

# *EU Sports Policy*

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# EU Sports Policy: Background

- From 1957 to 2009, the EU was not competent to develop a sports policy.
- However, other EU Treaty provisions such as free movement and competition laws had an impact on sport.
- In 1974 the European Court ruled that sport is subject to EU law whenever it is practiced as an economic activity (*Walrave*).
- In 2009, the Lisbon Treaty established sport as an official ‘third tier’ competence of the EU (Article 165 TFEU) → limited legislative capacity in sport.
- The sports movement hopes that Article 165 provides protection for the autonomy and specificity of sport.

# Key Actors in EU Sports Policy

- **European Commission:**

- Since Lisbon DG Education and Culture has the power to propose 'recommendations' and 'incentive measures' in the area of sport but not general sports legislation. Incentive measures include Erasmus+ funding for sport.
- DG EAC promotes dialogue with the sports movement.
- Other DGs can propose legislation that has an impact on sport (employment, competition, media etc).
- DG Competition can investigate sports related complaints.
- Other DG's can initiate legal proceedings against a Member State for breaches of EU law.

- **European Parliament:**

- Limited legislative role in sport.
- Adopt opinions, reports and resolutions on sport related matters.
- Commission sport related studies.
- Submit parliamentary questions to the Commission.
- Organise hearings on sport related matters.

- **Council of Ministers:**

- Since Lisbon a formal Sports Ministers Council meets.
- Can adopt recommendations and incentive measures.
- Can adopt resolutions: e.g. Work Plan for Sport (e.g. 2017-2020): <http://data.consilium.europa.eu/doc/document/ST-9639-2017-INIT/en/pdf>
- Can adopt conclusions: e.g. Major Sport Events and Sports Diplomacy.
- Can delegate work to expert groups.

- **The European Council:**

- Heads of State and Government.

- Sets the long term strategic direction of European integration.

- Agreed to the inclusion of Art.165 TFEU (2009).

- **Court of Justice of the EU:**
  - CJEU jurisprudence shapes the content of EU sports policy.
  - CJEU can hear preliminary references from national courts on the interpretation or validity of EU law.
  - Infringement proceedings before the Court can be initiated by the Commission against Member States for alleged breaches of EU law.
  - The Court can hear actions for annulment arising in instances where EU institutions or private individuals seek to challenge an EU act, such as a Commission competition decision.

# Themes in EU Sports Policy

1. Sports Policy as a means of promoting the EU.
2. The unintended consequences of policy in other sectors (free movement and competition law).
3. Sports policy as a means of reconciling the specificity of sport with EU law.

# 1. Promoting the EU

- The Adonnino Report (1985): European Community events and teams, the use of the Community emblem (12 gold stars).
- Amsterdam Declaration on Sport (1997): *“forging identity and bringing people closer together”*.
- European Year of Education through Sport (EYES) project (2004) explicitly referred to sport as *“a vehicle for Europeanisation”*.
- White Paper on Sport 2007: *“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”*.
- 2015/16: Commissioner Navracsics launches EU sports diplomacy initiative:  
[http://ec.europa.eu/assets/eac/sport/policy/cooperation/documents/290616-hlg-sd-final-report\\_en.pdf](http://ec.europa.eu/assets/eac/sport/policy/cooperation/documents/290616-hlg-sd-final-report_en.pdf)

## 2. Unintended Consequences

From 1957-2009, sport was not mentioned in the Treaty but other Treaty competences such as free movement and competition law had an impact on sport.

- Articles 18-25 TFEU: Non-Discrimination & Citizenship
- Article 45 TFEU: Free Movement of Workers
- Article 49 TFEU: Freedom of Establishment
- Article 56 TFEU: Freedom to Provide Services
  
- Article 101 TFEU: Restrictive Practices
- Article 102 TFEU: Abuse of Dominant Positions
- Article 107 TFEU: State Aid

- *Walrave and Koch v Association Union Cycliste Internationale* [1974]: Sport is subject to EU law whenever practiced as an economic activity.
- *Union Royale Belge Sociétés de Football Association and others v Bosman and others* [1995]: International transfer system dismantled.
- *Deliège v. Ligue francophone de Judo et disciplines Associées Asb* [2000]: Amateur sportspersons can be carrying out economic activity.
- *David Meca-Medina and Igor Macjen v Commission* [2006]: Anti-doping rules are subject to EU law.
- *TopFit e.V & Daniele Biffi v DLV* [2019]: EU citizenship rights apply to sport.
- Criticisms by sports movement that EU law does not recognise and protect the autonomy and specificity of sport.

- Problem: '*...it seems that the legality of nearly every sports regulation is being called into question...*' (Bell and Turner Kerr). EU law not capable of being 'sports sensitive'?
- Does the Treaty privilege single market values over sporting values?
- A campaign led by the sports movement was launched to include sport in the EU Treaty as a way of protecting the autonomy and specificity of sport.

