector is making a positive contribution to the attainment of the goals of the Lisbon Strategy.[71] However, this contribution has so far not been made explicit. The potential of sport should therefore be made visible in EU policy-making.

Mechanisms and methods need to be identified to ensure that sport is taken into account in the framework of the implementation of the Lisbon Strategy. In general, this should be feasible without creating additional structures or mechanisms.

The launch of policy actions and enhanced cooperation on sport at EU level needs to be underpinned by a sound knowledge base. Governmental and non-governmental stakeholders have identified the need for a European statistical definition of sport and to coordinate efforts to produce sport and sport-related statistics on that basis. They have particularly stressed the need to coordinate efforts to improve the quality and comparability of data in order to allow better strategic planning and policy making for sport.

Trustworthy statistical information on sport and sport-related matters is a necessary pre-condition for developing well-founded policies and for giving sport a higher profile in other policy areas. Statistics provide the factual means to assess the need for and progress of political initiatives.

At EU level, comprehensive and comparable statistics on sport are almost inexistent. Sport is statistically defined through NACE (classification of economic activities in the European Communities) code 92.6. This code only covers the “operation of sports facilities” and “other sports services”, i.e. the core business of sport. The statistical definition does not comprise sectors directly affected by sports activities (e.g. sporting goods manufacturers and retailers, sport media, sports education) nor other sports-related activities in sectors such as health or tourism. No specific data is collected in other fields, such as sports participation, types of sport or the profile of practitioners.

The persistent underestimation of the macro-economic impact of sport is mainly due to the fact that sport is statistically defined in a very narrow way. There is a discrepancy between the statistically covered economic sector "sport" and the common understanding of sport. One underlying and recurrent problem for experts is the lack of a definition of “sport” in an economic and statistical sense.

The Commission gathered some statistical information on sport by carrying out Eurobarometer surveys in 1997, 1998, and in 2003 and 2004 (in the run up and in parallel

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70 VOCASPORT 2004.

71 COM (2005) 024 Final of 2 February 2005: Communication to the Spring European Council - Working together for growth and jobs - A new start for the Lisbon Strategy.

with EYES 2004) in order to learn about European citizens' interest and participation in sport. Some research and publications have also been produced by academic institutions and by the European Observatory on Sport Employment (EOSE) and COMPASS[72]. The big professional sport federations finance their own statistics, as do the business sectors of sport, sports goods industries and sport service providers.

In 1999 and 2004 the Commission financed studies that relate to employment aspects of sport, with the “Vocasport” study being a comprehensive information source.

At their meeting in Vienna in March 2006, EU Sport Directors proposed to give the economic importance of sport a central place in discussions on sport among the Member States. A Working Group on "Sport and Economics" was set up in September 2006 with the aim of developing a common statistical definition of sport as well as a method for illustrating the economic impact of sport within the EU, most likely on the basis of national sport satellite accounts.

A satellite account is a specific data system which is based on the national accounts of a country, but does not form part of these national accounts. Hence, a satellite account is an appropriate tool for measuring an economic sector which does not correspond with specific economic activities according to statistical classification systems such as NACE, the European Community's statistical nomenclature of economic activities. Examples of other sectors where satellite accounts have proven useful are tourism and health.

At their meeting in Stuttgart in March 2007, EU Sport Ministers endorsed the activities of the Working Group on "Sport and Economics" and agreed that work on a sport satellite account should be taken forward at Member State and EU level.

3.2. The financing of sport

Sport organisations have many sources of income, including club fees and ticket sales, advertising and sponsorship, TV and media rights, re-distribution of income within the sport federations, merchandising, public support etc. However, some sport organisations have considerably better access to resources from business operators than others. In amateur and mass sports, equal opportunities and open access to sporting activities can only be guaranteed through strong public involvement. Public financial support is often vital for sport but must be provided within the limits imposed by Community law.

This section starts with an overview of the public financing of sport. It discusses the application of EU State aid rules to public aid provided to the sport sector, as well as the taxation of sport activities.

It then considers some aspects of the private financing of sport. In this connection, it considers sport-related aspects of sponsorship and the protection of intellectual property rights.

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[72] COMPASS is a jointly funded initiative of the Italian National Olympic Committee (CONI), UK Sport and Sport England. It involved progressively institutions from other European Countries. In 1998 seven pilot countries had contributed their data: Finland, Ireland, Italy, the Netherlands, Spain, Sweden and the UK. In 1999 Portugal joined the group. The objective is to examine existing systems for the collection and analysis of sports participation data in European countries with a view to identifying ways in which harmonisation may be achieved.

3.2.1. Public support for sport

Public support for sport can take many different forms, such as:

– Direct subsidies from public budgets,

– Subsidies from fully or partly State-owned gambling operators, or direct revenues resulting from a licence to provide gambling services,

– Special tax rates,

– Loans with lower interest rates,

– Guarantees with lower commissions,

– Public financing of sport facilities,

– Acquisition of a public municipal facilities by a private club or institution at a low price,

– Renting of sports facilities by public entities at a low price,

– Payment for the construction or renovation of sport facilities by the local council,

– Public works in private sport facilities,

– Public acquisition of advertising spaces in sport facilities,

– Land sales or donations or an exchange of land for sport facilities.

Sport is crucial to the well-being of European society. The vast majority of sporting activities takes place in non-profit-making structures, many of which depend on public support to provide access to sporting activities to all citizens in a discrimination-free environment. The main issue faced by a number of Member States is how to achieve a more sustainable financing model for giving public support to sport organisations.

In May 2006, the Commission organised an expert meeting with representatives of the Member States to examine the importance of public support for non-profit sport organisations, the functioning of which depends to a large extent on voluntary activity. The exercise showed that the nature of public support varies considerably between Member States, and from one sport discipline to another.

3.2.2. State aid control

The objective of State aid control is to ensure that government interventions do not distort competition and intra-Community trade. In this respect, State aid is defined as an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by Article 87 of the EC Treaty and do not constitute State aid.

The EC Treaty contains a general prohibition of State aid. In certain circumstances, however, government interventions are necessary for a well-functioning and equitable economy. The

Treaty therefore leaves room for a number of policy objectives with which State aid can be considered compatible.

State aid control in the field of sport

There are very few decisions so far where the Commission has applied Article 87 of the EC Treaty to sports. Public support measures in sports generally finance either infrastructure or activities or individual sports clubs.

Public financing related to the construction of sport infrastructure can be considered not to constitute State aid, provided that certain conditions are fulfilled.[73]

Public subsidies to professional clubs, however, may raise problems of compatibility with EU State aid rules since professional clubs are engaged in economic activities and are therefore considered to be undertakings under the EU competition rules.

The Independent European Sport Review makes a number of recommendations to the EU in the State aid area. In particular, it asks the Commission to exempt certain categories of State aid to sport from the general application of State aid rules. A general exemption from State aid rules would be contrary to the Treaty itself, under which all economic undertakings fall under the application of Article 87(1) EC. A block exemption regulation, which would exempt State aid measures from the obligation of notification to the Commission when certain conditions are respected, is not possible at this stage. The Commission has not been habilitated by the Council to adopt such a block exemption regulation in the area of sport. Furthermore, a block exemption regulation is possible only in an area where the Commission and Member States have acquired a good experience through an established practice and case law. This is not the case at this stage in the area of sport. For this reason, the Commission considers also that the adoption of guidelines on State aid and sport would at this stage be premature.

The granting of State aid to undertakings is in principle prohibited, but the State aid rules foresee a number of exceptions. These imply that several types of support measures granted by Member States to their sport sectors are State aid within the meaning of EC rules, but they can be considered to be compatible under certain conditions. This is notably the case if they fall within the scope of the existing block exemptions that apply to all economic sectors, such as:

– "De minimis" aid: aid of up to 200,000 EUR distributed over 3 fiscal years to a single undertaking.

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[73] Some general principles were laid down in a letter from the European Commission's Directorate-General for Competition to Germany regarding State funding for the Hanover football stadium. Aid for the construction of stadiums or other sports infrastructure could be argued not to constitute aid, provided it fulfils the following criteria: (1) the type of infrastructure involved is generally unlikely to be provided by the market because it is not economically viable; (2) it is not apt to selectively favour a specific undertaking: in other words, the site provides facilities for different types of activities and users and is rented out to undertakings at adequate market based compensation; (3) it is a facility needed to provide a service that is considered as being part of the typical responsibility of the public authority to the general public.

– Rescue and restructuring aid: aid to clubs facing financial difficulties, provided that such aid is limited in time, followed by a restructuring plan, and reimbursed in the 12 months after payment.

– Aid to SMEs: under certain conditions, aid for investments by small and medium-sized enterprises can be considered compatible.

– Training aid: state support accorded to the training of young athletes is generally compatible with EU law if it fulfils the conditions laid down in the block exemption regulation on training aid. Alternatively, it is not covered by the State aid rules if it falls within the competence of the State in the area of education.

Amateur sport clubs

In the area of sport, there is a tradition in most European countries that public aid is given to local sport clubs at the local level (mostly by municipalities). The sporting, social, cultural and recreational dimensions of amateur sport clubs are important for the public authorities of most Member States, which realise that sport plays an important role in promoting integration and health. Many small clubs may need to obtain public financing to run efficiently. Given the fact that amateur clubs are generally not considered as undertakings within the meaning of Article 87(1) EC, to the extent that they do not pursue economic activities, subsidies granted to these entities are generally not covered by the State aid rules.

Professional sport clubs

Since professional sport clubs are engaged in economic activities, there is no compelling argument why they should be exempted from the State aid rules.

The need to ensure competitive equality between players, clubs and competitions as well as the necessity to ensure uncertainty of results can in fact be guaranteed most effectively by the application of State aid rules, which are meant to establish a level playing field and ensure that States or municipalities that are most willing or able to grant subsidies to their clubs will not disrupt fair competition.

3.2.3. Taxation of sport activities

In the field of indirect taxation, Article 93 of the EC Treaty provides for the adoption of provisions for the harmonisation of Member States' rules and a large amount of secondary legislation has been agreed in this area. The current Community VAT rules are laid down in Council Directive 2006/112/EC[74] (hereafter referred to as "VAT Directive"). On 1 January 2007 the Sixth VAT Directive[75] was replaced by this new Directive, which codifies the text without changing existing legislation. These rules aim at ensuring that the application of Member State legislation on VAT does not distort competition or hinder the free movement of goods and services. The common system should, even if rates and exemptions are not fully harmonised, result in neutrality in competition so that within the territory of each Member State similar goods and services bear the same tax burden.

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[74] Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax - OJ L 347, 11.12.2006, p.1.

[75] Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. (77/388/EEC)

The following provisions are important for sport:

– According to Art. 132 of the VAT Directive, VAT exemptions are possible for certain activities of public interest. This category includes:

  – (m) the supply of certain services closely linked to sport or physical education supplied by non-profit-making organizations to persons taking part in sport or physical education[76];

  – (o) the supply of services and goods by organizations whose activities are exempt under the provisions of (m) in connection with fund-raising events organized exclusively for their own benefit provided, inter alia, that the exemption is not likely to cause distortion of competition to the disadvantage of commercial enterprises subject to VAT. For the purpose of point (o), Member States may introduce any restrictions necessary, in particular as regards the number of events or the amount of receipts which give entitlement to exemption.

– Member States may regard activities which are exempt under Art. 132 and engaged in by bodies governed by public law, as activities in which those bodies engage as public authorities. In such circumstances those activities will be regarded as "outside the scope of VAT" activities, meaning that they will also be non-taxable for VAT purposes.

– According to Art. 98 Member States may apply either one or two reduced rates of not less than 5% to supplies of goods or services in the categories set out in Annex III of the VAT Directive. While the standard rate of VAT must be at least 15% in each Member State, Annex III provides for reduced VAT rates concerning the "admission to sporting events" and the "use of sporting facilities".

The application by Member States of the reduced VAT rate in the field of sport is not always in compliance with Community rules because of different interpretations of the "scope" of the reduced rate. With regards to the different VAT rates applied to "admission fees to sporting events" within Member States, the question of allowing a Member State to avoid a VAT bill for a given sporting event (e.g. World Cup, Olympic Games) is a recurrent issue.[77]

The Commission is currently looking into the VAT rules governing public bodies and exemptions for certain activities in the public interest, with a view to modernising those rules in order to achieve a more consistent approach across the EU, avoid market distortions and meet current needs.

The rationalisation of the rules and derogations regarding the application of reduced VAT rates to certain sectors set out in Directive 2006/112/EC is also being considered. This process may have an impact on the special rates Member States are allowed to apply in the areas of "admission to sporting events" and "use of sporting facilities".

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[76] The supply of services or goods shall not be granted exemption as provided for in […] (m) if it is not essential to the transactions exempted, and if its basic purpose is to obtain additional income for the organization by carrying out transactions which are in direct competition with those of commercial enterprises liable for value-added tax.

[77] Rapport Coopers&Lybrand: L'impact des activités de l'Union Européenne sur le sport, septembre 1995.

In the absence of harmonisation, direct taxation remains a competence of the Member States. As a result, different national tax rules affect sports with regard to the taxation of clubs and of players. Different national tax rules can result in divergences e.g. in labour costs for sports clubs with the effect of imbalances between clubs in different Member States.

The income of sportspersons performing their activities in a State other than their residence State is taxed in the State of activity (Art. 17 of the OECD Model Tax Convention on Income and Capital). The applied withholding tax procedure may create some practical difficulties to get overpaid taxes reimbursed, in particular if the sportsman performed activities in several States.[78] In its "Gerritse" ruling[79] about the applicability of different rates of taxation in relation to the income of non-residents and of residents, the European Court of Justice (ECJ) stated that higher taxation of non-resident artists and sportsmen was not compatible with Articles 49 and 50 EC.

3.2.4. Sponsorship

The vast majority of sponsorship deals in Europe are found in the field of sport. In 2005, 91% of sponsorship investment went into sport, which corresponded with a figure of around $7–8 billion, compared to only 1% into culture.[80] Sport sponsorship is an inexpensive form of advertising which can easily reach favoured market segments[81], including through TV coverage.

From a sport point of view, sponsorship makes a significant contribution to many sport activities and is an important source of revenue for sport right holders (federations, clubs, teams or individual sportspersons).[82] It therefore plays a major role in the development of sport. Event sponsoring is also important. Events such as the FIFA World Cup 2006, the European Championship 2008 or the 2012 Olympic Games offer multiple opportunities for lucrative sponsorship deals to market brands and develop business.

Commercial sport sponsorship deals are especially significant in professional sport, but sponsoring is also important in the grassroots sector through its supportive role for the development of local or amateur sport structures. It can be especially interesting for the local business sector.

In its follow-up to the Green Paper on Commercial Communications in the Internal Market[83], the Commission identified 'sponsorship' as one of the priority areas for an Expert Group set up to examine problems arising from cross-border commercial communications and the objectives, levels and means of protection of public interest objectives of differing national regulations pertaining to them. As regards sponsorship, the Commission and the Expert Group, which consisted of two representatives appointed by each Member State, looked at the

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78 See judgments of the ECJ of 03.10.2006, C-290/04, "Scorpio" and of 15.02.2007, C-345/04, "Centro equestre".

79 C-234/01 of 12 June 2003.

80 European Sponsoring Association (ESA): figures based on The World Sponsorship Monitor (TWSM). Concrete overall figures on sport sponsorship are difficult to obtain, partly because every sponsor has its own figures and does not necessarily wish to publish them.

81 E.g. young men are both the keenest sports fans and the heaviest drinkers.

82 From a sport point of view, distinguishing TV/broadcasting/media sponsorship from e.g. event sponsorship is important. In the first case the money goes into the medium, whereas in the second case the money goes to sport/the event.

83 COM (1998) 121 final

following problems: differing national regulations on sponsorship services related to particular products, differing definitions in national regulations of sponsorship and patronage which restrict the development of cross-border services in this area, and differing national regulations on TV sponsorship insofar as they concern aspects which are not covered by Directive 89/552 EEC as amended by Directive 97/36/EC or the work of its contact committee. The Commission and the Expert Group concluded that there was no need for harmonisation in this field.

From an "ethical" or societal point of view, sport sponsorship must be seen in connection with policies aimed at protecting the public or the consumer. In the field of public health, Member States have different laws and policies in place that set e.g. tobacco, alcohol or fast food apart from other goods traded within their territories, and relate also to advertising and sponsorship. Some of these areas have been regulated or are currently being addressed at EU level.

In view of the fact that the vast majority of sponsorship investment goes into sport, the economic interests of sport need to be taken into account when new policies with an impact on sponsoring are designed. However, these interests need to be balanced against considerations of public health as well as societal and ethical considerations.

As different national rules on tobacco advertising and sponsorship were becoming a barrier to the free movement between Member States of the products and services carrying them, the EU introduced a ban on tobacco advertising and sponsorship in 2003[84] that Member States had to implement by 31 July 2005, with a prolongation until 1 January 2007 for the ending of tobacco sponsorship at international sporting events.[85] The directive bans advertising in the print media, on radio and over the internet and it also prohibits tobacco sponsorship of cross-border events or other activities.[86] The WHO's Framework Convention on Tobacco Control, for which the EU completed its ratification, has as one of its objectives a world-wide ban on tobacco advertising, promotion and sponsorship.

In the autumn of 2006, the Commission adopted a Communication setting out an EU strategy to support Member States in reducing harm related to alcohol consumption.[87] The Communication identifies areas where the EU can support the actions of Member States to reduce alcohol-related harm[88], among which the field of "responsible commercial communication and sales". Here the main aim is to support EU and national/local government actions to prevent irresponsible marketing of alcoholic beverages. The intention is to improve enforcement of current regulations, codes and standards.

For both sponsors and right-holders the issue of ambushing of sponsored properties is of increasing concern. Although in most countries the notion of "ambush marketing" is undefined, in its broadest sense it can encompass any kind of marketing activity undertaken around a property by an entity that is not a sponsor, where the entity seeks commercial benefit

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84 As a consequence of these political and legislative circumstances, the Formula One grand prix of Francorchamp, mainly sponsored by Marlboro, was cancelled in 2003, because of the Belgian tobacco advertising legislation.

85 Directive 2003/33/EC of 26 May 2003.

86 Tobacco advertising on television has been banned in the EU since the early 1990s, and is governed by the Television without Frontiers Directive (Council Directive 89/552/EEC of 3 October 1989).

87 COM(2006) 625 final of 24 October 2006.

88 This Communication does not address the question of distribution (e.g. a ban to buy) – which would, arguably, be an effective instrument to tackle the alcohol-related harm.

from associating itself with the property. There is little legislation in the area of ambush marketing. Where protection is offered, it has been developed through case law as an extension of the applicability of rules on intellectual property, unfair competition and, to a lesser extent, advertising and consumer protection. As a general rule, protection against ambush marketing tactics used within the stadium where a sport event occurs is most efficiently obtained through a well-drafted contract between the sponsor and the event organiser. However, protection against such tactics used outside the physical location under the control of the event organiser is much more difficult to obtain.

There is growing pressure from event organisers, who wish to protect their events and contractual agreements with their sponsors, on governments to introduce specific anti-ambush laws.[89] For example, prior to the European football championship in 2004 Portugal made it a criminal offence to gain promotional advantage for a brand by association with certain designated events. Any Internal Market problem relating to sponsorship should be addressed in the context of the Commission's policy on Commercial Communications.

3.2.5. Protection of sport-related intellectual property rights

The protection of sport-related intellectual property rights has been shaped by case law of the European Court of Justice.

Trade marks may consist of any signs capable of being represented graphically, such as a word, logo or colour scheme applied to goods and services. The signs must be capable of distinguishing the goods and services of one undertaking from those of other undertakings. A trademarked product informs the purchaser of the origin of the product, thus marking it as distinct from other products. At EU level, trade mark law is governed by two instruments: Directive 89/104/EEC on the approximation of trade mark laws in the EU[90], which aims at harmonising the conditions for registration of a national trade mark in respect of goods or services, and Council Regulation 40/94 on the Community trademark. In the sport context, trade marks are used extensively in the sport industry to protect sporting brands, but also by other sporting actors. The Court has given its interpretation of the trade mark directive in cases involving clubs or sporting goods manufacturers.[91] In the case *"Arsenal Football Club v Reed"*[92] on the scope of the proprietor's exclusive right to a trademark, the Court held that the non-authorised use of the sign “Arsenal” on scarves is such as to create the impression that there is a material link in the course of trade between the goods concerned and the trade mark proprietor. The use of a sign which is identical to the trade mark at issue is liable to jeopardise the guarantee of origin. It is consequently a use which the trade mark proprietor may prevent in accordance with Directive 89/104/EEC. The ECJ's findings are important for sport in that it supports trade mark owners and adds clarity to the question of whether a sign is being used as a trade mark or a badge of support. Moreover, in the field of trade marks, the role played by

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89 These go beyond the traditional protections offered by trade mark law, unfair competition/passing off, copyright, competition laws, human rights legislation and ticket terms and conditions.

90 The codification of this Directive carried out pursuant to a Communication from the Commission is currently underway: Proposal for a Directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (Codified version) COM/2006/0812 final.

91 Cases C-425/98 of 22 June 2000, C-251/95 of 11 November 1997, Case C-408/01 of 23 October 2003.

92 Case C-206/01 of 2 November 2002.

big sport federations and the IOC in setting guidelines for trade mark identification processes and designs of sports products can be an issue of concern for sporting goods manufacturers.[93]

In the field of copyright and related rights, it is mainly the 1996 Database Directive[94] that is of relevance for sport as it relates to sports information, such as fixture lists (lists of matches and dates) owned by leagues and used by sport betting companies. This Directive has been interpreted by the ECJ in four judgments of 9 November 2004 in cases concerning the sports database owners FM and BHB. Regarding the exploitation of databases (fixture lists and horse-racing data) by bookmaking services, the Court held in these cases that the right-holders cannot claim protection under the Database Directive.

Sport-related counterfeiting and piracy[95] have become an international phenomenon with considerable economic and social repercussions. Counterfeiting activities during major sporting events are a real challenge and can have economic impacts for sport right-holders. The sporting goods industries are particularly concerned by the growing purchase of counterfeit goods over the internet.

The protection and enforcement of intellectual property rights is an important issue for sport right-holders, although the sport sector hardly differs from other business sectors in this respect and faces similar challenges.

Existing cooperation networks with the Commission for the fight against counterfeiting during major sporting events (e.g. issuing of information for customs officials to help them to differentiate between genuine and counterfeit items during the European football championship in 2004) could be further developed.

3.3. Sport as a tool for regional development

Although its potential varies according to local specificities, sport can be a tool for local and regional development, urban regeneration or, in some cases, rural development (nature sports). Synergies can be identified between sport and tourism and sport can stimulate the upgrading of collective infrastructure (e.g. transport networks) and the emergence of new mechanisms for their financing (e.g. public-private partnerships).

Sport is not referred to in the regulatory framework and guidelines for the EU's cohesion policy for the period 2007-2013. However, sport-related projects have been previously co-financed by the Structural Funds[96], based on other objectives such as tourism promotion, urban regeneration, economic competitiveness or interregional cooperation.

Regional policy instruments can also play a role in preparing and ensuring the sustainability of certain major sporting events. For example, they were used to co-finance investment in

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93 Industries' concerns relate to high extra costs to show compliance with the set requirements. Manufacturers are e.g. forced to put the logo of a sport federation on sport products (e.g. balls) but are required to pay royalties to that sport federation; or design elements might be forbidden by a sport governing body for a top tournament, because it resembles too closely a logo of a manufacturer or other IPR that are registered trade marks.

94 Database directive 96/6/EC.

95 Counterfeiting means "to make something in imitation of something else with the intent to deceive". Piracy means "to illegally copy something that already exists".

96 Examples of sport projects co-financed by the Structural Funds are the SportUrban (see: http://www.sporturban.org) and the Sports Pulse (see: http://www.sportspulse.org/) projects.

transport infrastructure linked to the Olympic Games in Athens in 2004[97], although they were not aimed at financing sport facilities, but rather at improving accessibility generally, with specific benefits linked to the events.

3.4. Anti-trust

The economic importance of sport has grown dramatically in recent years and continues to grow. As a result, the Commission has had to deal with an increasing number of cases in the area of antitrust related to the sport sector and has resolved these cases either formally through decisions or informally.

The material provisions of the EC Treaty are

– Article 81 which forbids agreements between undertakings and decisions by associations of undertakings that prevent, restrict or distort competition in the common market, subject to some narrowly defined exceptions; and

– Article 82 which prohibits the abuse by one or more undertakings of a dominant position within the common market.

It has long been established by the case-law of the Community Courts and the decisional practice of the Commission that economic activities in the context of sport fall within the scope of EC law, including EC competition rules and internal market freedoms. This has recently been confirmed specifically with regard to the anti-trust rules, Articles 81 and 82 of the EC Treaty, by the *Meca Medina* ruling of the European Court of Justice (ECJ).[98] This judgment is of paramount importance for the application of EC competition law to the sport sector since this is the first time the ECJ has ever pronounced on the application of Articles 81 and 82 to organisational sporting rules.[99] In prior judgments the cases were decided solely on the basis of other provisions of the EC Treaty, most notably those on the freedom of movement for workers and the freedom to provide services. The very existence of an authoritative interpretation of the anti-trust provisions of the Treaty in the context of organisational sporting rules by the ECJ represents a significant contribution to legal certainty in this area.

a) The applicability of EC anti-trust law to organisational sporting rules and the specificity of sport

The Community Courts and the Commission have consistently taken into consideration the particular characteristics of sport setting it apart from other economic activities that are frequently referred to as the "specificity of sport". Although no such legal concept has been developed or formally recognized by the Community Courts, it has become apparent that the following distinctive features may be of relevance when assessing the compliance of organisational sporting rules with Community law:

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97 http://ec.europa.eu/regional_policy/themes/olympe/pages/focus_en.htm

98 Case C-519/04P, *Meca Medina v. Commission*, ECR 2006, I-6991

99 The judgment of the CFI in Case T-193/02, *Piau v. Commission*, ECR 2005 II-209 (upheld by the ECJ in Case C-171/05P, ECR 2006 I-37) concerned a sporting rule adopted in relation to an activity ancillary to sport (football agents) and not relating to the sporting activity itself (football).

– Sport events are a product of the contest between a number of clubs/teams or at least two athletes. This **interdependence between competing adversaries** is a feature specific to sport and one which distinguishes it from other industry or service sectors.

– If sport events are to be of interest to the spectator, they must involve **uncertainty as to the result**. There must therefore be a certain degree of equality in competitions. This sets the sport sector apart from other industry or service sectors, where competition between firms serves the purpose of eliminating inefficient firms from the market. Sport teams, clubs and athletes have a direct interest not only in there being other teams, clubs and athletes, but also in their economic viability as competitors.

– The organisational level of sport in Europe is characterised by a monopolistic **pyramid structure**. Traditionally, there is a single national sport association per sport and Member State, which operates under the umbrella of a single European association and a single worldwide association. The pyramid structure results from the fact that the organisation of national championships and the selection of national athletes and national teams for international competitions often require the existence of one umbrella federation. The Community Courts and the Commission have both recognized the importance of the freedom of internal organization of sport associations.

– Sport fulfils important **educational, public health, social, cultural and recreational functions**. The preservation of some of these essential social and cultural benefits of sport which contribute to stimulating production and economic development is supported through arrangements which provide for a redistribution of financial resources from professional to amateur levels of sport (principle of solidarity).

Controversial discussions in the past have never called into question the recognition of these unique characteristics of sport. Rather, they centered on the question of the precise impact of the specificity of sport on the application of EC competition law. It was argued by some that so-called "purely sporting rules" automatically fall outside the scope of EC anti-trust rules and cannot, by definition, be in breach of those provisions.

The ECJ has unequivocally rejected this approach in *Meca Medina* and held that the qualification of a rule as “purely sporting” is not sufficient to remove the athlete or the sport association adopting the rule in question from the scope of EC competition rules. The Court insisted, on the contrary, that whenever the sporting activity in question constitutes an economic activity and thus falls within the scope of the EC Treaty, the conditions for engaging in it then are subject to obligations resulting from the various provisions of the Treaty including the competition rules. The Court spelled out the need to determine, on a case-by-case basis and irrespective of the nature of the rule, whether the specific requirements of Articles 81 EC or 82 EC are met. It further clarified that the anti-doping rules at issue were capable of producing adverse effects on competition because of a potentially unwarranted exclusion of athletes from sporting events.

In the light of *Meca-Medina*, it appears that a considerable number of organisational sporting rules, namely all those that determine the conditions for professional athletes, teams or clubs to engage in sporting activity as an economic activity, are subject to scrutiny under the anti-trust provisions of the Treaty.

The landmark *Meca Medina* ruling has therefore substantially enhanced legal certainty by clearly pronouncing that there exists no such thing as a category of "purely sporting rules" that would be excluded straightaway from the scope of EC competition law.

This is not to say, however, that the ECJ has decided not to take into account the specific features of sport referred to above when assessing the compatibility of organisational sporting rules with EC competition law. Rather, it has ruled that this cannot be done by way of declaring certain categories of rules a priori exempt from the application of the competition rules of the Treaty. In other words, the recognition of the specificity of sport cannot entail the categorical inapplicability of the EC competition provisions to organisational sporting rules but it has to be included as an element of legal significance within the context of analyzing the conformity of such rules with EC competition law.

b) The methodology of applying EC anti-trust law to organisational sporting rules

The second aspect of the *Meca Medina* ruling contributing to increased legal certainty, apart from clarifying under which conditions EC competition law is applicable to sporting rules, is the establishment of a methodological framework for the examination of the compatibility of sporting rules with Articles 81 EC and 82 EC.

The ECJ spelled out that not every sporting rule that is based on an agreement of undertakings or on a decision of an association of undertakings which implies a restriction of the freedom of action is prohibited by Article 81(1).[100] In assessing the compatibility with this provision account must be taken of

– the **overall context** in which the rule was adopted or the decision was taken or produces its effects, and more specifically, of its **objectives;** and

– whether the restrictive effects are **inherent** in the pursuit of the objectives; and

– are **proportionate** to them.

In applying those principles to the case at hand, the ECJ found that the objective of the challenged anti-doping rules was to ensure fair sport competitions with equal chances for all athletes as well as the protection of athletes' health, the integrity and objectivity of competitive sport and ethical values in sport. The restrictions caused by the anti-doping rules, in particular as a result of the penalties, were considered by the ECJ to be "*inherent in the organisation and proper conduct of competitive sport*". The ECJ also carried out a proportionality test examining, with a positive result, whether the rules were limited to what is necessary as regards (i) the threshold for the banned substance in question and (ii) the severity of the penalties.

This demonstrates that the instruments of EC competition law provide sufficient flexibility in order to duly take into account the specificity of sport and illustrates how the distinctive features of sport play an essential role in analyzing the admissibility of organisational sporting

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100 Case C-519/04P, *Meca Medina v. Commission*, ECR 2006, I-6991, par. 42. By the same token not every sporting rule with potentially adverse effects on competition adopted by a sport association that has to be considered an undertaking in a dominant position within the common market constitutes an abuse of that dominant position. The material parts of the judgment in that respect make reference only to Article 81(1) because the plaintiffs had only claimed a misapplication of that provision. The logic of the methodology established by the ECJ appears to be transferable to Article 82.

rules under EC competition law. Where these features form the basis of a legitimate sporting objective, a rule pursuing that objective is not in breach of EC competition law provided that restrictions contained in the rule are inherent in the pursuit of that objective and are proportionate to it.

The methodology of applying EC anti-trust law, i.e. Articles 81 EC and 82 EC, to rules adopted by sport associations as set up by the ECJ in the *Meca Medina* ruling including criteria relating to the specificity of sport can be summarized as follows:

Step 1. Is the sports association that adopted the rule to be considered an "undertaking" or an "association of undertakings"?

a. The sports association is an "undertaking" to the extent it carries out an "economic activity" itself (*e.g.*, the selling of broadcasting rights).

b. The sports association is an "association of undertakings" if its members carry out an economic activity. In this respect, the question will become relevant to what extent the sport in which the members (usually clubs/teams or athletes) are active can be considered an economic activity and to what extent the members exercise economic activity. In the absence of "economic activity", Articles 81 and 82 EC do not apply.

Step 2. Does the rule in question restrict competition within the meaning of Article 81(1) EC or constitute an abuse of a dominant position under Article 82 EC?

This will depend, in application of the principles established in the Wouters judgment, on the following factors:

a. the overall context in which the rule was adopted or produces its effects, and its objectives;

b. whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and

c. whether the rule is proportionate in light of the objective pursued.

Step 3. Is trade between Member States affected?

Step 4. Does the rule fulfil the conditions of Article 81(3) EC?

The significance of the individual steps of this analysis are developed and explained in more detail in the Annex on Sport and EU Competition Rules.

It needs to be underscored that the *Meca Medina* ruling excludes the possibility of a pre-determined list of sporting rules that are in compliance with or in breach of EC competition law. Apart from the refusal by the ECJ to recognise purely sporting rules as automatically falling outside the scope of the Treaty competition rules or automatically compliant with them it is the requirement of a proportionality test that prevents any general categorisation. That test implies the need to take account of the individual features of each case. Even for the same kind of rule (e.g. licensing rules for sport clubs) conditions may and do vary greatly from sport to sport and from Member State to Member State (e.g. depending on the national legal

obligations relating to financial management and transparency there may or may not be a need to include licensing requirements of a particular type in the statutes of a sport association). In many if not most cases there are many conceivable shapes and forms of any particular type of rule. This, as well as the interrelation with other rules, the assessment of which is often indispensable to judge the proportionality of a certain regulation as a whole, renders it virtually impossible to comment on the compatibility of certain types of rules with EC competition law in general terms.

Nevertheless, the body of existing case law of Community Courts, relating to the application of Treaty provisions other than the competition rules, as well as the decision-making practice of the Commission concerning Articles 81 EC and 82 EC can assist in identifying the types of rules that may normally be considered not to infringe EC competition rules. These decisions will have to be reviewed in the light of the *Meca Medina* judgment but they remain relevant inasmuch as they identify objectives that may be recognized as legitimate within the context of carrying out the examination outlined above. Bearing in mind the proviso that a specific assessment based on the circumstances of each individual case involving, most notably, a proportionality test, is indispensable and that therefore one can only express varying degrees of likelihood of compliance with EC competition law, the following distinction can be made on the basis of existing case law and decisional practice:

The following types of rules constitute examples of organisational sporting rules that – based on their legitimate objectives – are **likely not to breach Articles 81 EC and/or 82 EC** provided the restrictions contained in such rules are inherent and proportionate to the objectives pursued:

– "Rules of the game" (e.g., the rules fixing the length of matches or the number of players on the field);

– Rules concerning selection criteria for sport competitions;

– "At home and away from home" rules;

– Rules preventing multiple ownership in club competitions;

– Rules concerning the composition of national teams;

– Anti-doping rules;

– Rules concerning transfer periods ("transfer windows").

The following rules represent a **higher likelihood of problems concerning compliance with Articles 81 EC and/or 82 EC**, although some of them could be justified under certain conditions under Article 81(3) or Article 82 EC:

– Rules protecting sports associations from competition.

– Rules excluding legal challenges of decisions by sports associations before national courts if the denial of access to ordinary courts facilitates anti-competitive agreements or conduct.

– Rules concerning nationality clauses for sport clubs/teams.

– Rules regulating the transfer of athletes between clubs (except transfer windows).

– Rules regulating professions ancillary to sport (e.g. football players' agents).

Notwithstanding this tentative classification it needs to be recalled that an individual analysis of every challenged organisational sporting rule on a case-by-case basis is indispensable.

The reasoning underlying this categorisation as well as the relevant case law and decision-making practice is specified in the Annex on Sport and EU Competition Rules.

4. THE ORGANISATION OF SPORT

4.1. The European approach to sport

The political debate on sport in Europe often attributes considerable importance to the so-called "European Sport Model". The Independent European Sport Review, for example, identifies several characteristics of sport in Europe which allegedly constitute this model: a pyramid structure of organisation allowing for democratic functioning and a certain degree of solidarity between members, combined with open competitions.[101]

The European Union has approached sport through its special characteristics. According to the Commission's 1999 Helsinki Report on Sport "[t]here are many common features in the ways in which sport is practised and organised in the Union, in spite of certain differences between the Member States, and [it] is therefore possible to talk of a European approach to sport based on common concepts and principles." The Helsinki report and the Nice Declaration make it possible to flesh out this approach, which is based in particular on the following elements found to varying degrees depending on the sports and the Member States in question:

– A pyramid structure for the organisation of sport and of sport competitions and a central role for the sports federations;

– A system of open competitions based on the principle of promotion/relegation;

– A broadly autonomous sports movement that may develop partnerships with the public authorities;

– Structures based on voluntary activity;

– Solidarity between the various constituent elements and operators.

In addition, the Commission's Consultation Conference "EU & Sport: matching expectations" (29-30 June 2006)[102] stressed

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101 This model is often contrasted with a so-called "American Model of Sport" based on a strict separation between closed professional leagues on the one hand and amateur sport on the other. However, this is a rather limited view of the real organisation of sport in the United States, as it refers only to the professional structure of four main sports: American football, basketball, base-ball and ice hockey. It does not take into account the significant role of academic sport nor the different organisational structures of other sports such as athletics or swimming.

102 http://ec.europa.eu/sport/doc/organisation_sport_europe.pdf

– the importance of national teams and competitions between these teams,

– the focus on health and the fight against doping,

– the involvement of the public sector in the financing of sport, and

– common management of amateur and professional sport by sport associations.

These characteristics enhance the positive values carried by European sport and deserve to be supported.

Nonetheless, it must be recognised that any attempt at precisely defining the "European Sport Model" quickly reaches its limits. Some of the features often presented as "characteristic", such as the system of open competitions based on promotion and relegation, are actually limited to a certain category of sport (team sport in this specific case). As a matter of fact, even for team sports the system of open competitions is somewhat mitigated by a licensing system that introduces financial criteria for participation in competitions.

Other sports present in Europe have adopted a totally or partially closed system for participation in professional sport competitions, such as motor-sports or cycling. The relevance of the pyramid structure for the organisation of competitions (and of the sport itself) is thus greatly reduced. It should be noted that the organisation of competitions also largely diverges from the pyramid structure in other sports, such as golf or tennis.

On the other hand, what is often presented as constitutive of a unique "European" model can sometimes apply to the organisation of sport in other parts of the world or even globally. The European model of sport has been a successful model and many of its elements have therefore been adopted by other countries around the world.

New tendencies are challenging the traditional vision of a unified "European Sport Model". Economic and social developments that are common to the majority of the Member States (increasing commercialisation and stagnation of public spending on the one hand, and an increase in the number of participants together with stagnation in the number of voluntary workers on the other) have resulted in new challenges for the organisation of sport in Europe. The emergence of new stakeholders (participants outside the organised disciplines, professional sports clubs etc.) and the increasing recourse to litigation are posing new questions as regards governance, democracy and representation of interests within the sports movement.

The Commission is fully aware – and respectful – of the autonomy and diversity of sports and recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States. The autonomy of sport organisations needs to be recognised and protected, within a framework that ensures the implementation of good governance principles such as democracy, transparency and accountability.[103] On this basis, self-regulation should be encouraged, provided that EU law is respected in areas such as free movement, non-discrimination and competition.

While different sports may wish to examine their own organisation, the method will need to be adapted to fit the specific situation of each sport. In the sports world, governance usually

[103] See the conclusions of the 2001 "Rules of the Game" conference.

refers to reinforced transparency and the introduction of formal rules and procedures in fields which have hitherto been governed in a more informal way.

The Commission considers that each sport has its specificities and deserves to be treated differently according to these. The EU will not impose general rules applicable to all European sports. However, EU law will continue to apply to sport, particularly as far as competition, freedom of movement and non-discrimination rules are concerned. Moreover, dialogue with sports organisations has brought a number of areas for possible EU action to the Commission's attention, particularly transfers, activities of players' agents, licensing systems, involvement of supporters in clubs, criminality in sport, and the protection of minors and media rights.

4.2. Free movement and nationality

For the issues treated in this section, see also Annex II – Sport and Internal Market Freedoms.

4.2.1. Free movement of sportspeople

Sport has been historically organised on the basis of the nation-state and competitions between national teams are highly appreciated by citizens. However, regarding access to sport this traditional feature cannot be a reason to discriminate. The Treaties, which establish the right of every citizen of the Union to move and reside freely in the territory of the Member States, prohibit discrimination on grounds of nationality.

