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NOTE

Abstract:

More than one third of Europe's citizens participate in sporting activities and many aspects of the Union's policies influence the sporting world in areas such as free movement of persons, competition policy, media policy and health policy. However, it was only after 1997, with the inclusion of a Declaration on Sport in the Amsterdam Treaty that the European Union started to deal with sport from angles which were not purely economic. The briefing deals with these topics in detail.

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INTRODUCTION AND LEGAL BASIS

The issue of sport has great economic, cultural and social impact. More than one third of Europe's citizens participate in sporting activities on a regular basis and the existence of over 600 000 sporting clubs in the EU Member States underlines this fact. Although there was no article in the **Treaty of Rome** which mentioned sport explicitly, many different aspects of the Union's policies influence the sporting world, such as those concerning free movement of persons, recognition of qualifications, competition policy, health (doping) and audiovisual policy.

Moreover, judgements by the **European Court of Justice** have emphasised that sport has distinctive characteristics which may provide a justification for action at EU level. A Court of Justice judgement in 1974 ('Walrave judgement')¹ established that sport is subject to Community law to the extent that it constitutes an economic activity. Since then, various cases (Dona, Bosman, Deliège, Lethonen)² have confirmed this approach.

The inclusion of a **Declaration on Sport** in the 1997 **Amsterdam Treaty** gave a strong political signal about the new importance given to sport:

"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 raised. In this connection, special consideration should be given to the particular characteristics of amateur sport."

As a follow-up to this Declaration, the Commission presented its overall vision of sport in a **report³ presented at the Helsinki European Council in December 1999**. The report acknowledged sport as one of the areas of activity that most concerns and brings together the citizens of the European Union, irrespective of age and social origin. It, however, also pointed out that the social function of sport for some years had been affected by the emergence of new phenomena such as violence in stadiums, increase in doping, exploitation of young sportsmen and women and the search for quick profits to the detriment of a more balanced development of sport.

The **European Parliament** gave its opinion on this report in a resolution of 7 September 2000⁴. Parliament welcomed the Commission's initiative and called on the Intergovernmental Conference **to include an explicit reference to sport** in Article 151 of the Treaty. Parliament also stressed that sport was an ideal platform for social cohesion and democracy, and supported the idea that vocational training and education for sports men and women should be included in the Socrates and Leonardo programmes.

The next significant step was the **Declaration on the specific characteristics of sport adopted by the Nice European Council in 2000**. It calls upon the Community institutions to take due

¹ Case C-36/74

² Cases C-13/76, C-415/93, C-51/96 and C-176/96

³ Report of 10 December 1999 from the Commission to the Helsinki European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework (COM(99) 644 final).

⁴ OJ C 135/2001, p. 274.

account of the educational values of sport in its actions and demands that the social and cultural dimensions of sport should feature more prominently in national and Community policies. Sports federations maintain the right to organise themselves.

The draft **Constitutional Treaty** presented to the European Council in June 2003 and successfully concluded on 18 June 2004 takes a further step in recognising the issues of sport as part of the EU policy. Article 16 includes sport among the topics where the EU may take supporting, coordinating or complementary action. In Article III – 182 there is a special reference to the educational and social function of sport and to the development of the European dimension in sport.

1. FREEDOM OF MOVEMENT OF PERSONS

The free movement of persons is guaranteed under the EC Treaty and applies also to a certain extent to athletes. However, various court cases at the European Court of Justice have shown that professional athletes have encountered many barriers to free movement. A famous case is the Bosman Case.

1.1. The Bosman Case¹

In December 1995 the Court, basing its reasoning on Article 48 EC, ruled in the very important Bosman Case that transfer fees for out-of-contract players, directly affecting a footballer's access to the employment market in another EU country, were an obstacle to the free movement of workers and thus illegal under the Treaty. The Court also ruled against any limit on the number of other EU players who could be fielded in a club team.

