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2006/2130(INI)

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OPINION

of the Committee on Legal Affairs

for the Committee on Culture and Education

on the future of professional football in Europe
(2006/2130(INI))

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SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. while on the one hand, the existing primary law of the European Community does not confer on the Community any responsibility for sport in general or for professional football in particular, on the other hand neither are they excluded from the scope of application and, among other things, the case-law of the European Court of Justice (Court of Justice) and decisions taken by the European Commission make clear that in particular the ban on discrimination imposed by Article 12 of the EC Treaty, the principle of freedom of movement for workers enshrined in Article 39 thereof, the freedom of establishment and the freedom to provide services laid down in Articles 43 and 49 thereof, the provisions on competition set out in Articles 81 to 87 thereof and the provisions on employment and social policy have had an impact on sport and professional football,
 - the declarations attached to the 1997 Treaty of Amsterdam and the declaration issued by the Nice European Council in 2000 did not change, and did not seek to change, this legal situation,
- B. while the specificity of sport, which is recognised in the Amsterdam Treaty, the Declaration of Nice and the case-law of the Court of Justice, should be recognised and implemented in decisions and legislation by all levels of government, it should also be noted that the application of a layer of regulation is monitored and controlled by national football authorities, UEFA and FIFA, respectively the national, European and world governing bodies in professional football,
- C. secondary law also fails to take systematic account of the specific requirements of professional football; this concerns, in particular, the provisions governing the recognition of diplomas and the award of licences to trainers, players' agents and players from non-EU countries; the Independent European Sport Review also calls for action by the European legislator in the following problem areas linked to professional football: money laundering, betting fraud, exploitation of young players and illegal trading in players, lottery regulation should national monopolies be abolished, measures to combat racism and hooliganism and the black market for tickets,
- D. the greater professionalisation and commercialisation of sport in general and football in particular has made EU law much more relevant in this area, a fact reflected in the growing number of cases pending before the Court of Justice and the Commission,
 - this has greatly exacerbated the problem of legal uncertainty and the sectors concerned increasingly see an approach based solely on treating cases individually as inadequate, a view also documented in the study commissioned by a number of sports ministers in the EU Member States and recently published under the title Independent European Sport Review 2006,
 - the legal uncertainty which currently exists is not only problematical in economic

terms, but in particular as regards the performance of football's social, cultural and educational tasks; it is not clear, for example, whether the UEFA rule stipulating that teams must contain a minimum number of home-grown players, a provision which is extremely important for youth development, would, if it underwent legal review by the Court of Justice, prove to be consistent with Article 12 of the EC Treaty,

- E. Notes that there is a distinction drawn in the case-law of the Court of Justice between the sporting and economic rules of governing bodies applicable to professional football; sporting rules fall outside the scope of the Treaty, while economic rules may fall either outside or within the scope of the Treaty, and may be capable of justification under or be prohibited by the Treaty,
- F. considers that the rules on the composition of national teams¹, or the rules relating to the selection by sports federations of those of their members who may participate in high-level international competitions² are purely sporting rules which therefore, by their nature, fall outside the scope of Article 39 and Article 49 of the Treaty. Also among such rules are 'the rules of the game' in the strict sense, such as, for example, the rules fixing the length of matches or the number of players on the field, the organisation and conduct of sporting events and championships, given that sport can exist and be practised only in accordance with specific rules. That restriction on the scope of the above provisions of the Treaty must, however, remain limited to its proper objective³. The same principles apply with regard to Articles 81 and 82 of the Treaty,
- G. considers that those covered by measures and decisions of sports tribunals are still, first and foremost, subject to national law, which should safeguard their legal position; thus, the autonomy of the rules of sport does not allow them to be considered to be assigned to dispense judicial protection exclusively, in consideration of the absolute, institutionalised primacy of national courts, which, therefore, excludes all limitation of their constitutional prerogatives,
- H. considers that the choice of public or sports jurisdiction may not be the subject of a prior agreement, with referral of future disputes exclusively to federal bodies and/or arbitrating bodies, but should be the outcome of a free choice by the parties taken following the launch of the action,
- I. considers, however, that the jurisdiction of the ordinary court is valid when disputes centred on disciplinary sanctions imposed by sports tribunals on clubs affiliated to the sporting federations and based on a failure to observe purely technical rules of a sporting nature to a large extent give rise to real and appreciable censure or loss of status of the affiliate. Not only measures to withdraw a sports club's affiliation to a federation, but also measures to exclude it from a given championship, are outside the conceptual area and the ontological and substantial scope of sporting autonomy, for the simple but decisive reason that these are sanctioning measures which, in that they remove powers and, therefore, subjective legal positions covered by the general judicial sphere of the

¹ See Case 36/74, paragraph 8, and Case 13/76, paragraph 14.

