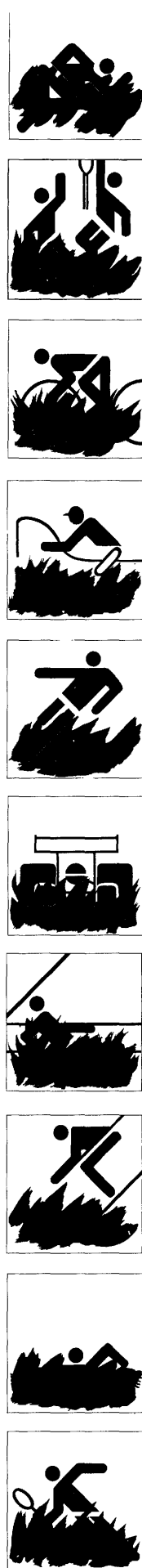


The Impact of European
Community Activities on Sport

CEE: X/19

THE IMPACT OF EUROPEAN UNION ACTIVITIES ON SPORT

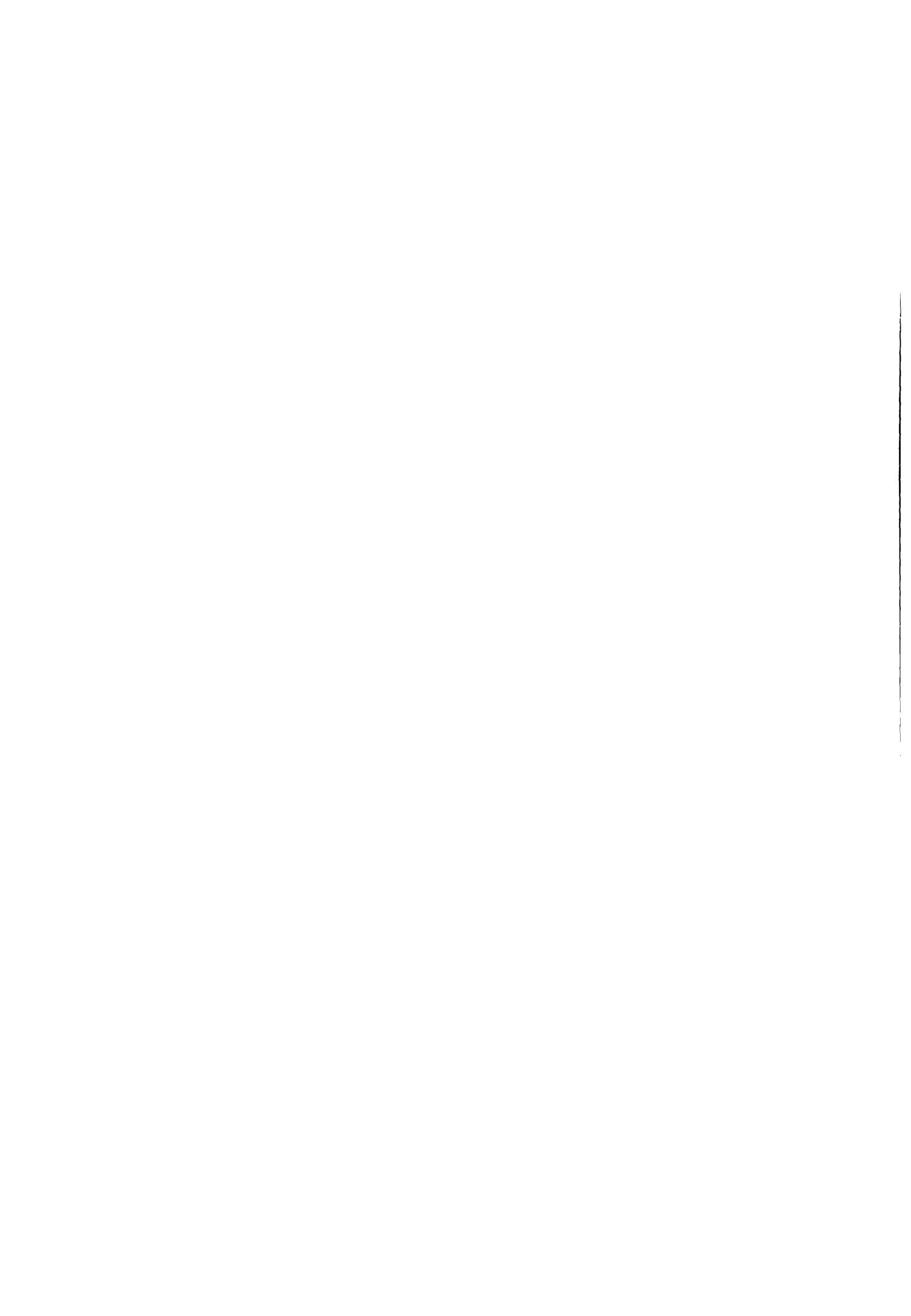
– 1994 Edition –



EUROPEAN COMMISSION

Directorate-General
"Information, Communication, Culture, Audiovisual"





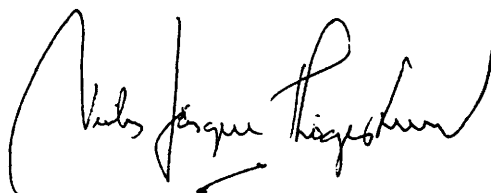
Many people will think that the European Union and sport have nothing to do with each other. This is not correct. A large number of Union rules and activities are of great importance for the Sports World. Some of them are more crucial than others. But even in very limited cases the relevance can be of major value to the sector concerned.

We have, therefore, prepared this report which systematically describes and analyses the impact of Union activities on the sports world.

I want to thank "Coopers and Lybrand" for preparing the report in close cooperation with most Directorates-General in the Commission, with the sports organizations and with the member states.

It is my wish that this report will be used actively by everybody concerned, and that it will further promote good and constructive cooperation between the European Commission and the sports world.

We intend to prepare an update of the report once a year. At the same time our new "Help Desk on Sport" will be at everybody's disposal to promote this cooperation.

A handwritten signature in black ink, reading "Niels Jørgen Thøgersen". The signature is fluid and cursive, with a prominent initial 'N' and a long, sweeping underline.

Niels Jørgen Thøgersen
Director, European Commission

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- B. European Community Committee for Sport for People with Disabilities
List of National Committees

Executive Summary

1 This 1994 edition of the study on the impact of the activities of the European Union on sport was prepared between April and July 1994. It describes the legislation and policies of the European Union and their actual or potential impact on the organisation or practice of sport. Besides adding policy and legislative changes since June 1993, it also includes a number of new sections, namely:

- lotteries and wagering activities;
- company law;
- airports; and
- sports for people with disabilities.

2 This update has been carried out in parallel with:

- a report on the reactions from the European Sports Forum members and international federations to the 1993 sports study; and
- an examination of the specifications for setting up a Commission "helpdesk" for sport as recommended in the 1993 sports study.

Restrictions on foreign sportspersons

3 The Treaty of Rome clearly recognises the right of EU citizens who are pursuing an economic activity to work in any Member State of the EU under the same conditions as nationals of that Member State. Such a right therefore applies to persons pursuing sport as a profession.

4 Regarding the transfer system, although the Commission made its position somewhat clearer in its written observations to the European Court of Justice in 1994, further clarifications of the Commission's position will depend on the ruling on the Bosman case to be delivered by the European Court, which is likely to happen in early or mid 1995. Coopers & Lybrand suggest that interested parties explore the idea of arriving at an understanding or compromise between Fifpro, which represents the players, and the football associations.

Sports qualifications

5 The EU's legislation and policies in the area of qualifications are designed to facilitate the free movement of workers by ensuring the mutual recognition of

qualifications gained for regulated professions in the different Member States and the establishment of a system for comparing vocational training qualifications. Sports-related qualifications can be affected by this legislation.

Hooliganism

6 The Commission would not object to Member States taking measures, such as the introduction of supporters' identity cards, which may restrict the free movement of "known" hooligans (that is supporters having committed previous offenses) as long as such measures did not prevent other EU citizens from continuing to enjoy their right to free movement and to free provision of services and as long as they did not seek to control the free movement of "potential" hooligans (that is supporters with no previous convictions on hooliganism offenses).

7 The European Parliament stated that the nationality of a supporter from a European Union country should never be the criterion for refusing or impeding access to sports events.

Insurance

8 The Commission believes that its only role with regard to insurance is to legislate for a single European market in the provision of insurance services. In relation to sport, it is of the opinion that the onus should lie with clubs, players and spectators to ensure that they will be adequately covered when participating in or attending a sporting event.

Advertising and sponsorship

9 The Commission's Green Paper on commercial communication is in preparation. The paper will examine Commission policy on advertising and sponsorship and may therefore affect sports organisations using these mediums.

Lotteries and wagering activities

10 In December 1992, based on the application of the principle of subsidiarity, the Council dismissed any notions of the Commission proposing legislation on harmonisation of gambling and gaming.

11 The European Court of Justice's ruling on the Schindler case provides that lotteries can be considered to be a service and therefore fall within the scope of the relevant Treaty Articles. The Court also ruled that national legislation which prohibits the holding of lotteries in a Member State is an obstacle to the freedom to provide services. However, because of the particular nature of lotteries, national authorities

can restrict or prohibit them, provided that the restrictions are on a non-discriminatory basis.

Company law

12 The legal status of sports clubs is not yet governed by clear and harmonised rules at the EU level and Member States continue to be responsible for the legal status under which sports organisations may operate. The EU has no intention of targeting sports clubs under any harmonisation measures.

Doping

13 As it does not fall within the competence of the EU to propose binding legislation specifically on testing sports persons for the illegal use of performance enhancing substances, the Commission's action was limited to drawing up a Code of Conduct against Doping in Sport, which was adopted in February 1992.

14 A new initiative called Europack was launched subsequently on education on anti-doping in sport. Furthermore, a report was adopted by the European Parliament in May 1994 on doping in sport.

Protection of young people at work

15 The Commission's proposed Directive on the protection of young people at work was adopted in June 1994. The Directive sets out a minimum working or employment age and a number of minimum standards dealing with exposure to various occupational risks, with particular reference to night work, working time and admission to employment. The employment of children in sports activities needs to be commensurate with their physical and psychological health.

Liability of service suppliers

16 A Commission proposal on the Liability of Suppliers of Services which sought to establish a reversal of the burden of proof of liability in the case of accidents was withdrawn in June 1994. The Commission decided to reorientate its action, so that sports-related sectors are unlikely to be affected in the near future.

Transportation of sports equipment between Member States

17 Temporary import of sports equipment, for competitions or other sporting activities, are free of restrictions, with the exception of such items as firearms.

Standardisation

18 The European Union's standardisation legislation is designed to ensure that differing standards in different Member States do not adversely affect intra-Community trade, by setting minimum health and safety standards to which manufacturers must comply.

19 The third mandate of the Commission to the European standardisation body (CEN) under the Directive on Personal Protective Equipment (PPE) includes items of sports equipment, such as mountaineering equipment and driving accessories.

20 A Directive on Recreational Craft was adopted in June 1994, which harmonises the essential safety requirements for the design and construction of recreational boats.

The Olympic symbol

21 Although the Commission has not issued an official position on the matter in response to a complaint, it feels that the obligation on National Olympic Committees and the Organising Committee of the Olympic Games not to use their emblems for any commercial or profit-making purposes in the country of another National Olympic Committee, without that Committee's permission, leads to a partitioning of the European Union market which is contrary to the principle of free movement of goods.

Sports food

22 In a 1994 proposal modifying the 1989 Directive on the approximation of the laws of the Member States relating to foods for particular nutritional uses, the group of food relevant for sportsmen has been dropped from the list of groups for which EU provisions will be laid down.

Footwear labelling

23 In March 1994, the Council adopted a Directive on the labelling of the materials used in the main components of footwear, including sports shoes, for sale to the consumer. The Directive aims to prevent any barriers to trade in the European Union for footwear and to help consumers identify what materials have been used in their composition.

Quantitative restrictions on sports footwear

24 In March 1994, the Commission adopted a proposal to remove disparities among Member States' import rules on sports footwear from China.

Airports

25 A UK company complained to the Commission that differing national requirements for aerial vehicles constituted barriers to free trade. It feels that differences in criteria for certification, such as weight, wing-size, type of controls, construction materials, engine-size, noise or endurance can be used to prevent competition. The Commission is examining the case.

Competition policy

26 Commission involvement in competition policy and sport is carried out on a reactive and case-by-case basis. The main sport-related areas in which the Commission has been called to examine cases under European Union competition policy include: broadcasting rights, product endorsement, ticket distribution, competition between federations, government funding to sport, restrictive trading practices and transfers of and restrictions on foreign players.

Exclusive broadcasting rights

27 In June 1993, the EBU agreed to improve access to sports events for non-member commercial stations. Following amendments to their acquisition procedures system, the Commission agreed to exempt the EBU from Article 85 for the acquisition of broadcasting rights for a five-year period.

28 Article 14 of UEFA's Statutes provides a mechanism for regulating cross-border transmissions of football. The main feature of the regime is the establishment of "free, protected and closed" time slots. The philosophy behind UEFA's article 14 rule is that in order to protect domestic football, it is necessary to ensure that football fans are encouraged to go to see and participate in local matches rather than simply watching football on television. In 1993, UEFA modified article 14 of its Statutes and is currently still discussing the matter with the Commission. The Commission has recently appointed a mediator to explore a compromise.

Product endorsement

29 The Commission examined three aspects of the Danish Tennis Federation's product endorsement policy: the acceptability of the label "official", the obligatory use of official equipment in competitions and the recourse to exclusive equipment distributors. The Commission felt that each of these practices contravened European Union competition policy.

30 No official decision has yet been taken by the Commission on the Danish Tennis Federation case. In the meantime, the latter has modified its rules. The

Commission is examining the changes to ensure that they comply with EU competition rules.

Competition between federations

31 The Commission was called upon by the Belgian indoor football authorities to examine the Union Belge's policy towards indoor football. Although no formal decision has been reached in the case, the Commission has informed the plaintiff that it is unlikely to follow up the complaint.

Ticketing

32 The Commission was called upon to investigate ticketing practices for the Barcelona, Albertville and Lillehammer Olympic Games and the 1990 and 1994 Football World Cups respectively in Italy and the US. The Commission questions three aspects of ticket distribution. Firstly, it queries the partitioning of the market by granting exclusivity to one agency per Member State. Second, it questions the practice that citizens from a different Member State to where the agency is located are deprived of the opportunity to purchase a ticket at that agency, simply on grounds of nationality. Thirdly, the Commission is opposed to the practice of making the sale of tickets conditional upon the purchase of linked services from the agency such as accommodation or travel arrangements.

Transfers and restrictions on foreign sportspersons

33 In October 1993, following a complaint from Jean Marc Bosman, the Belgian courts formally asked the European Court of Justice to rule on whether the relevant Treaty rules (including Articles 85 and 86) should be interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

34 A ruling on these questions can be expected in mid 1995.

Restrictive trading practices

35 Restrictive trading practices involving price-sharing and market-sharing agreements and the application of dissimilar conditions to equivalent transactions are banned. These measures affect manufacturers of sports equipment.

Dumping

36 The Commission can be called upon by EU companies, including sports equipment manufacturers, which consider themselves to be victims of dumping from third countries to determine whether a case of dumping exists and, if so, what can be done to protect or compensate prejudiced firms.

Subsidies to sport

37 The Commission has received occasional complaints arguing that clubs from countries which provide relatively more funding to sport have a competitive advantage in international competitions over those from less generous Member States. The Commission has not intervened in this area because subsidies as currently granted to sport do not significantly distort competition in EU-wide events nor on the transfer market.

Animals in sport

38 The EU has put in place a series of legislative measures laying down minimum health requirements for the free circulation of horses within the EU and for their import into the EU. It also has drafted legislation on trade in competition horses, rules on participation in competitions, and rules for intra-community trade of horses. A series of applicatory decisions are also being put into place. The establishment of a European Union passport to be used in the international movement of registered horses was agreed upon in 1993.

EU sources of funding for sport

39 The EU funds a series of initiatives which are of interest to sports organisations as potential sources of finance. Funding possibilities exist for sport in the context of regional development, education and training, research and development, Eastern and Central Europe, sport for the disabled and rural and cultural tourism. In 1994, the Commission finalised a specific funding programme on sport called EURATHLON.

Environmental policy

40 Both the Environmental Impact Assessment Directive and, to a lesser extent, the Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, have an impact on sport. The effect of the former may be to delay the construction of certain sports facilities while an environmental impact assessment is carried out; the latter may result in Member States curtailing the practice of water sports, such as sailing in areas that have been designated as protected areas under the Directive.

Taxation

41 The EU has put into place a series of framework Directives which allow Member States a large degree of interpretation in determining whether sports activities should be taxable or not, and if so to what extent.

Use of the ECU

42 Due to the financial and economic rationale of using the ECU in international sports events, the Commission encourages sports organisations involved in the financial management of international sports events to explore the economic rationale of using the ECU mainly in order to reduce exchange risk.

Sport for people with disabilities

43 The Commission provides financial support for innovative projects which promote sport for the disabled in the European Union. Moreover, the EU launched a series of "Community action programmes to assist disabled people" called "HELIOS II", which promotes equal opportunities for and the integration of disabled people, including the integration by sports in particular. In parallel, the EU set up a database, "Handynet", on organisations involved with sport for the disabled worldwide.

44 In response to growing demand from the various national sports organisations for disabled people and upon the invitation of the European Commission, a European Committee on Sports for People with Disabilities was established in November 1993.

Introduction

1 In July 1993, Coopers & Lybrand's European Union Office, as mandated by Directorate-General X of the European Commission¹, completed a study into the impact of European Union activities on sport. The objectives of the study were:

- to document comprehensively the impact of European Union² legislation and policy on sport;
- to identify the position of interested parties in relation to the Commission's position on sport;
- to identify ways in which the Commission could continue to make a positive contribution to the development of sport in the European Union.

2 The report was distributed prior to the European Sports Forum in November 1993. A summary of the report was presented at the Forum to act as a vehicle for debate and discussion. The document was well received and the Forum requested that it be updated regularly. The Commission agreed to this request. In order to fulfil their commitment to the European Sports Forum, in April 1994, the Commission asked Coopers & Lybrand to carry out an update of the study.

3 This 1994 edition of the study on the impact of the activities of the European Union on sport was carried out between April and July 1994. It describes the legislation and policy of the European Union and their actual or potential impact on the organisation or practice of sport. Besides adding policy and legislative changes since June 1993, it also includes a number of new sections.

¹ Previously known as the "Commission of the European Communities", under the Maastricht Treaty its correct title now is "European Commission".

² The entry into force in November 1993 of the Maastricht Treaty has caused confusion in terminology. "European Communities" or "EC" remain valid terms when referring to legislation implementing the Treaty of Rome. The term "European Union" has, however, obtained widespread use following ratification of the Maastricht Treaty on European Union. In order to avoid confusion, we use the term European Union or EU throughout this study, although not always technically correct, when referring collectively to the twelve Member States.

4 The conclusions also draw attention to the most important developments since June 1993, and indicate which new sections have been added to the report.

5 This update has been carried out in parallel with:

- a report on the reactions from the European Sports Forum members and international federations to the 1993 sports study; and
- an examination of the specifications for setting up a Commission "helpdesk" for sport as recommended in the 1993 sports study.

Acknowledgements

6 Coopers & Lybrand wishes to extend its thanks to those within the European Union institutions and sports organisations who provided input to this update. Without their cooperation, it would not have been possible to complete the work. A complete list of the Commission Directorates-General and Special Services which participated in the study is included in Appendix A.

**EU legislation and policies which have an impact
on sports**

I The free movement of persons and services

The principles

1001 Free movement of persons and services is embodied in the Treaty of Rome as one of the "Foundations of the European Union".

1002 A distinction is made between free movement of workers (ie employees), freedom of establishment (of self-employed persons setting up a permanent place of business in another Member State) and freedom to provide services (where there is no establishment of a permanent place of business in the Member State in which the service is being provided). In every case, the Treaty of Rome recognises the right of EU citizens pursuing an economic activity to work in any Member State of the European Union under the same conditions as nationals of that Member State.

The main provisions

Free movement of workers

1003 Article 48 gives a worker the right to reply to an offer of employment in any Member State and to reside in that country to carry out that employment. Member States are therefore obliged to abolish any discrimination based on nationality with regard to employment, remuneration and other conditions of work and employment. Member States can only restrict this right with regard to public service jobs, or if they can justify such a restriction on the grounds of public policy, public security or public health.

Free establishment

1004 Article 52 gives self-employed persons who wish to move to and establish a business in another Member State the same rights as those described for workers.

Mutual recognition of qualifications

1005 As Articles 48 and 52 alone would not stop discrimination taking place through the host Member State's refusal to accept a professional qualification for a regulated profession that had been acquired in the home Member State, Article 57 gives the Council the power to enact legislation for the mutual recognition of such qualifications.

1006 Following a period of a number of years when Directives on specific professions were enacted, two important Directives were approved to establish general systems

of mutual recognition. The first Directive³, which entered into force in January 1991, covers higher education and training diplomas of at least three years duration. The second Directive⁴, which entered into force in the Member States on June 18, 1994, covers higher education studies of less than three years duration, as well as vocational training certificates and attestations of competence granted through secondary, general or professional educational programmes.

1007 Further details regarding the above Directives, the work of the European Centre for the Development of Vocational Training (CEDEFOP) and the work of the European Network for Sports Sciences in Higher Education regarding comparison of qualifications, are given below.

Freedom to provide services

1008 Article 59 requires the abolition of restrictions on the free provision of services supplied by a national of another Member State. Article 60 defines the services concerned.

Key Issues

1009 To date, the actual or potential impact on sport of the European Union's rules on the free movement of people and services covers the following issues:

- restrictions on foreign sportspersons;
- the right of amateur EU sports persons to practise sport;
- sports qualifications;
- hooliganism;
- insurance;
- advertising and sponsorship;
- lotteries and wagering activities;
- company law.

1010 Each of these issues is considered in more detail below.

Restrictions on foreign sportspersons

1011 The governing bodies of certain sports impose rules which restrict the freedom of professional sports persons to play for teams in Member States where they are not nationals. This is an issue that has been particularly highlighted in the case of

³ Council Directive 89/48/EEC; OJ N° L 19/89; 24. 1. 89

⁴ Council Directive 92/51/EEC; OJ N° L 209/92; 24. 7. 92

professional football, the major aspects of which are discussed below, but other sports experience similar problems.

Rules on the fielding of foreign nationals

1012 According to the Union of European Football Associations (UEFA)⁵, it was common in the 1950s and 1960s for players to move freely between the Member States, which resulted in many clubs having a majority of foreign players. The national associations saw this phenomenon as detrimental to the national game, contending that clubs were recruiting experienced foreign players rather than their own juniors. UEFA holds that it is for this reason that many national football associations introduced rules restricting the number of foreign players allowed to play in a domestic team.

1013 Complaints about this practice prompted the Commission to take action to encourage UEFA to abolish such restrictive rules, contending that they were contrary to EU rules on the free movement of workers.

1014 In April 1991, following discussions with the Commission, UEFA decided to modify its regulations to facilitate the free movement of footballers. The main effect of this modification is that, since the 1992/93 season, the number of "non-eligible" players (ie players who are not eligible to play for the national team of the Member State in which their club is situated) that can be included in the referee's official report, cannot be limited by national associations to less than three. The referee's official report can also include the names of two "assimilated foreign players" ie two non-nationals who on that date have been playing in their country of residence for an uninterrupted period of five years, including three in youth teams. These rules apply to all first division leagues and from 1996/97 will be applied to all other professional leagues. The Commission and UEFA have agreed to hold consultations every four years to review the system.

Restrictions on naturalised sportspersons

1015 A related problem to restrictions placed on the number of foreign nationals in a team, is that of the limitations placed by sports federations' rules on players who have become naturalised citizens of the country in which they are residing.

1016 Disputes concerning the rules of the French basketball association illustrate this problem.

⁵ Working paper for Round Table meeting in Florence, 31 January 1992 entitled "Notes de l'UEFA sur l'accord entre la Commission des Communautés Européennes et l'UEFA".

1017 This association had limited the number of foreign players allowed to play in the national championships to two. The clubs had frequently tried to bypass this rule by asking their players to acquire French nationality. The association decided to combat this situation by ruling that of the ten players listed on the match card, at least eight had to have been licensed by the federation for more than five years. This rule was annulled by the Conseil d'Etat in 1984.

1018 The association subsequently adopted a regulation in 1986 which allowed clubs to field a maximum of two players who would be ineligible to play for the French team in international competition under the rules of the International Basketball Federation (FIBA). This 1986 regulation included a clause to the effect that players who had been nationalised for less than three years were considered to be foreign players. The regulation was found by the Conseil d'Etat to be contrary to the French law of 1983 which abolished all transition periods for naturalised persons and stated that a person having acquired French nationality through naturalisation was entitled to benefit from all the rights of a French citizen as of the date of his naturalisation.

1019 The FIBA rule on naturalisation still exists and, where applied by national federations, runs counter to EU rules in that it prevents an EU citizen who has become a naturalised citizen of another EU country from fully exercising his or her profession.

Transfer of players

1020 Transfer of players between clubs is commonplace in sport, both among amateurs and professionals. In football, when a player moves from one club to another, the acquiring club must pay a compensatory amount or fee to the ceding club. The amount of the compensation can be automatically set at the end of the contract period, or be negotiated freely or, when no voluntary agreement is reached, be fixed by arbitration. The obligation to pay transfer compensation is based on the rules of football regulatory authorities (FIFA, UEFA and national associations). The main justification for the compensation fee is to compensate clubs for the investment made in the player, in particular, training costs.

1021 In most cases, transfers take place at the end of the season and, in the vast majority of cases, the system has not given rise to problems. Nevertheless, the Commission has received official complaints and is currently handling two cases: the "Bosman" case, (details of which are provided in the section on competition policy), and the "Fifpro" case (Federation of professional football players), as originally filed by the Dutch football player Gillhaus.

The Court of Justice position

1022 In the 1970s, the European Court of Justice (ECJ) interpreted European Union free movement rules with regard to sportspersons in two major preliminary rulings requested by national courts. The first case⁶ concerned two Dutch motorcycle pacemakers who wanted to work for cycling teams of other Member States but were restricted from doing so by the rules of the International Cycling Association. These rules stipulated that the pacemaker had to be of the same nationality as the cyclists in the team. The second case⁷ questioned the rules of the Italian Football Federation, according to which only players who were affiliated to the federation were allowed to take part in matches, membership of the federation being, in principle, only open to players of Italian nationality. Both sets of rules were held by the complainants to be contrary to European Union law.

1023 In making its judgment in the Walrave case, the Court said that where the practice of sport had the character of gainful employment or remunerated service, it constituted an economic activity within the meaning of Article 2 of the Treaty and therefore fell within the scope of Articles 48 or 59, which call for the abolition of discrimination based on nationality.

1024 However, the Court also said that the prohibition of discrimination based on nationality did not affect "the composition of sport teams, in particular national teams", the formation of which was "a question of purely sporting interest" and as such, had nothing to do with economic activity.

1025 In the Donà case, the Court stated more categorically that the adoption of rules that discriminate on the grounds of nationality, even by a "sporting organisation", unless they related to matters that were only of a sporting, rather than an economic interest, were incompatible with Articles 7, 48 and 59 of the Treaty.

1026 More recently, footballer Jean Marc Bosman brought before the Court of Justice an action to have what he termed the "gentleman's agreement" between the Commission and UEFA declared void. In its ruling of 4 October 1991⁸, the Court rejected this action as inadmissible on the grounds that there had not been a formal decision by the Commission. The Commission could not, therefore, be challenged under Article 173 of the Treaty.

⁶ Walrave and Koch v. A.U.C.I; Case 36/74; judgment of 12. 12. 74.

⁷ Donà v. Mantero; Case 13/76; judgment of 14. 7. 76.

⁸ Bosman v. the Commission; Case C-117/91; judgement of 4. 10. 91

1027 In October 1993, a Belgian court formally asked the European Court of Justice (as it is entitled under Article 177 of the Treaty of Rome) to establish whether the relevant Treaty rules (Articles 48, 85 and 86) should be interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

1028 The answer from the European Court, which can be expected in early to mid 1995, may help to clarify the uncertainty currently surrounding the issue of the compatibility with European Union law with restrictions on foreign players and transfers⁹.

1029 On a related issue, and while not concerned specifically with sport, another Court of Justice decision in 1992¹⁰ concerned the possession of Member State and third country nationality and the exercise of the right of establishment. The Court ruled that a Member State may not ignore the fact that a person possesses the nationality of another Member State and that a person may rely on such nationality for the exercise of fundamental freedoms which flow from the Treaty.

⁹ While Community law provides that every EU citizen has the right to carry out professional activities in any EU country under the same conditions as the nationals of that country, recent jurisprudence in Belgium and Germany has recognised sports-based justification for restrictions on the number of foreign players in sports teams. In a case in March 1994, involving a Dutch basketball player, Te Velde, against the Belgian Basketball Federation, the Brussels courts ruled that the interdiction of Mr Te Velde to play in the Belgian basketball first division was based on "sports reasons", and was not based on nationality or economic criteria. Another recent case involved table tennis in Germany. Clubs took the table tennis federation to court regarding the prohibition on playing more than two foreign players, claiming it was against Community law. The Frankfurt courts judged that the restrictions imposed by the federation were not based on economic considerations and were inherent to acceptable sports considerations.

¹⁰ Micheletti and others v. Delegación del Gobierno en Cantabria; Case C-369/90; judgment of 7.7.92

The Parliament position

1030 In its 1989 report on the free movement of professional footballers in the European Union¹¹, the European Parliament (EP) took the stance that UEFA and the national football federations were breaching European Union law by limiting the number of foreign players in a team, although it agreed that national teams should respect the nationality principle.

1031 It also agreed that the Commission was restricted in its options for action because the private nature of the associations and federations involved prevented recourse to Article 169, which requires the proceedings to be brought against a Member State or its public authorities.

1032 Since the Van Raay report, certain Members of the European Parliament (MEPs) have continued to argue strongly that any restrictions based on nationality, that effectively curtail a player's freedom to choose in which country he would like to play, contravene Article 48 of the Treaty of Rome.

1033 In a November 1991 debate in the European Parliament, MEP Hugh McMahon refuted the contention that total free movement was detrimental to young football players, citing the case of Ireland, where the relatively small size of the population means that it is unable to support a full-time professional league. He said that the future career prospects of young Irish players were in fact threatened if their freedom to move to other countries was restricted.

1034 Although MEPs had urged the Commission to take action to prevent such discrimination, they were not happy with the outcome of the Commission's action as manifested by the changes made to the UEFA regulations, which they considered did not go far enough.

1035 In its April 1994 report on the European Community and Sport¹², the European Parliament points out that "to circumvent EU legislation, a distinction is made between freedom to join a sports club and the right to take part in a competition on behalf of that club. The first right is respected while the second is limited on the basis of nationality, the rule being that clubs which take part in a competition must not field more 'foreigners' than permitted by the federation".

¹¹ Janssen van Raay report; PE DOC A2-415/88; 1.3.89

¹² European Parliament report on the European Community and Sport; PE DOC A3-0326/94; 27.4.94

1036 The report's author (or "rapporteur"), Mrs. Larive, regards UEFA's rule on participation of foreigners (and those for other types of sport) "merely as a step in the right direction". She considers the rules as violating Article 48 of the Treaty of Rome and "calls for this violation to be terminated without delay". The European Parliament points out that firstly, "professional sport is an economic activity". "Secondly, common sense and the establishment of European citizenship require amateur sport within the EU to be open to all EU citizens on equal terms". Moreover, the Parliament's report does not consider it likely that, were "foreigners clauses" to be abolished, clubs will in future field teams composed exclusively of "foreigners".

1037 The European Parliament considers that professional sports are covered by Article 48, and that the transfer system operated in professional sport constitutes violations which "infringe freedom of competition (Article 85) and constitutes an abuse of a dominant position within the common market (Article 86)".

1038 The Parliament also points out that while sports officials claim that the transfer fee is a form of belated training fee, the transfer fee is often so enormous that this comparison is quite unrealistic. Moreover, the transfer system also applies even where the club of origin is not the same as the club where the player in question has received his training and where the training has been financed more by indirect or direct government subsidies and membership fees.

1039 The Parliament states that these "obstacles to the freedom to join sports clubs and federations are incompatible with the Treaty of Rome and must be systematically removed".

1040 In view of the above points, the European Parliament:

- calls for obstacles to participation in sport by EU citizens based on nationality, such as foreigners rules, to be phased out more rapidly;
- demands the elimination of discrimination on grounds of nationality, which is also practised in amateur sport;
- calls for the right to join and leave sports clubs freely to be guaranteed without making it dependent on additional conditions which conflict with general law (the transfer system); and
- urges the Commission to investigate immediately whether both the rules and practices of FIFA, UEFA and the national football associations and clubs are compatible with EU legislation, to take the appropriate decisions following this investigation and to act accordingly.

The Commission position

1041 In the Commission's opinion the modifications to UEFA's regulations constitute a step in the right direction, as UEFA had wanted to maintain stricter conditions on the fielding of non-nationals. The Commission and UEFA will hold consultations every four years to verify that the system is operating properly. The Commission's intention is that this arrangement will smooth the transition towards complete freedom of movement for footballers.

1042 The Commission has also reiterated that it is limited in its course of action as the restrictions on the number of non-nationals who can play are imposed by private individuals rather than public authorities. Initiating proceedings under Article 169 of the Treaty is therefore difficult, as this Article requires the proceedings to be brought against a Member State, its public authorities or official organs for not having fulfilled an obligation under the Treaty.

1043 In its written observations to the European Court of Justice, of January 1994, on the Bosman case, the Commission has stipulated that football associations' rules restricting the numbers of foreign players which may be fielded are contrary to EU rules on the free circulation of salaried workers (in particular on Articles 4 and 7 of Regulation 1612/68, which applies Article 48 of the EU Treaty (free movement of workers)). Further clarifications of the Commission's position will depend on the ruling on the Bosman case to be delivered by the European Court. This is likely to happen in early or mid 1995.

1044 The question has also been raised of the application of EU rules on free movement to the transfer rules. The Commission has indicated that insofar as transfer rules do not discriminate between players on the basis of their nationality, it considers that they are not contrary to Article 48 of the Treaty (on free movement of workers).

The right of amateurs to practice sport

1045 Several cases of discrimination based on nationality in amateur sports have been brought to the attention of the Commission. In the case of the amateur basketball leagues in Italy and Greece, and the squash and tennis leagues in Belgium, amateurs from other Member States who are resident in the Member State of the league in question have either been prevented from competing in championships, or have had to comply with different rules to those governing nationals of the country.

1046 This is particularly a problem for young people who have moved with their families to another Member State, but who are not permitted by the sports clubs or federations to play in national or international competitions for their host country.

The Court of Justice position

1047 The ECJ has not yet been referred any cases specifically relating to discrimination against amateur sportsmen on the grounds of nationality. However, it had interpreted the meaning of Article 7 of Regulation 1612/68¹³, which sets out Member States' obligations in relation to the free movement of workers and their families. Article 7 says that they should benefit from the same social and fiscal advantages as nationals. The ECJ has interpreted "social benefits" the conditions necessary for the full integration of the worker and his family in the host country.

The Commission position

1048 The basic Commission position is that amateurs, that is persons who are not practising sport as an economic activity, do not have recourse to Treaty Articles 48 and 59. In response to a written question concerning the requirements of the Royal Belgian Tennis Federation for participation in Belgian club competitions, which are more stringent for nationals of other Member States than for Belgians, the Commission responded¹⁴ that there was no legal basis on which the Belgian Tennis Federation could be required to open its competitions to all EU nationals, as the Commission could only be required to act in respect of discrimination related to the pursuit of a sport as a profession.

1049 The Commission is, however, aware that difficulties may arise in cases where it is difficult to distinguish between the status of amateur and semi-professional, (there being many forms of recompensing a sports person apart from purely monetary rewards).

1050 The Commission also feels that cases of discrimination against amateurs on the basis of nationality do restrict a person's freedom to move to and reside in another Member State and therefore are a barrier to creating a true People's Europe. Indeed, the ECJ's jurisprudence on the meaning of social benefits within Article 7 of Regulation 1612/68 could conceivably include the right to join a sports federation and play at any level. In this case, the individual would first have to complain to a national court of law, which may then seek a ruling from the ECJ.

1051 It should also be noted in this context that in May 1992, all EU Member States adopted the Council of Europe's European Sports Charter. The signatories to this Charter agreed several principles, some of which are relevant to the discussion of the right of amateurs to the practice sports in all Member States. They are:

¹³ Regulation 1612/68; OJ N° L 257/68; 19. 10. 68

¹⁴ Written Question N° 1868/90; OJ N° C 63/91; 11. 3. 91

- that sport is a social activity in the sense of being part of human society and therefore part of culture in the broad sense;
- that no discrimination on the basis of nationality should be permitted regarding access to sports facilities or to sports activities;
- that everyone with ability should have the opportunity to improve their standard of performance in sport and reach levels of personal achievement and/or publicly recognised levels of excellence.

1052 With reference to the first principle, following the entry into force of the Maastricht Treaty, the European Union has specific competence for cultural policy. If the link between sport and culture is accepted, this will reinforce the European Union's scope for non-binding initiatives in this area.

1053 With reference to the second and third principles, all governments who have signed the Charter should take action to ensure that sports federations' rules that discriminate against non-national amateurs are eliminated. This could be particularly effective in the Southern Member States, where the Governments have the greatest control over the federations' activities.

Sports qualifications

1054 Both mutual recognition Directives described above (in paragraph 1006) apply to regulated professions, ie occupations which can only be entered by those who hold a diploma, certificate or other qualification from the national training system, as stipulated by legal, regulatory or administrative provisions.

1055 Sports qualifications issued by national federations or other sports bodies would fall within the scope of the Directives if these organisations have been formally delegated the power to issue such qualifications, or if they are chartered bodies. The Directives operate on the principle that recognition is based on mutual trust, without any prior co-ordination of the types of training for the various professions concerned. Requests for proof of professional experience by the regulating authority in the host Member State, or insistence on an adaptation period or aptitude test, are to be permitted where the length of training or the course content differs substantially.

1056 Qualifications for teaching physical education in schools are regulated in every Member State and are normally obtained after three or four years of higher education. They therefore fall within the scope of the first general Directive and we are not currently aware of any problems having been brought to the attention of the Commission relating to this type of sports qualification.

1057 Problems could occur over the teaching of sports outside schools, where sports professions have developed differently and require different levels of qualification in each Member State. Very few European level diplomas, exist in the sports world comparable to the European Water Sports Instructor's Diploma, which was based on the diploma issued by the French State¹⁵, subsequently adopted by the European Water Sports Commission in 1988.

1058 In certain Member States, such as France where there is a national recognition system, some sports professions tend to be highly regulated. This has led to complaints being made to the Commission by British and Danish ski-instructors who have been fined for working in the French Alps without holding a qualification considered to be equivalent to the French qualification.

1059 In cases which fall outside the scope of both Directives and until Directive 92/51/EEC has entered into force, the jurisprudence of the Heylens and Vlassopoulou cases (see below) will apply. This means that the applicant has at least the right to receive a reasoned opinion as to why the equivalence of his qualification has not been recognised as sufficient by the authority controlling entry to the profession in question. In any case, a Member State is obliged to compare the qualification of the applicant with the qualification required in its territory.

1060 In this context, the European Centre for the Development of Vocational Training (CEDEFOP) has been carrying out detailed work to establish, for given occupations, the common skills of holders of vocational training qualifications. The legal base for CEDEFOP's involvement is Council Decision 85/368/EEC¹⁶ on the comparability of vocational training qualifications, which asked the Commission to implement a system for comparability with the assistance of CEDEFOP.

1061 For each of the occupations examined, the work of CEDEFOP results in:

- a Community description of the practical occupational requirements;
- a comparison table of diplomas, certificates and other vocational training qualifications issued in each Member State.

1062 CEDEFOP's work is limited to the so-called "skilled-worker" occupations and has not yet been extended to higher level occupations. It could transpire that following the Council Resolution on the transparency of qualifications adopted in December 1992, greater efforts will be made to complement, inter alia, the work done

¹⁵ Written Question N° 2962/87; OJ N° C 1/89; 2. 1. 89

¹⁶ Council Decision 85/368/EEC; OJ N° L 199/85; 31. 7. 85

on the launching of a "portfolio of qualifications" which permits job-seekers to present qualifications and relevant periods of work-experience which have not yet been covered by the comparability system. The application of such new systems would require approval via a new Council Decision on the basis of a new Commission proposal.

1063 The system does not lead directly to recognition of diplomas, but may assist the holders of comparable qualifications to claim equal treatment in view of employment and classification and the employers to search for comparable qualifications beyond national frontiers. 209 occupations from 19 sectors have been covered so far, although sport was not one of these areas.

1064 The only sector currently being studied by CEDEFOP which is partially sports-related, is the sector of tourism. The description of the occupation of "leisure/tourist assistant", which has been published in the Official Journal¹⁷, includes:

- setting up and maintaining games, leisure and sports facilities and the corresponding equipment;
- providing and running planned games and leisure activities; and
- maintaining and performing minor repair work on games equipment and other entertainment and sports installations.

1065 The European Network for Sport Sciences in Higher Education is also active in this area. This Network groups together training and research establishments and structures specialising in sports and physical education within the countries of the EU. Since 1990, it has been working on two projects :

- the formulation of a European model for a training structure capable of incorporating the various training levels for most sports-related occupations; and
- the harmonisation of existing training courses through agreements between the Member States on the broad lines of the content of training, defined on the basis of the professional profiles of the various sports-related occupations.

1066 The proposed training structure for sports-related occupations draws on the Council Decision of 16 July 1985 on the comparability of vocational training qualifications between Member States. The Network has applied this structure, which

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OJ N° C 320/92; 7. 12. 92

comprises five training levels, to the occupation of coach. For each of the levels, it has specified the tasks involved and the specific activities, evidence of training, entry conditions and the minimum duration of the training, the coach should have undergone for the qualification to be valid. It would like this proposal to be debated by all the bodies concerned at both national and European Union level, before being adopted by the Commission as a proposed sectoral Directive for the occupation of coach.

1067 Besides the two general mutual recognition Directives relating to regulated professions, a series of Directives with more specific scope have been adopted relating to the mutual recognition of diplomas, certificates and other evidence of formal qualifications in specific professions. Their aim is to provide for the freedoms of establishment and provision of services with the respect to professionals in those particular specific sectors and professions.

1068 A Directive was adopted in 1993 to promote the mutual recognition of medical qualifications¹⁸, including for specialised medicine. Lists of recognised qualifications are provided for medicine and specialised medicine, both common to all Member States and peculiar to two or more Member States. The Directive also sets out provisions to facilitate the effective right of establishment for doctors and their freedom to provide services.

1069 There is nothing in the Directive which prevents a Member State from recognizing specialisations, such as sports medicine, which are not already set out in the Directive. Indeed, the scheme of the Directive is such that if a new medical specialisation emerges and it is recognised in two or more Member States, there is the possibility of setting those qualifications in the Directive. However, the Directive makes clear provision for those qualifications which are not already set in the Directive to be taken into account in Member States in which a formal qualification is required.

