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**THE DEVELOPMENT AND PROSPECTS FOR COMMUNITY ACTION IN THE  
FIELD OF SPORT**

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## 1. INTRODUCTION

As a consequence of the rapid development of sport, especially professional sport, and the important place occupied by sport in society, provisions in the Treaty on European Union, secondary legislation, Community policies and decisions all have an increasing impact on sporting practices and activities.

Sport continues to grow rapidly. In economic terms, it accounts for 3% of world trade. The social impact of sport is amply illustrated by the fact that one European in three is actively involved in a sport and that there are 545 000 sports clubs in the Community.

This development of sport, at both professional and amateur level, increasingly involves the various Community policies. The institutions have already been called on to intervene in some cases, the most famous example being the Court's Bosman ruling.<sup>1</sup>

Three major areas of Community activity affect sport directly:

- *Freedom of movement*: the creation of the single market affects sport by guaranteeing freedom of movement. Apart from the Bosman ruling, the Commission has been contacted on several occasions by people whose possibilities of actively participating in a sport in a host country have been restricted. The recognition of qualifications, commercial messages (particularly sponsoring and advertising) and the right of establishment are of great interest for sports associations and the public as a whole.
- *Competition and audiovisual policy*: together with commercial communications, television rights have become the principal source of finance for professional sport, and therefore, given the rules regarding competition and audiovisual policy (particularly the Television Without Frontiers Directive and the principles of the Treaty relating to the free movement of services), questions concerning the sale of retransmission rights have become an on-going cause for debate.
- *Community policies and actions*: as an activity engaged in by the general public, sport is affected by certain general policies, particularly in connection with public health, education and vocational training for young people and the environment. Furthermore, sport is an important tool for combating social exclusion and in relation to voluntary work in Europe.

The impact of the Bosman ruling led to the representatives of the Member States examining the question of sport at the Intergovernmental Conference set up to revise the Maastricht Treaty and, for the first time, they referred to sport in a Declaration accompanying the Treaty, in which they:

1. emphasise “*the social significance of sport, in particular its role in forging identity and bringing people together*”,

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<sup>1</sup> Case C-415/93, [1995] ECR I-4921.

2. call on “*the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue*”, and
3. recommend that “*special consideration should be given to the particular character of amateur sport*”.

## 2. THE GROWING RELATIONSHIP BETWEEN SPORT AND THE UNION

In 1974 the Court of Justice ruled that, as an economic activity, sport was subject to Community legislation.<sup>2</sup> Sport is also mentioned in the conclusions of the Adonino report on European citizenship.<sup>3</sup>

In 1991 the Commission adopted its first communication setting out guidelines for Community action in relation to sport.<sup>4</sup> Any action should be concerned “to respect the independence of cooperative effort in general and in sport in particular”.<sup>5</sup> The adoption of this communication made it possible to set up the European Sport Forum, which provides a genuine floor for discussions between the Commission and sports associations and has helped to improve relations.

The Council of Health Ministers adopted a Resolution on doping in sport,<sup>6</sup> which led to a major European anti-doping campaign. Furthermore, as part of the BIOMED 2 medical research programme under the 4th research and technological development framework programme (1994-98) funding has been made available for a research project aimed at developing new methods of detecting the use of growth hormones by athletes. The programme is run jointly by several partners, including the International Olympic Committee.

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<sup>2</sup> Cases: C-36/74 *Walraeve v UCI* [1974] ECR I-1405  
C-13/76 *Donà v Mantero* [1976] ECR I-1333  
C-222/86 *Heylens v Unctef* [1987] ECR I-4097.

<sup>3</sup> Commission communication *A People's Europe*, (COM(88) 331 final of 24 June 1988).

<sup>4</sup> *The European Community and Sport*, SEC (91) 1438 of 31 July 1991.

<sup>5</sup> *Ibid.* p.3.

<sup>6</sup> Council Resolution of 8 February 1992, OJ C 44, 19.2.1992.