Access to sport is a social advantage, and given its high popularity and importance for the social integration of citizens, it cannot remain outside the scope of the fundamental principles of free movement. The application of Community rules on free movement to sport is not dealt with in any specific Community legal provision, but it is the result of established case law of the ECJ. The Court has ruled that an EU national who legally resides in another Member State has the right to equal treatment in terms of social advantages.

Amateur sport must not remain outside the scope of the fundamental principles of free movement. Whereas general access to sport practice and facilities does not seem to be a problem at European level, issues arise concerning membership of clubs for non-nationals, cross-border movement of sportspeople and participation in competitions.

The Commission reaffirms that membership of sports clubs and participation in competitions is an important factor to promote the integration of residents into the society of the host country, and that discrimination against EU nationals in this area must be avoided.

In order to analyse discrimination in the amateur sports field, the Commission invited Member States in an expert meeting[104] to provide it with the legal texts that govern the relationship between the State and the sport federations and to ensure at national level, together with sport federations, that there are no discriminatory provisions in place - neither in the statutes, nor in the competition regulations. The Commission suggested that Member States address an official standard letter to national sport federations calling on them to take the necessary steps in order to change provisions where necessary.

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[104] Meeting of experts with Member States representatives on the free movement of amateur sportspersons (Brussels, 1st December 2005): http://ec.europa.eu/sport/sport-and/jai/docs/reportexpert1205_en.pdf

In recent years, the Commission has received an increasing number of questions from EU residents informing it about restrictions on access to sporting activities and/or sporting competitions by sport amateurs in certain Member States and concerning different sports. During consultations with the Member States and the sport movement, the Commission has also often received information about such problems.The Commission is thus aware of a number of existing obstacles to the free movement of amateur sportspeople in several Member States. The Commission also had an exchange of views on the result of these actions with Member States under the Luxembourg Presidency in 2005.

The European Court of Justice has taken a number of important decisions in this area:

– In *Walrave & Koch*[105] and *Dona v Mantero*[106], the European Court of Justice (ECJ) stated clearly that regulations based on nationality which limit the mobility of sportsmen are not in conformity with the principle of free movement of workers.

– In its *Bosman* ruling[107] the ECJ stated: "Having regard to the objectives of the Community, sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty, as in the case of the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service". In its interpretation of the principle of free movement for sportsmen, the Court formulated two types of prohibition. Firstly, the Court prohibited all discrimination based on nationality and declared nationality quotas in sport clubs not in conformity with article 39. Secondly, in order to ensure the full effectiveness of the principle of free movement of sportsmen (after the expiry of a contract) the Court also condemned obstacles to free movement. One consequence was the end of allowances for a transfer at the end of a contract.

– The Court of Justice's interpretation of the concept of citizenship, enshrined in Article 17 of the EC Treaty, has become increasingly broad as far as the principle of non-discrimination in accessing social advantages is concerned. The principle of equal treatment in respect of social advantages stems from Article 7(2) of Council Regulation 1612/68 of 15 October 1968 on freedom of movement for workers and family members within the Community. The Court's case law has extended the right to equal treatment in the granting of social advantages to students and non-active persons who are lawfully resident in the host Member State. The Court has recognised the right of citizens of the Union who are lawfully resident in the territory of the host Member State to avail themselves of Article 12 of the EC Treaty when they are in a situation which is identical to that of nationals and falls within the scope *ratione materiae* of Community law.[108]

– In its *Walrave, Donà* and *Bosman* rulings, the ECJ recognised an exception to the principle of free movement of sportsmen for reasons which are not of an economic nature. This exception refers in particular to the selection of national teams.

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105 Case 36/74 of 12 December 1974

106 Case 13/76 of 14 July 1976

107 Case C-415/93 of 15/12/1995

108 C-184/99, Grzelczyk, 20 September 2001 and C-85/96, Martinez Salà, 12 May 1998.

– When considering the autonomy of a federation to organize its competitions, two particular cases are relevant. In its *Deliège* ruling[109], the Court stressed that selection criteria in judo based on a limit to the number of national participants in an international competition does not constitute a restriction on the freedom to provide services, as such a limitation may ensure certain important characteristics of sporting competitions and pursues a sporting interest only.

– Furthermore, in 2000 in its *Lehtonen* ruling[110] the Court considered that the setting of deadlines for transfers of players may meet the objective of ensuring the equity of sporting competitions. In order to be justified, rules of this type defined by sporting organisations may not go beyond what is necessary to achieve the legitimate aim pursued. In this case the proper functioning of the championship as a whole was 'inherent' to the sports organisation and the "transfer window" which prevented basket-ball players from joining another club during the season could be linked to the integrity of the competition.

Limited and proportionate restrictions to the principle of free movement, in line with Treaty provisions and ECJ rulings, can thus be accepted as regards:

– The right to select national athletes for national team competitions;

– The need to limit the number of participants in a competition;

– The setting of deadlines for transfers of players in team sports.

4.2.2. Nationality

The national organisation of sport

EU law prohibits (with some exceptions based on public policy, public health and public security) any discrimination on grounds of nationality. It establishes the right for any citizen of the Union to move and reside freely in the territory of the Member States. The Treaty also aims to abolish any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. The same prohibitions apply to discrimination based on nationality in the provision of services.

The interpretation of citizenship clauses to sport matters by the courts has led to the identification of some situations in which discrimination on grounds of nationality is clearly prohibited, or inversely, allowed. Thus, any discrimination on grounds of nationality is prohibited in sport, where sportspeople can be considered to be workers.[111]

National teams and competitions

The composition of national teams is inherent in the organisation of competitions opposing national teams. Rules concerning the composition of national teams, in particular rules that

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109 Case C-51/96 and C-191/97 of 11/04/2000

110 Case C-117/96 of 13/04/2000

111 C-415-93, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, 15 December 1995.

exclude non-national sportspeople from national teams, have been considered as rules that do not infringe the Treaty's free movement provisions.[112]

However, the release of under-contract players to play for national teams has recently been brought to court by some professional football clubs seeking compensation for time spent away from the club or for injuries sustained while on international duty.[113]

Some Member States and sports organisations have signalled their preoccupations with the situation of competitions involving individual sportspersons and leading to the conferment of National Champion titles. On cultural grounds, they are of the opinion that the conferment of such titles should be reserved for nationals of the Member State within which the competition takes place. A more technical concern is linked to the fact that in some cases, results in a national championship serve as a basis for the qualification of nationals to international competitions or for the composition of national teams.

The legality of residency clauses also needs to be examined, as some sports organisations are concerned that some sportspeople can take part in different national championships.

Third-country nationals

a. Admission for residence and work in the EU:

Requirements for residence and work permits may be perceived as an administrative hurdle by third-country nationals exercising sport activities in EU Member States. In accordance with the conclusions of the European Council in Tampere (Finland) in October 1999, which called for the establishment of an EU immigration policy based on fair treatment for third-country nationals, several Directives have been adopted in the course of the last years which also directly relate to the rights of third-country sport professionals, notably Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and Council Directive 2003/109/EC of 25 November 2003 on a long-term resident status for third country nationals who have legally resided for five years in the territory of a Member State.

In the December 2005 'Policy Plan on Legal Migration' (COM (2005) 669), which lists the actions and legislative initiatives that the Commission intends to take so as to pursue the consistent development of an EU legal migration policy, several measures are listed which may have a positive impact on third country sport professionals. The measures most likely to bring about direct benefits for third-country workers will be the planned proposal for a directive on rights of migrant workers as well as the planned proposal for a directive on the admission of highly skilled workers (both scheduled for the second half of 2007).

It should be noted that in 2003[114] and in 2005[115] the ECJ extended the principle of equal treatment to sportsmen from third countries having an Association Agreement with the European Union, because of the existence of non-discrimination clauses in these agreements.

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112 C-36/74, Walrave and Koch v. Union Cycliste Internationale, 12 December 1974.

113 On 15 May 2006, the Charleroi Commercial Court referred the question to the ECJ for a preliminary ruling under Article 234 EC, on the application of Article 39 (free movement of workers), 49 (free movement of services) and Articles 81 and 82 (competition) to the rules of FIFA governing player release and insurance (case C-243/06, OJ C 212, 2 September 2006, p.11).

114 Case C-438/00, Deutscher Handballbund V Maros Kolpak of 8/05/2003

115 Case C-265/03 Igor Simutenkov v Ministerio de Educación y Cultura, Real Federación Española de Fútbol of 12/04/2005

The clauses specifically stated that the treatment accorded by each Member State to workers from partner countries legally employed in its territory, would be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. The principle of non-discrimination is reaffirmed in similar terms in the Cotonou Agreement[116] between the European Union and 78 African, Caribbean and Pacific countries. However, no case regarding this Agreement has so far reached the ECJ.

The principle of non-discrimination applied in Association Agreements is restricted to workers legally employed in the territory of Member States, and subject to a condition of reciprocity. If the sport involves gainful employment it will be subject to Community law or to the provisions of non-discrimination of the Association Agreements. In its judgments of 2003 and 2005 the Court affirmed the interpretation taken in its earlier judgments in relation to sports and the importance of the principle of non-discrimination of third-country nationals who are legally employed in the Member States. These clauses however, do not allow a right to free movement within the European Economic Area.

b. Admission for short-term stays (visa):

As there is no special regulation for obtaining visas in order to attend sporting events or practice sports during international competitions, the general common visa rules apply for this category of persons. Visa requirements can sometimes affect the participation of third country nationals in international competitions, occasionally leading to disruptions in the structure of competitions.[117]

In order to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic and Paralympic Games in Athens and in the 2006 Winter Games in Turin, two Council Regulations (1295/2003[118] and 2046/2005[119]) were adopted. These measures were justified by the exceptional character of the event and the need to respect the obligations of the host country under the Olympic Charter, in particular the obligation to ensure entry to its territory for members of the Olympic family, but without undermining the essential principles and the smooth functioning of the Schengen *acquis*.

Although the Regulations maintained the visa requirement for members of the Olympic family having the nationality of a third country subject to that requirement under Council Regulation 539/2001[120], they aimed at facilitating the procedures by providing the submission of collective visa applications via the Olympic accreditation system. This way the Regulations provided a temporary derogation from the general visa rules of the Schengen *acquis*,

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116 Article 13, par.3 of the ACP EU Partnership Agreement signed in Cotonou on 23 June 2000.

117 When players or teams qualified on sporting grounds cannot participate in a competition because they are prevented from entering the territory of a Member State.

118 Council Regulation (EC) No 1295/2003 of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens, O.J. L 183 , 22/07/2003 p. 1-5.

119 Regulation (EC) No 2046/2005 of the European Parliament and of the Council of 14 December 2005 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2006 Olympic and/or Paralympic Winter Games in Turin, OJ L 33/1 of 20.12.2005

120 Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and the countries whose nationals are exempt from that requirement, OJ L 81, 21.03.2001.

including certain simplifications of the visa issuing procedure and the issuing of the visa in the form of a special number on the accreditation card.

Recently, in the framework of the proposal for a Regulation establishing a Community Code on Visas (Visa Code)[121], which will replace the Common Consular Instructions[122], the Commission suggested putting permanent provisions regarding measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in future Olympic Games among the rules of procedures in the Visa Code. In order to facilitate, in the future, this aspect of the organisation of Olympic Games by a Member State while fully applying the Schengen acquis, the specific procedures and conditions to be used will be attached to the Visa Code in an annex, which could be used without the need for lengthy legislative procedures.

Furthermore, in order to facilitate people to people contacts, the visa facilitation agreements concluded with Russia and Ukraine and to be concluded with five Western Balkan countries provide for the simplification of documentary evidence for participants in international sport events and persons accompanying them in a professional capacity, who can get the visa free of charge, and – in certain circumstances – for the issuance of multiple-entry visa valid for a longer period of time.

Concerning the crossing of internal borders, in case of a serious threat to public policy or internal security (e.g. during an international sport event), a Member State may – exceptionally and temporarily – reintroduce border control at its internal borders according to Articles 23-25 of the Schengen Borders Code.[123] This suspension of part of the Schengen *acquis* may affect both third country nationals and EU citizens who wish to attend sporting events.

4.3. Transfers

The transfer system of players is an example of the specificity of sport. While no comparable phenomenon exists in other economic areas, transfers of players between clubs play an important role in the functioning of team sports and, in particular, professional team sports.Transfer rules aim to protect the integrity of sporting competition and to avoid problems such as money laundering, but they must be in compliance with EU law.

In § 95-96 of its *Bosman* ruling, the Court of Justice unequivocally stated that "nationals of a Member State have, in particular, the right, which they derive directly from the Treaty, to leave their country of origin, to enter the territory of another Member State and reside there in order to pursue an economic activity. Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to free movement therefore constitute an obstacle to that freedom, even if they apply without regard to the nationality of the workers concerned." Restrictive transfer rules may also constitute an

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121 Proposal for a Regulation of the European Parliament and of the Council establishing a Community Code on Visas (11752/1/06 VISA 190 CODEC 771 COMIX 662)

122 Common Consular Instructions on visas for the diplomatic missions and consular posts (OJ C 326, 22.12.2005)

123 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

infringement of EU competition law. The *Bosman* ruling stated that professional football is an economic activity and therefore subject to EU law.

The *Lehtonen* case[124] implied that certain restrictions on labour mobility may be justified in order to ensure certain important characteristics of sporting competition such as transfer windows.

In Nice in December 2000, the European Council gave its support to a dialogue on the transfer system between the sports movement (in particular football authorities), organisations representing professional sportspeople, the Commission and the Member States, with due regard for the specific requirements of sport, subject to compliance with Community law.

In 2001, in the context of a case concerning alleged infringements of EU competition law by the FIFA Regulations on international football transfers, FIFA, in agreement with UEFA, undertook to change its existing Regulations on the status and transfers of players on the basis of the following principles[125]:

– For players under 23, a system of training compensation should be in place to encourage and reward the training effort of clubs, in particular small clubs.

– The creation of solidarity mechanisms to compensate clubs, including amateur clubs, for training costs.

– International transfers of players under 18 should be allowed subject to agreed conditions. The football authorities will establish and enforce a code of conduct to guarantee that sporting, training and academic education is provided to such players.

– The creation of one transfer period per season, and a further limited mid-season window, with a limit of one transfer per player per season.

– Minimum and maximum duration of contracts of respectively 1 and 5 years.

– Contracts are protected for a period of 3 years up to the age of 28; 2 years thereafter.

– A system of sanctions to be installed to protect the integrity of sport competitions so that unilateral breach of contract is only possible at the end of a season.

– Financial compensation can be paid if a contract is breached unilaterally, whether by the player or the club.

– Proportionate sporting sanctions are to be applied to players, clubs or agents in the case of unilateral breaches of contract without just cause in the protected period.

– Creation of an independent arbitration structure, with an independent chairperson and members designed on a parity basis by players and clubs.

– Voluntary arbitration not preventing access to national courts.

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124 Case C-117/96 of 13/04/2000

125 IP/01/314 of 05/03/2001

In 2002, the Commission considered this proposal to be balanced and therefore decided to close its investigation.

4.4. Players' agents

The development of a truly European market for players and the rise in the level of players' salaries in some sports has resulted in an increase in the activities of players' agents. Many players (but also sport clubs) ask for the services of agents to negotiate and sign contracts in an increasingly complex legal environment.

In recent years, cases brought before national courts and studies such as the Independent European Sport Review have called attention to some challenges related to this activity. Due to the integrated nature of the European players' market, the activity of players' agents is almost always of a cross-border nature. Thus, agents are often subject to differing regulations in different Member States. Some Member States (e.g. France, Portugal) have introduced specific legislation on players' agents while in others (e.g. Belgium, Netherlands, United Kingdom) the applicable law is the general law regarding employment agencies, but with specific references to players' agents. Moreover, some international federations (FIFA, FIBA) have introduced their own regulations for players' agents.

As regards the compatibility of federations' rules with EU competition law, even if the restrictions they impose on these sport-related professions are not likely to be considered inherent in the pursuit of a legitimate sporting objective, they may nevertheless be justified under Article 81(3) or Article 82 EC. The Court of First Instance has recognised[126] as legitimate the objective of raising professional standards for players' agents by introducing a qualitative (as opposed to quantitative) selection in the quasi total absence of any national laws or self-regulation in that respect.

There are reports on bad practices in the activities of some agents which have resulted in instances of corruption, money laundering and trafficking in underage players. These practices are damaging for the sport sector in general and raise important governance questions. The health and security of players, and particularly minors, needs to be protected and criminal activities fought against.

Some Member States have introduced specific legislation on players' agents while others have not, and some sport organisations (FIFA, FIBA) have introduced their own regulations. The issue of recognition of professional qualifications of players' agents is already covered by Directive 2005/36/EC on the recognition of professional qualifications in cases where the profession of players' agent is subject to national qualification requirements by regulation.

The European Parliament and stakeholders have called on the EU to regulate the activity of players' agents through an EU legislative initiative. The European Parliament resolution on the future of professional football "calls on the Commission to support UEFA's efforts to regulate players' agents, if necessary by presenting a proposal for a directive concerning players' agents which could include: strict standards and examination criteria before anyone could operate as a football players' agent; transparency in agents' transactions; minimum harmonised standards for agents' contracts; an efficient monitoring and disciplinary system by

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126 Case T-193/02, *Piau v. Commission*, judgment of 26 January 2005; the appeal was rejected as being partly manifestly inadmissible and partly manifestly unfounded by order of the ECJ of 23 February 2006, Case C-171/05P.

the European governing bodies; the introduction of an "agents' licensing system" and agents' register; and ending "dual representation" and payment of agents by the player."

It is therefore necessary to further analyse the extent of the problem. More information is needed and the impact of any proposed solution at EU level must be carefully assessed.

4.5. Protection of minors

There are concerns that the exploitation (sometimes also referred to as "trafficking") of young players is continuing. It is reported that an international network managed by agents takes very young players to Europe especially from Africa and Latin America. The most serious problem concerns children who are not selected for competitions and are abandoned in a foreign country, often falling in this way in an irregular position which fosters their further exploitation.

In most cases this phenomenon does not fall into the legal definition of trafficking in human beings, which is a very serious crime and implies the transfer of the child for the specific purpose of forced labour, sexual exploitation or other forms of severe exploitation such as begging. However, the situation of young players taken abroad for sport training and then abandoned without any support[127] is absolutely unacceptable given the fundamental values recognised by the EU and its Member States. It is also contrary to the values of sport.

The European Council's Nice Declaration (2000) mentions the need for the Community to take into account the protection of young sportsmen and sportswomen.[128]

The European Parliament has pointed out in its resolution on the future of professional football that it is "convinced that additional arrangements are necessary to ensure that the home-grown players initiative does not lead to child trafficking, with some clubs giving contracts to very young children (below 16 years of age);" and that "young players must be given the opportunity for general education and vocational training, in parallel with their club and training activities, and that the clubs should ensure that young players from third countries return safely home if their career does not take off in Europe."

The European Parliament "insists that immigration law must always be respected in relation to the recruitment of young foreign talent" and "calls for action to prevent the social exclusion of young people who are ultimately not selected." Following the recommendations of the Parliament, the Commission tackles the problem in the context of the implementation of Council Directive 94/33/EC of 22 June 1994 on the Protection of Young People at Work.[129]

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127 In this context, support is mainly– but not exclusively – intended as support in terms of accompanied return in the country of origin and reinsertion in the home society and family, in those cases in which the young player has not been authorised to continue to legally reside in the country of destination (under another typology of residence permit) or when he/she desires to return. This support could take other forms if the young minor player has been granted a residence permit allowing him/her to remain in the country of residence.

128 13.The European Council expresses concern about commercial transactions targeting minors in sport, including those from third countries, inasmuch as they do not comply with existing labour legislation or endanger the health and welfare of young sportsmen and -women. It calls on sporting organisations and the Member States to investigate and monitor such practices and, where necessary, to consider appropriate measures.

129 Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work: The Directive's main objective is to prohibit the employment of children. However, the Directive allows Member States

The main objectives of the Directive on the Protection of Young People at Work are to ensure that the Member States prohibit the work of children, to ensure that work of adolescents is strictly regulated and protected and to ensure that employers guarantee that young people have working conditions suitable for their age. The Directive allows Member States to stipulate, subject to certain conditions, that the ban on the employment of children is not applicable, among others, to children employed for the purposes of cultural, artistic, sports or advertising activities, subject to prior authorisation by the competent authority in each individual case.

There are indications that the practical enforcement of the Directive is only partial with regard to minors in sport. This problem needs to be studied and addressed.

As far as violations of immigration law are involved, Member States must apply the protective measures for unaccompanied minors envisaged by national legislation, where appropriate in accordance with Council Directive 2004/81/EC of 29 April 2004 on the residence permit.[130] In line with the UN Convention on the Rights of the Child[131], the best interest of the child must be a primary consideration for Member States when applying national legislation, especially concerning education and social integration. Finally, according to the Commission's proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals[132], the "best interests of the child" should be taken in due account when making any decision on the return of the child, in particular with respect to the duration of the child's stay in the Member State and of the existence of family, cultural and social ties with the country of origin.

The protection of minors in sport would also benefit from more effective regulation of the activities of players' agents, better licensing systems for sport clubs, and social dialogue in the sport sector.

4.6. Corruption, money laundering and other forms of financial crime

There have repeatedly been reports about corruption in the sport sector. Although there are EU instruments in place which require Member States to criminalise offences of corruption in both the public[133] and the private[134] sector, the Commission believes that more can still be done to optimise the effectiveness of these measures in relation to the particular challenges of the sport sector. It has so far not been possible to tackle this issue through EU mechanisms. The European Parliament considers that "many criminal activities (match fixing, corruption,

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to stipulate, subject to certain conditions, that the ban on the employment of children is not applicable to children employed for the purposes of sporting or advertising activities, subject to prior authorisation by the competent authority in each specific case. Member States can thus exclude sport activities, but only through existing national legislation.

130 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

131 UN Convention on the Rights of the Child of 20 November 1989

132 COM (2005)391 of 1.9.2005. The proposal is currently negotiated in the Council and in the European Parliament.

133 Convention drawn up on the basis of Article K.3 (2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, pages 2-11, of 25.06.1997)

134 Council Framework Decision 2003/568/JHA of 22 July 2003 (OJ L 192/54 of 31.7.2003)

etc.) are the result of the spiral of spending, salary inflation and the subsequent financial crises faced by many clubs."

Sport organisations are generally aware of these problems and have for some time been discussing them with governmental actors. The need for sport organisations to be transparent was recognised by participants at the conference "Rules of the Game", which took place in Brussels in 2001. In fact, it is one of the key aspects of the conference report. The problem has also been recognised in a number of reports produced by sport organisations, including the "Stevens Report" on Premier League Transfers.

One of the reasons why the Independent European Sport Review was launched was that it identified "a range of problems – such as doping, corruption, racism, illegal gambling, money-laundering and other activities detrimental to the sport – where only a holistic approach between football and the EU and national authorities will be truly effective." The Review put these problems on record and identified the following key problem areas: "player transfers, payments to agents, investment in clubs and a variety of other commercial deals associated with football, such as sponsorship".

Corruption in the sport sector may frequently be a reality and, given the sector's high degree of internationalisation, is often likely to have cross-border aspects. Corruption problems which have a European dimension need to be tackled at European level.

Corruption is particularly damaging for sport as it raises a credibility problem for sport associations. The sport sector cannot tackle the problem alone. Many major sport organisations have come to realise that they need to work more closely with governmental actors, including law enforcement bodies.

Sport organisations should be asked to provide input on how the fight against corrupt practices is addressed, and on how it could be made more effective. The development of public-private partnerships both at national and at European level will be of key importance into fighting against problems such as corruption, money laundering and match-fixing.

4.7. Licensing systems for clubs

In sport competitions certain criteria must normally be fulfilled as a condition for sport clubs to participate. One of the aims of such criteria is to prevent clubs from dropping out prematurely and therefore distorting the results of the competition. These criteria, which are set by sport federations or the organisers of leagues, are most often financial, but they also frequently require compliance with certain standards relating to e.g. safety for spectators and athletes. The set of criteria to be fulfilled in order to enter a sport competition is often referred to as a licensing system. Licensing systems exist in different sports (e.g. football, basketball, rugby etc.) and they are applied in national or European competitions.

The club licensing system for UEFA's football competitions provides an example.[135] This self-regulatory approach is considered by UEFA to be a key initiative to improve the governance and financial management of football in Europe. In its report on the future of professional football in Europe, adopted in March 2007, the European Parliament expresses firm support for the UEFA club licensing system and calls on UEFA to further develop this system in compliance with Community law in order to guarantee financial transparency and

[135] See UEFA's Manual for the 2004/2005 season at http://www.uefa.com/newsfiles/22395.pdf

proper management. It also considers that "diverging national legislation and licensing criteria in Europe cause an uneven playing field, economically and legally, and this situation seriously hampers fair sports competition between teams in European leagues, and hence also between national teams".

Licensing systems represent a compromise between the traditional openness of competitions in Europe, where access is allegedly based only on sporting merits, and the alternative approach of closed competitions in professional leagues, where the "financial" merit is preponderant. Licensing systems thus represent an evolution of the so-called European approach to sport, where sport merit remains the main criterion for a club to be entitled to participate in often highly professionalized competitions while having equally to fulfil a set of minimum financial and management standards. This should ultimately improve the financial and social sustainability of clubs.

Licensing systems generally aim to ensure that all clubs respect the same basic rules on financial management and transparency, but could also include provisions regarding discrimination, violence, protection of minors and training.

The usefulness of robust licensing systems should be acknowledged for professional clubs at European and national levels. Such systems must be compatible with competition and Internal Market provisions and may not go beyond what is necessary for the pursuit of a legitimate objective relating to the proper organisation and conduct of sport. The principle of proportionality must be respected.

Efforts need to concentrate on the implementation and gradual reinforcement of licensing systems. In the case of football, where a licensing system will soon be compulsory for clubs entering European competitions, action needs to concentrate on promoting and encouraging the use of licensing systems at national level.

4.8. Media

Issues concerning the relationship between the sport sector and sport media (television in particular) have become crucial as television coverage is the main source of income for professional sport in Europe. For instance, the value of broadcasting rights for the five biggest national football championships in Europe has continued to increase, reaching around €3 billion for the 2005/2006 season. Conversely, sport media rights are a decisive source of content for many media operators and an important factor driving the development of new platforms for the distribution of audiovisual content.

Characteristics of the European sport-related audiovisual sector are its constantly changing parameters and adaptations of the rules to different and new actors. The "Television without Frontiers" Directive[136] recognises the specificity of sport in the media context and its importance for (television) viewers. In Article 3a it provides for a possibility for the Member States to take measures to ensure in respect of events regarded as being of major importance to society (sport events being one of the foremost examples), that a significant part of the public is not deprived of the possibility of following such events on free television. The national lists, once notified to the Commission, are verified for their compatibility with

[136] Council Directive n°89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities.

Community law and published in the Official Journal. The publication of the lists in the Official Journal triggers mutual recognition of the national lists by other Member States.

The new Article 3j of the future Audiovisual Media Services Directive[137] proposes a further element to enhance access of viewers to events of high interest for society (including sport events): broadcasters exercising exclusive rights to such events have to grant other broadcasters the right to use extracts for the purpose of short news reports. It can be expected that this provision will not only help to foster the right to information of European citizens, but will also contribute to the trans-frontier circulation of sport programmes between Member States.

The application of EC competition rules has a great impact on relations between media operators and sporting organisations and thus on the financing and organisation of sport. The acquisition and sub-licensing of broadcasting rights and the sale of advertising slots constitute examples of activities of an economic nature covered by the provisions of the EC Treaty.

The application of the competition provisions of the EC Treaty to the selling of media rights of sport events takes into account that this area has a number of specific characteristics which notably include the following:

– The life-span of sports media rights is short. Sport events are mainly of interest if broadcast live.

– Demand is focused. Viewers will not be satisfied with the broadcast of a sport event other than the one which they were expecting.

– The availability of sports media rights is limited as they are often concentrated in the hands of a single federation and because contracts are concluded on an exclusive basis for long periods or for a large number of events.

The challenge for sport is to continue to be a driving force for the development of the media sector while at the same time ensuring that sport competitions are not distorted by an unfair distribution of the revenues from the sale of media rights of these competitions and that the different levels of sport participate in the distribution of the proceeds from professional sport organisations (principle of solidarity).

The area of sport media rights is particularly sensitive to antitrust violations. Given that a single seller or a joint selling entity may sell all sport media rights on an exclusive basis for an extended period of time to one single operator in a certain market (such as pay-TV), other operators in that market are foreclosed from accessing the product, which may result in competitive harm. Moreover, operators in neighbouring markets (such as internet) cannot access the exclusively sold rights. This may hamper the development of new services in neighbouring markets.

The Commission has taken decisions in three cases involving the joint selling of rights to broadcast games played by football clubs on the basis of Article 81 EC, namely *UEFA Champions League*[138], *German Bundesliga*[139] and *FA Premier League*[140].

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137 Council's Political Agreement on Common Position of 24 May 2007

138 Commission decision of 23 July 2003, Case 37398 Joint selling of the commercial rights of the UEFA Champions league, OJ 2003 L 291/25

The Commission's consistent policy has been that joint selling constitutes a horizontal restriction of competition under Article 81(1) EC. At the same time, the Commission also acknowledges that joint selling creates certain efficiencies and may, under certain circumstances, fulfil the conditions of Article 81(3) EC and therefore not constitute a violation of Article 81 EC. The Commission remedied the negative effects of joint selling by requiring, e.g., the selling of rights in several individual rights packages following an open and transparent tendering process. Moreover, the duration of rights contracts should not exceed three years and unsold rights would fall back for individual exploitation by the clubs. The abovementioned decisions had the effect of opening up media rights markets to broadcasters and new media service providers by making several different rights packages available while safeguarding the social and cultural aspects of football. This prevented the concentration of all available rights in the hands of a single media operator and ensured that a maximum amount of rights was made available to sports fans.[141]

The question if and under which conditions joint selling can be justified on the basis of Article 81(3) has to be examined in the light of the specific circumstances of each individual case.

The Declaration of the Nice European Council of 7-9 December 2000 on the specific characteristics of sport and its social function in Europe mentions (point 15) that the sale of television broadcasting rights is one of the greatest sources of income today for certain sports. The European Council stated that moves to encourage the mutualisation of part of the revenue from such sales, at the appropriate levels, would be beneficial to the principle of solidarity between all levels and areas of sport.

The joint selling of media rights for sporting competitions may facilitate the redistribution of revenues based on the principle of mutual support and based on the principle that these revenues should be redistributed to all those involved in sport: amateurs, volunteers, young people in training centres, sports teachers etc. However, it is important to note that a system of joint selling does not automatically lead to an equitable redistribution of the revenues. It is the primary responsibility of the national league associations, sport associations and clubs concerned to agree on a form of redistribution that is in line with the principle of solidarity expressed in the Declaration of the Nice European Council. It should be noted that financial solidarity can also be achieved on the basis of individual selling of sports media rights, provided that it is accompanied by a robust solidarity mechanism.

The 2001 "Rules of the Game" conference recognised that the "concept of solidarity is key to the development of sport" and "that fair and effective distribution of financial revenues from the sale of commercially valuable rights related to sport events encourages the development of talent and contributes to balanced and attractive competitions."

The following principles were proposed as guidelines for redistribution of revenue:

– Redistribution must be based on principles of solidarity (between all levels of the sport);

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139 Commission decision of 19 January 2005, Case 37214 Joint selling of the media rights to the German Bundesliga, OJ 2005 L 134/46

140 Commission press release IP/06/356 of 22 March 2006

141 For a detailed presentation of the application of EU anti-trust law to the selling of sports media rights see point 3.1 of Annex I to this document.

– Redistribution policies must pursue aims that are objective and justifiable;

– Effective communication through all levels of a sport is essential;

– Administration of redistribution mechanisms must be transparent, accountable and objective.

Sport organisations should pay due attention to the creation and maintenance of solidarity mechanisms. In the area of sports media rights, such mechanisms can take the form of a system of collective selling of media rights or of a system of individual selling by clubs, accompanied by a robust solidarity mechanism. In both cases the system has, of course, to be in line with EU law.

4.9. Supporters

The supporter phenomenon mostly concerns team sport clubs, particularly football clubs. While sometimes associated with negative phenomena (violence, racism, xenophobia), supporters' organisation often contribute to active citizenship and democracy, especially by reaching out to young people who are not always involved in other civil society structures.

There is currently no organised pan-European body to represent the interests of supporters in Europe. However, an interesting initiative concerning football and rugby has been developed in the UK and is currently being discussed at European level.

The UK Government has funded and supported the Supporters Direct[142] initiative, to:

– Promote and support the concept of democratic supporter ownership and representation through mutual, not-for-profit structures;

– Promote football clubs as civic and community institutions;

– Work to preserve the competitive values of league football in the United Kingdom and promote the health of the game as a whole.

These aims are pursued through:

– The Formation of Supporters Trusts to ensure democratic, transparent representative bodies for supporters at their clubs;

– The democratic representation of Supporters Trusts on Football Club Boards;

– The ownership of shares in clubs by Supporters Trusts and the pooling of individually held shares in a club under the influence of the Trust.

140 Supporters Trusts have been created in the UK to date.

The Independent European Sport Review recommended to UEFA to "involve supporters organisations as important stakeholders when they are organised at European level and to examine the feasibility of a European Supporters Direct body." UEFA announced on 13

142 http://www.supporters-direct.org/

October 2006[143] that "it is backing the launch of a project to study the feasibility of a European Supporters Direct body - which would, among other things, give supporters the opportunity to play a role in improving the financial stability and governance of their clubs. […] The process will study the possibility of taking the Supporters Direct model used in the UK, where supporters' trusts own a growing number of clubs, with a view to assessing to what extent this model could be expanded across Europe, as well as studying the different alternative models that exist around Europe. […] The result will be a report outlining the feasibility of extending the model across Europe."

The supporter movement's contribution to active citizenship and democracy can be strengthened through official recognition at club level. A formalised involvement of supporters can reinforce the governance and financial stability of clubs. It can also lead to new partnerships with local authorities, businesses and communities, thus facilitating locally sustainable income for sport clubs. In addition, a formalised partnership with supporters can be a way of supporting actions against violence, racism and xenophobia in sport.

5. FOLLOW-UP

5.1. Structured dialogue

The world of sport and its organisation in Europe is based on very diverse structures. This complexity is mirrored by a large number and different types of organisations and bodies active in the field of sport at various levels. Moreover, there is heterogeneity within the EU as regards the status of these actors, their legal nature and the autonomy they enjoy as well as their financial and staff-related capacity to participate in a dialogue at EU level. Unlike in other sectors and due to the very nature of organised sport, European structures in sport are, generally, less well developed than sport structures at national and international levels. European sport, moreover, is not organised according to EU-27 but according to continental structures which usually have a wider membership. Ensuring, however, that European decision-making takes account of the specificities of the sector, while at the same time guaranteeing the maintenance of the autonomy of sport, its self-regulation and self-organisation, has increasingly become an issue of concern within organised sport.

The Commission has an important role to play in contributing to the European debate on sport by providing a platform for dialogue with sport stakeholders. Wide consultation with "interested parties" is one of the Commission's duties according to the Treaties. In the field of sport, the Commission is seeking ways to improve the structured dialogue with sport stakeholders under the current Treaty provisions with the aim of ensuring that the voice of sport is heard in an appropriate way in EU policy-making.

The structured dialogue between the Commission and the European sport movement has taken different forms in the past. The most important and broadest platform for debate and exchange on European sport issues was the European Sport Forum, organised by the Commission, which brought together all kinds of European actors in sport, mostly non-governmental but also governmental representatives. The Forum was organised four times between 2000 and 2003.[144] It was appreciated by many as a "place to meet and to exchange views" and proved to be useful after the Council's adoption of the Nice Declaration in 2000,

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143 http://www.uefa.com/uefa/Keytopics/kind=64/newsId=467134.html

144 Forum 2000 - Lille; Forum 2001 - Brussels; Forum 2002 - Copenhague; Forum 2004 - Verona.

in particular with a view to preparing EYES 2004. However, the Commission abandoned this form of dialogue in 2004, when the efficiency of the Forum in terms of concrete outcomes was increasingly called into question.

In spring 2005, in order to prepare for the implementation of the reference to sport in the results of the 2004 Intergovernmental Conference, the Commission set up the dialogue framework "The EU & Sport: Matching Expectations". The debates that have been organised within this framework were related to the priority items of the political Rolling Agenda for Sport, adopted by EU Sport Ministers in 2004. This was to ensure a parallelism of the substantial discussions on sport between governmental and non-governmental stakeholders. This framework has meanwhile served as a consultation forum for preparing the White Paper on Sport.

The Commission has increasingly focused on European dialogue partners. Apart from organising debates with the broader European sport movement (representatives of federations, organisations, NGOs, media, industry, think tanks, regions etc.), the Commission has organised a series of annual high-level meetings with European sport federations. Representatives from the sport movement also participated in the Commission's expert meetings on particular issues of the Rolling Agenda. At the same time, doors have remained open for bilateral discussions with interested parties, in an effort to give all sport stakeholders a voice.

Due to the variety and complexity of the sport movement, it is a challenging task to ensure a well-structured and inclusive dialogue with the sport movement at EU level and to match the numerous and often diverging interests. There are different dimensions to be taken into account:

– The "single sport" perspective (e.g. national, European and international federations and leagues);

– The "country" perspective (e.g. national umbrella organisations and their European umbrella organisation);

– The Olympic and Paralympic movement perspective (e.g. national, European and International Olympic and Paralympic committees);

– Other actors and lobby groups at European level;

– The "wider Europe" perspective (e.g. Council of Europe).

5.2. Cooperation with Member States

In view of the lack of an explicit EU competence for sport, the main responsibility for sporting matters lies with Member States and sport organisations. The European Council's Nice Declaration of 2000 confirms this division of roles and the principle of subsidiarity, while calling on the EU to take sport increasingly into account in its policy-making.

As a consequence, political cooperation on sport at EU level continues to take place in an informal framework, outside the formal Council structures. It is up to individual EU Presidencies to decide upon the organisation of informal EU Sport Ministers and EU Sport Directors meetings and to set the agenda for the debates. In recent years, Sport Directors'

meetings have taken place regularly during each Presidency, but not all Presidencies have organised ministerial meetings.

In 2004 EU Sport Ministers, upon a proposal by the Commission, adopted a Rolling Agenda for sport. The Rolling Agenda defined the priority themes for Member State discussions on sport at EU level, serving as an inventory of items relating to sport on the EU agenda and enabling Member States, Presidencies and the Commission to determine priorities for future work.[145] The Rolling Agenda has ensured more coherence and continuity of the debates under the subsequent Presidencies. The Commission cooperates closely with each Presidency in preparing the programme for sport.

The Commission also organised a series of meetings with mainly governmental experts on priority subjects[146] in 2005 and 2006, which allowed for progress on the Rolling Agenda.

As a consequence of these debates and with regard to the priorities set by different Presidencies, Sport Ministers agreed on the need to strengthen cooperation in certain areas beyond the Sport Ministers' and Directors' meetings through the establishment of EU Working Groups involving a core group of interested Member States:

– A Working Group on "Sport & Health" set up in 2005 under the UK Presidency,

– A Working Group on "Sport & Economics" set up in 2006 under the Austrian Presidency, and

– A Working Group on "Non-profit sport organisations" set up in 2006 under the Finnish Presidency.

These Working Groups are chaired by the Commission, usually meet in Brussels and report to the Sport Directors.

5.3. Social dialogue

European social dialogue is a unique and indispensable component of the European social model. It refers to the discussions, consultations, negotiations and joint actions undertaken by the social partner organisations representing the two sides of industry (management and labour). It is a useful means by which the social partners assist in the definition of European employment and social standards, and play an important role in the governance of the Union.

Article 138 of the Treaty gives the Commission the role to promote social dialogue, gives recognition to social dialogue at European level and obliges the Commission to consult the European social partners before submitting proposals in the social policy field. Article 139 offers the possibility to negotiate agreements that can be implemented either in accordance with the procedures and practices specific to management and labour and the Member States, or by Council decisions for areas that are listed in Article 137.

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145 The Rolling Agenda includes the following subjects: Fight against doping, sport and health, sport and education, social function of sport, volunteering in sport, economic dimension of sport.

146 In 2005 and 2006 five such expert meetings took place on the following issues: anti-doping, health, equal opportunities, free movement of sportspeople, volunteering.

Through its decision of 20 May 1998 (98/500/EC)[147], the Commission established sectoral social dialogue committees at European level. The sectoral social dialogue committees are established with due regard for the autonomy of the social partners. The social partner organisations must apply jointly to the European Commission in order to take part in social dialogue at European level. The European organisations representing employers and workers must, when submitting this application, meet a number of criteria:

– Relate to specific sectors or categories, and be organised at European level;

– Consist of organisations which are themselves an integral and recognised part of Member States' social partner structures, and have the capacity to negotiate agreements, and which are representative of several Member States;

– Have adequate structures to ensure their effective participation in the work of the committees.