1.2. Transfer systems in football

In December 1998, following a number of complaints, the Commission expressed several reservations to FIFA with regard to its **transfer system** and its compatibility with EC competition law and free movement of workers. After long discussions, the Commission, FIFA, UEFA and professional footballers' representatives in 2001 agreed to change the transfer system in line with Community law and taking into account the specific nature of football².

1.3. Recognition of qualifications

Recognition of qualifications and diplomas is another important aspect of freedom of movement. There are, however, glaring disparities between the training and education qualifications needed to work as a professional athlete in the different Member States, which explains some of the problems that have arisen. Well-known cases are those involving ski instructors who hold qualifications from other Member States and wish to practise their profession in France.

¹ [Judgment of the Court of Justice in Case C-415/93 Bosman, 15 december 1995.](#)

² Mrs Viviane Reding, Statement to the European Parliament, the reform of FIFA rules governing transfers, Strasbourg, 13 March 2001, Speech/01/117

In March 2002 the Commission put forward a proposal for a Directive to clarify and simplify the system for the recognition of professional qualifications⁷. This proposal would replace fifteen existing Directives in the field. It covers all the regulated professions (e.g. sport instructors) and provides for a greater liberalisation of the provision of services and for a more automatic recognition of qualifications. The proposal has been forwarded to the Council of Ministers and the European Parliament for adoption under the co-decision procedure. The European Parliament on 11 February 2004 adopted its first reading with many amendments.

2. COMPETITION POLICY

The European Commission notes¹ that sport comprises two levels of activity: on the one hand the sporting activity itself which fulfils a social, integrating and cultural role that must be preserved and to which the competition rules of the EC Treaty, do not in theory apply. On the other hand, there exists a series of economic activities generated by sporting activity to which the competition rules of the EC Treaty do apply, albeit taking into account the specific requirements of this sector. The interdependence and particularly the overlap between these two levels render the application of competition rules more complex.

The sports sector is mainly concerned with anti-trust rules, which are based on **Articles 81 and 82 of the Treaty**. The Commission has the task of ensuring that EU competition rules are respected. Among the cases the Commission has dealt with in this area can be mentioned: the agreements governing ticket sales for the Football World Cup, broadcasting rights, the regulatory role of sporting event organisers and the creation of new sporting organisations, and the sale of sport rights to internet and 3G mobile operations.

3. AUDIOVISUAL POLICY AND SPORTING EVENTS

Given the huge importance of advertising in the world of sport, television is the primary source of funding for professional sport in Europe. Some sports, such as football and Formula 1, attain very high viewing figures and many TV stations are willing to pay large amounts for the exclusive right to broadcast such events. The sales of such exclusive rights are an accepted commercial practice. In some cases this practice, however, has resulted in exclusion of broad public access to television events of major importance to society. In 1997 the **Television without Frontiers Directive**² was amended. Not least thanks to the **European Parliament**, the Directive contains **guarantees for unencoded access broadcasting of certain major sporting events**. Each Member State was asked to draw up a **specific list** of national or other events which TV stations within its jurisdiction will not broadcast in encrypted form only, on the grounds of general interest. Member States are free to define which events are to be considered 'of major importance for society'. These events may not be transmitted by television

⁷ COM (2002) 119.

¹ COM (99) 644.

² Council Directive 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 As amended by Directive 97/36/EC. OJ L 202, 30/07/1997, p. 60.

broadcasters on an exclusive basis and in encoded form, in order to make it possible for a substantial proportion of the public to follow them without additional costs.

4. PUBLIC HEALTH POLICY - DOPING

Doping has always been at variance with the basic principles of sport ethics. Doping has become an increasing problem, which exist both amongst amateurs and professional sportsmen and women. Since 1992 the ministers at EU level responsible in the area of health and sport have considered the problem on several occasions with the aim of intensifying the fight against doping through better coordination of national measures.