The Court of Justice position

1070 ECJ jurisprudence on the issue of the mutual recognition of qualifications has been laid down in the cases of Heylens¹⁹ and Vlassopoulou²⁰. In the Heylens case,

¹⁸ Council Directive 93/16/EEC; OJ N° L 165/93; 7. 7. 93

¹⁹ UNECTEF v. Georges Heylens and others; Case 222/86; judgment of 15. 10. 87

²⁰ Irene Vlassopoulou v. Ministerium für Justiz, Bundes und Europaangelegenheiten Baden-Württemberg; Case C-340/89; judgment

which preceded the adoption of the general Directives, the Court ruled that, where a Member State refused to recognise the equivalence of a diploma granted to a worker who was a national of another Member State, it had to be possible for this decision to be made the subject of judicial proceedings in which its legality under European Union law could be reviewed. The Court also ruled that the person concerned had to be able to ascertain the reasons for the decision.

1071 The Vlassopoulou case further specified that, in a disputed case of recognition, if the national judge (on the basis of a comparison of diplomas) found that the qualifications and knowledge of the person wishing to practice the profession were equivalent to that which would be required of a national, then the Member States had to accept equivalence. If the equivalence was only partial, the host Member State could ask the applicant to prove that he or she had acquired the necessary knowledge or qualifications either through professional experience or by taking courses. If refused acceptance, the applicant had the right to a reasoned explanation and to contest the decision in a national court.

1072 The Court has also given more recent decisions regarding tourist guides in three separate cases brought by the Commission against France, Greece and Italy²¹. This jurisprudence could be important, in particular, for non-resident providers of services. In each case, the Court found that non-national tourist guides could not be prevented from accompanying groups of tourists into these countries on the basis that they did not hold the necessary national diploma as there could be no grounds for exceptions based on the 'general good'. The only exception that could be made would be guiding in museums and historical monuments, where it was admitted that a specialised guide may be required. It has to be underlined that these cases only concerned Article 59 and the temporary cross-border provision of services.

The Commission position

1073 In the case mentioned above of British ski-instructors being prevented from, or fined for practising in France, the Commission has issued a notice to the French authorities, who promised to change their legislation to comply with European Union rules by the autumn of 1993.

1074 The Commission stresses that European Union citizens should not assume an automatic right to practice their profession in another Member State. A formal procedure for recognition of their qualification will be required in most cases.

of 7.5.91

²¹ Cases C-154/89; C-180/89 and C-198/89; judgments of 26.2.91

The European Parliament Position

1075 In its report on the EC and Sport²², the European Parliament calls for the necessary legislation for recognition of diplomas and certificates to be adopted without delay so that trainers, coaches, therapists, etc., may practice their profession in the EU without discrimination on grounds of nationality.

Hooliganism

1076 The increasing incidents of violence between rival supporters at all levels of football matches have resulted in such measures as fenced grounds, all-seater stadia, the banning of alcohol consumption and the restriction of some matches to home supporters only.

1077 Other measures that have been suggested to prevent violent incidents include the UK Government's proposal (which was not implemented) to introduce identity cards for football supporters.

The Commission position

1078 In a written European Parliamentary question²³ the Commission was asked whether the UK Government's proposal to introduce identity cards could be a breach of European Union law. The proposal would have had the effect of preventing unaccompanied foreign nationals entering UK football grounds. The Commission replied that it did not contest the right of Member States to adopt legislation restricting entry to football grounds in order to reduce the level of violence as long as such legislation was drafted to take into account the situation of unaccompanied football supporters from other Member States, who had a right, as people receiving services, to free movement under Article 59 of the Treaty.

1079 The Commission nevertheless feels that it could be argued that it is against European Union law on free movement to stop groups of "potential" hooligans from going to international matches. It is only after they have committed an act of violence in another Member State, that they can legitimately be stopped from attending subsequent matches abroad (that is persons with no prior conviction for such offenses).

²² European Parliament report on the European Community and Sport; PE DOC A3-0326/94; 27. 4. 94

²³ Written question N° 2293/88; OJ N° C 276/89; 30. 10. 89

The European Parliament position

1080 In its report on the EC and sport²⁴, the European Parliament encourages Member States to continue their policies to prevent and combat violence among supporters, but remarks that the nationality of a supporter from a European Union country should never be the criterion for refusing or impeding access to sports events.

Insurance

1081 Sports persons are involved in activities in the course of their daily work that leave them very susceptible to injury. Equally, several tragic events in the last ten years, where the safety standards of sports stadia have proved inadequate, have highlighted the need for adequate insurance coverage.

The legislative context

1082 The EU has enacted legislation to ensure that a single European insurance market is created. The Third Framework Directive on non-life insurance²⁵, which entered into force on 1 July 1994 for nine Member States, extends the scope of the Second Non-Life Directive to enable insurance companies to sell policies to private individuals (as opposed simply to large-risk groups). Once implemented at national level, individual EU citizens will be able to buy insurance for injuries through sport from insurance companies that are not locally established. The contract law that applies will usually be that of the policyholder's country of residence. If the location of risk and the policyholder's home base are different, the policyholder may be permitted to choose between the two, although a Member State has the option to impose the contract law of the policyholders' residence.

The Commission position

1083 Apart from ensuring the implementation of the above Directive, the Commission does not consider that it has a role to play in enacting sports-specific insurance legislation for, for example, transnational events. It believes that the onus lies with clubs, players and spectators to ensure that their own insurance is adequate when participating in such an event.

²⁴ European Parliament Report on the European Community and Sport; PE DOC A3-0326/94; 27. 4. 94

²⁵ Council Directive 92/49/EEC; OJ N° L 228/92; 11. 8. 92

Advertising and sponsorship

1084 Many commercial companies use sports events, organisations, teams and sports players as an advertising medium. By association, their products, and the company itself are "cloaked" with the positive images represented by sport. Different types of events at different times enable companies to match the appeal of products with different audiences.

1085 Sponsorship is the practice of associating a commercial entity with a programme or event in exchange for a financial contribution from that company. Sponsorship is motivated by the fact that the sponsor improves its image by being linked to the characteristics of the programme or event it sponsors. Sponsorship can be distinct from advertising, or alternatively, the rights to place advertisements or boardings can form part of a sponsorship agreement. In 1991, sponsorship of sports amounted to approximately ECU 2 billion.²⁶

1086 Typically, sponsorship of an event, including advertising at the event, is purchased separately from advertising during the broadcasting of an event. Advertising time during a broadcast is usually purchased from the broadcaster, whereas sponsorship rights are bought from event organisers, sports federations or other bodies governing sports, sports marketing agencies, leagues, teams and individual sports players. Event organisers usually sell exclusive broadcasting rights to a network or consortium of broadcasters such as the EBU, frequently requiring that event sponsors be given the right of first refusal to acquire advertising time during the broadcast of an event.

1087 Television sponsorship is not very well developed within the EU. There is certainly a large market to develop, particularly in the trans-frontier niche, such as, for example, large pluri-national sporting events. The development of this market could bring large sums of money both to the media and to sport, thereby financing broadcasts which might otherwise not have been made.

1088 There are two basic types of sponsorship: programme or broadcast sponsorship (when the broadcaster arranges sponsorship for his programme) and event sponsorship (when the event organiser arranges sponsorship for an event). Programme sponsorship is the least developed of the two, with certain notable exceptions. An important issue in the future will be the linkage between the two types of sponsorship. For example, if Kodak sponsors an event, but Fuji has a sponsorship contract for a television programme in which that event features prominently, there will clearly be a conflict. This issue might be resolved by dialogue between the sports organisations and television companies, the results of which could be incorporated into contracts.

²⁶

Source ISL Marketing (as reported in the Economist, 25 July 1992).

1089 Previously, in order to secure the most lucrative financial benefit from the sale of broadcasting rights, event organisers allowed broadcasters a high degree of flexibility in terms of selection of advertisers. As the number of broadcasters increases, however, the balance of power is shifting from the broadcasters to the programme suppliers (event organisers). Both event and broadcast sponsorship are increasingly offered as a single package, with a proportion of the advertising time already committed to parties selected by the event organiser or the rights' holder.

1090 Television and radio advertising and revenue generated thereby is the property of the broadcasters involved. Whilst sports federations, if they organise an event and/or control a specific venue, will benefit from advertising opportunities which might or might not form part of a sponsorship package, rights' holders (events organisers) also get paid for television and radio rights and indirectly receive a share of the revenues.

1091 The revenue generated from the sale of sponsorship and advertising opportunities to commercial entities represents a significant proportion of income for many sports organisations.

Television advertising and sponsorship rules

1092 The development of satellite broadcasting and therefore of cheaper and more effective programme transmissions of television programmes prompted the Commission to formulate a Directive²⁷ to open the increasingly trans-frontier television broadcasting market. It was dubbed the "Television Without Frontiers" Directive. In so far as sports programmes form a significant part of total broadcasting, the Directive has an impact on sport.

1093 The aim of the Directive is to facilitate transborder transmissions by harmonising previous barriers in the form of national laws, to the minimum degree necessary to allow for the free circulation of such services. The principle is that the rules of the Member State where the broadcaster is established should apply. Member States remain free to insist on stricter rules for their own broadcasters.

1094 The Television Without Frontiers Directive has sections on both television advertising and sponsorship which are of direct relevance to sports. It was national differences in these areas that led to the requirement for harmonisation in order to facilitate the free circulation of broadcasting services.

²⁷

Council Directive 89/552/EEC; OJ N° L 298/89; 17.10.89. Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

1095 The basic principle guiding Commission policy is that of the free provision of services as per Article 59 of the Treaty. This Article provides for the abolition of restrictions on the free provision of services to nationals of another Member State.

1096 The Directive provides for a series of minimum requirements, both qualitative and quantitative, on television advertising. The main provisions include a maximum daily broadcasting time for advertising, rules on maximum frequency of advertising breaks, on the amount of advertising time per given hour and on rules restricting the content of certain forms of advertising.

1097 The Directive bans television advertising for cigarettes and other tobacco products and the tobacco sponsorship of television programmes.

1098 Another proposed Directive²⁸ banning all forms of advertising for tobacco products is being discussed by the Council. As it currently stands, the proposed Directive would ban all advertising of tobacco products (not only television advertising), both direct and indirect, beyond the point of sale. Although there would be no direct prohibition of sponsorship by tobacco companies, as tobacco logos would be banned from sporting events, this would render sponsorship of sports events by tobacco companies considerably less attractive. At the time of writing, a minority of countries including Denmark, Germany, the Netherlands and the UK are still blocking the proposed Directive.

1099 The Commission has not tabled any proposals on advertising for alcoholic beverages and has not given any indications that it plans to do so in the near future.

1100 The Television Without Frontiers Directive does not include a chapter on copyright, a gap which has been filled by a Council Directive²⁹ to coordinate legislation on copyright and related rights which broadcasters must acquire when either broadcasting by satellite or retransmitting by cable across two or more Member States. The Directive aims to achieve a balance between enabling broadcasters to transmit across borders while ensuring adequate protection of copyright. To accomplish this equilibrium, a minimum level of harmonisation of Member States' rules is needed. The Directive clarifies the conditions for trans-frontier broadcasting and therefore also applies to sports events, including for specialised pay-television channels.

²⁸ Amended proposal for a Council Directive on advertising for tobacco products; OJ N° C 167/91; 27.06.91

²⁹ Council Directive 93/83/EEC; OJ N° L 248/93; 06.10.93

1101 In 1992 and 1993, a French member of the European Parliament, Mr. Yves Fremion, drafted an own initiative report³⁰ on patronage and sponsorship in culture and sport. The report appealed to the European institutions to encourage patronage of events with limited or no credit to the sponsor. The rationale was to protect the rights holders and the consumer from any undue outside influence. Sponsors viewed many of the Fremion proposals as unworkable and contended that their implementation would severely reduce the revenue generation capacity of many sports organisations. The Fremion report was not adopted by the European Parliament.

1102 In order to establish the Commission's policy in the area of Commercial Communication - a term which comprises not only advertising but also direct marketing, sponsorship, sales promotions and public relations - the Commission is preparing a Green Paper.

1103 The aim of the Green Paper is to take an overall look at the industry engaged in commercial communication, and to examine what form of regulatory framework would be appropriate to ensure a coherent and consistent approach by the Commission.

Lotteries and wagering activities

1104 In many countries sport is partially financed, either directly or indirectly, by lotteries and gaming activities. The degree of funding varies between countries. In some cases, a portion of the profits from the gaming operations or game is allocated to specific sports organisations. In other cases, distribution is made via the Ministry of Finance. Revenue from lotteries and betting on football and on horses account for the majority of gaming activities funding sport.

1105 CONI, the Italian National Olympic Committee, is almost exclusively funded by the proceeds of betting on football (the "Totocalcio"). The new UK national lottery will contribute, via the Department of National Heritage, 20% of all the benefits from the national lottery, (an estimated 400 million ECU), to a new fund dedicated solely to the development of sport. In Germany, a significant part of the profits from class lotteries, the national lottery and the Glucksspirale game are channelled to sport; the German Sports Confederation (the Deutsche Sport Bund or DSB) gets just over half its funding from Glucksspirale. Austrian sport is partially funded by state-owned casino operations and Toto revenue is allocated to football in particular.

1106 Many of the largest gambling and gaming activities are operated as national monopolies. Cross-border transactions are often not allowed, which leads to a certain compartmentalisation of markets. This segmentation of markets has led to questions

³⁰

DOC PE 201.820/B; 16.9.92

about whether many lotteries and other betting operations are carried out in a manner which may not comply with EU rules on free circulation of goods and services and may restrict free competition.

1107 In 1992, the Commission held a series of hearings at which the idea of harmonisation of rules applying to gambling and gaming was discussed. At the Edinburgh summit in December 1992, based on the application of the principle of subsidiarity, the Council decided not to introduce harmonised legislation on gambling and gaming.

1108 There has also been concern expressed by many sports authorities that the application of EU rules on free circulation and competition policy might deprive sport of this vital source of finance. They fear that any application of EU law which threatens the existence of national lotteries and betting operations would have the effect of removing this source of funding for many sports organisations and would put these sports organisations at a considerable disadvantage over state-funded sports bodies or those receiving funding from other sources.

1109 In this context, the ruling of the European Court of Justice on the Schindler case is particularly relevant. (Case Ref. N° C-275/92). It provides some guidelines on the application of EU legislation to lottery activities and, to some extent, to gambling generally.

The facts of the case

1110 Gerhart and Jorg Schindler, independent agents of the German Süddeutsche Klassenlotterie ("SKL"), dispatched some 5 million envelopes with advertisements and application forms from the Netherlands to the United Kingdom inviting UK citizens to participate in the SKL.

1111 The envelopes were intercepted and confiscated by United Kingdom Customs authorities under the Revenue Act of 1898 and the 1976 Lotteries and Amusements Act, which, for public policy reasons, prohibited large lotteries in the UK.

1112 The UK Courts considered that the resolution of the dispute required an interpretation of application of EU legislation from the European Court of Justice. The case was therefore referred to the Luxembourg Court which subsequently received written submissions from the Schindlers, the U.K. Government and eight other national governments³¹ (indicating to the Court the importance each government placed on the outcome of the ruling).

³¹ Two other Member States made their interventions during oral proceedings.

1113 The specific question put by the national court to the European Court was essentially whether Articles 30 (free movement of goods) and 59 (freedom to provide services) of the Treaty of Rome preclude Member States from prohibiting foreign lotteries in their territory (as did the United Kingdom) and consequently the importation of material intended to enable residents to participate in foreign lotteries.

1114 In addition, the U.K. National Court wished to ascertain whether the importation of lottery advertisements and tickets into a Member State with a view to the participation by residents of that State in a lottery operated in another Member State constitutes an "importation of goods" and falls under Article 30 of the Treaty of Rome or whether such an activity amounts to a provision of services which as such comes within the scope of Article 59 of the Treaty.

1115 In its judgement of 24 March 1994, the Court ruled that:

- the importation of lottery advertisements and tickets into a Member State with a view to the participation by residents of that State in a lottery operated in another Member State relates to a "service" within the meaning of Article 60 of the Treaty and accordingly falls within the scope of Article 59 of the Treaty;
- national legislation which, like the United Kingdom legislation on lotteries, prohibits, subject to specified exceptions, the holding of lotteries in a Member State is an obstacle to the freedom to provide services;
- because of the particular nature of lottery products, National Authorities can restrict or prohibit them, provided that the restrictions are on a non-discriminatory basis.

1116 As the U.K. Government's ban concerned all large scale lotteries, regardless of country of origin, it was therefore non-discriminatory and acceptable in view of concerns of social policy and the prevention of fraud³².

³²

Coopers & Lybrand notes that the ruling is based on the legal situation that occurred at the time of the offence, i.e. when *all* large lotteries were prohibited in the United Kingdom and *before* the National Lotteries act of 1993, which introduced legislation to permit a U.K. National Lottery. While making this ruling, the Court has clearly stated that lotteries are a service and inferred that discriminatory prohibitions or restrictions could be a breach of Article 59 of the Treaty of Rome. As the United Kingdom law has changed in the meantime, a second case may have to be introduced in order to confirm this inference.

Company law

1117 The main thrust of Commission policy on company law is the attainment of a common and comprehensive legal environment for all types of European Union companies, their shareholders and those having business with them.

1118 The legal status of sports clubs, although they sometimes involve considerable economic and social interests, is not yet governed by clear and harmonised rules at the EU level. Member States continue to be responsible for the legal status under which sports organisations may operate and the EU has no intention of targeting sports clubs under any harmonisation measures. EU company law only applies to economic activities, and only if there are cross-border implications. Details are provided below on two EU legal initiatives which may be of interest to sports organisations.

Proposed European Statutes for Associations

1119 In December 1991, the European Commission adopted a proposal³³ to establish, along the lines of the European Company Statute, a statute facilitating the operation of associations and foundations across internal EU borders. The proposal is designed to place these entities on an equal footing with profit-making companies.

1120 Along the lines of the European Company (SE), a European Association (AE) could be constituted through the conversion of a national association which has a subsidiary or permanent establishment in another Member State.

1121 This statute is embodied within a draft Regulation containing rules regarding the convening of general meetings, operating procedures, financing arrangements, accounting methods, winding up and insolvency.

European Economic Interest Grouping (EEIG)

1122 In 1985, a Council Regulation³⁴ was adopted on the European Economic Interest Grouping ("EEIG"). The aim of the EEIG is "to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities". On the basis of this very broad definition no sector of activity is automatically excluded, the only condition being that the grouping's activity must relate

³³ OJ N° C 99/92; 21. 4. 92; amended in OJ N° C 236/93; 31. 8. 93

³⁴ Council Regulation 2137/85; OJ N° L 199/85; 31. 7. 85

to the economic activity of its members and not remake it. This legal instrument has not, however, been widely used by sports organisations.

II Health and safety

Key issues

Doping

2001 In the increasingly competitive world of both amateur and professional sports, large financial rewards in the form of prize money and/or sponsorship contracts are pushing sports persons to strive for ever greater physical achievements. The use of illegal performance-enhancing drugs to reach these heights has become the scourge of the modern sports world. Also, the introduction of increasingly sophisticated body-boosters makes detection more difficult.

2002 Testing for drugs is increasingly widespread. Where international federations have taken a firm line and adopted stringent procedures and protocols, testing can be very effective and have far-reaching effects on the sport.

The Commission position

2003 It is not within the European Union's competence to introduce binding legislation on the specific testing of sports persons for the illegal use of performance enhancing substances.

2004 The use of drugs in sport does, however, contravene the provisions of binding EU harmonisation Directives for health and medicinal products. This legislation is designed to prohibit the use of medicinal products for purposes other than for the diagnosis or treatment of recognised pathological states, to prevent their use in unauthorised forms and dosages³⁵, to prevent their unauthorised sale (black market) or prescription³⁶, and their advertisement³⁷.

2005 Recent European Union activity in the field of doping is based on the Council Resolution of 3 December 1990 on "Community Action to combat the use of drugs, including the abuse of medicinal products, particularly in sport"³⁸.

³⁵ Directive 65/65/EEC; OJ N° L 22/65 (last amended by Directive 89/341/EEC); 9.2.65

³⁶ Directive 75/319/EEC; OJ N° L147/75 (last amended OJ N° L 250/84); 9.6.75

³⁷ Directive 84/450/EEC; OJ N° L 250/84; 19.9.84

³⁸ OJ N° C 329/90; 31.12.90

2006 The Resolution stressed that action taken by the European Union in this area should complement the work of the Council of Europe and take into account its Anti-Doping Convention. It also advocated an educational and preventive approach, geared particularly towards young people. Through this Resolution, the Council invited the Commission to draw up a code of conduct to combat the use of drugs in sport. Annex II of the Resolution also asked the Commission to propose measures in the areas of:

- training information and health education initiatives against the use of drugs in sport;
- current drug use practices;
- drug-testing methods and cooperation between laboratories;
- research on the effects of drug-taking on health (within the European Union biomedical research framework programme).

2007 The requested Code of Conduct against Doping in Sport was drafted by the Commission and approved by the Council in its Resolution of 8 February 1992³⁹.

2008 The key aims of the Code are to increase awareness of the dangers of doping to health and to help change the attitudes and behaviour of those closely involved in order to encourage drug-free sport. It calls on young people, parents, educational institutions and athletes to advocate that participation in sport should be free from doping, and for the latter to act as role models. It encourages health professionals, the entourage of sports teams (managers, coaches, trainers, etc) and sports organisations to actively prevent doping and encourage fair play. It calls for cooperation between sports organisations on issues related to the status and control of doping. Testing laboratories are asked to continue their current work and to monitor for, and warn authorities about, the appearance of new drugs with performance enhancement potential. Finally, the Code calls on the media to provide the public with information about athletes' training programmes and the negative consequences for health of doping.

2009 One of the actions undertaken by the Commission to disseminate the Code has involved adapting it slightly to enable, in particular contexts, elements of it to be transferred to postcards, posters and stickers. Demand for this material from sports ministries and other bodies, has been high. Promotional material was also distributed at the Winter and Summer Olympic Games, the School Games in Nantes and the Tour de France.

³⁹ OJ N° C 44/92; 19.2.92

2010 DG X and the Directorate-General responsible for health and safety (DG V) are now concentrating their efforts on trying to encourage the Member States to disseminate the Code. In the meantime, positions are being developed within these DGs as to how to progress the other four measures mentioned in Annex II of the 1990 Council Resolution.

2011 In 1992, upon the request of various national organisations responsible for education on anti-doping, the Monitoring Group of the Anti-Doping Convention of the Council of Europe agreed upon an initiative called "Europack, education on anti-doping in sports".

2012 The objectives of Europack are to facilitate the work of national organisations handling education on anti-doping by:

- supplying model educational materials which can be used in developing national anti-doping education materials;
- providing relevant information on the development of a more structured approach towards anti-doping education;
- enabling faster and more efficient development of an education plan and implement action using the model educational material contained in the Europack.

2013 An Education Working Party was set up to develop a package of model educational material for different target groups, to support all member countries of the Council of Europe in the development of their own anti-doping educational materials. The following eight educational modules have been developed:

- Module 1 : Positive effects of sports
- Module 2 : List of appropriate training methods and practices
- Module 3 : What is doping ? Why is it forbidden ?
- Module 4 : List of banned substances
- Module 5 : List of allowable substances
- Module 6 : Control procedures
- Module 7 : Organisational structure of anti-doping activities & legal aspects of anti-doping rules
- Module 8 : Case studies and questions and answers

The Parliament position

2014 In a report adopted by the European Parliament on 3 May 1994, the Parliament recommends that an adequate policy against the use of doping in sport should be based on at least the 5 following objectives:

- Coordination of the lists of banned substances, of regulations and of penalties;
- Improvement of detection methods;
- Effective control of the distribution of doping substances;
- Effective sanctions against federations; and
- Prevention by awareness and education.

2015 In view of this, the Parliament, in its motion for a resolution on sport and doping, calls on:

- the Commission and Council to acknowledge expressly the European Union's responsibility in the fight against doping in sport both from an ethical standpoint and in the interests of public health;
- the European Union to set up, under a multiannual programme, a network of European laboratories for doping research and to cofinance relevant research projects, complementing and strengthening earlier measures taken by the Council of Europe and the International Olympic Committee;
- the Commission to set up, within the new European Monitoring Centre for Drugs, a separate doping department for doping in sport, which would act as a European databank for all information on legislation, regulations, research, testing methods and policy on prevention in the Member States and in the national and international sports federations;
- the European Union to draw up measures to combat trafficking in doping substances, in particular by harmonising legislation on the possession and use of stimulants in sport; and
- the Commission to draw up an information programme based on the 1992 Code of Conduct in order to alert public opinion and, in particular, young people to the danger of doping in sport.

2016 The report also calls upon national and international sports federations, Member States, the IOC, the media, individual sportsmen and sportswomen and all involved with sportsmen and sportswomen in the fight against doping.

Actions against AIDS

2017 Some sports federations have already adopted interim measures to fight AIDS. In June 1994, the Council agreed in principle on the extension of its "Europe against AIDS" programme. This programme could also be applied in favour of the world of sport. Specific actions which may be relevant to sports authorities and organisations include:

- informing and increasing the awareness of the public and certain target groups;
- health education for young people;
- measures to combat discrimination against people with H.I.V. and AIDS and those close to them;
- research and international cooperation.

Protection of young people at work

2018 In June 1994, the Council adopted a Directive on the protection of young people at work⁴⁰. The Directive sets out a minimum working or employment age and a number of minimum standards dealing with exposure to various occupational risks arising from physical, chemical and biological agents and certain types of work, as well as the working environment, with particular reference to night work, working time and admission to employment. In the Directive, "young person" refers to all persons under 18 years of age, "adolescent" refers to any young person of between 15⁴¹ and 18 years and "child" refers to any person of less than 15⁴² years of age or who is still subject to compulsory full-time schooling. There is a general provision prohibiting the employment of children, but derogations are provided for in Articles 4 and 5 which make it possible, for example, to employ children in cultural, artistic, sports and advertising activities, so long as this is commensurate with their physical and psychological health.

2019 This approach has been opted for in conformity with the law in force in most of the Member States and with the international conventions and recommendations

⁴⁰ OJ N° C 84/92; 4.4.92 amended in OJ N° C 77/93; 18.3.93, and reexamined in COM(94) 88.

⁴¹ In some Member States, the threshold is 16 rather than 15 years of age.

⁴² Ibid.

which allow children to take part in such activities. It does however impose additional protective conditions and provisions.

2020 The terms of the derogation in Article 5 would be determined by the competent authorities of the Member States.

Liability of service suppliers

2021 In 1990, the Commission tabled a proposed Council Directive on the Liability of Suppliers of Services⁴³ which sought to establish a reversal of the burden of proof of liability in the case of accidents. In June 1994, drawing the political conclusions from discussions which took place in other institutions, including among the concerned professions, the Commission decided to reorientate its action, which implied the withdrawal of the proposal. Under the withdrawn proposal, the service provider would have had to prove that he had not been negligent in the provision of a service, rather than the injured party having to prove the service supplier had been negligent. The definition of "service" was wide enough to cover those in the sporting world and would even have applied to services provided free of charge. The proposal could have had significant implications for sports coaches, organisers of sporting events, rescue teams, etc. Although the proposal was withdrawn, the Commission will continue to examine the problem of safety of services, among others, under a sectoral approach. Sports-related sectors might be considered but are unlikely to be affected in the near future.

Stadia safety

2022 In 1990, the Italian Standardisation Organisation made a formal request to the Commission to mandate CEN to draw up safety standards for sports stadia. Such a mandate has not yet been forthcoming. Nevertheless, the CEN technical bureau meeting in June 1993 agreed to create a technical committee on spectator accommodation (TC 315). This technical committee is responsible for developing standards for architectural design and performance requirements for spectator accommodation at entertainment venues, including: sports stadia; sports halls; and indoor and outdoor facilities. The standards apply to the safety of the spectators, comfort and visibility. The work programme of the committee and its final scope are still to be approved by the BTS (Technical Sector Board for Building and Civil Engineering).

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OJ N° C 12/91; 18.01.91

III The free movement of goods

The principles

3001 The free movement of goods is one of the "fundamental freedoms" of the European Union. The establishment of an integrated internal market requires the elimination of customs duties between the Member States and the prohibition of quantitative restrictions. Also important in the context of this study are the Union's harmonisation policies regarding the technical specifications of goods, and Regulations enacted within the scope of the Common Agricultural Policy in the case of equestrian sports. The latter are dealt with in Chapter V on Animals in Sport.

The main provisions

3002 EU Treaty provisions envisage the total suppression of national measures which adversely affect intra-Community trade. To ensure the free movement of goods, European Union law has a number of instruments at its disposal:

- Articles 12-17: prohibition of customs duties and taxes having equivalent effect;
- Articles 30-36: prohibition of quantitative restrictions and measures of equivalent effect.
- Article 37: prohibition of exclusive rights for imports and exports of any State monopoly or agency of a commercial character.
- Articles 92-94: prohibition of State aid in so far as it affects intra-European Union trade and threatens to distort competition.
- Articles 95-96: prohibition of fiscal discrimination.

3003 Other instruments provide for the harmonisation of national laws and standards and the creation of common rules, in particular:

- Articles 100 & 100A: the main bases in the Treaty for harmonising Member States laws which restrict the functioning of the internal market. Harmonisation can be total or optional. Total harmonisation means that Member States have to permit goods complying with the Directive to be freely imported and marketed and also have to prohibit the sale of goods not complying with the Directive. Optional harmonisation involves only the former of these obligations.

- Article 235: creation of EU rules where no other Treaty article applies.
- Other provisions relate to special sectors, such as transport and agriculture.
- Secondary legislation also prevents new obstacles to intra-Community trade. For example, a Council Directive⁴⁴ laying down a procedure for the provision of information on technical standards and regulations.

The new approach

3004 With regard to Articles 100 and 100A mentioned above, prior to 1985, the procedure for initiating, approving and in many cases amending detailed harmonisation Directives was extremely cumbersome. A "new approach" was therefore adopted⁴⁵ whereby subsequent standardisation Directives only defined essential safety requirements for products. Products must conform with these essential requirements in order to enjoy free movement throughout the European Union.

3005 The technical specifications relating to the "new approach" Directives are drawn up by the competent European level standardisation bodies on a mandate from the Commission, following consultation with the Member States. Once a European Standard (EN) has been agreed, it has to be implemented at national level by being given the status of a national standard and by withdrawal of any conflicting national standards. Conformity of a product with the national standards transposing the harmonised standards, confers a presumption of conformity with the essential requirements covered by the harmonised standards. Conformity with the technical standards is not, however, obligatory. The producer can also conform only to the minimum standards in the Directive, to be eligible to carry the CE mark.

Key issues

3006 The EU's rules on the free movement of goods have an impact on various sports-related activities:

- the transportation of sports equipment from one Member State to another, including firearms;
- the standardisation of equipment specifications;

⁴⁴ Council Directive 83/189/EEC; OJ N° L 109/83; 26. 4. 83; amended by Directive 88/182/EEC; OJ N° L 81/88; 26. 3. 88

⁴⁵ Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards; OJ N° C 136/85; 4. 6. 85

- the commercial exploitation of the Olympic Symbol;
- the production and marketing of sports food;
- footwear labelling;
- quantitative restrictions on sport footwear;
- airports.

Transportation of sports equipment between Member States

3007 As of 1 January 1993, the elimination of all administrative documents in intra-Community trade, in combination with the new VAT regime, has made superfluous previous arrangements for the temporary importation of goods. Temporary import of sports equipment, for competitions or other sporting activities, are therefore completely free of restrictions, with the exception of such items as firearms (see below).

3008 Despite the clear Treaty provisions on free trade between Member States, the Commission consistently receives complaints that certification, testing and technical requirements still hamper the implementation of free intra-Community trade. The Commission examines each complaint it receives to determine the extent to which Treaty provisions are being infringed.

Firearms

3009 A Directive on control of the acquisition and possession of weapons, was adopted by the Council of Ministers in 1991⁴⁶. While the Directive institutes strict procedures for the transfer of weapons from one Member State to another, it imposes more lenient rules on sportsmen and marksmen. They may, without prior authorisation, be in possession of one or more firearms classified in categories C and D in Annex I of the Directive (categories which correspond to two of the four categories into which the Directive classifies weapons), during a journey through two or more Member States. This journey has to be for the specific purpose of engaging in a marksmanship competition and only applies provided that they possess a European firearms pass for each firearm, and that they are able to substantiate the reasons for their journey, in particular by producing an invitation.

3010 These exceptions to the general rules do not apply to journeys to a Member State which prohibits the acquisition and possession of the firearms in question and which makes it subject to authorisation.

3011 The European firearms pass is a document issued by the authorities of the Member States and includes a minimum amount of information as set out in annex

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Council Directive 91/477/EEC; OJ N° L 256/91; 13.9.91

II of the Directive. A uniform layout for the pass was proposed in a February 1993 Commission recommendation⁴⁷.

Standardisation

Recreational craft

3012 In June 1994, the European Parliament and the Council adopted a Directive on the essential safety requirements for the design and construction of recreational boats⁴⁸. The Directive applies to recreational craft of all types with a hull length of 2.5 to 24m, regardless of the means of propulsion. Excluded from the scope of the Directive are: craft intended solely for racing, including rowing racing boats and training rowing boats; canoes and kayaks; sailing surfboards; powered surfboards; and various other minor categories.

3013 The essential safety standards concern boat identification, builder's plates, protection from falling overboard and means of reboarding, visibility from the main steering position and the provision of an owner's manual. Structural requirements include structure, stability and freeboard, buoyancy and flotation, openings in the hull, deck and superstructure, flooding, manufacturer's maximum recommended load, life-raft stowage, escape and anchorage, mooring and towing. Propulsion, fuel, electrical, steering and gas systems will have to meet certain requirements and fire protection, discharge prevention and navigation lights will also be subject to a certain degree of standardisation. Once a recreational craft has met all the requirements it will be allowed to carry a CE mark of conformity which will enable the boat to be used in any part of the European Union.

3014 Following adoption of the Directive, Member States are expected to draw up the necessary measures before 16 December 1995 for implementation by 16 June 1996.

3015 CEN, the European Committee for standardisation, has a mandate from the Commission and EFTA to draw up standards on small craft.

⁴⁷ Commission Recommendation 93/216/EEC on the European firearms pass; OJ N° L 93/93; 17. 4. 93

⁴⁸ European Parliament and Council Directive 94/25/EC; OJ N° L 164/94; 30. 6. 94

Sports equipment

3016 As stated above, under the new approach to standardisation adopted by the Commission, the European standardisation bodies, are responsible for developing detailed technical specifications within the framework of specific Directives.

3017 An early meeting between CEN (European Committee for Standardisation) and the Commission clarified that the Personal Protective Equipment (PPE) Directive⁴⁹ was not restricted to the workplace, and, while the first and second mandates for this Directive did not include any sports items, a decision was taken to include certain sports items such as mountaineering equipment and driving accessories in the 3rd mandate.

3018 Within the CEN, standardisation relating to sports equipment is dealt with by Technical Committee N° 136, which is responsible for sports, playground and other recreational equipment and by Technical Committee N° 161, which is responsible for protective clothing. Examples of standards currently being developed by these Committees (outside the scope of the Personal Protective Equipment Directive) include goals for football, handball and hockey, stationary training equipment, paragliding equipment, gymnastics equipment, balls for tennis, rugby, basketball and volleyball, safety harnesses and lines and buoyancy devices.

The Olympic symbol

3019 The commercial exploitation of the Olympic symbol is the most important source of income for the Olympic movement. In addition to the Olympic symbol itself (the five interlocking rings) Olympic emblems may also be designed and exploited. An Olympic emblem is an integrated design associating the Olympic rings with another distinctive element. They may be created by the International Olympic Committee (IOC), a National Olympic Committee (NOC), or an Organising Committee of the Olympic Games (OCOG).

3020 According to the Olympic Charter, all rights to the Olympic symbol itself belong exclusively to the IOC. It is stated in the Charter that "even if the national law or trademark registration grants to an NOC the protection of the Olympic symbol, such NOC may only use the ensuing rights in accordance with instructions received from the IOC Executive board".

3021 In practice, in the large majority of Member States, the Olympic symbol is registered as a protected trademark. The owner of the trademark is either the NOC of the State concerned, or the IOC. In some States, both IOC and NOC have

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Council Directive 89/656/EEC; OJ N° L 393/89; 30. 12. 89

registered the Olympic symbol in their own name. Spain, France, Belgium and Portugal have legislation in force which grants exclusive rights to their respective NOCs to commercialise the Olympic symbol on their own behalf.

3022 The Olympic Charter also obliges the NOCs and the OCOG, when exploiting the Olympic emblem, to avoid any conflict of commercial interests in the territories of other NOCs. The Charter states that an NOC Olympic emblem "may not be used for any advertising, commercial or profit-making purposes whatsoever in the country of another NOC without the latter's prior written approval".

3023 The issue of ownership of the symbol and emblems and the right to use them alone, or in combination with various designations, such as "official worldwide sponsor of the Olympic Games", is increasingly important for the IOC and NOCs, as commercial exploitation of the symbol and emblems through advertising, sponsorship, or suppliership contracts is crucial for the maintenance of their income.

3024 The Nairobi Treaty on the protection of the Olympic symbol, which was concluded on 26 September 1989 is designed to ensure that the exclusive right of commercialising the Olympic symbol belongs to the IOC.

3025 The Treaty provides in its first article that the contracting parties shall refuse or invalidate the registration of the Olympic symbol or any emblem containing the Olympic symbol as a trademark and that the commercial use of the Olympic symbol shall be prohibited, unless the IOC authorises such use.

3026 Two exceptions are applied to the obligation. First, where the symbol or emblem was registered or legally used prior to the date of entry into force of the Treaty and secondly, where the NOC of the state concerned and the IOC have not reached any agreement concerning the commercialisation of the Olympic symbol.

3027 The existence of this Treaty has not had a major effect on the existing situations in the Member States, as Italy and Greece are the only signatories and, in derogation from article 1, they have not expropriated their respective NOCs. The other Member States have not acceded to the Treaty, preferring to maintain the situation whereby their respective NOCs commercialise the symbol or emblems.

The Commission position

3028 In the Commission's view, the issues of trademark registration, the relative balance between the rights of the IOC and the NOCs or OCOG to exploit the Olympic symbol and emblems, and the proportions of revenue falling to each, are matters for discussion between the various Olympic bodies.

3029 On the other hand, the Commission feels that the obligation on NOCs and the OCOG not to use their emblems for any commercial or profit-making purposes in the country of another NOC, without that NOC's permission, leads to a partitioning of the European Union market which coincides with the territories within which the respective NOCs hold their national trademark registration. This is contrary to the principle of the free movement of goods as set out in the Treaty of Rome.

Sports food

3030 A Council Directive of 1989⁵⁰ (Framework Directive) on the approximation of the laws of the Member States relating to foods for particular nutritional uses mentions nine groups of foods for which provisions will be laid down by specific Commission Directives. One of these groups is "foods intended to meet the expenditure of intense muscular effort, especially for sportsmen". In a new proposal⁵¹ modifying the 1989 Directive, the group of food relevant for sportsmen has been dropped from the list of groups for which EU provisions will be laid down.

Footwear labelling

3031 In March 1994, the Council adopted a Directive⁵² on the labelling of the materials used in the main components of footwear, including sports shoes, for sale to the consumer.

3032 The Directive aims to prevent any barriers to trade in the European Union for footwear and to help consumers identify what materials have been used in their composition, without placing too much of a burden on the manufacturer. The Directive allows manufacturers to decide whether to use pictograms or texts to indicate the materials used in the shoes' uppers, lining and soles. Harmonised pictograms and definitions are listed in Annex I of the Directive.

3033 The manufacturer, or his authorised agent established in the European Union, would be responsible for supplying and ensuring the accuracy of the labels. The retailer is responsible for ensuring that the footwear he sells bears the appropriate labelling set out in the Directive. The provisions of the Directive also apply to mail-order catalogues.

⁵⁰ Council Directive 89/398/EEC; OJ N° L 186/89; 30. 6. 89

⁵¹ Proposal for a European Parliament and Council Directive; OJ N° C 108/94; 16. 4. 94

⁵² Council Directive 94/11/EC; OJ N° L 100/94; 19. 4. 94

3034 A CEN Technical Committee (TC 309), "footwear", will draw up standards in this area.

Quantitative restrictions on sports footwear

3035 European Union law governs the commerce between EU Member States and state-trading countries, including China. EU involvement in this area is relevant for the sports equipment manufacturing industry insofar as the majority of sports footwear is now manufactured in China and therefore falls under EU regulations on this matter.

3036 Up to the end of 1992, Member States had national quotas in place on imports of sports footwear from China. Once the Single Market came into existence at the beginning of 1993, national quotas were no longer permitted. Disparities among Member States' import rules, which remained in operation, were no longer acceptable and needed to be removed. A proposed Regulation (COM(92) 455 final) was tabled in order to remove these disparities.

3037 This proposal was, with some amendments, adopted by the Council on 7 March 1994⁵³. Under this Regulation, all national quotas have been definitively eliminated and only seven categories of products, among which footwear originating in the People's Republic of China, are subject to Community-wide quantitative restrictions. Special technology sports shoes (with non-injected soles) are excluded from this Regulation, on the basis that their import would have no adverse effects on the EU's shoe industry (as the EU's market share of this type of shoe is minimal). To be classified as "special technology sports shoes", the footwear must fall under a tight definition, have a cost (cif) of more than 12 ECU and be for use in sporting activities.

Airports

3038 The activities of the Commission's Transport Directorate-General (No. VII) may be relevant for aeronautical sports particularly regarding recognition of licences and permits for airborne border-crossings and for the use of radio frequencies. Discussions between the EU and the relevant aviation sports authorities should take place to establish what EU action may be necessary.

3039 A UK company called Ultraflight has complained to the Commission that differing national requirements for aerial vehicles constituted barriers to free trade. According to Europe Airports⁵⁴, Ultraflight was prevented from importing a

⁵³ Council Regulation 519/94; OJ N° L 67/94; 10. 3. 94

⁵⁴ Europe Airports is the coordinating forum for the National Aero Clubs and Associations of the EU countries and ECAC Member States.

particular type of ultralight aircraft from France to the UK, although this type of aircraft is used in France (although not certificated)⁵⁵ and seems to be fully certificated in Spain and Germany.

3040 Europe Airports feels that differences in criteria for certification, such as weight, wing-size, type of controls, construction materials, engine-size, noise or endurance can be used to prevent competition. The Commission is currently examining the case.

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A key factor in this case is the different certification regimes between the UK and France. In France, the authorities allow aircraft to fly on the condition that the manufacturer declares the aircraft to be airworthy; should problems arise, the manufacturer rather than the French authorities are responsible. In the UK, the procedure is different; independently of manufacturers' declarations, once the UK authorities certificate an aircraft, they automatically accept responsibility.