There are currently 34 sectoral social dialogue committees recognised by the Commission, but there is neither a committee for sport nor for a part of the sport sector. The roots of the sport movement in non-profit organisations and in volunteering have slowed down the emergence of social partners in the sport sector in most Member States. Increasing professionalisation has, however, led to the emergence of social dialogue and collective bargaining in a number of Member States.[148]

On the occasion of the agreement between UEFA and FIFA with the Commissioners in charge of competition, sport and social affairs concerning the revised FIFA rules relating to the international transfers of football players in 2001, the Commissioners invited FIFA and UEFA to encourage clubs to start or pursue social dialogue with the representative bodies of football players. They stressed that social dialogue could be an effective method to discuss and come to common solutions on important matters concerning employment and the social situation in the sector. Furthermore, they offered the Commission's assistance to social dialogue at European level.

Ever since, the Commission has been supporting projects for the consolidation of social dialogue in the sport sector globally as well as specifically in the football sector.[149] These projects have created a momentum for social dialogue at European level and the consolidation

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[147] http://ec.europa.eu/employment_social/social_dialogue/docs/decision98_500_en.pdf, Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level.

[148] A global collective agreement specific to the sports sector has been signed in France, the Netherlands and Sweden. In the football sector, collective agreements exist in eleven Member States.

[149] ENSSEE (European Network of Sports Sciences, Education, and Employment): Preparing a social dialogue committee in the sport sector, 2001

EASE: BSDSS project: Building the social dialogue in the sport sector, 2003/04

EASE: Row the Boat project: Re-enforcing the representativeness of social partners in the sport sector 2006/07

FIFPro: Establishment of social dialogue in the European football industry, 2002

FIFPro: Establishment of social dialogue in the European football industry part II (searching for partners), 2003/04

EFFC: Promoting the social dialogue in the European professional football sector, 2003/04

TMC Asser Instituut: the social dialogue in the European professional football sector in candidate countries, 2003/04

FIFPro: Social Dialogue Project, part III, 2005/06

of European-level organisations. They have also improved the understanding and awareness of the opportunities that social dialogue offers.

In the sport sector, they have helped in setting up the European Association of Sport Employers (EASE) that continues to identify suitable national employers' organisations in the sector, in co-operation with UNI-Europa, which represents employees in the services sector in several existing European Social Dialogue Committees. In the football sector, the international professional football players' trade union, FIFPro, has run several projects with the objective of setting up a European social dialogue in the football sector. The EPFL (Association of European Professional Football Leagues) has been given the mandate to consider social dialogue issues at European level and where appropriate act as a social partner.

Articles 138 and 139 of the Treaty give recognition to the dialogue between management and labour at Community level. In the sport sector, federations play traditionally a specific role in the organisation of sport. Given that they are the guardians of the sporting rules and that their statutes often mention that they represent the interests of both employees and employers, it is essential to identify genuine social partner organisations that have the mandate to represent one side of industry only and negotiate on its behalf.

In many Member States, social partner organisations in the sport sector are fragmented and display a low level of organisation. EU enlargement to countries with relatively weak industrial relations structures has reinforced the challenge. In several Member States, however, social partner organisations are well established and many athletes' organisations belong to a service or cross-industry trade union. Hence, it is important to offer continued and targeted support for the consolidation of representative European social partners.

The sports sector is very diverse. Some disciplines have their own industrial relations. Moreover, important differences can be noted between grassroots and elite-level sport, professional and amateur sport, and team and individual sport. The football sector, specifically, has often taken the lead in initiatives on social dialogue in Europe.

In the light of a growing number of challenges to sport governance, social dialogue at European level can create an added value:

– A European social dialogue gives the opportunity to address issues of employment relations and the social situation in the sector as well as to negotiate agreements in accordance with EU and national law and with the autonomy that is a characteristic of both social dialogue and of European sport.

– A European sectoral social dialogue committee can be a forum of exchange and mutual learning that initiates its own activities and commissions analyses and research in the sector.

– The Commission consults the European social partners on matters pertaining to employment and social affairs and they can make sure that their views are heard by agreeing joint declarations and joint statements.

– Some parts of the sport labour market are very integrated at the European, if not the international, level. A European social dialogue gives the opportunity to address

matters of common interest to all national employers' and athletes' organisations. This is complementary to national social dialogue.

– At a stage when social partner organisations and social dialogue at national level are not consolidated in all Member States, a European social dialogue can provide an incentive to engage also in a social dialogue at national level.

The Commission encourages and welcomes all efforts with the objective of establishing one or more European Social Dialogue Committees in the sport sector. It will continue to give support to both sides of industry and it will continue its open dialogue with all sport organisations on this issue.

The support that the Member States should make available for capacity building and joint actions of social partners through the European Social Fund in the convergence regions[150] should also be used for capacity-building of the social partners in the sport sector.

In line with the principle of autonomy, the social partners can choose if and when to address a joint request to set up a sectoral social dialogue committee to the Commission. It will examine any request according to the conditions laid out above. Taking into account the specificity of the sport structure, social partner organisations could identify relevant third bodies that they want to invite to take part in their social dialogue as observers. It should be kept in mind that a European social dialogue is, above all, a bi-partite dialogue between social partners.

It is difficult to predetermine the form social dialogue in the sport sector should take. The Commission will examine any request to set up a sectoral social dialogue committee in a pragmatic manner.

[150] "Under the Convergence objective, an appropriate amount of ESF resources shall be allocated to capacity-building, which shall include training, networking measures, strengthening the social dialogue and activities jointly undertaken by the social partners", Art. 5 § 3 of Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999.

ANNEX I : SPORT AND EU COMPETITION RULES

The purpose of this annex is to provide an overview regarding (i) the Commission's decision-making and administrative practice and (ii) the relevant judgments of the Community Courts concerning the application of Articles 81 and 82 EC in the sport sector.[151] This annex is **not legally binding and does not constitute Commission guidelines**.

1. INTRODUCTION

It has long been established by the Commission and the Community Courts that **economic activities** in the context of sport do fall within the scope of EC law, including Articles 81 and 82 EC and internal market freedoms. This was recently confirmed by the Community Courts in rulings by the Court of First Instance (CFI) and the ECJ in the *Meca Medina* case.[152] Although sport fulfils very important educational, public health, social, cultural and recreational functions that must obviously be preserved, there exists a wide ranging field of activities in sport that clearly constitute economic activities. Examples include the sale of tickets for sport events, advertising activities, the sale of media rights for sport events and the transfer of athletes in return for transfer fees.

Already in the 1970's, the ECJ ruled in *Walrave*[153] and *Donà*[154] that sport itself was subject to Community law where it constituted an economic activity. This has been confirmed by the Community Courts on several occasions later on, in particular in the *Bosman*[155] ruling which played a significant role in guiding the Commission in its development of competition policy in the sport sector. The *Bosman* ruling confirmed that sport is subject to all relevant EC Treaty provisions as regards the economic activities it generates, and that those provisions are to be applied on the basis of general principles taking into account certain special characteristics of the sector. These sport rulings by the Community Courts were based on the Treaty provisions concerning the internal market, and notably those relating to the free movements of workers. In view of today's commercialisation of professional sport, it cannot be disputed that professional sport constitutes an economic activity as has recently been confirmed by the CFI which stated that "high level sport has become, to a great extent, an economic activity".[156] Nevertheless, as will be shown below, the fact that professional sport has become "big business" does not exclude that anti-competitive sporting rules which are inherent in the organisation and proper conduct of sport and proportionate do not infringe Articles 81(1) or 82 EC or that restrictions resulting there from may be justified under Articles 81(3) and 82 EC.

The following sections of this document will deal with two separate but interrelated aspects of sport, namely (i) the regulatory (organisational) aspects of sport and (ii) certain revenue generating activities related to sport, in particular the sale and purchase of sports media rights

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151 In some cases, merger decisions under the EC Merger Regulation are referred to for market definition purposes and where it was deemed that a merger case could be of interest for the application of Articles 81 and 82 EC (see, in particular the *Newscorp/Telepiu* decision under 3.1.4.1. below).

152 Case T-313/02 *David Meca-Medina and Igor Majcen v. Commission* ECR 2004 II-3291, para. 44 and Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission* ECR 2006 I-6991, para. 22

153 Case 36/74 *Walrave and Koch v. Union Cycliste Internationale* ECR 1974, 1405, para. 4

154 Case 13/76 *Donà v. Mantero* ECR 1976 1333, para. 12

155 Case C-415/93 *URBSFA v. Bosman* ECR 1995 I-4921, para. 73

156 See Case T-313/02 David Meca-Medina and Igor Majcen v. Commission, supra, para. 44

and ticketing arrangements. The Annex contains a list of the relevant judgments and decisions concerning the sport sector that are referred to in the document.

The focus of this document is the application of the EC anti-trust rules, i.e. Articles 81 and 82 EC to undertakings. State Aids and EC Merger Regulation rules as well as restrictions resulting from Member State legislation and other State measures remain outside the scope of this document.

2. THE APPLICATION OF ARTICLES 81 AND 82 EC RELATING TO THE ORGANISATION OF SPORT

2.1 General principles

2.1.1 The Meca Medina judgments

The recent ECJ *Meca Medina* judgment is the first judgment in which the Community Courts applied Articles 81 and 82 EC to a sporting rule adopted by a sports association relating to a sporting activity (swimming).[157] The Commission had already applied Articles 81 and 82 EC in individual cases concerning sporting activities, and the ECJ's ruling broadly confirmed the Commission's approach adopted in these cases. Sport cases previously decided by the Community Courts had concerned the application of the EC Treaty provisions on the economic freedoms, such as free movement of persons or services. The ECJ's judgment in *Meca Medina* provides valuable guidance as regards the methodological approach towards assessing a sporting rule under Articles 81 and 82 EC.

The case concerned a complaint by two professional long distance swimmers who challenged the compatibility with Articles 81 and 82 EC of the anti-doping rules adopted by the International Olympic Committee (IOC) and implemented by the swimming governing body Fédération Internationale de Natation Amateur (FINA). Both the CFI and the ECJ reiterated that sport is subject to Community law only insofar as sport constitutes an economic activity. Both Courts found no violation of Article 81 or 82 EC, thus confirming the decision of the Commission.

Unlike the CFI, the ECJ explicitly held that the qualification of a rule as "purely sporting" was not sufficient to remove the athlete or the sports association adopting the rule in question from the scope of Articles 81 and 82 EC.[158] Having rejected the relevance of the simple reference to "purely sporting rules", the ECJ went on to describe the methodological approach that has to be applied to decide whether a given conduct falls within Articles 81 and/or 82.

It first found that the specific requirements of Articles 81 and 82 EC must be examined irrespective of the nature of the rule, in particular it must be determined "whether the rules which govern that [sport] activity emanate from an undertaking, whether the latter restricts

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157 See Case T-313/02 *David Meca-Medina and Igor Majcen v. Commission* ECR 2004 II-3291, and Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission* ECR 2006 I-6991. The *Piau* case decided by the CFI (Case T-193/02, *Piau v. Commission*, ECR 2005 II-209; the appeal was rejected as being partly manifestly inadmissible and partly manifestly unfounded by order of the ECJ of 23 January 2006, Case C-171/05P, ECR 2006 I-37) concerned a sporting rule adopted in relation to an activity ancillary to sport (football agents) and not relating to the sporting activity itself (football).

158 Case C-519/04 P *Meca Medina*, *supra*, para. 27

competition or abuses its dominant position, and whether that restriction or that abuse affects trade between Member States."[159]

The ECJ concluded, however, that the anti-doping rules in question did not infringe Article 81(1) EC despite the fact that the penalties under the anti-doping rules were capable of producing restrictive effects on competition as they could lead to the exclusion of athletes from sport events. The ECJ reached this conclusion on the basis of the principles set up in the *Wouters* judgment.[160] In this respect, the ECJ reiterated that account must be taken of (i) the **overall context** in which the rules were taken or produce their effects and of their **objectives** and (ii) whether the restrictive effects are **inherent** in the pursuit of the objectives and (iii) are **proportionate** to them. The ECJ found that the objective of the anti-doping rules was to ensure fair sport competitions with equal chances for all athletes as well as the protection of athletes' health, the integrity and objectivity of competitive sport and ethical values in sport. The limitations of action imposed on the athletes by the anti-doping rules were considered by the ECJ to be "inherent in the organisation and proper conduct of competitive sport".[161] The ECJ also examined whether the rules were limited to what is necessary as regards (i) the threshold for the banned substance in question and (ii) the severity of the penalties (in respect of which the ECJ also noted that the athletes had not argued that the penalties imposed were excessive). The ECJ found that the rules were proportionate in both cases. The appeal was therefore rejected.

2.1.2 The "test" for organisational sporting rules under Articles 81 and 82 EC

In line with the ECJ's *Meca Medina* judgment, the Commission follows the **methodological approach** described below in order to assess whether a rule adopted by a sports association relating to the organisation of sport infringes Articles 81 and/or 82 EC.

Step 1. Is the sports association that adopted the rule to be considered an "undertaking" or an "association of undertakings"?

a. The sports association is an "undertaking" to the extent it carries out an "economic activity" itself (e.g., the selling of broadcasting rights).

b. The sports association is an "association of undertakings" if its members carry out an economic activity. In this respect, the question will become relevant to what extent the sport in which the members (usually clubs/teams or athletes) are active can be considered an economic activity and to what extent the members exercise economic activity. In the absence of "economic activity", Articles 81 and 82 EC do not apply.

Step 2. Does the rule in question restrict competition within the meaning of Article 81(1) EC or constitute an abuse of a dominant position under Article 82 EC?

This will depend, in application of the principles established in the *Wouters* judgment, on the following factors:

a. the overall context in which the rule was adopted or produces its effects and its

159 *Idem*, paras. 30 and 33

160 Case C-309/99 *Wouters* ECR 2002 I-1577, paras. 97 and 110. The CFI had explicitly rejected the application of *Wouters* in its judgment at paragraph 65

161 Case C-519/04 P *Meca Medina*, *supra*, para. 45

objectives;

b. whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and

c. whether the rule is proportionate in light of the objective pursued.

Step 3. Is trade between Member States affected?

Step 4: Does the rule fulfil the conditions of Article 81(3) EC?

2.1.3 Undertakings and associations of undertakings

Article 81 EC applies to "undertakings" and "associations of undertakings", while Article 82 EC applies to "undertakings". The ECJ has defined the term "undertaking" broadly to include "every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed."[162] Economic activity is any activity consisting of "offering goods or services on the market".[163] Economic activity may take place at various levels in the sport sector, including by individual athletes, sport clubs and sports associations.

Individual athletes. The ECJ found that a high-level judoka participating in an international competition was exercising an economic activity - even if she was not remunerated by the organiser - due to the fact that such services are normally remunerated and that the participation in the event generates economic activity (e.g., the sale of tickets, transmission by broadcasters, sponsoring agreements).[164] In the same judgment, the ECJ also stated that the amateur status of athletes does not necessarily remove them from the scope of economic activities.[165] While independent athletes thus constitute undertakings, Advocate General Lenz considered that football players employed by a football club do not constitute undertakings.[166] However, even if athletes are employed by a sport club, they may be considered undertakings insofar as they carry out economic activities independent thereof, e.g., by entering into sponsoring agreements.

Sport clubs/teams. It is settled case law that sport clubs/teams are undertakings within the meaning of Article 81 and 82 EC to the extent they carry out economic activities.[167] Sport clubs/teams carry out economic activity, e.g., by selling tickets to the sport events, selling broadcasting rights or concluding sponsoring or advertising agreements.

National sports associations may be both undertakings under Articles 81 and 82 EC and associations of undertakings under Article 81 EC. Sports associations are undertakings where

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162 Case 41/90 *Klaus Höfner and Fritz Elser v Macroton GmbH* ECR 1991 I-1979, para. 21

163 Case 118/85 *Commission v Italy* ECR 1987 2599, para. 7

164 Joined Cases C-51/96 and C-191/97 *Christelle Deliège v. Ligue francophone de judo etc.* ECR 2000 I-2549, paras. 56 and 57

165 *Idem*, para. 46

166 Opinion in Case C-415/93 *Bosman* ECR*1995 I-4921*, para. 263

167 See, *e.g., Piau, supra*, para. 69 (for football clubs). Also see Commission decision of 25 June 2002 in Case 37806, *ENIC/UEFA*, para. 25, available at http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37806/en.pdf.

they themselves carry out economic activity, e.g., by commercially exploiting a sport event.[168] Sports associations are associations of undertakings under Article 81 EC to the extent they constitute groupings of sport clubs/teams or athletes for which the practice of sport constitutes an economic activity.[169] The CFI also held that the fact that a national association gathers both amateur and professional clubs/teams is of no importance as far as the classification as an association of undertakings is concerned.[170] Article 82 EC does not include the concept of "association of undertakings." However, the CFI has found that even where a sports association is not itself active on a given market, it may be considered an undertaking under Article 82 EC to the extent the association is the emanation of its members which are active on the market.[171]

International sports associations (such as the IOC, UEFA or FIFA) which have as their members national sports associations, are undertakings to the extent they themselves carry out activities of economic nature such as the conclusion of advertising contracts, the commercial exploitation of sport events or the conclusion of contracts relating to broadcasting rights.[172] International sports associations not carrying out economic activities themselves may be associations of undertakings[173] and may sometimes be also referred to as "associations of associations of undertakings" under Article 81 EC.[174] They also constitute undertakings under Article 82 EC to the extent they group members which in turn constitute undertakings.[175]

2.1.4 Restrictions under Articles 81(1) and 82 EC

National and/or international sports associations[176] are normally the bodies that adopt sporting rules, which sport clubs/teams and athletes need to adhere to. Sporting rules adopted by national or international sports associations may constitute agreements or decisions by undertakings or associations of undertakings within the meaning of **Article 81(1) EC**.[177] Such sporting rules, like any other decisions or agreements, are prohibited if they have as their object or effect the restriction or distortion of competition within the common market and affect trade between Member States.[178]

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168 Commission decision of 27 October 1992, Cases 33384 and 33378 *Distribution of package tours during the 1990 World Cup*, OJ 1992 L326/31, paras. 52 and 53. See also the references in Commission decision of 23 July 2003, Case 37398 *Joint selling of the commercial rights of the UEFA Champions League*, OJ 2003 L 291/25, para. 106 (hereinafter *UEFA CL*)

169 See, *e.g.*, *Piau, supra*, para. 69 (for national football associations)

170 *Piau, supra*, para. 70

171 *Piau, supra*, paras. 112 and 116

172 Commission decision *1990 World Cup*, *supra*, para. 47 (for FIFA)

173 *Piau, supra*, para. 72 (for FIFA)

174 See, *e.g.*, Commission decision *UEFA CL*, *supra*, para. 106

175 *Piau, supra*, paras. 112 and 116 (for FIFA)

176 For the purposes of this document, the term "international associations" covers also European associations.

177 *Piau, supra*, para. 75. Rules drawn up unilaterally by sporting associations consisting of undertakings will usually constitute decisions by an association of undertakings (see, *e.g.*, Commission decision *ENIC/UEFA*, para. 26, for a rule drawn up by the UEFA Executive Committee and C-519/04 P *Meca Medina, supra*, para. 45 for a rule drawn up by the IOC and implemented by the International Swimming Federation).

178 For general guidance on the question of "effects on trade between Member States" see Commission Notice concerning "Guidelines on the effect of trade concept contained in Articles 81 and 82 of the Treaty", OJ 2004 C 101/7. Rules adopted by international sport associations will normally affect trade between Member States. However, in view of the fact that rules of national sport associations usually concern a sport in the whole territory of a given Member State and in light of today's high level of

Article 82 EC prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States. For the purposes of applying this provision, the relevant market must be determined. As mentioned earlier, sports associations usually have practical monopolies in a given sport and may thus normally be considered dominant in the market of the organisation of sport events under Article 82 EC. Even where a sporting association is not active on a given market, it may be considered to hold a dominant position if it operates on that market through its members (e.g., sport clubs/teams).[179] Sport clubs/teams (and athletes) may also hold a collective dominant position under Article 82 EC to the extent that they present themselves as a "collective entity vis à vis their competitors, their trading partners and consumers" as a result of the implementation of rules adopted by a national or international sports association.[180]

2.1.5 Sporting rules pursuing legitimate objectives whose effects are inherent and proportionate to their objectives

The ECJ has explicitly acknowledged in *Meca Medina* that even in cases where a sporting rule restricts the freedom of action of the athletes it may not breach Articles 81 and 82 EC to the extent the rule in question pursues a legitimate objective and its restrictive effects are inherent in the pursuit of that objective and are proportionate to it.[181]

Legitimate objectives of sporting rules will normally relate to the "organisation and proper conduct of competitive sport"[182] and may include, e.g., the ensuring of fair sport competitions with equal chances for all athletes, the ensuring of uncertainty of results, the protection of the athletes' health, the protection of the safety of spectators, the encouragement of training of young athletes, the ensuring of financial stability of sport clubs/teams or the ensuring of a uniform and consistent exercise of a given sport (the "rules of the game"). The specificity of sport, i.e. the distinctive features setting sport apart from other economic activities, such as the interdependence between competing adversaries, will be taken into consideration when assessing the existence of a legitimate objective.

The restrictions caused by a sporting rule must be **inherent** in the pursuit of its objective. The ECJ found, e.g., that the penalties contained in the anti-doping rules in *Meca Medina* were inherent for the proper conduct of competitive sport and the healthy rivalry of athletes. Likewise, the prohibition on the ownership of two or several sport clubs/teams competing against each other was found by the Commission to be inherent for ensuring the uncertainty of results. Rules inherent in the organisation and proper conduct of competitive sport also include the "rules of the game", i.e., rules which determine the number of players, their function, duration of the competition/game etc. Obvious examples of rules of the game

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internationalisation of professional sport, rules adopted by national sport associations may often affect trade between Member States.

179 *Piau, supra*, paras. 115 *et seq*. (concerning the market for players' agents' services)

180 *Piau, supra*, paras. 113-114; also see *Bosman* Opinion, *supra*, para. 285

181 The test adopted by the ECJ for sporting rules under Article 81 EC differs from the test under Articles 39 and 49 EC where the ECJ examines whether the sporting rule in question is of "purely sporting interest" (in which case the Articles 39 and 49 EC do not apply) or is based on "reasons of an economic nature" (in which case Articles 39 and 49 EC apply); see, e.g,, Case C-176/96 *Lehtonen et al v. FRSB* ECR 2000 I-2681, para. 34

182 Case C-519/04 P *Meca Medina*, *supra*, paras. 45 and 46.

include the rule that a football team must have eleven players or a rule that regulates the dimensions of the goals.[183]

The sporting rule must also be **proportionate** in relation to its objective in order for it not to infringe Articles 81(1) and 82 EC and must be applied in a transparent, objective and non-discriminatory manner. In *Meca Medina* the ECJ considered whether the limit for the presence of the banned substance in question in the athlete's body was disproportionate (i.e., too low) and concluded that the rules did not go beyond what was necessary to ensure the proper conduct of competitive sport. Consequently, the proportionality of each sporting rule will have to be assessed on a case-by-case basis while taking into account the relevant facts and circumstances.

2.1.6 Justification under Article 81(3)

Where a restriction under Article 81(1) EC is found, such restriction may be justified under Article 81(3). Article 81(3) EC provides that the prohibition contained in Article 81(1) EC may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned. Such a justification is most likely to apply **where a rule is not inherent in the organisation or proper conduct of sport** so as to justify the application of *Wouters* but **where the beneficial effects of a rule outweigh its restrictive effects**.

2.1.7 Conclusions

The above considerations demonstrate that the application of Articles 81 and 82 EC provides **sufficient flexibility** to take account of the specificity of sport and does not impede sporting rules that pursue a legitimate objective (such as the organisation and proper conduct of sport), are indispensable (inherent) to achieve the objective and proportionate in light of the objective pursued. At the same time, the ECJ's *Meca Medina* judgment strongly confirms that it is not possible to pre-determine an exhaustive list of sporting rules which breach Article 81 and/or 82 EC (or of those which do not) as has been suggested on various occasions.[184] The areas covered by sporting rules are much too wide and too diverse as to possibly categorize them. Instead, it is necessary to examine the specific requirements of Articles 81 and 82 EC in each individual case. It is therefore only possible to clarify on a case-by-case basis which rules do not breach Articles 81 and 82 EC. The increasing body of case law at EU and national level will, however, assist in identifying the types of rules that may normally be considered not to infringe Articles 81 and 82 EC. A general exemption of sporting rules or of activities of sports associations is therefore neither possible nor warranted.

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183 To the extent that rules of the game do not relate to economic activity, they would fall outside the scope of application of EC competition law

184 See, *e.g*., p. 121 of the *Independent European Sport Review 2006*, a publication of May 2006 by Mr. José Louis Arnaut, former Portuguese Foreign Minister, at the initiative of the UK Sports Minister and financed by UEFA (available at http://www.independentfootballreview.com/) requesting that the Commission "*provide clear guidance as to the type of "sports rules" that are automatically compatible with Community law*."

2.2 Existing case law of the Community Courts and decision-making practice of the Commission

In the following, the document will summarize the existing case law and practice as regards rules by sports associations relating to the organisation of sport that have been found or are likely to comply with (see 2.2.1.) and rules that have been found or are likely to breach (see 2.2.2.) Article 81 or 82 EC. In this context, it must be re-emphasized that cases relating to sport decided by the Community Courts prior to *Meca Medina* and *Piau* concerned EC Treaty provisions other than Articles 81 and 82 EC, in particular the free movement of persons and services. The ECJ explicitly stated in *Meca Medina* that the fact that a sporting rule does not violate Articles 39 and/or 49 EC does not exclude that the rule may infringe Articles 81 and/or 82 EC, the requirements of which have to be examined individually.[185] The fact that the Community Courts have in some cases found that sporting rules did not violate Articles 39 and 49 EC does therefore not permit to conclude that these rules do not infringe Articles 81 or 82 EC in the absence of an analysis concerning the anti-competitive effects, the inherent nature and proportionality of the sporting rule in question. Likewise, compliance with Articles 81 and 82 EC does not establish compatibility with the internal market rules. In addition, as mentioned above, the Commission has applied Articles 81 and 82 EC in several cases concerning sport prior to the *Meca Medina* ruling.

The case law of the Community Courts and the decision-making practice of the Commission discussed below do not address all the issues that may arise or have arisen in the sport sector. Nor is the list of cases meant to be exhaustive. However, the examples of cases may assist in clarifying as to how to assess the compatibility of sporting rules with Articles 81 and 82 EC.

2.2.1 Examples of sporting rules unlikely to infringe Articles 81(1) and 82 EC

The following cases deal with a variety of issues such as the participation in sport events, the territorial organisation of sport or the multiple ownership of sport clubs. It is important to note that even rules that pursued legitimate objectives and were inherent and necessary for the organisation of sport have been found to violate Article 81 and/or 82 EC (or Articles 39 and 49 EC) because they went beyond what was necessary. As a result, it is not possible to generally exempt, for example, all rules relating to the promotion of sport clubs/teams in league competitions. Each sport may require different rules and each rule will have to be looked at individually.

2.2.1.1 Rules concerning the participation of athletes in sporting competitions

Deliège case. In *Deliège*, the ECJ confirmed that the selection rules applied by a judoka federation to authorise the participation of professional or semi-professional athletes in an international sport competition inevitably limit the number of participants. The ECJ found that such a limitation does not in itself restrict the freedom to provide services, if it derives from an inherent need in the organisation of the event in question and is not discriminatory.[186] While the ECJ in *Deliège* did not apply Articles 81 and 82 EC, it is likely that the rule in question would also meet the *Meca Medina* test for Articles 81(1) and 82 EC as its effects would be inherent in the pursuance of a legitimate objective (proper organisation of the sport event according to certain selection rules) and would not be disproportionate.

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185 Case C-519/04 P *Meca Medina, supra*, para. 31

186 *Deliège, supra*, paras 62, 64 and 69

2.2.1.2 The organisation of a sport on a territorial basis – "At home and away from home" rule

Mouscron case. The French communauté urbaine de Lille had lodged a complaint against UEFA under Article 82 EC as regards a rule for UEFA competitions to the effect that each club must play its home match at its own ground. The Belgian football club Excelsior Mouscron had thus been refused to switch its home match in the 1997/98 UEFA Cup against FC Metz from Mouscron to Lille. The Commission rejected the complaint as it considered the "home and away from home" rule as well as the exceptions contained therein to constitute a sporting rule that did not fall within the scope of Articles 81 and 82 EC.[187] The Commission found that the organisation of football on a national territorial basis was not called into question by Community law. The Commission considered the rule indispensable for the organisation of national and international competitions in view of ensuring equality of chances between clubs. The Commission also found that the rule did not go beyond what was necessary. It would appear likely that the rule would not constitute a violation of Article 82 EC under the principles set forth in *Meca Medina* (assuming that the rule restricts competition) since the rule pursues a legitimate objective (equality of chances in club competitions), possible restrictions caused by the rule are inherent in the organisation of club competitions and the rule is not disproportionate.

The Commission considered that Lille was active in the **market for the renting of stadiums**. The Commission also considered whether UEFA was dominant in the **market for organising European club competitions in football** although the question was left open.

2.2.1.3 Rules concerning the multiple ownership of sport clubs/teams

ENIC case. *ENIC*, a company that owned stakes in six professional football clubs in various Member States had lodged a complaint against a rule adopted by UEFA in 1998, which stated that no two clubs or more participating in a UEFA club competition may be directly or indirectly controlled by the same entity or managed by the same person. The Commission rejected the complaint concluding that there was no restriction of Article 81(1) EC because the objective of the rule was not to distort competition, but to guarantee the integrity of the competitions organised by UEFA.[188] It concluded that the rule "*aims to ensure the uncertainty of the outcome and to guarantee that the consumer has the perception that the games played represent honest sporting competitions…*"[189] The Commission also found that the rule did not go beyond what was necessary to ensure its legitimate aim: *i.e.*, to protect the uncertainty of the results in the interest of the public.[190] In view of the above considerations, it would appear likely that the rule would not infringe Article 81(1) EC on the basis of the *Wouters* criteria applied in *Meca Medina*.

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187 Commission decision of 9 December 1999, Case 36851, *C.U. de Lille/UEFA (Mouscron),* decision not published; also see Commission press release IP/99/965 of 9 December 1999. The Commission noted that the exceptions had to be applied in an objective and non-discriminatory manner in order to escape Articles 81 and 82 EC

188 *ENIC/UEFA, supra*. The Commission also relied on the *Wouters* judgment in its decision (see paras. 31 *et seq*.)

189 *Idem*, para. 28

190 In its *ENIC/UEFA* decision the Commission may have considered the multiple ownership rules to go beyond what is necessary had they (i) generally excluded capital investment in more than one football club or (ii) also applied to the accountants and auditors of clubs even if they were independent of the relevant clubs (see para. 34)

2.2.1.4 Rules concerning nationality clauses for national teams

Walrave case. The ECJ has since the early 1970s acknowledged that rules which restrict the nationality of players in *national teams* are to be considered as "pure sporting" rules and thus do not fall under Articles 39 and 49 EC. In *Walrave* the ECJ stated that the rule of the International Cycling Union (Union Cycliste Internationale, UCI) requiring that the pacemaker must be of the same nationality as the stayer in "world cycling championships behind motorcycles" was in compliance with EC law.[191] While the ECJ in *Walrave* did not apply Articles 81 and 82 EC, it is likely that the rule in question would also meet the *Meca Medina* test for Articles 81 and 82 EC as it pursued a legitimate objective for which it was inherent (proper organisation of sport competitions with national teams). There are no indications that the rule was disproportionate.

2.2.1.5 Anti-doping rules

Meca Medina case. The facts of the case are described at 2.1.1. above. As mentioned earlier, the ECJ agreed with the Commission's conclusion that the anti-doping rules for swimmers in question did not infringe Articles 81 and 82 EC because they were inherent in the organisation and proper conduct of sport and not disproportionate.[192]

2.2.1.6 Rules concerning transfer deadlines (transfer windows)

Lehtonen case. The *Lehtonen*[193] judgment concerned transfer rules of the International Basketball Federation concerning transfers of players within Europe. These rules, implemented by the national basketball associations, prohibited clubs in Europe fielding foreign players in national championships who had played in another country in Europe, if they had been transferred after 28 February. After that date it was still possible, however, for players from non-European clubs to be transferred and to play. Mr Lehtonen, a Finnish player, had been transferred to his Belgian club after that date and thus was not allowed to participate in the championship. The ECJ found a restriction of Article 39 EC but considered that the restriction could, in principle, be justified. The ECJ explicitly acknowledged the important role of transfer deadlines in ensuring the regularity of competition and observed that transfers late in the season may upset the competitive balance and damage the effective functioning of a championship.[194] In the case at hand, however, the ECJ found that the rules went beyond what was necessary to achieve the legitimate aim pursued.

In view of the importance and necessity of transfer deadlines for ensuring their objective, namely a fair and undistorted sport competition, the Commission considers that the regulation of transfer periods are likely to constitute sporting rules that do not infringe Articles 81(1) and 82 EC under *Meca Medina* (provided they do not go beyond what is necessary, *e.g.*, do not differentiate as regards the origin of a player or set transfer periods that are too short)

2.2.1.7 Licensing systems for sport clubs/teams in league competitions

Licensing requirements, such as rules on financial management and financial stability, frequently have to be fulfilled in order to participate in professional leagues. The objective of

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191 *Walrave*, *supra*, para. 8

192 *Meca Medina*, *supra*, paras. 45 and 54-55

193 Case C-176/96 *Lehtonen et al v. FRSB* ECR 2000 I-2681

194 *Idem*, paras. 53 to 55

such licensing rules is normally to ensure the financial stability of clubs/teams (and thus the regularity of sport competitions) and the availability of proper and safe sport facilities, *i.e.*, aspects which are inherent in, and necessary for, the organisation of sport. In view of this and of the large number of different licensing requirements that may be devised by sports associations, the rules included in such licensing systems which may interfere with business decisions of clubs/teams would have to be reviewed very carefully. Licensing rules may not go beyond what is necessary in order not to infringe Articles 81 and 82 EC.

2.2.2 Examples of sporting rules that may infringe Articles 81(1) and 82 EC

The following examples relate to sporting rules which restrict competition and which have been held not to be necessary or inherent for the organisation or proper conduct of sporting competitions. Such rules are therefore likely to constitute a violation of Articles 81 and/or 82 EC.

2.2.2.1 Rules shielding sports associations from competition

FIA case. In the FIA case the Commission dealt with a conflict of interest situation arising from the fact that a sport association was not only the regulator but also the commercial exploiter of a sport. The Fédération Internationale d'Automobile (FIA) is the international association for motor sport whose members, *inter alia*, organise and regulate motor sport in their respective countries. FIA itself also acted as organiser and promoter of motor sport championships, in particular Formula One. In 1999, the Commission issued a Statement of Objections (SO) concerning rules by FIA which prohibited drivers and race teams that held a FIA licence from participating in non-FIA authorised events. Circuit owners were prohibited from using the circuits for races which could compete with Formula One. The Commission came to the preliminary conclusion that these rules violated Articles 81(1) and 82 EC as they gave FIA the control to block the organisation of races which competed with the events FIA promoted or organised (*i.e.*, those events from which FIA derived a commercial benefit, in particular Formula One).[195] The Commission also objected to certain terms of the contracts between the Formula One Administration Ltd (FOA, subsequently Formula One Management Ltd), the company that administered the TV rights to Formula One races, and broadcasters because they made it possible to block the organisation of motor sport events that would compete with Formula One races. For example, the agreement with broadcasters imposed a severe financial penalty on them if they showed anything that would be deemed by FOA a competitive threat to Formula One. Finally, the Commission objected to FIA rules according to which FIA automatically acquired TV rights to all the motor sport events it authorised even if these were promoted by a different promoter.

The Commission closed the case after having reached a settlement in 2001.[196] The settlement provided in particular that FIA would:

– limit its role to that of a sport regulator without influence over the commercial exploitation of the sport and thus removing any conflict of interest (through the appointment by FIA of a "commercial rights holder" for 100 years in exchange for a one-off fee);

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195 Commission press release IP/99/434 of 30 June 1999.

196 XXXIst Report on Competition Policy 2001, para. 221 *et seq.*; also see Commission press release IP/01/1523 of 30 October 2001.

– guarantee access to motor sport to any racing organisation and to no longer prevent teams to participate in and circuit owners to organize other races provided the requisite safety standards are met;

– waive its TV rights or transfer them to the promoters concerned; and

– remove the anticompetitive clauses from the agreements between FOA and broadcasters.

2.2.2.2 Rules concerning the legal challenge of decisions taken by sports associations

The FIA and FIFA cases. In the FIA case one of the Commission's concerns was also to ensure that legal challenge against FIA decisions would be available not only within the FIA structure but also before national courts. FIA agreed to insert a new clause clarifying that anyone subject to FIA decisions can challenge them before the national courts.[197] Similarly, the Commission insisted in the negotiations with FIFA on transfer rules that arbitration would be voluntary and would not prevent recourse to national courts, which led to FIFA modifying its transfer rules to this end.[198]

2.2.2.3 Rules concerning nationality clauses for sport clubs/teams

Bosman case. *Bosman* concerned UEFA's "3+2" rule permitting each national football association to limit to three the number of foreign players whom a club may field in any first division match in their national championships, plus two players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior. The ECJ ruled that Article 39 EC precluded restrictions by sports associations on the number of nationals from EU Member States participating in international or national club competitions.[199] The Commission and Advocate General Lenz[200] considered that rules limiting the employment of foreign players also infringed Article 81(1) EC because they restricted the possibilities for the individual clubs to compete with each other by engaging players.

2.2.2.4 Rules governing the transfer of athletes in club competitions

2.2.2.4.1 Transfer rules for expired contracts

Bosman case. The Belgian football player Jean-Marc Bosman agreed to transfer to the French club US Dunkerque shortly after his contract with RC Liege had expired, but was unable to do so because the two clubs failed to reach agreement on the transfer fee. The Belgian Football Federation then refused to grant the required transfer approval to the French club. Because of the delay caused, US Dunkerque withdrew the contract with Bosman. He brought an action for compensation before the Belgian courts for loss of income, requesting that the case be referred to the ECJ.

The ECJ found that the FIFA transfer rules requiring payment of international end-of-contract transfer fees within the EU in respect of players who are nationals of an EU Member State

197 Commission press release, IP/01/1523 of 30 October 2001.
198 Commission press release, IP/02/284 of 6 June 2002.
199 *Bosman, supra*, para. 137.
200 *Bosman* Opinion, *supra*, para. 262.

violated Article 39 EC.[201] Whereas the ECJ did not assess the transfer rules under Articles 81 and 82 EC, Advocate General concluded in his Opinion that the transfer rules also violated Article 81 EC because the transfer rules replaced the "*normal system of supply and demand by a uniform machinery which leads to the existing competition situation being preserved... [E]ven after the contract has expired the player remains assigned to his former club for the time being.*"[202] Under normal competitive conditions, a player would have been able to transfer freely upon expiry of the contract and choose the club which offers the best terms. The transfer rules restrict the possibilities of the clubs to compete with each other by engaging players.

2.2.2.4.2. Transfer rules for valid contracts

Bosman did not address the wider and more serious issue of the legality of the payment of transfer fees for players who are still under contract. Following the *Bosman* case, transfer fees in football had continued to spiral, peaking at the €75m paid by Real Madrid to Juventus Turin for Zinedine Zidane in 2001. However, the demanding of such a fee by the selling club has the potential to severely restrict freedom of movement between EU states for players. In 1998, the Commission issued a statement of objections concerning FIFA's international transfer rules for contracted players ("Regulations for the Status and Transfer of Players"). Following negotiations between the Commission and FIFA, the latter committed itself to modify its transfer rules on the basis of certain principles.[203] In 2002, the Commission therefore decided to close its investigations.[204]

The main principles agreed upon during the discussions with FIFA and UEFA in 2002 were:

– measures to support the training of players, *e.g.* through training compensation for young players (under the age of 23) and a solidarity mechanism in order to redistribute a significant proportion of income to professional and amateur clubs involved in the training of a player;

– establishing a transfer period per season;

– specification of contractual arrangements between players and clubs, *e.g.* regulating duration of contracts (a minimum duration of one year and a maximum duration of five years) and specifying when breaches of contracts are possible (including sanctions); and

– ensuring that arbitration is voluntary and does not prevent recourse to national courts in case of disputes.