# 3. Reconciling Sport and Law

1. The Amsterdam Declaration on Sport (1997)\*
2. Nice European Council Declaration on Sport (2000)
3. The Independent Sports Review (2006)
4. The White Paper on Sport (2007)\*
5. The Communication on Sport (2011)\*
6. Article 165 TFEU - The Lisbon Treaty (2009)\*
7. Encouraging Dialogue in Sport: The Social Dialogue (2008-)\*

# Amsterdam Declaration (1997)

*‘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’.*

# The White Paper (2007)

- Major policy statement on sport in anticipation of Sports Article in the Treaty.
- Very limited legislative intervention: possibly public disorder and players' agents.
- Endorsement of the *Meca-Medina* 'case by case' method. Very unpopular with governing bodies.
- Focus on stakeholder representation in sport is important: social dialogue a solution?
- See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391>

# The Communication on Sport (2011)

- The Communication sets out the Commission's plans for sport.
- Based around three themes: (1) the societal role of sport, (2) the economic dimension of sport and (3) the organisation of sport.

- *“Good governance in sport is a condition for the autonomy and self-regulation of sport organisations” (p.10).*
- *“...the Commission considers that there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders. Good governance in sport is a condition for addressing challenges regarding sport and the EU legal framework” (p.10).*
- ‘Social dialogue’ forms essential part of good governance.
- See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011DC0012>

# Sport & the Lisbon Treaty

Article 165 Lisbon Treaty: 'Education, Vocational Training, Youth and Sport'.

1. *'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'.*
2. *Union action is aimed at 'developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen'.*
3. *The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.*
4. *In order to contribute to the achievement of the objectives referred to in this Article: the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States; the Council, on a proposal from the Commission, shall adopt recommendations.*

## Article 165: Issues

- Establishes a more formal rolling political agenda on the subject of sports law and policy. New Council of Sports Ministers meets. Two work plans for sport have been agreed.
- Promotes dialogue between the sports movement and the EU: structured dialogue and social dialogue.
- Resolves the consequences of the *UK v. Commission* litigation on the legality of budgetary appropriations for measures with no legal base: Erasmus + Programme now includes sport.

- Article 165 excludes any harmonisation of the laws and regulations of the member states thus safeguarding sporting autonomy.
- Article 165 mentions the ‘specific nature of sport’: does this bind the Commission and the CJEU in the exercise of other Treaty powers such as free movement and competition law? Two views on this (the horizontal obligation question).
- What is meant by “fairness” and “openness” in European competitions? Can be read two ways: (1) to protect traditional sporting rules and practices or (2) as a means of challenging them.

# Article 165 and CJEU Jurisprudence

- *Bernard*: Article 165 “corroborates” the Court’s view that the specific characteristics of sport allows football clubs to seek compensation for the training of their young players when they leave.
- *Murphy / QC Leisure*: Para 207 Opinion of the AG... Articles 6(e) and 165 TFEU ‘require account to be taken of the specific nature of sport and its structures based on voluntary activity’.
- *Murphy / QC Leisure*: Para 101 ECJ ... “under the second subparagraph of Article 165(1) TFEU, the European Union is to contribute to the promotion of European sporting issues, while taking account of the specific nature of sport”.
- *TopFit*: Para 33 ECJ: ‘Article 165 TFEU reflects the considerable social importance of sport in the European Union, in particular amateur sport, as highlighted in Declaration No 29 on sport annexed to the Final Act of the conference which adopted the text of the Treaty of Amsterdam’.

# Social Dialogue

## The Social Dialogue:

*'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'.*

(Article 152 TFEU)

*'The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties'.*

(Article 154 TFEU)

*'Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements'.*

(Article 155 TFEU)

# Social Dialogue

- EU sports policy encourages dialogue within sport as a means of avoiding litigation (see White Paper & Communication & Art.165).
- 30 existing Sectoral Committees (agricultural, telecom, civil aviation, etc.).
- Content of social dialogue must relate to the employment relationship between employers and employees.
- Social Dialogue Committee in football established in 2008.
- Fifpro represents workers & EPFL (leagues) and ECA (clubs).
- Role of UEFA as chair of SD committee?

# Social Dialogue Agreement 2012

- Minimum Requirements in Standard Player Contracts (2012).
- Will the social partners go further and sign further agreements on more contentious issues: reform of FIFA transfer regulations, home-grown player rules, agent regulations...?
- Will social dialogue transform labour relations in football and re-shape the European model of sport?
- Can social dialogue establish legal certainty in sport?

# 2012 Social Dialogue Agreement



# Key Reading

- Anderson, Parrish & Garcia (2018), *Research Handbook on EU Sports Law and Policy*, Edward Elgar.