There can be no doubt that the ruling by the Court of Justice in the Bosman case is the most widely known intervention in sporting matters by the Community.<sup>7</sup> The chief consequence of the ruling was the recognition of the freedom of movement of sports professionals and has resulted in national competitions being opened up to players throughout the Community and the revitalisation of the major European leagues.<sup>8</sup> The ruling also highlighted the need to examine how sport income was redistributed among the clubs and associations.

While taking note of the conclusions of the Bosman ruling, the Commission would merely reiterate that it is available at all times to assist sports organisations to find ways compatible with Community legislation to encourage the recruitment and training of young players and ensure that the equilibrium between clubs is maintained.

- The European Parliament has adopted a report on the European Union and sport, underlining the importance of sport as an agent for social integration and a key element in the drawing up of Community policies relating to education, young people or public health.<sup>9</sup>

### **3. THE ROLE AND UNIQUENESS OF SPORT**

#### ***3.1. The positive effects of sport***

The only official definition of sport is to be found in Article 2 of the Council of Europe's European Sports Charter, which defines sport as "all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels."

Sport is unique in that it performs five functions:

- an educational function: active participation in sport is an excellent way of ensuring balanced personal development for all age groups;
- a public health function: physical activity offers an opportunity to improve people's health; it is an effective means of combating certain illnesses such as heart disease and cancer and can help to maintain good health and quality of life among the elderly;

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<sup>7</sup> Ibid. 2.

<sup>8</sup> *Consequences of the Bosman Judgment*, memorandum from Commissioners Van Miert, Flynn and Oreja (SEC (96) 212 of 2 February 1996).

<sup>9</sup> Resolution of 13 June 1997 on sport in the European Union, OJ C 200, 30.6.1997.

- a social function: sport is a suitable tool for promoting a more inclusive society and for combating intolerance, racism, violence, alcohol and drug abuse; sport can also assist in the integration of people excluded from the labour market;
- a cultural function: sport gives people an additional opportunity to put down roots, to get to know an area better, to integrate better and to protect the environment to a greater degree.
- a recreational function: sporting activity is an important leisure occupation and provides personal and collective entertainment.

Employed in the correct way, sport is therefore a particularly effective weapon in the fight against intolerance, racism, violence, alcohol and narcotics abuse. It is therefore particularly affected by the development of voluntary work as an expression of social solidarity.

Sport also helps to instil moral values of fair play, solidarity, fair competition, team spirit and a healthy life, which need to be encouraged. Sport is called on to play a decisive role in the fight against drugs and it is very important that sports associations should be supported in their attempts to eradicate the curse of doping in sport.

In economic terms, sport is a rapid growth area. Sports sponsorship generates USD 15 billion,<sup>10</sup> the sale of television rights USD 42 billion and ticket sales USD 50 billion.

The European share of the sports trade is 36%, bettered only by the United States with 42%. Of the larger Member States within the Union, Germany accounts for 30% of this trade, the United Kingdom for 22%, Italy for 17% and France for 15%.

In 1997, the 40 world championships and 46 European championships organised in Europe provided an important area of economic activity for the host towns and regions.<sup>11</sup> Sport is also one of the most active transfrontier sectors.

For example, stars from the world of sport are highly effective when it comes to developing a high-profile, positive company image and are associated with a considerable number of economic activities relating to commercial messages (particularly sponsoring and advertising).

Sport is one of the sectors most likely to generate employment for young people, and, as such, is mentioned in the Commission report on local development and employment initiatives.<sup>12</sup>

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<sup>10</sup> *Finding the right balance for sport*, Stephen Townley, in GAIFS Sportvision magazine, January 1998.

<sup>11</sup> Report by the Secretary General of the European Olympic Committee, Bratislava, April 1988.

<sup>12</sup> First Report on Local Development and Employment Initiatives, DG V, Publications Office, ISBN 92-828-1751-2.