2.2.2.5 Rules concerning the organisation of ancillary activities (agent licensing)

Piau case. The *Piau* judgment[205] concerned FIFA rules governing the profession of football agents through which professional football players may conclude contracts with the clubs.

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201 *Bosman, supra*, para. 114.

202 *Bosman* Opinion, *supra*, para. 262. The transfer rules in *Bosman* did not constitute "purely sporting" rules but concerned economic activity (see the reference of the CFI *Meca Medina, supra*, paras. 40 and 42).

203 See XXXIst Report on competition policy 2001, para. 220.

204 See Commission press release IP/02/824 of 5 June 2002.

205 *Piau, supra*

Under the FIFA rules, a contract in such case is valid only if the agent involved has a licence for his/her practice issued by the national football association. Licensed agents must pass an interview, have an impeccable reputation, and deposit a bank guarantee. Mr Piau argued that the rules constituted a restriction on competition under Articles 81 and 82 EC. As a result of the Commission's investigation, FIFA removed the most restrictive limitations (for example, the deposit was substituted by a liability insurance, the interview was replaced with a multiple-choice test, *etc*.). Following these amendments the Commission rejected the complaint, a decision which was appealed by Mr Piau.

The aim of a football agent is to introduce a player for a fee to a club or clubs to each other with a view of employment. The CFI considered that this activity clearly does not pursue a purely sporting interest. The CFI questioned the legitimacy of FIFA's right to regulate the profession of football agents - which would normally be the prerogative of public authorities - , a profession which is not specific to sport and which is of unequivocally economic nature. However, the CFI acknowledged that the players' agent profession needs to be supervised by some entity, which, due to the quasi total absence of national laws in this respect and the lack of internal self-regulation among the agents[206] does not otherwise exist. The CFI upheld the Commission's conclusion that the rules in question did not produce anti-competitive effects under Article 81(1) EC, as the most restrictive rules had been modified by FIFA. The CFI also agreed with the Commission that, even if such anti-competitive effects existed, they could benefit from the exemption under Article 81(3) of the EC Treaty.

As regards Article 82 EC, the CFI considered that FIFA, as the emanation of the national associations and the clubs - the actual buyers of the services of players' agents - was active in the market for players' agents through its members, and that it held a dominant position in this market. The CFI stated, however, that an abuse could not be established, relying essentially on the same arguments as those used in relation to Article 81 EC. The CFI thus agreed with the conclusion in the Commission's decision that there was no infringement of Article 82 EC. This judgment was upheld by the ECJ, following appeal by Mr Piau.[207]

2.3 Main pending and undecided issues

There are currently a number of important outstanding legal issues relating to the application of Articles 81 and 82 EC to sport, in particular football. The three subjects which have attracted considerable attention recently concern (i) FIFA's release of players' rules[208], (ii) UEFA's home grown players' rules[209] and (iii) the idea of introducing salary caps in

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206 While the Commission recognizes the right of self-regulation for players' agents or other professions ancillary to sport, such self-regulation would also need to comply with EC competition law.

207 Order of the ECJ of 23 January 2006, Case C-171/05P, ECR 2006 I-37

208 The FIFA Regulations for the Status and Transfer of Players (Articles 36 to 41) make it compulsory for football clubs to release their players for matches of their national teams. Clubs are responsible to insure the players for accident and insurance during such release period and are not entitled to receive financial compensation or damages if the players get injured. These rules are contested by a number of European football clubs and form the subject of a number of legal proceedings. A reference for a preliminary ruling on the compatibility of this rule with Community law, including Articles 81 and 82 EC concerning the case *SA Sporting du Pays de Charleroi and G-14 Groupement des clubs de football européens/FIFA* (the so-called Charleroi case) is currently pending before the ECJ (case C-243/06, OJ C 212, 2 September 2006, p.11)

209 UEFA plans to introduce a rule setting a minimum number of "home grown players" for clubs to be eligible for the UEFA football competitions. Clubs entering UEFA competitions would have to have a certain number of "locally trained" players, defined as players who have been registered for three seasons/years with the club between the ages of 15 and 21.

professional football.[210] No formal decisions have been taken on these issues so far by the Community courts or the Commission. Therefore, this document cannot at this stage, provide a definite or exhaustive legal analysis of the problems involved or establish whether these rules would violate Articles 81 or 82 EC.

2.4 Conclusions

Based on the case-law and considerations set out above, the following types of rules constitute examples of "sporting rules" that – based on their legitimate objectives – have been found or are likely **not to infringe Articles 81(1) and/or 82 EC** provided that the restrictions contained in such rules are inherent and proportionate to the objectives pursued.

– "Rules of the game" (*e.g.*, the rules fixing the length of matches or the number of players on the field;[211]

– Rules concerning selection criteria for sport competitions;

– "At home and away from home" rules ;

– Rules preventing multiple ownership in club competitions;[212]

– Rules concerning the composition of national teams;

– Anti-doping rules; and

– Rules concerning transfer periods ("transfer windows")

The following rules represent a **higher likelihood of problems concerning compliance with Articles 81 EC and/or 82 EC**, although some of them could be justified under certain conditions under Article 81(3) EC:

– Rules protecting sports associations from competition;

– Rules excluding legal challenges of decisions by sports associations before national courts if the denial of access to ordinary courts facilitates anti-competitive agreements or conduct;

– Rules concerning nationality clauses for sport clubs/teams;

– Rules regulating the transfer of athletes between clubs (except transfer windows); and

– Rules regulating professions ancillary to sport (*e.g.*, football players' agents)

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[210] Salary cap is a limit on the amount of money a team can spend on player salaries, either as a per-player limit or a total limit for the team's roster (or both). Salary caps are more common, e.g., in North American sport leagues but do exist in some European countries (e.g., for certain rugby leagues in England). There have been calls from some European football clubs to introduce salary caps in football.

[211] Some of these rules may not involve economic activity and would, as such, fall outside the scope of application of EC competition law.

[212] Licensing systems are not included in the list due to the absence of case-law involving EC competition rules on this subject.

The multi-faceted case law discussed above illustrates the difficulty of any attempt to establish an exhaustive list of sporting rules that can be automatically excluded from the scope of Articles 81 and 82 EC or that can be automatically justified (or that automatically violate Article 81 or 82 EC). The compliance of sporting rules with Articles 81 and 82 EC therefore will have to be assessed on a case-by-case basis. This has most recently been established by the ECJ in *Meca Medina* which rejected the notion that certain sporting rules may fall outside the scope of Articles 81 and 82 EC if they are based on "purely sporting considerations" and do not relate to economic activity. The ECJ held that the specific requirements of Articles 81 and 82 EC need to be examined for each and every sporting rule.

3. THE APPLICATION OF ARTICLES 81 AND 82 EC RELATING TO CERTAIN REVENUE-GENERATING ACTIVITIES CONNECTED WITH SPORT

3.1 Sports media rights

3.1.1 Introduction

For many media operators sports media rights are crucial and constitute "*vital input*".[213] The Commission found as early as 1991 that "*sport is…particularly attractive to…commercial operators whether as part of general entertainment channels or specialist channels. Audience ratings can be very high for certain events, and are also popular with commercial sponsors*."[214] In later decisions the Commission stated, *e.g.*, that movies and sports are "*key sales drivers*" for pay-TV operators.[215] In view of the economic significance of broadcasting rights[216], the application of competition rules is of fundamental importance in this sector.

Other than in the area of regulatory aspects of sport, the exercise of economic activity is generally not a debated issue in the field of sports media rights. All broadcasting organisations, including public television broadcasting organisations, are undertakings within the meaning of Articles 81 and 82 EC.[217] The activities of acquiring and sublicensing television rights and the sale of advertising slots all constitute examples of activities of an economic nature covered by Articles 81 and 82 EC.[218]

Competition relating to the sale and acquisition of sports media rights has three important features. Firstly, the **rapid evolution** of the media sector including new technological developments necessitates that market definitions are kept under constant review.

Secondly, the **supply and demand structure** as regards sports media rights is characterised by few powerful players at each level of the supply chain, which are competing for scarce and highly valuable sport rights: At the top of the value chain, in the **upstream markets**, initial

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213 Commission decision of 20 March 2006, Case M.4066, *CVC/SLEC*, para. 29

214 Commission decision of 19 February 1991, Case 32524 *Screensport/EBU*, OJ 1991 L 63/32, para. 41

215 Commission decision of 15 September 1999, Case 36539 *British Interactive Broadcasting/Open*, OJ 1999 L 312/1, para. 28

216 For example, the broadcasting rights for the 2006 World Cup were sold by FIFA for around €1 billion to TV operators worldwide. The UK broadcasting rights for the three seasons of English Premiership football as of season 2007/2008 were sold by the English Football Association for around €2.5 billion (totalling €4.1 billion for the broadcasting rights on a worldwide basis)

217 Case 155/73 *Giuseppe Sacchi* ECR 1974 409, para. 14

218 Commission decision of 10 May 2000, Case 32150 *Eurovision*, OJ 2000 L 151/18, para. 64

rights owners (usually sports associations or clubs) sell rights of sport events to sports rights intermediaries, such as sports rights agencies or the European Broadcasting Union (EBU)[219] or directly to retail operators. The **downstream transmission markets** constitute the final stage of the value chain, covering the provision of sports media services to consumers by retail operators (*e.g.*, broadcasting companies, internet service providers, mobile operators).

Thirdly, sports media rights are most attractive when broadcast live because once the outcome of an event is known the value of the right declines together with viewer interest.

It is also important to note that the "Television without frontiers" Directive[220] in Article 3a sets out conditions allowing events which are considered to be of major importance for society, including sport events, to be broadcast freely to the public. Each Member State may therefore draw up a list of events which have to be broadcast in unencoded form, even if exclusive rights have been purchased by pay-TV channels.

3.1.2 Market definitions

Market definitions are particularly complex in the fast changing world of media rights.[221] In the media sector, products and services are not always (or no longer) clearly separable and are, also due to technological or economic "convergence", often marketed in a bundle.

In previous Commission decisions, **upstream product markets** for the acquisition of sports media rights have been identified for certain audiovisual content. This was done on the basis of specific criteria, such as brand image, the ability to attract a particular audience, the configuration of that audience and advertising/sponsoring revenues. With regard to sport events, the Commission identified separate markets for the rights to broadcast sport events for the first time in 1996.[222] Subsequently, the Commission has defined narrower markets, *e.g.*, for (i) the broadcasting rights for certain major sport events[223], (ii) the broadcasting (and new media[224]) rights for football events played regularly throughout every year where national teams participate[225] and (iii) the broadcasting rights for football events that do not take place regularly where national teams participate.[226] In the recent *CVC/SLEC* decision, the Commission left open the question, with respect to Italy and Spain, whether an upstream

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219 These intermediaries, which often acquire the initial media rights to a certain event in a product and geographical bundle, subsequently re-sell the rights to retail operators

220 Directive 97/36/EC of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ 1997 L 202/60.

221 For general guidance on market definitions see Commission Notice on the definition of relevant market for the purposes of Community competition law, OJ 1997 C 372/5.

222 Commission decision of 7 October 1996, Case M.779 *Bertelsmann/CLT*, OJ 1996 C 364/3, para. 19. Also see Commission decision of 3 March 1999, Case 36237 *TPS+7*, OJ 1999 L 90/6, para. 34.

223 See *Eurovision*, *supra*, para. 43 where the Commission considered that there was a strong likelihood that distinct markets existed for the acquisition of broadcasting rights for some major sporting events such as the Olympic Games. This decision was annulled by the CFI, but the CFI accepted the market definition.

224 *UEFA CL*, *supra*, para. 85

225 *UEFA CL*, *supra*, para. 62 (national leagues and cups, the UEFA Champions League and the UEFA Cup); also see Commission decision of 2 April 2003, Case M.2876 *Newscorp/Telepiu*, OJ 2004 L 110/73, para. 66.

226 *Newscorp/Telepiu*, *supra*, para. 65 (*e.g.*, the Football World Cup or the European Football Championship).

market for major motor sport events (Formula One and Moto Grand Prix) exists or whether the relevant market includes all regular major sport events (excluding football).[227]

The main **downstream product markets** that have been identified in past cases are: Pay TV[228], free TV, and content services delivered via the Internet and mobile devices. With regard to TV markets, taking technological developments[229] and a limited degree of substitutability[230] into consideration, the Commission has repeatedly held that separate markets exist for pay TV and free TV. This conclusion has been based on the different trading relationships involved, the different conditions of competition, the price of the services, and the characteristics of the two types of television.[231] With regard to new media, the Commission found in two recent decisions separate downstream markets for on-demand sport content services delivered via wireless mobile devices or via the Internet.[232] The findings of the sector inquiry into 3G, which was concluded in September 2005, confirmed the analysis with regard to mobile networks.[233]

With regard to the **geographic markets** the Commission has held thus far that the **downstream markets** are of a national character or at least confined to linguistic regions.[234] The geographical borders of the **upstream markets** also tend to be national not only for national events (*e.g.*, rights for national football leagues) but also for international sport events since such rights are normally also sold on a national basis. This is due to the national character of distribution as a result of national regulatory regimes, language barriers and cultural factors.[235]

Considering the technological developments, market definitions may evolve in the future, warranting careful and continued market research on the accuracy of the market definition for each case situation.

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227 See footnote 103, *supra*, para. 30. The decision confirmed that regular major sport events ,i.e., sport events that take place throughout the year or throughout a significant time period each year such as Formula One races are not in the same market as major irregular sport events (e.g., Olympic Games) which take place for a few weeks every four years (see paras. 33 to 37).

228 Regardless of a further possible distinction, within Pay-TV, between Video on demand (VoD), Near Video on demand (NVoD) and Pay-per view (PPV), see *Newscorp/Telepiù*, *supra*, para. 43.

229 See *Newscorp/Telepiù*, *supra*, para. 39.

230 See Commission decision of 9 November 1994, Case M.469 *MSG Media Service*, OJ 1994 L 364/1, paras. 32 and 48; *Bertelsmann/CLT*, *supra*, para. 16; Commission decision of 27 May 1998, Case M.993 *Bertelsmnann/Kirch/Premiere*, OJ 1999 L 53/1, para. 18; *Newscorp/Telepiù*, *supra*, para. 34. These interdependencies were also stressed in the ruling of the CFI in Case T-158/00 *ARD v. Commission*, ECR 2003 II-3825, paras. 80 *et seq*.

231 See *BIB/Open*, *supra*, para. 24; Commission decision of 21 March 2000, Case JV.37 *BSkyB/Kirch Pay TV*, para. 24; *Newscorp/Telepiù*, *supra*, paras. 18-47; Commission decision of 29 December 2003, Case 38287 *Telenor/Canal+/Canal Digital*, para. 28

232 *UEFA CL*, *supra*, para. 82; and Commission decision of 19 January 2005, Case 37214 *Joint selling of the media rights to the German Bundesliga*, OJ 2005 L 134/46, para. 18 (hereinafter *DFB*)

233 See concluding report on the sector inquiry into the provision of sports content over third generation mobile networks of 21 September 2005, available at http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/new_media/3g/final_report.pdf

234 See, *e.g.*, *UEFA CL*, *supra*, para. 90, and *Bertelsmann/Kirch/Premiere*, *supra*, para. 22

235 See, *e.g.*, *UEFA CL*, *supra*, para. 88

3.1.3 Competition concerns resulting from the behaviour of sellers

3.1.3.1 Decision making practice

The Commission's decision making practice is limited thus far to cases relating to the joint selling of exclusive rights under Article 81 EC. No decisions have been adopted with regard to the behaviour of a single seller (*e.g.*, sport associations or sports rights agencies) under Article 82 EC. It is important to note that the decisions and the remedies adopted in these decisions do not constitute an exhaustive list of remedies for future cases but they merely represent possible options to deal with competition issues arising in this area. The Commission may decide to adopt additional or different remedies in future cases.

3.1.3.1.1. Introduction

In the upstream market Article 81(1) EC applies to **joint selling agreements** leading to competition restrictions, like foreclosure and output limitation, that would unlikely have occurred in the absence of the agreements. Joint selling describes, for example, the situation where sport clubs entrust the selling of their media rights to their sports association which then sells the rights collectively on their behalf. A joint selling arrangement is a horizontal agreement which prevents the individual clubs each having a relatively small market share from individually competing in the sale of sports media rights. One price is applied to all rights collectively which constitutes price-fixing. In addition, the number of rights available in the upstream acquisition markets is often reduced which may create barriers to entry on downstream broadcasting markets and may lead to access foreclosure in these markets.

The Commission has recognised that joint selling may create **efficiencies** and accepted joint selling arrangements under Article 81(3) EC.[236] A joint selling arrangement has the potential of improving the media product and its distribution to the advantage of football clubs, broadcasters and viewers. The Commission in its decisions has in particular identified three types of benefits:

– The creation of a **single point of sale** provides efficiencies by reducing transaction costs for football clubs and media operators

– **Branding** of the output creates efficiencies as it helps the media products getting a wider recognition and hence distribution

– **The creation of a league product**: This is a product that is focused on the competition as a whole rather than the individual football clubs participating in the competition. This is attractive to many viewers

In order to ensure that the positive effects of joint selling outweigh the negative effects on competition, the Commission has sought in past decisions to remedy the competition concerns resulting from the collective sale of exclusive sports media rights by attaching conditions to a declaration of exemption or making commitments binding on undertakings. The accepted solution in each case depended on the facts of the individual case including the degree of market power and the restrictive practices found.

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236 See in particular the detailed analysis of Article 81(3) EC *in UEFA CL*, paras. 136 *et seq*.

A preliminary question that is of relevance for the assessment of joint selling concerns the **ownership of the rights**. In the *UEFA Champions League* decision, the Commission considered that the rights for the matches were not solely owned by UEFA, since the latter could at best be considered as a co-owner of those rights together with the football clubs for individual matches; the Commission also stated that the question of ownership is to be determined by national law.[237] The question of the ownership is important because in cases where the rights are solely owned, *e.g.*, by the football association[238], issues may arise under Article 82 EC rather than under Article 81 EC as the sale of rights would be carried out by a single seller and not jointly.

3.1.3.1.2. Decisions adopted by the Commission

The Commission has decided on three major cases involving joint selling of rights to broadcast games played by football clubs on the basis of Article 81 EC, namely *UEFA Champions League (UEFA CL)*[239], *German Bundesliga (DFB)*[240] and *FA Premier League (FAPL)*[241]. In these cases the collectively sold exclusive sports rights risked to restrict output and to foreclose access for operators on the downstream broadcasting markets. In order to remedy the output restrictions and foreclosure effects caused by collective selling in *UEFA CL, DFB and FAPL* the Commission developed a number of (non-exhaustive) remedies, see below under 3.1.3.1.3, and established the conditions under which it considered that joint selling, in the specific circumstances of each respective case, would be permissible under Article 81 EC.

UEFA CL. In the *UEFA CL* decision the Commission for the first time accepted joint selling of football media rights and laid out the principles for a pro-competitive rights structure. The original arrangements provided for the sale of UEFA Champions League free and pay-TV rights on an exclusive basis in a single bundle to a single broadcaster per territory for several years in a row. Buyers had only one source of supply and a single large broadcaster per territory would acquire all free and pay-TV rights, to the exclusion of all others, resulting in a number of rights being left unexploited and output restrictions. Following Commission intervention, UEFA amended its joint selling arrangements. The available rights were unbundled into several packages (in total 14) enabling more than one broadcaster to acquire rights to the UEFA Champions League. The packages were sold on the basis of an objective and non-discriminatory tender procedure. Although UEFA had the exclusive right to sell the packages of live rights, individual clubs could sell certain live rights (package 4) relating to their matches, in case UEFA would fail to sell.

Certain restrictions remained however. Indeed, the exclusive sale of live rights by UEFA still prevented individual clubs from competing in the sale of those rights, a single price was fixed, broadcasters only had one point of supply in respect of most live rights and the exploitation of deferred rights was subject to limitations.

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237 *UEFA CL*, *supra*, paras 121-123. Footnote 60 of the *UEFA CL* decision contains a summary of the legal situation concerning ownership in various Member States

238 For example, article 18-1 of the French law of 16 July 1984 confers exclusive rights for French league matches to the French football association

239 *UEFA CL, supra*

240 *DFB, supra*

241 See Commission press release IP/06/356 of 22 March 2006; the decision is available at http://ec.europa.eu/comm/competition/antitrust/cases/decisions/38173/decision_en.pdf

On the other hand, the Commission considered that joint selling also led to a number of positive effects and the Commission concluded that the amended joint selling agreement met the conditions for a justification under Article 81(3) EC.

The joint selling **improved the distribution of rights** to the UEFA Champions League through the creation of a quality branded product, exploited exclusively by UEFA and independent of the interests of individual clubs. The single point of sale enabled the acquisition of coverage for the whole UEFA Champions League season, allowing programming to be planned in advance. The only alternative to ensure coverage of the entire league would have been to acquire rights from many individual clubs. However, due to the knock-out nature of the UEFA Champions League this meant that a broadcaster could not know in advance which clubs would make it through to the end. Such an exercise was uneconomic especially as the value of individual club rights would plummet if that club was eliminated. The single point of sale therefore ensured full coverage and reduced the broadcasters' financial risk. Distribution was further improved by ensuring that certain live rights could be sold by individual clubs where UEFA had been unable to sell the rights within one week after the draw for the first round for the UEFA Champions League.

Consumers benefited directly from the improved distribution of rights and increased coverage created by the joint selling. In addition, the efficiencies created by the single point of sale allowed broadcasters to invest more in improving production and transmission. Access to deferred and archived content was also made more readily accessible.

The Commission considered that the restrictions on competition were **indispensable** to the creation of a UEFA Champions League branded product sold via a single point of sale and the related benefits. UEFA had a legitimate interest in creating a Champions League focused product separate from the interests of individual clubs, as it benefited UEFA, the clubs and the supporters/viewers of the Champions League. The exclusive joint selling of live rights, without parallel sales through individual clubs was also indispensable to ensuring the quality and attractiveness of the UEFA Champions League product to broadcasters.

The joint selling arrangements were **not likely to eliminate competition** in respect of a substantial part of the football rights market because substitutable rights to other football events taking place regularly throughout the year were available (*e.g.*, national football league rights). In addition, both UEFA and individual clubs sold a number of categories of UEFA Champions League rights in parallel ensuring multiple sources of supply for interested buyers.

DFB and FAPL. In the sales process of the German and English top national football leagues, the Bundesliga and the FAPL respectively, similar competition concerns arose as those found in *UEFA CL*.[242] In order to address these concerns, in both cases commitments were made to amend the original joint selling arrangements by the respective leagues on behalf of their individual club members. The commitments offered by both the *Deutscher Liga-Fußballverband* (the German Leage Association (GLA), the rights-holder for the Bundesliga matches) and the FAPL (the rights holder for the Premiership matches) were made legally binding under Article 9(1) of Regulation 1/2003. The commitments from both the GLA and

[242] These were cases of principally national character that had been opened by the Commission prior to modernisation. In the case of *DFB*, it is also noteworthy that the German Act against Restraints on Competition contained an exception for the joint selling of sports media rights between 1999 and 2005. Following modernisation, it is less likely – but not excluded – that the Commission would intervene in this type of cases

the FAPL included the unbundling of rights into separate rights packages for TV broadcasting and mobile platforms, the possibility for individual clubs to exploit certain unsold rights and rights unused by the initial purchaser, as well as the exploitation of deferred rights and rights for the new internet broadcasting[243] and telephony broadcasting markets. Rights were to be disposed of using a public tender procedure and exclusive rights contracts were not to exceed three football seasons.

In addition, as regards the FAPL, the open and competitive bidding process for the rights packages was made subject to scrutiny by an independent Monitoring Trustee. Furthermore, no single purchaser was allowed to acquire all the live rights packages, as first applied from the sale of rights to the 2007/2008 season (**no single buyer rule**). This commitment was negotiated by the Commission in order to end the monopoly of British Sky Broadcasting Group plc ("BSkyB") over the rights to the FAPL in the United Kingdom. Following the acquisition in May 2006 of two of the six FAPL live rights packages by Setanta, an Irish pay-TV sports channel, BSkyB ceased to be the exclusive holder of live Premier League matches.

3.1.3.2 Remedies applied in previous cases to address competition concerns

The Commission's practice highlights a number of possible approaches which, separately or in combination, have been used in order to address competition concerns resulting from joint selling arrangements concerning exclusive sports media rights under Article 81 EC. The list of remedies below is not exhaustive or binding for future cases and different or new remedies may be adopted depending on the specific circumstances of a given case.

3.1.3.2.1. Tendering

In order to reduce the risk of **foreclosure** effects in the downstream markets in *UEFA CL*, *DFB* and *FAPL* the Commission required the collective sellers on the upstream market to organise a competitive bidding process under non-discriminatory and transparent terms ("non-discriminatory and transparent **tendering**"). This approach gives all potential buyers an opportunity to compete for the rights.

3.1.3.2.2. Limitation of the duration of exclusive vertical contracts

The Commission acknowledges the need for a certain degree of exclusivity to protect the value of sports media rights, in particular live rights. The risk of long-term market **foreclosure** has been addressed in *UEFA CL, DFB* and *FAPL* by requiring the collective selling entity to limit the **duration** of the exclusive rights offered in vertical contracts to no more than three football seasons ("sun setting").[244] Longer contract duration would risk creating a situation where a successful buyer would be able to establish a dominant position on the downstream market reducing the scope for effective *ex ante* competition in the context of future bidding rounds.

3.1.3.2.3. Limitation of the scope of exclusive vertical contracts

In *UEFA CL, DFB* and *FAPL* the Commission sought to limit the risk of market **foreclosure** resulting from a single buyer acquiring all the valuable rights - by obliging the collective

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243 The internet broadcasting rights were sold as a separate package in *DFB* but not in *FAPL*

244 In *Newscorp/Telepiu, supra*, the commitments offered went even further; the notifying party undertook to buy football rights for no longer than two seasons at the time and only for satellite distribution

selling entity to unbundle the media rights in separate packages, thereby limiting the scope of the exclusivity. More specifically the Commission required:

– **A reasonable amount of different packages**: The creation of two or more independently valid live packages was required. The reason for this was that as live rights are often sold to one media operator, the creation of various packages would enable more than one media operator to acquire the rights.

– **Meaningful packages**: The large size of packages may create foreclosure concerns and the Commission has, *e.g*. in *FAPL*, requested the sale of several meaningful packages to enable also less powerful operators with less financial means to bid for the packages that suited their needs. At the same time, a package may not be "meaningful" (independently valid) if it is much smaller than other packages. The objective is to allow the respective purchasers of the package(s) to compete effectively on the downstream market.

– **Earmarked packages** for special markets/platforms: Due to the strong asymmetric value of rights for different distribution platforms, access to sports media rights may be foreclosed to downstream market operators in certain evolving markets or platforms (for example 3G networks or internet markets). By providing for specific packages for certain distribution platforms ("earmarking") in *UEFA CL*, *DFB* and *FAPL* mobile operators and internet service providers were enabled to acquire rights.[245]

– **No conditional bidding:** In *FAPL*, an obligation was imposed on the seller to accept only stand-alone unconditional bids for each individual package.[246] The rights would be sold to the highest standalone bidder. Such unconditional selling is aimed at preventing a powerful buyer interested in acquiring the most valuable package(s) from offering a bonus on condition that all the valuable rights are sold to it, thus inciting initial rights owners not to sell at least some packages to competitors in the same market or operators in neighbouring markets.

3.1.3.2.4. Fall-back option, use obligation, parallel exploitation

In order to limit the risk of **output restrictions** caused by the collective sale of exclusive rights, the Commission required in *UEFA CL*, *DFB* and *FAPL* that there should be **no unused rights**. Rights that are not sold by the collective entity within a certain time period fell back to the individual clubs for parallel exploitation ("**no hoarding).** In addition, the Commission ensured market availability of less valuable rights such as deferred highlights and new media rights by imposing the **parallel exploitation** of these rights by individual clubs and UEFA in *UEFA CL*.

3.1.3.2.5. No single buyer obligation

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245 In the *Bundesliga* decision, three separate packages for live rights were earmarked for (i) TV (pay-TV and free-TV), (ii) internet and (iii) mobile phones. In the *Premier League* decision, only two separate packages for live rights were earmarked for (i) audio-visual rights on a "*technology neutral basis*" (including pay-TV, free-TV and internet) and (ii) audio-visual mobile rights. This was due to the increasing convergence of the TV and internet platforms (*e.g.*, as a result of IPTV). The question as to which type of markets or platforms should be earmarked (*e.g.*, to protect or encourage their development) will depend in particular on the market conditions in the country/countries in question

246 *FAPL*, *supra*, para. 40 and points 7.5 to 7.7 of the FAPL commitments

In order to prevent that all packages of valuable live rights were sold to the dominant pay-TV operator in the United Kingdom, BSkyB, the Commission considered it necessary to impose a **no single buyer** obligation on the collective selling entity in the FAPL decision. Over a number of years prior to the *FAPL* decision BSkyB had acquired all the valuable live-TV packages that were made available on the market by the joint seller. Additional remedies were therefore deemed necessary to prevent downstream foreclosure and to ensure access also of other market players. Importantly, in the absence of such remedies there was a risk that competition would remain eliminated well beyond the duration of any on-going contract as due to the long-term presence of the dominant buyer competition was ineffective. It is noteworthy that these considerations were of relevance only in *FAPL* whereas due to the structure of the markets the issue did not arise in the *UEFA CL* and *DFB* cases.[247]

It should be noted in this context that in the *DFB* decision the Commission reserved the possibility of opening a separate investigation at the downstream level in case several packages with exclusive exploitation rights would be acquired by a single purchaser ("**vertical reserve**").[248] Such an investigation would thus target the dominant buyer rather than the seller.[249]

3.1.3.2.6. Trustee

The Commission in *FAPL* also required that the tender procedure was overseen by a **trustee** that reported back to the Commission to ensure and guarantee that the tender procedure was undertaken in a fair, reasonable a non-discriminatory manner.

3.1.4 Competition concerns resulting from the behaviour of buyers

In the downstream markets **joint buying arrangements** may also be caught under Article 81(1) EC, in particular when the exclusive acquisition of sports media rights leads to foreclosure and output restrictions as a result of vertical restraints in agreements between seller and buyer or by horizontal agreements between different buyers. In cases where *ex ante* (single or collective) dominance exists at the acquisition market, under certain circumstances the acquisition and use of exclusive sports media rights could constitute an abuse of dominance by the buyer within the meaning of Article 82 EC.

Foreclosure issues are especially relevant whenever exclusive rights constitute "premium" content. In such situations (mostly concerning broadcasting rights for live football matches), competition may be adversely affected through the monopolisation of the acquisition of this

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247 In *UEFA CL* there was no need to examine the individual national market situations. In *DFB* there was also no need at that time to look into the vertical effects, considering the value of the different packages and the distribution of market players (also taking into account the bankruptcy of Kirch which had previously acquired the Bundesliga rights)

248 *DFB*, *supra*, para. 35. The *ex ante* risk that one single buyer would acquire all the packages in a non-discriminatory tender procedure was rather small, as due to the bankruptcy of the company *Kirch* no powerful pay-TV operator was present in the German downstream market

249 However, it would not be excluded to act also against the joint seller as the emergence on the market of a dominant buyer would likely constitute a material new fact within the meaning of Article 9(2) of Regulation 1/2003 justifying the re-opening of the procedure

premium content, if this content is an essential input for effective competition in the **downstream market**.[250]

In addition, because of insecurity about technological developments, the existence of some substitution between different platforms and asymmetric value of rights, powerful operators on one retail market may seek to prevent players in neighbouring markets from acquiring meaningful rights. The acquisition of exclusive audiovisual rights for all platforms by a powerful retail operator in one downstream market (*e.g.*, a pay-TV operator) may create additional anti-competitive **foreclosure effects in neighbouring markets** (*e.g.*, 3 G mobile telephony), thereby hampering the development of new services.

Output restrictions may occur when exclusive rights, which are either bought collectively by different operators or bought by a dominant firm for one or more downstream markets, are subsequently not exploited by the buyers.

3.1.4.1 Decision-making practice relating to the behaviour of buyers

The Commission has dealt with a number of cases where remedies were necessary to address situations where a powerful retail operator (or a joint buying consortium of retail operators) on one platform foreclosed access to exclusive content for operators in the same or neighbouring markets.

Newscorp/Telepiù.[251] The merger brought together Italy's two satellite pay-TV platforms, one of which (Telepiù) was already dominant in the market. The new entity, SkyItalia, would have held almost a 100% share of the pay-TV market, with competition from other platforms being unlikely due to cable penetration in Italy being only around 1%. The merged entity would have combined for a long duration an unparalleled portfolio of exclusive rights related to premium content (also including key sport events), thereby foreclosing third parties from accessing premium content needed to establish competing pay-TV offers downstream.

Although Italian law provided that football rights must be sold to at least two buyers, this could not apply where there was only one company in the market.[252] Consequently, the Commission found that the merger would have created a near monopoly in the Italian pay-TV market by strengthening the already dominant position of Telepiu. It would also have created a quasi-monopoly in the various markets for the acquisition of content for pay-TV and would have foreclosed access to such content to potential competitors. Hold-back and black-out rights would have foreclosed the market and prevented new entry through the use of platforms other than satellite in the future. The merger was only cleared following the giving of substantial commitments by the new entity, ensuring access to its technical platform, limiting the exclusivity of its rights to its satellite platform and limiting the duration of its exclusive rights to attractive content (including football rights) to two years.

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250 These types of concerns existed all or in part in every merger case concerning pay-TV examined by the Commission so far (*inter alia MSG* in 1994, *Bertelsmann/Kirch* in 1998, *Sogecable/Via Digital* in 2003, *Newscorp/Telepiù* in 2003)

251 See Commission decision of 2 April 2003, Case M.2876 *Newscorp/Telepiu*, OJ 2004 L 110/73. The merger had originally been notified to the Italian NCA. The transaction was abandoned and subsequently re-notified to the European Commission which authorised the merger under conditions similar to those envisaged by the Italian NCA

252 As set out in paragraphs 30, 31 of the Commission decision, due to the specificities of the Italian market football rights are almost exclusively sold to pay-TV operators. Therefore, a sale to free-TV operators was not a viable option.

Eurovision/EBU. The European Broadcasting Union (EBU) is an association of national broadcasters based largely in Europe. Its members principally consist of broadcasters providing a service of national character and importance for all sections of the public. Members of EBU may participate in EBU's Eurovision system, which consists of a TV programme exchange system, pursuant to which EBU members offer, *inter alia*, sports coverage to other EBU members on a reciprocal basis. As part of the system, EBU members participate in the joint acquisition and subsequent sharing of sports media rights, including the free exchange of transmission signal in respect of the relevant sport events. The effects on competition of the joint purchasing of sports rights, through EBU's Eurovision system, have been considered twice by both the Commission[253] and the CFI[254]. In both cases, the Commission found restrictions under Article 81(1) EC and exempted the respective joint purchasing agreements under Article 81(3) EC. The CFI in each case annulled the Commission's decisions. Following the CFI's judgment, the Commission is currently reviewing the Eurovision Rules under Article 81 EC.

AVS. The Commission's AVS investigation concerned an agreement between Telefónica and Sogecable, the two largest Spanish pay-TV platforms, whereby they committed to jointly acquire and exploit the rights to the Spanish First League for 11 seasons (until 2009) through their joint venture Audiovisual Sport (AVS). In November 2000, the Commission closed parts of its investigation concerning foreclosure effects on the Spanish pay-TV markets after the parties granted access to the football rights to new cable and digital terrestrial television entrants in Spain and guaranteed competitors that they were free to set the prices of the pay-per-view football matches.[255] The Commission continued its investigation as regards the long duration of the agreement, the rights of first refusal of the parties for a large number of Spanish football clubs and the potentially unfair and discriminatory terms and conditions of the parties' sublicensing rules. The Commission closed its investigation in May 2003 following the merger of Sogecable and Via Digital of Telefónica. The merger was authorised in November 2002 by the Spanish authorities under certain conditions which (i) abolished the renewal options held by AVS on the football rights, (ii) guaranteed third parties' access to the rights under fair, reasonable and non-discriminatory conditions, (iii) established that the merged entity would not have exclusive use of the new media rights and (iv) stipulated that access to the football rights would be subject to an arbitration mechanism.[256]

3.1.4.2 Remedies applied in previous cases to address competition concerns

It is important to re-emphasize that the remedies adopted in previous decisions are not exhaustive or binding for future cases. They merely represent possible options to deal with competition issues arising in this area. The Commission may decide to adopt additional or different remedies in future cases.

As will be explained below, remedies can either consist of **behavioural solutions** imposed upon downstream players, such as sublicensing of rights in the same market or neighbouring markets, or of **structural solutions** requiring the divestiture of rights in the same or neighbouring markets. As in other areas structural solutions are generally more effective. Moreover, in the media sector experience shows that sublicensing is a difficult remedy to

253 Commission decision of 11 June 1993, Case 32150 *EBU/Eurovision System* OJ 1993 L 179/23 and Commission decision of 10 May 2000, Case 32150 *Eurovision* OJ 2000 L 151/18

254 Case T-528/93 *Eurovision I* ECR 1996 II-649 and Case T-185/00 *etc Eurovision II* ECR 2002 II-3805

255 Press release IP/00/1352 of 23 November 2000

256 Press release IP/03/655 of 8 May 2003

apply in practice as it must be ensured that prices and sublicensing conditions are transparent and acceptable. Given that sub-licensing is generally not in the sub-licensor's interest it may be necessary to involve a trustee to ensure a satisfactory degree of effectiveness. If remedies cannot solve the competition concerns, the (joint) acquisition of sports media rights may also be prohibited.

3.1.4.2.1. Limitation of the scope of exclusivity with regard to neighbouring markets

In *Newscorp/Telepiù*, Newscorp offered commitments to waive its exclusivity and its protective rights on means of transmission other than the satellite platform on which it was active itself.[257] Therefore, operators on other platforms (*e.g.*, internet, cable, UMTS) were able to buy those contents (including for football and other sport events) directly from rights owners and have in fact done so.

A system of "wholesale offer" of premium content was also put in place, whereby Newscorp had to sublicense acquired "premium content" rights on a non-exclusive basis to third parties active on means of transmission other than satellite.[258]

3.1.4.2.2. Limitation of duration of exclusivity

Limiting the **duration** of the exclusivity assures that other market players will be able to acquire rights at regular intervals. In *Newscorp/Telepiù* the company committed itself to limit the duration of its exclusive rights to two years.[259]

3.1.5 Conclusion

The remedies described above are examples of remedies that have been used to date to address competition concerns arising in the area of sports media rights. However, it is important to note that there is no "standard" or "one-size-fits-all" approach that applies to cases involving sports media rights. The Commission will have to carefully assess each individual case in order to determine, where necessary, the appropriate remedy or remedies, taking into account the specific facts and circumstances, in particular also considering the technological developments of the relevant markets.

3.2 Ticketing arrangements

3.2.1 Introduction

As a general matter, similar issues arise in cases concerning ticketing arrangements for sport events as in ticketing arrangements for other events. However, there are some special

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257 *Newscorp/Telepiu*, *supra*, para. 231

258 In cases where it is foreseeable *ex ante* that all exclusive premium rights will be acquired by a single dominant buyer or a consortium of buyers (resulting in foreclosure), it may be appropriate to impose on the buyer not to acquire all the rights exclusively in the same market (**no single buyer rule**). In this respect also see 3.1.3.2.5. above (no single buyer rule imposed on the seller)

259 Para. 233 states that the limitation of the duration of future exclusive contracts for satellite transmission as regards football teams to two years and the unilateral termination right granted to football right owners constitute effective undertakings, in that they will make premium football contents contestable on the market at regular intervals

characteristics as regards ticketing for sport events relating in particular to safety aspects such as the effective segregation of rival groups of supporters[260] and the counterfeiting of tickets.

In assessing ticketing arrangements, the Commission has taken as its guiding principle that these arrangements should ensure that **all consumers in the EEA have reasonable access to entry tickets**. Particular attention has in past cases been paid to exclusive distribution agreements, territorial restrictions on ticket sales and restrictions in payment methods (credit card exclusivity).