IV Competition policy

The principles

4001 EU competition policy covers conditions of competition in trade between commercial enterprises on the territory of the EU.

4002 The main rules of competition policy which have an impact on sport are the following Articles of the Treaty of Rome:

- Articles 85 and 86 on "agreements" or concerted practices between "undertakings" and abuse of a dominant position respectively;
- Article 91 on dumping;
- Article 92 on the degree of state aid permitted.

Concerted practices and abuse of dominant market position

4003 Articles 85 and 86 of the Treaty aim to promote true freedom of choice for consumers, and to avoid barriers to trade within the internal market. Article 85 prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which prevent, restrict or distort competition within the Common Market". Only in clearly defined situations (as discussed below) are agreements still allowed.

4004 Article 86 bans the abuse of a dominant market position which affects trade between Member States.

4005 In applying Articles 85 and 86 to sport the EU will have regard to the circumstances of each individual case. These Articles apply only to cases involving what the Treaty calls "undertakings" and when trade between Member States is affected.

4006 "Undertakings" refers to commercial organisations in the widest sense of the term. "Undertakings" are considered to be any entity carrying out "economic or commercial activities such as production, distribution or the supply of services". Existing case law establishes that any person participating in the economic process will qualify as an undertaking. Even individuals have been held to constitute undertakings. Sports federations and associations and sports clubs are considered to be undertakings under the Treaty, because they exercise what the Commission sees as an "economic or commercial" activity.

4007 An economic or commercial activity does not necessarily involve making profits. It is the nature of the activities practised, rather than the generation of profit or legal status, which determines the economic or commercial character. In the Macrotron case⁵⁶, the European Court of Justice ruled that the non-profit nature of an entity has no impact on the applicability of EU competition policy. The Commission's Decision on film purchases by German television stations⁵⁷ also stipulates that competition policy covers economic activities "regardless of whether or not intended to earn profits".

4008 Furthermore the distinction between professional and amateur status also does not affect per se whether EU competition rules apply.

4009 Football, for example, can be considered as an economic activity, in so far as professional football clubs organise matches with other clubs and entry to matches is on a paying basis. In this sense, football clubs which "produce" matches can be considered "undertakings" under Article 85 of the Treaty. To participate in competitions at a national level and to participate in other sports-related activities at the national level, clubs and their members are often affiliated to the national sports federations. National football federations and clubs are therefore associations of undertakings to which competition policy clearly applies. In return for their services to clubs, the national federations often levy a percentage of the receipts from matches organised by clubs. The federation is responsible for negotiating exclusivity of broadcasting contracts for the matches it organises (national cup, national team,...) For league football and European club competitions, television contracts are negotiated by clubs or leagues. From a competition policy point of view, it is important that clubs are free to negotiate individually and independently from their national federation.

4010 Manufacturers and distributors of sports equipment are clearly also considered to be "undertakings".

4011 The second pre-condition required in order that EU competition law may apply, is that trade between Member States is affected or could potentially be affected. If trade between Member States is not affected, national law will apply. Again, trade is interpreted by the Commission in the general sense of the term. The activities of an "undertaking" are generally considered to fall under the definition of

⁵⁶ Klaus Höfner and Fritz Elser v. Macrotron GmbH; case C-41/90; judgment of 23. 4. 91; OJ N° C 132/91; 23. 5. 91

⁵⁷ Commission Decision 89/536/EEC of 15 September 1989; Case IV/31. 734 - Film purchases by German television stations; OJ N° L 284/89; 3. 10. 89

trade. In the world of sport, agreements between national sports federations clearly affect trade between Member States. Agreements on the trans-frontier exchange of televised sports programmes is but one well-publicised example.

4012 The two above-mentioned pre-conditions are common to both Treaty Articles (85 and 86). Besides these two requirements, there are a series of other pre-conditions specific to one or other of Articles 85 and 86.

4013 Article 85 applies to "agreements", "decisions" or "concerted practices". Moreover, these arrangements must "prevent, restrict or distort" competition within the EU. For example, the manifest agreements between broadcasters, described below, and between federations, such as those made by EBU members also described below are judged by the Commission to be decisions of associations of undertakings.

4014 Complaints can be addressed to the Commission under Article 86 if the subject of the complaint has a dominant position in the market and there is abuse of the dominant position. In the market for organising and "supplying" events, the fact that only one federation often covers a sport in a Member State gives that federation, under certain circumstances, a dominant position in that market. It must be immediately said that the existence per se of a dominant position is not in conflict with the provisions of Article 86. Only when a dominant position is abused, can the EU be called upon to intervene to ensure that competition takes place. An example of abuse of dominant position would be for one supplier of a service to exclude other potential suppliers from entering a market. The Commission is currently examining a number of cases related to "abuse of dominant position" in the world of sport, as set out below.

4015 The Commission has on various occasions been called upon by sports organisations and companies to ensure that competition takes place in the sports world in a non-restricted manner. Competition issues have been raised regarding the following questions:

- Exclusive broadcasting rights:
 - a) the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters;
 - b) the degree to which sports federations should be allowed to control the broadcasting of sports events on their home territory, under Article 14 of UEFA.
- The label of "Official": should sports equipment manufacturers be allowed to endorse specific brands of equipment with the logo "official"?

- The use of sports equipment: should sports federations and organisations be allowed to insist on the use of certain brands of sports equipment?
- Purchasing of sports equipment: to what degree should sports federations and organisations be allowed to recommend the purchase of sports equipment exclusively from certain distributors?
- Competition between federations: to what extent should different federations be free to organise competitions for the same sport?
- Ticket sales: exclusive agents.
- Transfer of players.
- Restrictive trading practices of sports equipment manufacturers and distributors.

Exclusive broadcasting rights

4016 There are two main sports-related broadcasting issues which have been examined by Directorate-General IV (Competition) of the Commission:

- the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters; and
- the degree to which sports federations and associations should be allowed to control the broadcasting of foreign sports events on their home territory.

4017 These two issues are discussed below and are also examined in a parallel study on exclusive broadcasting rights⁵⁸ carried out for Directorate-General X of the Commission.

The acquisition of exclusive broadcasting rights

4018 Television rights to sports events are normally granted for a given territory, usually per country, on an exclusive basis. Exclusivity is, as a general rule, considered to be necessary in order to guarantee the value of a given sports programme, in terms of viewing figures and advertising revenues which it can achieve. Television rights are

⁵⁸ Exclusive Broadcasting Rights : A Review and Analysis of Trade Practices.

normally owned by the organiser of a sports events, who is able to control the access to the premises where the event is staged. In order to control the televising of an event and to guarantee exclusivity, the organiser admits only one "host broadcaster" to produce the television signal. As part of this contract, the host broadcaster will, at least, secure certain broadcast rights in its own territory. Further rights to exploit the television coverage will either:

- remain with the host broadcaster as creator and thereby owner of the television material; or
- be controlled by the rights owner of the event. This will either be in the form of a licence to exploit the material or as an assignment of all rights, save for a licence of certain or all rights in its own territory, by the host broadcaster.

The importance of exclusive broadcasting rights

4019 The main broadcasting issue involving the EU is the acquisition of exclusive broadcasting rights. The importance of exclusive broadcasting rights can be explained quickly. In the highly competitive broadcasting industry, broadcasters, be they national or private, in order to survive, must strive to differentiate themselves from other broadcasters. To do so, they endeavour to offer programmes not available on other channels in order to attract a maximum number of viewers. The more viewers, the more potential consumers see advertisements. The more people see publicity, the more the advertisers and sponsors are willing to pay to have their advertisements shown, and the more revenue generated for the broadcaster. In return, the broadcaster will be willing to pay more to secure the exclusive rights. Exclusivity is therefore a central power force in driving the sports/television relationship.

4020 Major sports events are among the programmes which attract the most viewers. As the salaries of sports professionals and the costs of sports infrastructure have increased, revenue from advertising has become by far the most important source of income for most televised sports organisations. In recent years, the amounts television companies have paid for exclusive broadcasting rights have risen significantly. The 1992 summer Olympics generated a total of approximately 562 million ECU from television rights contracts.

4021 The issue of exclusive broadcasting rights must be seen in the context of the ongoing struggle between public and private broadcasters. In the past, public television companies dominated the market. Increasingly, private broadcasters are competing with national public mission broadcasters and, in addition, international sports rights agencies have entered into the market. These agencies enable sports organisers to maximise revenue by selling the rights country by country, without getting themselves involved in various negotiations with individual broadcasters. This has

facilitated rights acquisitions by commercial channels who are not members of the European Broadcasting Union (EBU).

4022 The European Broadcasting Union (EBU) is currently one of the most important players in the world of broadcasting within the EU. It is an association of radio and television organisations set in 1950 with headquarters in Geneva. It has no commercial aim. Active membership is open to public mission broadcasters that is, companies which are subject to a number of obligations by national law and practice concerning their programmes and their audience coverage. Purely commercial broadcasters are not admitted as members.

4023 The EBU operates a collective purchasing and transmission system. By acting on behalf of a series of television companies, it allows many public mission television companies access to programmes to which they would not otherwise have had access, being financially unable to purchase the rights. The EBU is the operator of the "Eurovision" Network.

4024 An important role of the EBU is to protect smaller broadcasters by enabling them to have access to certain highly attractive programmes, which otherwise would have been too expensive.

The danger that large broadcasters may dominate small broadcasters

4025 In this highly competitive broadcasting market, exclusive broadcasting rights are a necessary part of the normal functioning of that market. While the Commission accepts the concept of exclusivity, the duration and scope of exclusive rights can be anti-competitive. In the Commission's view, the duration of exclusivity has to be defined differently with respect to different types of programmes. With regard to sports events, the Commission feels that exclusivity should be limited to one-off contracts covering one event or one sports season.

4026 The Commission can intervene when it is called upon by market players to ensure that all potential acquirers of exclusive rights have equal access to programmes. The Commission's role is therefore one of ensuring competition in the market of exclusive broadcasting rights. The Treaty of Rome has mandated the Commission to ensure that differences in the buying power of broadcasters or groups of broadcasters do not prevent fair competition. There is a real danger that large groups of broadcasters will dominate the market, to such an extent that smaller broadcasters are effectively prevented from competing. National public mission broadcasters from smaller Member States often fall into the category of smaller broadcasters.

4027 The ability of large buying groups to appropriate to themselves the exclusive rights of an increasing number of events is particularly important in a context in which sports organisations are starting to demand more money for exclusive rights. Possible

solutions range from the reservation of television rights for large sports events for the national broadcaster, as is the case in Norway, to total liberalisation of the market.

The danger that minority sports will be neglected

4028 An associated danger is that minority sports will receive less television exposure. Sports which do not yet attract sufficient viewers to interest advertisers may lose out to sports attracting large audiences. On the other hand, minority sports may not necessarily suffer in the event of a liberal view on exclusivity. The fact that the exclusive rights may already belong to other broadcasters may force television companies with less resources to look into broadcasting less popular sports. An example of this is snooker, which has grown from a minority sport to a leading television sport in the UK.

4029 The Commission has been called upon to examine four cases which are of direct interest to the above-mentioned issues. These cases are as follows:

- Film Purchases by German Television Stations⁵⁹
- La Cinq versus EBU⁶⁰
- Screensport versus EBU Members⁶¹
- EBU-Eurovision System⁶²

4030 The first two cases are only indirectly related to sport but are important in that they provide certain legal precedents which are relevant for the EBU-Eurovision System. The latter two cases, the Screensport v. EBU Members and the EBU - Eurovision System cases, relate more directly to sport. Solutions were reached on both cases. The Screensport v. EBU Members opposed two specialised sports channels, while the EBU - Eurovision System case involved exclusivity in television coverage of sports events. The latter case is not only relevant to sport, but also has implications for other televised events.

⁵⁹ Commission Decision 89/536/EEC of 15 September 1989; case IV/31. 734 - Film purchases by German Television stations; OJ N° L 284/89; 3. 10. 89

⁶⁰ La Cinq v. EBU, Commission Decision; 14. 8. 90

⁶¹ Screensport v. EBU Members, Commission Decision 91/130; 19. 2. 91; OJ N° L 63/91; 9. 3. 91

⁶² EBU-Eurovision System, case IV/32. 150, Commission Decision 93/403; OJ N° L 179/93; 22. 7. 93

The Screensport v. EBU Members: the facts of the case

4031 The Screensport v. EBU members case investigated the potential distortion of competition which resulted from the fact that Eurosport participated in the collective purchasing system from which Screensport was excluded.

4032 Screensport and Eurosport were, until February 1993, major competitors in the market of specialised sports channels. Until this date, Eurosport was owned by certain members of the European Broadcasting Union. TESN (the European Sports Network) is owned by ESPN, a major US sports channel, Canal + and Générale des Eaux of France. Screensport was the UK link in the TESN network of sports channels.

4033 Screensport claimed that the benefits of the EBU's collective purchasing system had been expanded to Eurosport thereby allowing Eurosport better access to European sports events than Screensport. In this context, Screensport formally complained to the Commission that it was not receiving fair access to sports coverage.

The Commission position

4034 As indicated above, the Commission believes that broadcasters, public or private, are considered as undertakings and therefore Articles 85 and 86 may apply. It also saw clear evidence of a restriction of competition resulting from the collective purchasing system. The Commission felt that trade between Member States was affected in that Eurosport was in competition with Screensport for the same types of sports programme, intended for international broadcasts.

4035 This dispute was solved in January 1993 when, rather than continuing as competing sports channels, the shareholder of TESN agreed to acquire a holding in Eurosport, and Eurosport to purchase a share of TESN. TESN agreed to cease sports broadcasting in Europe on its own behalf, and both parties undertook not to compete with the activities of their newly created joint ventures. TESN and Eurosport decided to cooperate in order to provide a single service that would ensure the survival of one pan-European sports channel since they believe that "the current structure of the market and development prospects are such that financial equilibrium cannot be achieved by two channels".

4036 The new version of Eurosport will have the following public-service obligations. In addition to major international and European sporting events, Eurosport will broadcast sports with a small following and of limited commercial appeal, sports involving minorities and programmes which highlight the cultural and educational aspects of sport.

EBU - Eurovision System: the facts of the case

4037 The Commission carried out an investigation to determine to what extent the EBU's system for the acquisition of exclusive broadcasting rights, including for sports programmes contravened EU competition policy and whether this system could be exempted within the meaning of Article 85 (3) and under which conditions, in order to limit the anti-competitive effects of the EBU's system.

4038 The EBU has a collective purchasing system for the acquisition of broadcasting rights, including for sports events. This system pools the resources of EBU members and increases their bargaining power to competitively acquire broadcasting rights and allows public mission broadcasters, particularly from smaller countries, access to quality programming which would otherwise prove too expensive to purchase. Once the rights have been acquired, only EBU members are entitled to broadcast the events during a designated period of exclusivity.

The Commission position

4039 The Commission does not believe that exclusive broadcasting rights are anti-competitive per se; the duration and scope of exclusivity can, however, be anti-competitive. In the case of the EBU, it is the collective purchasing of television rights which comes within the scope of Article 85 (1).

4040 In the EBU - Eurovision System case, the restriction of competition stemmed from the joint purchasing of rights (which, on the other hand, also provides a number of benefits). The Commission felt that the EBU was imposing very strict conditions on non-members for the purchase of EBU-acquired rights. The access to those rights for non-members on reasonable terms was required by the Commission in order to reduce the restriction of competition vis-à-vis non-members and to allow non-members also to benefit from the advantages of the Eurovision System.

4041 In reaching its Decision, the Commission took into consideration the EBU's agreements that if its powers to carry out collective purchasing of exclusive rights were removed, it would probably have to cease operating and there would be no organisation to facilitate purchasing for smaller market players. Moreover, minority sports would suffer.

4042 Following negotiations between the Commission and the EBU, the EBU introduced new provisions to improve access to sports events for non-member commercial stations. Better terms and conditions are now offered to non-members for the acquisition of broadcasting rights for deferred transmissions, extracts and news and also for live transmissions of events which the EBU members do not themselves broadcast live. In view of these changes, the Commission agreed to exempt the EBU from the application of Article 85 (1). The exemption safeguards the fulfilment of the

EBU members' public mission while at the same time allowing third-party channels appropriate access to sports programmes.

The control of broadcasting of foreign sports events by sports federations

4043 UEFA, the European Union of Football Associations, is Europe's highest football authority. It acts as the federation of national football federations, determining the rules applying to each of the member federations. Only one national football federation per country⁶³ is recognised by UEFA and the International Federation of Football Associations (FIFA). Under UEFA Statutes, football federations own the exclusive rights to authorise the broadcasting, transmission or reproduction of the matches they organise by broadcasters or associations of broadcasters. As mentioned above, the freedom of clubs to negotiate individually is important from a competition policy point of view.

4044 The televising of football is subject to a degree of control in all EU countries. For example, in England it is not possible to watch live Premier League football on a Saturday afternoon. This is because all other matches (professional, junior and amateur) are normally played at that time. Thus, according to UEFA, to allow the transmission would damage attendances. Indeed, national football associations throughout Europe have traditionally tried to avoid clashes between televised football and the live game. UEFA contends that there is a general recognition in the football world that simultaneous broadcasting of football damages attendances in the stadia.

4045 Article 14 of the UEFA Statutes provides the mechanism for regulating cross-border transmissions of football. However, the operation of the Article has been controversial and has led to complaints before the European Commission (see below).

4046 Following lengthy negotiations with the Commission, in 1993 UEFA introduced a new regime to regulate cross-border transmissions. The main features of the regime are the establishment of "open, protected and closed" time slots. The Commission is still examining whether the new provisions fully comply with competition policy.

4047 During "free" slots (on weekday mornings and weekday evenings after 22:30) television transmission of football can take place without any restrictions whatsoever. During "protected" time slots (on weekday afternoons and evenings up to 22:30), it is possible for a "receiving" association to object to an incoming transmission, but only under tightly controlled conditions (ie, when there would be a "direct clash" with domestic match schedules). Finally, during "closed" time slots (on Saturdays and

⁶³ With the exception of the UK, where four separate football associations are recognised for England, Scotland, Wales and Northern Ireland.

Sundays), there should, in principle, be no transmissions of football (though there would be exceptions for important international matches and Cup finals).

4048 The effect of the application of article 14 is that if a match on television (irrespective of whether it is live or deferred, whole, partial or repeated) would coincide with an important local match, the national football federation may withhold its authorisation from the broadcaster. If, for example, a European Cup match between Ajax Amsterdam and Bayern Munchen takes place in Munich, the Dutch television broadcasting the match in the Netherlands must be granted prior permission from the Dutch football federation to televise the match. The Dutch federation must assess whether the transmission of the match into the Netherlands would damage attendances at local games being played at the same time. In the past, television companies were sometimes obliged to compensate the federations for the privilege to broadcast. However, one of the reforms introduced by the new UEFA regime is a ban on any such type of financial compensation. Similarly, federations had been accused of delaying their decisions on broadcasts until the last moment. A further reform introduced by the new UEFA regime is to establish clear procedural steps for the authorisation process.

4049 The main reason behind this rule is that UEFA feels that football fans should be encouraged to go to live matches, and football players should participate at amateur or youth matches, rather than simply to watch them on television. In this way, local football and football in smaller nations stand a better chance of developing.

4050 As with the EBU-Eurovision system case, the issue of control over the broadcasting of sports events is important insofar as revenue generated from advertising and sponsorship and the sales of exclusive rights for sports events, is the main source of funding for the sports world.

4051 The Commission's examination of article 14 is important in that it focuses attention on the degree to which protection should be given to national sports events and under what circumstances. Moreover, the Commission's policy on article 14 is not just applicable to football; it is relevant to all sports in which federations strive to generate a maximum of financial resources via broadcasting of sports events.

4052 The Commission's final decision on the matter is likely to impact not only European football, but also world football rules. FIFA is awaiting the outcome of the decision before drafting its equivalent to UEFA's article 14, in order to ensure full compatibility between UEFA and FIFA rules.

The facts of the cases

4053 Certain television broadcasters (TESN⁶⁴, BSkyB⁶⁵ and ITVA⁶⁶) have officially complained to the Commission about the old article 14 of UEFA's Statutes. Other television companies have complained unofficially.

4054 The complainants argue that control over television football transmissions is in no way justified and that article 14 of UEFA's Statutes should be abrogated.

4055 In a separate but related case, the Football Association (FA) of England, the governing body of football in England, had concluded agreements with the BBC (the national public mission broadcaster) and BSkyB (a company with new satellite channels including a dedicated sports channel). The agreement effectively shared exclusive broadcasting rights for the Football Association's matches, between the two broadcasters for a five year period. In addition, the BBC and BSkyB were granted exclusive permission under article 14 for the transmission of all foreign matches where article 14 permission was necessary. ITVA (the Independent Television Association) contested this exclusivity for foreign matches.

The Commission position

4056 The Commission agreed that the FA's agreements with the BBC and BSkyB granting exclusive permission to broadcast foreign matches was "not only contrary to Article 85 (concerted practices) of the Treaty, but also an abuse of a dominant position by the FA (Article 86)"⁶⁷. At the request of the Commission, this exclusivity was removed from the agreements. Pending the Commission's decision on article 14 of the UEFA statutes, the FA has undertaken to apply article 14 in a manner which does not discriminate between, on the one hand, BBC and BSkyB and, on the other hand, third party broadcasters such as ITV.

4057 The Commission agreed to examine the case of article 14 of UEFA under competition policy rules because it considers that the application pre-conditions are fulfilled. That is, there is a decision of an association of undertakings (various national

⁶⁴ Case N° IV/33.742

⁶⁵ Case N° IV 33.245

⁶⁶ Case N° IV 33.145

⁶⁷ Draft notice concerning a notification in cases N° IV/33.145 - ITVA/Football Authorities and N° IV/33.245 - BBC, BSB and Football Association, OJ N° C 94/93; 3. 4. 93.

and European football federations); the decision has the effect of preventing trade between Member States since the broadcasting of certain matches is prohibited; UEFA and football federations are considered to be "undertakings" within the meaning of EU competition policy; and, given that only one federation per country is recognised by the UEFA, in certain circumstances, they can be considered to have a dominant position in the "market" for football.

4058 The Commission usually considers "abuse" (of a dominant position) to mean "distorted use" and "lack of transparency". Regarding distortion, it has been claimed that the foreign matches are being banned even when their timing does not conflict with national matches. The precise time span, such as one or two hours before and/or after a game are still being negotiated between the Commission and UEFA.

4059 The Commission feels that UEFA's old article 14 was contrary to Article 85 (1). The revised article 14 may be exempted under Article 85 (3), if its anti-competitive effects are deemed to be limited to the extent necessary for the protection of live football in stadia. The Commission is anxious to bring the recourse to article 14 back to the reasonable limits of its original purpose.

4060 Given the opposition to article 14 from certain broadcasters, it has been decided to enter into comprehensive consultations with all parties concerned in order to seek a compromise solution. Such a compromise should provide sufficient protection for attendances in the stadium, while at the same time allowing broadcasters to show a reasonable amount of football and to ensure proper scheduling, promotion and advertising. A mediator has been appointed in order to explore a compromise, in separate talks with the parties.

4061 Discussions on the potential competition-restricting effect of UEFA's revised rules are continuing, in order to ensure a greater transparency of the procedures involved while retaining the same philosophy. For example, the question of the timing of broadcasts will be clarified (such as the time period in which a clash might occur between a live and a broadcast match), as will ensuring non-discrimination by the federations between national and foreign matches.

Product endorsement

4062 The Danish Tennis Federation (DTF) case currently being examined by the Commission is illustrative of three inter-related issues concerning sports equipment. These are :

- The use of the label "official".
- The obligatory use of "official" equipment in federation competitions.
- The obligatory purchase of equipment from specific distributors for use in federation competitions.

4063 At the time of writing, no official decision has been taken by the Commission on the DTF case. Following discussions between the Commission and the DTF, the latter has modified its rules and has come around to the Commission's position. These rule changes have been notified to the Commission, which is examining the changes to ensure that they comply with EU competition rules.

The use of the label "official"

4064 Many sports federations grant the label of "official" to certain sports equipment and manufacturers are willing to pay to have their equipment recognised as "official" because the fact that equipment is "official" leads to more sales. The money manufacturers are willing to pay is important in financing federations.

The facts of the case

4065 The Danish Tennis Federation (DTF) has made an agreement which designates three brands of tennis balls; Penn, Tretorn and Slazenger, as "official" tennis balls. In counterpart, the DTF has been financially rewarded. A Danish parallel importer has complained to the Commission about this practice, on the ground that the agreement does not comply with EU competition rules.

The Commission position

4066 The Commission's point of view is that the granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the product. Consumers are entitled to objective information so that an independent choice of product can be made. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. The label "official" would also be acceptable if it was justified for technical reasons. However, for tennis balls, there is very little difference among first grade balls (as recognised by ITF technical tests).

4067 The Commission hopes that by focusing on the DTF case, other federations will be encouraged to change their practice before there is recourse to legal action by the Commission. In the UK, the label "official supplier" of tennis balls was disallowed for the same reasons. A solution was reached when the sponsors became "members of a tennis ball sponsoring group", a label which proved acceptable to the Commission.

The obligatory use of "official" equipment

4068 One of the basic missions of national sports federations is to organise competitions for their member clubs and affiliates. Not only do federations actively organise competitions, but many clubs organise competitions under the auspices and guidelines of the federation.

4069 One way of generating additional funding is for federations to promote the exclusive use of particular brands of sports equipment both for competitions they organise and for competitions organised under their auspices. Manufacturers are willing to pay for the privilege of this form of promotion.

The facts of the case

4070 The DTF had originally stipulated that only Penn, Tretorn and Slazenger tennis balls could be used in tournaments organised by and under the auspices of the DTF. A Danish parallel importer complained that this practice constituted an abuse of dominant position by the DTF.

4071 In the meantime, the DTF has proposed a reduction in the scope of application of its obligation to use officially sponsored balls.

4072 The Commission is currently examining the new rules to ensure that they comply with EU competition policy.

The Commission position

4073 A distinction needs to be made between competitions organised by the DTF and competitions organised under the auspices of the DTF. The Commission does not contest the ability of the DTF, for the competitions it organises, to select specific tennis ball(s) as long as competition was not restricted in the original process of designating the exclusive equipment. Exclusive contracts should not be for an "abusively" long period of time. The duration of one season may be a good indication of an acceptable duration.

4074 The Commission does not accept exclusive contracts imposed by the federations for competitions that they do not organise, even if the events are under the auspices of the federation. Such a practice is considered to be an abuse of the DTF's dominant position in Danish tennis. The Commission claims that the DTF is, in effect, using its monopoly position to impose certain brands, without providing sufficient technical justification. Moreover, it is doing so for its own (financial) profit. The Commission does, however, agree with the obligation to use grade 1 balls, because this restriction is based on technical considerations.

4075 Moreover, competition should have been open when bids for the endorsement contract were called for at the outset. The Commission must interpret on a case by case basis whether the duration of the contract is too long, and whether the price is excessive (often linked with the duration). As already mentioned above, the duration of one season may be a good indication of an acceptable duration.

4076 Another illustration of the Commission's position was prompted when Tretorn complained about the UK Lawn Tennis Federation's insistence on the use of pressurised balls in UK competitions. Tretorn happens to be the only large manufacturer which does not make pressurised balls (although it does make grade 1 balls) and therefore feels it is being arbitrarily discriminated against. The UK federation said it prefers pressurised balls because they respond faster. The Commission has told Tretorn that as long as the UK federation has technical reasons for its decision, there is nothing it can do. The only exception is if Tretorn can prove that the rule had been set up with a view to excluding Tretorn, a situation which would be extremely difficult to prove.

Exclusive purchasing agreements

4077 For commercial reasons, manufacturers sometimes sign exclusive distribution agreements with certain distributors. Some federations are reported to recommend their affiliates to purchase their equipment through exclusive distributors. This allows federations a supplementary source of revenue.

The facts of the case

4078 In competitions organised under the auspices of the Danish Tennis Federation (DTF), not only do tennis balls have to be of a specific brand but, that specific brand needs to be purchased through specific distributors. In the DTF's Official Magazine, a boxed text indicates that tennis balls should be purchased via specific distributors, the justification being that these companies help tennis, so tennis players should reciprocate. A complaint against the DTF was officially registered by the Commission.

The Commission position

4079 The Commission believes that the above arrangement does not comply with EU competition policy, in particular with Regulation 1983 of 1983⁶⁸. This Regulation permits exclusive distribution agreements as long as "parallel imports" are also allowed. Parallel imports permit imports of the same product from other Member States, (regardless of the exclusive distribution agreement with a distributor in the home Member State). Therefore, if a wholesaler discovers a cheaper source of the same product abroad, it must be free to import that product. Similarly, the seller in the foreign Member State must be free to practice "passive" exports, that is, without making active efforts to attract customers abroad. Exclusive distribution agreements may not, however, allow "active" exporting. "Active" denotes the organisation of publicity campaigns and the use of warehouses and sales representatives etc.

⁶⁸

Regulation 1983/83; OJ N° L 73/83; 30.6.83

4080 The Commission views the parallel import rule as an absolute requirement in terms of competition policy. This is because it is the only guarantee that exclusive distribution agreements do not lead to significant price differentials between Member States, which would clearly run the risk of harming consumer interests. By recommending its affiliates to purchase at a specific distributor, the DTF effectively restricts competition.

4081 Another recent example of the application of this principle is the Commission decision in March 1992 to impose a fine on Dunlop Slazenger International (DSI) and All Weather Sports, the sole distributor for Dunlop in the Benelux. DSI was accused of using various means to block exports of balls to other European Union Member States in order to protect its sole distributors in those States.

4082 As indicated at the beginning of this section, no official decision has been taken by the Commission at the time of writing. The Commission is examining changes to the DTF's rules to ensure that they comply with competition rules.

Competition between federations

4083 In principle, anyone is free to set up a sports federation. There is no legal barrier to prevent the creation of a separate or "competing" federation for a variant of a sport. For this reason, established federations sometimes require exclusivity from their affiliates by requiring the latter to agree to participate only in sports events organised by the federation to which they are affiliated.

4084 A problem may arise when a variant of the game feels its interests would be better promoted by a separate federation. This is particularly likely in sports where the success of one variant is likely to take away from the mainline variety of a sport. The more powerful established federation might be tempted to hamper the creation of an alternative federation. The weaker federation runs the risk of being squeezed out of the market by its larger competitor.

4085 This poses the related question of the extent to which more than one federation should be allowed to govern any sport or variation of a sport. Should federations be allowed to freely compete for the market, and to what extent should rules for competition apply? Should the most efficient and powerful entities be allowed to dominate? Should cases such as boxing, where there are a number of competing federations⁶⁹, be promoted? The issue is the extent to which the authority of a federation covers a sport, including its variants.

⁶⁹ WBO, WBA, WBC, and IBF.

4086 Total freedom to compete would allow powerful private entities, whether they take the form of federations or not, to organise on their own behalf parallel competitions, which could take players and spectators away from established competitions. Views differ as to whether this freedom would make a positive or negative contribution to sport.

4087 Underlying the entire issue of the authority of the federations are financial interests. Although reliable information is difficult to obtain on the amounts in question, revenues from exclusive television rights, advertising at matches and tickets to matches are a significant source of income for sports organisations and for commercial entities involved.

The facts of the case

4088 In Belgium, the football federation is the Union Belge Royale des Sociétés de Football Association (URBSFA), more commonly known as the "Union Belge". Its role is to promote and organise all forms of football in Belgium.

4089 The organisation of indoor football (5-a-side) has been regionalised in Belgium. The Francophone Federation of Indoor Football (Ligue Francophone de Football en Salle or LFFS) and the Flemish Federation (VZVV) are now responsible for the organisation and promotion of indoor football for their respective territories. Both indoor football associations are represented at the national level by a national federation. The main reason for establishing the national indoor federation was that only one federation could be recognised by the international football authorities.

4090 In 1985, FIFA, the world football authority, decided to take a more active interest in indoor football and integrated indoor football into its network; only one national federation per country would be recognised by UEFA and FIFA.

4091 FIFA's decision to take control of indoor football may have been motivated by the suitability of indoor football to television. Indoor football is very spectacular, with significantly more goals scored per minute than 11-a-side football. It is also easier to film an indoor game given the reduced size of the pitch. The nature of the indoor game allows for more opportunities for advertising breaks and so more revenue can be generated. Moreover, indoor football physically requires less space and therefore entails less infrastructure costs, this at a time when the renovation requirements of stadia is increasing to improve safety. An additional attraction is that indoor football, given that it takes place on a smaller scale than ordinary football, is less prone to hooliganism and football violence.

4092 FIFA's decision to integrate indoor football was rejected by the indoor football authorities. They felt that their own Indoor Football Federation would be in a better position to promote this sport. FIFA reacted to this refusal to integrate by banning

indoor football participants from international competitions run by FIFA (the majority of existing competitions); this was achieved by prohibiting double affiliation for players. In Belgium, therefore, players affiliated to the indoor federation were no longer able to play in matches organised by the Union Belge, the only Belgian affiliate of UEFA and FIFA.

4093 The Union Belge's policy had the effect of preventing amateurs and professionals from participating in both types of football during the one season. The impact is less serious for professionals who are not generally double affiliated. Amateur players, however, often participate in both types of football during the course of the same season. The Union Belge allowed no indoor games during the weekend, except during holiday periods. Referees affiliated under the Union Belge were not allowed to referee indoor games. The intention of these measures was clear: to prevent indoor football from competing with 11-a-side football.

4094 The Belgian courts were consulted on the matter and ruled against the Union Belge, but only during the course of the ongoing season at the time of the judgement. During subsequent seasons, there were no legal impediments to prevent the Union Belge from continuing its discrimination against indoor football.

4095 It was for this reason that the Francophone Federation of Indoor Football subsequently complained to the Commission about the practices of the Union Belge.

4096 Other cases of conflicts between sports authorities have been called to the attention of the national courts in various Member States, such as the dispute between the Italian sailing and yachting federations. National courts are deemed to be competent to handle these matters, and sometimes rule against sports authorities for abusing a dominant position as they did in the Italian sailing case.

The Commission position

4097 Federations are considered to carry out economic activities, and therefore qualify as "undertakings" to which competition policy applies. Agreements also existed between the Union Belge and certain indoor football authorities. Trade between Member States is not necessarily affected by the agreements. Although no formal decision has been reached in the case, the Commission has informed the plaintiff that it is unlikely to follow up the complaint.

Ticket sales by exclusive agencies

4098 Distribution of tickets for some major sporting events is based on the principle of exclusive distribution in each Member State. The organising committee of the event enters into agreements with an exclusive ticket distributor in each Member State. For the privilege of exclusivity, agencies are willing to pay considerable amounts of money.

4099 Strict separation of Member States' national markets has thus taken place. Consumers and travel agencies in foreign Member States are sometimes prevented from buying tickets and travel agencies selling tickets in one Member State have undertaken not to sell them in another.

4100 The main reason behind this system of national quotas has been to ensure fairness in the distribution of tickets so that countries of different sizes and financial means, receive their fair share of tickets. The principle of quotas, however, fails to take into account the European Union dimension.

The facts of the cases

4101 In 1991, a German tourist agency complained to the Commission that it could not obtain tickets to the Barcelona Olympic Games for its clients. In Germany, only the Deutsche Reisebüro had the right to sell tickets to the Olympics. A similar situation existed in all other Member States both for the Barcelona and Albertville Olympic Games.

4102 Moreover, the German agency which was granted exclusivity commonly made purchase of tickets conditional on the purchase of accommodation and travel services from the same organisation.

4103 The Commission was also called upon to examine the ticket distribution system for the football World cup in Italy in 1990.

The Commission position

4104 The Commission's view was that the agreements between the Organising Committee of the Olympics and the exclusive distributors infringed Articles 85 and 86 of the Treaty on two main points.

4105 First, the practice of strict territorial exclusivity, by which only residents could purchase tickets from the distributing agency, was considered unacceptable under Article 85 by the Commission on the basis of European Court of Justice case-law.⁷⁰

4106 Second, under Article 86 of the Treaty, the exclusive agency clearly had an indisputable dominant market position. This dominant market position was abused in so far as the exclusive agent obliged purchasers of tickets to concurrently purchase other services (accommodation and travel) which were dissociable from the ticket.

⁷⁰ ECJ case Consten; 13.7.66, Tipp - Ex ; 8.2.90

4107 Under no circumstances could these two practices be exempted from EU competition rules. The Commission's position on excluding EU nationals purely on nationality grounds is that this practice is totally unacceptable and contravenes the basic principles of the Treaty of Rome. The same is true when consumers are forced to purchase other services alongside their ticket to a sports event. Although the Commission felt that these practices contravened EU rules on free circulation of services, it approached the problem from the angle of competition policy.

4108 On the issue of having one ticket agency per Member State, no clear decision has yet been taken by the Commission.

4109 Regarding the distribution system for tickets at the 1990 World Cup for football, the Commission ruled⁷¹ that the World Cup organiser's exclusive agreement with one tour operator for the organisation and sale of package tours to the World Cup, was not compatible with EU competition rules. The safety arguments put forward in support of the arrangements were not justified, since the representatives of the organiser admitted that a number of tour operators other than the one selected could have complied fully with the organiser's requirements in this respect.

4110 Given that this was the Commission's first decision on ticket sales for a sporting event, no fines were imposed. Similar infractions in the future are likely to be subject to a fine.

4111 Following the position taken by the Commission, the Organising Committees of the Olympics in Barcelona and in Albertville and the ticket distributors altered their contractual arrangements so that the nationals of a Member State could buy tickets directly from the Organising Committees or from distributing travel agencies based in other Member States. The Commission is currently examining, in retrospect, the compatibility of EU competition rules with the ticket distribution system for the Lillehammer Winter Olympic Games and the 1994 World Cup for football in the U.S.

Transfers and restrictions on foreign sportspersons

4112 As part of a "gentlemen's agreement", UEFA has accepted the principle that "any professional footballer should be free to play for another club at the end of his contract with his former club, irrespective of the usual negotiations between the buying and the selling club concerning compensation, in particular for real and demonstrable costs incurred in training young players". Previously, the compensation due had to be paid before the player was allowed to move to another club. Under the gentlemen's

⁷¹ Commission Decision 92/521/EEC relating to a proceeding under Article 85 and cases IV/33.384 and IV/33.378 on distribution of package tours during the 1990 World Cup; OJ N° L 326/92; 12. 11. 92.

agreement, however, the player can move *before* the money is paid thereby removing the block on the player's immediate transfer; a compensatory amount must nevertheless still be paid at a later stage. Compensation for the development and training costs of young players is the main justification given by clubs for transfer fees.

The facts of the case

4113 The need to agree such a principle had been raised by cases such as that of footballer Jean-Marc Bosman. In summary, Bosman, having reached the end of his contractual period with the Royal Football Club of Liège and having accepted a position with the French club of Dunkerque, was prevented from moving to France because of difficulties between the two clubs in arranging for the payment of the agreed transfer fee. These difficulties resulted in the French football federation not receiving the required transfer authorisation from the Belgian football union. Because of the delay, Dunkerque rescinded the contract with Bosman.

4114 Bosman took his case to the national tribunal requesting that he should receive compensation for loss of earnings and that the case be referred to the ECJ.

4115 As already described in the section on free movement of persons, in October 1993, following a complaint from Bosman, the Belgian Courts formally asked the European Court of Justice to rule on whether the relevant Treaty rules (including Articles 85 and 86) should in interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

4116 The European Court of Justice's ruling can be expected in early to mid 1995.

The Commission position

4117 In its written observations to the European Court of Justice in January 1993 regarding the Bosman case, the Commission has indicated that football associations' rules on transfers and those restricting the numbers of foreign players, in particular those from other EU countries, are indeed covered by rules on concerted practices (Article 85 of the Treaty).

4118 Given the business aspects of professional football, such as revenue from broadcasting rights, sponsorship contracts, ticket sales and compensation fees for ceding players, the Commission has deemed that EU competition policy rules on

concerted practices are clearly liable to apply to this professional sport when its practices are viewed as restrictive.

4119 Article 85(3) provides for certain exemptions from its provisions under certain conditions. Any consideration by the Commission of possible exemptions, however, would require that the Commission be formally "notified" of the rules (so that the Commission would have sufficient information to determine whether the rules merit exemption or not). In the case of the Bosman complaint, the federation rules have not been formally "communicated" to the Commission, and therefore the Commission has not yet been legally called upon to take a stance.

4120 Regarding the question of whether there has been an abuse of a dominant position (Article 86), in the same written observations on the Bosman case, the Commission has found no evidence of economic relations between the clubs such as would deem a position of collective dominance to exist, and it does not consider that Article 86 applies. Similarly, football associations, as they do not themselves recruit players, cannot be deemed to hold a dominant position on the market for recruitment of players. Again, Article 86 therefore cannot apply.

The Parliament position

4121 In an annex to the Janssen van Raay report⁷², the European Parliament said that it considered that transfer fees obstructed workers in freely selecting their employer and that this was a "modern form of slavery". It also pointed out that individual players refrained from bringing proceedings because the power of the employers' monopoly was such that an action could herald the end of their professional careers.

4122 Mr van Raay has since drawn up another draft opinion on the European Community and Sport⁷³ which reiterates this stance.

4123 The Larive Report on the European Community and Sport, adopted by the European Parliament in April 1994, provides more details of the Parliament's position on restrictions on foreign sportspersons and on the transfer system. Details are provided in Section I on the free movement of persons and services.

⁷² Annex drawn up on behalf of the Committee on Legal Affairs and Citizen's Rights; 23.3.89.

⁷³ PE DOC 204.507; 31.3.93

Restrictive trading practices

4124 The application of EU competition policy to commercial companies manufacturing and distributing sports equipment is a general application of EU competition policy, and is not specific to the sports world. The aim is to prevent restrictive trading practices and to promote fair trade.

The facts of cases

4125 Each year, a number of restrictive practices are brought to the attention of the Commission by commercial entities complaining about market conditions. These cases have included windsurfing equipment, sailing boats, tennis shoes and tennis balls.

4126 The circumstances surrounding the cases vary enormously, and include such matters as price-sharing and market-sharing agreements, and the application of dissimilar conditions to equivalent transactions. The parties involved in the cases mentioned above are invariably manufacturers and distributors of sports equipment.

The Commission position

4127 Article 85 precludes concerted practices in trade between Member States. It prohibits price-sharing agreements and the limitation and control of production or markets. It forbids the sharing of markets and sources of supply, and the application of dissimilar conditions to equivalent transactions. It also forbids contracts which force acceptance of products with no connection to the subject of the contract. Trade between Member States must be affected for Article 85 to be applied.

4128 In order that the application of competition policy does not discourage desirable cooperation between enterprises, certain exceptions are allowed if they "promote production or distribution of goods or promote technical or economic progress, while allowing consumers a fair share of the resulting profit". All restrictive practices must be notified to the Commission, which pronounces on whether competition is breached. The Commission has also put in place "block exemptions" including for the areas of patent licensing agreements, classes of exclusive distribution and purchase agreements and patent licensing, which otherwise would be precluded under Article 85⁷⁴. Notification is not necessary if a block exemption covers the trade practice.

4129 Article 86 forbids abuse of a dominant position. The existence of a dominant position must be examined on a case by case basis.

