



EUROPEAN TEAM SPORT FEDERATIONS

SAFEGUARDING THE HERITAGE AND FUTURE OF TEAM SPORT IN EUROPE

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Safeguarding the heritage and future of team sport in Europe

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Preamble

Sport is facing an increasing number of legal challenges and, as a result, is going through a period of deep uncertainty. If we are to protect the values of the European sports model, it is fundamental that sporting regulations may evolve within a stable legal environment, in order to meet the respective needs and specific circumstances of all team sports. It is essential, to maintain effective self-regulation, that sports bodies are ready and able to meet the various challenges, in accordance with the principle of subsidiarity.

1. Introduction

- 1.1 At the outset, it should be clearly stated that the need to protect the “specificity” of sport is not an attempt to put sport above the law. It is rather an attempt to recognise and respect the true values of sport within the law.
- 1.2 This document responds to the request by various Member States of the European Union to sports governing bodies to present concrete proposals to safeguard the future development of team sport in Europe, in particular, by better defining the legal environment in which the relevant European sports federations (working under the auspices of their international federations) and their members and stakeholders operate.
- 1.3 Sport is of great importance to the European public and delivers many benefits to society, especially in terms of integration, education, public health, team-work and social cohesion/inclusion. As such, it is vital that current sports structures be protected and that the specific characteristics of sport be taken into account when EU law is applied in this sphere. The Nice Declaration, adopted by the Member States of the European Union in 2000, already points firmly in this direction.



- 1.4** The "White Paper on Sport", issued by the European Commission in July 2007, was the first comprehensive attempt to describe how EU law affects sport and, as such, was welcome. However, describing the issues faced by sport is not enough: it is also necessary to address the issues in a way that delivers legal certainty. The European Parliament has also recognised the need to define more concretely the meaning of sporting specificity and to provide sports bodies with the legal security they need to carry out their functions effectively. This will, in turn, give concrete expression to the political sentiment underlying the Nice Declaration.
- 1.5** Legal security and certainty can be delivered using a variety of EU legal instruments, such as category exemptions, guidelines, communications or other generic rules. Article 165 of the new Treaty will (when ratified) create a further possibility, in the form of recommendations. The European Council should now invite the European Commission to follow up on the "White Paper" and set out a clear definition of the specificity of sport, employing the most appropriate legal instruments, and thus allowing federations to organise, regulate and promote their respective sports safely within the framework of EU law and the principle of subsidiarity. This task should be carried out in conjunction with the sports governing bodies (for example, the European sports federations as stated in both the White Paper on Sport and the European Parliament report on the White Paper), who are responsible for involving their own internal "stakeholders" in the decision-making process.
- 2. Specificity and autonomy of team sports in general: broad definition**
- 2.1** There is no question of seeking to remove the sports sector from the scope of application of EU law. However, it is both possible and necessary to explain in a clear way how the specificity of sport will be



recognised when EU law is applied. Appropriate guidance on the application of EU law to team sport should cover a wide variety of subject areas and be as practical as possible. There is a broad measure of consensus within the team sport family as to the subjects that should be addressed, including the need to preserve uncertainty of outcome, to foster open competition, to create a more level playing field, to safeguard the integrity of team sport; and generally to protect the values of the European sports model. In several of these areas there have already been supportive statements expressed by EU institutions, including the European Council, European Parliament, European Commission and the Court of Justice. It is now time to put this into a more coherent legal framework.

To achieve these goals, the following matters should be addressed:

2.2 *Field-of-play rules, structure of championships and calendars*

Based on appropriate consultation of relevant stakeholders, sports federations are the most appropriate bodies to regulate matters such as the rules of the game, competition formats (often undertaken by leagues), promotion/relegation issues and qualification systems, as well as the sporting calendar.