3.2.2 Market definition

In view of the fact that tickets for sport events are often sold by or through a single entity (*e.g.*, the organising committees of the respective World Cups), Article 82 EC has played an important role in cases involving ticketing arrangements (although Article 81 EC may also apply in these cases). In order to determine the market position of the ticket-selling undertaking(s) under Article 82 EC (but also under Article 81 EC), it is therefore necessary to define the relevant product and geographic markets. In general, the relevant product markets will be the **market for the sale of tickets for the sport event in question**. Tickets for sport events, in particular popular sport events such as, *e.g.*, the Olympic Games or football World Cups or European Championships are normally not substitutable by tickets for other sport events.[261]

Depending, *inter alia*, on the different types of tickets, packages of tickets or selling methods, **separate sub-markets** may be identified. For example, in the *1998 World Cup* decision the Commission found two separate markets for (i) the sale of "blind Pass France 98" tickets (entitling the buyer to view all first round matches and one match of the round of the last 16 in the same stadium) and (ii) the sale of "blind individual tickets" (relating to the opening match, quarter and semi-finals, third place play-off and the final).[262] These ticket arrangements differed, *e.g.*, from the ticketing arrangements for the 2006 World Cup. Ticket sales for the 2006 World Cup included, for example, team specific tickets (TST) which allowed the buyer to follow a certain national team up to the final, depending on the team's performance. Also, other than in 1998, there were no "geographic" ticket packages on the basis of a given stadium. The market(s) for the sale of tickets for each sport event will therefore have to be carefully analysed on a case-by-case basis taking into account in particular the specific sales arrangements.

The definition of the **geographic market** will depend on the type of sport event. For important international sport events (Olympic Games, football World Cup *etc*.), the geographic market will be at least EEA-wide in scope, due to the widespread demand for these tickets.[263] For sport events of primarily national interest (*e.g.*, national track and field

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260 See, *e.g.*, Commission decision of 20 July 1999, Case 36888 *1998 Football World Cup*, OJ 2000 L 5/55, para. 105: "*Ensuring effective security at football matches is essential and may, in particular circumstances, justify the implementation of special ticket sales arrangements by tournament organisers*." Also see Commission decision of 13 December 2002, Case 37932 *Cupido et al v. UEFA, Euro 2000 and ISL Marketing AG*, available at http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37932/en.pdf, paras. 30 *et seq*

261 See, *e.g.*, *1998 World Cup decision*, *supra*, para. 68 (for the football World Cup)

262 *Idem*, para. 74

263 *Idem*, para. 77 (for the football World Cup)

championships) the scope may be national or even regional in scope (*e.g.*, ticket sales for football clubs with mainly local followers).

3.2.3 Decision-making practice

3.2.3.1 Exclusive distribution rights

The Commission decision relating to ticketing arrangements for the 1990 Football World Cup[264] was concerned with the exclusive worldwide distribution of package tours combined with tickets for the 1990 World Cup without the possibility of alternative sources of supply. The World Cup Organising Committee, set up jointly by the Italian football association and FIFA for the technical and logistical organization of the World Cup[265], had undertaken to confer on a single travel agency (90 Tour Italia SpA) worldwide exclusive rights for the supply of stadium entrance tickets for the purpose of putting together package tours. Other travel agencies or tour operators could therefore not obtain tickets from any other source than 90 Tour Italia SpA. The Commission took the view that this exclusive distribution system infringed Article 81 EC because it restricted competition between tour operators and between travel agencies in the EU on the market for the sale of package tours to the 1990 World Cup. The restrictions could not be justified under Article 81(3) EC on stadium safety grounds as a number of tour operators fulfilling the same criteria as 90 Tour Italia could have competed on the market without jeopardising spectator safety. The Commission therefore found an infringement of Article 81 EC but did not impose fines, *inter alia*, because it was the first time it had taken action on the distribution of tickets for a sporting event.

Following the 1990 World Cup decision, the organising committees of the Barcelona and Albertville Olympic Games amended their contractual agreements to allow nationals of the EU Member States also to buy tickets directly from the organising committees or from travel agents distributing them in other EU Member States.

3.2.3.2 Discriminatory ticketing practices (territorial restrictions)

The Commission decision relating to ticketing arrangements for the 1998 World Cup[266] found an abuse by the French organising committee under Article 82 EC as it had imposed unfair trading conditions which discriminated against non-French residents and resulted in a limitation of the market for those consumers. In particular, the general public throughout the EEA could only purchase certain match tickets on condition that they provided an address in France to which the tickets could be delivered. The practical effect of such a requirement was to deprive the overwhelming majority of citizens outside France of the possibility of purchasing any of the tickets in question. In addition, non-French residents were restricted to reserving tickets by means of written application while French residents could avail themselves of other, quicker means including reservation by telephone or by accessing the electronic French Minitel system. The Commission only imposed a symbolic fine of €1000 because of the legal uncertainty concerning ticket arrangements under EC law at the time[267]

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264 Commission decision of 27 October 1992, Case 33384 and 33378, *Distribution of package tours during the 1990 World Cup*, OJ 1992 L 326/31

265 The World Cup committee received revenues from the commercial exploitation of the World Cup and from granting the exclusive rights to 90 Tour Italia and was thus considered to constitute an undertaking under Article 81 EC (see para. 57 of the decision)

266 Commission decision of 20 July 1999, Case 36888 *1998 Football World Cup*, OJ 2000 L 5/55

267 This consideration is unlikely to play a role in future Commission cases

and steps undertaken by the organising committee to ensure access of EU consumers to more tickets.

3.2.3.3 Restrictions in payment methods (credit card exclusivity)

The Commission has also examined credit card exclusivity arrangements for sport events in two cases: the VISA exclusivity for ticket sales via the internet for the Athens Olympic Games in 2004, and the MasterCard exclusivity for direct sales of tickets for the FIFA Football World Cup 2006.

2004 Athens Olympic Games. In the Athens Olympic Games, tickets ordered via the internet directly from the organising committee ('ATHOC') could only be paid for with VISA cards. The Commission took the view (Case 38703) that this exclusivity did not constitute an infringement of Articles 81 or 82 if consumers in the EEA had **reasonable access to tickets** via alternative sales channels that did not require payment with VISA cards. Such an alternative supply channel for the general public was available in that tickets could be bought from any National Olympic Committee in the EEA as the latter accepted other payment methods. ATHOC also agreed to improve the information to consumers regarding all options for the purchase of tickets and by intervening with the National Olympic Committees in the EEA. The case was subsequently closed without a decision.[268]

2006 Germany World Cup. The 2006 World Cup case was triggered by a complaint from a UK consumer organisation 'Which?' against FIFA and the German Football Association under Article 82 EC (Case 39177) concerning the MasterCard exclusivity arrangements for tickets intended for the general public. The Commission followed the same guiding principle as in the Athens Olympic Games case, *i.e.*, there should be **reasonable access to tickets** for all consumers in the EEA. Tickets from the World Cup Organising Committee ('OC') could be paid for with MasterCard credit card, direct debit from a German bank account or international (cross-border) bank transfer. However, in the latter case, significant costs could arise for consumers in EEA countries outside the Eurozone, such as the United Kingdom. In light of the enormous demand for tickets and the importance of direct sales by the OC, the Commission was of the opinion that there needed to be a viable alternative to the direct sales by the OC to ensure reasonable access to tickets for the World Cup 2006 for those consumers who did not possess a MasterCard product. This alternative could take the form of (i) other payment forms for direct sales by the OC (*i.e.*, more than one credit card and/or bank transfers without dissuasive additional costs for the consumers), or (ii) other sales channels for which there is no credit card exclusivity. As a result, the OC set up local currency accounts enabling fans based in non-Eurozone countries in the EEA to pay for tickets by making domestic bank transfers. The complaint was subsequently withdrawn and the case was closed without a decision.[269]

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[268] Commission press release IP/03/738 of 23 May 2003

[269] Commission press release IP/05/519 of 2 May 2005

SPORT ISSUES DOCUMENT: LIST OF RELEVANT CASE LAW ON SPORT

PART 1: ORGANISATION OF SPORT

ECJ JUDGMENTS

Case no.	Date	Name	Official reference	Internet link
Case C-243/06	Pending case	*Sporting du Pays de Charleroi and Groupement clubs de football européens*	Pending	http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-243/06&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100
Case C-519/04	18 July 2006	*Meca Medina and Igor Majcen v. Commission*	ECR 2006 I-6991	http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-519/04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100
Case C 171/05 P	23 February 2006	*Piau (Order)*	Not yet published	http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docj=docj&docor=docor&numaff=C-171%2F05P&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100
Joined Cases C-51/96 and C-191/97	11 April 2000	*Christelle Deliège v Ligue francophone de judo etc.*	ECR 2000 I-2549	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61996J0051
Case C-176/96	13 April 2000	*Lehtonen et al v. FRSB*	ECR 2000 I-2681	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61996J0176
Case C-415/93	15 December 1995	*URBSFA v. Bosman*	ECR 1995 I-4921	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61993J0415
Case	16 December	*Walrave and Koch v.*	ECR 1974, 1405	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61974J0036

36/74	1975	*Union Cycliste Internationale*		
Case 13/76	12 December 1974	*Donà v. Mantero*	ECR 1976, 1333	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61976J0013

CFI JUDGMENTS

Case no.	Date	Name	Official reference	Internet link
Case T-193/02	26 January 2005	*Piau v. Commission*	ECR 2005 II-209	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002A0193:EN:NOT
Case T-313/02	30 September 2004	*David Meca Medina and Igor Majcen v. Commission*	ECR 2004 II-3291	http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/c_300/c_30020041204en00390039.pdf

COMMISSION DECISIONS

Case no.	Date	Name	Official reference	Internet link
Case 38158	1 August 2002	*Meca Medina et Majcen / CIO*	Not published in OJ	http://ec.europa.eu/comm/competition/antitrust/cases/decisions/38158/fr.pdf
Case 37806	25 June 2002	*ENIC/UEFA*	Not published in OJ	http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_75.html#i37_806
Case 36851	9 December 1999	*Lille/UEFA (Mouscron)*	Not published press release IP/99/965	http://europa.eu/rapid/pressReleasesAction.do?reference=IP/99/965&format=HTML&aged=0&language=FR&guiLanguage=en
Case 37124	16 April 2002	*Piau/FIFA*	Not published in OJ	http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37124/fr.pdf

PART II: SPORT MEDIA RIGHTS

CFI JUDGMENTS

Case no.	Date	Name	Official reference	Internet link
Case T-185/00 *etc*	8 October 2002	*Eurovision II*	ECR 2002 II-3805	http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Rechercher&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=T-185/00&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100
Case T-528/93.	11 July 1996	*Eurovision I*	ECR 1996 II-649	http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61993A0528

COMMISSION DECISIONS

Case no.	Date	Name	Official reference	Internet link
Case 38173	22 March 2006	*Joint selling of the media rights to the FA Premier League*	Not published in OJ	http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_76.html#i38_173
Case M.4066	20 March 2006	*CVC/SLEC*	Not published in OJ	http://ec.europa.eu/comm/competition/mergers/cases/decisions/m4066_20060320_20212_en.pdf
Case 37214	19 January 2005	*Joint selling of the media rights to the German Bundesliga*	OJ L 134, 46	http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37214/en.pdf
Case 37398	23 July 2003	*Joint selling of the commercial rights of the UEFA Champions*	OJ 2003 L 291/25	http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_74.html#i37_398

		League		
Case M.2876	2 April 2003	*Newscorp/Telepiu*	OJ 2004 L 110/73	http://ec.europa.eu/comm/competition/mergers/cases/decisions/m2876_en.pdf
Case 32150	10 May 2000	*Eurovision*	OJ 2000 L 151/18	http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_151/l_15120000624en00180041.pdf
Case JV.37	21 March 2000	*BSkyB/Kirch Pay TV*	OJ 2000	http://ec.europa.eu/comm/competition/mergers/cases/decisions/jv37_en.pdf
Case 36539	15 September 1999	*British Interactive Broadcasting/Open*	OJ 1999 L 312/1	http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_73.html#i36_539
Case 36237	3 March 1999	*TPS+7*	OJ 1999 L 90/6	http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_090/l_09019990402en00060022.pdf
Case M.993	27 May 1998	*Bertelsmann/Kirch/Premiere*	OJ 1999 L 53/1	http://ec.europa.eu/comm/competition/mergers/cases/decisions/m993_19980527_610_en.pdf
Case M.779	7 October 1996	*Bertelsmann/CLT*	OJ 1996 C 364/3	http://ec.europa.eu/comm/competition/mergers/cases/decisions/m779_en.pdf
Case M.469	9 November 1994	*MSG Media Service*	OJ 1994 L 364/1	http://ec.europa.eu/comm/competition/mergers/cases/decisions/m469_19941109_610_en.pdf
Case 32150	11 June 1993	*EBU/Eurovision System*	OJ 1993 L 179/23	No internet link available
Case 32524	19 February 1991	*Screensport/EBU*	OJ 1991 L 63/32	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991D0130:EN:HTML

PART III: TICKETING ARRANGEMENTS

COMMISSION DECISIONS

Case no.	Date	Name	Official reference	Internet link
Case 37932	13 December 2002	*Cupido et al v. UEFA, Euro 2000 and ISL Marketing AG*	Not published in OJ	http://ec.europa.eu/comm/competition/antitrust/cases/decisions/37932/en.pdf
Case 36888	20 July 1999	*1998 Football World Cup*	OJ 2000 L 5/55	http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_005/l_00520000108en00550074.pdf
Cases 33384 and 33378	27 October 1992	*Distribution of package tours during the 1990 Football World Cup*	OJ 1992 L326/31	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992D0521:EN:HTML

ANNEX II : SPORT AND INTERNAL MARKET FREEDOMS

The objective of this annex is to provide an overview of the established case law in the field of the Internal Market that directly relates to sport and, in this context, to contribute to a clarification of legal concepts based on the Internal Market freedoms and notably the free movement of workers and the free movement of services.

There is no EU legal instrument that applies exclusively or specifically to sport. However, sport-related activities, when they have an economic nature, are subject to the Treaty provisions and have been analysed in a number of judgments of the European Court of Justice. Over the years these rulings have helped to clarify in what way the provisions of the Treaty should be interpreted when sport-related questions are raised.

1 APPLICATION OF INTERNAL MARKET FREEDOMS TO SPORT

1.1 Application of the EC Treaty to sport

The Court had to establish first whether and to what extent sporting activities, and thus sporting regulations, are subject to the provisions of the Treaty. In the first ruling issued in this area (Walrave and Koch, 1974)[270], the Court made it clear that the practice of sport insofar as it constitutes an economic activity within the meaning of Article 2 of the Treaty is subject to Community law. Sport activities come within the scope respectively of Articles 39 to 42 (regarding the free movement of workers) and of Articles 49 to 55 (concerning the free movement of services) if they have the character of gainful employment or remunerated service.

In any event, regardless of the specific form of agreement that accounts for the provision of sports, the Court has clearly stated that these Treaty provisions, by giving effect to the general rule of Article 12 of the Treaty, prohibit any discrimination on the basis of nationality in the performance of sport activities to which they refer.

In developing this reasoning, the Court made it clear in the Donà ruling[271] that the non-discrimination principle must apply to professional or semi-professional players who are providing services for remuneration or have signed an employment contract, i.e. are engaged in an economic activity.

In the Deliège judgment[272] the Court stated that the mere fact that a sports association or federation unilaterally classifies its members as amateur athletes does not in itself mean that those members do not engage in economic activities within the meaning of Article 2 of the Treaty.

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270 Of 12 December 1974, 36/74

271 Of 14 July 1976, 13/76

272 Of 11 April 2000, joint cases C-51/96 and C-191/97. It is worth mentioning in this context that the Services Directive (2006/123/EC), which applies, inter alia, to sport activities, contains a recital dealing specifically with sport. Recital 35: "*Non-profit making amateur sporting activities are of considerable social importance. They often pursue wholly social or recreational objectives. Thus, they might not constitute economic activities within the meaning of Community law and should fall outside the scope of this Directive*". This is fully consistent with the abovementioned case law of the Court, whereby sport activities are covered by EC law insofar as they constitute economic activities.

More recently, in the Meca-Medina ruling[273], the Court took another important decision with regard to the relation between sport and Community law: even if a rule concerns questions purely of a sporting nature and, as such, has nothing to do with an economic activity *per se*, this does not mean that the activity governed by that rule or the body which lays it down are not governed by the Treaty. If a sporting activity falls within the scope of the Treaty, it can be subject to all obligations resulting from Treaty provisions and a rule affecting it should thus be analysed from the perspective of a restriction to fundamental freedoms (and to competition law – *see annex on competition issues*).

1.2 Application of the EC Treaty to sport federation rules

The Court of Justice has clarified that rules established by sporting associations and federations, both on national and on international level, are subject to Community law even though they are not rules adopted by public bodies.

As early as in 1974 (Walrave) the Court confirmed that as far as fundamental freedoms which constitute the objective of the Community are concerned, the prohibition of discrimination on the basis of nationality must not be restricted to acts of public authorities but applies also to any rules which will regulate, in a collective manner, gainful employment and the provision of services, also when such rules are created by associations or organisations which are not public authorities and do not fall under public law. The Court explained this interpretation by stating that if the application of the non-discrimination principle were to be restricted to rules of public nature, it could be compromised and undermined by decisions or rules adopted by private parties.

Along these line, the Court confirmed in the Lehtonen ruling[274] that the abolition between Member States of obstacles to the freedom of movement for persons and freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law, i.e. also sport organisations.

In the Bosman ruling of 1995[275] the Court stated that even though the principles of the freedom of association had been upheld by the Court several times and are protected by Community law, if rules are drawn up by sporting associations that result in a restriction of the freedom of movement of professional sportspeople, they cannot be seen as necessary to ensure the freedom of association, nor can they result from it. The Court also confirmed that the private rules of sporting associations may not restrict rights conferred on individuals by the Treaty, and neither the freedom of association nor the subsidiarity principle can be invoked to uphold such rules.

In addition, since working conditions are regulated in different ways in different Member States, the prohibition of discrimination must not be limited to acts subject to public law only. The Court also made it clear in the Bosman ruling that the prohibition of discrimination refers in the same way to relationships that govern an employment contract or a contract to provide services, as long as these relationships are entered into or take effect within the territory of the Community.

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273 Of 18 July 2006, C-519/04

274 Of 13 April 2000, C-176/96

275 Of 12 December 1995, C-415/93

By such rulings the Court has made it clear that sport clubs, associations or federations have to take account of the non-discrimination principle when approving their internal codes and regulations. This principle has been used by the Court in later rulings which concerned restrictions on the participation of foreign players in games, selection procedures in competitions, transfer rules for football players, or the compatibility of anti-doping rules with competition law.

In the Bosman ruling the Court stated that the principle of the freedom of establishment not only prohibits the host Member State from treating foreign nationals in a discriminatory way on its territory, but also effectively prevents a Member State from imposing any limitations hindering its own nationals or companies from establishing themselves in another Member State. This also refers to rules established by sporting associations, which must not restrict any of the fundamental freedoms.

Similarly, as regards the free movement of workers, transfer rules adopted by a professional football federation are liable to restrict the possibility of a player to find employment in another Member State, and as such constitute an obstacle to this freedom. Such rules could only be justified if their objective was compatible with the Treaty and justified by reasons of public interest, and if they would not go beyond what is necessary to achieve this objective.

1.3 Free movement of workers and free provision of services

In the area of sport, the Court has mainly focused on two fundamental freedoms of the Internal Market: freedom of movement of workers and freedom to provide services.

1.3.1 Freedom of movement of workers (Articles 39 to 42 EC)

The application of the Community rules on free movement of workers to sport is not dealt with in any specific Community legal provisions. However, there is important case law of the European Court of Justice in this field. According to this case law, sport is subject to Community law when it constitutes an economic activity, whether by professional or amateur athletes. If sport involves gainful employment it will come within the scope of Article 39 of the Treaty and the prohibition of discrimination on grounds of nationality contained in Articles 12 and 39 will apply. In addition Article 7(4) of Regulation 1612/68 on the freedom of movement for workers[276] will apply, so that collective agreements or any regulations concerning employment must be non-discriminatory. It must be stressed that the European Court of Justice has always given a broad interpretation of the concept of worker as covering a person who (i) undertakes genuine and effective work (ii) under the direction of someone else (iii) for which he is paid.

For the free movement of workers to be a reality, two main principles must be respected: there must be no discrimination on grounds of nationality, and there must be no obstacles to free movement. The general prohibition of discrimination on grounds of nationality is contained in Article 12 of the Treaty, and Article 39 deals with its application in the employment sphere.

As explained above, this prohibition of discrimination applies not only to measures of public authorities but also to rules of sporting associations which determine the conditions under which sportsmen and sportswomen can engage in gainful employment.

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[276] Regulation 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ No L 257, 19.10.1968)

In the Bosman case, the Court considered that Mr Bosman had accepted an offer of employment in another Member State, and that his personal situation was therefore covered by Article 39. Professional football was clearly an economic activity to which the Treaty could apply. The Court thus held that the transfer fee system between clubs aimed at compensating the old club for the training invested in a player who wanted to leave upon expiry of his contract was an obstacle incompatible with the free movement of workers. In addition, it held that Article 39 precluded rules which limited the number of professional players from other Member States who could play in football competitions. The only exception applies to matches which are purely of sporting rather than economic interest, such as competitions of national teams.

Some Association Agreements between the EU and third countries contain provisions on non-discrimination on grounds of nationality as regards working conditions and remuneration of workers who are legally employed in a Member State. Sportspersons from these countries, when engaged in gainful activity, can benefit from the Bosman case in that legally employed players would not be discriminated against when playing in a Member State. This means e.g. that players who are nationals of a country which has concluded such an association agreements with the Community cannot be excluded from the team sent out on the field on the basis of their nationality. This was the case in the Kolpak judgment[277], which concerned a Slovak handball player in Germany before Slovakia's accession to the EU. The Court of Justice held that a rule which limits the number of players who may participate in certain matches relates to working conditions and that a limited opportunity for Slovak players, in comparison with players who were nationals of EEA Member States, to take part in certain matches involved discrimination prohibited by the Association Agreement. The same approach was followed by the ECJ in the Simutenkov ruling[278], which concerned a Russian football player in Spain.

1.3.2 Freedom to provide services (Articles 49 to 55 EC)

According to the Court of Justice, the concepts of economic activity and the provision of services within the meaning of the Treaty define the field of application of this fundamental freedom guaranteed by the Treaty and, as such, may not be interpreted restrictively.

The abovementioned general principles fully apply to the provision of services. As a consequence, since under the first paragraph of Article 50 services are considered to be services within the meaning of the Treaty if they are normally provided for remuneration, Article 49 may apply to sporting activities and to the rules laid down by sports associations. The Court has added (Bosman) that the general abolition of restrictions on freedom to provide services should be observed regardless of the source of the restrictions (i.e. regardless of whether they are put forward by State authorities or not). Moreover, activities performed in the context of the provision of services must be subject to the same principle of non-discrimination as those performed in the framework of an employment contract.

In the Deliège judgment, the Court stated that sporting activities and, in particular, a high-ranking athlete's participation in an international competition are capable of involving the provision of a number of separate, but closely related, services which may fall within the scope of Article 49 of the Treaty, even if some of those services are not paid for by those for

277 Judgment of the Court of 8 May 2003 – Case C-438/00

278 Judgment of the Court of 12 April 2005 – Case C-265/03

whom they are performed. For example, the organiser of an international competition may offer athletes an opportunity to engage in their sporting activity in competition with others and, at the same time, the athletes, by participating in the competition, enable the organiser to put on a sports event which the public may attend, which television broadcasters may retransmit and which may be of interest to advertisers and sponsors. Moreover, the athletes provide their sponsors with publicity, the basis for which is the sporting activity itself.

In addition, it has to be recalled that the Court of Justice has clarified, from a general point of view, that the free provision of services under Article 49 benefits not only the providers of services but also the recipients of services. As a consequence, sport practitioners and users, such as spectators or participants to sport events, are also entitled to be protected by this fundamental freedom and therefore cannot be victim of discrimination based on nationality or on the place of residence (as regards for instance the participation fee for a sport event).

1.4 The specifity of sport

Without prejudice to the above, the Court has recognised certain specificities in the area of sport. The Court has also acknowledged the societal importance of sporting activities.

In general, the Court has held that sporting rules would not have to be subject to Community law only when they concerned issues of purely sporting interest. Such would be the case, for example, of nationality-based criteria for the composition of national teams. More specifically, the Treaty's provisions concerning freedom of movement of persons do not prevent the adoption of rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only, such as, for example, matches between national teams from different countries. However, such restrictions must remain limited to that particular objective and cannot be relied upon to exclude the whole of a sporting activity.

The same applies to restrictions on competitions resulting from anti-doping rules adopted by sporting organisations. As confirmed in the Meca-Medina case, the sporting character of a rule does not remove from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down. This important assertion confirmed that the Court will not apply blanket exemptions to sport-related activities when reviewing their relation to Community law.

The Court has also made it clear that each time when the sporting character of regulations is invoked, careful and strict analysis of the grounds for excluding a specific rule from the application of the Treaty must be undertaken. In the Bosman ruling, for instance, the Court declared that Article 39 (formerly 48) EC precludes imposing restrictions on the number of players of other nationalities taking part in football matches. Such restrictions would clearly restrict the possibility of players to participate in matches, and this would also be considered as a restriction of the players' freedom of employment. The Court disagreed that such restrictions could be justified on non-economic grounds, such as the link between sporting clubs and their country, the need to train a sufficient number of players of a given nationality, or to help maintain competition between clubs.

Similarly, when referring to the specificities of sport in the Bosman ruling, the Court confirmed that the free movement of workers, which is one of the fundamental freedoms of the Community, cannot be restricted by a Member State by using the powers resulting from

Article 151 (former Article 128), paragraph 1, EC which defines the Community's obligation to respect national and regional cultural diversity.

The Court confirmed that the rules established by sporting associations must be in accordance with the Treaty provisions, also when referring to the internal organisation of sporting competitions. It is important to note that the Court agreed that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions, if this corresponds with the specificity of the organisation of a sport. However, the Court also pointed out that in the case of sporting rules, measures taken by sports federations may not go beyond what is necessary for achieving the aim pursued.

In addition the Court stated that restrictions on the participation of professional players from other Member States in sporting competitions and the imposition of deadlines which exclude those players from such competitions and put them in a situation less favourable than that of players from outside the EU, can be considered as an obstacle to one of the fundamental freedoms. The Court reconfirmed its earlier ruling that participation in sporting events and competitions by professional players should be subject to those freedoms, as such participation is the essential purpose of the players' activity and any restrictions imposed on it should also be considered as restrictions on the players' employment prospects.

1.5 Sources of funding for sporting activities

There has been no judgment of the European Court of Justice so far which would explicitly refer to the question of funding of sporting activities as a general interest objective that would justify restrictions on the fundamental freedoms of the Internal Market. However, sport has been mentioned as one of many good causes which are financed with revenues from the organisation of gambling services (such as lotteries, betting services, etc.). In many Member States there are special rules regarding the provision of such services, including provisions that reserve such services to particular operators.

The Court has made it clear that even though the financing of good causes, such as social works, charitable works, sport or culture can be supported in a significant way by the profits obtained from lotteries or other forms of gambling activity, this does not undermine the economic nature of these services, and as such does not automatically exclude them from the application of Community law. Moreover, even if it is not irrelevant that lotteries and other types of gambling may contribute significantly to the financing of benevolent or public-interest activities, that motive cannot in itself be regarded as an objective justification for restrictions on the freedom to provide services. In fact, it can constitute only an incidental beneficial consequence and not the justification for the adoption or continuation of restrictive policies.

2 LIST OF JUDGMENTS DIRECTLY RELATING TO INTERNAL MARKET FREEDOMS IN THE AREA OF SPORT

Walrave and Koch, 12 December 1974, 36/74

This first ruling of the European Court of Justice which addressed sport established the basic principle that was to be repeated in all future rulings on sport. The ruling responded to a question raised by two Dutch nationals who participated in medium-distance cycling championships behind motorcycles as pacemakers, and who questioned the rule of the Union

Cycliste Internationale which restricted their right to participate in the competition on the basis of their nationality.

In this ruling the Court confirmed for the first time that the practice of sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

The Court also developed, for the first time in its case law, the general principle whereby the Treaty provisions apply not only to regulation issued by public authorities but also to any rules which regulate in a collective manner gainful employment or provision of services, regardless of whether the rules are developed by public or private entities. The Court also clarified the geographical application of the prohibition of discrimination, which is binding for all legal relationships that have been entered into or have taken effect within the territory of the Community. Finally, the Court agreed that questions of purely sporting interest may not be subject to the prohibition of discrimination.

Donà, 14 July 1976, 13/76

The ruling was requested with regard to a rule of an Italian football federation which required that only players affiliated to that federation could participate in matches as professional or semi-professional players, when this affiliation in practice was limited to persons of Italian nationality.

In its ruling, the Court repeated that any discrimination on the basis of nationality with regard to employment, remuneration and other conditions of work and employment as well as the freedom to provide services was prohibited. The Court thus restated that any national provisions which aim at collectively regulating gainful employment and services, and which impose nationality-based limitations, are incompatible with Community law. Thus the rules of the Italian Football Federation limiting participation in football matches to players with Italian citizenship were incompatible with the provisions of the Treaty.

However, the Court also recognised that such rules were acceptable if they excluded foreign players for reasons which were not of economic nature and which were of sporting interest only.

Bosman, 15 December 1995, C-415/93

The Court's ruling was to respond to a question from a Belgian Court examining the case of a Belgian football player whose transfer to a French club was not realised because his new and old clubs failed to reach an agreement regarding the transfer fee. The Belgian Football Federation refused to send the transfer certificate and the French club withdrew from the contract. Mr Bosman, the Belgian football player, also questioned the FIFA rule restricting the number of professional players who are nationals of other Member States and who may be fielded in national competitions.

The ruling confirmed that sport was subject to all relevant Treaty articles in so far as they refer to economic activities and that it was not necessary, for the purposes of the application of the Community provisions on freedom of movement for workers, for the employer to be an undertaking. All that was required was the existence of, or the intention to create, an employment relationship.

It also helped to clarify what are the limitations of decisions and regulations adopted by sporting organisations. The Court declared that those rules were subject to the Treaty, in so far as they do not have a specific sport-related objective only, and that the requirement for the transfer fee to be paid in case of recruitment of a player from another club following the expiry of his or her contract affected the player's opportunities for finding employment. Finally, the Court stated that the Treaty precluded the application of rules laid down by sporting associations under which, in matches in competitions which they organise, clubs may field only a limited number of professional players who are nationals of other Member States.

Lehtonen, 13 April 2000, C-176/96

The ruling in the Lehtonen case referred to the transfer rules of the Federation Royale Belge des Sociétés de Basket-ball ASBL (FRBSB), which imposed certain restrictions regarding players previously registered in a federation of another country. According to the FRBSB regulations, the deadline for transfers of players within Europe was 28 February, after which date only players from outside Europe could be transferred. FRBSB rules specified dates during which transfers were allowed, and any transfer outside those dates resulted in the transferred player not being allowed to take part in a game.

The case in question concerned a basketball player of Finnish nationality who was engaged by a club affiliated to FRBSB but who, according to the International Basketball Federation (FIBA), failed to meet the required deadline for transfers. As a result, the club decided not to field the player until the end of the season's games.

In the Lehtonen ruling the Court confirmed that a professional player who has signed a contract with his/her sporting club, under which he/she receives a fixed monthly remuneration and bonuses, should be considered as a worker. His or her work as a paid employee for the provision of services should be considered an economic activity and as such should be covered by the scope of the fundamental freedoms defined by the Treaty. With regard to the situation of Mr Lehtonen, the Court confirmed the characteristics that distinguish the employment relationship by reference to the rights and duties of both parties of this relationship, such as providing services for and under the direction of another person, for a certain period of time, in return for remuneration.

However, the Court considered that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions.

Deliège, 11 April 2000, joint cases C-51/96 and C-191/97

The Court ruled on the compatibility of a judo association's rules that restricted the number of athletes from national federations that could participate in tournaments with the Treaty's provisions, in particular the freedom to provide services.

The Court confirmed that sport is subject to Community law in so much as it constitutes an economic activity within the meaning of Article 2 EC. This also applies to the employment and/or services provided by semi-professional or professional sportspersons, provided they receive remuneration and their activity is genuine and effective, and cannot be regarded as purely marginal and ancillary. In this judgment, the Court identified a number of separate, but closely related, sporting activities which are liable to be covered by Article 49 EC even if some of these services are not paid for by those for whom they are performed. Amongst these activities are those involving different providers and recipients, such as: the organiser of an

international competition who may offer athletes an opportunity of engaging in their sporting activity in competition with others; the athletes who, on the one side by participating in the competition, enable the organiser to put on a sport event, and on the other side provide their sponsors with publicity the basis for which is the sporting activity itself; the public who may attend such an event; television broadcasters which may retransmit it; advertisers and sponsors which may be interested by it.

The Court also stated, however, that a federation's rules which impose certain restrictions on athletes such as obtaining authorisation to compete in high-level competitions do not constitute a restriction on the freedom to provide services if they derive from the inherent need of the organisation of such competitions. The Court thus once again recognised that only needs of a purely sporting interest may allow for the imposition of restrictions to fundamental freedoms.

Kolpak, 8 May 2003, C-438/00

Mr Kolpak, a Slovak national, entered in March 1997 into a fixed-term employment contract for the post of goalkeeper in the German handball team TSV Östringen eV Handball, a club which played in the German Second Division. Mr Kolpak received a monthly salary, was resident in Germany and held a valid residence permit.

The Deutsche Handball Bund (DHB), which organises league and cup matches at federal level, issued to him a player's licence marked with the letter A on the grounds of his Slovak nationality. Mr Kolpak, who had requested that he be issued with a player's licence which did not feature the specific reference to nationals of non-member countries, brought an action before a national court challenging the decision of the DHB. He argued that the Slovak Republic was one of the non-member countries nationals of which were entitled to participate without restriction in competitions under the same conditions as German and Community players by reason of the prohibition of discrimination resulting from the combined provisions of the EC Treaty and the Association Agreement with Slovakia.

The Court concluded that Article 38(1) of the Association Agreement with Slovakia must be construed as precluding the application to a professional sportsman of Slovak nationality, who was lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation in that State under which clubs were authorised to field, during league or cup matches, only a limited number of players from non-member countries that were not parties to the EEA Agreement.

Simutenkov, 12 April 2005, C-265/03

Mr Simutenkov was a Russian national who, at the time of the facts, was living in Spain, where he had a residence permit and a work permit. Employed as a professional football player under an employment contract entered into with Club Deportivo Tenerife, he held a federation licence as a non-Community player.

Mr Simutenkov submitted, through that club, an application to replace the federation’s licence which he held with a licence that was identical to that held by Community players. In support of that application, he relied on the Partnership and Cooperation Agreement with Russia.

Following its Kolpak ruling, the Court held that the article dealing with non-discrimination in conditions of employment of the Partnership and Cooperation Agreement was of direct effect

and was to be construed as precluding the application to a professional sportsman of Russian nationality, who was lawfully employed by a club established in a Member State, of a rule drawn up by a sports federation of that State which provided that clubs may field in competitions organised at national level only a limited number of players from countries which were not parties to the EEA Agreement.

Meca-Medina, 18 July 2006, C-519/04

See annex on competition issues.

ECJ rulings with regard to gambling and/or betting services

Schindler, of 24/3/1994, C-275/92; Läärä, of 21/9/1999, C-124/97; Zenatti, of 21/10/1999, C-67/98; Anomar, of 11/9/2003, C-6/01; Gambelli, of 6/11/2003, C-243/01; Lindman, of 13/11/2003, C-42/02; Placanica, Palazzese and Sorricchio, of 6/3/2007, joint cases C-338/04, C-359/04 and C-360/04. See also judgments: Comm. v Italy, of 26/4/1994, C-272/91; Familiapress, of 26/6/1997, C-368/95

The rulings in question concerned the restrictions on the free provision of gambling activities (such as lotteries, slot-machines management, betting services, etc.) and restrictions imposed by Member States on access to and provision of those services for reasons relating to the protection of consumers or the maintenance of order in society. Since in some Member States parts of the profits generated by lotteries may be allocated to public interest goals, including sport, questions were raised if the specificity of sporting needs may allow for restrictions on the free movement of gambling services in order not to decrease the level of these profits.

The Court has consistently held that gambling activities should be considered an economic activity. In Schindler, for example, the Court said that even if national laws provide that the profits made by a lottery may be used only for certain purposes, in particular in the public interest, or may even be required to be paid into the State budget, the rules on the allocation of profit do not alter the nature of the activity in question or deprive it of its economic character.

Furthermore, in the same ruling, the Court responded to the question whether national legislation, restricting access to and/or provision of services with regard to gambling, can be justified, inter alia, by the financing of public interest activities. The Court, after recalling the need to analyse the restrictions imposed by Member States on a case-by-case basis so as to assess the need for these restrictions and their proportionality, stated that even if it is not irrelevant that lotteries and other types of gambling may contribute significantly to the financing of benevolent or public-interest activities, that motive cannot in itself be regarded as an objective justification for restrictions on the freedom to provide services. Moreover, the restrictions cannot be justified by financial needs, which can constitute only an incidental beneficial consequence and not the real justification for the restrictive policy adopted.

ANNEX III : CONSULTATIONS WITH STAKEHOLDERS

1. INTRODUCTION

Stakeholder consultations have been an essential tool in the process leading to the adoption of the White Paper on Sport. In addition to the formal requirements to consult with relevant actors, the Commission has been able to profit from its large framework for consultation, communication and interaction with Member States' Governments, sport organisations, other representatives of civil society, and individual citizens in the field of sport.

The Commission has a tradition of dialogue with Member States' sport ministries and European sport organisations. This dialogue is structured and reciprocal, and input from stakeholders – public as well as private – has provided crucial input during the preparation of the White Paper.

Stakeholders have regularly called on the EU's institutions to take action on numerous sport-related issues and their expectations have often gone far beyond the limits of the institutions' competences as conferred by Community law.

In the subsequent sections the consultation efforts of the last two years are presented, structured by type of consultation. An on-line consultation was open for all interested organisations and individuals during an 8-week period in February-April 2007, the results of which are presented below in detail. The two big stakeholder conferences organised in 2005 and 2006 are also discussed in more detail as they were particularly representative of the European sport movement – at all levels and in all disciplines – and because their results, prepared by external experts, have been published and are accessible on-line. Other consultation measures are presented in a more synthetic form.

2. DIALOGUE WITH THE EUROPEAN SPORT MOVEMENT

The Commission has a long tradition of dialogue with the European sport movement, dating back to 1991 when the first European Sport Forum was organised in Brussels. The Forum met in different formats, usually in one of the Member States, until 2003. It included representatives of the sport movement – usually limited to European federations and European organisations –, representatives of Member States' Governments, and occasional observers. The Forum gathered up to 300 delegates. In 2005, following the results of the 2004 Intergovernmental Conference, it became apparent that the Commission would need to consult with its sport policy stakeholders in such a way as to be prepared for various scenarios, in terms of the status which sport could be expected to have at EU level in the future. The Commission informed its stakeholders that it would consult with them in order to identify concrete topics of direct practical relevance to stakeholders. This approach was well received by stakeholders and a consultation process was launched under the title: "The EU & Sport: matching expectations".

2.1 Consultation Conferences: "The EU & Sport: matching expectations"

The first consultation conference was organised on 14-15 June 2005.[279] Three workshops were organised, focussing on "The Social Function of Sport", "Volunteering in Sport" and "The Fight against Doping". In-depth discussions took place, introduced by recognised external experts (academics and stakeholders). Rapporteurs were also external and their reports were published on-line.

In relation to the social function, the Commission undertook to answer to calls to:

– "map participation in sport in the EU-25 including a focus on disadvantaged groups in order to find out which areas, which countries, which cross-border topics etc. need more attention" and

– "identify barriers limiting access to sport in order to maximise the inclusion of excluded groups."

Recognising the importance of voluntary work, the Commission promised to:

– "set up a European agenda on volunteering in sport including a dialogue with all interested parties" and to

– "provide for ways of cooperation at EU level to progress on the issue of volunteering in sport."

In relation to doping, the Commission undertook to:

– "make better use of already existing EU programmes and policies to increasingly raise awareness", and to

– "provide for better ways of cooperation at EU evel aimed at establishing best practices in the field of education and information for adolescents."[280]

The second consultation conference was placed under the title: "The Role of Sport in Europe" and took place in Brussels on 29-30 June 2006.[281] The conference followed the concept of the preceding one. Again, external speakers introduced the topics of the three workshops, and reports were prepared by external experts and published on-line. Discussions were frank and constructive. Each workshop dealt with one of the big themes of the White Paper – the societal function of sport, the economic impact of sport and the governance of sport.