⁷⁴ For details see Regulation 19/65/EEC; OJ N° L 36/65; 6.3.65

Dumping

4130 The European Union has competence to protect its market from dumped imports. For an exporter, dumping is a practice consisting of selling a product at below the price at which it is sold on its home market. Dumping is prohibited by EU commercial policy⁷⁵, in accordance with existing international rules, in particular those arising from Article VI of the GATT.

4131 Dumping is relevant to sport when EU manufacturers of sports equipment, such as sports shoes or tennis rackets, are the victims of dumping practices from foreign competitors outside the EU. Should this be the case, official complaints can be made to Directorate General I of the Commission, which will determine whether a case of injurious dumping exists and, if so, will propose that defensive action be taken in order to eliminate the injury caused to the European Union industry.

Subsidies to sport

4132 Sports bodies in many countries receive assistance and subsidies of various kinds from national, regional or local authorities. Examples of financial assistance to football clubs include the Spanish government writing off the debt of all first division clubs in 1990, and the state aid to French football clubs. Sports activities in many Member States are financially assisted by lottery, toto and other forms of sports betting activities. Another form of assistance is the sponsorship of teams by large private companies, such as the sponsorship of Juventus by the Agnelli Group in Turin.

4133 Financial assistance from the state gives football clubs an advantage in two main respects. It enables them to acquire players in the expensive trans-frontier transfer market, and to participate in European cups. On the issue of the player transfer market, the richer the club, whether financed by subsidies or not, the more expensive and usually more competent players it can purchase. The aid to clubs need not even be direct. For example, if the State partially covers a club's bill on the renovation of its stadium (often legally required for security reasons), this enables a club to devote more resources to acquire new players.

4134 In European cups, the richer clubs who have bought the best players have an advantage over poorer clubs in the same competition. This advantage will have a cumulative effect in terms of financial benefits from ticket sales, advertising and sponsorship and sales of television rights.

4135 It can also be argued that "poorer" clubs from "poorer" Member States tend to lose some of their best players to rich foreign clubs. In the long-term this could hasten

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Council Regulation 2423/88; OJ N° L 209/88; 2. 8. 1988

a lack of interest in the sport in the disadvantaged countries. It should be recognised, however, that the clubs which sell some of their best players are duly compensated for their loss.

The Commission position

4136 Article 92 of the Treaty of Rome prohibits aid granted by Member States which distorts competition in trade between Member States by favouring certain types of organisations or products, unless they are justifiable for special social or other reasons. Types of aid permitted by the Treaty include funding for projects which are of public interest.

4137 Sports clubs, in particular large football clubs, are part of a country's socio-cultural heritage, in the widest sense of the term. As well as being economic activities, sports clubs carry out other functions which include the use of their facilities for other leisure activities and cultural events; they contribute to the enhancement of a region by providing facilities valuable for the local community. Moreover, clubs often contribute to the strengthening of local prestige and civic pride. Such considerations mean that subsidies to sports clubs are likely to be exempt from the restrictions on state aids as imposed in the Treaty of Rome, since they cannot be fully compared to state aids granted to commercial enterprises.

4138 The Commission also feels that subsidies currently granted to sports clubs do not significantly distort competition in EU-wide events or on the transfer markets and do not prejudice those clubs not benefiting from aid. Moreover, it would be particularly difficult to measure distortion in terms of its effects.

4139 The European Parliament has nevertheless recently called upon the Commission⁷⁶ to carry out careful monitoring to ensure that free competition between top-class sports clubs is not distorted by excessive public financing.

4140 Regarding funding from betting and gaming activities, the Commission will not intervene in different local systems of support for non-commercial sporting or other cultural or charitable interests.

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European Parliament Report on the European Community and Sport;
PE DOC A3-0326/94; 27. 4. 94

V Animals in Sport

5001 The EU has enacted legislation on horses, dogs and pigeons. The majority of this legislation concerns horses.

5002 The legal foundation for EU regulations on animals is Article 43 of the Treaty of Rome, which entitles the Commission to propose legislative measures on agricultural matters.

Horses

5003 The Council adopted three guiding or "framework" Directives on horses ("equidae") in 1990. They cover:

- Animal health conditions governing movement and import from third countries of horses (Directive 90/426/EEC⁷⁷)
- Zoological and genealogical conditions governing intra-Community trade of horses (Directive 90/427/EEC⁷⁸)
- Trade in horses intended for competitions and conditions for participation in competitions (Directive 90/428/EEC⁷⁹)

5004 For each of these framework Directives, there are a number of specific applicatory decisions.

Animal health conditions

5005 This Directive lays down minimum health requirements for the free circulation of horses within the EU and for their import into the EU.

5006 The high value of thoroughbreds has led the EU to be strict in the matter of imports of horses to the EU and circulation within the EU. An infected horse could spread its disease, and decimate horse populations.

⁷⁷ Council Directive 90/426/EEC; OJ N° L 224/90; 18.8.90

⁷⁸ Ibid

⁷⁹ Ibid

5007 The prevention of a spread of an outbreak of African horse sickness in 1990, in Southern Spain and Portugal, was a widely publicised example of the Commission's involvement in regulating free movement of horses. The outbreak threatened to prevent equestrian events from taking place in Spain during the Barcelona Olympics.

5008 Under previous rules, once a disease was declared in an area of a country, the entire country was quarantined. The 1990 outbreak in Southern Spain therefore threatened the Barcelona area in this region, despite the fact that there was no evidence of the disease in this region. The Commission, in cooperation with the national and regional authorities, established the principle of "regionalisation". In the case of African horse sickness, this was established by Commission Decision 90/552/EEC⁸⁰ as amended by Decision 92/531/EEC⁸¹. The rules stipulated that only the area surrounding the region of the outbreaks had to be quarantined. The restrictions only applied to Andalusia and were lifted in November 1993⁸².

5009 In order for a horse to circulate freely within the territory of the EU, the Commission has laid down minimum conditions in terms of animal health; there must be no clinical signs of disease at inspection.

5010 As for imports of horses into the EU, the Animal Health Directive imposes a series of rules for imports from third countries including the requirement that horses are: from a country on the Commission's list of acceptable countries; are accompanied with a certificate from the veterinary authorities of the third country; and are certified to be free of diseases. Entry into the EU is considered to be the first point of debarkation at an airport or port where the necessary infrastructure is in place.

5011 As regards third countries, the list of countries free from dangerous diseases is constantly updated by the Commission after visits from the Commission's veterinarians. In order to prevent the disease from entering the EU, only horses from countries on the list can be imported.

5012 An implementing Commission Decision (92/260/EEC⁸³) provides for less severe health requirements and veterinary certification for registered horses staying only a short period of time in the EU. These rules apply to horses admitted into the EU for up to three months, in particular to horses participating in competitions.

⁸⁰ Commission Decision; OJ N° L 313/90; 13. 11. 90

⁸¹ Commission Decision; OJ N° L 334/92; 19. 11. 92

⁸² Commission Decision 93/616/EC; OJ N° L 296/93; 1. 12. 93

⁸³ Commission Decision; OJ N° L 130/92; 15. 5. 92

5013 In order to facilitate the import of competition horses, Commission Decision 93/321/EEC⁸⁴ provides for less frequent identity and physical checks on the temporary admission of horses, to compete in the EU, from Sweden, Finland, Norway and Switzerland .

5014 Another Commission Decision establishes health certificates for the import of breeding horses (93/197/EEC⁸⁵). Sanitary rules have also been laid down for competition horses which enter the European Union after having been temporarily exported to a third country for competitive purposes and cultural events (93/195/EEC⁸⁶).

5015 The Commission is currently examining the animal health rules which will apply to horses going to the next Olympic Games in Atlanta.

Zoological and genealogical conditions

5016 It is customary for horses to be registered in the studbook of its breed/race. Competitions are reserved for specific breeds as registered in studbooks. Each horse therefore has its own passport from the Association. Decisions by the Association are approved by a national Ministry (usually the Ministry of Agriculture).

5017 The Directive applies only to registered horses and requires the mutual recognition of studbooks and the mutual recognition of the Associations. Commission Decision 92/353/EEC⁸⁷ lays down the minimum criteria for approval or recognition of organisations managing studbooks for registered horses. A subsequent Commission Decision lays down minimum rules to ensure coordination between organisations managing studbooks.

5018 The Directive also sets minimum registration information requirements for the identification document. In cooperation with the International Equestrian Federation (FEI) and taking into account the recommendations of the Office International Epizooties (OIE), a European Union passport has been established which must be used in the international movement of registered horses⁸⁸.

⁸⁴ Commission Decision 93/321/EEC; OJ N° L 123/93; 19. 5. 93

⁸⁵ Commission Decision 93/197/EEC; OJ N° L 86/93; 6. 4. 93

⁸⁶ Ibid

⁸⁷ Commission Decision 92/353/EEC; OJ N° L 192/92; 11. 7. 92

⁸⁸ Commission Decision 93/623/EEC; OJ N° L 298/93; 3. 12. 93

Trade in competition horses and participation in competitions

5019 Directive 90/428/EEC governs the trade of competition horses and the conditions for participation in competitions. It concerns all competitions, including show-jumping, dressage, flat, steeple and trotting and relates to both registered and non-registered horses (with different provisions).

5020 The most important stipulation (Article 3) is that the rules of competitions may not discriminate on the basis of nationality (registration in another Member State). This rule of non-discrimination applies to entrance to competitions, judging and prize money (or profits) which accrue from the competition.

5021 Exceptions to the rule of non-discrimination will be allowed, when notified to the Commission, for the following reasons: competition reserved for horses registered in a specific studbook (reserved for the best horses), for the improvement of a breed (the best horses receive the prize money), for regional competitions (to select a regional champion), and for historic or traditional events (such as the Palio of Sienna). These exceptions only account for a minority of competitions.

5022 The other exception to the rule is that Member States are allowed to reserve a certain percentage of prize money or profits for the safeguard, development and improvement of breeding. This percentage should not currently (1993) exceed 20%. The decision to reserve a percentage of the prize money and the reasons for doing so, must be communicated to the Commission. A subsequent Commission Decision (92/216/EEC⁸⁹) obliges each Member State to appoint a coordinating authority to collect data on the criteria for reserving funds for breeding.

5023 The Commission is in the process of drafting harmonised rules for registration in studbooks. After a preliminary study of this problem, the Commission has proposed a modification to Directive 90/428/EEC to solve the practical problems relating to the control of derogations from the Directive.

Dogs and cats

5024 A distinction is drawn between pedigrees traded commercially and companion dogs, or pets.

5025 The UK and Ireland, given their geographic isolation, have up to now, restricted free movement of dogs and cats into their countries. As of July 1994, dogs traded commercially should circulate without quarantine at destination, as long as

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Commission Decision 92/216; OJ N° L 104/92; 22. 4. 92

certain tests have been fulfilled and vaccinations carried out (Directive 92/65/EEC⁹⁰). Details of these tests and the veterinary certification accompanying the animals have been laid down in Commission Decision 94/273/EEC⁹¹. Furthermore dogs and cats should be identified in conformity with the system laid down in Decision 94/274/EEC⁹².

Pigeons

5026 The Commission has laid down minimum conditions in Directive 92/66/EEC⁹³ for the exchange of racing pigeons, on the basis of legislation existing at the national level. The objective is to prevent the spread of Newcastle disease and mainly concerns France, Belgium, the Netherlands and Germany.

⁹⁰ Council Directive 92/65/EEC; OJ N° L 268/92; 14.9.92

⁹¹ Commission Decision 94/273/EEC; OJ N° L 117/94; 7.5.94

⁹² Ibid.

⁹³ Council Directive 92/66/EEC; OJ N° L 260/92; 5.9.92

VI EU sources of funding for sport

6001 The EU funds a series of initiatives which could be of interest to sports organisations; the main categories are described briefly below⁹⁴.

Projects financed under the Structural Funds

6002 The EU contributes to the economic development of the EU's less developed regions through financial transfers from the Structural Funds. The three Structural Funds, (the European Regional Development Fund, the European Social Fund, and the Agricultural Fund) provide grants, in cooperation with Member States, to projects which meet their objectives of regional and rural development and creation of employment. Most Structural Funds money is targeted at the EU's poorest regions, that is Greece, Portugal, the Republic of Ireland, Southern Italy (Mezzogiorno), parts of the UK, and parts of Spain and France (Corsica and overseas territories). Money from the Structural Funds is accessible through national, regional and local development authorities, as well as bodies responsible for training. The principle is for the EU to supplement national funding in order to promote economic and social projects which otherwise would not have taken place.

6003 Although sports infrastructure has not been targeted as a recipient of money from the Structural Funds, it can sometimes benefit, either directly or indirectly, from EU funding. To the extent that sports-related activities or infrastructure contribute to the objectives of economic development (i.e. promotion of local economic activities and the creation of employment), they may be eligible for funding from the Structural Funds. In particular, sports-related projects should explore opportunities under programmes which promote "activity tourism" and regeneration of urban areas; sports-related projects need to strive to "slot into" plans to develop tourism and urban areas.

6004 The decision to allocate grants under the Structural Funds to specific projects lies with the Member State rather than the European Commission and any applications or inquiries need to be targeted at the various relevant authorities in the Member States. Given different national and regional development priorities and policies, project eligibility varies from region to region. To secure EU finance, projects need to be co-financed either by Member States or by the sports organisations which stand to benefit.

⁹⁴ For more details, see the British Sports Council's publication "Focus on Brussels"

6005 Examples of direct intervention from the Structural Funds, in particular from the Regional Fund, include:

- ski lifts in Abruzzi and Campania;
- sport centres in a variety of Mezzogiorno regions;
- tennis courts and annexes in Campania;
- indoor swimming pool in Campania;
- pluridisciplinary centre for tourism, sport and leisure in Puglia;
- equestrian sports facilities in Puglia;
- nature park with sports areas in Calabria;
- improvement of port facilities (including improvement of facilities for sailing boats used for sporting purposes) in Ireland;
- walking trails in Ireland;
- angling facilities in Ireland;
- training schools for small aircraft in Ireland, as part of airfield development;
- sailing and watersports training facilities as part of port development in Ireland;
- golf clubs in Ireland (financed in the past in the context of promotion of tourism).

6006 Sports authorities of all levels should explore the possibilities of eligibility for funding with the appropriate national, regional or local authorities in their respective countries.

6007 The Structural Funds also provide money for projects which improve access to certain less favoured areas. Sports facilities in these areas will benefit indirectly from this form of EU funding. For example, the Structural Funds contributed to the improvements made to the road transport facilities around Barcelona in preparation of the 1992 Summer Olympics.

6008 The EU also contributes to national spending on training and education via the European Social Fund. If training grants are available from local, regional or national authorities, the EU is likely to have part-funded them.

Education and training programmes

6009 The objective of the ERASMUS programme is to encourage cooperation between the EU and EFTA's higher education institutions. ERASMUS aims to promote the European dimension in higher education institutions, to set up European university networks and to fund student mobility grants. In the context of supporting the establishment of European Union university networks, ERASMUS funds a number of Inter-University Cooperation Programmes (ICPs) for courses on sports education.

Activities for which thematic networks will be able to apply for European Union support are as follows :

- evaluation of curricula for specific disciplines;
- design of joint programmes and specific courses;
- scientific analysis and reflection on a specific area of studies;
- information services for network members.

6010 As of 1995, ERASMUS will be regrouped with other EU programmes in the area of education under the framework of the SOCRATES programme.

6011 The PETRA programme (for the vocational training of young people and their preparation for adult and working life), run by the Task Force for Human Resources, Education, Training and Youth, has supported some sports-related projects. These projects have been undertaken within the Youth Initiatives Projects section of the programme and have included for example :

- a project geared towards disadvantaged young people in an area of Portugal, which, with the support of a sports club, has set up an association which attempts to combine sports activities and training courses for such young people;
- the building by young people, of a 14 person, 24 foot canoe, which will be used and designed by various groups for adventure and sporting trips;
- the management and running of a sailing training vessel by 40 young people, offering training in navigation, electronics and culinary skills, and team building;
- the establishment of a recognised new professional diploma for marine- and aquatic-area jobs, with a specialisation in diving; this project is carried out in cooperation with Toulouse University and an international diving centre; and
- the setting up of a bicycle renting service in the city of Luxembourg, incorporating a training centre for bicycle mechanics and management skills; this project is carried out in cooperation with a local youth organisation, the local tourism office and the Ministry of Employment and Tourism.

6012 As of 1995, PETRA will be regrouped, alongside other EU vocational training programmes under the framework of the LEONARDO DA VINCI programme.

6013 Other education and training programmes managed by the Task Force do not currently fund sports-related projects, but it is possible that projects could be developed which would be eligible for funding, for example, under the exchange programme called Youth for Europe, or the language programme called LINGUA. The aim of the Youth for Europe Programme is to promote an active sense of citizenship and mutual understanding among young Europeans by bringing together young people from different social, economic and cultural backgrounds. Special attention is accorded to the access fo disadvantaged young people to the programme. The LINGUA programme, which will also be regrouped under SOCRATES (education programmes), focuses on activities to promote partnerships between schools in Europe, in particular to improve foreign language competence in the European Union.

EURATHLON, DG X's new programme to fund sport

6014 In 1994, Directorate General X of the Commission set up a new programme, EURATHLON, to assist financially initiatives in sport which give people a stronger sense of belonging to a multi-cultural but united European Union. Eligible projects must have a clear EU dimension. The programme is open to activities involving partners (public authorities or sports federations, public or private organisers, etc.) from at least three Member States. Participation of partners from other European countries particularly the newly acceding countries and Central and Eastern European countries is welcomed.

6015 Projects funded are carried out in cooperation with public authorities responsible for sport and sports organisations.

6016 The Commission funds up to 50% of the budget submitted, with a floor intervention of 5.000 ECU and a ceiling of 50.000 ECU. Application forms are available from the Commission's Offices in Member States and from DG X in Brussels. Applications for funding for the following year must be completed and returned to the Commission ("DG X.C.5.") before the closing date of 30 November of the previous year.

6017 The programme will cover the following types of activities:

- *"sporting activities"* aimed at improving ties between European Union citizens, especially young people (when schools can also play a role) and women, in the context of sport for fun and "sport for all";
- *training* for those actively involved in sport (athletes, trainers, monitors, referees, etc.) as part of joint training schemes.

6018 The programme will primarily focus on exchange programmes for young sportsmen and women, but will also cover the organisation of seminars and international training programmes on issues such as the implications of European Union legislation for sport, national sports legislation and federation rules, sport management techniques, European scientific and social research into sporting activity, etc.

6019 In selecting which projects should be provided with funding, account will be taken of the following criteria:

- quality and originality, and the innovative or trend-setting nature of the activity;
- the European dimension, i.e. encouraging the broadest possible involvement of sportsmen and women, officials, etc. from at least three Member States;
- public response to and interest in the project.

6020 The following types of projects will not be eligible under EURATHLON:

- activities of a purely national or bilateral nature;
- projects already receiving European Union financing from another source;
- profit-making activities;
- publications;
- feasibility studies;
- overheads, financing costs, fixed costs or running costs incurred by requesting bodies.

6021 In granting assistance, the Commission will ensure that a balance is observed in terms of geographical distribution and different types of sports. the Commission will examine all valid applications in consultation with an independent panel of experts. This panel, the EURATHLON Committee, will be comprised of:

- one representative of AENOC (European Association of National Olympic Committees);
- one representative of ENGSO (European Non-Governmental Sports Organisations)/Sport for all;
- three government representatives (from the Troika countries, i.e. the country currently presiding the Council of Ministers, the country previously presiding and the country next to preside);

- two representatives from the Commission's DG X (Committee Presidency and Secretariat).

Sports projects for people with disabilities

6022 DG X of the Commission has a budget line to provide financial support for innovative projects which promote sport for the disabled in the European Union. The more general aspects of EU policy on sports for people with disabilities are described in Section X of this report.

6023 Appraisal of applications for European Union subventions for sport for the disabled are based on the following criteria:

- the project must originate from a Member State, and take place in one of the Member States of the European Union;
- the project must originate from a legal body or organisation;
- the project must be open to participation from all Member States;
- the application must include background, justification, aims and objectives, as well as a statement of what benefits will arise as a result of it;
- the project must have sources of income other than the European Commission. The European identity of the project must be evident.

6024 Examples of the type of projects which may be funded include those which:

- introduce new sports or forms of sport;
- stimulate participation in new sports;
- have a positive effect on the dissemination and exchange of experience, knowledge and information;
- aim at people with more severe disabilities or others that will never have the possibilities to participate in international championships and Paralympics and/or;
- promote sport for people with a disability in general in some new way.

6025 Applications should be sent to national committees in each Member State with copies to both DG V and DG X. A European level committee selects applications

on the basis of the above-mentioned criteria; the Commission must approve the selection. A list of National Committees is included in Appendix B.

6026 Financial support for the disabled was also provided for the Paralympics in Albertville, Barcelona and Lillehammer.

Research in science and technology

6027 The Commission funds a variety of research programmes in science and technology. Funded areas of relevance to sports include medical research and biotechnology. The aim of EU research programmes is to promote pan-EU research projects which, without EU finance, might not otherwise take place. The long-term aim is to increase EU competitiveness. The emphasis is on basic or pre-competitive research.

6028 In May 1994, the Council and the Parliament adopted the Commission proposal for a "Fourth European Community Framework Programme for research, technological development and demonstration activities". This "Fourth Framework Programme", as it is more commonly known, groups the various European Union research promotion programmes and will steer the European Union's action in the area of research up to 1998. The specific programmes should be approved by the Council and Parliament shortly after May 1994.

6029 Although there will be no specific research programme for sport, the EU promotes research in the biotechnological and biomedical fields with potential applications in the fight against doping in sport. These types of research would tend to be carried out by specialised non-sports-related companies and research institutes. However, to the extent that sports organisations could be involved in this research, they would stand to benefit from EU funding (eg pan-EU efforts to provide statistics on pathologies of athletes).

6030 Another example of past EU assistance to projects which are relevant for sport is the Commission support to a high-altitude research station, operated by an international team in the Himalayas (on the K2 mountain), which carried out studies in, among other areas, how the human organism copes with extreme altitudes; the results of their work are particularly relevant for mountaineering and airports.

6031 In the new Agriculture and Fisheries Programme, (which includes, among other areas, agro-industry and food technologies), the Commission has proposed that research should improve the food and drink industry's competitiveness and provide consumers with a safe and higher quality, more nutritious and health promoting diet. Research in new sports food could potentially fall under this objective.

6032 In respect of the principle of subsidiarity, the EU does not want to replace national research in any way. Instead, it specialises in promoting research which involves more than one EU Member State, and which otherwise would not have been initiated.

Research in information and telecommunications technologies and industrial technologies

6033 In its quest to actively encourage the development of new technology within the EU, the Commission focuses on promoting research cooperation between parties from different Member States. Under the Fourth Framework Programme (see above), a series of EU research programmes are designed to increase EU competitiveness, particularly in the areas of information technology and telecommunications. Again, the main emphasis is on basic or pre-competitive research.

6034 As indicated in the previous section, there are no EU research programmes specifically aimed at sports activities. However, to the extent that high technology communication systems are used in sport, and a high degree of pan-European cooperation is involved in the development process, participation in an EU funded programme could be possible.

6035 It is also possible that certain specific programmes in the area of general telematics, such as health care services, distance learning and systems designed to promote rural development, could potentially find applications in the sports world.

6036 A specific programme which might directly impact sport is TIDE, an EU-funded programme aimed at developing advanced technologies to assist the disabled and elderly. The programme is designed to stimulate technology transfer, make user requirements more transparent and provide a basis for the formulation of new technical standards for assistive technology. TIDE could in principle fund the applications of advanced technologies for improving access to the exercise of sports by people with disabilities through improvement of information services accessibility, technological updating of services supporting sport for disabled persons, or even through projects which apply advanced technologies in a better and more suitable manner and the manufacturing of devices adapted to sport (through CAD-CAM methods for example). TIDE could thereby fund the development of advanced technologies which facilitate the participation of disabled people in sport. One of the main eligibility criteria for TIDE is that the research and development involves a group of parties which include industrial participants from more than one Member State.

6037 Areas where TIDE is active and potential applications can be found for sport is, for example, in training using virtual reality environments, orientation and

navigation devices and compensation of impairment by advanced prostheses and orthosis and other rehabilitation technology-based individual applications. In its Official Journal, the Commission regularly publishes calls for proposals for projects in certain research areas. Calls for proposals for TIDE are expected in December 1994 and usually allow three months time to prepare submissions.

Eastern and Central Europe and the CIS

6038 The EU funds technical assistance programmes for the Central and Eastern European countries and the Republics of the Commonwealth of Independent States (CIS). They are called PHARE and TACIS respectively. Their overall aim is to contribute to the building up of market economies in these countries.

6039 Under PHARE, there is a programme to develop the tourism sector in Poland. A similar programme for Slovakia may be launched in 1995. The tourism sector has the potential to make a significant contribution to economic restructuring by creating jobs, earning hard currency, and promoting the growth of new small- and medium-sized businesses in addition to accelerating the privatisation of existing tourism infrastructure. In the context of the programme to develop the tourism sector in Poland, there has recently been a greater emphasis placed on improving "activity tourism", particularly in rural areas. Types of projects liable to be assisted include:

- horseback riding;
- fishing;
- yachting;
- sailboarding on lakes; and
- mountain trekking.

6040 There is also the possibility of PHARE funding being allocated to upgrade and promote the use of existing sports facilities in order to exploit them for youth sports holidays. This would build the revenue-generating potential of the region in which the site is located.

6041 There is clearly a potential for sports organisations from the European Union to be more involved in providing advice in the framework of PHARE-financed projects. These opportunities need to be discussed with the relevant authorities in the PHARE countries, from whom all applications for assistance must originate. In the case of the Polish tourism programme, the State Office for Sport and Tourism is the responsible authority.

6042 Under TACIS, it is unlikely that sports organisations would be funded directly under such initiatives. Indirectly, however, sports organisations and sports equipment manufacturers, for example, can benefit from general economic improvements in the region.

6043 In a totally different context to PHARE and TACIS, DG X of the Commission co-financed a study carried out by the Nederlandse Sport Federatie on "bridging the gap" between sports authorities in Western and Eastern Europe.

Rural and cultural tourism

6044 A few sports-related projects have been supported within the framework of Directorate General XXIII's rural and cultural tourism initiative which started in 1991, for example :

- a project to develop trans-frontier tourism between France and Spain on the theme of fishing;
- two projects to develop cycling itineraries.

6045 In a 1992 Council Decision⁹⁵, the EU agreed on a Community action plan to assist tourism. This has been followed up by a report from the Commission on Community measures affecting tourism⁹⁶.

⁹⁵ Council Decision 92/421/EEC; OJ N° L 231/92; 13.8.92

⁹⁶ Report from the Commission, COM (94) 74.

VII Environmental policy

The principles

7001 Having no legal base in the original Treaty of Rome, as environmental matters were not regarded as a necessary objective in 1958, the principles of the EU's environmental policy were set out in the Environmental Action Programme of 1973. Subsequent legislation based on Articles 100 and 235 of the Treaty mainly focused on trade creation and industrial pollution and tended to be reactive.

7002 The advent of the Single European Act and the first major revision of the Treaty in 1987 introduced Articles 130R, 130S and 130T which had the effect of specifically empowering the European Union to protect the environment. This meant that preventative measures could be taken in advance of potential problems developing. In addition, the Maastricht Treaty gives environmental policy an even higher priority and makes it no longer subject to a unanimous vote by the Council of Ministers, except in a few specific areas.

The Environmental Impact Assessment Directive

7003 The major Directive regarding the monitoring and control of the environment is the Environmental Impact Assessment Directive⁹⁷ which came into force in 1988. It is designed to ensure that environmental effects are taken into account by developers of certain projects and by the competent national authorities. It applies to private or public projects which, by virtue of their nature, size and location, are likely to have significant effects on the environment. Such projects are identified in two annexes to the Directive. The projects listed in Annex I must be subject to a compulsory environmental impact assessment. Projects listed in Annex II can be subject to an assessment where Member States consider that their characteristics so require.

7004 Some of the classes of projects listed in Annex II, under the headings of "infrastructure" and "other projects", concern the sports industry directly, they are:

- ski-lifts and cable cars;
- yacht marinas;
- racing circuits and test tracks.

7005 Other infrastructure projects may concern the sports industry indirectly in that they may include, or be attached to, sports complexes. They are:

⁹⁷ Directive 85/337/EEC; OJ N° L 175/85; 5. 7. 85

- holiday villages, hotel complexes and associated developments;
- urban development projects;
- construction of roads, harbours (including fishing harbours) and airfields;
- dams and other installations designed to hold water or store it long term;
- tramways, elevated and underground railways, suspended lines or similar lines of a particular type; used exclusively or mainly for passenger transport.

7006 The first five year review of the existing Directive's operation has shown that impact assessments have been required for several projects in Annex II, primarily yacht marinas, ski lifts and race tracks. The Commission has also received complaints from the general public, as well as bodies concerned with wildlife conservation and other environmental issues, about failures to carry out sufficient impact assessments. For instance, the assessment of ski lifts and cable cars has not taken account of the runs underneath them that are the primary cause of environmental damage.

7007 The Commission has formally submitted to the Council a proposal⁹⁸ to amend the environmental impact assessment Directive. If this proposal, which takes account of the five year review and complaints to the Commission about the existing Directive's operation, is adopted, the scope of Annex II will be increased to cover additional infrastructure projects which are directly or indirectly linked to sport. These are:

- works and installations for ski runs and bobsleigh runs (which will substitute for the category of ski-lifts and cable cars);
- golf courses and associated developments;
- holiday villages, leisure centres and cultural centres.

7008 The European Parliament's report⁹⁹ and resolution on the Winter Olympic Games, criticised the preparations for the Games in Albertville, France, as having ignored the provisions of the Environmental Impact Assessment Directive. The report claimed that this led to serious environmental damage being caused to that region of the Alps, for example through the clearing of mountain slopes, the use of snow-making machines and the construction or extension of multi-lane roads. The resolution called for future Olympic Games to recognise and respect the constraints of a sustainable natural and cultural environment and proposed that future Winter Olympic Games be sited permanently in one resort that already has the appropriate infrastructure, thus avoiding damage to other potential Olympic sites.

⁹⁸ OJ N° C 130/94; 12. 5. 94

⁹⁹ MEP Karl Partsch, PE DOC 154. 404. 4.R. 91

Conservation of natural habitats

7009 A Directive on the conservation of natural habitats and of wild fauna and flora¹⁰⁰ was adopted in May 1992, to be implemented by the Member States before May 1994. The Directive calls on the Member States to conserve natural and semi-natural habitats by creating a European network of classified special protection areas named "Natura 2000". Within these areas, steps should be taken to avoid pollution, deterioration of habitats and any disturbance of fauna and flora which could have a significant detrimental effect on the area. Although the aim is to balance conservation needs with local economic and recreation requirements, freedom to practice water-sports may be curtailed by national measures implementing this Directive.

¹⁰⁰ Directive 92/43/EEC; OJ N° L 206/92; 22. 7. 92

VIII Taxation

The principles

8001 Articles 95 and 96 of the Treaty of Rome prohibit discrimination of tax treatment on exports and imports of products from other Member States. Article 99 allows the EU to impose fiscal harmonisation measures "in the interest of" the Single Market. Currently, this rule has been interpreted in a minimalist way. Only matters which are deemed to be absolutely necessary for the realisation of the Single Market are addressed by the EU. In this manner, the principle of subsidiarity is respected.

8002 The main EU legislation enacting the principles laid down in the Treaty are the Sixth and Eighteenth VAT Directives¹⁰¹. Every activity which has as its objective the practice or the development of sport, and is considered to be an economic activity, is taxable within the meaning of Article 4, paragraph 2 of the Sixth VAT Directive.

8003 There is debate as to whether certain bodies involved in sports are in fact "taxable persons", as defined by the same Article. This Article says that a taxable person is one who independently carries out an economic activity, ie exploitation of a tangible or intangible property in order to obtain revenue on a continuous or occasional basis. States, international organisations, regional and local authorities and bodies governed by public law are not considered to be taxable bodies.

8004 The Commission was asked by a Member of the European Parliament¹⁰² whether a non-professional, non-profit-making yacht club could be liable to VAT. The Commission answered that under Article 13 (A)(1)(m) of the Sixth Directive, Member States are required to exempt, under conditions which they are to lay down themselves, certain services closely limited to sport supplied by non-profit-making organisations to persons taking part in sport. A yacht club is therefore eligible for exemption.

8005 The Sixth and Eighteenth Directives allow Member States to continue to tax transactions by non-profit making organisations if exemption is likely to create

¹⁰¹ The Sixth Council Directive on the harmonisation of VAT; Council Directive 77/388/EEC; OJ N° L 145/77; 13. 6. 77 and the Eighteenth Council Directive on the harmonisation of VAT - Abolition of certain derogations in the Sixth Directive; Council Directive 89/465/EEC; OJ N° L 226/89; 3. 8. 89

¹⁰² Written Question N° 1875/86 of 13. 11. 86, answered by Lord Cockfield on 22. 01. 87.

distortions of competition, such as to place at a disadvantage commercial enterprises liable to VAT.

8006 The supply of goods and services by fund-raising events organised exclusively for their own benefit is also exempted from VAT, provided such exemption is not likely to cause distortion of competition. The main criteria which render activities eligible for exemption from VAT are that: the activity is in the public interest, distortions of competition are not created such as to place at a disadvantage commercial enterprises liable to VAT, and systematic profit-making is not the objective of the activity.

Key issues

8007 The main EU tax issue relevant to sport is whether sports activities are taxed or not and, if so, to what extent. In practice, Member States may limit the scope of the exemption to services closely limited to sport, supplied by non-profit making organisations to persons taking part in sport.

8008 While the majority of sports clubs¹⁰³ are organised on a non-profit basis, in some sports, such as golf and tennis, facilities provided by commercial clubs can be considered comparable to those supplied by voluntary sports organisations. It can be very difficult to distinguish between a purely commercial sports clubs and a non-commercial activity such as a sports club set up by a group of friends but which charges fees to cover the clubs expenses.

8009 The main applications of EU VAT law regarding services closely linked to sports activities are detailed below.

Admission (tickets) to sports events

8010 In principle, admission fees to sporting events are not exempt from VAT. However, exemption of admission fees to sporting events was granted to those Member States which, at the time of their accession to the EU, already exempted such admissions. Exemption of admission to sporting events does not appear to have led to a distortion of competition between Member States, nor is it thought likely to do so in the future. The Commission has now proposed that instead of the continuation

¹⁰³ In 1993, with a view to implementation of EU Directives, the UK introduced changes to its tax regime on membership fees of non-profit making member sports clubs.

of this derogation to the general rule, a right of option should be granted to Member States on whether or not to tax this activity¹⁰⁴.

8011 In practice, Member States currently apply different rules to admission fees. For example, the UK fiscal authorities apply normal VAT rates to admission fees. This is not the case in France. Such divergencies could lead to distortions of competition. Nevertheless, Directive 92/77/EEC on the harmonisation of the rates of VAT provides that a reduced rate may be applied to certain goods and services listed in Annex H of that Directive. Admission to sports events is expressly included in this list.

8012 Given the different tax treatment for admissions in different Member States, certain parties have raised the question as to whether it is possible for a Member State to opt not to tax a *specific* sports event. When, for example, the Winter Olympics were held in Albertville, the French authorities did not apply VAT to admissions, whereas should Manchester have been selected to host the 2000 Summer Olympics, under UK law, VAT should ordinarily have been applied on admissions.

Non-sports activities of sports clubs and organisations

8013 Besides purely sporting activities, sports clubs provide a series of other facilities including restaurants, bars, shops, etc. Lodging and restaurant operations are not strictly covered by the exemption. Nevertheless, a tolerance margin permits Member States to extend its scope to operations of minimal importance e.g. the sale of small quantities of food and drink to be consumed on the premises, carried out within the framework of the exempted activities. This is, however, subject to the condition that this exemption does not distort competition.

Transfer of players

8014 All the Member States consider that the indemnity paid when a player is transferred from one club to another constitutes a remuneration for a supply of services within the meaning of Article 2 of the Sixth VAT Directive and must be taxed. On the other hand, the amount of damages paid in the case of a breach of contract where one of the parties has failed to fulfil an obligation is not subject to tax.

Exclusive rights

8015 To the extent that the organisations which sell the rights are taxable, the sale and purchase of exclusive broadcasting rights are taxable.

¹⁰⁴

COM(92) 215 final, OJ N° C 205/92; 13. 8. 92

Horse racing

8016 Currently there are major variations in the VAT rates applied by different Member States to the sales and training of horses. This tax differential has resulted in a shift in thoroughbred sales from the UK to France and Ireland. The UK responded to potential tax distortions by introducing a flat-rate farmer scheme, with as consequence a lower VAT rate levied on the sale of horses by such flat-rate farmers in the UK. Prize money is not taxed in most Member States.

Commemorative coins for sports events

8017 Legal tender is exempt from VAT, as long as it is normally used as a legal means of payment. Although commemorative coins for sports events are legal tender, they are not normally used as such and are considered to be taxable at the national VAT rates.

Temporary import of goods

8018 Since 1 January 1993 there has been a change in the rules applied to the temporary importation of goods. The concession that allowed a boat from one EU Member State to remain in the territory of another EU Member State, under VAT free arrangements of temporary importation of goods for a period of six months in any twelve, has been ended. Leisure boats moored in a Member State on 1 January 1993, which entered the territory in accordance with the rules on the temporary importation of goods (Article 14(1)(c) of the Sixth VAT Directive) may continue to benefit from this regime, as long as the provisions in force at the moment the boat entered the regime are in respected. The removal of the boat from the regime will be assimilated to an import into the Member State in which it is situated at the time. In other words, in the course of 1993, at the moment the period set in 1992 expired, VAT became due, unless:

- the boat was dispatched or transported out of the European Union;
- at the moment it was imported, the boat was placed under the temporary import regime provided for in Regulation (EEC) No. 1855/89, which entered into force on 1 January 1993 or under another regime for the suspension of duties as provided for in the European Union customs provisions in force (Article 7(3) of the Sixth Directive);
- the date of first use was prior to 1 January 1985; or
- the amount of VAT due upon the importation of the boat was insignificant.

8019 Supplies of boats after 1 January 1993 are fully taxable.

IX The ECU and sport

9001 The ECU is at present a composite currency unit or "basket" currency composed of a fixed amount of each of the currencies of the European Union. The weighting of each currency within the basket reflects the relative economic importance of each Member State. At the beginning of Stage III of EMU (Economic and Monetary Union), the ECU will be transformed into the single currency of the EU.

9002 From an economic perspective, for events involving the currencies of more than one Member State, the ECU can reduce exchange risk, make hedging easier and increase financial stability. For European sports events which involve revenue and expense flows to and from a variety of different Member States, there may be a case for resorting to the ECU rather than continuing to use the US Dollar or a variety of different national currencies (which suffer more than the ECU from exchange rate fluctuations). The ATP tennis tour has already shown interest in this idea.

9003 Given the relative stability of the ECU, treasury management of international federations could be made more secure; players who receive prize money or payment in ECU would not face problems with converting it into another currency or investing it in deposits, bonds, etc. From the federations' point of view, their budgets could be established months in advance, with relatively fewer risks of foreign exchange fluctuations.

9004 Due to the financial and economic rationale of using the ECU in international sports events and the widespread popularity of such events, this area could offer the European Union a significant opportunity for heightening public awareness of the ECU.

9005 The Commission therefore encourages sports organisations involved in the financial management of international sports events to explore the economic rationale of using the ECU mainly in order to reduce exchange risk. For events and operations which do not go beyond national borders, however, there is no reason to switch to the ECU.

X Sports for people with disabilities

10001 The founding Treaties of the European Union also stress the necessity to improve employment conditions and the living standards in the Member States of the European Union. It is within this framework that the European Union treats all socially-related matters, including sports for disabled, which has been supported by the Commission.

10002 The Commission considers sports to be an essential factor for integration, contributing to founding an autonomous life, due to the role of sports as a means of:

- rehabilitation;
- leisure; and
- competition.

10003 Directorate General X of the Commission provides financial support for innovative projects which promote sport for the disabled in the European Union. Details are provided in Section VI of this report.

10004 The EU launched a series of "Community action programmes to assist disabled people"; the third action programme¹⁰⁵, running from 1993 to 1996 and dubbed "HELIOS II", promotes equal opportunities for and the integration of disabled people, including the integration by sports in particular. The Commission initiatives aim to stimulate and coordinate activities in the Member States in order to promote a European dimension. All disability groups are covered.

10005 In parallel, the EU set up a database on organisations involved with sport for the disabled worldwide. The database, which is called "Handynet", was established in cooperation with national committees representing sports for disabled in the Member States.

Establishment of the European Committee on Sports for People with Disabilities

10006 In response to growing demand from the various national sports organisations for disabled people and upon the invitation of the European Commission, representatives appointed by the National Olympic Committees met on several occasions over the last two years to set up a European body whose purpose

¹⁰⁵ Council Decision 93/136/EEC establishing a Third Community Action Programme to assist Disabled People; OJ N° L 56/93; 9. 3. 93

would be to provide advice and promote sports for disabled people. A European Committee on Sports for People with Disabilities was eventually established on 19 November 1993, on the initiative of the European Commission ("Integration of Disabled People" Unit of DG V and "Sports" Unit of DG X).

10007 The Committee brings together two representatives of each national committee on sports for disabled people twice a year, and acts as adviser to the Commission. Its tasks include delivering an opinion on applications for grants for sporting activities submitted to the Commission and promoting European initiatives in the field of sports for disabled people. The Committee on Sports has elected Dr Bob Price, President of the British Sports Association for the Disabled and a Director of the British Paralympic Association, as its chairman and Mr K.V. Nielsen, Chairman of the Danish Sports Organisation for the Disabled, as Vice-chairman.

10008 The Commission encourages the national committees on sports for people with disabilities to develop cooperation with all NGOs and national councils or organisations for sport for people with disabilities.

Conclusions

XI Conclusions

In this section, the main issues are highlighted, as are changes and amendments following the completion of the previous study. Changes since the previous report are in italics.

The free movement of persons and services

Restrictions on foreign sportspersons

1 The Treaty of Rome clearly recognises the right of EU citizens who are pursuing an economic activity to work in any Member State of the EU under the same conditions as nationals of that Member State. Such a right therefore applies to persons pursuing sport as a profession.

2 The position of persons who are subject to discrimination on the grounds of nationality when pursuing a non-economic activity, such as persons practising a sport without remuneration, is less clear cut. In principle, such a person has no recourse to the Treaty. However, secondary EU legislation on Member States' obligations in relation to the free movement of workers and their families requires that they should be fully integrated in the host country. If a case came before the European Court of Justice, it would be likely to give a wide interpretation of the "social benefits" to which they should be entitled, such as the possibility to practise the sport of their choice, in line with the concept of a "People's Europe".