The European Council in Vienna on 11 and 12 December 1998 expressed its concern with the scale of doping in sport and the severity of this practice, and stressed the need for action at EU level. It invited the Member States to examine jointly with the Commission and international sports bodies 'possible measures to intensify the fight against this danger, in particular through better coordination of existing national measures'. Subsequently, the Ministers responsible for Sport in the EU Member States met on an informal basis in 1999 to lay down a basis for a **common strategy** for the Lausanne **World Conference on drug abuse in sport** organised by the International Olympic Committee in February 1999 to discuss the structures, missions and the funding of an **International Anti-Drugs Agency**. The EU's main reservations regarding the outcome of the conference concerned: the insufficient attention given to the causes of drug abuse; collaboration between the Olympic movement and public authorities; and the composition of the Independent International Anti-Drugs Agency. The EU was in favour of the creation of an Anti-Drugs Agency that should not be a body of the IOC itself.

The **World Anti-Doping Agency** (WADA) was established on 10 November 1999 to promote and co-ordinate the fight against doping in sport in all its forms. To this end, WADA cooperates with intergovernmental organisations, government, public authorities and other public and private bodies engaged in the fight against doping in sport. The Agency's principal task is to coordinate a comprehensive anti-doping program at international level, laying down common and effective minimum standards, particularly with regard to out-of-competition controls, and seeking equity for all athletes in all sports and in all countries. The European Commission took an active part in the establishment of WADA. In the start-up phase of the agency, it defended the principles of independence and transparency. However, owing to an incompatibility between the administrative and financial rules of the EU and those of the Agency, the EU has been unable to contribute to its operating budget. On the other hand, 2 million EUR in subsidies were granted to specific projects for combating doping, such as the establishment of an Athlete Passport or the training of observers of the Agency, who are present at major sporting events. The Athlete Passport combines a paper passport, in which doping control officials can log doping control information, with an internet-based database (www.wadapassport.org), through which athletes can access anti-doping information and obtain personal data regarding their own testing history¹.

The EU is also concerned about the extent of doping in **amateur sport**. Thus, in May 2002 the Commission presented the results of a study on doping at fitness centres in Europe. This is the first time the phenomenon has been the subject of an investigation covering several Member

¹ [Written Question: P-0147/04](#).

States, and the results are worrying: nearly 6% of fitness centre users admit taking performance-enhancing drugs regularly¹

The **European Parliament** has for several years been very concerned about the increasing use of doping substances and on 17 December 1998, the European Parliament adopted a resolution² in which it called on the Commission to take into account the real dimension of the doping problem and to propose measures at Community level notably with a view to better coordination and complementarity between measures and actions taken by the Member States and European and international sporting organisations. On 7 September 2000 the European Parliament in its resolution³ on the Commission Communication on combating doping (COM (99) 643) called on the Commission, within the Fifth Framework Programme, to intensify research into doping substances, detection methods, the impact of the use of doping substances on health, and the limits of natural hormones produced by the human body. Moreover, it called on the Commission to include in its information campaigns about the dangers of doping the possible harmful effects of 'nearly-doping products', as well as discouraging department stores, sports shops and gymnasia, etc. from selling these products. The Parliament welcomed the provision under budget line B3-2020 of funding for pilot projects to assist campaigns to combat doping products in sport in Europe as well as the Commission's plans to mobilise the European Union's education, vocational training and youth programmes to inform young people about the hazards of doping products.

5. SPORT AND EDUCATION

The European Parliament already in 1997 suggested that the Community should organise a European Year of Sport, a request it repeated in a resolution of 7 September 2000⁴. On 6 February 2003, **the European Year of Education through Sport 2004** was established by Decision 291/2003 of the European Parliament and Council⁵. The year, which coincide with the Olympic Games in Athens, will be marked by EU and national initiatives aimed at encouraging lasting cooperation between educational institutions and sports organisations and giving more-emphasis to sports activities and the transmission of sporting values in education. The budget is EUR 11.5 million and 28 countries are participating. The slogan is "move your body, stretch your mind".

¹ [European Commission Press Release: IP/02/709, May 2002](#)

² [OJ C 98/99](#)

³ [OJ C 135/01, p. 270](#)

⁴ [OJ C 135/01, p. 270](#)

⁵ OJ L 43 E/03, p.1.

