

EU Sports Law

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1957 Treaty of Rome

- No mention of sport (not until 2009 - Art.165 TFEU).
- Articles establishing free movement of workers and services, competition policy & citizenship rights.
- Do these Treaty Articles apply to sport?
- In exercising their Treaty powers, has the European Court of Justice privileged single market values over sporting values?

Key Cases

- Case 36/74 *Walrave and Koch v Association Union Cycliste Internationale* ECR [1974] 1405
- Case C-415/93 *Union Royale Belge Sociétés de Football Association and others v Bosman and others* [1995] ECR I-4921.
- Joined Cases C-51/96 and C-191/97 *Deliège v. Ligue francophone de Judo et disciplines Associeés Asb* [2000] ECR I-2549.
- Case C-176/96 *Lehtonen & Castors Canada Dry Namur-Braine ASBL v Federation Royale Belge des Societes de Basketball ASBL* [2000] ECR I-2681.

- Case C-176/96 *Deutscher Handballbund eV v Kolpak* [2003] ECR I-4135.
- Case C-519/04 P *David Meca-Medina and Igor Macjen v Commission* [2006] ECR I-6991.
- Case C-49/07 *MOTOE v Elliniko Dimosio* [2008] ECR I-4863.
- Case C-325/08 *Olympique Lyonnais v Olivier Bernard, Newcastle United* [2010] I-2177.

- Joined Cases C-403/08 & C-429/08 *FA Premier League (FAPL) and others v QC Leisure and others, Murphy v Media Protection Services Ltd* [2011] ECR I-9083.
- Case C-90/16 *The English Bridge Union Ltd v Commissioners for HM Revenue & Customs* [2017] BVC 53.
- Case C-22/18 *TopFit e.V & Daniele Biffi v Deutscher Leichtathletikverband e.V* [2019]

Walrave (1974)

- *'Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty'* (para. 4).
- The prohibition of discrimination based on nationality *'does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity'* (para. 8).
- The prohibition on discrimination contained in the free movement passages of the Treaty *'...does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services'* (para. 17).
- *'The rule on non-discrimination applies in judging all legal relationships in so far as these relationships, by reason either of the place where they are entered into or the place where they take effect, can be located within the territory of the Community (now EU)'* (para. 28).

Bosman (1995)

- *'Article 48 (now 45 TFEU) of the Treaty precludes the application of rules laid down by sporting associations, under which a professional footballer who is a national of one Member State may not, on the expiry of his contract with a club, be employed by a club of another Member State unless the latter club has paid to the former club a transfer, training or development fee' (para.114).*
- *'Article 48 (now 45 TFEU) of the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other Member States' (para.137).*

Deliège (2000)

- *'As a result of recent developments in the way sports operate, the distinction between amateur and professional athletes had become less clear. Leading sports personalities could receive, in addition to grants and other assistance, higher levels of income because of their celebrity status, with the result that they provided services of an economic nature' (para.13).*
- *'...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' (para.46).*
- *Selection rules are '...inherent in the conduct of an international high-level sports event, which necessarily involves certain selection rules or criteria being adopted. Such rules may not therefore in themselves be regarded as constituting a restriction on the freedom to provide services prohibited by Article 49 (now 56) of the Treaty' (para. 64).*

Lehtonen (2000)

- *Transfer windows are 'liable to restrict the freedom of movement of players who wish to pursue their activity in another Member State, by preventing Belgian clubs from fielding in championship matches basketball players from other Member States where they have been engaged after a specified date. Those rules consequently constitute an obstacle to freedom of movement for workers' (para.49).*
- *'Late transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that championship, and consequently the proper functioning of the championship as a whole' (para.54)*

Kolpak (2003)

‘Article 38(1) of the Association Agreement with Slovakia must be construed as precluding the application to a professional sportsman of Slovak nationality, who is 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 are authorised to field, during league or cup matches, only a limited number of players from non-member countries that are not parties to the EEA Agreement’

See also ECJ *Simutenkov* (2005).

Meca-Medina (2006)

- *'The mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down'* (para.27).
- *'If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty'* (para.28).
- *Anti-doping rules do not 'necessarily constitute a restriction of competition ... since they are justified by a legitimate objective. Such a limitation is inherent in the organisation and proper conduct of competitive sport and its very purpose is to ensure healthy rivalry between athletes'* (para.45).

MOTOE (2008)

A ‘system of undistorted competition, such as that provided for by the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators’ (para.51).

‘Rules on consent such as those in question here lead to a conflict of interest’ (Opinion of AG).

See also: Case AT.40208 – International Skating Union’s Eligibility Rules.

Bernard (2010)

- *‘Article 45 TFEU does not preclude a scheme which, in order to attain the objective of encouraging the recruitment and training of young players, guarantees compensation to the club which provided the training if, at the end of his training period, a young player signs a professional contract with a club in another Member State, provided that the scheme is suitable to ensure the attainment of that objective and does not go beyond what is necessary to attain it’.*
- *‘A scheme such as the one at issue in the main proceedings, under which a ‘joueur espoir’ who signs a professional contract with a club in another Member State at the end of his training period is liable to pay damages calculated in a way which is unrelated to the actual costs of the training, is not necessary to ensure the attainment of that objective’.*

Murphy (2011)



English Bridge Union (2017)

‘Article 132(1)(m) of Directive 2006/112 must be interpreted as meaning that an activity such as duplicate bridge, which is characterised by a physical element that appears to be negligible, is not covered by the concept of ‘sport’ within the meaning of that provision’ (para. 29).

TopFit (2019)

- *AG Opinion*: Case to be assessed with reference to free movement law (establishment). This requires evidence of economic activity.
- *CJEU*: Applied EU citizenship rights. Rules of sports bodies (not just state bodies) limiting participation of non-nationals are unlawful unless justified & proportionate.

Conclusions

- Sport is subject to EU laws on free movement, citizenship & competition law.
- Sports bodies must consider to how accommodate this legal reality but the EU should not ignore the ‘autonomy & specificity of sport’ (‘conditional autonomy’).
- Consider Weatherill’s ‘strategies’ for defending the autonomy of sport: contractual, legislative & interpretive.

Key Reading

- Weatherill, S (2017), *Principles and Practice in EU Sports Law*, OUP.
- Anderson, Parrish & Garcia (2018), *Research Handbook on EU Sports Law and Policy*, Edward Elgar.