3 Sports bodies have internal rules which may have an adverse impact on the ability of non-native sportspersons to practise their sport on the same terms as a native of the country in which that sports body is operating, at both amateur and professional levels. These rules vary per sport but fall into two broad categories:

- rules relating to "foreign" sportspersons ie persons who are resident in the country of the sports body, but who have not become naturalised citizens of that country;
- rules relating to "naturalised" sportspersons ie persons who have legally acquired the nationality of the country in which they reside and wish to practise sport.

4 Restrictions on foreign sportspersons take two main forms:

- limits on the number of foreigners fielded in a team;
- limits on the sportspersons' eligibility to join a club, or to take part in all events organised by the club or federation to which the club is affiliated.

5 Restrictions on naturalised sportspersons usually take the form of the sports body's regulations insisting on the person waiting a number of years after his or her legal acquisition of the required nationality before becoming eligible to play for a team in which the number of foreigners is subject to limits or before representing his adopted country at an international event.

6 A key point concerning the above rules is that they are applied by the sports bodies, without distinction, both to "EU foreigners" (for example a French person residing in Italy) and to "non-EU foreigners" (for example, an American residing in Spain). The effect of applying such rules to EU citizens, in particular those practising sport as an economic activity, is to curtail their right to free movement as set out in the Treaty of Rome.

7 *Regarding the transfer system, although the Commission made its position somewhat clearer in 1994 its written observations to the European Court of Justice, further clarifications of the Commission's position will depend on the ruling on the Bosman case to be delivered by the European Court, which is likely to happen in early or mid 1995.*

8 *This updated report refers to the April 1994 European Parliament call for obstacles to the freedom to join sports clubs to be removed. New references are also made to recent national court cases involving free movement of players.*

9 *In view of the slow progress in solving this problem, Coopers & Lybrand suggest that interested parties explore the idea of arriving at an understanding or compromise between Fifpro, which represents the players, and the football associations (UEFA and/or FIFA). If such an agreement was to become a reality, the entire issue of transfers might enter into the field of collective agreements under labour relations and therefore fall outside the scope of the EU's competition rules. A similar legal structure is already the case regarding players' negotiations of contracts in the US. Although this option may currently seem relatively remote, opposing parties may be spurred into compromise following the outcome of the Bosman ruling.*

Sports qualifications

10 The EU's legislation and policies in the area of qualifications are designed to facilitate the free movement of workers by ensuring the mutual recognition of qualifications gained for regulated professions in the different Member States and the establishment of a system for comparing vocational training qualifications. Sports-related qualifications are affected by this legislation.

11 *The section on CEDEFOP has been updated. A Directive was adopted in 1993 to promote the mutual recognition of medical qualifications, including for specialised medicine. The Directive also aims to facilitate the right of establishment for doctors and their freedom to provide services.*

Hooliganism

12 The Commission has stated that it would not object to Member States taking measures, such as the introduction of supporters' identity cards, which may restrict the free movement of "known" hooligans (that is supporters having committed previous offenses) as long as such measures did not prevent other *EU* citizens from continuing to enjoy their right to free movement and to free provision of services and as long as they did not seek to control the free movement of "potential" hooligans (that is supporters with no previous convictions on hooliganism offenses).

13 *The position of the European Parliament was stated in its April 1994 report on the EC and Sport: the nationality of a supporter from a European Union country should never be the criterion for refusing or impeding access to sports events.*

Insurance

14 The Commission believes that its only role with regard to insurance is to legislate for a single European market in the provision of insurance services. In relation to sport, it is of the opinion that the onus should lie with clubs, players and spectators to ensure that they will be adequately covered when participating in or attending a sporting event.

Advertising and sponsorship

15 In 1989, the Council approved a Commission Directive, dubbed "Television Without Frontiers", which sets out minimum requirements, both qualitative and quantitative, for television advertising and sponsorship. The Directive bans direct and indirect advertising for cigarettes and other tobacco products and the tobacco sponsorship of television programmes.

16 The Commission has also proposed a Directive which would ban all types of advertising for tobacco products beyond the point of sale, and not just television advertising as in the Television Without Frontiers Directive. A blocking minority of Member States still oppose the adoption of this Directive.

17 *The Commission's Green Paper on commercial communication is in preparation. This paper will examine Commission policy on advertising and sponsorship and may therefore affect sports organisations using these mediums. The Fremion report on patronage and sponsorship in culture and sport, which favoured patronage of events with limited or no credit to the sponsor, failed to be approved by the European Parliament.*

Lotteries and wagering activities

18 *A new section has been added to the report on lotteries and wagering activities, given the concern expressed by many sports authorities that the application of EU rules on free circulation and competition policy might deprive sport of this vital source of finance. In December 1992, based on the application of the principle of subsidiarity, the Council dismissed any notions of the Commission proposing legislation on harmonisation of gambling and gaming.*

19 *The European Court of Justice's ruling on the Schindler case provides some guidelines on the application of EU legislation to lottery activities. The Court ruled that lotteries can be considered to be a service and therefore fall within the scope of the relevant Treaty Articles. The Court also ruled that national legislation which prohibits the holding of lotteries in a Member State is an obstacle to the freedom to provide services. However, because of the particular nature of lotteries, national authorities can restrict or prohibit them, provided that the restrictions are on a non-discriminatory basis.*

Company law

20 *A new section has also been added on company law. Although the Commission aims to attain a common and comprehensive legal environment for all types of EU companies, the legal status of sports clubs is not yet governed by clear and harmonised rules at the EU level and Member States continue to be responsible for the legal status under which sports organisations may operate. The EU has no intention of targeting sports clubs under any harmonisation measures. Details are provided on a proposed European Company Statute and the European Economic Interest Grouping ("EEIG"), both of which may be of interest to sports organisations.*

Health and safety

Doping

21 *EU legislation that has an indirect impact on the fight against doping includes Directives designed to prohibit the use of medicinal products other than for the diagnosis or treatment of pathological states, to prevent their use in unauthorised forms and dosages and to prevent their unauthorised (black market) sale or prescription and their advertisement.*

22 *As it does not fall within the competence of the EU to propose binding legislation specifically on testing sports persons for the illegal use of performance enhancing substances, the Commission's action was limited to drawing up a Code of Conduct against Doping in Sport, which was adopted in February 1992.*

23 *A new initiative called Europack was launched subsequently on education on anti-doping in sport. Furthermore, a report was adopted by the European Parliament in May 1994 on doping in sport. The report lists five main objectives for an adequate policy against the use of doping in sport and calls upon the Commission, and others to act accordingly.*

Protection of young people at work

24 *The Commission's proposed Directive on the protection of young people at work was adopted in June 1994. The Directive sets out a minimum working or employment age and a number of minimum standards dealing with exposure to various occupational risks, with particular reference to night work, working time and admission to employment. Derogations are provided for in Articles 4 and 5 which make it possible, for example, to employ children in cultural, artistic, sports and advertising activities, so long as this is commensurate with their physical and psychological health.*

Liability of service suppliers

25 *A Commission proposal on the Liability of Suppliers of Services which sought to establish a reversal of the burden of proof of liability in the case of accidents was withdrawn in June 1994. The Commission decided to reorientate its action, so that sports-related sectors are unlikely to be affected in the near future.*

The free movement of goods

Transportation of sports equipment between Member States

26 *As of 1 January 1993, the elimination of all administrative documents in intra-European Union trade, in combination with the new VAT regime, has made superfluous previous arrangements for the temporary importation of goods. Temporary import of sports equipment, for competitions or other sporting activities, are therefore completely free of restrictions, with the exception of such items as firearms. In relation to the European firearms pass, a uniform layout for the pass was proposed in a 1993 Commission recommendation.*

27 *Despite the clear Treaty provisions on free trade between Member States, the Commission consistently receives complaints that certification, testing and technical requirements still hamper the implementation of free intra-Community trade.*

Standardisation

28 *The European Union's standardisation legislation is designed to ensure that differing standards in different Member States do not adversely affect intra-*

Community trade, by setting minimum health and safety standards to which manufacturers must comply.

29 The third mandate of the Commission to the European standardisation body (CEN) under the Directive on Personal Protective Equipment (PPE) *includes items of sports equipment, such as mountaineering equipment and driving accessories.*

30 *A Directive on Recreational Craft was adopted in June 1994, which harmonises the essential safety requirements for the design and construction of recreational boats.*

The Olympic symbol

31 *Although the Commission has not issued an official position on the matter in response to a complaint, it feels that the obligation on National Olympic Committees and the Organising Committee of the Olympic Games not to use their emblems for any commercial or profit-making purposes in the country of another National Olympic Committee, without that Committee's permission, leads to a partitioning of the European Union market which is contrary to the principle of free movement of goods.*

Sports food

32 *In a 1994 proposal modifying the 1989 Directive on the approximation of the laws of the Member States relating to foods for particular nutritional uses, the group of food relevant for sportsmen has been dropped from the list of groups for which EU provisions will be laid down.*

Footwear labelling

33 *In March 1994, the Council adopted a Directive on the labelling of the materials used in the main components of footwear, including sports shoes, for sale to the consumer. The Directive aims to prevent any barriers to trade in the European Union for footwear and to help consumers identify what materials have been used in their composition.*

Quantitative restrictions on sports footwear

34 *In March 1994, the Commission adopted a proposal to remove disparities among Member States' import rules on sports footwear from China.*

Airports

35 *A new section has been included on airports. Details are provided on a complaint to the Commission that different national requirements in the UK and France constitute barriers to free trade.*

Competition policy

36 Commission involvement in competition policy and sport is carried out on a reactive and case-by-case basis. The main sport-related areas in which the Commission has been called to examine cases under European Union competition policy include: broadcasting rights, product endorsement, ticket distribution, competition between federations, government funding to sport, restrictive trading practices *and transfers of and restrictions on foreign players*.

Exclusive broadcasting rights

37 Two main sport-related broadcasting issues were called to the Commission's attention. The first is the acquisition of exclusive broadcasting rights for sports programmes by a group of broadcasters, in particular by the European Broadcasting Union (EBU), and whether this allows fair competition.

38 In June 1993, the EBU agreed to improve access to sports events for non-member commercial stations. Following amendments to the acquisition procedures system, the Commission agreed to exempt the EBU from Article 85 for the acquisition of broadcasting rights for a five-year period.

39 The second main broadcasting issue called to the attention of the Commission is the UEFA article 14 case which examines the federations' control of broadcasting for foreign events on their home territory.

40 Article 14 of UEFA's Statutes provides a mechanism for regulating cross-border transmissions of football. The main feature of the regime is the establishment of "free, protected and closed" time slots. The philosophy behind UEFA's article 14 rule is that in order to protect domestic football, it is necessary to ensure that football fans are encouraged to go to see and participate in local matches rather than simply watching football on television. *In 1993, UEFA modified article 14 of its Statutes and is currently still discussing the matter with the Commission. The Commission has recently appointed a mediator to explore a compromise.*

Product endorsement

41 The Commission examined three aspects of the Danish Tennis Federation's product endorsement policy: the acceptability of the label "official", the obligatory use of official equipment in competitions and the recourse to exclusive equipment distributors.

42 The Commission felt that each of these practices contravened European Union competition policy. The granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the

product. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. Furthermore, there should be a competitive tender before allocating the label to a specific sponsor.

43 On the obligation to use official equipment for competitions, the Commission accepts that the organiser of a competition can select the equipment it sees fit to choose. It is only when the federations are not responsible for the organisation of a competition, even if that competition is organised under the auspices of the federation, but nevertheless use their strong position to oblige its affiliates to use a particular brand of equipment, that the Commission sees abuse of the federations' dominant position in tennis; this practice restricts competition between sports equipment manufacturers.

44 The final point to which the Commission objects is the practice of a federation encouraging its affiliates to purchase their equipment, (which they are obliged to use in the federation's competitions), from specific distributors. This is seen as an abuse of the federation's strong position by restricting competition among suppliers.

45 *No official decision has yet been taken by the Commission on the Danish Tennis Federation case. Following discussions between the Commission and the Danish Tennis Federation, the latter has modified its rules. These rule changes have been notified to the Commission, which is currently examining the changes to ensure that they comply with EU competition rules.*

Competition between federations

46 The Commission was called upon by the Belgian indoor football authorities to examine the Union Belge's policy towards indoor football. The indoor federation claimed that the Union Belge's policy prevented football players from alternating, during the course of the season, between the Union Belge's competitions and indoor football competitions. The indoor federation felt the Union Belge was abusing the dominant position it had in Belgian football. *In the indoor football case, although no formal decision has been reached in the case, the Commission has informed the plaintiff that it is unlikely to follow up the complaint.*

47 The Commission's position is that sports federations are subject to competition policy and that the Treaty of Rome requires the Commission to ensure that sports authorities do not abuse the strong position they have in their respective sports. Contrary to the fears of some federations, the Commission has nothing against the monopoly position of sports authorities as such; it is merely the abuse of the dominant position which is contrary to competition policy. Moreover, trade between Member States must be affected. The monopolistic structure of the sports world is therefore not called into question by the Commission.

Ticketing

48 The Commission was called upon to investigate ticketing practices for the Barcelona, Albertville *and Lillehammer* Olympic Games and the 1990 *and 1994* Football World Cups respectively in Italy *and the US*. The Commission questions three aspects of ticket distribution. Firstly, it queries the partitioning of the market by granting exclusivity to one agency per Member State. Second, it questions the practice that citizens from a different Member State to where the agency is located are deprived of the opportunity to purchase a ticket at that agency, simply on grounds of nationality. Thirdly, the Commission is opposed to the practice of making the sale of tickets conditional upon the purchase of linked services from the agency such as accommodation or travel arrangements.

Transfers and restrictions on foreign sportspersons

49 *In October 1993, following a complaint from Jean Marc Bosman, the Belgian courts formally asked the European Court of Justice to rule on whether the relevant Treaty rules (including Articles 85 and 86) should be interpreted as prohibiting:*

- *"a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"*
- *"national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".*

50 *The European Court of Justice's ruling can be expected in early to mid 1995.*

51 *In its written observations to the European Court of Justice in January 1993 regarding the Bosman case, the Commission provides details of its position on transfers and football associations' rules restricting the numbers of foreign players. Both are indeed covered by rules on concerted practices (Article 85 of the Treaty).*

52 *Regarding the question of whether there has been an abuse of a dominant position (Article 86), the Commission has found no evidence of economic relations between the clubs such as would deem a position of collective dominance to exist, and it does not consider that Article 86 applies. Similarly, football associations, as they do not themselves recruit players, cannot be deemed to hold a dominant position on the market for recruitment of players. Again, Article 86 therefore cannot apply.*

Restrictive trading practices

53 The European Union's competition policy also applies to commercial companies manufacturing and distributing sports equipment. Restrictive trading

practices involving price-sharing and market-sharing agreements and the application of dissimilar conditions to equivalent transactions are banned. Examples of unfair competition involving sports equipment include cases on windsurfing equipment, sailing boats, and tennis equipment. The Commission examines complaints brought to its attention on a case-by-case basis to determine the extent to which these trading practices violate the provisions of the Treaty of Rome.

Dumping

54 The Commission can be called upon by *EU* companies, including sports equipment manufacturers, which consider themselves to be victims of dumping from third countries. The Commission will examine the complaint to determine whether a case of dumping exists and, if so, what can be done to protect or compensate prejudiced firms.

Subsidies to sport

55 The vast majority of sports organisations and activities receive public assistance. The level and forms of the assistance varies significantly from Member State to Member State. The Commission has received occasional complaints arguing that clubs from countries which provide relatively more funding to sport have a competitive advantage in international competitions over those from less generous Member States.

56 While the Commission has the competence to prohibit aid which distorts trade between Member States, it has not intervened in this area because subsidies as currently granted to sport do not significantly distort competition in *EU*-wide events nor on the transfer market. No prejudice is caused to clubs not benefiting from assistance. Moreover, as well as sometimes being economic activities, sports clubs carry out other functions to the extent that assistance to them could not be assimilated to state aid as granted to commercial enterprises.

57 *The European Parliament has recently called upon the Commission to carry out careful monitoring to ensure that free competition between top-level clubs is not distorted by excessive public financing.*

Animals in sport

58 The *EU* has put in place a series of legislative measures laying down minimum health requirements for the free circulation of horses within the *EU* and for their import into the *EU*. It also has drafted legislation on trade in competition horses, rules on participation in competitions, and rules for intra-community trade of horses. A series of applicatory decisions are also being put into place. *The establishment of a European Union passport to be used in the international movement of registered horses was agreed upon in 1993.*

59 The Commission is currently examining the animal health rules which will apply to horses going to the next Olympic Games in Atlanta.

EU sources of funding for sport

60 The EU funds a series of initiatives which are of interest to sports organisations as potential sources of finance. *Funding possibilities exist for sport in the context of regional development, education and training, research and development, Eastern and Central Europe, sport for the disabled and rural and cultural tourism.*

61 *In 1994, the Commission finalised a specific funding programme on sport called EURATHLON. New sections have been added to this report on sport for the disabled and Eurathlon and additional examples of projects potentially eligible for funding have been included.*

Environmental policy

62 Both the Environmental Impact Assessment Directive and, to a lesser extent, the Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, have an impact on sport. The effect of the former may be to delay the construction of certain sports facilities while an environmental impact assessment is carried out; the latter may result in Member States curtailing the practice of water sports, such as sailing in areas that have been designated as protected areas under the Directive.

Taxation

63 The EU has put into place a series of framework Directives which allow Member States a large degree of interpretation in determining whether sports activities should be taxable or not, and if so to what extent.

Use of the ECU

64 *Due to the financial and economic rationale of using the ECU in international sports events, the Commission encourages sports organisations involved in the financial management of international sports events to explore the economic rationale of using the ECU mainly in order to reduce exchange risk. For events and operations which do not go beyond national borders, however, there is no reason to switch to the ECU.*

Sport for people with disabilities

65 *A new section has been added on this issue. Directorate General X of the Commission provides financial support for innovative projects which promote sport for the disabled in the European Union. Moreover, the EU launched a series of "Community*

action programmes to assist disabled people" called "HELIOS II", which promotes equal opportunities for and the integration of disabled people, including the integration by sports in particular. In parallel, the EU set up a database, "Handynet", on organisations involved with sport for the disabled worldwide.

66 In response to growing demand from the various national sports organisations for disabled people and upon the invitation of the European Commission, a European Committee on Sports for People with Disabilities was established in November 1993.

APPENDIX A

List of Commission Directorates General and Special Services which contributed to the study

Appendix A

List of Commission Directorates General and Special Services which contributed to the study

- DG I. External Economic Relations
- DG II. Economic & Financial Affairs
- DG III. Industrial Affairs
- DG IV. Competition
- DG V. Employment, Industrial Relations & Social Affairs
- DG VI. Agriculture
- DG VII. Transport
- DG X. Information, Communication, Culture & Audiovisual
- DG XI. Environment, Nuclear Safety & Civil Protection
- DG XII. Science, Research & Development
- DG XIII. Telecommunications, Information Industry & Innovation
- DG XV. Internal Market & Financial Services
- DG XVI. Regional Policy
- DG XXI. Customs Union & Indirect Taxation
- DG XXIII. Enterprise Policy, Distributive Trades, Tourism & Cooperatives
- Task Force on Human Resources, Education, Training & Youth
- Legal Service
- Consumer Policy Service

APPENDIX B

European Community Committee for Sport for People with Disabilities List of National Committees

Appendix B

European Community Committee for Sports for People with Disabilities

List of National Committees

Belgium

**Belgisch Coördinatie Comité Sport voor Gehandicapten
Comité Belge de coordination du Sport
pour les personnes handicapées.**

c/o B.O.I.C.

Bouchoutlaan, 9

1020 Brussels

tel: + 32 2/479 19 40

fax: + 32 2 /479 46 56

Denmark

Dansk Handicap Idraets Forbund

Idraettens Hus

Brøndby Stadion, 20

2605 Brøndby

tel: + 45 42/45 55 55

fax: + 45 42/45 62 45

France

**Comité Français de Liaison pour les Activités Physiques
et Sportives des Personnes Handicapées (COFLASPH)**

42, Rue Louis Lumière

75020 Paris

tel: + 33 1/45 45 07 60

fax: + 33 1/45 45 31 82

Germany

Deutscher Behinderten-Sportverband e.V.

c/o DBS, Friedrich-Alfred-Strasse, 15

4100 Duisburg 1

tel: + 49 203/738 16 20

fax: + 49 203/738 16 28

Greece

Will be established soon.

Italy

Comitato Nazionale Italiano per i minorati

c/o C.O.N.I.

Foro Italico

Roma 00194

tel: + 39 6/36 851

fax: + 39 6/360 79 70

Ireland

Irish Sport Association for Persons with Disabilities

c/o Irish Wheelchair Association

Blackheath Drive, Clontarf

Dublin 3

tel: + 353 1/33 82 41

fax: + 353 1/33 38 73

Luxembourg

Comité National Luxembourgeois pour les personnes handicapées

c/o Comité Olympique National

7, Avenue Victor Hugo

1750 Luxembourg

tel: + 352/47 13 47

fax: + 352/47 13 49

Netherlands

Coördinatie Comité

c/o Nederlandse Sportbond voor Geestelijk Gehandicapten

P.O. Box 85273

3508 AG Utrecht

tel: + 31 30/36 37 47

fax: + 31 30/31 30 54

Portugal

Federação Portuguesa de Desporto para Deficientes

Rua de S. José 86, 1

1100 Lisbon

tel: + 351 1/342 20 01

fax: + 351 1/342 85 18

Spain

Comité de Deportes para Minusvalidos de la Comision de las Comunidades Europeas

c/o ANDE O'Donnell N° 37-1

28009 Madrid

tel: + 34 1/578 34 78

fax: + 34 1/578 28 42

United Kingdom

United Kingdom Coordinating Committee

c/o British Paralympic Association

Delta Point, Room G 13A

35 Wellesley Road

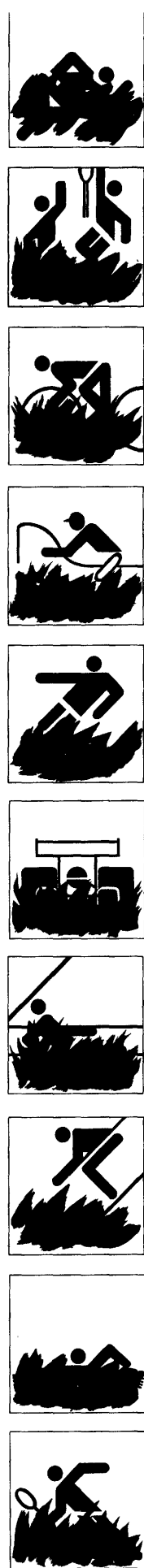
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THE IMPACT OF EUROPEAN UNION ACTIVITIES ON SPORT

- 1995 Edition -



EUROPEAN COMMISSION

Directorate-General
"Information, Communication, Culture, Audiovisual"



The impact of European Union activities on sport

- 1995 edition -

Study by Coopers & Lybrand
for DG X of the European Commission

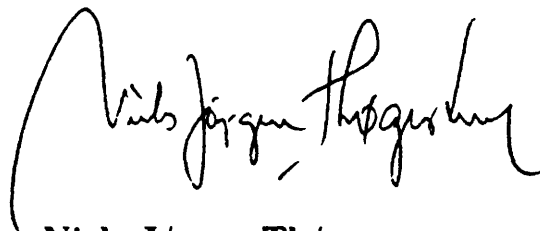
Foreword

September 1995 saw extensive press coverage of the Advocate General's opinion on the Bosman case, which brought to the attention of the general public, the link between the European Union and the sport of football. But the issues of free movement and competition policy, paramount in this particular case, are certainly not the only areas of EU activity with implications for the sports world.

I hope that this study, prepared by Coopers & Lybrand in close cooperation with the relevant Directorates-General of the European Commission, will serve as the sports world's guide to the wide range of EU legislative, policy and funding initiatives which have a current or potential impact on its activities.

Together with our new help desk, "Sport Info Europe", managed by our Sports Sector, the study provides information that is intended to contribute to continuing the constructive cooperation between the European Commission and the sports world.

My colleagues and I look forward to further fruitful collaboration with sports' representatives and to contributing together to the development of sport in Europe.



Niels Jørgen Thøgersen
Director, European Commission

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- A. List of Commission Directorates-General which contributed to the study
- B. The European Committee on Sports for People with Disabilities
List of National Committees

Executive summary

1 This 1995 edition of *The Impact of European Union Activities on Sport*, is the second update of the study originally produced in July 1993 by Coopers & Lybrand's European Union Office, as mandated by Directorate-General X of the European Commission. It describes the legislation and policies of the European Union and their actual or potential impact on the organisation or practice of sport. Besides adding policy and legislative changes since the July 1994 edition, it also includes a new introduction, which outlines the political and institutional structure for dealing with sports-related issues at European Union level.

Introduction

2 The Sports Sector operates from within Directorate-General X of the European Commission. It is responsible for ensuring intra-Commission and inter-institutional cooperation on sports issues and facilitating cooperation with the sports world. It manages two major programmes for the funding of sports activities - Sports for Persons with Disabilities and Eurathlon - and has launched an information service called Sport Info Europe. The Sports Sector organises the annual meeting of the European Sports Forum and the annual meeting of international sports federations with the Commission. It also plays a key role in discussions concerning future sports policy.

The free movement of persons and services

Rules on the fielding of foreign nationals

3 The governing bodies of certain sports impose rules which restrict the freedom of sportspersons to play for teams in countries where they are not nationals. In football, for example, teams are not allowed to field more than three foreign players (and two "assimilated" players) in European and international competitions. These rules apply equally to "EU foreigners" and "non-EU foreigners".

4 The Commission considers such rules to be contrary to the EU's rules on the free movement of persons, as they have the effect of restricting an EU citizen's right to work in any Member State of the European Union under the same conditions as nationals of that Member State. In the case of Jean-Marc Bosman, currently pending before the European Court of Justice, the Advocate General has already stated in his opinion of 20 September 1995, that the rule restricting the number of foreign players fielded in a football team is contrary to Article 48 of the Treaty.

Transfer of players

5 The compatibility of the football transfer system with the EU rules on the free movement of people is also being examined in the Bosman case. The Advocate General already stated in his opinion that Article 48 of the Treaty prohibits a football club from being able to demand or receive payment of a sum of money when one of its players whose contract has expired, is engaged by another club. The full court will give its ruling in late 1995 or early 1996.

Restrictions on naturalised sportspersons

6 Some sports federations' rules place restrictions on sportspersons who have become naturalised citizens of the country in which they are residing. Such rules are contrary to EU legislation as, once a Member State has accorded nationality to a person, that person should be entitled immediately to all the same rights as an existing citizen; including all rights as an EU citizen.

Restrictions on foreign amateurs

7 Amateur sportspersons who are residing in a Member State other than their Member State of origin sometimes find that they are prevented by the rules of the sports body in question from competing in local or higher level championships on the same conditions as nationals of that country. In the Commission's opinion and according to the European Court of Justice's jurisprudence, such rules are contrary to EU legislation on the rights to be accorded to workers and their families who are residing in any Member State.

Sports qualifications

8 The two major EU directives concerning qualifications are designed to facilitate the free movement of workers by ensuring the mutual recognition of qualifications gained for regulated professions in the different Member States. This legislation applies to all sports-related qualifications. Sports bodies' initiatives to develop European level diplomas may be eligible for support under the EU's Leonardo da Vinci programme.

Hooliganism

9 The Commission has stated that it would not object to Member States taking measures, such as the introduction of supporters' identity cards, which may restrict the free movement of "known" hooligans (that is supporters having committed previous offenses) as long as such measures did not prevent other EU citizens from continuing to enjoy their right to free movement and to free provision of services and as long as they did not seek to control the free movement of "potential" hooligans (that is supporters with no previous convictions on hooliganism offenses).

10 The position of the European Parliament was stated in its April 1994 report on the EC and Sport: the nationality of a supporter from a European Union country should never be the criterion for refusing or impeding access to sports events.

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11 The Commission believes that its only role with regard to insurance is to legislate for a single European market in the provision of insurance services. In relation to sport, it is of the opinion that the onus should lie with clubs, players and spectators to ensure that they are adequately covered when participating in, or attending, a sporting event.

Advertising and sponsorship

12 The 1989 "Television Without Frontiers" Directive sets out minimum requirements, both qualitative and quantitative, for television advertising and sponsorship. The Directive bans direct and indirect advertising for cigarettes and other tobacco products and the sponsorship of television programmes by tobacco manufacturers. Modifications to this Directive are currently under discussion at the Council of Ministers.

13 The Commission has also proposed a Directive which would ban all types of advertising for tobacco products beyond the point of sale, and not just television advertising as in the Television Without Frontiers Directive. A blocking minority of Member States still oppose the adoption of this Directive.

14 The Commission's Green Paper on commercial communication is in preparation. Among others, this paper will examine Commission policy on advertising and sponsorship and may therefore affect sports organisations using these mediums. The Green Paper is expected to be published later this year.

Satellite broadcasting and cable retransmission

15 A Council Directive now coordinates legislation on copyright and related rights which broadcasters must acquire when either broadcasting by satellite or retransmitting by cable across two or more Member States. The Directive clarifies the conditions for trans-frontier broadcasting and therefore would also apply to pay-television channels specialising in sport.

Encryption of television broadcasting

16 A Green Paper is being drafted to review the current situation regarding barriers to the provision of cross-border encrypted services and to draw up Commission policy guidelines. This is relevant for sport insofar as pay per view may

become more common in the case of sporting events, as is currently already the case with boxing in the US.

Lotteries and wagering activities

17 In December 1992, based on the application of the principle of subsidiarity, the Council dismissed any notions of the Commission proposing legislation on the harmonisation of gambling and gaming.

18 The European Court of Justice's ruling on the Schindler case provides some guidelines on the application of EU legislation to lottery activities. The Court ruled that lotteries can be considered to be a service and therefore fall within the scope of the relevant Treaty Articles. The Court also ruled that national legislation which prohibits the holding of lotteries in a Member State is an obstacle to the freedom to provide services. However, because of the particular nature of lotteries, national authorities can restrict or prohibit them, provided that the restrictions are on a non-discriminatory basis.

Company law

19 Although the Commission aims to attain a common and comprehensive legal environment for all types of EU companies, the legal status of sports clubs is not yet governed by clear and harmonised rules at the EU level and Member States continue to be responsible for the legal status under which sports organisations may operate. The EU has no intention of targeting sports clubs under any harmonisation measures. Details are provided on a proposed statute for a European Association and the European Economic Interest Grouping ("EEIG"), both of which may be of interest to sports organisations.

Health and safety

Doping

20 EU legislation that has an indirect impact on the fight against doping includes Directives designed to prohibit the use of medicinal products other than for the diagnosis or treatment of pathological states, to prevent their use in unauthorised forms and dosages and to prevent their unauthorised (black market) sale or prescription and their advertisement.

21 As it does not fall within the competence of the EU to propose binding legislation specifically on testing sportspersons for the illegal use of performance enhancing substances, the Commission's action was limited to drawing up a Code of Conduct against Doping in Sport, which was adopted in February 1992.

22 A joint initiative of the Council of Europe and the Commission called "Europack", has led to the development of the "Clean Sport Guide", which is a comprehensive education and information pack aimed at athletes, teachers, doctors and coaches.

Health promotion

23 An Action Programme for Health Promotion, Education and Training is likely to be approved before the end of 1995. The Programme will run from 1996 to the year 2000 and could be of interest to sports bodies that intend to organise health promotion initiatives.

Protection of young people at work

24 The 1994 Directive on the protection of young people at work is due to enter into force in the Member States in June 1996. In general, the Directive prohibits work by children (under 15) and ensures that work by adolescents is strictly regulated. Member States may, however, provide for derogations concerning children carrying out certain activities, including sports, as long as these activities are not harmful to the child's physical and psychological health.

Liability of service suppliers

25 A Commission proposal on the Liability of Suppliers of Services which sought to establish a reversal of the burden of proof of liability in the case of accidents was withdrawn in June 1994. The Commission decided to reorientate its action, so that sports-related sectors are unlikely to be affected in the near future.

Safety of spectator facilities

26 The European Standardisation body (CEN) has a Technical Committee on spectator facilities which is responsible for developing standards for sports and multipurpose venues, in order to ensure spectator comfort and safety.

The free movement of goods

Transportation of sports equipment between Member States

27 As of 1 January 1993, the elimination of all administrative documents in intra-European Union trade, in combination with the new VAT regime, has made superfluous previous arrangements for the temporary importation of goods. The temporary import of sports equipment, for competitions or other sporting activities, is, therefore, completely free of restrictions, with the exception of such items as firearms.

Standardisation

28 The European Union's standardisation legislation is designed to ensure that differing standards in different Member States do not adversely affect intra-Community trade, by setting minimum health and safety standards to which manufacturers must comply.

29 The third mandate of the Commission to the European standardisation body (CEN) under the Directive on Personal Protective Equipment (PPE) includes items of sports equipment, such as mountaineering equipment and diving accessories.

30 A 1994 Directive on Recreational Craft harmonises the essential safety requirements for the design and construction of recreational boats.

The Olympic symbol

31 Although the Commission has not issued an official position on the matter in response to a complaint, it feels that the obligation on National Olympic Committees and the Organising Committee of the Olympic Games not to use their emblems for any commercial or profit-making purposes in the country of another National Olympic Committee, without that Committee's permission, leads to a partitioning of the European Union market which is contrary to the principle of the free movement of goods.

Sports foods

32 In a 1994 proposal modifying the 1989 Directive on the approximation of the laws of the Member States relating to foods for particular nutritional uses, the group of food relevant for sportsmen was dropped from the list of groups for which EU provisions will be laid down. In July 1995, the European Parliament approved the amendments in its first reading of the proposed Directive.

Footwear labelling

33 In March 1994, the Council adopted a Directive on the labelling of the materials used in the main components of footwear, including sports shoes, for sale to the consumer. The Directive aims to prevent any barriers to trade in the European Union for footwear and to help consumers identify what materials have been used in their composition.

Quantitative restrictions on sports footwear

34 In March 1994, the Commission adopted a proposal to remove disparities among Member States' import rules on sports footwear from China. These rules were

amended in March 1995. Certain sports shoes are exempted from quantitative restrictions.

Certification, testing and technical specifications

35 The Commission has received complaints that non-tariff barriers to trade are being created by differing national definitions and standards for the manufacture, testing and certification of recreational aircraft. The Commission has now closed the case against the UK's Civil Aviation Authority, but is still examining the complaint introduced by the Belgian Federation of Microlight Aircraft.

Competition policy

36 Commission involvement in the application of EU competition policy rules to sport is carried out on a reactive and case-by-case basis, usually following the receipt of a complaint. The main sport-related areas in which the Commission has been requested to act include: broadcasting rights, product endorsement, ticket distribution, competition between federations, government funding to sport, restrictive trading practices and transfers of and restrictions on foreign players.

Exclusive broadcasting rights

37 Two main sport-related broadcasting issues were called to the Commission's attention. The first is the acquisition of exclusive broadcasting rights for sports programmes by a group of broadcasters, in particular by the European Broadcasting Union (EBU), and whether this allows fair competition.

38 In June 1993, the EBU agreed to improve access to sports events for non-member commercial stations. Following amendments to the acquisition procedures system, the Commission agreed to exempt from Article 85 the arrangements for the acquisition of broadcasting rights for a five-year period.

39 The second main broadcasting issue called to the attention of the Commission is the UEFA article 14 case which concerns the federations' control of broadcasting for foreign events on their home territory.

40 Article 14 of UEFA's Statutes provides a mechanism for regulating cross-border transmissions of football. Following lengthy negotiations with the Commission, in 1993 UEFA introduced a new regime to regulate cross-border transmissions. The main feature of the regime is the establishment of "free, protected and closed" time slots. The philosophy behind UEFA's article 14 rule is that in order to protect domestic football, it is necessary to ensure that football fans are encouraged to go to see and participate in local matches rather than simply watching football on television. The Commission is currently still discussing the matter with UEFA.

Product endorsement

41 The Commission is examining three aspects of the Danish Tennis Federation's product endorsement policy: the acceptability of the label "official", the obligatory use of official equipment in competitions and the recourse to exclusive equipment distributors.

42 The Commission felt that each of these practices may contravene European Union competition policy. The granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the product. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. Furthermore, there should be a competitive tender before allocating the label to a specific sponsor.

43 On the obligation to use official equipment for competitions, the Commission accepts that the organiser of a competition can select the equipment it sees fit to choose. It is only when the federations are not responsible for the organisation of a competition, even if that competition is organised under the auspices of the federation, but nevertheless use their strong position to oblige its affiliates to use a particular brand of equipment, that an abuse of the federations' dominant position in tennis may arise.

44 The final point to which the Commission objects is the practice of a federation encouraging its affiliates to purchase their equipment, (which they are obliged to use in the federation's competitions), from specific distributors. This may constitute an abuse of the federation's strong position by restricting competition among suppliers.

45 At the time of writing, no official decision had been taken by the Commission on the DTF case. Following discussions between the Commission and the DTF, the latter has modified its rules and has come around to the Commission's position. The new rule changes have not yet been notified to the Commission, but are expected to be so shortly. Once they are notified, the latter will examine the changes to ensure that they comply with EU competition rules.

Competition between federations

46 The Commission's position is that sports federations are subject to competition policy and that the Treaty of Rome requires the Commission to ensure that sports authorities do not abuse the strong position they have in their respective sports. Contrary to the fears of some federations, the Commission has nothing against the monopoly position of sports authorities as such; it is merely the abuse of the dominant position which is contrary to competition policy. Moreover, trade between Member States must be affected. The monopolistic structure of the sports world is therefore not called into question by the Commission.

47 The Commission was called upon by the Belgian indoor football authorities to examine the Union Belge's policy towards indoor football. The indoor federation claimed that the Union Belge's policy prevented football players from alternating, during the course of the season, between the Union Belge's competitions and indoor football competitions. The indoor federation felt the Union Belge was abusing the dominant position it had in Belgian football. In early 1994, the Commission rejected the complaint of the indoor football federation on the grounds that trade between Member States was not seriously affected.

Ticketing

48 The Commission was called upon to investigate ticketing practices for the Barcelona, Albertville and Lillehammer Olympic Games and the 1990 and 1994 Football World Cups respectively in Italy and the US. The Commission questions three aspects of ticket distribution. Firstly, it queries the partitioning of the market by granting exclusivity to one agency per Member State. Second, it questions the practice whereby EU citizens from a different Member State to where the agency is located are deprived of the opportunity to purchase a ticket at that agency, simply on grounds of nationality. Thirdly, the Commission is opposed to the practice of making the sale of tickets conditional upon the purchase of linked services from the agency such as accommodation or travel arrangements.

49 Recently, many organisers of sports events have altered the rules of their ticket distribution systems so as not to grant exclusivity. They have also been more transparent in their selection of official agents.

Transfers and restrictions on foreign sportspersons

50 In October 1993, following a complaint from Jean-Marc Bosman, the Belgian courts formally asked the European Court of Justice to rule on whether the relevant Treaty rules (including Articles 85 and 86) should be interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

51 The European Court of Justice's ruling can be expected in late 1995 or early 1996. In the meantime, one of the Advocates General, who advise the Court and assist it in preparing decisions, published his opinion on 20 September 1995. He stated that Article 85 does indeed prohibit agreements between clubs, and decisions of sports associations allowing a football club to demand and receive payment when one of its players, whose contract has expired, is taken on by another club. A

restriction of competition ensues, above all, from the fact that a club is obliged to pay a transfer fee when acquiring a player, as this creates a tendency to preserve the status quo.

52 Article 85 should also be interpreted as prohibiting agreements between clubs and decisions of sports associations which restrict the access of players from other Member States to club competitions organised by national and international federations. These rules obstruct competition because they restrict the scope for individual clubs to compete with each other by taking on players.

Restrictive trading practices

53 The European Union's competition policy also applies to commercial companies manufacturing and distributing sports equipment. Restrictive trading practices involving price-fixing and market-sharing agreements and the application of dissimilar conditions to equivalent transactions are banned. Examples of unfair competition involving sports equipment include cases on windsurfing equipment, sailing boats, and tennis equipment. The Commission examines complaints brought to its attention on a case-by-case basis to determine the extent to which these trading practices violate the provisions of the Treaty of Rome. In December 1994, the Commission imposed fines on Tretorn and certain of their exclusive distributors. The Commission ruled that Tretorn had applied an export ban to their exclusive distributors of tennis balls, and that the exclusive distributors had participated in the implementation of the export ban and suspension of supplies, thereby preventing parallel imports of tennis balls.

Dumping

54 The Commission can be called upon by EU companies, including sports equipment manufacturers, which consider themselves to be victims of dumping from third countries. The Commission will examine the complaint to determine whether a case of dumping exists and, if so, what can be done to protect or compensate prejudiced firms.

Subsidies to sport

55 The vast majority of sports organisations and activities receive public assistance. The level and forms of the assistance varies significantly from Member State to Member State. The Commission has received occasional complaints arguing that clubs from countries which provide relatively more funding to sport have a competitive advantage in international competitions over those from less generous Member States.

56 While the Commission has the competence to prohibit aid which distorts trade between Member States, it has not intervened in this area because subsidies as currently granted to sport do not significantly distort competition in EU-wide events

nor on the transfer market. No prejudice is caused to clubs not benefiting from assistance. Moreover, as well as sometimes being economic activities, sports clubs carry out other functions to the extent that assistance to them could not be assimilated to state aid as granted to commercial enterprises.

Animals in sport

57 The EU has put in place a series of legislative measures laying down minimum health requirements for the free circulation of horses within the EU and for their import into the EU. It also has drafted legislation on trade in competition horses, rules on participation in competitions, and rules for intra-community trade of horses. A series of applicatory decisions are also being put into place. Important changes to the Directive on trade in competition horses are currently under discussion.

58 The Commission has put in place animal health rules which will apply to horses returning from the next Olympic Games in Atlanta. The Commission is still in discussions with the relevant US authorities to ensure that no unjustified animal health barriers are erected which would restrict the participation of Community horses at the Games.

EU sources of funding for sport

59 The EU funds a series of initiatives which are of interest to sports organisations as potential sources of finance. Funding possibilities exist for sport in the context of programmes targeting regional development, education and training, promotion of the consumption of milk, research and development, Eastern and Central Europe, sport for disabled persons and rural and cultural tourism.

60 In 1994, the Commission launched the pilot phase of Eurathlon, a new funding programme for sport. 82 projects were selected for financing from the 1995 budget. The overall objective of the programme is to contribute to a better understanding and sense of solidarity between European citizens through their participation in sports events and to promote the role that sports can play in improving health and encouraging social and economic integration. Eurathlon II will continue to fund such projects in 1996.

Environmental policy

61 Both the Environmental Impact Assessment Directive and, to a lesser extent, the Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, have an impact on sport. The effect of the former may be to delay the construction of certain sports facilities while an environmental impact assessment is carried out; the latter may result in Member States curtailing the practice of water sports, such as sailing in areas that have been designated as protected areas under the Directive.

Taxation

62 The EU has put into place a series of Directives which allow Member States a large degree of interpretation in determining whether sports activities should be taxable or not, and if so to what extent.