² See Joined Cases C-51/96 and C-191/97, *Deliège* [2000], ECR I-2549, paragraph 64.

³ See Case 36/74, paragraph 9; 13/76, paragraph 15; C-415/93, paragraphs 76 and 127; C-51/96 and C-191/97, paragraph 43; C-176/96, paragraph 34.

sports club, preventing them from developing and attaining of the social objective laid down in their constitution, necessarily and incontestably fall within the scope of national law and not solely within that of internal sporting rules,

- J. likewise as a result of this legal uncertainty, it is not clear how much autonomy self-regulating bodies, such as UEFA and national associations, enjoy, to what extent they are bound, when exercising their right to self-regulation and performing their regulatory tasks, by certain principles of EU law (non-discrimination, proportionality, democratic and constitutional procedures, safeguarding of players' rights), and how free they are to exercise their 'monopoly' (problem of the home and away rule, breakaway leagues, trademark law), or whether, when they act both as a regulator and an economic operator in the same market, this results in a conflict of interests or the abuse of a dominant position,
- the primacy of Community law and access to the normal legal channels of the Member States and of the Union must be safeguarded also in sport,
- K. European football needs a level playing field, in both economic and legal terms, for international competitions, but this is ruled out by the differing arrangements which apply in individual Member States, for example the rules on the (joint or individual) marketing of television rights, the conditions governing free-to-air coverage by public television stations, differing national and/or local rules on subsidies and taxes, the rules governing the use of players from third countries, differing licensing practices and conditions governing the ownership and management of clubs; this state of affairs is also seriously undermining sporting competition,
- the application of EU law, in particular the Bosman judgment of the Court of Justice, has had a positive impact on the rights of professional players, but at the same time, according to FIFPro¹ roughly 50% of professional players in Europe do not have an employment contract with their clubs and many employment and training contracts in this area are legally questionable,
 - the article dealing with sport (Article III-282), which was incorporated into the Constitutional Treaty not by the Convention, but rather by the Intergovernmental Conference, shares the uncertain fate of the Constitutional Treaty itself, is already being interpreted in a very wide variety of ways, and is problematical in that professional football today essentially presents itself as an economic activity and the application of EU law should not be kept at bay by invoking 'voluntary structures' and social and educational tasks; in overall terms, EU law is not applied in such a manner as to increase legal certainty,
 - European football, based as it is on the principle of nationality, needs to strike a proper balance between the national foundation of the game and the European level so as to enable football leagues and associations to cooperate efficiently,

¹ **Fédération Internationale des Footballeurs Professionnels** (*International Federation of Professional Footballers*)

- L. reiterates that, as established by the case-law of the Court of Justice, where a sporting activity takes the form of gainful employment or the provision of services for remuneration, it falls within the scope of Article 39 et seq. of the Treaty or of Article 49 et seq. thereof¹,
- M. considers that the rules providing for the payment of fees for the transfer of professional players between clubs (transfer clauses) or limiting the number of professional players who are nationals of other Member States which those clubs may field in matches (rules on the composition of club teams), or fixing, without objective reasons concerning only the sport or justified by differences in the circumstances between players, different transfer deadlines for players coming from other Member States (clauses on transfer deadlines) fall within the scope of Article 39 et seq. of the Treaty and are subject to the prohibitions which they enact²,
- N. Considers that the principles extracted from the case-law, as regards the application to sporting regulations of the Community provisions in respect of the freedom of movement of persons and services, are equally valid as regards the Treaty provisions relating to competition and are capable, in an appropriate case, of constituting an infringement of the liberties guaranteed by those provisions and of being the subject of a proceeding pursuant to Articles 81 and 82 of the Treaty,
- O. considers that purely sporting rules, that is to say rules concerning questions of purely sporting interest and, as such, having nothing to do with economic activity, do not fall within the scope of the Treaty³. Such regulations, which relate to the particular nature and context of sporting events, are inherent in the organisation and proper conduct of sporting competition and cannot be regarded as constituting a restriction on the Community rules on the freedom of movement of workers and the freedom to provide services,
- P. Calls on the Commission, in the context of European football, to provide guidance on the legal framework for the sport, thereby making for a greater degree of legal certainty,
- Q. Takes the view that, although they lay down no specific legislative competence for sport, the EU Treaties contain a wide array of instruments which could be employed as part of an action plan, e.g.:
- European Parliament and Council directives to deal with the issues of licences for players from non-EU countries, the protection of young players and the role of players' agents;
 - group exemptions in connection with various aspects of competition law, e.g. marketing contracts, subsidies;

