

# European Sports Forum

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# *Equal treatment for non-nationals in individual sports competitions*

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# Background: EU Treaty & sport

- General:
  - Article 18 TFEU: non-discrimination
  - Article 21 TFEU: citizenship
  - Articles 45-49-56 TFEU: free movement
- Article 165 TFEU: sport

# Involvement EU institutions

- **EU Commission**
  - Helsinki report on Sport
  - White Paper on Sport
- **EU Parliament**
- **Court of Justice of the EU**
  - E.g. *Walrave, Bosman*
  - Focus on free movement and nationality
  - Team sports

# Origin of the study

## - White Paper on Sport

### Action Plan *Pierre de Coubertin*

#### C. The organisation of sport

##### C.1. Free movement and nationality

(40). Launch a study on access to individual sport competitions for non-nationals.

# Definitions

- **‘Non-nationals’:**

“citizens, their family members, and workers from other EU Member States, as well as citizens of States which have signed agreements with the EU that contain non-discrimination clauses, and who are legally employed in the territory of the Member States (third country nationals).”

- **‘Individual sports competitions’:**

“national competitions involving individual sportspersons, regarding sports disciplines practiced in a professional or amateur capacity within the European Union.”



# Sports disciplines covered

- The 26 individual (“non-team”) sports disciplines that are covered in the Study, are the Olympic sports disciplines concerned (Winter and Summer Olympics):
- triathlon, modern pentathlon, tennis, table tennis, badminton, rowing, canoe/kayak, athletics, aquatics, archery, boxing, judo, shooting, weightlifting, wrestling, taekwondo, equestrian, gymnastics, skating, luge, biathlon, bobsleigh, cycling, skiing, fencing and sailing

# Research team & Methodology

- Research team:
  - TMC Asser Institute
  - Europa Institute, Leiden Law School
  - Edge Hill University
- Local experts in 27 Member States
- Methodology
  - Phase 1: Questionnaire
  - Phase 2: Legal study

# Focus research

Rules or practices which:

- prevent or hinder foreign nationals' access to **national sporting competitions**;
- prevent or hinder foreign nationals' access to **national championships**;
- deny non-nationals the possibility to win the **national title** in any given sporting discipline;
- deny foreigners the opportunity to set national **records** or win **medals** at national championships.

# Research

- Each of these sets of rules is examined on its conformity with EU law.
- Specifically:
  - the principle of non-discrimination on grounds of nationality;
  - the EU Treaty provisions on freedom of movement;
  - the EU Treaty provisions on citizenship;
  - the relevant secondary EU legislation
  - Jurisprudence Luxembourg Court

# Analysis: 4 legal categories of sports rules

1. Measures which do not fall under the EU free movement rules;
2. Measures which do not constitute a restriction to freedom of movement;
3. Measures which amount to a restriction of the right to free movement, but are nevertheless capable of justification and proportionate;
4. Measures which cannot be justified and/or are disproportionate, therefore violate EU law, and may consequently no longer be applied in a Member State.

# Recommendations

## 1. Access of foreign athletes to national competitions:

- encourage and allow the participation of foreign athletes (EU citizens and also third-country nationals to the extent that they may benefit from EU rights) as much as possible,
- while taking into account the constraints imposed by the organization of a specific sporting event and respecting the need to ensure the training of young players and the regularity of the competition.

# Recommendations

## 2. Participation of foreign athletes in national championships:

- allow them to compete in the national championship of a given sporting discipline, provided that they do not exert a direct and substantial influence on the outcome of the competition.
- In sports which involve direct eliminations, foreigners may be excluded from participation in the national championship, as they exert too direct and substantial an influence on the outcome of the tournament.

# Recommendations

## 3. Award of national title:

- winning the national title may remain the exclusive prerogative of nationals of a given country.
- This can be classified as a rule which comes under the scope of the EU Treaty, but does not form a restriction to freedom of movement as it is inherent to the organisation and proper functioning of national titles and proportionate and therefore does not violate EU law.

# Recommendations

## 4. Award of medals in championships and the setting of national records:

- this is likely to be a matter of purely sporting interest which does not come under the scope of application of the EU Treaty
- Non-nationals may therefore be excluded from winning medals in national championships and setting national records

# Further recommendations

5. The European Commission is invited to enter into a **constructive dialogue** with those federations to remove unacceptable discriminatory measures. Enforcement action to preserve the equal treatment rights of athletes is a means of last resort.