Use of the ECU

63 The present basket ECU offers several advantages for transactions involving several currencies, by reducing exchange risk, making hedging easier and increasing financial stability. The Commission encourages sports organisations involved in the financial management of international sports events to explore the economic rationale of using the ECU and to consider the best strategies for preparing for the change over to the single currency, which should happen not later than 1999.

Sport for people with disabilities

64 Directorate-General X of the Commission provides financial support for innovative projects which promote the integration of the disabled through sports in the European Union. Directorate-General V has also launched a series of "Community action programmes to assist disabled people" called "HELIOS II", which promotes equal opportunities for, and the social and economic integration of, disabled people, including the integration through sports in particular.

65 In response to growing demand from the various national sports organisations for disabled people and upon the invitation of the European Commission, a European Committee on Sports for People with Disabilities was established in November 1993.

Preface

1 This 1995 edition of *The Impact of European Union Activities on Sport*, is the second update of the study originally produced in July 1993 by Coopers & Lybrand's European Union Office, as mandated by Directorate-General X of the European Commission.

2 The objective of the study is to document comprehensively the impact of European Union legislation and policy on sport.

3 This new edition takes into account legislative and policy changes since the last edition of the report, dated July 1994.

4 In addition, a new introductory chapter briefly describes the institutional framework for coordinating sports-related issues and initiatives aimed at improving cooperation with the sports world.

Acknowledgements

5 Coopers & Lybrand wishes to extend its thanks to those within the European Union institutions and other organisations who provided input to this update. Without their cooperation, it would not have been possible to complete the work. A complete list of the Commission Directorates-General which participated in the study is included in Appendix A.

6 While every effort has been made to reflect accurately the views of those consulted, the information given in the study does not bind the European Commission in any way.

Introduction

1 Although not directed specifically at sport, many of the rules, policies and programmes of the European Union (EU) have an impact on, or are of interest to, the sports world. This study looks at the European Union's activities that are of particular relevance to sport.

2 The following introduction provides a brief overview of the sports-related institutional structures within the European Union. These structures are designed to facilitate the mutual exchange of information and opinions between the EU and the sports world and to promote the development of sport within the EU.

DG X's Sports Sector

3 The European Commission is composed of 24 Directorate-Generals (DGs) and several special services. Directorate-General X is responsible for information, communication, culture and audiovisual matters and it is within DG X that a new Sports Sector has been created. The responsibilities of the Sports Sector cover the following main areas:

- intra-Commission and inter-institutional cooperation on sports issues;
- cooperation with sports organisations: the European Sports Forum, the meeting of international sports federations, bi-lateral meetings with sports organisations (see below);
- Sport Info Europe and the sports newsletter;
- management of funding programmes: Eurathlon and Sports for People with Disabilities (see Chapter VI on source of funding);
- sports policy: the possible inclusion of sport in the Treaty; the Communication on sports policy;
- joint initiatives with the Council of Europe: Europack, Clean Sport Guide and Fairplay Campaign (see Chapter II on Health, Safety and Ethics).

Budget

4 The budget available to DG X's Sports Sector for 1995 is 2 million ECU. Within this budget line, 1.3 million ECU is officially allocated to the funding programme for sports for people with disabilities. The remainder funds the Eurathlon programme and information measures aimed at sports authorities and organisations.

Interservice Group

5 Given the large number of different DGs involved in the formulation and management of policies which have an impact on sport, DG X's Sports Sector

regularly convenes an informal interservice group on sport, formed of approximately 40 representatives from 18 DGs. These meetings facilitate discussion of sports-related issues and ensure that there is a coherence in the Commission's work, wherever it is of relevance to the sports world.

6 In addition, DG X's Sports Sector regularly participates in ad hoc meetings on sports-related matters that are organised by other DGs.

The European Sports Forum

7 Inaugurated in 1991, the annual European Sports Forum meeting brings together representatives of the European Commission, the European Parliament, the Member States' ministries competent for sport, the National Olympic Committees and the non-governmental sports organisations. A number of observers are also invited. The aim of the Sports Forum is for all parties to discuss EU activities of interest to the sports world. Presentations on specific issues are given by Commission officials and other Forum participants. Information and opinions are freely exchanged. The main subjects discussed during the 1994 Forum were developments in sports policy, educational funds, health and safety issues and the sports sector as a job creator.

8 The Sports Forum meeting is followed the next day by a meeting of the Commission with the European and international sports federations, in order to extend the discussions to the broadest possible range of sports representatives. At the 1994 meeting it was clear from the lively nature of the discussions that certain divergences of opinion persist over the issue of the free movement of sportspersons. There was nevertheless a constructive dialogue about this and other matters and all parties stressed the need for increased cooperation.

9 Following each Forum, DG X produces the "Forum Newspaper", which reports on the issues raised at the Sports Forum. The Forum Newspaper is targeted at a wider audience than the participants at the Forum.

Sport Info Europe

10 Sport Info Europe is the information service and help desk managed by DG X's Sports Sector. It is a telephone hotline which answers questions from any interested parties on matters concerning the EU and sport. Proposed by Coopers & Lybrand as a result of its first examination of EU activities and their impact on sport, and endorsed by the Sports Forum, it became operational in November 1994.

11 Acting as a "one-stop-shop", Sport Info Europe provides general information on the EU and sport and establishes contacts between specialists in the EU and the sports world. It also continues to promote cooperation between the various DGs dealing with matters that have an actual or potential impact on sport.

12 Sport Info Europe deals with matters that fall into three broad categories: requests for documentation; general policy questions; and questions necessitating the collaboration of other DGs. The requests are related to European funding in general, to legal problems on both national and international level and to activities in DG X's Sport Sector and other Commission services dealing with sport. To date, the most frequent requests have concerned the free movement of persons, recognition of diplomas, competition policy and the Eurathlon programme.

Communication on Sport Policy

13 A new Commission Communication is being prepared to indicate the Commission's current and future actions in the field of sport.

"The EU and Sport" Newsletter

14 In April 1995, DG X launched a newsletter "The EU and Sport", which is produced by Sport Info Europe and distributed to the national sports organisations. The newsletter carries articles on the latest EU developments of interest to the sports world. The intention is to publish it approximately four times a year.

Meetings of the European Sports Directors

15 A new development at an institutional level, the meetings of European Sports Directors (ie key national ministry officials) represent a good example of the increasing interest among Member States' governments in strengthening the cooperation between sports bodies and the European Union authorities.

16 The first meeting of European Sports Directors was arranged by the German Presidency and was held in Bonn in September 1994. A second meeting, under the auspices of the French Presidency, was held in Paris in March 1995. The Spanish Presidency will hold a meeting in the second half of 1995. Items discussed at these meetings range from specific questions, such as public aid to sport and the equivalence of diplomas, to broader questions, such as the possible inclusion of sports in the revised Treaty.

Sports policy

17 There is currently no specific mention of sport in the European Union Treaty. There are, however, on-going discussions in the sports world concerning the potential inclusion of an article on sport in the Treaty (or alternatively, the inclusion of a reference to sport in Article 128 on Culture) when it is revised by the Inter-Governmental Conference in 1996. It is possible that such an article could foster the recognition of sport's role in society and require the EU to financially support supra-national sports measures. It has been argued that this article would be positive for the sports world, as long as it referred to respect for the autonomy of sport, included a

compatibility clause, and emphasised respect of the principle of subsidiarity and avoidance of duplication of effort.

European Parliament

18 The European Parliament (EP) plays an important part in the approval of the Commission's legislative and policy initiatives, including budgetary matters.

19 Within the EP, the Committee on Culture, Youth, Education and the Media has lead responsibility for sports. Reference is made to this Committee's 1994 report on the European Community and Sport in the subsequent chapters of this study.

20 An EP Sports Intergroup also allows for the cross-committee and cross-party discussion of sports issues. It also hears representations from various sports bodies, who wish to put across their point of view. The Intergroup is represented at the European Sports Forum and DG X's Sports Sector participates in the Intergroup's meetings.

I The free movement of persons and services

The principles

1001 The free movement of persons and services is embodied in the Treaty of Rome as one of the "Foundations of the European Union".

1002 A distinction is made between free movement of workers (ie employees), freedom of establishment (of self-employed persons setting up a permanent place of business in another Member State) and freedom to provide services (where there is no establishment of a permanent place of business in the Member State in which the service is being provided). In every case, the Treaty of Rome recognises the right of EU citizens pursuing an economic activity to work in any Member State of the European Union under the same conditions as nationals of that Member State.

The main provisions

Free movement of workers

1003 Article 48 gives a worker the right to reply to an offer of employment in any Member State and to reside in that country to carry out that employment. Member States are therefore obliged to abolish any discrimination based on nationality with regard to employment, remuneration and other conditions of work and employment. Member States can only restrict this right with regard to public service jobs, or if they can justify such a restriction on the grounds of public policy, public security or public health.

Free establishment

1004 Article 52 gives self-employed persons who wish to move to and establish a business in another Member State the same rights as those described for workers.

Freedom to provide services

1005 Article 59 requires the abolition of restrictions on the free provision of services supplied by a national of another Member State. Article 60 defines the services concerned.

Mutual recognition of qualifications

1006 As Articles 48 and 52 alone would not stop discrimination taking place through the host Member State's refusal to accept a professional qualification for a regulated profession that had been acquired in the home Member State, Article 57 gives the

Council the power to enact legislation for the mutual recognition of such qualifications.

1007 Following a period of a number of years when Directives on specific professions (doctors, nurses, etc) were adopted and entered into force, two important Directives were adopted, with a view to establishing a general system for the mutual recognition of professional qualifications. This system concerns all professions which are not covered by specific directives. It therefore applies to sports professions.

1008 The first Directive¹, which entered into force in January 1991, concerns diplomas obtained following a period of education or training of at least three years duration (hence its nickname "Bac+3"²). The second Directive³, which entered into force in the Member States in June 1994, concerns higher education diplomas and qualifications obtained after studies of less than three years duration.

1009 Both general Directives apply to "regulated professions", ie occupations which can only be entered by those who hold a diploma, certificate or other qualification from the national training system, as stipulated by legal, regulatory or administrative provisions. For example, in France it is necessary to possess the "brevet d'Etat d'éducateur sportif (B.E.E.S)", in order to be able to teach sport on a remunerated basis. All sports professions therefore fall within the scope of the Directives, whether they are exercised on an employed or self-employed basis. The Directives also apply to professionals who work on a temporary basis in a Member State other than the one in which they are established.

1010 The general system common to the two Directives establishes certain principles. One principle is that, if a person is fully qualified to practice their profession in their Member State of origin, they should also be qualified to practice in their host Member State. These qualifications should be, without exception, recognised as they stand. Recognition is based on mutual trust, without any prior co-ordination of the types of training for the various professions concerned.

1011 Furthermore, requests for proof of professional experience by the regulating authority in the host Member State, or insistence on an adaptation period or aptitude test, are to be permitted only where the length of training or the course content differs substantially.

1012 The general system also provides for guarantees regarding procedures. A formal demand for recognition of their qualification must be made by the person

¹ Council Directive 89/48/EEC; OJ N° L 19/89; 24. 1. 89

² The Baccalauréat (or Bac) is the secondary school examination under the French system that gives a university entrance qualification.

³ Council Directive 92/51/EEC; OJ N° L 209/92; 24. 7. 92

seeking to work in a host country. The competent authorities then have four months to communicate their decision to the person concerned.

1013 Of the specific directives mentioned above, several were adopted from 1975 to 1989 and consolidated into a sole Directive in 1993, in order to facilitate the free movement of doctors and the mutual recognition of their qualifications⁴, including qualifications for specialised medicine. Lists of recognised qualifications are provided for medicine and specialised medicine, both common to all Member States and peculiar to two or more Member States. The Directive also sets out provisions to facilitate the effective right of establishment for doctors and their freedom to provide services.

1014 There is nothing in the Directive which prevents a Member State from recognising specialisations, such as sports medicine, which are not already listed in the Directive. Furthermore, the Directive makes clear provision for those qualifications which are not already set in the Directive to be taken into account by Member States in which a formal qualification is required.

Key issues

1015 To date, the actual or potential impact on sport of the European Union's rules on the free movement of people and services relates to the following issues:

- rules on the fielding of foreign nationals;
- transfer of players;
- restrictions on naturalised sportspersons;
- restrictions on foreign amateurs;
- sports qualifications;
- hooliganism;
- insurance;
- advertising and sponsorship;
- satellite broadcasting and cable retransmission;
- encryption of television broadcasting;
- lotteries and wagering activities;
- company law.

1016 Each of these issues is considered in more detail below.

Rules on the fielding of foreign nationals ("nationality clause")

1017 The governing bodies of certain sports impose rules which restrict the freedom of sportspersons to play for teams in Member States where they are not nationals.

⁴ Council Directive 93/16/EEC; OJ N° L 165/93; 7. 7. 93

1018 A key point concerning these rules is that they are applied by the sports bodies, without distinction, both to "EU foreigners" (for example a French person residing in Italy) and to "non-EU foreigners" (for example, an American residing in Spain).

1019 The issue of such restrictions has been particularly highlighted in the case of professional football, the major aspects of which are discussed below, but other sports, such as basketball and volleyball, experience similar problems.

1020 The current rules of the Union of European Football Associations (UEFA) were introduced in April 1991, following the so-called "Gentleman's Agreement"⁵ with the Commission. Since the 1992/93 season, the number of "non-eligible" players (ie players who are not eligible to play for the national team of the Member State in which their club is situated) that can be included in the referee's official report, cannot be limited by national associations to less than three. The referee's official report can also include the names of two "assimilated foreign players" ie two non-nationals who, on the date of that report, have been playing in their country of residence for an uninterrupted period of five years, including three in youth teams. This "three plus two" rule applies to all first division leagues and from 1996/97 is due to be applied to all other professional leagues.

1021 According to UEFA, this rule limiting the number of non-national players in a team simply attempts to ensure that not all the best players end up playing for a limited number of teams in a limited number of countries. UEFA points out that even with the current restrictions in place, there has been a trend towards domination of the European game by a small number of powerful teams in the strongest countries (eg AC Milan). With the increasing influence of money in football this trend is likely to continue. Thus, UEFA believes that structures are necessary to ensure that the raw power of money is not the sole determinant of success. UEFA contends that the rule limiting the number of non-nationals is essential to maintain the competitive structure of European football and to develop the game in smaller and (financially weaker) countries.

1022 If the European Court of Justice finds in favour of Jean-Marc Bosman in the case currently pending (see paragraphs 1039-1042 below), this rule will have to be changed radically.

Transfer of players

1023 Transfer of players between clubs is commonplace in sport, both among amateurs and professionals. In football, when a player moves from one club to another, the acquiring club must pay a compensatory amount or fee to the ceding

⁵ The judgment delivered by the Court of Justice in Case C117/91 held that the Agreement was not an "act" susceptible to judicial review.

club. The amount of the compensation can be automatically set at the end of the contract period, or be negotiated freely. In some countries, when no voluntary agreement is reached, the amount can be fixed by arbitration. The obligation to pay transfer compensation is based on the rules of football regulatory authorities (FIFA, UEFA and national associations). The main justification for the transfer fee is to compensate clubs for the investment made in the player, in particular, training costs. The football authorities also hold that small clubs rely on transfer fees from large clubs to sustain their income.

1024 In most cases, transfers take place at the end of the season and, in the vast majority of cases, the system has not given rise to problems. Nevertheless, there have been cases where the failure of two clubs to agree on a transfer fee has prevented a player who has reached the end of his contract with one club, from moving to the club of his choice, as happened in the case of footballer Jean-Marc Bosman (see paragraphs 1039-1042 below and Chapter IV on competition policy for details).

1025 In September 1995, a complaint was also made to the Commission by a Danish professional football player, disputing the legality of the system of transfer fees under European law.

Restrictions on naturalised sportspersons

1026 A related problem to restrictions placed on the number of foreign nationals in a team, is that of the limitations placed by sports federations' rules on players who have become naturalised citizens of the country in which they are residing.

1027 This problem arises in many sports and is illustrated by disputes concerning the rules of the French basketball association.

1028 This association had limited the number of foreign players allowed to play in the national championships to two. The clubs had frequently tried to bypass this rule by asking their players to acquire French nationality. The association decided to combat this situation by ruling that of the ten players listed on the match card, at least eight had to have been licensed by the federation for more than five years. This rule was annulled by the Conseil d'Etat in 1984.

1029 The association subsequently adopted a regulation in 1986 which allowed clubs to field a maximum of two players who would be ineligible to play for the French team in international competition under the rules of the International Basketball Federation (FIBA). This 1986 regulation included a clause to the effect that players who had been nationalised for less than three years were considered to be foreign players. The regulation was found by the Conseil d'Etat to be contrary to the French law of 1983 which abolished all transition periods for naturalised persons and stated that a person having acquired French nationality through naturalisation was entitled to benefit from all the rights of a French citizen as of the date of his naturalisation.

1030 The FIBA rule on naturalisation still exists and, where applied by national federations, runs counter to EU rules in that it prevents an EU citizen who has become a naturalised citizen of another EU country from fully exercising his or her profession.

Restrictions on foreign amateurs

1031 Several cases of discrimination based on nationality in amateur sports have been brought to the attention of the Commission with regard to the amateur basketball and volleyball leagues in Italy, basketball leagues in Greece, and the squash, tennis and judo leagues in Belgium. Amateurs from other Member States who are resident in the Member State of the league in question have either been prevented from competing in championships (varying from local to high level championships) or have had to comply with different rules to those governing nationals of the country.

1032 This is particularly a problem for young people who have moved with their families to another Member State, but who are not permitted by the sports clubs or federations to play in national or international competitions for their host country.

The Court of Justice position

1033 In the 1970s, the European Court of Justice (ECJ) interpreted European Union free movement rules with regard to sportspersons in two major preliminary rulings requested by national courts. The first case⁶ concerned two Dutch motorcycle pacemakers who wanted to work for cycling teams of other Member States but were restricted from doing so by the rules of the International Cycling Association. These rules stipulated that the pacemaker had to be of the same nationality as the cyclists in the team. The second case⁷ questioned the rules of the Italian Football Federation, according to which only players who were affiliated to the federation were allowed to take part in matches, membership of the federation being, in principle, only open to players of Italian nationality. Both sets of rules were held by the complainants to be contrary to European Union law.

1034 In making its judgment in the Walrave case, the Court said that where the practice of sport had the character of gainful employment or remunerated service, it constituted an economic activity within the meaning of Article 2 of the Treaty and therefore fell within the scope of Articles 48 or 59, which call for the abolition of discrimination based on nationality.

⁶ Walrave and Koch v. A.U.C.I; Case 36/74; judgment of 12. 12. 74.

⁷ Donà v. Mantero; Case 13/76; judgment of 14. 7. 76.

1035 However, the Court also said that the prohibition of discrimination based on nationality did not affect "the composition of sport teams, in particular national teams", the formation of which was "a question of purely sporting interest" and as such, had nothing to do with economic activity.

1036 In the Donà case, the Court stated more categorically that the adoption of rules that discriminate on the grounds of nationality, even by a "sporting organisation", unless they related to matters that were only of a sporting, rather than an economic interest, were incompatible with Articles 7, 48 and 59 of the Treaty.

1037 Although the case was not concerned specifically with sport, a Court of Justice decision in 1992⁸ clarified the position regarding the possession of Member State and third country nationality and the exercise of the right of establishment. The Court ruled that a Member State may not ignore the fact that a person possesses the nationality of another Member State and that a person may rely on such nationality for the exercise of fundamental freedoms which flow from the Treaty.

1038 With specific regard to restrictions on foreign sportspersons, footballer Jean-Marc Bosman brought before the Court of Justice an action to have the "Gentleman's Agreement" between the Commission and UEFA declared void. In its ruling of 4 October 1991⁹, the Court rejected this action as inadmissible on the grounds that there had not been a formal decision by the Commission. The Commission could not, therefore, be challenged under Article 173 of the Treaty.

1039 In October 1993, a Belgian court, also seized by Jean-Marc Bosman, formally asked the European Court of Justice¹⁰ (as it is entitled under Article 177 of the Treaty of Rome) to establish whether the relevant Treaty rules (Articles 48, 85 and 86) should be interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

1040 On 20 September 1995, one of the Advocates General of the European Court of Justice, gave his opinion on the case. He maintained that Article 48 prohibits a

⁸ Micheletti and others v. Delegación del Gobierno en Cantabria; Case C-369/90; judgment of 7. 7. 92

⁹ Bosman v. the Commission; Case C-117/91; judgment of 4. 10. 91

¹⁰ Case C-415/93

football club from being able to demand or receive payment of a sum of money when one of its players whose contract has expired is engaged by a another club. He contended that the transfer fee payable for a player by his new club infringes at least the player's freedom of movement, so that there is a breach of Article 48. Arguments that the transfer fees are critical to economic survival of small clubs and are justified as a compensation for training costs were countered by the Advocate General. He felt that the first fear could be overcome by a redistribution of clubs' incomes from the larger to the smaller clubs and that a transfer fee equivalent to the actual training costs (as opposed to a calculation related to current salary) would be perfectly conceivable on a player's first change of clubs.

1041 The Advocate General also maintained that Article 48 prohibits restricting the access of players who are nationals of another Member State to competitions organised by the national and international associations. The Advocate General does not share the fear that the abolition of the rules could lead to teams consisting entirely of foreigners and thus affect the popularity of professional football. He also regards as unfounded the concern that clubs' efforts to promote young players would be reduced. In his opinion, the clubs have a great interest in providing players for the national teams, so that they will continue to develop their own players as before. These players, in turn, will benefit from their experience of playing with foreign players.

1042 The ruling from the European Court of Justice is expected towards the end of 1995 or early in 1996. If the full court follows the Advocate General's opinion, the current transfer system and rules on foreigners will have to be changed.

1043 The ECJ has not yet been referred any cases specifically relating to discrimination against amateur sportsmen on the grounds of nationality. However, it had interpreted the meaning of Article 7 of Regulation 1612/68¹¹, which sets out Member States' obligations in relation to the free movement of workers and their families. Article 7, paragraph 2, says that they should benefit from the same social and fiscal advantages as nationals. The ECJ has interpreted "social advantages" as including all benefits and advantages which facilitate the full integration of the worker and his family in the host country.

The Parliament position

1044 In May 1994, the European Parliament adopted a Resolution on the European Community and Sport¹². Parts of this Resolution refer to the issue of the EU's rules on the free movement of people in relation to the sports world.

¹¹ Regulation 1612/68; OJ N° L 257/68; 19. 10. 68

¹² OJ N° C 205/94 (EP report A3-0326, 27. 4. 94)

1045 The Parliament believes that professional sport is an economic activity and, as such, should be subject to Community law on free movement of persons and freedom to provide services.

1046 In addition, the Parliament holds that common sense and the establishment of European citizenship require that amateur sport within the EU should also be open to all EU citizens on equal terms.

1047 In the light of these views, the Parliament:

- calls for obstacles to participation in sport by EU citizens based on nationality, such as foreigners rules, to be phased out more rapidly;
- demands the elimination of discrimination on grounds of nationality, which is also practised in amateur sport;
- calls for the right to join and leave sports clubs freely to be guaranteed without making it dependent on additional conditions which conflict with general law (the transfer system); and
- urges the Commission to investigate immediately whether both the rules and practices of FIFA, UEFA and the national football associations and clubs are compatible with EU legislation, to take the appropriate decisions following this investigation and to act accordingly.

The Commission position

1048 With regard to the fielding of foreign nationals, it is the Commission's position that rules restricting the number of foreign players which may be fielded in a competition are contrary to EU rules on the free circulation of salaried workers and in particular to Articles 4 and 7 of Regulation 1612/68, which applies Article 48 of the Treaty (free movement of workers). Further clarifications of the Commission's position on this issue will depend on the European Court of Justice's ruling on the Bosman case.

1049 As far as transfer rules are concerned, the Commission has stated its opinion in relation to the international football transfer system¹³ in particular. The Commission maintains that the system is contrary to Article 48 of the Treaty (in addition to being contrary to the competition rules - see Chapter IV). It is the Commission's view that the transfer rules relating to movement between clubs at the end of a contract constitute a right of retention for clubs which is unacceptable, as

¹³ Hearing in case C-415/93, ECJ 20. 6. 95

fundamental workers' rights guarantee that a worker can choose his employer freely.

1050 The Commission's position regarding restrictions on naturalised persons, is that any sporting rules which install waiting periods following naturalisation are contrary to Community legislation. Once a Member State has accorded nationality to a person, that person should be entitled immediately to all the same rights as an existing citizen, including all rights as an EU citizen.

1051 In general terms, the Commission's ability to take action to ensure that sporting rules are compatible with EU rules is limited, as such rules are imposed by private bodies rather than public authorities. Once the outcome of the Bosman case is known, one option open to the Commission to ensure the Court's decision is enforced, is recourse to Article 169. Initiating proceedings under this Article is, however, difficult, as it requires proceedings to be brought against a Member State, its public authorities or official organs, for not having fulfilled an obligation under the Treaty.

1052 The Commission feels that cases of discrimination against amateurs on the basis of nationality restrict a person's freedom to move to and reside in another Member State and therefore are a barrier to creating a true People's Europe. Indeed, the ECJ's jurisprudence on the meaning of social advantages within Article 7 of Regulation 1612/68 includes the right to join a sports federation and play at any level.

1053 When the Commission receives a complaint from an amateur sportsperson who feels that they have been discriminated against on grounds of nationality, they are advised to complain first to a national court of law, which may then seek a ruling from the ECJ.

1054 It should also be noted in this context that in May 1992, all EU Member States adopted the Council of Europe's European Sports Charter. The signatories to this Charter agreed several principles, some of which are relevant to the discussion of the right of amateurs to practice sports in all Member States. They are:

- that sport is a social activity in the sense of being part of human society and therefore part of culture in the broad sense;
- that no discrimination on the basis of nationality should be permitted regarding access to sports facilities or to sports activities;
- that everyone with ability should have the opportunity to improve their standard of performance in sport and reach levels of personal achievement and/or publicly recognised levels of excellence.

1055 With reference to the second and third principles, all governments who have signed the Charter should take action to ensure that sports federations' rules that discriminate against non-national amateurs are eliminated.

Sports qualifications

1056 Qualifications for teaching physical education in schools are regulated in every Member State and are normally obtained after three or four years of higher education. They therefore fall within the scope of the first general Directive (described above in paragraph 1006) and we are not currently aware of any problems having been brought to the attention of the Commission relating to this type of sports qualification.

1057 Problems do occur, however, in relation to the teaching of sports outside schools, where sports professions have developed differently and require different levels of qualification in each Member State.

1058 In certain Member States, such as France, where there is a national recognition system, some sports professions tend to be highly regulated. This has led to complaints being made to the Commission by British and Danish ski-instructors who have been fined for working in the French Alps without holding a qualification considered to be equivalent to the French qualification. The French have now relaxed their legislation to a certain extent, but the Commission still considers that certain barriers remain and has asked France to further modify its legislation.

1059 Very few European level diplomas exist in the sports world. One example is the European Water Sports Instructor's Diploma, which was based on the diploma issued by the French State¹⁴, subsequently adopted by the European Water Sports Commission in 1988. It should be noted, however, that the European Commission does not have the competence to either accord or approve diplomas, or endorse an achieved harmonisation of qualifications. Recognition of European qualifications developed by a European federation or its members, falls within the competence of the Member States.

1060 It is also possible in some Member States that this competence is, at least in part, delegated to sports' federations. Such federations can take the initiative to put in place, at a Community level, a common diploma, or at least quality standards common to several States which could be the outline for a European diploma for a particular sector. The National Equestrian Federations of all the EU countries (and others) have taken such an initiative to harmonise their qualifications for instructors in equitation. They have reached an agreement on three levels of qualification which has been endorsed by the International Equestrian Federation. In parallel, they have developed an International Trainer's Passport which will be validated by the relevant National Equestrian Federation and will authenticate the holder's qualifications.

1061 In this context, it is of interest to sports organisations that Strand 1 of the Commission's vocational training programme "Leonardo da Vinci" (see Chapter VI on

¹⁴ Written Question N° 2962/87; OJ N° C 1/89; 2. 1. 89

EU sources of funding for sport) supports projects that lead to increased transparency and recognition of qualifications, as well as projects that establish and carry out modules of common training. It may also support projects which deal with the coordination and consultation process necessary to endorse a European diploma at Member State level.

1062 The European Centre for the Development of Vocational Training (CEDEFOP) carries out work on the comparability of vocational training qualifications.

1063 The only sector that has been studied by CEDEFOP which is partially sports-related, is the sector of tourism. The description of the occupation of "leisure/tourist assistant", which has been published in the Official Journal¹⁵, includes;

- setting up and maintaining games, leisure and sports facilities and the corresponding equipment;
- providing and running planned games and leisure activities; and
- maintaining and performing minor repair work on games equipment and other entertainment and sports installations.

1064 The European Network for Sport Sciences in Higher Education is also active in the area of the comparability of sports qualifications. This Network groups together training and research establishments and university and non-university level structures specialising in sports and physical education within the countries of the EU. Institutes of other European countries can have associate member status.

1065 In addition to producing publications and information tools on sports-related training courses and promoting student and teacher exchanges, the Network has undertaken initiatives aimed at facilitating the comparison and convergence of national vocational qualifications through the development of European models for specific disciplines. It has developed a European model for a training structure of various levels for coaching sport and is in the process of producing further models for management and for health and fitness.

1066 The Network is also creating a "European Observatory for Sport Vocations" which will elaborate a European nomenclature of sport vocations and collect data and make a comparative study of five vocations: physical education teacher; coach; mountain guides and leaders; ski monitors and health and fitness leaders.

¹⁵ OJ N° C 320/92; 7. 12. 92

The Court of Justice position

1067 ECJ jurisprudence on the issue of the mutual recognition of qualifications has been laid down in the cases of Heylens¹⁶ and Vlassopoulou¹⁷. In the Heylens case, which preceded the adoption of the general Directives, the Court ruled that, where a Member State refused to recognise the equivalence of a diploma granted to a worker who was a national of another Member State, it had to be possible for this decision to be made the subject of judicial proceedings in which its legality under European Union law could be reviewed. The Court also ruled that the person concerned had to be able to ascertain the reasons for the decision.

1068 The Vlassopoulou case further specified that, in a disputed case of recognition, if the national judge (on the basis of a comparison of diplomas) found that the qualifications and knowledge of the person wishing to practice the profession were equivalent to that which would be required of a national, then the Member States had to accept equivalence. If the equivalence was only partial, the host Member State could ask the applicant to prove that he or she had acquired the necessary knowledge or qualifications either through professional experience or by taking courses. If refused acceptance, the applicant had the right to a reasoned explanation and to contest the decision in a national court.

1069 The Court has also given more recent decisions regarding tourist guides in three separate cases brought by the Commission against France, Greece and Italy¹⁸. This jurisprudence could be important, in particular, for non-resident providers of services. In each case, the Court found that non-national tourist guides could not be prevented from accompanying groups of tourists into these countries on the basis that they did not hold the necessary national diploma, as there could be no grounds for exceptions based on the 'general good'. The only exception that could be made would be guiding in museums and historical monuments, where it was admitted that a specialised guide may be required. It has to be underlined that these cases only concerned Article 59 and the temporary cross-border provision of services.

The Commission position

1070 The Commission's main concern with regard to the mutual recognition of qualifications is to ensure that Community law is being correctly applied. In particular, it verifies that the two Directives which put in place the general system for the mutual recognition of qualifications have been correctly transposed in all the Member States.

¹⁶ UNECTEF v. Georges Heylens and others; Case 222/86; judgment of 15. 10. 87

¹⁷ Irene Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg; Case C-340/89; judgment of 7. 5. 91

¹⁸ Cases C-154/89; C-180/89 and C-198/89; judgments of 26. 2. 91

To date, two Member States (Greece and Belgium) have been condemned by the European Court of Justice for the non-transposition of the first general Directive.

1071 The Commission also receives and examines a certain number of complaints about specific difficulties that are brought to its notice. In the area of sports, several disciplines are concerned (skiing, deep sea diving, etc.). The difficulties are due to the tendency of certain Member States to require a professional from another Member State to re-do all or part of their training, although they are already fully qualified. While the general system is certainly not a system for the automatic recognition of professional qualifications acquired in another Member State, each demand must be examined individually by the competent authority in the host Member State who keeps a certain power of discretion. However, the Commission ensures that the general principles set out in the two Directives are respected, as well as the procedural guarantees (for example, the obligation of the Member State to reply to an application four months from the date it receives the complete dossier).

The European Parliament Position

1072 In its report on the EC and Sport¹⁹, the European Parliament calls for the necessary legislation for recognition of diplomas and certificates to be adopted without delay so that trainers, coaches, therapists, etc., may practice their profession in the EU without discrimination on grounds of nationality.

Hooliganism

1073 The increasing incidents of violence between rival supporters at all levels of football matches have resulted in such measures as fenced grounds, all-seater stadia, the banning of alcohol consumption and the restriction of some matches to home supporters only.

1074 Other measures that have been suggested to prevent violent incidents include the UK Government's proposal (which was not implemented) to introduce identity cards for football supporters.

The Commission position

1075 In a written European Parliamentary question²⁰ the Commission was asked whether the UK Government's proposal to introduce identity cards could be a breach of European Union law. The proposal would have had the effect of preventing

¹⁹ European Parliament report on the European Community and Sport; PE DOC A3-0326/94; 27. 4. 94

²⁰ Written question N° 2293/88; OJ N° C 276/89; 30. 10. 89

unaccompanied foreign nationals entering UK football grounds. The Commission replied that it did not contest the right of Member States to adopt legislation restricting entry to football grounds in order to reduce the level of violence as long as such legislation was drafted to take into account the situation of unaccompanied football supporters from other Member States, who had a right, as people receiving services, to free movement under Article 59 of the Treaty.

1076 The Commission nevertheless feels that it could be argued that it is against European Union law on free movement to stop groups of "potential" hooligans (that is, persons with no prior conviction for such offenses) from going to international matches. It is only after they have committed an act of violence in another Member State, that they can legitimately be stopped from attending subsequent matches abroad.

The European Parliament position

1077 In its report on the EC and sport²¹, the European Parliament encourages Member States to continue their policies to prevent and combat violence among supporters, but remarks that the nationality of a supporter from a European Union country should never be the criterion for refusing or impeding access to sports events.

Insurance

1078 Sportspersons are involved in activities in the course of their daily work that leave them very susceptible to injury. Equally, several tragic events in the last ten years, where the safety standards of sports stadia have proved inadequate, have highlighted the need for adequate insurance coverage.

The legislative context

1079 The EU has enacted legislation to ensure that a single European insurance market is created. The Third Framework Directive on non-life insurance²², which entered into force on 1 July 1994 for nine Member States, extends the scope of the Second Non-Life Directive to enable insurance companies to sell policies to private individuals (as opposed simply to large-risk groups). Once implemented at national level, individual EU citizens will be able to buy insurance for injuries through sport from insurance companies that are not locally established. The contract law that applies will usually be that of the policyholder's country of residence. If the location of risk and the policyholder's home base are different, the policyholder may be

²¹ European Parliament Report on the European Community and Sport; PE DOC A3-0326/94; 27. 4. 94

²² Council Directive 92/49/EEC; OJ N° L 228/92; 11. 8. 92

permitted to choose between the two, although a Member State has the option to impose the contract law of the policyholders' residence.

The Commission position

1080 Apart from ensuring the implementation of the above Directive, the Commission does not consider that it has a role to play in enacting sports-specific insurance legislation for, for example, transnational events. It believes that the onus lies with clubs, players and spectators to ensure that their own insurance is adequate when participating in such an event.

Advertising and sponsorship

1081 Many commercial companies use sports events, organisations, teams and sports players as an advertising medium. By association, their products, and the company itself are "cloaked" with the positive images represented by sport. Different types of events at different times enable companies to match the appeal of products with different audiences.

1082 Sponsorship is the practice of associating a commercial entity with a programme or event in exchange for a financial contribution from that company. Sponsorship is motivated by the fact that the sponsor improves its image by being linked to the characteristics of the programme or event it sponsors. Sponsorship can be distinct from advertising, or alternatively, the rights to place advertisements or hoardings can form part of a sponsorship agreement. In 1991, sponsorship of sports amounted to approximately ECU 2 billion²³.

1083 Typically, sponsorship of an event, including advertising at the event, is purchased separately from advertising during the broadcasting of an event. Advertising time during a broadcast is usually purchased from the broadcaster, whereas sponsorship rights are bought from event organisers, sports federations or other bodies governing sports, sports marketing agencies, leagues, teams and individual sports players. Event organisers usually sell exclusive broadcasting rights to a network or consortium of broadcasters such as the EBU, frequently requiring that event sponsors be given the right of first refusal to acquire advertising time during the broadcast of an event.

1084 Television sponsorship is not very well developed within the EU. There is certainly a large market to develop, particularly in the trans-frontier niche, such as, for example, large pluri-national sporting events. The development of this market could bring large sums of money both to the media and to sport, thereby financing broadcasts which might otherwise not have been made.

²³ Source ISL Marketing (as reported in the Economist, 25 July 1992).

1085 There are two basic types of sponsorship: programme or broadcast sponsorship (when the broadcaster arranges sponsorship for his programme) and event sponsorship (when the event organiser arranges sponsorship for an event). Programme sponsorship is the least developed of the two, with certain notable exceptions. An important issue in the future will be the linkage between the two types of sponsorship. For example, if Kodak sponsors an event, but Fuji has a sponsorship contract for a television programme in which that event features prominently, there will clearly be a conflict. This issue might be resolved by dialogue between the sports organisations and television companies, the results of which could be incorporated into contracts.

1086 Previously, in order to secure the most lucrative financial benefit from the sale of broadcasting rights, event organisers allowed broadcasters a high degree of flexibility in terms of selection of advertisers. As the number of broadcasters increases, however, the balance of power is shifting from the broadcasters to the programme suppliers (event organisers). Both event and broadcast sponsorship are increasingly offered as a single package, with a proportion of the advertising time already committed to parties selected by the event organiser or the rights' holder.

1087 Television and radio advertising and revenue generated thereby is the property of the broadcasters involved. Whilst sports federations, if they organise an event and/or control a specific venue, will benefit from advertising opportunities which might or might not form part of a sponsorship package, rights' holders (events organisers) also get paid for television and radio rights and indirectly receive a share of the revenues.

1088 The revenue generated from the sale of sponsorship and advertising opportunities to commercial entities represents a significant proportion of income for many sports organisations.

1089 In 1989, EU legislation was adopted to address television broadcasting activities, including television advertising and sponsorship. These rules are detailed below. In addition, in order to establish the Commission's policy in the area of Commercial Communications - a term which comprises not only advertising but also direct marketing, sponsorship, sales promotions and public relations - the Commission is preparing a Green Paper²⁴. Although the Green Paper will not contain proposals for legislation, it will provide guidelines on the Commission's policy approach to commercial communications, and serve as a basis for consultation.

1090 The Green Paper will review national regulatory regimes, in particular, the differences in national legislation which can create barriers or distortions between Member States. Moreover, it will assess the role of cross-border commercial

²⁴ A Green Paper is a Commission consultative document in an area in which there is no Community legislation as yet.

communications in the functioning of the Internal Market and the problems facing companies when drawing up intra-EU communication strategies. The Green Paper will address the issue of policy coordination, and examine what form of regulatory framework would be appropriate to ensure a coherent and consistent approach by the Commission.

1091 To research these issues, the Commission carried out an EU-wide survey, involving the dispatch of more than 4000 questionnaires. The Green Paper is scheduled to be published later this year.

1092 In 1992 and 1993, a French member of the European Parliament, Mr. Yves Fremion, drafted an own initiative report²⁵ on patronage and sponsorship in culture and sport. The report appealed to the European institutions to encourage patronage of events with limited or no credit to the sponsor. The rationale was to protect the rights holders and the consumer from any undue outside influence. Sponsors viewed many of the Fremion proposals as unworkable and contended that their implementation would severely reduce the revenue generation capacity of many sports organisations. The Fremion report was not adopted by the European Parliament.

Television advertising and sponsorship rules

1093 The development of satellite broadcasting and therefore of cheaper and more effective programme transmissions of television programmes prompted the Commission to formulate a Directive²⁶ to open the increasingly trans-frontier television broadcasting market. It was dubbed the "Television Without Frontiers" Directive. In so far as sports programmes form a significant part of total broadcasting, the Directive has an impact on sport.

1094 The aim of the Directive is to facilitate transborder transmissions by harmonising previous barriers in the form of national laws, to the minimum degree necessary to allow for the free circulation of such services. The principle is that the rules of the Member State where the broadcaster is established should apply. Member States remain free to insist on stricter rules for their own broadcasters.

1095 The Television Without Frontiers Directive has sections on both television advertising and sponsorship which are of direct relevance to sports. It was national

²⁵ DOC PE 201.820/B; 16.9.92

²⁶ Council Directive 89/552/EEC; OJ N° L 298/89; 17.10.89. Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities. A proposal to amend this Directive has been tabled and, at the time of writing, was still under discussion (COM(95) 86 final, 31.5.95. The proposal does not change the basic principles of the 1989 Directive, but rather aims to improve its functioning (see details below).

differences in these areas that led to the requirement for harmonisation in order to facilitate the free circulation of broadcasting services.

1096 The basic principle guiding Commission policy is that of the free provision of services as per Article 59 of the Treaty. This Article provides for the abolition of restrictions on the free provision of services to nationals of another Member State.

1097 The Directive provides for a series of minimum requirements, both qualitative and quantitative, on television advertising. The main provisions include a maximum daily broadcasting time for advertising, rules on maximum frequency of advertising breaks, on the amount of advertising time per given hour and on rules restricting the content of certain forms of advertising. Modifications to certain provisions have been proposed by the Commission in May 1995 and are currently being debated at the European Parliament and Council²⁷. Under the proposal, the restriction on broadcasting sponsorship by pharmaceuticals companies would be lifted (although broadcasting advertising by pharmaceuticals companies would continue to be prohibited).

1098 The Directive bans television advertising for cigarettes and other tobacco products and the sponsorship of television programmes by tobacco manufacturers.

Other rules on advertising and sponsorship

1099 Another proposed Directive²⁸ banning all forms of advertising for tobacco products is being discussed by the Council. As it currently stands, the proposed Directive would ban all advertising of tobacco products (not only television advertising), both direct and indirect, beyond the point of sale. Although there would be no direct prohibition of sponsorship by tobacco companies, as tobacco logos would be banned from sporting events, this would render sponsorship of sports events by tobacco companies considerably less attractive. At the time of writing, a minority of countries including Denmark, Germany, the Netherlands and the UK are still blocking the proposed Directive.

1100 The Commission has not tabled any proposals on advertising for alcoholic beverages and has not given any indications that it plans to do so in the near future.

²⁷ Proposal for amendments to Council 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities; COM(95) 86 final; 31. 5. 95

²⁸ Amended proposal for a Council Directive on advertising for tobacco products; OJ N° C 167/91; 27. 6. 91

Satellite broadcasting and cable retransmission

1101 The Television Without Frontiers Directive does not include a chapter on copyright, a gap which has been filled by a Council Directive²⁹ to coordinate legislation on copyright and related rights which broadcasters must acquire when either broadcasting by satellite or retransmitting by cable across two or more Member States. The Directive aims to achieve a balance between enabling broadcasters to transmit across borders while ensuring adequate protection of copyright. To accomplish this equilibrium, a minimum level of harmonisation of Member States' rules is needed. The Directive clarifies the conditions for trans-frontier broadcasting and therefore also applies to sports events, including for specialised pay-television channels.