¹ See Case 36/74 *Walrave and Koch* [1974] ECR 1405, paragraph 5; Case 13/76 *Donà* [1976] ECR 1333, paragraphs 12 and 13; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 73.

² See the judgments in Case C-145/93, paragraphs 114 and 137; Case C-176/96, *Lehtonen* [2000], ECR I-2681, paragraph 60; and Case C-438/00, *Deutscher Handballbund* [2003], ECR I-4135, paragraphs 56-58.

³ See Case 36/74, paragraph 8.

- Commission directives pursuant to Article 211 of the EC Treaty on the application of competition law; in that connection, steps should be taken to determine whether sporting organisations provide services of general economic interest within the meaning of Article 86 of the EC Treaty;
 - the machinery of social dialogue, in particular in connection with issues relating to players' rights;
 - recommendations to the Member States with a view to replacing differing national arrangements with, for example, central marketing systems;
 - Council framework decisions, e.g. to combat certain forms of crime;
- R. Calls on the Commission, when developing the action plan, to take up the proposals made in this report and to involve Parliament in all aspects of the drafting and implementation of the action plan and to consult sporting organisations, players' associations and all other interested parties;
- S. Does not regard the establishment of a specific EU Sports Agency as necessary,
- T. Considers that football's bodies should be free to govern their sport where their rules are purely sporting; however, considers that, where the rules include restrictions, they must be proportionate, that is, reasonable and necessary to achieve the sporting objective(s) concerned,
- U. Considers that football must ensure the interdependence of competitors and the need to guarantee the uncertainty of results of competitions, which could serve as a justification for sports organisations to implement a specific framework on the market for the production and the sale of sport events; however, considers that such specific features do not warrant an automatic exemption from the Community competition rules for any economic activities generated by professional football owing to the increasing economic weight of such activities;
- V. Considers that Community law - in particular internal market and competition rules - applies where football entails an economic or commercial activity;
- W. Considers that the European Union should provide clear guidance on the type of 'sports rules' that are automatically compatible with Community law and the 'sports-related rules' where Community law applies;
- X. Considers that a consultation process between the EU Institutions and European football authorities needs to be established, so as to provide a mechanism for confirming which sports rules and practices fall outside the scope of Community law and which do not; considers that such a consultation process could give rise to a formal framework agreement between the EU and UEFA.

PROCEDURE

Title	The future of professional football in Europe		
Procedure number	2006/2130(INI)		
Committee responsible	CULT		
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Enhanced cooperation – date announced in plenary			
Drafts(wo)man Date appointed	Maria Berger 30.5.2006		
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Result of final vote	+: –: 0:	21 0 0	
Members present for the final vote	Maria Berger, Carlo Casini, Rosa Díez González, Giuseppe Gargani, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Achille Occhetto, Aloyzas Sakalas, Gabriele Stauner, Andrzej Jan Szejna, Diana Wallis, Jaroslav Zvěřina		
Substitute(s) present for the final vote	Nicole Fontaine, Jean-Paul Gauzès, Othmar Karas, Eva Lichtenberger, Arlene McCarthy, Manuel Medina Ortega		
Substitute(s) under Rule 178(2) present for the final vote	Sharon Bowles, Albert Deß, Ewa Klamt		
Comments (available in one language only)	...		