The first workshop dealt with "The Societal Role of Sport".[282] Whereas previous policy documents (since the Nice Declaration of 2000) have usually referred to the social, educational, cultural and other non-sporting, non-economic functions of sport, the societal role was found to be an appropriate umbrella term to cover them all. The workshop provided a first opportunity to test this concept with stakeholders and it was well received. Numerous

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279 "The EU & Sport: matching expectations": Consultation Conference with the European Sport Movement. Workshop Reports: http://ec.europa.eu/sport/sport-and/equal-opp/docs/workshop_report_en.pdf

280 All quotes: Introductory Remarks, pp. 1-2

281 Programme: http://ec.europa.eu/sport/doc/programme_sport_06.pdf

282 Report from Workshop 1: The Societal Role of Sport. By Dr Christiane Richter, University of Duisburg-Essen (Germany): http://ec.europa.eu/sport/doc/societal_role_sport.pdf

calls on the Commission to take action were made, of which only a few can be mentioned here:

– "Produce a comprehensive definition of sport that demonstrates its multi-faceted nature and represents sport's current status, appreciation and value to society."

– "Recognise the educative role of sport by mainstreaming sport within the EU and in particular align sport more effectively to other policy sectors such as health (a necessary link as regards obesity), education and social, as well as to International Relations policies to further support reconciliation and development projects."

– "Promote the idea that sport organisations should take on new roles in relation to the societal function of sport, including its educational, intercultural and health-promoting functions."

The workshop on "The Economic Impact of Sport"[283] recorded substantial expectations with regard to the EU institutions' ability to make the potential of sport for wealth and job creation better known. It became clear that stakeholders wanted the Commission to facilitate this process through concrete actions. A short selection of expectations includes:

– "A Sport Satellite Account, as recently implemented in Austria and as applied already for the tourism sector at EU level, would be a useful method that could be further developed and implemented in other EU Member States. […] This initiative could result in financial investments for establishing appropriate tools designed to collect sport statistics."

– "Transparent guidelines for "measuring" the impact of sporting events so that sustainability of these events can be ensured in the long run."

The workshop on "The Organisation of Sport"[284] provided insights into stakeholders' expectations for a pro-active role to be played by the EU, as well as the need to respect the autonomy of sport. While a need was perceived for the EU to act as an "honest broker", there was also concern among some stakeholders about the exact scope of this role, about the implications of Community law and about the role of the "specificity of sport". Key recommendations were made for the preparation of the White Paper, including the following:

– "It is important for the White Paper to take into account the diversity of sport (amateur/professional, different models of sport)."

– "Some participants stressed the importance of mainstreaming sport and EU policies. It is also important to take into account not only the legal aspects of sport but also other various components (educational role, promotion of health…) through the use of non-legal instruments."

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283 Report from Workshop 2: The Economic Impact of Sport. By Mr Trudo Dejonghe, Lessius Hogeschool, Antwerp (Belgium): http://ec.europa.eu/sport/doc/ws_economic_impact.pdf

284 Report from Workshop 3: The Organisation of Sport in Europe. By Mr Mathieu Fonteneau, Comité National Olympique et Sportif Français (CNOSF), Brussels Bureau. http://ec.europa.eu/sport/doc/organisation_sport_europe.pdf

– "The importance of promoting new initiatives (e.g. gender mainstreaming) was also stressed."

– "In the field of governance, the importance of social dialogue should be stressed."

– "Some participants also asked for an emphasis to be put upon grass roots sport and volunteering."

While the big stakeholders conferences included both organised sport and non-traditional sport (lifestyle sport, socio-cultural sport organisations, etc.), the Commission also recognises the need to meet at the highest level with European sport federations. Such conferences took place in Brussels in the autumn of 2004, 2005 and 2006.

The conference with sport federations of 2006 under the title "Sport Governance in Europe" focussed exclusively on governance issues.[285] Chaired by the Commissioner responsible for sport, the meeting was conceived to provide direct input into the White Paper process. This provided an opportunity to discuss one of the core elements of the White Paper, and to identify the specific organisational features of sport. This high-level meeting included both federations with a high level of professionalisation in management structures, as well as other federations which, despite being often big in terms of membership figures, are less professionalized and also less commercialised. Ahead of the conference, the Commission met separately with representatives of some of the latter federations and one of them was invited to summarise the results of these talks to the plenary of the conference.

2.2 Bilateral consultations

Following an invitation extended by the Commission at the Consultation Conference "The EU & Sport: Matching Expectations" in 2006, a large number of organisations asked to meet with the Commission on issues related with the White Paper in 2006 and 2007. These consultations included meetings and contacts with the following organisations and bodies (in alphabetical order):

– Association of Commercial Television in Europe (ACT)

– Bridge Asset International

– Cadbury Schweppes

– Central Council of Physical Recreation (CCPR)

– Comité national olympique et sportif français (CNOSF)

– Conseil national des activités physiques et sportives (CNAPS)

– Council of Europe (CoE)

– Euroleague Basketball, S.L.

– Europäische Akademie des Sports, Velen, Germany

[285] Report:"Sport Governance in Europe : White Paper Consultation by Commissioner Figel' with European Sport Federations". http://ec.europa.eu/sport/doc/figel_federations_Report_en.pdf

– European Athlete as Student Network (EAS)
– European Athletic Association (EAA)
– European Broadcasting Union (EBU)
– European Elite Athletes Association (EEAA)
– European Judo Union (EJU)
– European Lotteries (EL)
– European Newspaper Publishers' Association (ENPA)
– European non-governmental sport organisations (ENGSO) + ENGSO Youth
– European Olympic Committees (EOC)
– European Paralympic Committees (EPC)
– European Professional Football Leagues (EPFL)
– European Rugby Union (FIRA-AER)
– European Snack Association (ESA)
– European Sponsoring Association (ESA)
– European Squash Federation (ESF)
– European Youth and Sport Forum (EYSF)
– Fédération Internationale des Associations de Footballeurs Professionnels (FIFPro)
– Federation of International Basketball Association – Europe (FIBA)
– Federation of International Football Associations (FIFA)
– Finnish Sports Federation
– Football against racism in Europe (FARE)
– G-14
– Golf Environment Europe
– International Badminton Federation (IBF)
– International Olympic Committee (IOC)
– International Rugby Board (IRB)
– International Sport and Culture Associaton (ISCA)

– Nordic Sports Confederations

– Play the Game

– Premier League

– Press: Euractiv, Reuters

– Special Olympics Europe/Eurasia

– Sport Sans Frontières

– Supporters Direct

– UK Sport

– UNESCO

– Union Cycliste Internationale (UCI)

– Union of European Basketball Leagues (ULEB)

– Union of European Football Associations (UEFA)

– United Nations Environment Programme

– Willibald Gebhardt Institut (WGI)

– Yorkshire and Humberside Region, UK

3. ON-LINE CONSULTATION

An internet-based consultation targeting all interested organisations and individuals was launched on 7 February 2007 and remained open until 3 April 2007. The website was based on the Interactive Policy-Making Tool and included a range of multiple-choice questions as well as boxes with space for respondents to insert their own ideas and comments.

1. Background information on respondents

777 replies were received to the online questionnaire. With the exception of Malta, every EU Member State is represented in the answers. France ranks first on the list with 18.9% of the replies, closely followed by Belgium with 17.5%. A large number of responses were also submitted from the United Kingdom, Germany and Spain. It should be kept in mind that many sport organisations have their seats in one of these European countries.

59.2% of the questionnaires were completed by a sport organisation, be it a sports club, a sport federation or other. 25.5% of the respondents claimed not to be a member of a sport organisation, nor of a governmental or non-governmental organisation, which means that the on-line consultation also reached a considerable number of respondents outside organised sport.

2. Do you think that sport activities have a fundamental role to play in contributing to changing attitudes?

There was consensus among respondents that sport activities have an important role to play in contributing to changing attitudes in society, in particular in the areas of health, tolerance and social inclusion. To increase the positive impact of sport in these areas, the level of participation in sport should be increased, particularly among young people. Most of the answers agreed on the need for more and better co-operation between educational institutions and sports organisations in order to optimise the use of infrastructure and know-how, and on the convenience for sport organisations to diversify their activities in order to meet new social needs. Additional solutions most frequently mentioned were: the promotion of co-operation between sport and public health organisations; the development of physical and health education at school; the development of programmes directed at less active and obese children and their parents; better use of sport as a tool for social inclusion at the local level; the development of programmes against racism and other forms of discrimination in the sport sector; the promotion of physical activity at work.

Many respondents suggested improved government support to sport and physical activity. Cross-sectoral initiatives could increase the attractiveness of sport and physical activity for young people and families.

Many respondents expressed the opinion that sport can be used to change attitudes and promote greater social tolerance and inclusion at European level. In this context, they called for an increase in Europe-wide initiatives and a stronger role of the European Commission as a coordinator.

3. Do you think the time for sport / physical activity should be increased in school?

A large majority of respondents (93.2%) found that sport / physical activity should be increased in school. Only 0.8% of the total number of respondents thought that no increase of sport or physical activity was needed since there were more important activities that should be reinforced.

4. Which are in your view the main values that can be taught through sport?

Among the list of values to be conveyed through sport, respondents selected the following five as the most important ones: respect for others, compliance with the rules, discipline, team play and fair play.

5. Should the EU measure the economic importance of sport in order to help raise the profile of sport in EU and national policies?

90.3% of the replies fully or partly agreed that the EU should help raise the profile of sport by addressing the economic importance of sport.

6. European grassroots sport organisations base a large part of their activities on voluntarily engaged people. Would you agree that the specific role and status of non-profit organisations and volunteers should be taken into account at EU level?

Most respondents confirmed the importance of voluntarily engaged people for European grassroots sport. Sport was frequently mentioned as the largest voluntary movement in Europe. Many respondents called attention to the fact that European sport is far broader than

just professional sport. The grassroots sport system is based on voluntary work and non-profit club activities. Sport at all levels is underpinned by non-commercial support and structures, without which sport could not survive. These structures also contribute to fostering citizenship in European societies.

Many respondents expressed a wish for recognition of the role and impact of non-profit organisations and volunteers in European society and for a political and social "revaluation" of these organisations. A wider study on the operation of voluntary organisations could be useful to policy-makers. Public consciousness of the importance of volunteer work should be strengthened.

Fiscal incentives were most frequently quoted as a way of encouraging volunteers and voluntary organisations. Volunteers were said to be discouraged from offering their services because of tax legislation and their social situation. A favourable tax treatment for NGOs or VAT exemptions on equipment and services for organisations were suggested in many replies.

Another way to generate more awareness of the valuable work of volunteers could be grants for communication as well as encouragement of staff through corporate entities. Many respondents observed that the development of appropriate support frameworks for non-profit organisations was important, for example to provide training on the economic aspects of sport and opportunities for the exchange of best practice.

Some respondents pointed to the challenge to ensure quality of sport services in the face of the increasing demands on volunteers. This situation also called for better training in face of complex legal or regulatory frameworks, both national and European.

Most respondents stressed that sport should remain within the autonomous sphere of governance of sport federations. Public institutions should create good basic conditions for sport organisations to function. 78.5% of respondents agreed that the role and status of non-profit organisations and volunteers should be taken into account at EU level. The EU was asked to better promote volunteers and their organisations in its policies as well as to keep in mind the possible extra administrative burden on volunteers when drafting legislation. Voluntary work in sport should be acknowledged by the EU and considered in its legislation.

Some respondents mentioned the need for reflection on a European status for non-profit organisations and volunteers. The need for a better recognition of the qualifications of volunteers was also mentioned by some respondents. Some suggested that the exchange of volunteers should be promoted at European level.

7. The overall economic impact of sport in quantitative terms is scarcely documented. Would you agree that the EU should address these shortcomings?

A large majority of respondents (83.3%) found that the EU should address methodological shortcomings to measure the overall economic impact of sport.

8. In EU Member States sport, grassroots sport in particular, is often largely financed by the State through income generated by State-run lotteries. Would you agree that a White Paper on sport should address the need for Member States to seek more stable ways of financing grassroots sport in the long run? Should there be a debate at European level?

88.7% of respondents thought that a White Paper on sport should address the need for Member States to seek more stable ways of financing grassroots sport in the long run. There was general agreement that grassroots sport has great social importance, high educational value, and also great importance for public health. State funding for sport contributes to the health of the population. To exchange best practices in this area was considered useful.

Some respondents stressed the right of each EU Member State to decide upon the details of its own national lottery law. In their opinion the current lottery-based funding for sport was functioning well and was indispensable for the continued financing of the activities of the sport sector. Future financing debates on sport, in particular grassroots sport, should be about securing, optimising and complementing current State funding. Many respondents noted that a liberalisation of the betting sector, as called for by commercial betting operators, could have a number of negative effects, amongst them a reduction in funding for good causes by State lotteries, including sport.

Several respondents noted that sport organisations should be entitled to obtain funding also from private sport betting operators. Some indicated that alternatives should be sought in the field of tax payments for all legally established sport betting companies and suggested a coordination role for the EU.

Many replies observed that financing through income generated by State-run or State-licensed lotteries was not a sufficiently stable source of income for sport. Support for the good values promoted by sport should not be left to the vagaries of lottery fundraising. Alternative funding sources should be found. The wish for a more stable system of financing of sport, grassroots sport in particular, was expressed in most replies. A more stable system of financing could allow for a more structured network of sport organisations providing more sustainable sport programmes.

Numerous replies observed that politicians should provide more financial support for sport as this would lead to long-term healthcare savings. State funding for sport should therefore be given a share of the health and education budgets of Member States. A fair percentage of revenues generated by State-owned monopolies or private betting operators should be invested in social and educational projects, such as grassroots sport. Sport should thus be funded from public budgets, based on taxation, to a greater extent.

With regard to TV rights of professional sports, some respondents mentioned the importance of ensuring solidarity payments to the grassroots level. Many respondents called attention to the financing of so-called "minor" sports with limited access to TV-coverage.

Several respondents noted that an EU-wide approach to sport funding would be difficult because of different ways of financing sport in different Member States. Nevertheless, the European Commission should encourage Member States to include sport within their budget allocations. It could also encourage private sponsors to increasingly fund sport at the grassroots level. Researching and promoting sustainable funding opportunities for sport could be a task for the European Commission.

9. Sport has an important employment dimension. Professions in sport have to adapt continuously to the developments and challenges imposed by the job market. Do you think that the EU should address the specificities of sport professions in the field of education to ensure a better recognition of sport-related qualifications at EU level?

There was consensus that social changes in European society have been influencing sport and occupations around sport. Sport-related professions have to adapt continuously to these developments.

87.6% of respondents expressed the view that the EU should address the specificities of sport professions in the field of education to ensure a better recognition of sports-related qualifications at EU level.

Respondents frequently pointed out the importance of better cross-border recognition of sport-related qualifications and sport-related practical experience. Recognition of sport-related qualifications at EU level would allow for greater mobility of sport-related staff, both geographically and within the sports sector, and therefore an EU-wide transfer system for sport-related vocational education and training would be welcome. A need to create the profession of sports coach at EU level was stressed in several replies.

The need to ensure the quality of vocational education and training was also stressed, particularly concerning sports involving a degree of risk.

Regarding "quality assurance" on coaching and sports management (leadership of sport clubs), reference was made to the need for all training programmes for future coaches and leaders to be founded on sound academic evidence. Practice based on a business-as-usual attitude without scientific basis would be detrimental to sport.

10. The European Council in its Nice Declaration of 2000 calls on EU bodies to give special consideration to the social, education and cultural functions inherent to sport. It points out that certain special characteristics of sport, such as internal cohesion and solidarity, fair competition, and the protection of the moral and material interests of sportsmen and women, particularly the younger generation, should be taken into account in current policies pursued by the Community institutions. We would like to have your views on the way the Commission should take account of the specific features of sport in current and future policies.

A considerable number of respondents observed that more research was necessary to understand the impact of sport, especially from a social perspective, and a European observatory was suggested to this end. Values that can be reached or strengthened through sport should be listed and best practices should be identified and communicated.

For many respondents the protection of the autonomy and specificity of sport was essential. The autonomy of sport included the right to set its own rules and regulations and to govern and operate in the best interest of sport. The uncertainty of results should be guaranteed.

Most respondents agreed that the EU should take account of the specific features of sport. In particular, the following points were mentioned:

– The EU should create Europe-wide equal conditions for professional sports, clear competition rules for fair play, as well as regulations for the security of players and against hooliganism.

– The gender issue and intercultural dialogue between players from different countries should be given more attention.

– Local sports and voluntary engagement should be encouraged by the EU.

– The educational aspects of sport at school should be stressed and grassroots infrastructure should be extended.

– Sport should not only be considered from the point of view of professional and commercial sport.

– Policies should seek to promote participation and ensure the highest standards of facilities, coaching and development at grassroots level.

– Sport should be used as a tool for fostering the healthy development of children and young people.

– Sport has many potential benefits for efforts to promote development and peace.

– Solidarity must be ensured between the different components of sport.

– European identity and citizenship could be fostered through sport.

– Sport for people with disabilities deserves a special place.

– A more uniform EU approach to doping issues is necessary.

The Nice Declaration was quoted frequently as a basis for decisions in European sport. Many respondents expressed the wish that the status of non-profit associations should be taken into account in EU legislation, policies and programmes. Some respondents called for the role of sport to be mentioned in the Treaties, in order to achieve greater legal certainty and more intensive co-operation between sport stakeholders and the EU and national authorities. Several respondents expressed the view that sport should be included in different funding programmes. It was suggested to create a Public Health Programme for Sport and Physical Activity as an independent EU programme. The idea of a "social agenda for sport" was proposed too.

Several respondents stressed the need to promote inclusiveness and the fight against discrimination on the basis of origin, gender, age, race, physical condition and disability. Several called for an EU specific approach and support for sport and disability outside the programmes addressed to disabled persons.

Replies also referred to the need of sport organisations to accept that "not all young people are born athletes" yet they still should have access to sporting activities.

11. There are many common features in the ways in which sport is practised and organised in the Union, in spite of certain differences between the Member States, and it is therefore possible to talk of a European approach to sport based on common concepts and principles. We would like to have your views on elements which characterise the European approach to sport in comparison with other continents.

Possible replies to the statements were: "This is an essential feature of the European approach to sport"; "This is a characteristic of the European approach to sport but it is true only for some sports"; "This is a characteristic of the European approach to sport but it is true for sport regardless of the continent"; "This is not an essential feature of the European approach to sport."

Statement: In the European Union, sport organisations manage both amateur and professional sport.

37.3% of respondents agreed that this was a characteristic of the European approach to sport but only for some sports. 32.4% saw it as an essential feature of the European approach.

Statement: There is an important involvement of the public sector in the financing of sport in the European Union.

This statement was considered an essential feature of the European approach by 43.6%, although for 29.5% it was only true for some sports.

Statement: Solidarity links exist between elite and grassroots sport in Europe (elite sport finances grassroots sport).

33.1% considered this solidarity as characteristic of the European approach though only for some sports. 32.6% answered that they did not see this as an essential feature of sport in Europe.

Statement: In the European Union, sport structures are based on voluntary activity.

42.1% saw this as an essential feature of the European approach to sport. 25.4% agreed with the statement but only for some sports.

Statement: In the European Union, sport organisations are autonomous in running sport activities, sometimes in partnership with public authorities.

43.6% of respondents considered this autonomy as essential for the European approach to sport. 27.6% stated that this was an essential feature of European sport but was only true for some sports.

Statement: European sport is characterised by a system of open competitions based on the principle of promotion/relegation.

37.5% saw the promotion/relegation system as a typical European approach to sport, whereas 28.6% expressed the view that this was only true for certain sports.

Statement: European sport is organised in a pyramidal structure with a central role for sports federations.

51.7% agreed that this was an essential feature of the European approach to sport. 19.7% considered the pyramidal structure with a central role for sports federations as typically European though not for all sports.

12. Would you agree that there is a European approach to sport clearly differentiated from other continents?

41.7% of respondents agreed that there was a European approach to sport clearly differentiated from other continents. The pyramid structure of sport was said to be unique to Europe. Respondents often compared the European approach to sport with the American approach. The promotion of the educational and social role of sport was also mentioned as part of a specific European approach to sport.

Many respondents pointed out that sport in Europe had a strong historical basis rooted in democracy and that clubs and associations were embedded in their cultures and regions of origin. They noted that between EU Member States there are as many similarities as there are differences regarding issues such as professional league structures, sport-related values and funding mechanisms. An advantage of the pyramid structure of sport in Europe is the facilitation of co-operation between elite and grassroots sport and the encouragement of mass participation. Some respondents observed that there is too strong a focus on elite sport, to the detriment of mass sports.

In view of the large historical and cultural differences between EU Member States and the resulting organisation of sport, many respondents demanded that the subsidiarity principle be respected in decisions concerning sport and sport organisations. In particular, pan-European rules and regulations should be adapted to the needs of individual Member States.

Some respondents pointed out that their sport was practiced on the basis of common international rules and in close cooperation with non-European sport governing bodies, without any European specificity whatsoever.

13. Do you think that cooperation between sport organisations, Member States and EU institutions is desirable?

The autonomy of sport is broadly recognised. However, 86.7% of respondents were in favour of cooperation between sport organisations, Member States and EU institutions in order to resolve problems linked to sport. Doping, violence, corruption, racism and over-commercialisation were considered the most important areas.

14. Would you say that the role of the EU in the field of sport is:

90.1% of respondents found that the EU's role in the field of sport was "not sufficiently active" (68.5%) or "insignificant" (21.6%).

15. Statements on the European Union and sport:

An impressive degree of consensus could be found in the following areas:

– 96.1% found that sport was an appropriate tool to promote active lifestyles;

– 94.5% thought that the EU should promote the ethical and social values of sport;

– 92% thought that sport could contribute to the education of people by promoting intercultural dialogue;

– 91.6% wished to see the EU to become more active in the promotion of education through sport;

– 91.2% agreed that the EU should contribute to Member State efforts to increase the level of participation in sport;

– 89.3% considered sport as an appropriate tool to promote social integration of people with disabilities and 88.7% to fight against discrimination;

– 90.7% found that the EU should financially support activities that use sport as a means to promote healthier lifestyles;

– 88.2% found that social integration should be financially promoted;

– 86.9% thought that the EU should participate in the fight against doping.

A majority of respondents also agreed with the following statements:

– 72.3% of respondents expressed the view that the EU should eliminate obstacles to the practice of sport for EU citizens who reside in another Member State than their own;

– 67.7% agreed that the EU should explore the need for action as regards the profession of agents in the field of sport;

– 62.7% of respondents found that the EU should have the capacity to intervene more in European sports issues.

16. Priorities for the European Union in the field of sport:

Among the topics that should be addressed at EU level, in the respondents' view, the following areas should have priority (combined figures for "top priority" and "high priority" for the EU):

– Promotion of sport as a tool to achieve more active lifestyles and to fight against sedentary lifestyles and obesity (84.1%);

– Promotion of education through sport (83.5%);

– Promotion of the ethical and social values of sport (81.9%);

– Promotion of "sport for all" regardless of age, gender, ethnic background, etc. (80.6%);

– Opening of EU programmes to finance activities that use sport as a means to promote other goals (80.2%);

– Fight against doping (77.9%);

– Promotion of the level of participation in sport (75.9%);

– Promotion of stronger cooperation between educational institutions and sport organisations (72.9%);

– Use of sport activities to fight against discrimination (71.4%);

– Promotion of volunteering activities in sport (66%);

– Cooperation with national sport organisations and national governing bodies in order to fight against corruption (65%);

– Promotion of the contribution of sport to intercultural dialogue (60.7%);

– Promotion of the European dimension of sport (55%);

– Collect and analyse statistical data on the impact of sport in economic and social terms (54.8%);

– Promotion of the equity and balance of sport competitions (54%).

17. Any other comments, concerns or suggestions you may have on the role you think the EU should play (or not) in the field of sport.

Sport was considered by several respondents as an activity which unites. Thus, it was often referred to as an area particularly relevant within EU policies. Many respondents pointed out that the EU should pay special attention to the relationship between the public sector (governments) and NGOs. Consultation mechanisms should be developed in respect of the sport sector's own structures, with an equal representation of governmental and non-governmental actors.

Many respondents mentioned that the EU and sport share a number of common concerns, such as the exploitation ("trafficking") of young players, the activities of players' agents, corruption and money laundering, violence at sporting events, racism and other discrimination, and doping. The importance of the Green Paper on Nutrition and Physical Activity was mentioned, as well as the need to develop a Public Health Programme for sport to address, inter alia, the challenge of obesity.

Most respondents called for closer co-operation between Member States, sport organisations, social partners and the EU. The EU should cooperate with UEFA and FIFA to improve security at football events and to strengthen the role of football in support of intercultural dialogue and fair play. The EU should find a way to encourage partnerships between media and sport organisations in order to communicate the many different facets and values of sport (social, cultural, educational) to the widest possible public. To be an effective tool for regional and international development, sport should be mainstreamed into EU programmes and policies as a low-cost high-impact tool to attain development aims, in particular the UN Millennium Development Goals. Intensified cooperation in the bidding process for major sporting events was also considered useful.

Many respondents called for an EU financial tool to promote grassroots sport, including the training and exchange of volunteers in sport. Some called for a better knowledge of sport financing so as to explore more stable financing sources for grassroots sport.

Several respondents considered that education through sport should be a priority for the EU. Replies often stressed the need to ensure more regular sport at schools.

The need for legal clarity was mentioned in many replies, as well as the need to address the economic impact of sport.

The need to ensure the free movement of active sportsmen and sportswomen as well as people teaching sport was of concern to many respondents.

In numerous answers the Commission was encouraged to continue the current consultation process.

4. CONSULTATIONS WITH EU MEMBER STATES

EU-level discussions in the field of sport take place in an informal setting. To better focus the debates and to allow for continuity and progress, EU Member States, upon a proposal by the Commission in 2004, adopted a Rolling Agenda for sport. This Rolling Agenda contains the priority items Member States wish to see addressed at EU level.

4.1 EU Sport Ministers and Sport Directors meetings

Every Presidency organises a meeting of Member State Sport Directors (senior civil servants with direct access to their Ministers), and most Presidencies have until now organised an informal meeting of Member State Ministers in charge of sport. During the last two years, informal ministerial meetings were organised by the Presidencies of Luxembourg (Luxembourg, April 2005), the United Kingdom (Liverpool, September 2005) and Germany (Stuttgart, March 2007).

A Ministerial Conference was organised jointly by the Commission and the Finnish Presidency under the title “The EU & Sport: Matching Expectations” in Brussels on 27-28 November 2006. Joint conclusions were published.[286] All debates were transmitted live on screens in an adjacent room. Attendance at this live-screening was open to all interested parties.

The Conference confirmed Member States' unanimous support for a White Paper on the role of sport in Europe as a response to the wish of Sport Ministers to give sport a higher profile in European and national policy making. It mirrored Member States' high expectations for this policy initiative and their wish to remain closely involved in the White Paper process. Ministers agreed that the White Paper should aim at ensuring that European policies increasingly take into account the added value of sport and its potential for achieving the EU's strategic objectives in the social and economic fields, at further implementing the "specificity of sport" in line with the Council's Nice Declaration and at facilitating relations between the EU and the sport sector, including by providing guidance and clarity for sport stakeholders. Ministers also discussed the three priority topics of the Finnish Presidency, namely sport and health, the role and status of non-profit sport organisations and the fight against doping. The outcome of these debates provided concrete input for the White Paper and gave orientation to the Commission ahead of the drafting process.

4.2 Expert meetings (2005, 2006)

In 2005 and 2006 a range of expert meetings with representatives of Member State Governments were organised, most of which have been documented through internet publications. In some of these meetings experts from the sport movement and from the academic world were also invited. These meetings have focused on the fight against doping, equal opportunities, the free movement of sportspeople and volunteering in sport. Some meetings were based on questionnaires prepared by the Commission, thus allowing for a comparison between realities in different EU Member States.

[286] Conclusions: http://ec.europa.eu/sport/doc/ministerial_conclusions_en.pdf

4.3 EU Working Groups "Sport and Health", "Sport and Economics", "Non-profit sport organisations" (2005, 2006, 2007)

Following decisions by EU Member States under the British, Austrian and Finnish Presidencies to work together more closely on certain specific issues of the Rolling Agenda for sport of direct relevance to them, EU working groups, chaired by the Commission, have been set up on the issues of "Sport and Health", "Sport and Economics" and "Non-profit sport organisations". Similarly, EU Sport Ministers decided in Stuttgart (March 2007) to set up a Network of National Anti-Doping Agencies. The form of cooperation practised in these Working Groups is not founded on Community law and the output is not binding. Participation is open, voluntary and self-financed. The system has a variable geometry, since Member States may choose in which Working Groups they participate. The practice of these Working Groups is supported by a strong consensus among all Member States, including those which are not participating. It testifies to the specific nature of sport as a policy field at EU level.

The Working Group “Sport & Health” was created to follow up on a study financed by the Commission entitled “Young People’s Lifestyle and Sedenariness” (Universities of Paderborn and Duisburg-Essen). It was set up by decision of Member State Sport Ministers in Liverpool in September 2005 with a remit to exchange information and good practice, and on this basis develop new models. Ministers later extended this mandate to also include the preparation of non-binding physical activity guidelines. Detailed reports from all meetings of the Working Group have been published on-line.[287]

The Working Group “Sport & Economics” was set up by a decision of Member State Sport Directors (Vienna, March 2006) with a mandate to look at available data around the wealth and job creating role of the sport sector, and to make proposals for future data collection. The group has three main longer-term objectives: to measure the sport sector as a percentage of GDP and a percentage of employment in the Member States as well as at EU level; to measure the dynamics of the sport sector over time; and to have reliable data as a basis for future decision-making with a bearing on the sport sector. The first two meetings have already allowed for progress in agreeing on a European broader statistical definition of sport based on the NACE nomenclature.

The Working Group “Sport & Non-Profit Organisations” was set up as a follow-up of an expert meeting on “volunteering in sport” and, being one of the priority topics of the Finnish Presidency, was officially established by EU Sport Ministers at their conference in November 2006. The activities of this Group reflect concerns as to how the interests of sport organisations are affected by Community law, including implications for the role of volunteers. The purpose of the Working Group is to review the status of non-profit sport organisations, their activities and the financing of grassroots sport in relation to Community law. The kick-off meeting held in February 2007 allowed for a clarification of concepts and the national situation with regard to the non-profit sector. The meeting confirmed that the sector faces challenges that also affect the field of sport. It also confirmed the common wish

[287] 19/10/2005: 1st meeting of the Working Group Sport and Health. Adoption of the revised Terms of Reference (based on the draft Terms of Reference adopted by Sport Ministers in Liverpool, 20 September 2005). http://ec.europa.eu/sport/doc/wg_sporthealthoct05.pdf; 23/02/2006: 2nd meeting of the Working Group Sport and Health, Brussels. http://ec.europa.eu/sport/doc/wg_sport_healt_230206.pdf; 11/09/2006 : 3rd meeting of the Working Group Sport and Health, Brussels. http://ec.europa.eu/sport/doc/report_sport_healt_en.pdf

by participating Member States to be able to continue to promote and maintain a privileged treatment of the grassroots sport sector.

4.4 Member State Working Group "White Paper" (2007)

As a follow up to the decision by EU Sport Ministers at their conference in November 2006, an ad-hoc Working Group "White Paper", chaired by the German Presidency, met on 7 March 2007 in Brussels. 16 EU Member States participated in order to discuss concrete, practical topics of interest to them, thus providing informal input and concrete ideas for the White Paper. The meeting illustrated that Member States were not looking for an EU "doctrine" or "philosophy" on sport, but that they were interested in concrete actions related to specific points of relevance to them. Topics which the represented Member States wished to see addressed in a White Paper included a focus on the health-enhancing role of sport, the need to tackle criminal activities linked to sport, the fight against doping, volunteering in sport, enhancement of the integration role of sport, the creation of a European satellite account for sport, the use of sport for development purposes, the need to discuss the funding of sport, environmental aspects, players' agents, protection of minors, intellectual property rights protection, training of sportspeople, and ideas to control costs by way of self-regulatory measures.

5. RECENT STUDIES, SURVEYS, REPORTS

5.1 Studies on sport and education (2004), training centres (2007)

Independent studies in the field of the fight against doping have been carried out in the past, as have evaluations of co-financed anti-doping projects and of the European Year of Education through Sport (EYES 2004). However, four recent studies have played a more direct and targeted role in the run-up to the White Paper. Compared with classical consultancy studies, they have focussed more strongly on stakeholders' opinions and expectations.

In an attempt to know more about four key topics, the Commission financed four studies in 2004 (published in January 2005) focussing on:

– The issue of lifestyle change in relation to childhood and youth obesity: "Study on young people's lifestyles and sedentariness" (Universities of Paderborn & Duisburg-Essen).[288] This study led to the creation of the Working Group "Sport & Health" (see above) and inspired a number of Commission initiatives in the field of the fight against obesity, as seen from a sport perspective.

– The job creation potential of the sport sector: "Améliorer l'emploi dans le domaine du sport en Europe par la formation professionnelle" (EZUS-Vocasport).[289] This study formed the basis for the creation of the Working Group "Sport & Economics" (see above) and led to an EQF Test Project entitled: "EQF Sports". This project,

[288] Universities of Paderborn & Duisburg-Essen: Study on young people's lifestyles and sedentariness and the role of sport in the context of education and as a means of restoring the balance. http://ec.europa.eu/sport/documents/lotpaderborn.pdfhttp://ec.europa.eu/sport/documents/lotpaderborn.pdf

[289] Améliorer l'emploi dans le domaine du sport en Europe par la formation professionnelle. http://ec.europa.eu/sport/documents/lotvocasport.pdf

which received Community funding in early 2007, will define a European Qualifications Framework (EQF) for the sport sector.

– The inter-cultural dialogue function of sport[290] and the problem of rapid career shifts (the need for dual careers) in young top-level athletes[291] were subjects treated by two further studies.

The specifications for the studies provided for a structured review of already published academic knowledge in the given area (rather than the generation of new primary data), as well as a mid-way conference where the draft report was discussed. The Commission insisted that stakeholders' views and experience must be reflected in the final reports, and in the conclusions and recommendations thus presented.

As a follow-up measure to the EZUS-Vocasport study, a study on training centres for future professional athletes in Member States was launched in January 2007.[292]

5.2 Eurobarometer surveys (2003, 2004)

In connection with the European Commission's Year of Education through Sport (EYES 2004) two Eurobarometer surveys were conducted – one before the beginning of the Year[293], the other towards its end.[294]

5.3 EP reports (2004, 2007)

Since the mid-1990s, MEPs have regularly taken a strong interest in sport and urged the Commission to take action in this field. The support of the Culture Committee of the European Parliament was crucial in obtaining funding for anti-doping projects (2000-2002) and in establishing the European Year of Education through Sport (EYES 2004). A variety of EP documents testify to the Committee's expectations. Most recently, on 29 March 2007, the EP adopted a resolution on "the future of professional football in Europe".[295] The Parliament's primary objectives were to tackle the legal uncertainty surrounding football, to provide an answer to negative developments (money laundering, fraud, gambling, etc.) and to stimulate a competitive balance. Other adopted texts and publications from the EP have provided valuable input for the drafting of the White Paper, in particular:

– European Parliament resolution on "Promoting healthy diets and physical activity: a European dimension for the prevention of overweight, obesity and chronic diseases" (2006/2231(INI), 1 February 2007;[296]

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290 PMP Consultancy & Loughborough University: "Sport and Multiculturalism". http://ec.europa.eu/sport/documents/lot3.pdf

291 PMP Consultancy & Loughborough University : "Education of Young Sportpersons". http://ec.europa.eu/sport/documents/lot1.pdfhttp://ec.europa.eu/sport/documents/lot1.pdf

292 06/07/2006: Call for tender EAC 14/06. Study on training sportsmen/women in Europe http://ec.europa.eu/sport/calls/1406/index_en.html

293 http://ec.europa.eu/public_opinion/archives/ebs/ebs_197_fr_summ.pdf

294 http://ec.europa.eu/public_opinion/archives/ebs/ebs_213_summ_en.pdf

295 European Parliament resolution of 29 March 2007 on the future of professional football in Europe (2006/2130(INI)); P6_TA-PROV(2007)0100

296 P6_TA-PROV(2007)0019

– European Parliament resolution on "forced prostitution in the context of world sports events", 15 March 2006;[297]

– European Parliament resolution on "development and sport", 1 December 2005;[298]

– European Parliament resolution on "The Olympic Truce – Turin Winter Olympics 2006", 1 December 2005;[299]

– European Parliament resolution on "combating doping in sport", 14 April 2005;[300]

– European Parliament resolution on "respect for core labour standards in the production of sports goods for the Olympic Games", 22 April 2004;[301]

– European Parliament resolution on "women and sport" (2002/2280(INI), 5 June 2003;[302]

– Studies:

  – "Current situation and prospects for physical education in the European Union", study commissioned by the European Parliament. Author: Ken Hardman, University of Worcester, Brussels 2007;

  – "Professional Sport in the Internal Market" (Asser Study), August 2005.

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298 P6_TA(2005)0464
299 P6_TA(2005)0463
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301 P5_TA(2004)0380
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IMPACT ASSESSMENT

Accompanying the

WHITE PAPER ON SPORT

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1. PROCEDURAL ISSUES

1.1. Leading service

Directorate-General for Education and Culture, Sport Unit.

1.2. Reference in Commission Catalogue for 2007

The White Paper on Sport is not listed in the Commission Legislative and Work Programme for 2007, but appears as an item in the Catalogue of legislative and non-legislative planning.

1.3. Timetable

The following timetable indicates the roadmap for the proposed EU White Paper on Sport, from the first reflection process to the presentation to the public:

Action	Target date
Consultations with the Sport Movement – "The EU & Sport: Matching Expectations": conferences, high-level meetings, bilateral consultations	May 2005 – March 2007
Reflection at services level	January – March 2006
Sport Directors meeting – Vienna	29-30 April 2006
Inter-service work (regular meetings)	16 May 2006 – April 2007
Sport Directors meeting – Naantali	5-6 October 2006
Discussion in the College	22 November 2006
Ministerial Conference – Brussels	28 November 2006
Sport Directors meeting – Bonn	1-2 February 2007
On-line consultation	6 February – 4 April 2007
Meeting of Member State Working Group on the White Paper	7 March 2007
Sport Ministers meeting – Stuttgart	12-13 March 2007
Drafting of White Paper (political document, staff working document, annexes, Impact Assessment)	Late January – April 2007
Steering Group meeting on Impact Assessment	27 March 2007
Impact Assessment Board meeting	2 May 2007
Inter-Service-Consultation	10 May 2007 - 4 June 2007
White Paper adoption by the Commission	10 July 2007
Sport Directors meeting – Portugal	12-14 July 2007
Conference with the sport movement	8-9 October 2007
Sport Ministers meeting – Lisbon	25 October 2007

1.4. The Impact Assessment Board

The draft of this Impact Assessment was submitted to the Impact Assessment Board on 4 April 2007 and was discussed with DG EAC at a Board meeting on 2 May. In its opinion, the

Board advised DG EAC to review and clarify certain sections of the Impact Assessment report in particular in order to take account of the need to prioritise problems for the purpose of this document and to identify the EU value added for the proposals made in the White Paper for solving the problems, including a better illustration of new measures proposed in this policy initiative. In addition, the Board recommended a clarification of the implications of the proposals for the administrative burden. In response to this process, DG EAC has revised this Impact Assessment report in an effort to reflect the Board's comments.

1.5. Legal context of the proposed initiative

The EU does not have a specific legal competence for sport enshrined in the Treaty. However, sport is an area to which many of the EC Treaty provisions directly or indirectly apply. The sport sector is therefore not excluded from the application of EU law. Insofar as sport is an economic activity, it is subject to the full application of the EU Internal Market and competition provisions. In addition, Treaty provisions, such as those relating to EU citizenship, equal treatment or non-discrimination, directly apply to sport. Moreover, sport increasingly interacts with other European policies and their underlying legal framework in a number of areas, e.g. health, education, employment, economics, environment.

Judgements by the European Courts and several Commission decisions have recognised some of the sport sector’s specificities on a case-by-case basis and provided thereby some guidance on the application of EU law to sport.

The European Council’s Nice Declaration of 2000, a non-legally binding instrument, is the current existing text that provides orientation for addressing the specific characteristics of sport at EU level.

The Constitutional Treaty, signed but not ratified by all EU Member States, includes sport among the “areas of supporting, coordinating or complementary action” (article I-17), focussing on the need to protect and promote the educational and social role of sport (article III-282). Although it is not in force and therefore without legal value, it can be considered as a consensus among stakeholders to see certain sport issues addressed at EU level.