Encryption of television broadcasting

1102 A Green Paper, ie a Commission consultative document in an area in which there is no Community legislation as yet, is being drafted to review the current situation regarding barriers to the provision of cross-border encrypted services and to draw up Commission policy guidelines. The Green Paper focuses on national regulation on the illegal reception of encrypted transmissions. In preparing the Paper, concerned parties, were invited, via a questionnaire, to give their opinion on possible future legislation. The Green Paper may subsequently lead to legislation being proposed. Legislation in this area would be likely to affect pay per view broadcasting. This is relevant for sport insofar as pay per view may become more common in the case of sporting events, as is currently already the case with boxing in the US. The Green Paper on encryption is expected to be published in November 1995.

Lotteries and wagering activities

1103 In many countries sport is partially financed, either directly or indirectly, by lotteries and gaming activities. The degree of funding varies between countries. In some cases, a portion of the profits from the gaming operations or game is allocated to specific sports organisations. In other cases, distribution is made via the Ministry of Finance. Revenue from lotteries and betting on football and on horses account for the majority of gaming activities funding sport.

1104 CONI, the Italian National Olympic Committee, is almost exclusively funded by the proceeds of betting on football (the "Totocalcio"). The new UK national lottery contributes, via the Department of National Heritage, 20% of all the benefits from the national lottery, to a new fund dedicated solely to the development of sport. In Germany, a significant part of the profits from class lotteries, the national lottery and the Glücksspirale game are channelled to sport; the German Sports Confederation (Deutsche Sport Bund or DSB) gets an important part of its funding from

²⁹ Council Directive 93/83/EEC; OJ N° L 248/93; 6. 10. 93

Glücksspirale. Austrian sport is partially funded by state-owned casino operations and Toto revenue is allocated to football in particular.

1105 Many of the largest gambling and gaming activities are operated as national monopolies. Cross-border transactions are often not allowed, which leads to a certain compartmentalisation of markets. This segmentation of markets has led to questions about whether many lotteries and other betting operations are carried out in a manner which may not comply with EU rules on free circulation of goods and services and may restrict free competition.

1106 In 1992, the Commission held a series of hearings at which the idea of harmonisation of rules applying to gambling and gaming was discussed. At the Edinburgh summit in December 1992, based on the application of the principle of subsidiarity, the Council decided not to introduce harmonised legislation on gambling and gaming.

1107 There has also been concern expressed by many sports authorities that the application of EU rules on free circulation and competition policy might deprive sport of this vital source of finance. They fear that any application of EU law which threatens the existence of national lotteries and betting operations would have the effect of removing this source of funding for many sports organisations and would put these sports organisations at a considerable disadvantage over state-funded sports bodies or those receiving funding from other sources.

1108 In this context, the ruling of the European Court of Justice on the Schindler case is particularly relevant³⁰. It provides some guidelines on the application of EU legislation to lottery activities and, to some extent, to gambling generally.

The facts of the case

1109 Gerhart and Jorg Schindler, independent agents of the German Süddeutsche Klassenlotterie ("SKL"), dispatched some 5 million envelopes with advertisements and application forms from the Netherlands to the United Kingdom inviting UK citizens to participate in the SKL.

1110 The envelopes were intercepted and confiscated by United Kingdom Customs authorities under the Revenue Act of 1898 and the 1976 Lotteries and Amusements Act, which, for public policy reasons, prohibited large lotteries in the UK.

1111 The UK Courts considered that the resolution of the dispute required an interpretation of application of EU legislation from the European Court of Justice. The case was therefore referred to the Luxembourg Court which subsequently

³⁰ Case Ref. N° C-275/92

received written submissions from the Schindlers, the UK Government and eight other national governments³¹ (indicating to the Court the importance each government placed on the outcome of the ruling).

1112 The specific question put by the national court to the European Court was essentially whether Articles 30 (free movement of goods) and 59 (freedom to provide services) of the Treaty of Rome preclude Member States from prohibiting foreign lotteries in their territory (as did the United Kingdom) and consequently the importation of material intended to enable residents to participate in foreign lotteries.

1113 In addition, the UK National Court wished to ascertain whether the importation of lottery advertisements and tickets into a Member State with a view to the participation by residents of that State in a lottery operated in another Member State constitutes an "importation of goods" and falls under Article 30 of the Treaty of Rome or whether such an activity amounts to a provision of services which as such comes within the scope of Article 59 of the Treaty.

1114 In its judgment of 24 March 1994, the Court ruled that:

- the importation of lottery advertisements and tickets into a Member State with a view to the participation by residents of that State in a lottery operated in another Member State relates to a "service" within the meaning of Article 60 of the Treaty and accordingly falls within the scope of Article 59 of the Treaty;
- national legislation which, like the United Kingdom legislation on lotteries, prohibits, subject to specified exceptions, the holding of lotteries in a Member State is an obstacle to the freedom to provide services; and
- because of the particular nature of lottery products, National Authorities can restrict or prohibit them, provided that the restrictions are on a non-discriminatory basis.

1115 As the UK Government's ban concerned all large scale lotteries, regardless of country of origin, it was therefore non-discriminatory and acceptable in view of concerns of social policy and the prevention of fraud³².

³¹ Two other Member States made their interventions during oral proceedings.

³² Coopers & Lybrand notes that the ruling is based on the legal situation that occurred at the time of the offence, i.e. when *all* large lotteries were prohibited in the United Kingdom and *before* the National Lotteries act of 1993, which introduced legislation to permit a U.K. National Lottery. While making this ruling, the Court has clearly stated that lotteries are a service and inferred that discriminatory prohibitions or restrictions could be a breach of Article

Company law

1116 The main thrust of Commission policy on company law is the attainment of a common and comprehensive legal environment for all types of European Union companies, their shareholders and those having business with them.

1117 The legal status of sports clubs, although they sometimes involve considerable economic and social interests, is not yet governed by clear and harmonised rules at the EU level. Member States continue to be responsible for the legal status under which sports organisations may operate and the EU has no intention of targeting sports clubs under any harmonisation measures. EU company law only applies to economic activities are provided below on two EU legal initiatives which may be of interest to sports organisations.

Proposed European Statute for Associations

1118 In December 1991, the European Commission adopted a proposal³³ to establish, along the lines of the European Company Statute, a statute facilitating the operation of associations and foundations across internal EU borders. The proposal is designed to place these entities on an equal footing with profit-making companies. It is likely to be discussed by the Council in the first half of 1996.

1119 Along the lines of the European Company (SE), a European Association (AE) could be constituted through the conversion of a national association which has a subsidiary or permanent establishment in another Member State.

1120 The proposed statute for an AE is embodied within a draft Regulation containing rules regarding the convening of general meetings, operating procedures, financing arrangements, accounting methods, winding up and insolvency.

European Economic Interest Grouping (EEIG)

1121 In 1985, a Council Regulation³⁴ was adopted on the European Economic Interest Grouping ("EEIG"). The aim of the EEIG is "to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities". On the basis of this very broad definition no sector of activity is

59 of the Treaty of Rome. As the United Kingdom law has changed in the meantime, a second case may have to be introduced in order to confirm this inference.

³³ OJ N° C 99/92; 21. 4. 92; amended in OJ N° C 236/93; 31. 8. 93

³⁴ Council Regulation 2137/85; OJ N° L 199/85; 31. 7. 85

automatically excluded, the only condition being that the grouping's activity must relate to the economic activity of its members and not remake it. This legal instrument has not, however, been widely used by sports organisations.

II Health, safety and ethics

Key issues

Doping

2001 In the increasingly competitive world of both amateur and professional sports, large financial rewards in the form of prize money and/or sponsorship contracts are pushing sportspersons to strive for ever greater physical achievements. The use of illegal performance-enhancing drugs to reach these heights has become the scourge of the modern sports world. Also, the introduction of increasingly sophisticated body-boosters makes detection more difficult.

2002 Testing for drugs is increasingly widespread. Where international federations have taken a firm line and adopted stringent procedures and protocols, testing can be very effective and have far-reaching effects on the sport.

The Commission position

2003 It is not within the European Union's competence to introduce binding legislation on the specific testing of sportspersons for the illegal use of performance enhancing substances.

2004 The use of drugs in sport does, however, contravene the provisions of binding EU harmonisation Directives for health and medicinal products. This legislation is designed to prohibit the use of medicinal products for purposes other than for the diagnosis or treatment of recognised pathological states, to prevent their use in unauthorised forms and dosages³⁵, to prevent their unauthorised sale (black market) or prescription³⁶, and their advertisement³⁷.

2005 Recent European Union activity in the field of doping is based on the Council Resolution of 3 December 1990 on "Community Action to combat the use of drugs, including the abuse of medicinal products, particularly in sport"³⁸.

2006 The Resolution stressed that action taken by the European Union in this area should complement the work of the Council of Europe and take into account its Anti-

³⁵ Directive 65/65/EEC; OJ N° L 22/65 (last amended by Directive 89/341/EEC); 9. 2. 65

³⁶ Directive 75/319/EEC; OJ N° L 147/75 (last amended OJ N° L 250/84); 9. 6. 75

³⁷ Directive 84/450/ EEC; OJ N° L 250/84; 19. 9. 84

³⁸ OJ N° C 329/90; 31. 12. 90

Doping Convention. It also advocated an educational and preventive approach, geared particularly towards young people. Through this Resolution, the Council invited the Commission to draw up a code of conduct to combat the use of drugs in sport. Annex II of the Resolution also asked the Commission to propose measures in the areas of:

- training information and health education initiatives against the use of drugs in sport;
- current drug use practices;
- drug-testing methods and cooperation between laboratories;
- research on the effects of drug-taking on health (within the European Union biomedical research framework programme).

2007 The requested Code of Conduct against Doping in Sport was drafted by the Commission and approved by the Council in its Resolution of 8 February 1992³⁹.

2008 The key aims of the Code are to increase awareness of the dangers of doping to health and to help change the attitudes and behaviour of those closely involved in order to encourage drug-free sport. It calls on young people, parents, educational institutions and athletes to advocate that participation in sport should be free from doping, and for the latter to act as role models. It encourages health professionals, the entourage of sports teams (managers, coaches, trainers, etc) and sports organisations to actively prevent doping and encourage fair play. It calls for cooperation between sports organisations on issues related to the status and control of doping. Testing laboratories are asked to continue their current work and to monitor for, and warn authorities about, the appearance of new drugs with performance enhancement potential. Finally, the Code calls on the media to provide the public with information about athletes' training programmes and the negative consequences for health of doping.

2009 One of the actions undertaken by the Commission to disseminate the Code has involved adapting it slightly to enable, in particular contexts, elements of it to be transferred to postcards, posters and stickers. Demand for this material from sports ministries and other bodies, has been high.

2010 DG X and the Directorate-General responsible for health and safety (DG V) are now concentrating their efforts on trying to encourage the Member States to disseminate the Code. In the meantime, positions are being developed within these

³⁹ OJ N° C 44/92; 19. 2. 92

DGs as to how to progress the other four measures mentioned in Annex II of the 1990 Council Resolution.

2011 A joint anti-doping project of the Council of Europe and the Commission, "Europack", was initiated by the Council with the objective of developing pedagogical material to facilitate the work of national organisations. The result is the "Clean Sport Guide", which is a comprehensive education and information pack aimed at athletes, teachers, coaches and doctors.

2012 A spin-off product is the "Pocket Guide", which contains information on rules, procedures and allowable medications in all European countries.

Fairplay Campaign

2013 The Fairplay Campaign is another joint project of the Commission and the Council of Europe. The theme of the campaign is that fairplay is the winning way and that everybody has a role to play in spreading the message. The message is contained in a series of ten specially designed cartoons printed on stickers and T-shirts. Information on the project and how campaign material may be obtained is available by contacting Sport Info Europe.

The Parliament position

2014 In a report adopted by the European Parliament on 3 May 1994, the Parliament recommends that an adequate policy against the use of doping in sport should be based on at least the 5 following objectives:

- Coordination of the lists of banned substances, of regulations and of penalties;
- Improvement of detection methods;
- Effective control of the distribution of doping substances;
- Effective sanctions against federations; and
- Prevention by awareness and education.

2015 In view of this, the Parliament, in its motion for a resolution on sport and doping, calls on:

- the Commission and Council to acknowledge expressly the European Union's responsibility in the fight against doping in sport both from an ethical standpoint and in the interests of public health;

- the European Union to set up, under a multiannual programme, a network of European laboratories for doping research and to co-finance relevant research projects, complementing and strengthening earlier measures taken by the Council of Europe and the International Olympic Committee;
- the Commission to set up, within the new European Monitoring Centre for Drugs, a separate doping department for doping in sport, which would act as a European databank for all information on legislation, regulations, research, testing methods and policy on prevention in the Member States and in the national and international sports federations;
- the European Union to draw up measures to combat trafficking in doping substances, in particular by harmonising legislation on the possession and use of stimulants in sport; and
- the Commission to draw up an information programme based on the 1992 Code of Conduct in order to alert public opinion and, in particular, young people to the danger of doping in sport.

2016 The report also calls upon national and international sports federations, Member States, the IOC, the media, individual sportsmen and sportswomen and all involved with sportsmen and sportswomen in the fight against doping.

Health promotion

2017 The Commission has proposed an Action Programme for Health Promotion, Education and Training⁴⁰ which would run from 1996 to the year 2000. At the time of writing it is being discussed at second reading by the European Parliament and the Commission expects it to be adopted by the end of 1995.

2018 In principle, sports organisations could apply for funding for their initiatives that are linked to health promotion under this programme. Funds are likely to be limited, but eligible projects will be funded under the following broad categories: health information; health education; vocational training in public health and health promotion; specific prevention and health promotion measures; and health promotion strategies and structures.

Actions against AIDS

2019 Some sports federations have already adopted interim measures to fight AIDS. While less directly relevant than the Health Promotion Programme, the Commission's

⁴⁰ OJ N° C 139/94; 21. 5. 94; amended in OJ N° C 135/95; 2. 6. 95

"Europe against AIDS" programme⁴¹ could also be of interest to the world of sport.

Protection of young people at work

2020 In June 1994, the Council adopted a Directive on the protection of young people at work⁴². The Directive, which is due to enter into force in the Member States in June 1996, covers all young people under the age of 18 who have an employment contract or an employment relationship defined by the law in force in the Member State. In the Directive, "young person" refers to all persons under 18 years of age, "adolescent" refers to any young person of between 15⁴³ and 18 years and "child" refers to any person of less than 15⁴⁴ years of age or who is still subject to compulsory full-time schooling.

2021 There is a general provision prohibiting the employment of children, but derogations are provided for in Articles 4 and 5 which make it possible, for example, to employ children in cultural, artistic, sports and advertising activities, so long as this is commensurate with their physical and psychological health.

2022 This approach has been opted for in conformity with the law in force in most of the Member States and with the international conventions and recommendations which allow children to take part in such activities. It does however impose additional protective conditions and provisions.

2023 The terms of the derogation in Article 5 would be determined by the competent authorities of the Member States.

Liability of service suppliers

2024 In 1990, the Commission tabled a proposed Council Directive on the Liability of Suppliers of Services⁴⁵ which sought to establish a reversal of the burden of proof of liability in the case of accidents. In June 1994, drawing the political conclusions from discussions which took place in other institutions, including among the concerned professions, the Commission decided to reorientate its action, which implied the withdrawal of the proposal. Under the withdrawn proposal, the service provider would have had to prove that he had not been negligent in the provision of a service,

⁴¹ OJ N° L 168/95; 18. 7. 95

⁴² OJ N° L 216/94; 20. 8. 94

⁴³ In some Member States, the threshold is 16 rather than 15 years of age.

⁴⁴ Ibid.

⁴⁵ OJ N° C 12/91; 18. 1. 91

rather than the injured party having to prove the service supplier had been negligent. The definition of "service" was wide enough to cover those in the sporting world and would even have applied to services provided free of charge. The proposal could have had significant implications for sports coaches, organisers of sporting events, rescue teams, etc. Although the proposal was withdrawn, the Commission will continue to examine the problem of safety of services, among others, under a sectoral approach. Sports-related sectors might be considered but are unlikely to be affected in the near future.

Safety of spectator facilities

2025 In 1990, the Italian Standardisation Organisation made a formal request to the Commission to mandate CEN to draw up safety standards for sports stadia. Such a mandate has not yet been forthcoming. Nevertheless, the CEN Technical Board agreed to create a technical committee on spectator facilities (TC 315)⁴⁶. In general terms, this technical committee is responsible for developing standards for architectural design and performance requirements for spectator facilities for sports and multipurpose venues (indoor and outdoor), in order to ensure the safety, comfort of and visibility for spectators. Specifically, it deals with standards for layout criteria, including spacing, access and egress, sight lines and positioning of separation fences and barriers. It also looks at standards for products by performance requirements for permanent, demountable, movable and telescopic stands. The programme of work approved so far by the Technical Board⁴⁷ covers: terminology; layout criteria for indoor and outdoor stands; layout criteria for separating elements; and product characteristics for separating elements.

⁴⁶ BT Resolution C076/1994

⁴⁷ BT S1 Resolution C036/1994

III The free movement of goods

The principles

3001 The free movement of goods is one of the "fundamental freedoms" of the European Union. The establishment of an integrated internal market requires the elimination of customs duties between the Member States and the prohibition of quantitative restrictions. Also important in the context of this study are the Union's harmonisation policies regarding the technical specifications of goods, and Regulations enacted within the scope of the Common Agricultural Policy in the case of equestrian sports. The latter are dealt with in Chapter V on Animals in Sport.

The main provisions

3002 EU Treaty provisions envisage the total suppression of national measures which adversely affect intra-Community trade. To ensure the free movement of goods, European Union law has a number of instruments at its disposal:

- Articles 12-17: prohibition of customs duties and taxes having equivalent effect;
- Articles 30-36: prohibition of quantitative restrictions and measures of equivalent effect;
- Article 37: prohibition of exclusive rights for imports and exports of any State monopoly or agency of a commercial character;
- Articles 92-94: prohibition of State aid in so far as it affects intra-European Union trade and threatens to distort competition;
- Articles 95-96: prohibition of fiscal discrimination.

3003 Other instruments provide for the harmonisation of national laws and standards and the creation of common rules, in particular:

- Articles 100 & 100A: the main bases in the Treaty for harmonising Member States laws which restrict the functioning of the internal market. Harmonisation can be total or optional. Total harmonisation means that Member States have to permit goods complying with the Directive to be freely imported and marketed and also have to prohibit the sale of goods not complying with the Directive. Optional harmonisation involves only the former of these obligations.
- Article 235: creation of EU rules where no other Treaty article applies.

- Other provisions relate to special sectors, such as transport and agriculture.
- Secondary legislation also prevents new obstacles to intra-Community trade. For example, a Council Directive⁴⁸ laying down a procedure for the provision of information on technical standards and regulations.

The new approach

3004 With regard to Articles 100 and 100A mentioned above, prior to 1985, the procedure for initiating, approving and in many cases amending detailed harmonisation Directives was extremely cumbersome. A "new approach" was therefore adopted⁴⁹ whereby subsequent standardisation Directives only defined essential safety requirements for products. Products must conform with these essential requirements in order to enjoy free movement throughout the European Union.

3005 The technical specifications relating to the "new approach" Directives are drawn up by the competent European level standardisation bodies on a mandate from the Commission, following consultation with the Member States. Once a European Standard (EN) has been agreed, it has to be implemented at national level by being given the status of a national standard and by withdrawal of any conflicting national standards. Conformity of a product with the national standards transposing the harmonised standards, confers a presumption of conformity with the "essential requirements" of the Directive. Conformity with the technical standards is not, however, obligatory. The producer must conform to the essential requirements of the Directive and be able to prove it (preferably by conformity to harmonised standards) to be eligible to carry the CE mark.

Key issues

3006 The EU's rules on the free movement of goods have implications for various sports-related activities:

- the transportation of sports equipment from one Member State to another, including firearms;
- the standardisation of equipment specifications;
- the commercial exploitation of the Olympic Symbol;
- the production and marketing of sports food;

⁴⁸ Council Directive 83/189/EEC; OJ N° L 109/83; 26. 4. 83; amended by Directive 88/182/EEC; OJ N° L 81/88; 26. 3. 88

⁴⁹ Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards; OJ N° C 136/85; 4. 6. 85

- footwear labelling;
- quantitative restrictions on sport footwear;
- certification, testing and technical requirements.

Transportation of sports equipment between Member States

3007 As of 1 January 1993, the elimination of all administrative documents in intra-Community trade, in combination with the new VAT regime, has made superfluous previous arrangements for the temporary importation of goods. The temporary import of sports equipment, for competitions or other sporting activities, is therefore completely free of restrictions, with the exception of such items as firearms (see below).

Firearms

3008 A Directive on control of the acquisition and possession of weapons, was adopted by the Council of Ministers in 1991⁵⁰. While the Directive institutes strict procedures for the transfer of weapons from one Member State to another, it imposes more lenient rules on sportsmen and marksmen. They may, without prior authorisation, be in possession of one or more firearms classified in categories C and D in Annex I of the Directive (categories which correspond to two of the four categories into which the Directive classifies weapons), during a journey through two or more Member States. This journey has to be for the specific purpose of engaging in a marksmanship competition and only applies provided that they possess a European firearms pass for each firearm, and that they are able to substantiate the reasons for their journey, in particular by producing an invitation.

3009 These exceptions to the general rules do not apply to journeys to a Member State which prohibits the acquisition and possession of the firearms in question and which makes it subject to authorisation.

3010 The European firearms pass is a document issued by the authorities of the Member States and includes a minimum amount of information as set out in annex II of the Directive. All Member States, with the exception of France, Italy and the new Member States, are issuing such passes, which follow the uniform layout proposed in a February 1993 Commission Recommendation⁵¹.

⁵⁰ Council Directive 91/477/EEC; OJ N° L 256/91; 13. 9. 91

⁵¹ Commission Recommendation 93/216/EEC on the European firearms pass; OJ N° L 93/93; 17. 4. 93

Standardisation

Recreational craft

3011 In June 1994, the European Parliament and the Council adopted a Directive on the essential safety requirements for the design and construction of recreational craft⁵². The Directive applies to recreational craft of all types with a hull length of 2.5 to 24m, regardless of the means of propulsion. Excluded from the scope of the Directive are: craft intended solely for racing, including rowing racing boats and training rowing boats; canoes and kayaks; sailing surfboards; powered surfboards; and various other minor categories.

3012 The essential safety requirements are mandatory and concern hull identification, builder's plates, protection from falling overboard and means of re-boarding, visibility from the main steering position and the provision of an owner's manual. Structural requirements include structure, stability and freeboard, buoyancy and flotation, openings in the hull, deck and superstructure, flooding, manufacturer's maximum recommended load, life raft stowage, escape and anchorage, mooring and towing. Propulsion, fuel, electrical, steering and gas systems will have to meet certain requirements and fire protection, discharge prevention and navigation lights will also be subject to essential requirements. Once a recreational craft has met all the requirements it will be allowed to carry a CE conformity marking which will enable it to be used in any part of the European Union.

3013 Member States are expected to draw up the provisions necessary to comply with the Directive before 16 December 1995, for implementation by 16 June 1996.

3014 CEN, the European Committee for standardisation, has a mandate from the Commission and EFTA to draw up standards on small craft.

Sports equipment

3015 As stated above, under the new approach to standardisation adopted by the Commission, the European standardisation bodies are responsible for developing detailed technical specifications within the framework of specific Directives.

3016 An early meeting between CEN (European Committee for Standardisation) and the Commission clarified that the Personal Protective Equipment (PPE) Directive⁵³, was not restricted to the workplace, and, while the first and second

⁵² European Parliament and Council Directive 94/25/EC; OJ N° L 164/94; 30. 6. 94

⁵³ Council Directive 89/686/EEC; OJ N° L 399/89 of 30. 12. 89, as amended by Council Directives 93/68/EEC; OJ N° L 220/93 of 30. 8. 93 and 93/95/EEC; OJ N° 276/93; 9. 11. 93

mandates for this Directive did not include any sports items, a decision was taken to include certain sports items such as mountaineering equipment and diving accessories in the 3rd mandate.

3017 Within the CEN, standardisation relating to sports equipment is dealt with by Technical Committee CEN/TC 136, which is responsible for sports, playground and other recreational equipment. Examples of standards currently being developed by this Committee (outside the scope of the Personal Protective Equipment Directive) include goals for football, handball and hockey, stationary training equipment, paragliding equipment and gymnastics equipment. It is expected to have the first European standards on sports equipment published by early 1996.

The Olympic symbol

3018 The commercial exploitation of the Olympic symbol is the most important source of income for the Olympic movement. In addition to the Olympic symbol itself (the five interlocking rings) Olympic emblems may also be designed and exploited. An Olympic emblem is an integrated design associating the Olympic rings with another distinctive element. They may be created by the International Olympic Committee (IOC), a National Olympic Committee (NOC), or an Organising Committee of the Olympic Games (OCOG).

3019 According to the Olympic Charter, all rights to the Olympic symbol itself belong exclusively to the IOC. It is stated in the Charter that "even if the national law or trademark registration grants to an NOC the protection of the Olympic symbol, such NOC may only use the ensuing rights in accordance with instructions received from the IOC Executive board".

3020 In practice, in the large majority of Member States, the Olympic symbol is registered as a protected trademark. The owner of the trademark is either the NOC of the State concerned, or the IOC. In some States, both IOC and NOC have registered the Olympic symbol in their own name. Spain, France, Belgium and Portugal have legislation in force which grants exclusive rights to their respective NOCs to commercialise the Olympic symbol on their own behalf.

3021 The Olympic Charter also obliges the NOCs and the OCOG, when exploiting the Olympic emblem, to avoid any conflict of commercial interests in the territories of other NOCs. The Charter states that an NOC Olympic emblem "may not be used for any advertising, commercial or profit-making purposes whatsoever in the country of another NOC without the latter's prior written approval".

3022 The issue of ownership of the symbol and emblems and the right to use them alone, or in combination with various designations, such as "official worldwide sponsor of the Olympic Games", is increasingly important for the IOC and NOCs, as

commercial exploitation of the symbol and emblems through advertising, sponsorship, or suppliership contracts is crucial for the maintenance of their income.

3023 The Nairobi Treaty on the protection of the Olympic symbol, which was concluded on 26 September 1989 is designed to ensure that the exclusive right of commercialising the Olympic symbol belongs to the IOC.

3024 The Treaty provides in its first article that the contracting parties shall refuse or invalidate the registration of the Olympic symbol or any emblem containing the Olympic symbol as a trademark and that the commercial use of the Olympic symbol shall be prohibited, unless the IOC authorises such use.

3025 Two exceptions are applied to the obligation. First, where the symbol or emblem was registered or legally used prior to the date of entry into force of the Treaty and secondly, where the NOC of the state concerned and the IOC have not reached any agreement concerning the commercialisation of the Olympic symbol.

3026 The existence of this Treaty has not had a major effect on the existing situations in the Member States, as Italy and Greece are the only signatories and, in derogation from article 1, they have not expropriated their respective NOCs. The other Member States have not acceded to the Treaty, preferring to maintain the situation whereby their respective NOCs commercialise the symbol or emblems.

The Commission position

3027 In the Commission's view, the issues of trademark registration, the relative balance between the rights of the IOC and the NOCs or OCOG to exploit the Olympic symbol and emblems, and the proportions of revenue falling to each, are matters for discussion between the various Olympic bodies.

3028 On the other hand, the Commission feels that the obligation on NOCs and the OCOG not to use their emblems for any commercial or profit-making purposes in the country of another NOC, without that NOC's permission, leads to a partitioning of the European Union market which coincides with the territories within which the respective NOCs hold their national trademark registration. This is contrary to the principle of the free movement of goods as set out in the Treaty of Rome.

3029 The IOC is pressing for this practice to be exempted from Community rules, as it is considered vital to maintaining an income for each NOC.

Sports foods

3030 A Council Directive of 1989⁵⁴ (Framework Directive) on the approximation of the laws of the Member States relating to foods for particular nutritional uses mentions nine groups of foods for which provisions will be laid down by specific Commission Directives. One of these groups is "foods intended to meet the expenditure of intense muscular effort, especially for sportsmen". In a new proposal⁵⁵ modifying the 1989 Directive, the group of food relevant for sportsmen has been dropped from the list of groups for which EU provisions will be laid down. In July 1995, the European Parliament approved the proposed amendments in its first reading of the draft Directive.

Footwear labelling

3031 In March 1994, the Council adopted a Directive⁵⁶ on the labelling of the materials used in the main components of footwear, including sports shoes, for sale to the consumer.

3032 The Directive aims to prevent any barriers to trade in the European Union for footwear and to help consumers identify what materials have been used in their composition, without placing too much of a burden on the manufacturer. The Directive allows manufacturers to decide whether to use pictograms or texts to indicate the materials used in the shoes' uppers, lining and soles. Harmonised pictograms and definitions are listed in Annex I of the Directive.

3033 The manufacturer, or his authorised agent established in the European Union, would be responsible for supplying and ensuring the accuracy of the labels. The retailer is responsible for ensuring that the footwear he sells bears the appropriate labelling set out in the Directive. The provisions of the Directive also apply to mail-order catalogues.

Quantitative restrictions on sports footwear

3034 European Union law governs the commerce between EU Member States and state-trading countries, including China. EU involvement in this area is relevant for the sports equipment manufacturing industry insofar as the majority of sports footwear is now manufactured in China and therefore falls under EU regulations on this matter.

⁵⁴ Council Directive 89/398/EEC; OJ N° L 186/89; 30.6.89

⁵⁵ Proposal for a European Parliament and Council Directive; OJ N° C 108/94; 16.4.94

⁵⁶ Council Directive 94/11/EC; OJ N° L 100/94; 19.4.94

3035 Up to the end of 1992, Member States had national quotas in place on imports of sports footwear from China. Once the Single Market came into existence at the beginning of 1993, national quotas were no longer permitted. Disparities among Member States' import rules, which remained in operation, were no longer acceptable and needed to be removed. A proposed Regulation (COM(92) 455 final) was tabled in order to remove these disparities.

3036 This proposal was, with some amendments, adopted by the Council on 7 March 1994, and amended in March 1995 by a subsequent Council Regulation⁵⁷ adopted, inter alia, to take account of the enlargement of the European Union. Under this Regulation, all national quotas have been definitively eliminated and only seven categories of products, among which footwear originating in the People's Republic of China, are subject to Community-wide quantitative restrictions. Special technology sports shoes (with non-injected soles) are excluded from this Regulation, on the basis that their import would have no adverse effects on the EU's shoe industry (as the EU's market share of this type of shoe is minimal). To be classified as "special technology sports shoes", the footwear must fall under a tight definition, have a cost (cif) of more than 9 ECU (previously 12 ECU) and be for use in sporting activities. Since March 1995, sports shoes (such as football shoes and golf shoes) with spikes, sprigs, stops, clips, bars or the like are also exempted from quantitative restrictions.

Certification, testing and technical requirements

3037 Despite the clear Treaty provisions on free trade between Member States, the Commission consistently receives complaints that certain certification, testing and technical requirements still hamper the implementation of free intra-Community trade. The Commission examines each complaint it receives to determine the extent to which Treaty provisions are being infringed.

3038 For example, differing national definitions and standards for the manufacture, testing and certification of a particular class of aircraft can operate as non-tariff barriers to trade and prevent their free movement between EU countries. Complaints have been made to the Commission regarding UK and Belgian rules for microlight aircraft.

3039 In the UK case, a company called Ultraflight⁵⁸ wanted to market in the UK, a particular type of microlight aircraft manufactured in France. The aircraft were

⁵⁷ Council Regulation 519/94; OJ N° L 67/94; 10. 3. 94; as amended by Council Regulation 538/95; OJ N° L 55/95; 11. 3. 94

⁵⁸ Complaint N° P/91/0740

widely used in France (although not certified⁵⁹) and fully certified in other EU countries, such as Spain and Germany. The British Civil Aviation Authority (CAA) refused to grant the necessary airworthiness certificate to enable the aircraft to be sold in the UK, without the aircraft undergoing the CAA's own certification procedure.

3040 Ultraflight complained to the Commission that the length and cost of this certification procedure was disproportionate to any possible risk to human safety or the environment and therefore constituted an effective barrier to trade.

3041 The complaint introduced by the Belgian Federation of Microlight Aircraft⁶⁰ contended that the Belgian authorities were also effectively preventing the free circulation of microlight aircraft through regulations that did not recognise other EU countries' testing and certification procedures.

The Commission position

3042 The Commission's position is that, in the absence of harmonised Community legislation regarding both the technical rules applicable to recreational aircraft and the issue of flying permits for such aircraft, Articles 30 to 36 of the Treaty governing the principle of the free movement of goods constitute the Community law against the background of which the national legislations concerned should be examined.

3043 A Member State is therefore obliged to recognise aircraft which have already received type approval in another Member State, if it is established that the technical rules applicable to aircraft in that State are equivalent to its own rules, so that an equivalent level of safety can be reached. In such cases, type approval should be quasi automatic. Only if it can be proved that the safety level is not equivalent, because risks are posed to human safety or the environment, can the authorities impose additional tests on, or changes to, the model of aircraft concerned.

3044 With regard to the UK and Belgian cases mentioned above, the Commission asked the relevant national authorities to bring their legislation in line with Community law, by providing for the mutual recognition of aircraft which have been lawfully designed, tested and manufactured and/or marketed in another Member State, according to different technical specifications which nevertheless enable an equivalent level of safety to be reached.

⁵⁹ It should be noted that, in France the authorities allow aircraft to fly on the condition that the manufacturer declares the aircraft to be airworthy; should problems arise, the manufacturer, rather than the French authorities, is responsible. In the UK, the procedure is different: independently of manufacturer's declarations, once the UK authorities certify an aircraft, they automatically accept responsibility.

⁶⁰ Complaint N° 235/91 (a complaint was also introduced on the same subject by IAOPA - N° 148/91)

3045 The Ultraflight case has now been closed by the Commission, since the UK authorities have amended their legislation. The Belgian case is still under examination.

IV Competition policy

The principles

4001 EU competition policy covers conditions of competition in trade between commercial enterprises on the territory of the EU.

4002 The main rules of competition policy which have an impact on sport are the following Articles of the Treaty of Rome:

- Articles 85 and 86 on "agreements" or concerted practices between "undertakings" and abuse of a dominant position respectively;
- Article 91 on dumping;
- Article 92 on the degree of state aid permitted.

Concerted practices and abuse of dominant market position

4003 Articles 85 and 86 of the Treaty aim to promote true freedom of choice for consumers, and to avoid barriers to trade within the internal market. Article 85 prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which prevent, restrict or distort competition within the Common Market". Only in clearly defined situations (as discussed below) are agreements still allowed under Article 85(3).

4004 Article 86 bans the abuse of a dominant market position which affects trade between Member States.

4005 In applying Articles 85 and 86 to sport the EU will have regard to the circumstances of each individual case. These Articles apply only to cases involving what the Treaty calls "undertakings" and when trade between Member States is affected.

4006 "Undertakings" refers to commercial organisations in the widest sense of the term. "Undertakings" are considered to be any entity carrying out "economic or commercial activities such as production, distribution or the supply of services". Existing case law establishes that any person participating in the economic process will qualify as an undertaking. Even individuals have been held to constitute undertakings. Sports federations and associations and sports clubs are considered to be undertakings under the Treaty, because they exercise what the Commission sees as an "economic or commercial" activity.

4007 An economic or commercial activity does not necessarily involve making profits. It is the nature of the activities practised, rather than the generation of profit or legal status, which determines the economic or commercial character. In the Macrotron case⁶¹, the European Court of Justice ruled that the non-profit nature of an entity has no impact on the applicability of EU competition policy. The Commission's Decision on film purchases by German television stations⁶² also stipulates that competition policy covers economic activities "regardless of whether or not intended to earn profits".

4008 Furthermore the distinction between professional and amateur status also does not affect per se whether EU competition rules apply.

4009 Football, for example, can be considered as an economic activity, in so far as professional football clubs organise matches with other clubs and entry to matches is on a paying basis. In this sense, football clubs which "produce" matches can be considered "undertakings" under Article 85 of the Treaty. To participate in competitions at a national level and to participate in other sports-related activities at the national level, clubs and their members are often affiliated to the national sports federations. National football federations and clubs are therefore associations of undertakings to which competition policy clearly applies. In return for their services to clubs, the national federations often levy a percentage of the receipts from matches organised by clubs. The federation is responsible for negotiating exclusivity of broadcasting contracts for the matches it organises (national cup, national team,...). For league football and European club competitions, television contracts are negotiated by clubs or leagues. From a competition policy point of view, it is important that clubs are free to negotiate individually and independently from their national federation.

4010 Manufacturers and distributors of sports equipment are clearly also considered to be "undertakings".

4011 The second pre-condition required in order that EU competition law may apply, is that trade between Member States is affected or could potentially be affected. If trade between Member States is not affected, national law will apply. Again, trade is interpreted by the Commission in the general sense of the term. The activities of an "undertaking" are generally considered to fall under the definition of trade. In the world of sport, agreements between national sports federations clearly affect trade between Member States. Agreements on the trans-frontier exchange of televised sports programmes is but one well-publicised example.

⁶¹ Klaus Höfner and Fritz Elser v. Macrotron GmbH; case C-41/90; judgment of 23. 4. 91; OJ N° C 132/91; 23. 5. 91

⁶² Commission Decision 89/536/EEC of 15 September 1989; case IV/31. 734 - Film purchases by German television stations; OJ N° L 284/89; 3. 10. 89

4012 The two above-mentioned pre-conditions are common to both Treaty Articles (85 and 86). Besides these two requirements, there are a series of other pre-conditions specific to one or other of Articles 85 and 86.

4013 Article 85 applies to "agreements", "decisions" or "concerted practices". Moreover, these arrangements must "prevent, restrict or distort" competition within the EU. For example, the manifest agreements between broadcasters, described below, and between federations, also described below, are judged by the Commission to be decisions of associations of undertakings.

4014 Complaints can be addressed to the Commission under Article 86 if the subject of the complaint has a dominant position in the market and there is abuse of the dominant position. In the market for organising and "supplying" events, the fact that only one federation often covers a sport in a Member State gives that federation, under certain circumstances, a dominant position in that market. It must be immediately said that the existence per se of a dominant position is not in conflict with the provisions of Article 86. Only when a dominant position is abused, can the EU be called upon to intervene to ensure that competition takes place. An example of abuse of dominant position would be for one supplier of a service to exclude other potential suppliers from entering a market. The Commission is currently examining a number of cases related to "abuse of dominant position" in the world of sport, as set out below.

4015 The Commission has on various occasions been called upon by sports organisations and companies to ensure that competition takes place in the sports world in a non-restricted manner. Competition issues have been raised regarding the following questions:

- Exclusive broadcasting rights:
 - a) the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters;
 - b) the degree to which sports federations should be allowed to control the broadcasting of sports events on their home territory, under article 14 of UEFA.
- The label of "Official": should sports equipment manufacturers be allowed to endorse specific brands of equipment with the logo "official"?
- The use of sports equipment: should sports federations and organisations be allowed to insist on the use of certain brands of sports equipment?

- Purchasing of sports equipment: to what degree should sports federations and organisations be allowed to recommend the purchase of sports equipment exclusively from certain distributors?
- Competition between federations: to what extent should different federations be free to organise competitions for the same sport?
- Ticket sales: exclusive agents.
- Transfer of players and restriction on foreign sportspersons.
- Restrictive trading practices of sports equipment manufacturers and distributors.

Exclusive broadcasting rights

4016 There are two main sports-related broadcasting issues which have been examined by Directorate-General IV (Competition) of the Commission:

- the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters; and
- the degree to which sports federations and associations should be allowed to control the broadcasting of foreign sports events on their home territory.

4017 These two issues are discussed below and are also examined in a study on exclusive broadcasting rights⁶³ carried out for Directorate-General X of the Commission.

The acquisition of exclusive broadcasting rights

4018 Television rights to sports events are normally granted for a given territory, usually per country, on an exclusive basis. Exclusivity is, as a general rule, considered to be necessary in order to guarantee the value of a given sports programme, in terms of viewing figures and advertising revenues which it can achieve. Television rights are normally owned by the organiser of a sports events, who is able to control the access to the premises where the event is staged. In order to control the televising of an event and to guarantee exclusivity, the organiser admits only one "host broadcaster" to produce the television signal. As part of this contract, the host broadcaster will, at

⁶³ Exclusive Broadcasting Rights : A Review and Analysis of Trade Practices.

least, secure certain broadcast rights in its own territory. Further rights to exploit the television coverage will either:

- remain with the host broadcaster as creator and thereby owner of the television material; or
- be controlled by the rights owner of the event. This control will either be in the form of a licence to exploit the material or as an assignment of all rights, save for a licence of certain or all rights in its own territory, by the host broadcaster.

The importance of exclusive broadcasting rights

4019 A major broadcasting issue involving the EU is the acquisition of exclusive broadcasting rights. The importance of exclusive broadcasting rights can be explained quickly. In the highly competitive broadcasting industry, broadcasters, be they national or private, in order to survive, must strive to differentiate themselves from other broadcasters. To do so, they endeavour to offer programmes not available on other channels in order to attract a maximum number of viewers. The more viewers, the more potential consumers see advertisements. The more people see publicity, the more the advertisers and sponsors are willing to pay to have their advertisements shown, and the more revenue generated for the broadcaster. In return, the broadcaster will be willing to pay more to secure the exclusive rights. Exclusivity is therefore a central power force in driving the sports/television relationship.

4020 Major sports events are among the programmes which attract the most viewers. As the salaries of sports professionals and the costs of sports infrastructure have increased, revenue from advertising has become by far the most important source of income for most televised sports organisations. In recent years, the amounts television companies have paid for exclusive broadcasting rights have risen significantly. The 1992 summer Olympics generated approximately 562 million ECU from television rights contracts; television revenues from the Atlanta games in 1996 are expected to reach over 700 million ECU⁶⁴.

4021 The issue of exclusive broadcasting rights must be seen in the context of the ongoing struggle between public and private broadcasters. In the past, public television companies dominated the market. Increasingly, private broadcasters are competing with national public mission broadcasters and, in addition, international sports rights agencies have entered into the market. These agencies enable sports organisers to maximise revenue by selling the rights country by country, without getting involved in various negotiations with individual broadcasters. This has facilitated rights

⁶⁴ This amount is the equivalent of US \$ 906 million, based on August 1995 exchange rates. Of this total, US \$ 250 million will be paid by the EBU.

acquisitions by commercial channels who are not members of the European Broadcasting Union (EBU).

4022 The European Broadcasting Union (EBU) is currently one of the most important players in the world of broadcasting within the EU. It is an association of radio and television organisations set in 1950 with headquarters in Geneva. It has no commercial aim. Active membership is open to public mission broadcasters that is, companies which are subject to a number of obligations by national law and practice concerning their programmes and their audience coverage. Purely commercial broadcasters are not admitted as members.