At a meeting called by the British Minister of Sport, the United Kingdom Presidency presented a paper on the use of sport to combat social exclusion. The Cardiff European Council recognised the importance of sport, calling in its conclusions for ideas to promote more contacts between young people and to use sport as a means to combat social exclusion.<sup>13</sup>

Sport has certain unique characteristics, which must be safeguarded if it is not to be transformed into something very different. The difficulty lies in clarifying how Community law can be applied to the economic aspects of sport while taking account of its uniqueness and character.

The Court of Justice has addressed the question and supplied examples of the uniqueness of sport in its rulings on the subject. Points 14 and 15 of the Donà ruling,<sup>14</sup> for example, recognised the possibility of certain restrictions to the freedom of movement, taking into account particular requirements in relation to matches involving national teams.

### ***3.2. Problems and challenges for European sport***

European sport is traditionally based on a system of national federations, whereby each sport is organised nationally and also has a European body. European competitions have also involved a system of promotion and relegation as well as competitions between the different States.

In the light of the rapid growth of sport in Europe, this system could face radical transformation. Therefore it is important for European sport to start to consider the shape of its organisation for the years to come. If it fails to do so, European sport risks being crushed under the pressure of economic interests which wish to base their activities on formulas which have been tried and tested in other parts of the world, notably in the field of top-level professional sport in the United States. This could endanger grass-roots structures, which are traditionally organised differently in Europe. One example is university sport, which is very strong in the United States and performs a function which has no equivalent in Europe.

The development of commercial television in Europe, the birth of specialised channels and the arrival of pay-TV have put the final touches to the new framework for European sport, a framework which will need monitoring to ensure that it does not endanger existing structures.

The growth of sport has given rise to a number of problems which threaten the harmonious development of European sport and its positive influence on European society. Experts have identified three major threats to European sport:

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<sup>13</sup> Cardiff European Council, Presidency Conclusions, No 31.

<sup>14</sup> Ibid., 5.

- the risk of excessive commercialisation;
- the lack of protection for young people taking part in top-level competitions;
- the ineffectiveness of anti-doping measures.

At the start of the eighties, the International Olympic Committee adopted two decisions which have had a considerable impact on active involvement in sport. They opened the Games to all athletes, removing the distinction between amateurs and professionals, and allowed the Games to be commercially sponsored, opening the door to the general commercialisation of all sport. Overcommercialisation could break the solidarity which exists between professional and amateur sport and between different sports and might even lead to the disappearance of sports seen as unprofitable.

The second major problem concerns the protection of young people. Associations and clubs make increasing use of young people, and public authorities must ensure that the health and education of the young people are not harmed by excessive sports activity.

Once again the spotlight has fallen on doping in sport, with measures and legislation apparently unable to keep up with methods of doping. There are ever-louder calls for increased international and European collaboration in the fight against this menace to sport.

#### **4. UNION ACTION**

A careful study of the characteristics of sport suffices to reveal where it can be affected by different policies and it is therefore no surprise that there are problems with regard to these policies. This is why, following the Bosman ruling, the Commission has received numerous complaints concerning the rules governing sport in Europe.

At the same time, Community activities can be used to address some of the problems of sport. As has already been demonstrated in cases involving sport, the Community's competition policy is also an invaluable instrument to combat abuses or practices which damage competition in relation to the economic aspects of European sport.

##### ***4.1. Regulation***

Union regulation particularly concerns three aspects of sport: the relationship between sport and television, questions related to competition policy and matters relating to the freedoms guaranteed by the Treaties, particularly people's freedom of movement.

##### *4.1.1. Sport, television and commercial communications*

Questions relating to the relationship between sport and television have assumed crucial importance. Television is the primary source of finance for professional sport



in Europe, especially given the significance of commercial communications in sport.<sup>15</sup> As the presence of television guarantees income from sponsoring and advertising, any sporting event not covered by television runs the risk of extinction.

Some sports, such as football or formula 1 motor racing, attain very high viewing figures. This is why advertisers attach great importance to these events and large numbers of broadcasters are prepared to pay considerable sums to obtain exclusive rights to show popular sports. The soaring prices involved may give rise to discrimination in relation to public access to major sporting events.