2.3 *Rules relating to the national organisation of team sport in Europe and reflecting the model of the European team sport pyramid*

Rules designed to give teams a more equal chance and which reflect the national character of team sport in Europe (such as the “home and away” rule) should be recognised as valid. Similarly, rules underpinning the “open” system in Europe, such as the principle of promotion and relegation in competitions, are based on the belief that representatives from every nation should have the chance to compete at the top flight in Europe. This system as a whole depends on the loyalty and commitment of all stakeholders to the European pyramid structure and the recognition that both national and European club



competitions are indivisibly linked. Consequently, it is not possible for federations, leagues, clubs or players to simply “pick and choose” which part of the pyramid structure they wish to be part of.

2.4 *Rules concerning the movement of players between teams*

All team sports require specific sports regulations governing the transfer of players from one club to another. While such systems are not identical there are certain common themes, such as the need to protect minors, to compensate for the training of players, to provide for contractual stability, and to ensure that a fair dispute resolution system exists. Also, to protect the regularity and smooth and stable functioning of competition, certain limits must be imposed on player movement, for example, in the form of transfer “deadlines”. These matters were all recognised, for example, in the agreement reached between FIFA/UEFA and the European Commission in 2001, when a solution was found to an important case concerning the international transfer system in football.

2.5 *Rules to encourage attendance and participation in amateur sport*

Certain sports may need protection to ensure that blanket coverage on television does not undermine attendance at matches and discourage people from participating at the amateur level. Team sports may (in accordance with their own sporting calendars) implement measures, such as limiting TV times, to avoid such risks.

2.6 *Rules concerning the composition of national teams and the release of players*

The rules concerning eligibility and selection criteria for the national team fall within the natural sphere of competence of the team sports federations. Such rules must also strive to protect the national team while finding the right balance between club and country. Generally, “player release” rules are designed to safeguard the interest of the



national team, in particular, by ensuring that each national team can select the best players and that players are not obstructed from representing their country in accordance with the relevant calendars elaborated by the different team sports. This is vital to protect stakeholders, the public, and the pyramid model on which European sports is based.

2.7 *Rules on doping and other disciplinary matters*

All sports must fight doping in order to prevent cheating and uphold the principles of fair play and good conduct as well to protect the health of players. Subject to proper individual case management and an appropriate and proportionate policy on sanctions, rules of sports federations on doping, as well as other disciplinary rules aiming at protecting sporting values (such as fairplay and integrity), fall squarely within the sphere of competence of the relevant sports federation.

2.8 *Licensing systems*

All team sports should constantly strive to improve the standards of their clubs in key areas, such as youth development, infrastructure, and, where appropriate, financial management. A licensing system, at European and/or national level, is one model that encourages such policies and should in turn serve to enhance not only good governance but also the overall level of sporting competition. Different team sports will consider their own needs if and when developing such systems, or their equivalent.

2.9 *Rules regarding the ownership of clubs in the same competition*

All team sports need to be aware of the image of their sport and to guard against conflicts of interests which may undermine the independence of clubs and the integrity of competitions. Such conflicts may result from the same people having interests in more than one team participating in the same competition. Appropriate rules to



address these matters should be developed and enforced by the sports governing bodies.

2.10 *Rules concerning the activities of agents*

The increased role and influence of agents operating in team sport is a matter that has to be properly regulated. The key objective here is again to protect the integrity and image of team sport and to achieve the necessary degree of financial transparency. The activities of agents also fall under the general principles of the specificity of sport and should be regulated in accordance with the needs of the different team sports.

2.11 *Rules concerning the local training of players*

All team sports should ensure that sporting rules and structures exist to promote youth development and to allow clubs to continue carrying out an important role in their local communities, to improve and encourage the training of young players and to enhance competitive balance. Such rules should be combined with strict controls by sports bodies (in principle, a prohibition) on the transfer of minors, otherwise the risk is that more and more young players move abroad too early in their life.

