



EU Sport Forum, Madrid, 19-20 April 2010

Second session: "Priorities for the planned Commission initiatives in the field of sport"

BACKGROUND INFORMATION

for

Workshop II: The organisation and financing of sport

The choice of priorities for a new EU agenda in the field of sport should be based on the new Treaty provisions on sport while taking account of results and experiences gathered during the implementation of the White Paper on Sport, of new developments in the field of sport, of recent political developments (e.g. European Council Declaration, December 2008), and of the interests expressed in the course of consultations with sport stakeholders.

Part of the Commission's consultations with sport stakeholders will be the two workshops organised at the EU Sport Forum in Madrid in the afternoon of 19 April 2010. Workshop II will be devoted to the organisation of sport and the financing of sport.

To prepare for the discussion, participants could ask themselves the following questions:

- What **main themes** should the EU focus on to develop the European dimension in sport with regard to questions or challenges relating to the organisation and the financing of sport?
- What **possible action** should usefully be taken at EU level to address such themes?
- Which **tools and cooperation mechanisms** should be used to implement the EU competence for sport and to address identified challenges?
- What are the **top priorities** regarding the organisation and financing of sport that could be included in a possible future **EU Sport Programme**?

By way of example, the following topics could be addressed in this workshop.

Examples of topics related to the organisation of sport:

1. Free movement

Discussions on the free movement of sportspeople touch on one of the fundamental freedoms of the European Union, but also on one of the fundamental elements of the specific nature of sport, namely the organisation of sport on a national basis. This is therefore an area where the specific nature of sport has been often called into consideration and which is rich in case law. While the Treaties prohibit discrimination based on nationality and enshrine the principle of free movement of workers, the ECJ has taken into account the need to preserve certain specific characteristics of sport in past rulings dealing with the composition of national teams (Walrave, Donà), deadlines for transfer rules for players in team sport competitions (Lehtonen) and compensation for recruitment and training of young players (Olympique Lyonnais). Additional guidance has been provided by the Commission when examining specific situations.

The "theme-per-theme" approach seems to be the most effective way to address free movement issues in this context. It should be underlined that free movement rules do not only apply to workers and professional players; since the entry into force of the TFEU, any discrimination on grounds of nationality is prohibited within the scope of application of the Treaties, which now includes sport. This aspect will need to be further analysed and discussed between the Commission, Member States and the sport movement.

2. Transfers

In 2001, after a discussion with the Commission in the context of an antitrust case involving transfer

rules for football players, football authorities adopted a set of rules which have since then been included in FIFA's Regulations on the Status and Transfer of Players. Transfers of players are another distinctive element of the specific nature of sport – they are in fact a unique system of developing labour relations between clubs and players in team sports. Whilst they pursue legitimate objectives such as ensuring the fairness and integrity of competitions, transfer systems have often come to public attention because of concerns about the legality of the acts and about transparency of financial flows involved. The question should be raised whether the transfer system is in need to be tested to assess its suitability for regulating the specificities of the professional team sports' labour market.

3. Sports agents

The independent expert study on sport agents carried out on behalf of the Commission in 2009 gives an in-depth view of the activities of sport agents in the EU as well as of the possible ethical issues raised by these activities, notably in areas such as financial crime, exploitation and trafficking of players. The study notes that there are discrepancies in the way the activity of agents is regulated in Europe but concludes that there are no major obstacles to the free provision of sport agents' services across the EU as a result of differing national or private regulations.

The abovementioned ethical issues should be addressed as they risk undermining the fairness of sporting competitions and threatening the integrity of sportspeople. The question is open as to how to tackle these issues at EU level in order to achieve effective solutions to the multiple and complex problems identified.

4. Match fixing

Match fixing is a blatant violation of the principle of fairness of sporting competitions. It is also a major threat to the basic values of ethics and integrity on which sport is built. As such, match fixing is considered as a form of corruption and punished consequently in the Member States' jurisdictions. The question of the effectiveness of existing sanctions and of their dissuasive nature to deter episodes of match fixing could be raised. Match fixing is often, though not always, associated to illicit betting; cases have been reported where international criminal networks were involved in betting-related match fixing on a global scale. The trans-national nature of this phenomenon, which is strictly linked to the worldwide popularity of sport competitions, requires a coordinated international approach. The role that interested parties (EU institutions, Member States, sport movement, gambling and betting operators) can play in this context could be further explored. Another aspect that deserves further discussion is the efficiency of early warning systems developed by the industry in cooperation with sport stakeholders to address match fixing related to betting.

5. Integrity of young sportspeople

Sport is practised by a large part of the EU's citizens from the youngest age. In the EU, young people are most actively involved in sport at all levels. This requires increased surveillance from public authorities, sport stakeholders and families. Young athletes involved in elite sports may put at risk their health and general wellbeing because of increasing pressure to achieve results even at the lowest levels of competitions. Amongst the risks facing young sportspeople, the most obvious include overtraining and exploitation, missed education opportunities and possibly use of doping, sexual abuse and harassment. Particular attention should be paid to the specific needs of young athletes coming to Europe from third countries since they are in a very fragile position. Public authorities and/or sport governing bodies have adopted various measures to ensure protection of young athletes; these measures should be balanced with the need to respect the athletes' fundamental rights as well as the EU's fundamental freedoms.