This is why Article 3a of the Television Without Frontiers Directive allows Member States to draw up a list of major events which must be broadcast uncoded.<sup>16</sup> Community secondary legislation enables Member States to draw up the list on the basis of general interest in each State. Member States also ensure that broadcasters falling within their jurisdiction respect the provisions made by other Member States, while the Commission monitors compatibility with Community law.

The broadcasting of sporting events and, in particular, the sale of exclusive broadcasting rights is a commercial activity and subject to Community legislation governing competition. The sale of exclusive broadcasting rights for sports events is established and accepted commercial practice.

There are several key issues:

Short-term exclusive coverage should not pose any problems; in any case, aspects such as the time-span, the impact of the exclusive rights and the position of the enterprise on the market(s) must be taken into consideration. Exclusivity agreements must not strangle a market, even if exclusive rights must last for a certain time to enable a new competitor to enter the market. The criteria justifying exceptions contained in Article 85(3) of the EC Treaty must be examined in each case.

Selling broadcasting rights in packages may reduce the number of individual rights available to broadcasters on the market and may affect the functioning of the market by permitting only periodical transactions and tying up products. This means that every aspect of any situation with ramifications for competition must be examined, taking into account, among other things, the participants' capacity to sell individual rights. When examining criteria for an exception, consideration must also be given to aspects such as solidarity between the strong and the weak or between professional and amateur sport and sport for young people.

In the case of several broadcasters coming together to jointly purchase broadcasting rights, the buyers' position on the market must be examined, along with the time-span and quantity of the (exclusive) rights acquired and any benefits to competition of such a joint purchase.

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<sup>15</sup> *UFA Fussball Studie* 98, Hamburg 1998.

<sup>16</sup> Directive 97/36/EC amending Directive 89/552/EEC, OJ L 202, 30.07.1997, p.60.

#### 4.1.2. *Sport and competition policy*

Competition policy has a direct impact on sport in areas other than broadcasting rights. Positions adopted by the Commission often support existing sports regulations, recognising the aspects of sport that make it unique and accepting certain exceptions, depending on the activity.

Here are three illustrations of the Commission's flexibility in this field:

- *Quotas in national teams*

The Commission takes the view that national quotas for certain international competition are a constituent element of the organisation of sport.<sup>17</sup>

- *Transfer periods*

The Commission has concluded that sports organisations are justified in fixing periods for the transfer of players from one club to another.<sup>18</sup>

- *Ownership of a team*

In response to several parliamentary questions the Commission does not exclude the possibility that the sports organisations' regulations aiming to prevent clubs with the same owner taking part in national or international competitions may be justified, if they are necessary to ensure the uncertainty of the result of the competition.

There are other important cases concerning sport and competition policy. One well-known case concerns the payment of transfer fees. Although UEFA and FIFA no longer apply the international system to Community players, there are still some problems within the European Economic Area (EEA) concerning the application of the system to non-Community players and transfers of players under contract. Responding to complaints received, the Commission intends to express its views on the compatibility of these situations with Article 85 of the Treaty.

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<sup>17</sup> *Deliège* (C-51/96).

<sup>18</sup> *Lehtonen* (C-176/96).

In the case concerning ticket sales and the 1998 World Cup, following a preliminary examination, the Commission has concluded that the organisers were in breach of the rules governing competition in that they divided the single market by making a large number of tickets only available to the general public if they could provide an address in France. In previous cases the Commission investigated the sale of tickets for major international sporting events by tour operators. The Commission has always insisted that tour operators should compete to sell tickets and should be free to combine the sale of tickets with other services, but the Commission would not accept organisers obliging them to do so.

Cases relating to sports equipment are more delicate. As the technical organisation with the authority to approve these articles, associations can exert a major influence of the sports equipment market simply by exercising their prerogatives. The Commission is currently examining cases concerning decisions taken by sports associations which threaten to undermine free competition.