2.12 *Rules concerning the selling of commercial rights*

Federations and leagues have a key role to play in marketing the commercial rights to the sporting events they organise. Among other things, the central marketing structure in Europe is essential for the delivery of the financial solidarity system which is a fundamental feature of the European team sport model.

2.13 *Rules concerning the control of spending and financial stability*

It is important to maintain a level playing field in all team sports. Where necessary, proportionate and balanced rules should be developed by



the relevant competition organiser to maintain competitive balance and achieve financial stability. A pan-European licensing or audit regime could be established to meet these objectives and in accordance with the respective needs of different team sports.

2.14 *Solidarity*

A common theme linking all the above matters is the ability of governing bodies to maintain a regulatory structure built on solidarity, both sporting and financial, reflecting the pyramid model and value system of team sport in Europe.

2.15 *Arbitration as dispute resolution mechanism*

Since disputes in professional team sport need to be addressed in a speedy manner by parties having the requisite specialist knowledge, it is preferable that such disputes be resolved in appropriate arbitration bodies ensuring balanced representation of the parties.

2.16 *Intellectual Property (IP) and betting integrity*

Historically, sport has largely been financed by income from betting. However, in Europe, state monopolies are being dismantled and the liberalisation of gambling presents new challenges for sports bodies, especially with on-line betting companies increasingly active in this area. Greater regulatory control (involving joint efforts by sports bodies and public authorities) could be the way to tackle these challenges. IP protection for sports fixture lists would ensure more revenues are retained for reinvestment in sport while helping to safeguard the integrity of competition and reduce the risk of match-fixing. A stronger IP regime is also needed to guard against threats, such as internet piracy for example.



3. Specific current priorities

As a starting point, and bearing in mind that it is not realistic to cover everything at once, the focus can be on three specific areas in the near term; these being: (1) training and education; (2) club licensing; and (3) agents.

3.1 Training and Education

The Bosman case effectively eliminated any form of restriction on the number of non-national players able to sign for a club. The case has ramifications far beyond football and affects every team sport in Europe. Further, because of the growing number of international cooperation and association agreements the EU has concluded with third countries, clubs increasingly recruit players not just from other European countries but from virtually every part of the world. In these circumstances, there is a growing opinion that additional measures are needed to promote the training and education of players.

Team sports have attempted to respond to the challenge in different ways. For example, in football, UEFA introduced a local-trained player rule applicable to its own club competitions, which aims to achieve many valid sporting objectives, such as: promoting training, maintaining competitive balance, preventing player “hoarding”, and enhancing local identity and culture. The European Commission has declared the rule to be compatible with EU law. Other team sports must be free to develop and implement similar policies based on the same principles and tailored to their own individual circumstances.

The UEFA rule on local trained players is not universally implemented and it remains to be seen how effective it will be in achieving its objectives. Furthermore, if there is no effective control on the movement of minors, the rule might also have the unintended consequence of encouraging clubs to sign ever younger players from abroad. This is not in the interests of either team sport or young



people. The European team sports all believe that players should be trained to play – not to be bought and sold as commodities.

3.1.1 “*Double projet*” – dual training

Both the team sports and the political authorities (including EU Governments and the European Parliament) have expressed strong support for the promotion of “dual career” training. That is to say, it is essential that players have the opportunity to receive a general education and/or the possibility of vocational training in order to safeguard their future after their sporting career is over. The importance of academic and vocational training for athletes applies both to those in the formative education phase (up to the age of 21 – 23, depending on the sport) as well as to older athletes who must reintegrate into society on completion of their sporting career, including those whose sporting career ends prematurely.

As matters currently stand, associations, leagues and clubs do not have sufficient incentives to invest in this vital area. For example they have no guarantee that the recipients of the training will remain with them for very long.