Examples of topics related to the financing of sport:

6. Sport betting and gambling

The organisation of gambling services, including those run by private operators and those owned,

run or licensed by the state, directly or indirectly contribute to the financing of sport activities and other public interest activities in the EU Member States through various schemes. Examples include strong traditional financial links between lotteries and sport (redistribution schemes), commercial or charitable payments to third parties active in sport and payments to designated sporting bodies, sponsorship deals with gambling operators mainly in the field of professional sport, or fiscal contributions to the state budget that in turn finances sport. Ongoing developments on gambling markets, including the emergence of on-line products, and regulatory frameworks for gambling and betting that are presently in a state of flux, have led to perceived challenges on the side of sport stakeholders in regard to sustainable income streams from gambling activities into sport. Stakeholders have pointed to the need to address the financial return for sport, especially grassroots sports, from the organisation of such activities, in particular sport betting. It could be considered whether the EU should take any action in this field, and if so, what kind of action.

7. Intellectual property rights

Sports-related intellectual property rights (IPRs) such as copyright and neighbouring rights as well as trademarks are an essential source of income for professional sport – in many cases licensing of IPRs represents the lifeblood of the whole sporting chain, generating revenues that are partly redistributed from professional to grassroots sport. The main questions surrounding the licensing of sports rights concern the protection of IPR from unauthorised use, the maintenance of practices based on exclusive territorial licenses and the balancing between the sale of media rights and the public's right to information. In connection with IPR, the issue of defining a property right for the organisers of sport competitions in relation to the event they organise deserves to be further examined.

8. State aid in the field of sport

In all EU Member States sport is partly financed from the national budget and by local authorities. Public support measures for sport essentially finance infrastructure, activities or individual sport clubs. The Treaty on the Functioning of the EU contains a general prohibition of State aid, but leaves room for a number of policy objectives with which government intervention can be considered justified. State funding relating to the construction of sport infrastructure normally does not constitute State aid provided certain conditions are fulfilled. Moreover, EU law provides for exceptions for public support measures to the sport sector although they are considered State aid within the meaning of EU law when certain conditions are respected. Sport activities, for instance, may benefit from the general exemption from State aid rules from *de minimis* aid and also state support for training of young athletes is generally compatible with EU law.

In 2008 the COM adopted a new General Block Exemption regulation which provides for exempting State aid measures from the obligation of notification to the Commission. Sport activities are included in this Regulation as part of regional investment aid. EU State aid law is applicable to all undertakings that carry out an economic activity; for sport it is therefore particularly relevant regarding public subsidies granted to professional clubs. There have only been a few decisions concerning the application of EU State aid in the field of sport and stakeholders have requested additional guidance on this matter.

Example of topics related to cooperation in sport:

9. Good governance

Promoting good governance in sport is an essential task for all the parties involved in the discussion about the future role of the EU in the field of sport. In many cases, disputes related to the application of EU and/or national laws to sport disguise a conflict which would be better addressed through appropriate governance measures. While it is not possible to identify a single model of governance in European sport in view of the large differences between the various disciplines and the national organisational systems, there are elements which should be taken as common ground for the debate about sport governance. In particular, the following principles can be considered as playing an essential role in this context: autonomy of sport organisations within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the

representation of interested stakeholders. Is there a role the EU could or should play with regard to good governance in sport?

10. Structured dialogue on sport

Dialogue and cooperation involving competent sport stakeholders at international, European and national levels are a key condition for the success of the EU's dealings with sport and related policy processes. Given the specific organisation of sport, the diversity of actors in sport and the complexity of the topics to be addressed, the organisation of a balanced dialogue at EU level is a challenging task. The 2007 White Paper on Sport has set in place a structured form of this dialogue, including the EU Sport Forum as the main annual event, which has facilitated the implementation of the White Paper actions over the past years. The European Council in its 2008 Declaration on Sport called for further strengthening dialogue with the Olympic and sport movement at EU level and the new article 165 TFEU explicitly calls for promotion and cooperation between bodies responsible for sports. Thorough reflection is needed as to how dialogue and cooperation on sport between the EU level and sport stakeholders can be further promoted and strengthened while at the same time remaining efficient and inclusive.

11. Social dialogue

Social dialogue is part of the European social model, as it empowers representatives of European trade Unions and employers' organisations to address issues of common interest and reach autonomous agreements. Since 1998, sectoral social dialogue is in place at EU level; in this framework, a social dialogue committee has been launched in the sector of professional football. Work in this committee has progressed towards the establishment of minimal contractual requirements for football players across Europe. Other topics may be addressed by this committee if its members so wish. On a wider scale, progress has been made in view of creating a social dialogue committee for the whole sports and active leisure sector. Social dialogue may be seen as an effective instrument to address various issues facing the sport movement, including issues related to the relation between EU law and the specific nature of sport.