The Commission has already dealt with a series of cases and has, for example, informed the Danish Tennis Federation (DTF) that its sponsorship agreements with tennis ball suppliers no longer pose problems with regard to competition.<sup>19</sup>

This was the first time that the Commission gave its opinion of such agreements, contributing considerably to the promotion of sport without threatening competition. Denominations such as “official ball” or “official supplier” have been abolished, as the use of such denominations may confuse consumers into believing that the technical performance or quality of the products thus described is superior to that of other products, which is not always the case.

#### *4.1.3. Sport and freedom of movement*

Another major area of Community activity affecting sport concerns the regulation of the internal market, particularly where it concerns workers' freedom of movement.

It is important to remember that the operative part of the Bosman ruling was based on the application of Article 48 of the EC Treaty. The Court's position is clear when it grants sportspersons the same rights as other Union workers and points out that back in 1978 UEFA executives were attempting to remove all obstacles to freedom of movement.

Commission departments often have to deal with another question concerning amateur sport, namely the rights of the individual to take part in a sporting activity. In some Member States federal organisations do not allow young people from other Member States to take part in national championships, claiming that Community legislation only covers professional sport.

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<sup>19</sup> Cases Nos IV/F-1/33.055 and 35.759.

The Commission has always taken a clear line on this matter.<sup>20</sup> Active participation in sport is one of the rights that must be accorded to a Community national who decides to settle in another State. Moreover, restrictions on other Member States based on nationality would hardly be compatible with the status of European citizenship.

Recently, an English and a Scottish football club have also claimed the right to settle in another Member State, as they wish to be based in Ireland while continuing to play in the leagues of which they are members.<sup>21</sup> But even if the regulations of the sporting organisations in question contravened Article 52 of the Treaty, the Commission would be unable to commence infringement proceedings, which may only be commenced against a Member State. The power to deal with this question lies with national courts.

Recognition of qualifications is another important aspect of freedom of movement. There are glaring disparities between training methods in sport in different Member States, which explains some of the problems which have arisen. The most famous cases are those involving ski instructors who hold qualifications from other Member States and wish to practice their profession in France. The Commission is currently trying to find a solution through dialogue.

Advertising, particularly the sponsorship of sporting activities, is another major area linked to the internal market. The Green Paper presented on the subject by the Commission has revealed that certain attitudes on the part of Member States are of serious concern to sports organisations.<sup>22</sup> The follow-up communication to the Green Paper advocates an approach which, thanks to a new method of analysis of the principle of proportionality, permits the free movement of advertising services while providing effective safeguards for general interests recognised by the Court.

The Community Directive banning tobacco advertising<sup>23</sup> has had an initial impact, but a study carried out by the Central Council for Physical Recreation in the United Kingdom shows that in most cases it is possible to find other advertisers.<sup>24</sup>

The other great cause for concern is a possible ban on advertising alcoholic beverages and all advertising targeting children. These questions will be examined in detail before any steps are taken.

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<sup>20</sup> The Commission has always invoked Regulation (EEC) No 1612/68, supported by the rulings of the Court of Justice in the cases C-151/97 *Commission v Ireland* and C-62/96 *Commission v Greece*.

<sup>21</sup> Oral question No 200/98 from Mr Crownley concerning the planned move by Wimbledon F.C.

<sup>22</sup> *Green Paper on Commercial Communications in the Internal Market*, May 1996.

<sup>23</sup> Directive 89/522/EEC on advertising tobacco products currently in the process of being approved.

<sup>24</sup> *Tobacco Sponsorship of Sport*, CCPR, London, February 1998.

#### 4.2. *Sport in Community policies*

The Commission has carried out a very important study on the impact of Community activities on sport, showing that twenty of the twenty-four Commission's Directorates-General carry out actions or programmes which have an impact on sport.<sup>25</sup> As guardian of the Treaties it is the Commission's responsibility to ensure that Community law is implemented within the Union, but various Community policies are excellent instruments for demonstrating to sporting interests the additional benefits of Community action.

It will be very important to coordinate new measures for sport more effectively. Until now, actions benefiting sports associations have not been part of an overall Commission strategy. There is a need for coordination in order to improve contact with sporting circles, the wish expressed in Amsterdam Declaration.