3.1.2 Home-grown players

Clubs have a duty to invest in the local training of players. Clubs are not merely businesses but are part of the local communities where they are based and part of the identity of the nation to which they belong. Thus, appropriate incentive measures should be in place to ensure that all clubs engage in their player training commitments and to ensure that a degree of competitive balance is maintained in sporting competition. Such measures should not have the effect of stimulating the trafficking or exploitation of young players and concrete proposals must be developed to prevent this.



3.1.3 Protection of young players and training clubs

A related matter concerns the necessary protection of young sportspeople and the clubs that invest in their training. Appropriate regulatory measures are required to avoid the exploitation of youngsters (especially minors) and to ensure that clubs have continued incentives to invest in player training. In this connection, measures should be introduced to ensure that young players stay for a certain period of time with the club that has invested in their training.

Furthermore, under the age of 18, players should in principle stay with the clubs in their own country for a certain period of time, depending on the team sport in question. An appropriate body, within the sport in question (comprising associations, leagues, clubs and players), should investigate any international transfer of an U18 player and/or any occasion where there is a first registration of an U18 player who has a different nationality from that of the association where he seeks to be registered. This body would investigate the relevant conditions especially as regards player welfare and would be entitled to take all necessary measures to achieve these objectives.

3.2 Club licensing

To improve the professionalism of team sports in Europe, it is time to examine, for each team sport, the creation of an appropriate licensing framework and monitoring body. For example, a European financial management control body could be administered by the European sports federations as part of their own club licensing system and applied to clubs participating in pan-European competitions.

The establishment of such a framework at European level, in addition to the existing national-level control bodies (under the auspices of the relevant sports bodies), would help to foster better governance at all levels, to achieve greater financial transparency and sound



management, to enhance the stability and balance of competitions, and to deter abuses.

3.3 Agents

The increased prevalence of agents in team sport (operating predominantly in the European area) and the well documented problems linked to their various activities calls for improved regulation to be developed by the sports federations possibly in conjunction with appropriate measures at EU level.

4. Good governance by sports federations

All team sport federations should apply, and continue to develop, principles of good governance based on the existing work of, *inter alia*, the IOC and the Council of Europe. Adherence to principles of good governance, including appropriate involvement of stakeholders in the decision-making process, and operating in a democratic and transparent way, are primary conditions for the international, European and national federations to be recognised as the bodies responsible for regulating their sports on world-wide, European and national levels respectively, in compliance with the principle of subsidiarity.

Team sports also have the ability and desire to deliver wider public benefits, in particular, to advance the fight against racism and corruption and to promote the principles of fairplay provided that the public authorities work together with them in order to help achieve these objectives. At the same time, there are a series of other societal issues which are linked to, or somehow highly visible through sport, including: violence; corruption; money-laundering; trafficking/smuggling of minors; stadia and security; illegal betting; xenophobia, racism and other forms of discrimination; match-fixing and doping. Such issues can not be specifically dealt with by sports bodies alone, since resolving them requires co-operation with the political and public authorities and police forces.



5. Conclusion: French Presidency

- 5.1 The European Council should request the European Commission to finally implement, together with the European team sport federations the most effective means to recognise the specificity of the sport within a clear legal framework in accordance with the principles set out in this paper.
- 5.2 In addition to the above, the European Council should, as a first step, confirm its commitment to implement a definition of the specificity of sport in concrete terms and declare its unanimous support for:
- (i) the principle of “dual career” training for young sportspersons; effective implementation of “dual career” training in Europe, under the authority and guidance of the relevant sports federations;
 - (ii) the concept of minimum numbers of home-grown (local-trained) players, or similar policies, in professional team sports’ squads;
 - (iii) the more effective protection of young players and training clubs and, where appropriate, stricter regulation of the international movement of minors;
 - (iv) the establishment of an appropriate European licensing framework and financial management body, to be administered by the relevant European sports federations;
 - (v) improved regulation of the activities of agents in Europe and the current work (impact assessment) being conducted by the European Commission in this area;
 - (vi) strict adherence to the principles of good governance by all team sports federations.

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