6. OTHER ACTIVITIES

6.1 Violence in sport

The European Parliament has several times expressed its concern about violence in sport.

As far as football hooliganism is concerned, the measures have to strike a balance between protecting public order and respecting individual rights and the EU's rules on freedom of movement and non-discrimination on the basis of nationality. To this end the European Community has adopted a number of Recommendations, Resolutions and Decisions that deal with the problem:

- **Council Recommendation on guidelines for preventing and restraining disorder connected with football matches**¹. It advises that Member States should use a common format for police intelligence reports about known or suspected troublemakers and information should be exchanged about techniques for preventing disorder.
- **Council Resolution on preventing and restraining football hooliganism through the exchange of experience, exclusion from stadiums and media policy**².
- **Council Resolution concerning a handbook for international co-operation and measures to prevent and control violence and disturbances in connection with international football matches**³.
- **Council Decision concerning security in connection with football matches with an international dimension**⁴. It establishes national football information-points that shall exchange relevant information and facilitate international police co-operation.
- **Council Resolution on the use by Member States of bans on access to venues of football matches with an international dimensions**⁵.

6.2 European Sports Forum

The EU needs to be aware of the concerns and opinions of the sports world when preparing initiatives in this area, while sports authorities must be well-informed on EU developments which will affect their activities.

Since 1991, a meeting place for this dialogue has been the annual **European Sports Forum** with the aim of ensuring better coordination between the world of sport and the Commission. It brings together people involved in sport from national ministries and non-governmental organisations as well as officials from international and European federations and sport clubs.

6.3 Sports and disabled people

The European Community provided financial support for disabled people practising sport via the **Eurathlon programme**. This programme, which was started in 1994, was suspended in 1998, based on a Court of Justice ruling on the legality of the funding.

The **Nice Declaration** said that sport provides a particularly favourable opening for the development of individual talent, rehabilitation, social integration and solidarity for the physically or mentally disabled people. The year **2003** was designated **European Year of**

¹ [OJ C 131/1996, p. 1.](#)

² [OJ C 193/1997, p. 1.](#)

³ [OJ C 196/1999, p. 1.](#)

⁴ [OJ L 121/2002, p. 1.](#)

⁵ OJ C 281/2003, p. 1

Disabled Citizens and the European Commission decided it was an ideal opportunity to focus on further efforts to support sporting activities for the disabled in accordance with the Sports Declaration. The new focus follows an exceptionally successful Paralympics in Sydney.

The Xth European Sports Forum, held in Brussels in 2001, set up a specific Working Party on sport for people with disabilities to prepare for the European Year of People with Disabilities in 2003. In its conclusion, the Working Party recommended that the year 2003 should not be an isolated one year event, but should lead to further action to encourage people with disabilities to engage in sport.

6.4 Sport and equal opportunities

On 5 June 2003¹ the **European Parliament** adopted a resolution based on an own-initiative report on **women and sport**.

The holding of the Olympic Games in Athens in 2004 and the European Year of Education through Sport led the Parliament to propose an examination of the importance of sports coeducation in schools, calling on the Commission and the member States to give clear priority to projects encouraging women to participate in sport.

Recalling that sport had had a democratic role since Antiquity, Parliament called for a new dimension for sport in schools and sport in leisure and sought to ensure equal rights in top-level sport for female athletes. It also called for measures for the prevention and elimination of sexual harassment and abuse in sport.

The Parliament also requested greater participation by women in decision-making in sports. To that end, it called on Member States and authorities to make subsidies to sports associations conditional on the adoption of statutory provisions ensuring equal representation of women and men at all levels. Sports organisations were invited to promote women's participation in refereeing and adjudication and the presence of women in management structures would have to increase over the next ten years. Finally, participation in sport by girls and women should be included as an operational objective in the future Community framework strategy on gender equality for 2006-2010.

¹ OJ C 68 E/04, p. 335