



# Mapping and Analysis of the Specificity of Sport

*A Final Report Executive Summary to the DG Education & Culture of the European Commission*

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written by



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## Executive Summary

### Background

Ecorys, KEA and Sport and Citizenship were commissioned by the European Commission in March 2016 to undertake a study on the mapping and analysis of the specificity of sport, in response to growing interest from Member States and also discussions at the Council of the European Union under the Luxembourg Presidency in November 2015.

This report provides an analysis of EU rulings and decisions relating to the 'specificity of sport' since 2007. The 'specificity of sport' refers to the inherent characteristics of sport which set it apart from other economic and social activities, as recognised in the amended Treaty of the European Union in 2009.

The mapping exercise on legal developments relating to the specificity of sport was undertaken in two stages. The first stage consisted of an initial scoping exercise to identify relevant case law and decisions for the subsequent review and synthesis tasks. The scoping review was informed by consultations with relevant experts and stakeholders. While it was not possible to guarantee an exhaustive list of decisions and rulings in the time available for the study, the approach to the scoping review aimed to ensure a thorough and comprehensive coverage of the available literature and case material.

Building on the scoping exercise, the research team then reviewed the key rulings and decisions in detail. The detailed reviews of specific cases involved sorting and collating information on rulings and decisions into an analytical grid to enable the information to be analysed in a logical and consistent manner.

### Key developments in EU law since 2007

The mapping research has highlighted a number of significant developments since 2007 in legal rules concerning the specificity of sport.

- An area where there has been significant progress since 2007 is State Aid for sports infrastructure projects. On the basis of numerous decisions, the Commission has been able to codify the operational exemption criteria for State Aid to sports infrastructures in particular that aid is generally acceptable when facilities have a multi-functional character and are not used exclusively by a single professional sport user. This has increased the level of certainty for public authorities in knowing what types of sports infrastructure projects can be supported by public subsidy and whether prior notification to the Commission is required.
- The Court of Justice ruling in the case of Greek Motorcycling Federation (Motosykletistiki Omospondia Ellados (MOTOE)) v Elliniko Dimosio clarifies that the procedures and criteria for selection used by sports bodies that regulate the undertaking of sporting events and have a direct commercial interest in the events (for example entering into sponsorship, advertising and insurance contracts) can have exclusive rights in deciding which events take place. However in applying the Treaty's anti-trust laws the ruling clarified that the procedures and criteria for selection used by sports governing bodies must be transparent.
- In relation to the media, the Court of Justice ruling in the case of UEFA v European Commission confirms that only Member States can determine the events that are of major importance to society and so can be prohibited from exclusive broadcasting deals.

- In the area of intellectual property, a Court of Justice ruling in the case of FA Premier League v QC Leisure clarifies that EU law on copyright does not protect sports events; however the various media products resulting from the audiovisual recording and broadcasting of sports events qualify for protection. This means that sports events that are subject to exclusive contracts in given Member States cannot be broadcast via satellite technology in other Member States. The same decision also deemed it acceptable for Member States to introduce legislation to protect sporting events, where appropriate by virtue of protection of intellectual property, by putting in place specific national legislation.
- The landmark Court of Justice ruling in the case of Olympique Lyonnais v Olivier Bernard and Newcastle United FC clarifies that a training compensation scheme for young players is compatible with EU rules on free movement as the scheme is proportionate to the sporting objective of promoting investment in training of young players.
- A number of policy statements and informal agreements between the Commission and the Member States have clarified rules on the promotion of home grown players and their compatibility with EU rules on free movement.

### **Pending or undecided issues**

The mapping research has highlighted a number of issues where the clarification of legal rules will be dependent on the findings of ongoing Commission investigations or future assessments. The key outstanding issues relating to the application of EU rules regarding the specificity of sport are as follows:

- The compatibility with the internal market of State Aids to professional sports clubs (including tax privileges, the transfer and sale of land and property, state guarantees, bank loans, and debt waivers).
- Whether rules that ban sportsmen or sportswomen from international competitions under the jurisdiction of a federation if they take part in events not approved by that federation are compatible with the Treaty's anti-trust rules.
- Whether regulations which limit payments to players' agents involved in transfer deals infringe on EU competition rules.
- Whether less restrictive alternatives can deliver more substantial improvements to competitive balance and the quality of youth development than current home-grown player quotas which are in operation across a range of sports and national leagues.
- Whether the football transfer system in its current form can be justified or protected by the 'specificity of sport' in particular in attaining the objectives of serving the interests of fair competition.

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