The following list, which is not exhaustive, indicates certain areas targeted by Community policies: public health, the protection of young workers, safety at sports facilities, standards for sports equipment, the free movement of sports equipment, veterinary regulations concerning animals and sport, scientific and technological research, tourism, taxation and sport, sport and the environment, education and vocational training and sport for persons with disabilities.

Under Title VI of the Treaty on European Union (cooperation in the fields of justice and home affairs), the Council and the Commission cooperate closely on the exchange of information and experience concerning the prevention of hooliganism. The Council is preparing a report on experience gained in this field, which is of vital importance to sport.

It is important to emphasise the relevant measures relating to sport under two Community policies, health and education. The White Paper on education contains some ideas on alternative methods of learning.<sup>26</sup>

Physical activity must play an important role in the development of young people in Europe. Therefore youth and training programmes should view sport as a means of improving the quality of education by encouraging exchanges. The same thing applies to the use of sport as part of the range of European voluntary activities.

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<sup>25</sup> *The Impact of Community Activities on Sport*, study conducted by Coopers & Lybrand for the Commission in 1993 and updated in 1995.

<sup>26</sup> *Teaching and Learning: Towards the Learning Society*, Commission White Paper on education and training, OPEEC, Luxembourg, 1995.

The Commission is already supporting the creation of European networks for improving public health through sport, coordinated by the Dutch Olympic Committee.<sup>27</sup> The communication on the creation of an action programme on injury prevention also contains a chapter on sport.<sup>28</sup>

Another important area is the fight against racism and xenophobia. In a recent communication on the action plan against racism, sport is cited as one of the areas offering the widest scope for positive action.<sup>29</sup> The British Presidency has circulated a report on the opportunities football offers to address the problem posed by increased racism.<sup>30</sup>

As regards the environment, the Commission has supported initiatives by sporting associations to raise the awareness of athletes and the general public of the need to respect the environment and sustainable development.

### **4.3. The role of sport in external relations**

In the field of external relations sport can play a dual role. Member States can use it in a boycott to put pressure on a State, as they did in the case of South Africa during the apartheid regime and, more recently, with Yugoslavia. Europe is also the world's leading sporting power and its sports associations have a duty to support developing countries.

This activity could be included in the Lomé Convention, which is currently under review. There is already a cultural section and a sports section would be extremely useful. African sport has enjoyed rapid growth in recent years and needs all the support possible.

For example, as part of the assistance given to South Africa, the Union has made ECU 8 million available for a programme to create a sports organisations network; the project is managed by the Netherlands Sports Confederation.

Sport in Central and Eastern Europe, especially in the applicant countries, needs special attention. To render Community action more effective, it could be coordinated with the work of the Council of Europe.

The education and youth programmes for the Mediterranean countries also take sport into account as a means of bringing people together in a particularly sensitive part of the world.

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<sup>27</sup> *Promotion of health-enhancing activity*, published by DG V and containing the conclusions of the preparatory meeting at Tampere (Finland) on 12-14 April 1996.

<sup>28</sup> Commission communication COM (1997) 178 final, of 14 May 1997.

<sup>29</sup> Commission communication COM (1998) 183 of 25 March 1998.

<sup>30</sup> *Eliminating Racism from Football*, a report by the Football Task Force submitted to the British Minister of Sport on Monday 30 March 1998.

## **5. CONCLUSION**

The Commission will continue to monitor the implementation of Community law. Community measures must improve information systems and dialogue with sports organisations, particularly in relation to the special characteristics of sport which deserve to be taken into consideration when Community laws are being implemented.

As regards the integration of sport in different Community policies, steps should be taken to test the real effectiveness of action on the ground and the additional benefits of action at Community level.

This dual approach – the implementation of Community law and the integration of sport in different Community policies – will give European Sport organisations an opportunity to benefit more from Community activities. It will also help them in adapting their structures to the new political, economic and social framework created by the action of the European Union.