1.6. Inter-service work

In light of the sport sector's multi-faceted dimensions, any Community initiative on sport requires a strong collegial approach. The Directorate General for Education and Culture has therefore ensured close cooperation with all concerned Commission services at different levels and at all stages of the preparatory process for the proposed initiative. The involvement of 17 Directorates-General in this inter-service work confirms the horizontal nature of sport.

This exchange of views before the official Inter-Service Consultation has allowed for progress in many areas and alignment of positions on more sensitive topics. Matters falling in the competence areas of the Directorates-General for Competition, for the Internal Market and for Employment and Social Affairs have been co-drafted with these services. An inter-service Steering Group has been set up for this Impact Assessment and met on 27 March 2007. The newly established Commission Inter-Service Group "Sport" (which had three informal meetings in May 2006, July 2006 and January 2007 and one formal meeting on 7 May 2007) will accompany the implementation of the initiative once it has been adopted.

2. INTRODUCTION TO THE IMPACT ASSESSMENT REPORT

2.1. Purpose

This impact assessment report aims at outlining the main considerations for a Commission initiative in the field of sport (problems, objectives, possible social, economic and environmental impacts) and, in line with subsidiarity and proportionality requirements, at explaining the options for an appropriate instrument to address the societal role of sport in the EU, its economic dimension and its specific organisational features. The report points to expectations from stakeholders and the need for a political initiative on the one hand, and the expected contribution to the EU general policy objectives and the positive impact on sport on the other.

2.2. Structure

This impact assessment report firstly analyses why a policy action in the field of sport is considered necessary and looks at the underlying motives for an initiative at EU level.

In a second step, the report addresses what the initiative is aiming to achieve in terms of contribution to overall EU policy objectives and in regard to reflecting the specific characteristics of sport in societal, economic and organisational terms within different EU policies, programmes and actions. Furthermore, the report explains the need for improved structures for cooperation and dialogue on sport at EU level.

The fifth and sixth chapters will discuss and compare the existing policy options for the initiative, including the 'no policy change' scenario, and look into possible impacts for addressing the main problems identified.

The question whether the Union has the competence and is better placed to act (subsidiarity principle) as well as the proportionality of the preferred option and its added value will be outlined in chapter eight. The report will then refer to the main evidence-base used for preparing the initiative.

The tenth chapter identifies possible budgetary implications and human resources needs for implementing the proposals made in the planned initiative. The last chapter concerns the monitoring and evaluation when implementing the proposed initiative.

2.3. Main sources of evidence and information

Information for the impact assessment on the proposed political initiative is based on in-house knowledge (consultations, conferences, expert meetings, working groups) along with existing studies (e.g. studies commissioned by DG EAC on sport and education, the Independent European Sport Review 2006[1]), reports (e.g. EP reports; EOC, FIA & Herbert Smith report on "Rules of the Game"[2]) and surveys (e.g. Eurobarometer), which have enabled the Commission to identify where the main interests and concerns lie and how to focus possible future actions at EU level. It builds on the results of an extensive phase of political cooperation, broad

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1 http://www.independentfootballreview.com/doc/Full_Report_EN.pdf

2 EOC [European Olympic Committee]; FIA [Fédération Internationale de l'Automobile] & Herbert Smith (Hrsg.) (2001): The Rules of the Game. Europe's first conference on the Governance of Sport, 26 & 27 February 2001; Conference Report & Conclusions, Brussels.

public consultation and dialogue on sport at EU level, involving the Commission, the European Parliament and governmental and non-governmental sport stakeholders in Europe (see chapter 9 for details).

The European Council's Nice Declaration brings further evidence on the topics to be covered. The success of the European Year of Education through Sport (2004) provided strong evidence for the important social and educational values of sport and on the usefulness of more coordinated approaches initiated at EU level. It should also be noted that the inclusion of sport in the Constitutional Treaty was the result of a long and intense debate between all concerned actors and gives further orientation on those sport issues which stakeholders wish to see addressed at EU level.

There are concrete calls by stakeholders for action at EU level on a significant range of areas which seek to better promote sport in European and also national policy-making without, however, leading to increased interference in the management of the affairs of sports governing bodies. EU Member States, at Ministers' and at working levels, have further identified their priorities for the core areas of the planned political initiative in the recent past (see section 3.2.3).

2.4. Current and recent Community expenditure on sport

The Community does not have a specific budget line for sport. Possibilities to obtain financial support by the Commission for projects related to sport are therefore limited. However, sport-related projects and actions are sometimes eligible in the framework of existing EU programmes and funds, such as in the fields of education, youth, citizenship, health, equal opportunities, etc. or in relation to such themes, under the European Regional Development Fund and the European Social Fund. In 2004, projects and actions relating to sport and education were financed within the European Year of Education through Sport (EYES 2004), which was based on Article 149 EC. Targeted actions during major sporting events have been exceptionally financed in the recent past, when amendments to the 2005 and to the 2007 EU budget were adopted by the EP to fund activities connected with the Almería Mediterranean Games 2005 and the Jaca 2007 European Youth Olympic Festival.

3. UNDERLYING MOTIVES AND PROBLEM DEFINITION FOR A COMMUNITY INITIATIVE ON SPORT ["WHY"]

3.1. Introduction

The significance of sport for individual citizens and for society as a whole is widely acknowledged. Sport is a phenomenon totally integrated within the social, cultural, economic and political frameworks of the 27 Member States. To date, however, aspects of sport which are of interest to the European Union and its different policies and actions that have an impact on sport have not been clearly addressed within a comprehensive and more coordinated approach by the European Commission. The important social, educational, health-enhancing and citizenship functions that sport fulfils, sport's growing economic dimension, its specific organisational features and the challenges sport faces today in Europe should be made visible for the first time through an EU initiative on sport.

Before listing the main problems identified (section 3.3), the underlying motives for an EU initiative on sport are explained hereafter.

3.2. Underlying motives

3.2.1. The EU's overall political priorities and the Commission's strategic goals

The Commission has set itself medium- to long-term priorities in order to build a better and stronger Union for the benefit of all European citizens. Within its strategies the Commission has to use the potential of Europe, including the full range of EU and Member State policy instruments, to the fullest. In order to achieve its two major objectives of *prosperity* and *solidarity*, the Commission is striving for ambitious goals. It does so in particular through actions in the cross-cutting area of the *Lisbon strategy*, which is about reintegrating all economic structures in Europe to obtain tangible results for sustainable growth and high quality jobs in Europe, while at the same time reinforcing the *European social dimension* in the face of global challenges. The current emphasis is on political focus and the commitment to *meet citizens' expectations*. The EU therefore has to make efforts to ensure sound policies that are able to deliver in areas such as *education, research, social inclusion, social cohesion, fundamental rights, public health and sustainable development*.

In this context, the positive role that sport plays in European society and the growing economic importance of sport have so far not been addressed in a comprehensive way in EU policy making and therefore *the full potential of sport to help the Commission realise its strategic goals has remained unused*. It should be explored how the benefits of sport can contribute to the Union's social, economic and integration ambitions and to better reach out to EU citizens.

3.2.2. Promotion of the characteristics of sport within EU policies

The important role of sport in European society has been recognised in the European Council's *Amsterdam Declaration (1997), Nice Declaration (2000) and Aarhus Declaration (2003)* which call on the Community to give consideration, under the various Treaty provisions, to the characteristics of amateur sport, to the social, educational and cultural functions inherent to sport as well as to the preservation of voluntary sport structures. The Nice Declaration points out that certain specific characteristics of sport, such as internal cohesion and solidarity, fair competition and the protection of the moral and material interests of sportsmen and –women, should be taken into account in EU policies.

The interaction between sport and EU law as well as the role of sport within EU policies, programmes and actions has not been addressed in a comprehensive manner and needs to be illustrated in order to give orientation on how to take into account the existing texts at EU level that relate to sport.

3.2.3. Strong expectations by governmental and non-governmental sport stakeholders

The Nice Declaration and the Constitutional Treaty in particular have raised hopes among stakeholders for more coordinated and effective EU action concerning the implementation of the principles and values enshrined in these texts.

The Commission is faced with *considerable expectations by governmental and non-governmental actors to better promote sport* and its specific characteristics in EU policies. Requests range from issues related to highly-professionalized sport to concerns at the grassroots level. These discussions on sport at EU level have also illustrated the need to *set priorities* for the EU's involvement with sport.

3.2.3.1. A clear political demand

EU Member States have repeatedly called on the Commission to enhance the visibility of sport in EU policy making and to address sport at EU level along the priorities identified by EU Sport Ministers within the Rolling Agenda for sport (social function of sport, sport and health, volunteering in sport, fight against doping, education and training in sport, economic dimension of sport), in full respect of subsidiarity. Since March 2006, when the idea of an EU initiative on sport was discussed for the first time among EU Sport Directors, Member States have been fully supportive of the process, formulated concrete proposals and issued political recommendations for an initiative on sport, most recently at the meetings of EU Sport Ministers in Brussels in November 2006 and in Stuttgart in March 2007 and in specific meetings at working level thereafter.

3.2.3.2. A variety of expectations by the sport movement

The Commission's regular dialogue with the sport movement has confirmed the horizontal impact of sport within various EU policy areas and its multi-faceted relations with the 'acquis communautaire'. The significant number, diversity and heterogeneity of sport stakeholders explain the variety of aspirations and why calls on the Commission to act have covered a large spectrum of different issues: they usually range from calls for more financial support for sporting activities and projects over the promotion of the social values inherent to sport and the need to tackle threats to sport, the protection of current sport structures and more legal certainty regarding the application of EU law to sport, to calls for a better recognition of the autonomy of sport at EU level. Sport stakeholders from the professional level to the grassroots have shown a keen interest in shaping the content of the EU initiative on sport within the public consultation process.

3.2.3.3. The concerns and needs of EU citizens

Sport, because of its local anchoring and social functions, is an area that directly concerns EU citizens, namely through their active or passive participation in sport or through their active involvement in the democratic structures of organised sport. Participation in sport has been subject to change and sport organisations point to the need to promote grassroots level sport structures (e.g. volunteering) and to ensure EU citizens' rights in the field of sport, e.g. non-discriminatory access to sport, equal opportunities in sport, better education, training and employment in and through sport, prevention of risks and threats related to sport. In view of the Commission's commitment to better meeting the aspirations of EU citizens, actions favouring the citizenship dimension of sport should be further identified.

3.2.4. Complex cooperation and dialogue structures for sport at EU level

Political cooperation on sport at EU level takes place in an informal framework, outside the formal Council structures. It is up to individual Presidencies to organise informal EU Sport Ministers and EU Sport Directors meetings. Expectations have continued to increase, inter alia because of the prospect of a specific Community competence for sport. Against this background the Commission is faced with a situation where it has to ensure that political cooperation on sport at EU level can take place in a structured and efficient manner. Cooperation tools could usefully be identified that allow for more progress and continuity in the debates within the current political and legal context.

The world of sport and its organisation in Europe is based on very complex structures, which is mirrored by a high number and different types of organisations and bodies active in the field of sport at various levels, from highly professionalized to the grassroots. Moreover, there is heterogeneity within the EU as regards the status of the actors in sport, their legal nature and the autonomy they enjoy as well as their financial and staff-related capacity to participate in a dialogue at EU level. Unlike in other sectors and due to the very nature of organised sport, European structures in sport are, generally, less well developed than sport structures at national and international levels. European sport, moreover, is not organised according to EU-27 but according to continental structures which usually have a wider membership.

Given the variety of protagonists in sport the Commission is therefore not only faced with manifold requests but also with the *challenge to ensure more efficiency and inclusiveness* regarding the cooperation and dialogue on sport at EU level.

3.2.5. Lack of comparable information and data

Giving sport a higher profile in national policies is a key interest for stakeholders in all EU Member States. Comparable data on sport are almost inexistent at EU level. In order to formulate responsible future sport policies and to take informed decisions at both national and European levels, sound, comparable and accurate information is needed in several sport-related areas.

Calls on the Commission to provide EU-wide information are manifold and cover *economic as well as social data needs* (e.g. economic impact, job creation, participation rates, time spent on sport in schools, volunteering). A prioritisation of the most needed data will have to be made.

3.2.6. Momentum for an EU initiative on sport

The public debate on European sport policy choices and governance in sport is currently high on the agenda, as the following examples show:

EU Sport Ministers unanimously welcomed the Commission's intention to launch a policy initiative on the role of sport in Europe, which could take the form of a White Paper, as a response to the Sport Ministers' wish to give sport a higher profile in European and national policy making.

The *European Parliament* has regularly dealt with the various challenges found in the sport sector. In the recent past the EP organised hearings on doping and on education in sport and adopted resolutions inter alia on sport and development. The EP's report on "Professional football in Europe", adopted on 29 March 2007, identifies specific courses for EU action aimed at addressing challenges inherent to the field of professional football (e.g. to better protect young players, the intensification of social dialogue to overcome the problem of legal uncertainty, to encourage education of young players, to examine the need for a cost-control system).

The *European Year of Education through Sport* (EYES) 2004 has helped spread positive messages about the social and educational functions of sport in Europe and enhanced network building between sport organisations, educational institutions and public authorities, and thus generated expectations among actors in sport. The Commission needs to follow up on the results of the Year in line with the conclusions set out in the Commission's Communication

"The EU action in the field of Education through Sport: building on EYES 2004 achievements".

The *Independent European Sport Review 2006*, a study initiated by the UK Minister for sport and financed by UEFA, also contributed to the current debate on governance in sport and has been strongly advocated by its authors throughout Europe. It makes concrete proposals for action in the field of European sport, to tackle challenges in professional football in particular.

For more than 30 years there have been rulings by the European Court of Justice and decisions by the Commission that clarify the application of EU law to sport. However, developments such as the commercialisation and professionalisation of sport have made the role of EU law increasingly prominent in the area of sport. This fact is also reflected in the number of *cases before the Community Courts and the Commission*. Court rulings and Commission decisions influence Europe's sporting world and have led to increased calls for an EU initiative that takes stock and enhances knowledge of the current legal framework applicable to sport.

3.3. Main problems identified

Europe is facing new social and economic realities, e.g. strain on Member States' public finances, the dynamic drive for open markets towards a more integrated economy, increased mobility, changing labour markets and employment conditions. These changes in European society also directly or indirectly impact on sport and the traditional ways how sport operates at different levels (international, national, regional, local). These processes will constantly evolve and require reflection on the side of actors in sport how best to adapt to new realities. There are also certain developments inherent in the field of sport (e.g. increasing commercialisation and professionalisation of sport, stagnation of voluntary engagement in sport, emergence of new stakeholders in sport outside the traditional organisational structures, increasing recourse to litigation) as well as risks and threats related to sport (e.g. trafficking of young players, doping, violence, racism, corruption).

All these developments have resulted in new challenges to the way how sport functions in Europe. Some of these challenges occur at European level and call for European solutions, as has been repeatedly stressed by stakeholders.

Issues have been identified in three different areas that are considered relevant when addressing the role of sport in Europe: the societal role of sport, the economic dimension of sport, and the organisational features of sport. The relevant issues to be addressed within a more comprehensive EU approach to sport and the main challenges linked to them are listed hereafter:

3.3.1. Issues relating to the societal role of sport

- *Public health and physical activity* (e.g. lack of physical activity and the occurrence of overweight and obesity, cardio-vascular diseases and osteoarthritis with direct and indirect risks for society and individuals);

- *Fight against doping* (e.g. threat to individual and public health, to the principle of open and equal competition, and to the image of sport);

- *Education and training* (e.g. values conveyed through physical activity and sport are not sufficiently taken into account in the field of education, time spent on physical activity and sport in education is less than sub-optimal and could be improved at a reasonable cost, European training schemes are not adequately implemented to meet the high mobility in the sport sector, possible discriminations may occur due to quotas for locally trained players);

- *Volunteering in sport, active citizenship, and non-profit sport organisations* (e.g. new trends in sports participation, declining volunteer base for amateur sports clubs and shorter average period for a volunteer's involvement in a given club, financing of non-profit sport organisations, lack of EU-wide comparable data);

- *Social inclusion in and through sport* (e.g. discrimination of under-represented groups in access to sport activity; unused potentials of sport as an instrument to foster social cohesion and social inclusion; lack of EU-wide comparable data);

- *Fight against violence and racism in sport* (e.g. high level of violent and racist behaviour jeopardises sport's role as a contributor to the positive values conveyed through it and challenges the fundamental values of European integration);

- *Sport in its external dimension* (e.g. unused potential of sport to contribute to reaching the EU's objectives in regard to third countries, development policies in particular, and in cooperation with international organisations);

- *Sustainable development* (e.g. potential damage to the environment resulting from sport practice, sport facilities and sport events).

3.3.2. Issues relating to the economic dimension of sport

- *Macro economic impact of sport* (e.g. unused economic potential of sport to contribute to the Lisbon goals of sustainable growth and more and better jobs);

- *Economic evidence on sport* (e.g. under-estimated economic weight of sport in national and European policy-making due to a lack of a common EU-wide statistical definition of sport and of EU-wide comparable statistical data);

- *Public and private support to sport* (e.g. strain on Member States' budgets in combination with the fact that non-profit sport structures depend on public sector support; developments affecting the financing of grassroots sport; possible rationalisation of the rules and derogations regarding the application of certain VAT exemptions and reductions; major sponsorship deals can be found in professional sport, less so in grassroots sports);

- *Sport's contribution to regional development* (e.g. unused potential of sport as a tool for local and regional development, urban regeneration and rural development).

3.3.3. Issues relating to the organisation of sport

- *"European Sport Model"* (e.g. new socio-economic realities coupled with the emergence of new actors in sport result in challenges for the traditional European

model of sport, while specific traditions, values and specific characteristics of how sport in Europe is organised exist and deserve to be preserved);

- *Free movement and nationality questions in sport* (e.g. continued discriminations regarding the right to free movement in the field of sport in professional and amateur sports; open questions as to the specificities of individual sports and national champion titles);

- *Transfers* (e.g. absence of transfer rules puts challenges to the integrity of sport competitions; transfers of players give rise to concerns about the legality of the financial flows involved);

- *Players' agents* (e.g. reports on bad practices of players agents within a truly European market for players and in light of the rise in the level of players' salaries in some sports: corruption, money laundering and the exploitation of under-aged players damage the image of sport; different regulations in Member States);

- *Protection of minors* (e.g. continued trafficking of young players despite the existence of pertinent legal instruments);

- *Corruption, fraud and money laundering* (e.g. criminal offences with a cross-border, European dimension; in quickly developing and increasingly liberalised betting markets, a rise in illicit activities such as match-fixing);

- *Licensing systems for clubs* (e.g. lack of robust self-regulatory licensing systems for professional sports clubs at European and national levels that are compatible with EU competition and internal market provisions);

- *Media* (e.g. questions in regard to the redistribution of income of media rights between clubs and between professional and amateur sports and robust solidarity mechanisms; lack of acknowledgement that sport is a driving force for the emergence of new media and interactive television services);

Establishing a hierarchy of the problems and challenges for the purpose of this impact assessment is a challenging task given the wide and extremely varied context in which sport activities take place and the manifold expectations resulting from it. Nonetheless, in light of the considerations developed under point 3, the following problems can be identified as being the most pertinent ones to be addressed within an initiative on sport at EU level:

a) The lack of legal certainty regarding the application of EU law to sport, articulated by almost all sport stakeholders.

b) Governance issues relating mainly to professional sports, in particular illegal practices which seem to be wide-spread among players' agents, the weak protection of under-aged sportspersons, as well as the damaging effects of doping and of violence and racism in sport.

c) The financing of sport and changes to the traditional ways how sport is funded at the grassroots level.

d) The lack of data on the sport sector as a basis for policy making.

e) The growing problem of overweight and obesity, which is to a large extent the result of a lack of physical activity.

f) The limited integration of sport issues in education and training policies.

4. OBJECTIVES THAT THE INITIATIVE INTENDS TO ACHIEVE ["WHAT"]

4.1. General objective

The overall aim of this EU initiative is to give strategic orientation on the role of sport in Europe, to encourage debate on given problems, to promote sport in Europe by enhancing the visibility of sport in EU policy-making and by raising awareness about the needs and specificities of the sector. The initiative thus aims at responding to stakeholders' expectations in so far as they are realistic, proportionate and do not undermine the efficient application of EU law to sport. The initiative also seeks to identify the appropriate level of further action at EU level.

Given the diversity and large number of actors in sport and the heterogeneity of the sports sector, the initiative aims at adopting a comprehensive approach covering elements that concern key developments in the overall European sports-landscape. Such a consolidated approach has so far been missing.

Taking account of the underlying legal context for sport, the initiative seeks

- to ensure that sport contributes to the EU's policy goals and strategies (4.2.);
- to define concrete priority actions of an added European value in different areas relating to the societal role of sport, the economic dimension of sport and the specific organisation of sport in line with the challenges identified in chapter 3 (4.3.);
- to identify ongoing EU programmes and actions apt to promote sport (4.4.);
- to encourage ways of improving cooperation and dialogue on sport at EU level (4.5.).

The time-frame for implementing the proposed policy actions is short- to mid-term and covers a period of 5 years.

4.2. Using sport's potential to contribute to the EU's overall policy goals

The sport sector has the potential to contribute to the Commission's strategic policy agenda through several fields of actions and could thereby help achieve the EU’s political ambitions and guiding principles in the following horizontal policy areas in a consistent way:

4.2.1. The Lisbon Strategy

The initiative should illustrate that sport can make a viable contribution in support of policies aimed at meeting the Lisbon goals in terms of sustainable growth and more and better jobs. The aim is to build on the growing economic importance of sport, namely in terms of GDP, and the powerful employment potential of sport, that through its spin-off effects can

positively impact on Europe's economies and labour markets. The initiative aims at identifying actions and policies apt to use this potential of sport. In this debate, the social value of sport, representing implicit economic benefits, must not be forgotten (e.g. added value of the voluntary sport sector; indirect impact through education, regional development and higher attractiveness of the EU).

4.2.2. The EU Citizens agenda, Equal Opportunities for all, Social Integration and Social Cohesion

Sport is one of the areas of human activity that most fascinate and bring together people, irrespective of age, race, gender, disability, and social origin. The sport movement has a strong traditional anchoring in Europe and is today one of the most significant social movements in the EU - from the grassroots to the top level, from sports with lesser resources to highly-professionalized spectator sports, from non-organised physical activity to organised sports. Sport is an area that has successfully proven that it can deliver in promoting solidarity, social tolerance and inclusion and to help youngsters to develop important life and employment skills. Sport plays a significant role in fostering social renewal and social cohesion through various schemes and projects at local, regional and national levels.

The proposed initiative should demonstrate through specific actions (e.g. in the fields of citizenship, youth, life-long learning, health, intercultural dialogue, free movement of citizens) that the sport sector is an excellent contribution to the EU Citizens agenda, a tool to help the Commission, through different policies, in bringing the EU closer to its citizens, and thus to further the integration and cohesion goals of the EU.

4.2.3. The EU area of Freedom, Security and Justice

Like other social activities, sport is not immune to criminal or anti-social abuses such as racism, violence, doping, corruption, fraud, money laundering or law breaches regarding young people. All of them challenge the fundamental values of European integration jeopardise the role of sport in society. Development and reinforcement of cooperation and coordination among all relevant actors in the sport area, not only law enforcement services, should contribute to prevent and combat criminal offences. Sport should become an increasingly important tool of crime prevention and socialisation of vulnerable groups. Identifying, within the proposed initiative, suitable measures within a multidisciplinary approach can help meet the EU's efforts to ensure fundamental rights and to provide citizens with a high level of safety.

4.2.4. The EU's Public Health agenda

The close interaction between sport and health lies within the notion of health-enhancing physical activity. The lack of physical activity and the occurrence of overweight in particular have become a major societal concern, because of both the risks for individuals and the impact on national health budgets. The key role and the potentials of the sport sector in supporting the EU's strategic ambitions in the field of public health, in particular the fight against overweight and obesity, should be increasingly exploited in areas such as public health and research and also through the youth, citizenship and life-long learning programmes. Moreover, networks and platforms to foster the cooperation between all concerned actors in their efforts to promote physical activity should be identified.

4.2.5. Sustainable Development

Sporting activity, sport facilities and sport events have an impact on the environment. The "greening" of sport can be achieved through responsible environmental management of sport activities and thus contribute to the Sustainable Development goals. Public administrations, sport organisations and sport event organisers could help to ensure environmental sustainability when developing their policies and businesses.

4.2.6. The EU's external dimension

Sport has an external dimension that could help the EU raise its external profile, to positively contribute to relations with third countries, including as an element of the EU's public diplomacy, and to deliver in external policy areas. The potential of sport to contribute to peace and development has already been recognised at international level. The proposed initiative should help to identify areas of the EU external policies and programmes where sport can play a role as a tool for promoting education, health, children's rights, anti-discrimination, social integration, or post-conflict reconstruction and environmental values. This will need coordination and synergies with other actors, e.g. international organisations, sports governing bodies, non-governmental organisations.

4.2.7. Democracy, transparency and accountability

Democracy, transparency and accountability are important guiding principles for the Union today and crucial in order to deliver on EU citizens' expectations, including in the field of sport. Therefore, better communicating the important role of sport in societal and economic terms to decision makers at national and European level, on the one hand, and better explaining the Commission's dealing with sport in political and legal terms to sport stakeholders, on the other, should be envisaged within the planned initiative. The Commission can play a role in encouraging the sharing of best practice and clarifying issues around the application of EU law to sport, as well as in helping to develop a common set of principles for good governance in sport. It should do so in full respect of the autonomy and diversity of sports.

4.3. Addressing societal, economic and organisational challenges related to sport in Europe

In line with the issues and challenges identified within the three core areas (societal, economic, organisational) in chapter 3, the initiative aims at

- illustrating that sporting activity fulfils important physical and health-enhancing, educational and social functions on the one hand, and that sport has a growing economic role to play in Europe on the other. To this end the initiative should identify those actions where an EU involvement is considered beneficial and of an added value (e.g. a more coordinated approach in the fight against doping; the exchange of information and best practices on volunteering in sport involving all concerned actors) and point out new measures (e.g. regular sport-related EU-wide information surveys; a study to assess the sport sector's contribution to the Lisbon Agenda) as compared to measures that seek to strengthen already existing and ongoing policies, programmes and actions at both national and European levels (see also point 4.4.).

– raising awareness about the fact that sport in Europe has special organisational features, single out relevant priority areas and identify ways to address these. To this end, the initiative should propose action in those areas where the Commission has the most evidence for a need to address issues at EU level, while considering that problems need to be tackled at all levels of governance. The initiative should thereby contribute to the political debate on sport in Europe.

– identifying appropriate levels and means to tackle major threats to the harmonious development of sport in Europe in all three core areas.

More specifically, with regard to the most significant problem areas identified under chapter 3, the initiative aims at

a) *enhancing knowledge about the application of EU law to the sport sector*, internal market and competition provisions in particular. To this end, the initiative aims at increasing understanding of the case-law of the European Courts and the decisional practice of the Commission as it stands. The proposed initiative seeks to explain that the Commission cannot take a position on the general admissibility of certain types of sporting rules irrespective of the circumstances of every individual case, which are decisive for the legal assessment. The initiative aims, however, to illustrate the application of competition rules to sport on the basis of the case-law of Community courts and the Commission's decisional practice and to provide an overview of the established case-law in the field of the internal market that impacts e.g. on the financing of sport or the free movement of sports professionals. In this context, the initiative will also identify tools for improving the dialogue on sport at EU level (e.g. structured cooperation, social dialogue) in order to increase the chance that sensitive issues be solved in an amicable way before they are taken to court.

b) *identifying the most pressing governance questions in sport that could usefully be addressed at EU level*. The negative effects of doping and of violent and racist behaviour on European sports, as well as the many problems caused by illegal practices which seem to be wide-spread with regard to players' agents and the weak protection of minors seem to be of particular relevance. The initiative aims at identifying ways to promote a more coordinated EU approach to fight doping and to raise awareness about the damaging effects of violence and racism in sport with solutions fostering cooperation at different levels. The initiative seeks to conduct an impact assessment with regard to players' agents and a reinforcement of the application of existing legislation regarding minors. In addition, the initiative should point out appropriate levels and structures to address identified challenges relating to free movement and nationality questions, transfers, licensing systems, criminality and media. These are partly new actions to be launched at EU level (e.g. studying the access of EU nationals to individual sport competitions), but partly also a reinforcement of existing policy tools (e.g. monitoring the implementation of the EU anti-money laundering legislation in the Member States with regard to the sport sector). Debate and exchange of best practices with concerned actors should be encouraged (e.g. a dialogue with sport organisations on self-regulatory licensing systems) as well as more efficient dialogue and cooperation structures

(e.g. establishment of European Social Dialogue Committees in the sport sector).

c) *illustrating the key components that relate to the financing of sport* and that could usefully be addressed in an EU level framework, either through new actions (e.g. an EU-wide study on the public and private financing of grassroots sport and sport for all), or through political statements (e.g. the need to maintain existing policies of VAT reductions in the field of sport), or through a strengthened exchange of best practices within existing structures (e.g. EU working group on non-profit sport organisations);

d) *identifying ways to promote the collection of comparable EU-wide data on sport* in order to have a sound basis for informed political decisions and to raise the profile of sport in national and EU policy making. The initiative seeks to support the development of a new European statistical method to measure the economic impact of the sport sector in a wider sense, building upon already existing initiatives at Member State level, as well as to identify a means to provide regular EU-wide non-economic information on sport;

e) *raising awareness of the need to combine forces in order to use physical activity and sport in the fight against obesity*. To this end, and as a clear action of an EU added value that builds on already existing activities at Member State level, the initiative seeks to facilitate the debate with concerned actors in the field of health-enhancing physical activity. In parallel, existing EU programmes should be further mobilised (see also point 4.4.). Additional support to tackling the issue should be sought through the development of new EU guidelines with targets for physical activity;

f) *further integration of sport issues in EU education and training policies and schemes*. In this area the initiative seeks above all to strengthen, reinforce and optimise existing EU policy tools in order to encourage support for sport and physical activity in the field of education and training. To this end, existing EU programmes should be mobilised (see also point 4.4.) and political statements issued. The initiative also seeks to introduce a limited number of new measures (e.g. the award of a European label to schools actively involved in supporting and promoting physical activities in a school environment).

4.4. Identifying EU programmes and actions to financially support the sport sector

Given the lack of a specific EU budget for sport, the initiative should identify EU programmes and actions that are suitable to fund sport-related activities. The objective is to mainstream sport in existing programmes (e.g. health, youth, citizenship, life-long learning, research) as well as future actions therein and, where appropriate, to include specific provisions on sport and physical activity. In addition the initiative seeks to indicate how financial assistance may be provided to sport-related projects within EU financial instruments (e.g. the Structural Funds, notably the European Regional Development Fund and the European Social Fund, instruments in the field of external relations and development cooperation, etc.) and ensure that the sport sector is taken into account within the funding possibilities provided by future European Years.

4.5. Strengthening the dialogue and political cooperation structures for sport at EU level

A better coordination between the protagonists of sport (e.g. sport governing bodies, Member State authorities, EU institutions) is necessary to help achieve some shared principles with regard to the promotion of sport in Europe – one that is true to its social role, while ensuring that its organisational aspects are in line with the EU's economic and legal order.

On the political side, an effective cooperation with Member States within the present informal setting should be envisaged through a more structured way of working – one that allows for the common definition of priorities and some reporting on progress to Sport Ministers. At the technical level, new EU actions that the initiative proposes result from problems identified by Member States themselves and build on existing but relatively recent cooperation structures (e.g. Working Group on "Sport & Health; Working Group "Sport & Economics"; Working Group "Non-Profit Sport Organisations"). The initiative seeks to further underpin and frame the work within these structures.

The Commission has an important role to play in contributing to the European debate on sport by providing a platform for dialogue with sport stakeholders. Wide consultation with "interested parties" is one of the Commission's duties according to the Treaties. The proposed initiative aims at establishing an improved, well-structured and inclusive dialogue with the European actors in sport and to better address the challenges identified. (e.g. new networks, meeting formats, platforms and by establishing the social dialogue on sport). The initiative will have to take account of the different dimensions of sport and existing governance structures in sport.

5. MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVES ["HOW"]

There are four policy options to address the role of sport in Europe within the current legal and political context. The first option is to take no action. Option 2 is to launch a consultation on the need for an EU initiative on sport. Options 3 and 4 both envisage actions that tackle the current challenges facing sport in Europe. Option 3 aims at addressing sport under a broad-based and comprehensive approach and by choosing a non-legally binding instrument, whereas option 4 would entail regulatory measures for specific problems based on different EC Treaty provisions combined with a better mainstreaming of sport in EU policies and programmes. The possible impacts of the option with regard to the objectives sought are described hereafter.

5.1. Option 1: No action

In view of the lack of a direct EU competence for sport, the option of "no action on sport at EU level" should be considered.

From a political point of view, choosing this option would mean that the potential of sport to contribute to the realisation of the EU's own objectives in relation to social, economic and integration goals would remain unexploited. This would be contradictory to the commitment to use Europe's full potential to achieve strategic policy goals. In addition, the lack of a coherent and comprehensive approach in a socially and economically important sector such as sport could give rise to criticism of the Commission for not being pro-active in an area where a clear demand for action exists.

Taking no action would mean to continue dealing with sport at EU level with the existing arrangements and instruments without a more consolidated policy approach. It would also mean that no action entailing a clear EU value added, such as the launching of studies and the initiation and promotion of European platforms and networks to further address risks, threats and challenges related to sport, and no measures to identify and mobilise suitable funding programmes and actions would be taken in support of a sector of European society that plays an important role in EU citizens' lives. As for the costs involved, although it is difficult to measure, no action may result in the continuation of missed opportunities to contribute to a decrease in discrimination, doping, violence, racism and corruption in sport. It may thus be detrimental to the image of the Commission in meeting citizens' expectations.

With regard to the key problems identified under chapter 3 of this Impact Assessment, taking no action would have the following consequences:

a) Given the strong calls from stakeholders for more legal clarity, the Commission, by following this option, would miss the opportunity to enhance knowledge of the case-law of the Community Courts and the decisional practice of the Commission, in particular as regards the application of EU internal market rules and competition law to sport. Limited understanding of the impact of EU law on sport increases the risk of decisions taken by stakeholders in the field of sport that run counter to EU law, and therefore also the risk of infringement procedures and litigation before the Court.

b) The opportunity to further address sport governance issues and to contribute to tackling challenges arising for instance from the weak protection of under-aged sportspersons as well as from serious threats to sport such as doping, violence and racism would be missed, with the result of a continuation of these harmful developments.

c) Not addressing some major developments relating to the financing of sport would mean to ignore an important concern of both the grassroots sport sector and Member State sport authorities. For instance, the traditional ways of financing sport at national level face challenges that could usefully be further studied at EU level inter alia to ensure that future EU policies, that are likely to impact on the financing of grassroots sport can be developed while taking full account of a sector where information to date is scarce.

d) Policy makers at national level would have to continue to take decisions in the field of sport without the availability of sound and comparable EU-wide data at hand, in the economic field in particular. No action would mean to ignore the support of EU Sport Ministers for an initiative to develop sport satellite accounts. Again, the opportunity to raise awareness about a sector which has an important weight in European society would be missed, with the risk that sport would continue not to receive the consideration it deserves in future political decisions.

e) No action would also mean that despite the clearly identified need to tackle obesity in a global approach and at all levels, the important role played by physical activity and sport would not receive the attention it deserves within EU policies, thus reinforcing the risk of an approach to fight obesity that puts

the emphasis mainly on nutrition aspects and less so on physical activity, and the ultimate consequence of higher levels of obesity.

f) Sport would continue to play an under-represented role within the EU's own education polices and training schemes because it would be more difficult to seize the opportunity to use the various components of the Life-Long-Learning Programme to tackle sport-related issues and to use sport as a pilot sector in the European Qualifications Framework and in the European Credit System for Vocational Education and Training.

In case no action is taken, cooperation and dialogue in the field of sport would continue within current structures and settings, which have proved to be unsatisfactory for many stakeholders who claim a voice and place in their dealings with the EU.

No action would finally mean not drawing any lesson from the repeated calls by governmental and non-governmental actors to better promote sport at EU level, and to raise the visibility of the social and economic potentials of sport. Option 1 would therefore not be suitable to tackle the challenges identified under point 3 and to reach the intended objectives outlined under point 4. It should therefore be discounted.

5.2. Option 2: Further consultations on the need for an initiative on sport (Green Paper)

The Commission could consider further consulting on the need for an initiative by launching a Green Paper on sport in Europe. Green Papers are Commission documents which intend to stimulate discussion on given topics at European level. With a Green Paper the Commission consults stakeholders on specific proposals and seeks views on the ongoing challenges in a given area.

There is a fundamental reason why a Green Paper is not considered a viable option for an EU initiative on sport: the Commission's intensive dialogue with the European sport movement. This process led to consensus ahead of the Nice Declaration and Article III-282 of the Constitutional Treaty. In 2005 the Commission set up the consultation framework "The EU & Sport: Matching Expectations" and stepped up its efforts in consulting sport stakeholders.

The Commission therefore considers that another broad public consultation of sport stakeholders would not bring any added value to the already existing evidence material. It would, on the contrary, generate costs for duplication of efforts. The Commission would miss out on the present momentum to take action and give new impetus to the debate on sport within an EU setting. A Green Paper would be counter-productive to the objectives and a less efficient option to tackle the problems already identified. This option should therefore be discarded.

5.3. Option 3: Broad initiative on sport (White Paper or Communication)

In contrast to no action and to further consultations, there is the option to take a comprehensive approach, considering sport in its different dimensions and focussing on non-regulatory topics. Up until now, sport has not been addressed by the EU in such a comprehensive and consolidated policy approach. Choosing this option would take account of the following factors:

– the appropriateness of a political response that respects the legal context, the subsidiarity and proportionality principles and the autonomy of sport;

– the fact that sport has a horizontal dimension which interacts with various EU policy areas – hence the need for a broad initiative that builds on a mix of soft-law and soft-policy instruments;

– the fact that the sport sector represents a plethora of organisations and structures – hence the need to cover sport in a wider sense.

A broad initiative could give rise to criticism by some stakeholders who wish to see the Community taking legal action in order to meet their particular interests in specific areas. Such arguments have to be weighed against the need for the Commission to respect Member States' responsibilities for sporting matters and the autonomy of sport. Within EU policy making this also means respecting the diversity and the heterogeneity of sport, as well as its solidarity links and sport's specific organisational features. In doing this, the Commission cannot focus on one single sport, e.g. football, or one level of sport, e.g. professional sport, but has to take a more comprehensive approach covering all levels and all sports. Moreover, wishing to address the interests and concerns of all sport stakeholders remains a challenging task, not least because the sport movement does not always speak with one voice.

A broad initiative would make it possible to address all the issues identified under chapter 3 through different actions at different levels. It would mean to initiate parallel actions entailing a clear EU value added, such as the launching of studies and the initiation and promotion of European platforms and networks to further address risks, threats and challenges related to sport, as well as measures to identify and mobilise suitable funding programmes and actions. By doing so, the Commission would give a clear signal of positive support for a sector directly impacting on EU citizens' lives.

Concerning the most significant problems referred to in chapter 3, the following scenario can most likely be expected:

a) By enhancing knowledge of the case-law of the Community Courts and the decisional practice of the Commission, in particular as regards the application of EU internal market rules and competition law to sport, the initiative will contribute to a lower likelihood that sport organisations take decisions which give rise to infringement procedures and litigation before the Court. Furthermore, the preparations and debate within the Commission of a broad initiative on sport is likely to raise awareness in many other EU policy sectors about the need to take better account of sport issues when developing future regulatory proposals.

b) By addressing the most pressing sport governance issues the initiative could contribute to tackling some of the harmful developments found in the field of European sport. The Commission would thus at least partly respond to strong calls from some stakeholders to take action in areas such as the fight against doping, violence and racism in sport, the activities of players' agents or the protection of minors. The impact of such actions must be considered in a realistic way: no regulatory measures are proposed at this stage. However, facilitating more coordinated EU approaches as requested by many stakeholders within already existing national and international networks and

structures, e.g. in the field of doping and with regard to fighting violence and racism, could be expected to have a positive impact in the medium to long term.

c) Choosing a broad approach that further studies the financing of grassroots sport would be indirectly beneficial to this sector. In regard to future policy decisions at national and European levels it would help to raise awareness of the possible need to secure and foster certain sport funding structures and, for sport organisations, it would help to encourage reflection on the need to adapt their organisation structures to new economic realities.

d) Furthering the development of EU-wide comparable quality data on sport would enable national and EU policy makers to take better informed decisions in the field of sport, since policy actions on sport need to be underpinned by a sound knowledge base. Concerning the wish of stakeholders to develop a European statistical method for measuring the economic impact of sport through Sport Satellite accounts, and the proposals to be made by the initiative in this respect, there may be future, though limited, costs involved (staff, budget). It is important to note that the initiative would not propose additional data collection, but to derive new information from already existing data sources at Member State level. A positive outcome and the benefits for the large economic sector which sport is can be expected to greatly overweight potential costs.

e) Opting for a broad EU initiative with targeted actions in the field of physical activity and sport would respond to the need to tackle public health concerns, such as obesity, in a global approach and at all levels. Such an action would for instance be complementary to measures already taken or ongoing at EU level in the fight against obesity, as for example commitments from members of the EU Platform on Diet, Physical Activity and Health and actions suggested in the White Paper "A Strategy for Europe on Nutrition, Overweight and Obesity related health issues".

f) Choosing this option would also be in line with the Commission’s wish to encourage support for sport and physical activity at school and at university within its various policy initiatives in the fields of education and training. Concerning the place of sport and physical activity within these policies, the initiative would cover the different components of the Life-Long-Learning Programme to tackle sport-related issues and to use sport as a pilot sector in the European Qualifications Framework and in the European Credit System for Vocational Education and Training. Positive impacts could be expected in terms of a direct contribution to more health-enhancing physical activity, especially among youngsters, thus with possible economic long-term effects on Member States' health budgets, and in terms of less obstacles to mobility in sport.

In respect of the current legal context, a broad initiative could usefully take the form of a White Paper on Sport or a Communication on Sport. These two instruments do not fundamentally differ with regard to their content. Both documents are "non-legislative" instruments under the Treaty and contain proposals for Community action in a specific area. A White Paper follows a consultation process at EU level. White Papers go a step further than

Green Papers: the problems have been identified based on a large consultation process and concrete policy options are proposed to pave the way for tackling issues at different levels.

Although not legally binding, the political value of a White Paper is high. It is likely to provide for better visibility and out-reach to EU citizens than a Communication in an area such as sport. Considering the Commission's wish to give political weight and visibility through its broad-based approach to sport, in the current legal context the choice of a White Paper seems more appropriate than the choice of a Communication.

Option 3 should be considered a realistic choice for an EU initiative addressing the role of sport in Europe.

5.4. Option 4: Regulatory measures in selected areas combined with better mainstreaming of sport in EU policies and programmes

In contrast to no action, further consultations and a "non-legislative" broad initiative on sport, the Commission could also decide to tackle specific problems in selected areas by means of regulatory or legislative proposals. In parallel, it could make an additional effort to mainstream sport into other EU policies and programmes.

With such an approach, the Commission could seek to respond to some stakeholders' interests, such as those pronounced for the field of professional football, by addressing key problems in a strong way. Such an approach would raise expectations that the Commission addresses issues in accordance with the EP report on professional football or the Independent European Sport Review 2006. The issues identified there include regulatory action in areas such as activities of players' agents, home-grown players' rules, free movement of sportspeople, release of players' for national teams, collective selling of media rights, cost control and licensing systems, protection of minors, sport betting activities, violence and racism in sport.

In line with the principle of subsidiarity and the autonomy of sport, the EU should take regulatory action only if the issues at hand cannot be resolved through self-regulation and if, by taking action, the EU could have a better impact to help the harmonious development of sport than other actors. Doubts therefore arise whether there is a need for a range of additional new EU legislation in the field of sport, as requested by some sport stakeholders. The choice of single (regulatory or legislative) actions would also carry the risk of not corresponding to the Commission's commitment to better regulation.

An approach based on individual regulatory measures mainly concerning professional sport would not be for the benefit of the entire sport sector. By choosing this option, the key concerns of the grassroots sport sector, in charge of providing sporting opportunities for society, would risk not to be sufficiently taken into account. In addition, although an initiative on sport in Europe cannot ignore the challenges for the most popular sport, which is football, it cannot focus on the concerns of one single sport if it does not want to ignore the diversity and richness of the sport sector.

By choosing targeted single regulatory measures only in the above areas, the EU would also miss the opportunity to better reach out to citizens through a broad-based approach and to send a signal in support of the citizen dimension of sport.

With regard to the proposed parallel mainstreaming of sport into existing policies, it should be noted that in the past efforts have already been made to this effect, but only with limited success. This has led the Commission to the conclusion that more could be done at EU level to ensure that sport is mainstreamed into EU policies and that EU programmes and actions have to be mobilised differently to take increasingly account of sport and its specific characteristics.

Choosing single regulatory measures in selected areas would bear the risk of only partly addressing the challenges identified under chapter 3:

a) The Commission, by following this option, would disregard the opportunity to adopt a consolidated approach to sport and to enhance knowledge of the case law of the Community Courts and the decisional practice of the Commission, in particular as regards the application of EU internal market rules and competition law to sport. Hence, there would be a similar risk as referred to in the "no action" scenario. On the other hand, regulatory measures in certain selected areas would increase legal certainty for some of the problems identified and might better satisfy the concerns of some stakeholders (particularly in professional team sports) who seek exceptions to the applicability of EU law to the sport sector.

b) By opting for regulatory measures the Commission would respond to strong calls by some stakeholders to take legal action with regard to some pressing sport governance issues. However, constraints exist upon the feasibility of far-reaching legislative actions in fields such as players' agents or the protection of minors due to the limits set by the legal context. In the field of doping, responsibilities are distributed differently in EU Member States and bodies specialising in the fight against doping already exist at several levels. Any measure on the side of the EU would therefore by definition be limited and must be aimed at complementing that of other actors. Firstly, although many stakeholders consider a better EU-wide coordination in the fight against doping necessary, legislative action in this area does not currently seem to be on stakeholders' wish list. Secondly, in light of the variety of existing structures at national, European and international levels it is also unlikely that regulatory measures at EU level would bring an added value. Similarly in the fight against violence and racism in sport, solutions should be sought mainly by strengthening existing instruments, networks and initiatives at national, European and international levels.

c) An EU legal action that would have an impact on the financing of sport (e.g. introduction of a special tax on sport betting as proposed by some stakeholders) would not seem appropriate at this stage. Much further studying (e.g. on the financial flows to the grassroots sport sector) and reflection would be needed on the practicability, usefulness and proportionality of any EU initiative in such an area where key competences lie with Member States and sport organisations. However, analysing the impact of EU policies within a Europe-wide study on the financing of sport would bear the advantage of launching a first debate in an EU setting on possible future needs for new approaches and solutions at different levels aimed at safeguarding the financing of the grassroots sport sector.

d)–f) In a similar way as in the “no action” scenario, choosing this option would also mean

- To take an approach that does not take account of the need for action at EU level aimed at promoting the economic potential of sport through the development of sound and EU-wide comparable data. The opportunity to give an EU impetus to evidence-based sport policies would be missed;

- To continue neglecting, within EU policies, the important role of physical activity and sport for addressing pressing public health problems, such as obesity;

- To miss the opportunity to stress within a comprehensive approach that sport needs a more visible place within the EU's own education and training policies.

It is considered that there are better means to reach the objectives of an EU initiative on sport. In respect of the principle of subsidiarity and the autonomy of sport, single (regulatory or legislative) actions appear to be less appropriate than a more comprehensive and flexible mix of "soft" instruments for addressing the above-mentioned challenges at different levels of governance.

5.5. The choice of a White Paper

In light of the above considerations, the preferred option to address the role of sport in Europe in its different dimensions and within the current legal and political context is a broad initiative. A White Paper would be the preferred choice. The choice of a White Paper over a Communication is mainly a political choice related to the political "weight" and visibility which the Commission intends to give to an initiative in the field of sport.

A White Paper signals by definition that the Commission sees challenges (chapter 3), has objectives in respect of these (chapter 4) and that the Commission has considered in a consistent and systematic way whether and how to act on these (chapters 4 and 5.5.2.).

A White Paper would bring EU-level attention to the problems, would have the benefit of increasing awareness of the interaction of sport with other EU policy areas, would demonstrate cross-fertilisation between them, would involve all relevant stakeholders in the reflections about future actions and it would enshrine concrete proposals for actions for follow-up, and this without putting too strong a focus on a single dimension of sport, namely the economic dimension of professional sport. A White Paper on sport would take account of the solidarity links inherent in the way in which sport is organised in Europe - from the grassroots to the top, thus respecting one of the key characteristics of sport in Europe.

A White Paper would also constitute an appropriate response, with sufficient political weight and visibility, to the considerable expectations which exist among the Member States and sport stakeholders in this area. At the same time a White Paper, in such a consolidated approach, would have to take note of the need for a prioritisation of actions in light of the manifold problems and challenges.

5.5.1. Main components of a White Paper

By issuing a White Paper, the Commission sets out concrete ideas within an Action Plan ("Pierre de Coubertin") in order to tackle the problems and challenges identified in chapters 3 and aims at reaching the objectives as outlined in chapter 4. The Action Plan describes the proposed measures in the three core areas of the White Paper: the societal role of sport, its economic dimension and its specific organisation.

The White Paper "package" contains the following documents:

- The political document setting out the key ideas and providing the political messages;
- A Staff Working Document describing the background for the proposals made in the White Paper in more detail. This document will contain three annexes:
  - An explanatory document on the application of EC competition law in the field of sport;
  - An explanatory document on the application of Internal Market rules in the field of sport;
  - A report on consultations held by the Commission;
- The present Impact Assessment Report;
- A summary of the present Impact Assessment Report.

5.5.2. Main proposals within the Action Plan

The Action Plan addresses all the issues and challenges identified in section 3.3 for the three core sections of the White Paper. The specific activities foreseen in the Action Plan constitute a mix of instruments containing new measures while also building on existing policies and actions. They take the form of studies and surveys, platforms and networks, political cooperation and structured dialogue, recommendations and the mobilisation of programmes as well as other financial instruments.

Concerning the aforementioned priority areas, the following actions are proposed to address the main challenges:

a) The lack of legal certainty regarding the application of EU law to sport:

- How established EU law, namely the most relevant decisions of the Community Courts and the Commission, takes account of the specificities of the sport sector will be further outlined in Annexes on Sport and competition policy and on Sport and Internal Market issues, in particular regarding the interpretation and application to sport of:
  - EC competition rules;
  - EC provisions on the free movement of workers;

– EC provisions on the freedom to provide services and, to a limited extent, the freedom of establishment.

– Studying certain aspects of the impact of EU policies on the sport sector will help the Commission to further clarify and, if necessary and appropriate, to adapt its approach to sport in the future. The Commission will, in particular, launch studies on

  – The voluntary sport sector;

  – The financing of grassroots sport (see also below);

  – Access to individual sport competitions for non-nationals.

– The Commission will promote dialogue structures and networks to enhance the debate and to identify and exchange best practices with concerned actors at EU level on existing challenges for sport. This will inter alia contribute to achieving more legal certainty. Examples include

  – Combat discrimination in sport through political dialogue with Member States, recommendations and structured dialogue with sport stakeholders;

  – Set up a dialogue with sport organisations to promote self-regulatory licensing systems for clubs/teams;

  – Support and encourage efforts leading to the establishment of European Social Dialogue Committees in the sport sector.

b) Governance issues relating mainly to professional sports, in particular the problems caused by illegal practices which seem to be wide-spread among players' agents, the weak protection of under-aged sportspersons, as well as the damaging effects of doping and of violence and racism in sport:

– The Commission will carry out an impact assessment to provide a clear vision of the activities of players' agents in the EU and an evaluation of different options for possible action at EU level;

– The Commission will monitor the implementation of EU legislation relevant to the protection of minors in sport;

– The Commission will facilitate a more coordinated EU approach in the fight against doping;

– The Commission will support partnerships between training centres for law enforcement officers;

– The Commission will strengthen the prevention and fight against violence and racism in sport, inter alia through the exchange of operational information and practical know-how between police services, between law enforcement services and with sport organisations, through analysing possibilities for new legal instruments or EU-wide standards and through encouraging the use of

existing EU programmes (e.g. DAPHNE III, Youth in Action, Europe for Citizens).

c) The financing of sport and challenges facing the traditional ways how sport is funded at the grassroots level:

– The Commission will launch a study on the financing of grassroots sport and sport for all in EU Member States from both public and private sources;

– The Commission will defend possibilities for reduced VAT rates for sport.

d) The lack of data on the sport sector as a basis for policy making:

– The Commission, in close cooperation with EU Member States, will develop a European statistical method for measuring the economic impact of sport;

– The Commission will launch a study to measure the sport sector's contribution to the Lisbon Agenda;

– The Commission will issue regular sport-related EU surveys providing non-economic information and data;

– The studies proposed in the action plan will provide additional evidence material.

e) The growing problem of overweight, obesity, cardio-vascular diseases and osteoarthritis which is to a large extent the result of a lack of physical activity:

– The Commission, together with Member States, will develop new physical activity guidelines;

– The Commission will set up a pluri-annual EU Health-Enhancing Physical Activity network and, if appropriate, smaller and more focused networks dealing with specific aspects of the topic;

– The Commission will mobilise the EU Public Health Programme, Youth and Citizenship programmes, Life-Long Learning (LLL) Programme, 7th Framework Programme for Research and Technical Development (RTD).

f) The limited integration of sport issues in education and training policies:

– Within the LLL-Programme, the Commission will promote participation in educational opportunities through sport;

– The Commission will identify projects for the implementation of the European Qualification Framework (EQF) and the European Credit system for Vocational Education and Training (ECVET) in the sport sector;

– The Commission will consider the introduction of the award of a European label to schools actively supporting physical activity;

– The Commission will complete the analysis of the compatibility of "home-grown-players rules" with Community law.

5.5.3. Annexes to the White Paper

The *Staff Working Document* annexed to the White Paper will provide the technical background for the political document by further analysing the issues at stake and by explaining the proposed solutions in a more detailed way.

The *Annex on Sport and EU Competition Rules* will address specific sport-related matters including those related to media rights under the EC antitrust and state aid rules falling within the field of competence of DG Competition. The *Annex on Sport and Internal Market Freedoms* will address specific matters falling within the remit of DG Internal Market and DG Employment and Social Affairs. Both documents will take stock of the established case-law of the European Courts and sport-related decisions by the Commission. They will not provide a generalised legal assessment of the conformity of certain types of sporting rules or practices with EU law, but a factual description of the current state of play. Both documents will aim at responding to stakeholders' wish for enhanced knowledge on the application of EU competition and internal market provisions to the activities of the sport sector and thus contribute to legal certainty as well as the clarification of the notion of "specificity of sport".

The *Annex on Consultations* will provide a detailed summary of the dialogue on sport organised at EU level during the past years. The document contains an overview on the results of the on-line consultation for an EU initiative on sport launched in the beginning of 2007.

5.6. Expected wider social, economic, environmental and external impacts of a White Paper on Sport

As outlined in sections 3 and 4, sport has social, economic, environmental and external dimensions. Although the impact of political actions and non-legislative proposals (as outlined in the Action Plan) is by definition limited, promoting these dimensions through specific actions foreseen in a White Paper on Sport is likely to have desirable positive impacts for the EU and its citizens in line with the intended objectives.

In contrast to the other options considered above, only the comprehensive and coherent approach of a White Paper has the potential of achieving positive impacts in all areas: social, economic, environmental and external.

5.6.1. Social impact

Through its comprehensive approach, the White Paper can be expected to increase the visibility of the crucial social functions of sport in both European and, to a lesser extent, also in national policy making.

In concrete terms, through its proposed actions the White Paper is likely to achieve that sport is better mainstreamed in other EU policy areas, such as health, youth, citizenship, education and training, employment, social inclusion and social integration, research, and regional development, and that this orientation is reflected at Member State level.

Another positive impact derives from the fact that the EU makes sound political statements in areas such as health, volunteering, inclusion and financing of sport. It thereby positions itself, paves the way for future policies and promotes the interests of the grassroots sport sector.

Any possible direct impact of the White Paper on tackling major threats to sport, such as doping, violent and racist behaviour and criminality, is rather limited and requires close cooperation with other actors. However, the White Paper can be expected to have an indirect impact by strengthening existing networks and promoting more coordinated approaches.

The proposed actions concerning the societal role of sport will make a positive contribution to the expectations of stakeholders to better implement the Council's Nice Declaration.

5.6.2. Economic impact

The White Paper is also expected to increase the visibility of sport within EU policy areas that relate to its economic dimension.

An important impact should result from the proposed action of promoting the provision of comparable statistical economic data on the sport sector. If in the future Member State and Community efforts to develop a common European statistical method to measure the economic impact of sport are implemented, national policy-makers will obtain an important tool to better design national sport policies, based on reliable figures. The expected costs will remain limited (see chapter 10).

Proposed actions relating to the funding of sport will not have any immediate impact on the economic situation of sport organisations. However, they will have the indirect effect of awareness-raising in European and national policy-making regarding the specific concerns and needs of the sport sector. They will also help the actors concerned to reflect on solutions covering public and private sources to secure the financing of the grassroots sport sector in the mid- to long-term.

Better coordinated approaches in the field of sport and health, as envisaged by the White Paper, will help to make increasingly visible the positive correlation between physical activity and reduced health care costs in EU Member States.

5.6.3. Environmental impact

In line with the Commission's mission to promote a high level of environmental protection the proposed actions in the White Paper are expected to achieve the following results: (1) A more responsible management of sporting activities, sport facilities and sport events through the encouragement to implement voluntary schemes like EMAS, the EU Eco-label and Green Public Procurement and (2) The Communication of environmental values to the society at large. The White Paper will seek to encourage sport organisations to set meaningful environmental goals to improve their environmental performance and promote environmental initiates spearheaded by sport associations. On the financial side, if account is taken of sport within the "information and communication" part of the new Life+ programme the likeliness of implementation of the proposed actions by sport organisations will increase.

5.6.4. Impact outside the EU

Sport can make a positive contribution to further the realisation of development goals. This is recognised at international levels (e.g. UN Millennium Development Goals), through multilateral structures combining political dialogue and external assistance for sport-related projects, own assistance programmes by major international sport organisations and through the creation of non-governmental specialised networks.

At EU level, the European Parliament in 2005 adopted a resolution on development and sport. The Commission and FIFA have recently signed a Memorandum of Understanding to make football a tool for development in the ACP countries. Complementary or innovative actions with respect to already existing programmes and actions and the mainstreaming of sport-related actions in external assistance programmes are likely to have a positive impact in third countries, if the close cooperation with all actors (UN level, Member States' public authorities, sport federations and private organisations in international sport relations) can be assured. Sport is likely to increasingly help the dialogue with partner countries, as part of the EU's public diplomacy.

6. SUMMARY: COMPARISON OF THE DIFFERENT OPTIONS AND THEIR EXPECTED IMPACT

The following table compares the different options analysed above and their expected impact:

	Option 1 **No action**	**Option 2** **Further consultations**	**Option 3** **Broad initiative** **White Paper Communication**		**Option 4** **Single measures**
Cost efficiency	Indirect costs of "no action" in several areas	Indirect costs of "duplication of efforts"	Limited to studies, conferences and operational costs	Limited to studies, conferences and operational costs	Depend on the proposed single actions
Effectiveness	n.a.	Duplication of efforts, broad public consultations already carried out	Effective means to have a broad approach to sport and to further take account of the Nice Declaration	Effective means to have a broad approach to sport and to further take account of the Nice Declaration, but less visibility and political weight than a White Paper	Effective only in single areas (e.g. players' agents); not a viable option to give sport a higher profile in EU policy making
Coherence	Incoherence in light of the political demand and stakeholders' expectations to have an initiative on sport	Incoherent approach (see effectiveness)	Coherent approach in light of past consultations and legal and political context	Coherent approach in light of past consultations and legal and political context, but not appropriate because of the need for maximum	Incoherent approach in light of the diversity of expectations. Not appropriate to cover interest of the grassroots sector and the citizens dimensions of

				visibility and out-reach to citizens	sport
Possible risks	Deterioration of the existing situation; missed opportunity to reach out to citizens Negative image / lack of credibility of the Commission ("passiveness")	Negative image of the Commission because of lack of progress and duplication of work	Too "soft" instrument in the view of some stakeholders with too little far-reaching proposals Need for close cooperation within the Commission to ensure implementation of the proposed courses for action Possible, although limited, budgetary and human resources constraints	Too "soft" instrument in the view of some stakeholders with too little far-reaching proposals Need for close cooperation within the Commission to ensure implementation of the proposed courses for action Possible, although limited, budgetary and human resources constraints	Missed opportunity for an EU-level statement on the important multi-faceted role of sport Criticism by sport stakeholders and governments for having missed the opportunity to give sport a higher profile in EU policy making
Overall assessment	Not a viable option	Not a viable option	Right policy choice and best added value	Second best option	Will not lead to a comprehensive EU policy approach

7. ADDED VALUE OF COMMUNITY INVOLVEMENT

In view of the above assessment, the added value of Community involvement is analysed only for the selected option of a White Paper on Sport.

7.1. Subsidiarity of the proposal

In order to assess whether the EU can act in the field of sport and whether it is better placed than Member States to tackle the above problems it should be noted that the proposed initiative is first and foremost a political document which does not entail any regulatory proposals. While there is no specific EU competence for sport, the problems identified are directly linked to EU competence areas relating to the various topics that the initiative will address, ranging from health, education, youth or citizenship to competition and internal market rules.

The preferred option of a White Paper would improve cooperation between Member States in those areas where experience has demonstrated that progress in addressing or solving the problems cannot be sufficiently achieved by Member States alone and that the EU is well-placed to help achieving them through a set of non-regulatory instruments. EU activities are only proposed for those topics where there is a clear added value and a clear wish by Member States for the EU to act. The Action Plan therefore does not cover all issues put forward by sport stakeholders but makes a clear prioritisation, based on EU competences and the wishes of the Member States.

Questions of subsidiarity may have arisen with regard to Option 4, where concrete regulatory actions would have been proposed.

It is therefore considered that the White Paper does not raise problems regarding the principle of subsidiarity as far as the right to act is concerned. There is no interference with Member States' competences in the field of sport. The White Paper will not go beyond what is necessary to achieve the objectives of the Treaty.

As to the one proposal in the Action Plan that might lead to legislative action in the future, the proposed White Paper intends to carry out an Impact Assessment to provide a clear vision of the activities of players' agents in the EU and to assess different options for action or not at EU level. The proposed Impact Assessment is not, as such, a proposal for legislative action, although, if justified, it will consider legislative action among the possible options. Hence, it does not give rise to subsidiarity and proportionality concerns.

In the area of players' agents the Commission has received strong and almost unanimous demands from the sport movement and Member States to act in this area. In view of the scale of the perceived problems in this area and the cross-border nature of the activities of players' agents, it appears justified to conduct an Impact Assessment at EU level.

However, as already observed, the proposed Impact Assessment as such has no impact on the application of the principle of subsidiarity. This impact must be analysed in the proposed Impact Assessment on players' agents, and not in the present Impact Assessment on a White Paper on Sport.

7.2. Proportionality of the proposal

Similarly, it is considered that the preferred option of a White Paper does not raise problems concerning the principle of proportionality since the actions proposed are mainly of a political, non-legal nature, aimed at giving strategic orientation and therefore will not be disproportionate.

Concerning the proposed Impact Assessment on players' agents, repeated calls from the sport movement and from Member States have been made on the EU to regulate in a proportionate way the activity of players' agents through an EU legislative initiative. Before considering possible action, the Commission will carry out an Impact Assessment. Thus, the proposed measure has no impact on the application of the principle of proportionality.

7.3. Complement, reinforcement to and/or synergies with other interventions

For the first time, the White Paper will give an overview of all the different interventions of the Commission in the field of sport and of interactions of sport with other EU policies.

The initiative will constitute an added-value to existing initiatives in the field of sport, in that it will provide a complement to national policies and existing cooperation networks in the various areas of sport.

The proposed Impact Assessment on players' agents will allow a careful analysis of the situation before coming to any conclusion. It may also be noted that the ECJ in a judgement concerning the application of EC competition law in the field of players' agents has recognised as legitimate the objectives of professionalizing and moralising the activities of players' agents.

8. STAKEHOLDERS CONSULTATIONS AND EVIDENCE MATERIAL

8.1. Dialogue with the European sport movement

The Commission has a permanent dialogue with the European sport movement. Until 2003, the European Sport Forum gathered up to 300 delegates every year, including representatives of Member States' Governments, representatives of the sport movement – usually limited to European federations and European organisations – and occasional observers.

8.1.1. Conferences "The EU & Sport: matching expectations"

In 2005 the Commission decided to intensify its dialogue with the sport movement and to focus on more targeted discussions. This action was placed under the slogan "The EU & Sport: matching expectations" and has helped pave the way for the proposed White Paper, by focussing on concrete topics which stakeholders find important.

The first consultation conference was organised on 14-15 June 2005.[3] Three workshops were organised, focussing on "The Social Function of Sport", "Volunteering in Sport" and "The Fight against Doping". The second consultation conference was organised on 29-30 June 2006 in Brussels and placed under the heading: "The Role of Sport in Europe". Like the year before, reports from each workshop were prepared by external experts. Workshops looked at "The Societal Role of Sport"[4], "The Economic Impact of Sport"[5] and "The Organisation of Sport"[6]. Thus, the three chapter headings of the planned White Paper were also the three main headings of the conference.

Meetings between European sport federations and the Commissioner responsible for sport took place in 2004, 2005 and again on 20 September 2006. This last meeting looked at the core elements of the planned initiative on sport, namely the governance of sport in Europe and the specific organisational features of sport.[7] Ahead of the main meeting, the Commission met separately with some smaller federations and federations with more limited financial capacities.

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3 Workshop Reports: http://ec.europa.eu/sport/sport-and/equal-opp/docs/workshop_report_en.pdf
4 Report from Workshop 1: http://ec.europa.eu/sport/doc/societal_role_sport.pdf
5 Report from Workshop 2: http://ec.europa.eu/sport/doc/ws_economic_impact.pdf
6 Report from Workshop 3: http://ec.europa.eu/sport/doc/organisation_sport_europe.pdf
7 Report: http://ec.europa.eu/sport/doc/figel_federations_Report_en.pdf

8.1.2. Bilateral consultations

The Commission has always been prepared to receive sport organisations, including professional sports, amateur sports and all blends of "sport & culture" or "sport for all" organisations. In 2006 and 2007, the Commission has met bilaterally with a number of sport organisations to discuss issues related to the planned EU initiative on sport. In contrast with the multilateral meetings mentioned above, results have not been published as talks were confidential.

8.1.3. On-line consultation

An internet-based consultation targeting all interested organisations and individuals was launched on 7 February 2007 and remained open until 3 April 2007.[8] The website was based on the Interactive Policy-Making Tool and included a range of multiple-choice questions, as well as boxes with space for respondents to insert their own thoughts and ideas. The Commission has profited from its various conferences, and from conferences to which it was invited, to spread the word about this opportunity for stakeholders to make themselves heard. A detailed report on the outcome of the consultation will be annexed to the White Paper.

8.2. Consultations with EU Member States

8.2.1. EU Sport Ministers and EU Sport Directors meetings

Every Presidency organises a meeting of Member State Sport Directors (high civil servants with direct access to their Ministers), and most Presidencies have organised an informal meeting of Member State Ministers in charge of Sport in recent years. Within the last two years, informal Ministerial meetings were organised by the Presidencies of Luxembourg, the United Kingdom and Germany. A Ministerial Conference was organised jointly by the Commission and the Finnish Presidency under the title "The EU & Sport: Matching Expectations" in Brussels on 27-28 November 2006.[9] At this conference, debates were transmitted live to TV screens in an adjacent room. Attendance was open not only to specific stakeholders but to all interested parties.

8.2.2. Expert meetings

In 2005 and 2006 a range of expert meetings with representatives of Member State governments were organised, most of which have been documented via internet publications. These meetings have focused on the fight against doping, equal opportunities, health, volunteering and the free movement of sportspeople. In some of these meetings experts from the sport movement and from the academic world also had the opportunity to participate.

8.2.3. EU Working Groups "Sport & Health", "Sport & Economics", "Non-profit sport organisations"

Following decisions by EU Member States under the British, Austrian and Finnish Presidencies to closer work together on issues of the Rolling Agenda for Sport of direct relevance for them, EU working groups have been set up on the issues of "Sport & Health"

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[8] Planned White Paper on Sport – Online consultation. http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=OnlineConsult2007&lang=en

[9] Conclusions: http://ec.europa.eu/sport/doc/ministerial_conclusions_en.pdf

(2005), "Sport & Economics" (2006) and "Non-profit sport organisations" (2007). Similarly, Ministers decided in Stuttgart (March 2007) to set up a Network of National Anti-Doping Agencies. This form of cooperation is not founded on EC law and the output is not binding. At least eight Member States participate in each Working Group. The work of these groups has been valuable for the preparation of the White Paper.

8.2.4. Member State Working Group "White Paper"

An ad-hoc Working Group "White Paper", called for by EU Sport Ministers and convoked jointly by the German Presidency and the Commission, met on 7 March 2007 in Brussels. It concentrated on concrete, practical topics of interest to Member States which could be included in the White Paper.

8.3. Available studies, surveys, reports

8.3.1. Independent studies carried out by the Commission

Four consultancy studies were carried out in 2004 and published in January 2005, focussing on the issue of lifestyle change in relation to childhood and youth obesity[10], the job creation potential of the sport sector[11], the inter-cultural dialogue function of sport[12] and the problem of rapid career shift (the need for dual careers) among young top-level athletes[13.] The EU Working Group "Sport & Health" was set up as a response to some of these reports (see above). In January 2007 a contract was signed with INEUM and TAJ consultancies to conduct a survey of training centres for young athletes in Member States.

8.3.2. European surveys

In connection with the European Commission's Year of Education through Sport (EYES 2004) two Eurobarometer surveys were conducted – one before the beginning of the Year[14,] the other towards its end.[15] They confirm the important role of sport in European society and the citizens' wish to better promote sport within the EU.

8.3.3. EP reports

Since the mid-1990s, MEP's have regularly taken a strong interest in sport and urged the Commission to take action in this field. Within the past years, the EP has issued resolutions on "women and sport", "sport and development" and organised hearings on "doping in sport" and "education in sport". The support of the CULT Committee was crucial in obtaining funding for anti-doping projects (2000-2002) and in setting up the European Year of Education through Sport (EYES 2004). A variety of CULT documents testify to the Committee's expectations. Most recently, the EP adopted its "Report on the future of professional football in Europe[16]. The Parliament's primary objectives are to tackle the alleged legal uncertainty surrounding football raised by some stakeholders, to provide an answer to

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[10] http://ec.europa.eu/sport/documents/lotpaderborn.pdf
[11] http://ec.europa.eu/sport/documents/lotvocasport.pdf
[12] http://ec.europa.eu/sport/documents/lot3.pdf
[13] http://ec.europa.eu/sport/documents/lot1.pdf
[14] http://ec.europa.eu/public_opinion/archives/ebs/ebs_197_fr_summ.pdf
[15] http://ec.europa.eu/public_opinion/archives/ebs/ebs_213_summ_en.pdf
[16] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0100+0+DOC+XML+V0 //EN&language=EN

negative evolutions (money laundering, fraud, match-fixing, etc.) and to stimulate a competitive balance.

8.3.4. Other evidence material

In order to prepare the White Paper on Sport, the Commission has undertaken a screening exercise of the available independent, academic and journalistic literature in order to get more evidence on the topics to be identified for the initiative, such as the report on "Rules of the Game"[17]. Moreover, the Commission has received direct contributions from sport stakeholders (from both professional and amateur sport organisations and federations as well as from organised and non-organised sport) on the items they wished to see addressed in the different chapters of the White Paper. The Independent European Sport Review 2006 represents one contribution to the debate. It was launched at the initiative of the Governments of France, Germany, Spain and the United Kingdom and has been financed by UEFA. The report presented in 2006 by Mr José Luis Arnaut[18] analyses the current state of play in European football and contains a number of calls for the EU to take action in the field of professional football. This report is not a Commission document but testifies to some stakeholders' expectations from the EU.

9. FINANCIAL AND HUMAN RESOURCES

The "Pierre de Coubertin" Action Plan has been designed so as to keep the necessary financial and human resources for its implementation as limited as possible. The needs for human and administrative resources will be covered within the allocations granted to the managing services in the framework of the annual allocation procedure.

More precisely, the impact in terms of budgetary implications on existing budget lines (e.g. item 15 01 02 11 - Other management expenditure in support of Education and Culture, policy area) over a period of 5 years (2008-2012, the implementation period of the White Paper) can be estimated as follows:

- Studies and surveys: €1,950,000 (i.e. €390,000 per year on average);
- Platforms/networks and dialogue & cooperation structures: €900,000 (i.e. €180,000 per year on average).

The impact on human resources will be limited as most actions are related to areas which the Sport Unit in DG EAC is already dealing with. The implementation of actions which are completely new will require one additional person at AD level at this Unit throughout the 5-year implementation period.

Some additional sport-related activities may also occur at DG MARKT, JLS, EMPL and COMP, but in all cases these activities will take place in the context of existing sport-related work.

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[17] EOC [European Olympic Committee]; FIA [Fédération Internationale de l'Automobile] & Herbert Smith (Hrsg.) (2001): The Rules of the Game. Europe's first conference on the Governance of Sport, 26 & 27 February 2001. Conference Report & Conclusions. Brussels.

[18] http://www.independentfootballreview.com/doc/Full_Report_EN.pdf

10. MONITORING AND EVALUATION

The Commission will monitor the implementation of the "Pierre de Coubertin" Action Plan contained in the White Paper and intends to ensure the political follow-up by:

- Regularly reporting to EU Member States on the progress in each action area. The Commission will do so under each Presidency, starting in the second half of 2007, in the framework of the EU Sport Directors meetings;

- Reporting to the European Parliament on the experience gained when appropriate. The Commission will do so in the competent EP Committees, mainly the CULT Committee.

The Commission will monitor and report on progress by using the following indicators. This will allow Member States, the Parliament and the Commission to determine whether and to what extent the White Paper's objectives have been reached:

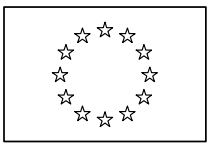
(1) The availability of clear recommendations based on the studies and the impact assessment foreseen in the Action Plan;

(2) The functioning of better structured and more efficient dialogue and networks on sport at EU level, as foreseen in the Action Plan. A Eurobarometer two years after the adoption of the White Paper will measure the satisfaction rate of sport stakeholders with regard to better cooperation and dialogue structures for sport at EU level. An EU sport platform (e.g. a sport forum), bringing together all relevant EU sport stakeholders, to be held the first time in 2008, will provide an opportunity to get direct feedback on progress in implementing the White Paper. The regular organisation of meetings of the existing EU Working Groups plus the establishment of new networks and the regular participation therein of a stable number of Member States and other relevant stakeholders will be sought. Progress on the establishment of Social Dialogue Committees for sport can be expected in the medium term.

(3) Regular informal EU Sport Directors and EU Sport Ministers meetings. The objective is to arrive at a practice where each Member State holding the EU Presidency organises one Sport Directors and one Sport Ministers meeting and ensures continuity of the debates by closely coordinating its programmes for sport within the Troika and in cooperation with the Commission and by using a re-enforced Rolling Agenda for sport, setting common priorities and ensuring regular reporting to Sport Ministers.

(4) Increased co-funding of sport-related projects within EU programmes, funds and actions. The work at inter-service level based on meetings of the Inter-Service Group "Sport" led by DG EAC will allow for a regular stocktaking of progress made in terms of mainstreaming sport into EU programmes, funds and actions and for identifying the needs for further improvement. A Eurobarometer two years after the adoption of the White Paper will measure the satisfaction rate of sport stakeholders with regard to better EU co-funding of sport-related projects.

(5) The availability of sound and comparable EU-wide data which illustrate the economic dimension of sport in Europe. Statistical data based on a revised and broadened NACE approach should be available by mid-2009.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.7.2007
SEC(2007) 936

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying document to the

WHITE PAPER ON SPORT

{COM(2007) 391 final}
{SEC(2007) 932}
{SEC(2007) 934}
{SEC(2007) 935}

The Impact Assessment for the White Paper on Sport explains the main motives and the process that led to the decision by the Commission to prepare a White Paper on Sport. The decision was based on a combination of in-house knowledge, extensive consultations with governmental and non-governmental stakeholders and a review of existing reports and studies[1], which enabled the Commission to identify priorities for a political initiative in the field of sport. The analysis confirmed that there is a significant range of expectations placed on the EU to better take into account the specific characteristics of sport in its policy making[2] while respecting the autonomy of sport, and that there are different areas where EU action in the field of sport could bring added value to existing measures at national level. It also confirmed that the potential of sport in the social and economic fields could be used better to help the EU achieve its strategic goals.

The current legislative framework does not give the EU a specific legal competence for sport. It is, however, an area to which many EC Treaty provisions apply and which has therefore also been subject to judgements by the European Courts and decisions by the Commission. The complex European sport landscape with its multi-faceted dimensions interacts with a considerable number of EU policies and is facing new social and economic realities and challenges, a fact which has so far not been addressed in a comprehensive manner through an EU-level initiative. Thus any response to stakeholders' expectations for an EU initiative has to be based on a holistic policy approach taking into account the underlying legal context on the one hand and the need to respect the autonomy of sport and subsidiarity requirements on the other. Any such initiative naturally requires close cooperation among all Commission services concerned.

With this in mind, the Impact Assessment outlines the main considerations for a Commission initiative in the field of sport by explaining the underlying motives, identifying the key problems and describing the main objectives. The key problems could be identified in relation to three core areas, namely the societal role of sport, the economic dimension of sport and the organisation of sport. They are presented in the form of a list of issues and the main challenges identified with regard to these issue. In view of the large number of issues to be addressed within a comprehensive approach to sport, six priority problems are identified for the purpose of the Impact Assessment which mirror major concerns expressed by stakeholders:

a) The lack of legal certainty regarding the application of EU law to sport;

b) Governance issues relating mainly to professional sports, in particular illegal practices which seem to be wide-spread among players' agents, the weak protection of under-aged sportspersons, as well as the damaging effects of doping and of racism and violence in sport;

c) The financing of sport and challenges facing the traditional ways how sport has been funded at grassroots level;

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[1] or a detailed summary of consultations carried out during the past years with both governmental and non-governmental stakeholders, see Annex III of the Commission Staff Working Document accompanying the White Paper.

[2] s laid down in the European Council's Nice Declaration of 2000.

d) The lack of data on the sport sector as a basis for policy making;

e) The growing problem of overweight, obesity, cardio-vascular disease and osteoarthritis which is to a large extent the result of a lack of physical activity;

f) The limited integration of sport issues in education and training policies.

The report illustrates that an EU initiative on sport should aim at giving strategic orientation on the role of sport in Europe, to encourage debate on given problems and to enhance the visibility of the sector in EU policy-making. The report states that the initiative is seeking to illustrate, recognise and promote within EU policy-making the specific societal, economic and organisational characteristics of sport. Another objective is to better mainstream sport into existing and planned EU programmes and actions and to identify how financial assistance may be provided to sport-related projects within EU financial instruments. The Impact Assessment also identifies the objective of better dialogue and political cooperation structures for sport at EU level.

Four different options to address the role of sport in Europe within the current legal and political context emerge from the impact analysis:

– Option 1 is to take no action and would lead to a continuation of the current arrangements in the field of sport;

– Option 2 is to launch further consultations on the need for an EU initiative on sport by choosing the tool of a Green Paper;

– Option 3 is to address sport through a broad, comprehensive initiative taking the form of a non-legally binding instrument, namely a White Paper or a Communication;

– Option 4 entails regulatory measures for specific problems combined with better mainstreaming of sport in EU policies and programmes.

Through its analysis of the possible impacts, the effectiveness, cost efficiency, coherence and possible risks of proposed actions in the six priority areas the report comes to the conclusion that option 1 (no EU action) would not meet the demands of stakeholders and may result in the continuation of missed opportunities to address current challenges in the field of sport. In light of the comprehensive consultations already carried out during the past years, the report does not see any added value in a continuation of the consultation process (option 2). The report considers that regulatory or legislative proposals in a range of areas, as proposed under option 4, would carry the risk of not respecting the principle of subsidiarity and the autonomy of sport and would not take into account sport's multi-faceted dimensions.

The option of a White Paper is the one which corresponds best to the objectives set out and is also the most cost-effective alternative. Through an action plan setting out concrete measures for the key topics identified, it pools the most effective actions at different levels while respecting the autonomy of sport and the division of competences for sport in Europe. It is the option which best responds to the wish to give political weight and visibility to an initiative on sport at EU level within the current legal framework.

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