4023 The EBU operates a collective purchasing and transmission system. By acting on behalf of a series of television companies, it allows many public mission television companies access to programmes to which they would not otherwise have had access, being financially unable to purchase the rights. The EBU is the operator of the "Eurovision" Network.

4024 An important role of the EBU is to protect smaller broadcasters by enabling them to have access to certain highly attractive programmes, which otherwise would have been too expensive.

The danger that large broadcasters may dominate small broadcasters

4025 In this highly competitive broadcasting market, exclusive broadcasting rights are a necessary part of the normal functioning of that market. While the Commission accepts the concept of exclusivity, the duration and scope of exclusive rights can be anti-competitive. In the Commission's view, the duration of exclusivity has to be defined differently with respect to different types of programmes. With regard to sports events, the Commission feels that exclusivity should be limited to one-off contracts covering one event or one sports season.

4026 The Commission can intervene when it is called upon by market players to ensure that all potential acquirers of exclusive rights have equal access to programmes. The Commission's role is therefore one of ensuring competition in the market of exclusive broadcasting rights. The Treaty of Rome has mandated the Commission to ensure that differences in the buying power of broadcasters or groups of broadcasters do not prevent fair competition. There is a real danger that large groups of broadcasters will dominate the market, to such an extent that smaller broadcasters are effectively prevented from competing. National public mission broadcasters from smaller Member States often fall into the category of smaller broadcasters.

4027 The ability of large buying groups to appropriate to themselves the exclusive rights of an increasing number of events is particularly important in a context in which sports organisations are starting to demand more money for exclusive rights. Possible

solutions range from the reservation of television rights for large sports events for the national broadcaster, as is the case in Norway, to total liberalisation of the market.

The danger that minority sports will be neglected

4028 An associated danger is that minority sports will receive less television exposure. Sports which do not yet attract sufficient viewers to interest advertisers may lose out to sports attracting large audiences. On the other hand, minority sports may not necessarily suffer in the event of a liberal view on exclusivity. The fact that the exclusive rights may already belong to other broadcasters may force television companies with less resources to look into broadcasting less popular sports. An example of this is snooker, which has grown from a minority sport to a leading television sport in the UK.

4029 The Commission has been called upon to examine four cases which are of direct interest to the above-mentioned issues. These cases are as follows:

- Film Purchases by German Television Stations⁶⁵
- La Cinq versus EBU⁶⁶
- Screensport versus EBU Members⁶⁷
- EBU-Eurovision System⁶⁸

4030 The first two cases are only indirectly related to sport but are important in that they provide certain legal precedents which are relevant for the EBU-Eurovision System. The latter two cases, the Screensport v. EBU Members and the EBU - Eurovision System cases, relate more directly to sport. Solutions were reached on both cases. The Screensport v. EBU Members opposed two specialised sports channels, while the EBU - Eurovision System case involved exclusivity in television coverage of sports events. The latter case is not only relevant to sport, but also has implications for other televised events.

⁶⁵ Commission Decision 89/536/EEC of 15 September 1989; case IV/31. 734 - Film purchases by German Television stations; OJ N° L 284/89; 3. 10. 89

⁶⁶ La Cinq v. EBU, Commission Decision; 14. 8. 90

⁶⁷ Screensport v. EBU Members, Commission Decision 91/130/EEC; 19. 2. 91; OJ N° L 63/91; 9. 3. 91

⁶⁸ EBU-Eurovision System, case IV/32. 150, Commission Decision 93/403/EEC; OJ N° L 179/93; 22. 7. 93

The Screensport v. EBU Members

4031 The Screensport v. EBU members case concerned the potential distortion of competition which resulted from the fact that Eurosport participated in the collective purchasing system from which Screensport was excluded.

4032 Screensport and Eurosport were, until February 1993, major competitors in the market of specialised sports channels. Until this date, Eurosport was owned by certain members of the European Broadcasting Union. TESN (the European Sports Network) is owned by ESPN, a major US sports channel, Canal + and Générale des Eaux of France. Screensport was the UK link in the TESN network of sports channels.

4033 Screensport claimed that the benefits of the EBU's collective purchasing system had been expanded to Eurosport thereby allowing Eurosport better access to European sports events than Screensport. In this context, Screensport formally complained to the Commission that it was not receiving fair access to sports coverage.

4034 As indicated above, the Commission believes that broadcasters, public or private, are considered as undertakings and therefore Articles 85 and 86 may apply. It also saw clear evidence of a restriction of competition resulting from the collective purchasing system. The Commission felt that trade between Member States was affected in that Eurosport was in competition with Screensport for the same types of sports programme, intended for international broadcasts.

4035 The dispute between Screensport and Eurosport was resolved in January 1993 when, rather than continuing as competing sports channels, the shareholder of TESN agreed to acquire a holding in Eurosport, and Eurosport to purchase a share of TESN. TESN agreed to cease sports broadcasting in Europe on its own behalf, and both parties undertook not to compete with the activities of their newly created joint ventures. TESN and Eurosport decided to cooperate in order to provide a single service that would ensure the survival of one pan-European sports channel since they believed that "the current structure of the market and development prospects are such that financial equilibrium cannot be achieved by two channels".

4036 The new version of Eurosport has the following public-service obligations. In addition to major international and European sporting events, Eurosport must broadcast sports with a small following and of limited commercial appeal, sports involving minorities and programmes which highlight the cultural and educational aspects of sport. The new Eurosport channel has notified the Commission of its joint-venture, in order to receive clearance from the Commission. The latter is presently still examining this notification in the case "Eurosport Mark III".

EBU - Eurovision System

4037 The Commission carried out an investigation to determine to what extent the EBU's system for the acquisition of exclusive broadcasting rights, including for sports programmes, contravened EU competition policy and, if so, whether this system could be exempted within the meaning of Article 85(3) and under which conditions, in order to limit the anti-competitive effects of the EBU's system.

4038 The EBU has a collective purchasing system for the acquisition of broadcasting rights, including for sports events. This system pools the resources of EBU members and increases their bargaining power to competitively acquire broadcasting rights. It also allows public mission broadcasters, particularly from smaller countries, access to quality programming which would otherwise prove too expensive to purchase. Once the rights have been acquired, only EBU members are entitled to broadcast the events during a designated period of exclusivity.

4039 The Commission does not believe that exclusive broadcasting rights are anti-competitive per se; the duration and scope of exclusivity can, however, be anti-competitive. In the case of the EBU, it is the collective purchasing of television rights which comes within the scope of Article 85(1).

4040 In the EBU - Eurovision System case, the restriction of competition stemmed from the joint purchasing of rights (which, on the other hand, also provides a number of benefits). The Commission felt that the EBU was imposing very strict conditions on non-members for the purchase of EBU-acquired rights. The access to those rights for non-members on reasonable terms was required by the Commission in order to reduce the restriction of competition vis-à-vis non-members and to allow non-members also to benefit from the advantages of the Eurovision System.

4041 In reaching its Decision on this case, the Commission took into consideration the EBU's arguments that if its powers to carry out collective purchasing of exclusive rights were removed, it would probably have to cease operating and there would be no organisation to facilitate purchasing for smaller market players. Moreover, minority sports would suffer.

4042 Following negotiations between the Commission and the EBU, the EBU introduced new provisions to improve access to sports events for non-member commercial stations. Better terms and conditions are now offered to non-members for the acquisition of broadcasting rights for deferred transmissions, extracts and news and also for live transmissions of events which the EBU members do not themselves broadcast live. In view of these changes, the Commission agreed to exempt (under Article 85(3)) the EBU from the application of Article 85(1). The exemption safeguards the fulfilment of the EBU members' public mission while at the same time allowing third-party channels appropriate access to sports programmes.

The control of broadcasting of foreign sports events by sports federations

4043 UEFA, the European Union of Football Associations, is Europe's highest football authority. It acts as the federation of national football federations, determining the rules applying to each of the member federations. Only one national football federation per country⁶⁹ is recognised by UEFA and the International Federation of Football Associations (FIFA). Under UEFA Statutes, football federations own the exclusive rights to authorise the broadcasting, transmission or reproduction of the matches they organise, by broadcasters or associations of broadcasters. As mentioned above, the freedom of clubs to negotiate individually is important from a competition policy point of view.

4044 The televising of football is subject to a degree of control in all EU countries. For example, in England it is not possible to watch live Premier League football on a Saturday afternoon. This is because all other matches (professional, junior and amateur) are normally played at that time. Thus, according to UEFA, to allow the transmission would damage attendances. Indeed, national football associations throughout Europe have traditionally tried to avoid clashes between televised football and the live game. UEFA contends that there is a general recognition in the football world that simultaneous broadcasting of football damages attendances in the stadia.

4045 Article 14 of the UEFA Statutes provides the mechanism for regulating cross-border transmissions of football. However, the operation of the Article has been controversial and has led to complaints to the European Commission (see below).

4046 Following lengthy negotiations with the Commission, in 1993 UEFA introduced a new regime to regulate cross-border transmissions. The main features of the regime are the establishment of "open, protected and closed" time slots.

4047 During "open" slots (on weekdays before 16:00 and after 22:30) television transmission of football can take place without the consent of the receiving association. During "protected" time slots (on weekdays after 16:00 and before 22:30, and on Sunday evenings), it is possible for a "receiving" association to object to an incoming transmission, but only under tightly controlled conditions (ie, when there would be a "direct clash" with domestic match schedules). Finally, during "closed" time slots (on Saturday afternoons and evenings before 22:00, and on Sunday mornings and afternoons), there should, in principle, be no transmissions of football (though there would be exceptions for important international matches and Cup finals).

4048 The effect of the application of article 14 is that if, during a protected time slot, a match on television (irrespective of whether it is live or deferred, whole, partial or

⁶⁹ With the exception of the UK, where four separate football associations are recognised for England, Scotland, Wales and Northern Ireland.

repeated) would coincide with an important local match, the national football federation may withhold its authorisation from the broadcaster. If, for example, a European Cup match between Ajax Amsterdam and Bayern München takes place in Munich, the Dutch television broadcasting the match in the Netherlands must be granted prior permission from the Dutch football federation to televise the match. The Dutch federation must assess whether the transmission of the match into the Netherlands would damage attendances at local games being played at the same time. In the past, television companies were sometimes obliged to compensate the federations for the privilege to broadcast. However, one of the reforms introduced by the new UEFA regime is a ban on any such type of financial compensation. Similarly, federations had been accused of delaying their decisions on broadcasts until the last moment. A further reform introduced by the new UEFA regime is to establish clear procedural steps for the authorisation process.

4049 The main reason behind this rule is that UEFA feels that football fans should be encouraged to go to live matches, and football players should participate at amateur or youth matches, rather than simply to watch them on television. In this way, local football and football in smaller nations stand a better chance of developing.

4050 As with the EBU-Eurovision system case, the issue of control over the broadcasting of sports events is important insofar as revenue generated from advertising and sponsorship and the sales of exclusive rights for sports events, is the main source of funding for the sports world.

4051 The Commission is still examining whether the new provisions fully comply with competition policy. The Commission's examination of article 14 is important in that it focuses attention on the degree to which protection should be given to national sports events and under what circumstances. Moreover, the Commission's policy on article 14 is not just applicable to football; it is relevant to all sports in which federations strive to generate a maximum of financial resources via broadcasting of sports events.

4052 The Commission's final decision on the matter is likely to impact not only European football, but also world football rules. FIFA is awaiting the outcome of the decision before drafting its equivalent to UEFA's article 14, in order to ensure full compatibility between UEFA and FIFA rules.

The facts of the cases

4053 Certain television broadcasters (TESN⁷⁰, BSkyB⁷¹ and ITVA⁷²) have officially complained to the Commission about the old article 14 of UEFA's Statutes. Other television companies have complained unofficially.

4054 The complainants argue that control over television football transmissions is in no way justified and that article 14 of UEFA's Statutes should be abrogated.

4055 In a separate but related case, the Football Association (FA) of England, the governing body of football in England, had concluded agreements with the BBC (the national public mission broadcaster) and BSkyB (a company with new satellite channels including a dedicated sports channel). The agreement effectively shared exclusive broadcasting rights for the Football Association's matches, between the two broadcasters for a five year period. In addition, the BBC and BSkyB were granted exclusive permission under article 14 for the transmission of all foreign matches where article 14 permission was necessary. ITVA (the Independent Television Association) contested this exclusivity for foreign matches.

The Commission position

4056 The Commission has agreed to examine the case of article 14 of UEFA under competition policy rules because it considers that the conditions for the application of Article 85 of the Treaty, which prohibits restrictive agreements, are fulfilled. That is, there is a decision of an association of undertakings (various national and European football federations); the decision has the effect of preventing trade between Member States since the broadcasting of certain matches is prohibited. Moreover, article 14 restricts competition because it limits the right of national football federations to market their transmission rights and compete freely for the sale of these rights.

4057 In this context, the Commission is examining the issue of the protection of live audiences by methods such as, or similar to, article 14 of UEFA's regulations. If the Commission agrees that the basic argument that live audiences should be protected by systems like article 14 is justified, and it had not yet done so at the time of writing, only then would the Commission proceed to an examination of detailed questions relating to the authorisation procedures and the scope of time slots. If the anti-competitive effects of UEFA's article 14 were then deemed to be limited to the extent necessary for the protection of live football in stadia, the revised article 14 could be exempted under Article 85(3). Among other things, the Commission would examine

⁷⁰ Case N° IV/33. 742

⁷¹ Case N° IV/33. 245

⁷² Case N° IV/33. 145

claims that foreign matches are being banned even when their timing does not conflict with national matches. The Commission is anxious to bring the recourse to article 14 back to the reasonable limits of its original purpose.

4058 It has been decided to enter into comprehensive consultations with all parties concerned in order to seek a compromise solution. A mediator has been appointed in order to explore a compromise, in separate talks with the parties, which would remove the basis for the complaints.

4059 In the separate case involving the FA and the BBC and BSkyB, the Commission agreed that the FA's agreements with the BBC and BSkyB granting exclusive permission to broadcast foreign matches was "not only contrary to Article 85 (concerted practices) of the Treaty, but also an abuse of a dominant position by the FA (Article 86)"⁷³. At the request of the Commission, this exclusivity was removed from the agreements. Pending the Commission's decision on article 14 of the UEFA statutes, the FA has undertaken to apply article 14 in a manner which does not discriminate between, on the one hand, BBC and BSkyB and, on the other hand, third party broadcasters such as ITV.

Product endorsement

4060 The Danish Tennis Federation (DTF) case currently being examined by the Commission is illustrative of three inter-related issues concerning sports equipment. These are :

- The use of the label "official".
- The obligatory use of "official" equipment in federation competitions.
- The obligatory purchase of equipment from specific distributors for use in federation competitions.

4061 At the time of writing, no official decision had been taken by the Commission on the DTF case. Following discussions between the Commission and the DTF, the latter has modified its rules and has come around to the Commission's position. The new rule changes have not yet been notified to the Commission, but are expected to be so shortly. Once they are notified, the latter will examine the changes to ensure that they comply with EU competition rules.

The use of the label "official"

4062 Many sports federations grant the label of "official" to certain sports equipment and manufacturers are willing to pay to have their equipment recognised as "official"

⁷³ Notice concerning a notification in cases N° IV/33.145 - ITVA/Football Authorities and N° IV/33.245 - BBC, BSB and Football Association, OJ N° C 94/93; 3.4.93

because this leads to increased sales. The money manufacturers are willing to pay is important in financing federations.

The facts of the case

4063 The Danish Tennis Federation (DTF) has made an agreement which designates three brands of tennis balls; Penn, Tretorn and Slazenger, as "official" tennis balls. In compensation, the DTF has been financially rewarded. A Danish parallel importer has complained to the Commission about this practice, on the ground that the agreement does not comply with EU competition rules.

The Commission position

4064 The Commission's point of view is that the granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the product. Consumers are entitled to objective information so that an independent choice of product can be made. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. The label "official" would also be acceptable if it was justified for technical reasons. However, for tennis balls, there is very little difference among first grade balls (as recognised by ITF technical tests).

4065 The Commission hopes that by focusing on the DTF case, other federations will be encouraged to change their practice before there is recourse to legal action by the Commission. In the UK, the label "official supplier" of tennis balls was disallowed for the same reasons. A solution was reached when the sponsors became "members of a tennis ball sponsoring group", a label which proved acceptable to the Commission.

The obligatory use of "official" equipment

4066 One of the basic missions of national sports federations is to organise competitions for their member clubs and affiliates. Not only do federations actively organise competitions, but many clubs organise competitions under the auspices and guidelines of the federation.

4067 One way of generating additional funding is for federations to promote the exclusive use of particular brands of sports equipment both for competitions they organise and for competitions organised under their auspices. Manufacturers are willing to pay for the privilege of this form of promotion.

The facts of the case

4068 The DTF had originally stipulated that only Penn, Tretorn and Slazenger tennis balls could be used in tournaments organised by and under the auspices of the DTF.

A Danish parallel importer complained that this practice constituted an abuse of dominant position by the DTF.

4069 In the meantime, the DTF has proposed a reduction in the scope of application of its obligation to use officially sponsored balls.

4070 The Commission will examine the new rules, once they have been notified (formally communicated), to ensure that they comply with EU competition policy.

The Commission position

4071 A distinction needs to be made between competitions organised by the DTF and competitions organised under the auspices of the DTF. The Commission does not contest the right of the DTF, for the competitions it organises, to select specific tennis ball(s) as long as competition was not restricted in the original process of designating the exclusive equipment. Exclusive contracts should not be for an "abusively" long period of time. The duration of one season may be a good indication of an acceptable duration.

4072 The Commission does not condone exclusive contracts imposed by the federations for competitions that they do not organise, even if the events are under the auspices of the federation. Such a practice is considered to be an abuse of the DTF's dominant position in Danish tennis. The Commission claims that the DTF is, in effect, using its monopoly position to impose certain brands, without providing sufficient technical justification. Moreover, it is doing so for its own (financial) profit. The Commission does, however, agree with the obligation to use grade 1 balls, because this restriction is based on technical considerations.

4073 Moreover, competition should have been open when bids for the endorsement contract were called for at the outset. The Commission interprets on a case by case basis whether the duration of the contract is too long, and whether the price is excessive (often linked with the duration). As already mentioned above, the duration of one season may be a good indication of an acceptable duration.

4074 The Commission also took a position when Tretorn complained about the UK Lawn Tennis Federation's insistence on the use of pressurised balls in UK competitions. Tretorn happens to be the only large manufacturer which does not make pressurised balls (although it does make grade 1 balls) and therefore feels it is being arbitrarily discriminated against. The UK federation said it prefers pressurised balls because they respond faster. The Commission has told Tretorn that as long as the UK federation has technical reasons for its decision, it has no cause to act. The only exception is if Tretorn can prove that the rule had been set up with a view to excluding Tretorn, a situation which would be extremely difficult to prove.

Exclusive purchasing agreements

4075 For commercial reasons, manufacturers sometimes sign exclusive distribution agreements with certain distributors. Some federations are reported to recommend their affiliates to purchase their equipment through exclusive distributors. This allows federations a supplementary source of revenue.

The facts of the case

4076 In competitions organised under the auspices of the Danish Tennis Federation (DTF), not only do tennis balls have to be of a specific brand, but that specific brand needs to be purchased through specific distributors. In the DTF's Official Magazine, a boxed text indicates that tennis balls should be purchased via specific distributors, the justification being that these companies help tennis, so tennis players should reciprocate. A complaint against the DTF was officially registered by the Commission.

The Commission position

4077 The Commission believes that the above arrangement does not comply with EU competition policy, in particular with Regulation 1983 of 1983⁷⁴. This Regulation permits exclusive distribution agreements as long as "parallel imports" are also allowed. Parallel imports are imports of the same product from other Member States, (regardless of the exclusive distribution agreement with a distributor in the home Member State). Therefore, if a wholesaler discovers a cheaper source of the same product abroad, it must be free to import that product. Similarly, the seller in the foreign Member State must be free to practice "passive" exports, that is, without making active efforts to attract customers abroad. Exclusive distribution agreements may, however, disallow "active" exporting. "Active" denotes the organisation of publicity campaigns and the use of warehouses and sales representatives etc.

4078 The Commission views the parallel import rule as an absolute requirement in terms of competition policy. This is because it is the only guarantee that exclusive distribution agreements do not lead to significant price differentials between Member States, which would clearly run the risk of harming consumer interests. By recommending its affiliates to purchase from a specific distributor, the DTF effectively restricts competition.

4079 As indicated at the beginning of this section, no official decision has been taken by the Commission at the time of writing. Again, only when the rules are formally notified to the Commission will the latter examine the new changes to the DTF's rules to ensure that they comply with competition rules.

⁷⁴ Commission Regulation 1983/83/EEC; OJ N° L 173/83; 30. 6. 83

4080 Another example of the application of this principle is the Commission decision in March 1992 to impose a fine on Dunlop Slazenger International (DSI) and All Weather Sports, the sole distributor for Dunlop in the Benelux. DSI was accused of using various means to block exports of balls to other European Union Member States in order to protect its sole distributors in those States.

4081 In another case related to tennis balls, in December 1994, the Commission imposed fines on Tretorn and certain of their exclusive distributors for infringement of Article 85(1)⁷⁵. The Commission ruled that Tretorn had applied an export ban to their exclusive distributors of tennis balls, and that the exclusive distributors had participated in the implementation of the export ban and suspension of supplies, thereby preventing parallel imports of tennis balls.

Competition between federations

4082 It is generally accepted that single national federations and a single international federation are the most effective institutional structure to promote the interests of each sport. In order to maintain a single federation structure, established federations sometimes require exclusivity from their affiliates by requiring the latter to agree to participate only in sports events organised by the federation to which they are affiliated. In principle, however, anyone or any group of persons are free to set up a sports federation. There is no legal barrier to prevent the creation of a separate or "competing" federation for a variant of a sport.

4083 A problem may arise when a variant of the game feels its interests would be better promoted by a separate federation. This is particularly likely in sports where the success of one variant is likely to take away from the mainline variety of a sport. The more powerful established federation might be tempted to hamper the creation of an alternative federation. The weaker federation runs the risk of being squeezed out of the market by its larger competitor.

4084 This poses the related question of the extent to which more than one federation should be allowed to freely govern any sport or variation of a sport. Should federations be allowed to freely compete for the market, and to what extent should rules for competition apply? Should the most efficient and powerful entities be allowed to dominate? Should cases such as boxing, where there are a number of competing international federations⁷⁶, be promoted? The issue is the extent to which the authority of a federation covers a sport, including its variants.

⁷⁵ Commission Decision 94/987/EC of 21 December 1994 relating to cases IV/32. 948 - IV/34. 590: Tretorn and others; OJ N° L 378/94; 31. 12. 94

⁷⁶ WBF, WBO, WBA, WBC, and IBF.

4085 Total freedom to compete would allow powerful private entities, whether they take the form of federations or not, to organise on their own behalf parallel competitions, which could take players and spectators away from established competitions. Views differ as to whether this freedom would make a positive or negative contribution to sport.

4086 Underlying the entire issue of the authority of the federations are financial interests. Although reliable information is difficult to obtain on the amounts in question, revenues from exclusive television rights, advertising at matches and tickets to matches are a significant source of income for sports organisations and for commercial entities involved.

The facts of the cases

4087 In Belgium, the football federation is the Union Belge Royale des Sociétés de Football Association (URBSFA), more commonly known as the "Union Belge". Its role is to promote and organise all forms of football in Belgium.

4088 The organisation of indoor football (5-a-side) has been regionalised in Belgium. The Francophone Federation of Indoor Football (Ligue Francophone de Football en Salle or LFFS) and the Flemish Federation (VZVV) are now responsible for the organisation and promotion of indoor football for their respective territories. Both indoor football associations are represented at the national level by a national federation. The main reason for establishing the national indoor federation was that only one federation could be recognised by the international football authorities.

4089 In 1985, FIFA, the world football authority, decided to take a more active interest in indoor football and integrated indoor football into its network; only one national federation per country would be recognised by UEFA and FIFA.

4090 FIFA's decision to take control of indoor football may have been motivated by the suitability of indoor football to television. Indoor football is very spectacular, with significantly more goals scored per minute than 11-a-side football. It is also easier to film an indoor game given the reduced size of the pitch. The nature of the indoor game allows for more opportunities for advertising breaks and so more revenue can be generated. Moreover, indoor football physically requires less space and therefore entails less infrastructure costs, this at a time when the renovation requirements of stadia is increasing to improve safety. An additional attraction is that indoor football, given that it takes place on a smaller scale than ordinary football, is less prone to hooliganism and football violence.

4091 FIFA's decision to integrate indoor football was rejected by the indoor football authorities. They felt that their own Indoor Football Federation would be in a better position to promote this sport. FIFA reacted to this refusal to integrate by banning indoor football participants from international competitions run by FIFA (the majority

of existing competitions); this was achieved by prohibiting double affiliation for players. In Belgium, therefore, players affiliated to the indoor federation were no longer able to play in matches organised by the Union Belge, the only Belgian affiliate of UEFA and FIFA.

4092 The Union Belge's policy had the effect of preventing amateurs and professionals from participating in both types of football during the same season. The impact is less serious for professionals who are not generally doubly affiliated. Amateur players, however, often participate in both types of football during the course of the same season. The Union Belge allowed no indoor games during the weekend, except during holiday periods. Referees affiliated under the Union Belge were not allowed to referee indoor games. The intention of these measures was clear: to prevent indoor football from competing with 11-a-side football.

4093 The Belgian courts were consulted on the matter and ruled against the Union Belge, but only during the course of the ongoing season at the time of the judgment. During subsequent seasons, there were no legal impediments to prevent the Union Belge from continuing its discrimination against indoor football.

4094 It was for this reason that the Francophone Federation of Indoor Football subsequently complained to the Commission about the practices of the Union Belge. In early 1994, the Commission rejected the complaint of the LFFS on the grounds that trade between Member States was not seriously affected.

4095 Other cases of conflicts between sports authorities have been called to the attention of the national courts in various Member States, such as the dispute between the Italian sailing and yachting federations. National courts are deemed to be competent to handle these matters, and sometimes rule against sports authorities for abusing a dominant position as they did in the Italian sailing case.

Ticket sales by exclusive agencies

4096 Distribution of tickets for some major sporting events has traditionally been based on the principle of exclusive distribution in each Member State. The organising committee of the event enters into agreements with an exclusive ticket distributor in each Member State. For the privilege of exclusivity, agencies are willing to pay considerable amounts of money.

4097 Strict separation of Member States' national markets has thus taken place. Consumers and travel agencies in foreign Member States are sometimes prevented from buying tickets and travel agencies selling tickets in one Member State have undertaken not to sell them in another.

4098 The main reason behind this system of national quotas has been to ensure fairness in the distribution of tickets so that countries of different sizes and financial

means, receive their fair share of tickets. The principle of quotas, however, fails to take into account the European Union dimension. More recently, many organisers of sports events, including those of the Olympic Games and of the Football World Cup in 1994, have altered the rules of their distribution systems so as not to grant any exclusivity in the Member States. Moreover, the above-mentioned organisers have also been more open and transparent in their selection of official agents (via public tenders).

The facts of the cases

4099 In 1991, a German tourist agency complained to the Commission that it could not obtain tickets to the Barcelona Olympic Games for its clients. In Germany, only the Deutsche Reisebüro had the right to sell tickets to the Olympics. A similar situation existed in all other Member States both for the Barcelona and Albertville Olympic Games.

4100 Moreover, the German agency which was granted exclusivity commonly made purchase of tickets conditional on the purchase of accommodation and travel services from the same organisation.

4101 The Commission was also called upon to examine the ticket distribution system for the football World cup in Italy in 1990.

The Commission position

4102 Basing its analysis on Articles 85 and 86 requirements, the Commission supported changes in the distribution rules on two main points.

4103 First, the practice of strict territorial exclusivity, by which only residents could purchase tickets from the distributing agency, was considered unacceptable under Article 85 by the Commission on the basis of European Court of Justice case-law⁷⁷.

4104 Second, under Article 86 of the Treaty, the exclusive agency clearly had an indisputable dominant market position. It was strongly felt that this dominant market position was abused in so far as the exclusive agent obliged purchasers of tickets to concurrently purchase other services (accommodation and travel) which were dissociable from the ticket.

4105 Under no circumstances could these two practices be exempted from EU competition rules. The Commission's position on excluding EU nationals purely on nationality grounds is that this practice is totally unacceptable and contravenes the basic principles of the Treaty of Rome. The same is true when consumers are forced

⁷⁷ ECJ case Consten; 13. 7. 66, Tipp - Ex ; 8. 2. 90

to purchase other services alongside their ticket to a sports event. Although the Commission felt that these practices contravened EU rules on free circulation of services, it approached the problem from the angle of competition policy.

4106 On the issue of assigning one ticket agency per Member State, although no definitive position has yet been taken, the Commission would be in favour of any steps taken to ensure that single agencies in a dominant position would avoid breaches of competition rules (ie non-discriminatory distribution such as a "first come, first served" rule).

4107 Regarding the distribution system for tickets at the 1990 World Cup for football, the Commission ruled⁷⁸ that the World Cup organiser's exclusive agreement with one tour operator for the organisation and sale of package tours to the World Cup, was not compatible with EU competition rules. The safety arguments put forward in support of the arrangements were not justified, since the representatives of the organiser admitted that a number of tour operators other than the one selected could have complied fully with the organiser's requirements in this respect.

4108 Given that this was the Commission's first decision on ticket sales for a sporting event, no fines were imposed. Similar infractions in the future are likely to be subject to a fine.

4109 Following the position taken by the Commission, the Organising Committees of the Olympics in Barcelona and in Albertville and the ticket distributors altered their contractual arrangements so that the nationals of a Member State could buy tickets directly from the Organising Committees or from distributing travel agencies based in other Member States.

Transfers and restrictions on foreign sportspersons

4110 As detailed in Section I on free movement of persons and services, the current transfer system in football regulates the movement of football players between clubs. It provides for a compensatory amount to be paid by the acquiring club to the ceding club. A second issue is that of UEFA rules on nationality which restrict the number of foreign sportspersons allowed to participate in certain matches, the so-called "nationality clause" or "3 plus 2" rule, under which a team can include a maximum of three foreign players and two "assimilated" players.

4111 UEFA rules provide that a player is free to change clubs once his existing contract comes to an end. This basic principle is reflected in the "Gentleman's

⁷⁸ Commission Decision 92/521/EEC relating to a proceeding under Article 85 and cases IV/33.384 and IV/33.378 on distribution of package tours during the 1990 World Cup; OJ N° L 326/92; 12. 11. 92

Agreement" between UEFA and the Commission, which states that: "every non-amateur player's contract must at least include a principle that a player having completed his contract shall be free to enter a new contract with any club of his choice and to play immediately with that club. The players' rights to contract and to play shall not be affected by the negotiations between the releasing and acquiring club concerning the payment of a compensation fee, the latter taking into account, in particular, the investment in training given to young players". Previously, the compensation due had to be agreed and paid before the player was allowed to move to another club. Under the "Gentleman's Agreement", however, the player can move, even if the clubs are still discussing the amount to be paid, thereby removing the block on the player's immediate transfer; a compensatory amount must nevertheless still be paid at a later stage. Compensation for the development and training costs of young players is the main justification given by clubs for transfer fees.

The facts of the case

4112 The question of the legality of the football transfer system under EU rules has been raised by cases such as that of footballer Jean-Marc Bosman. In summary, Bosman, having reached the end of his contractual period with the Royal Football Club of Liège and having accepted a position with the French club of Dunkerque, was prevented from moving to France because of difficulties between the two clubs in arranging for the payment of the agreed transfer fee. These difficulties resulted in the French football federation not receiving the required transfer authorisation from the Belgian football union. Because of the delay, Dunkerque rescinded the contract with Bosman.

4113 Bosman took his case to the national tribunal requesting that he should receive compensation for loss of earnings and that the case be referred to the European Court of Justice.

4114 As already described in the section on free movement of persons, in October 1993, following a complaint from Bosman, the Belgian Courts formally asked the European Court of Justice to rule on whether the relevant Treaty rules (including Articles 85 and 86) should be interpreted as prohibiting:

- "a football club from demanding and receiving payment when one of its players, at expiry of contract, is taken on by a new club;"
- "national or international sports associations or federations from establishing rules limiting the access of foreign players from other EU Member States to the competitions they organise".

4115 In June 1995, a public hearing was held at the European Court of Justice to offer all parties involved the opportunity to voice their views and concerns regarding the Bosman case⁷⁹.

4116 Three of the four Member States which publicly expressed their views, (Germany, France and Italy), stated that the Treaty, including both competition rules and indeed Article 48 on free movement, should not apply to sport. They did not oppose the transfer system as it currently operates, and felt that football associations should be entitled to decide upon the rules governing transfers. Only Denmark supported the Commission's position (see below) that the transfer system is contrary to the Treaty and is considering the introduction of a new law which would abolish the transfer as it currently stands in Denmark.

4117 Bosman's position was that football is indeed an economic activity and that the Treaty rules are applicable to the transfer system. He added that the latter is contrary to Articles 85 and 86 (and 48). Moreover, Bosman contested UEFA's position on compensation.

4118 UEFA argued that the transfer system is a cornerstone of the regulatory structure of football. It was necessary to reward clubs (particularly small clubs) for the investment made in the training of players. UEFA argued that without income derived from transfers many small clubs would go out of business and if there were fewer clubs then fewer players would get the chance of a professional training in the first place. UEFA added that in the vast majority of cases there was no disagreement over the transfer fee and, if there is, the matter could be settled by an independent Board of Experts. Finally, UEFA added that, in the Bosman case, the transfer rules were not properly applied, yet this isolated incident had cast doubt over the legitimacy of the entire system. As to the "three plus two" rule, UEFA argued that this had nothing to do with Bosman. It pointed out that the player was being transferred to a French second division club (Dunkerque) to which the rule did not even apply. Furthermore, even if the Court did consider the rule, UEFA argued that it could be justified on "sporting" grounds and did not, therefore, infringe EU law. Finally, UEFA pointed out that identical rules apply to different team sports all over Europe. Consequently, if the European Court condemned the UEFA rule, it would have serious and widespread implications throughout the sporting world.

4119 In parallel, earlier this year, UEFA stated that it was holding discussions with FIFPRO, the international association of football players' unions, on a method to fix transfer fees. Both parties understood the importance of compensation for clubs and of the principle that all players should be free to move freely at the end of a contract. Furthermore, UEFA indicated that both sides agreed that the "three plus two" rule

⁷⁹ A summary of the discussions held at the hearing were published by the European Court of Justice on 7 June 1995 (re: case C-415/93)

was designed to protect the development of national talent and, as such, was in the best interests of European football and should be maintained.

The Commission position

4120 In its written observations to the European Court of Justice in January 1994 regarding the Bosman case, the Commission has indicated that football associations' rules on transfers and those restricting the numbers of foreign players, in particular those from other EU countries, are indeed covered by competition rules (Article 85 of the Treaty).

4121 Given the business aspects of professional football, such as revenue from broadcasting rights, sponsorship contracts, ticket sales and compensation fees for ceding players, the Commission has deemed that EU competition policy rules on concerted practices are clearly liable to apply to this professional sport when its practices are viewed as restrictive.

4122 At the European Court of Justice hearing, the Commission contended that neither UEFA's rules on international transfers upon expiration of players' contracts nor the nationality clause (restricting the number of foreign players on a team) comply with Treaty provisions on competition (Article 85(1)). The Commission argued that both the transfer system and the nationality clause limit the freedom of clubs in recruiting players, in particular players from another country. The transfer system introduces a uniform system for the recruitment of players which deprives clubs and players of the possibility to benefit from other more favourable transfer systems or indeed from a regime in which compensation or transfer fees would not be necessary, as might be expected under normal conditions of competition. On the nationality rules, the Commission argued that these rules prevent clubs from having free access to the services offered by footballers throughout the Community. Moreover, the Commission felt that neither the transfer system nor the nationality clause were indispensable for the organisation of competitive football.

4123 Article 85(3) provides for certain exemptions from its provisions under certain conditions. Any consideration by the Commission of possible exemptions, however, would require that the Commission be formally "notified" of the rules (so that it would have sufficient information to determine whether the rules merit exemption or not). "In July 1995, UEFA notified its transfer rules⁸⁰ to the Commission, therefore obliging the Commission to assess whether the rules should be exempted under Article 85(3). DG IV is currently examining the compliance of the transfer system."

⁸⁰ UEFA has notified its transfer rules to the Commission. Its rules on foreign sportspersons have not been notified. The Commission has expressed the view that this rule is contrary to Article 48 of the Treaty and there is no exemption procedure under Article 48.

4124 Regarding the question of whether there has been an abuse of a dominant position (Article 86), the Commission saw no evidence of economic relations between the clubs such as would deem a position of collective dominance to exist, and it does not consider that Article 86 applies. Similarly, football associations, as they do not themselves recruit players, cannot be deemed to hold a dominant position on the market for recruitment of players. Again, Article 86 therefore cannot apply.

The Parliament position

4125 In an annex to the Janssen van Raay report⁸¹, the European Parliament said that it considered that transfer fees obstructed workers from freely selecting their employer and that this was a "modern form of slavery". It also pointed out that individual players refrained from bringing proceedings because the power of the employers' monopoly was such that an action could herald the end of their professional careers.

4126 Mr van Raay has since drawn up another draft opinion on the European Community and Sport⁸² which reiterates this stance.

4127 The Larive Report on the European Community and Sport, adopted by the European Parliament in April 1994, provides more details of the Parliament's position on restrictions on foreign sportspersons and on the transfer system. Details are provided in Section I on the free movement of persons and services.

The position of the European Court of Justice

4128 The European Court of Justice's ruling can be expected in late 1995 or in early 1996. In the meantime one of the Advocates General, who advise the Court and assist it in preparing decisions, delivered his opinion on 20 September 1995. The judges of the Court of Justice often follow the opinions of the Advocates General.

4129 The Advocate General's opinion was very clear: Article 85 does indeed prohibit agreements between clubs and decisions of sports associations allowing a football club to demand and receive payment when one of its players, whose contract has expired, is taken on by another club. A restriction of competition ensues, above all, from the fact that a club is obliged to pay a transfer fee when acquiring a player, as this creates a tendency to preserve the existing competition situation.

4130 Article 85 also prohibits agreements between clubs and decisions of sports associations which restrict the access of players from other Member States to club

⁸¹ Annex drawn up on behalf of the Committee on Legal Affairs and Citizen's Rights; 23. 3. 89

⁸² PE DOC 204. 507; 31. 3. 93

competitions organised by national and international federations. These rules obstruct competition because they restrict the scope for individual clubs to compete with each other by taking on players.

4131 The Advocate General rejected the position that sports associations are abusing a dominant position on the market of players (as prohibited under Article 86 of the Treaty). In Section I on free movement of persons and services, details are provided of the Advocate General's argument that both the transfer system and the 3 plus 2 rules are contrary to Article 48 of the Treaty.

4132 Immediately after the publication of the Advocate General's opinion, a Danish football player lodged a complaint with the European Commission. The player, Mr Tengbjerg, claims that the transfer system does not comply with EU competition policy.

Restrictive trading practices

4133 The application of EU competition policy to commercial companies manufacturing and distributing sports equipment is a general application of EU competition policy, and is not specific to the sports world. The aim is to prevent restrictive trading practices and to promote fair trade.

The facts of cases

4134 Each year, a number of restrictive practices are brought to the attention of the Commission by commercial entities complaining about market conditions. These cases have included windsurfing equipment, sailing boats, tennis shoes and tennis balls.

4135 The circumstances surrounding the cases vary enormously, and include such matters as price-fixing and market-sharing agreements, and the application of dissimilar conditions to equivalent transactions. The parties involved in the cases mentioned above are invariably manufacturers and distributors of sports equipment. (See also previous section on exclusive purchasing agreements.)

The Commission position

4136 Article 85 precludes concerted practices in trade between Member States. It prohibits price-fixing agreements and the limitation and control of production or markets. It forbids the sharing of markets and sources of supply, and the application of dissimilar conditions to equivalent transactions. It also forbids contracts which force acceptance of products with no connection to the subject of the contract. Trade between Member States must be affected for Article 85 to be applied.

4137 In order that the application of competition policy does not discourage desirable cooperation between enterprises, certain exceptions are allowed if they

"promote production or distribution of goods or promote technical or economic progress, while allowing consumers a fair share of the resulting profit". When restrictive practices are notified to the Commission, the latter pronounces on whether competition is breached. The Commission has also established automatic exemptions for certain groups of agreements, such as patent licensing agreements, classes of exclusive distribution and purchase agreements and patent licensing, which would otherwise be precluded under Article 85⁸³. Notification is not necessary if an automatic exemption covers the practice.

4138 Article 86 forbids abuse of a dominant position. The existence of a dominant position must be examined on a case by case basis.

Dumping

4139 The European Union has competence to protect its market from dumped imports. For an exporter, dumping is a practice consisting of selling a product at below the price at which it is sold on its home market. Dumping is prohibited by EU commercial policy⁸⁴, in accordance with existing international rules (GATT/WTO agreements⁸⁵).

4140 Dumping is relevant to sport when EU manufacturers of sports equipment, such as sports shoes or tennis rackets, are the victims of dumping practices from foreign competitors outside the EU. Should this be the case, official complaints can be made to Directorate-General I of the Commission, which will determine, after carrying out an investigation, whether a case of injurious dumping exists and, if so, will propose that defensive action be taken in order to eliminate the injury caused to the European Union industry.

4141 In 1994, a complaint was lodged by the European Confederation of the Footwear Industry alleging that imports of certain footwear, including ordinary sports footwear other than that mentioned in the previous section on quantitative restrictions on sport footwear, originating in China, Indonesia and Thailand, were being dumped and thereby causing injury to the Community industry. The Commission, having decided, after consultation with the Member States, that there was sufficient evidence

⁸³ For details see Regulation 19/65/EEC; OJ N° L 36/65; 6.3.65

⁸⁴ Council Regulation 3283/94; OJ N° L 349/94; 31.12.94

⁸⁵ Article VI of the GATT (General Agreement on Trade and Tariffs), and the Anti-Dumping Code of 1994. The WTO is the newly-formed World Trade Organisation which is in charge of implementing GATT Codes.

to justify the initiation of an anti-dumping proceeding, commenced an investigation in February 1995⁸⁶. This investigation is still pending.

Subsidies to sport

4142 Sports bodies in many countries receive assistance and subsidies of various kinds from national, regional or local authorities. Examples of financial assistance to football clubs include the decision of the Spanish government to write off the debt of all first division clubs in 1990, and the state aid to French football clubs. Sports activities in many Member States are financially assisted by lottery, toto and other forms of sports betting activities. Another form of assistance is the sponsorship of teams by large private companies, such as the sponsorship of Juventus by the Agnelli Group in Turin.

4143 Financial assistance from the state gives football clubs an advantage in two main respects. It enables them to acquire players in the expensive trans-frontier transfer market, and to participate in European cups. On the issue of the player transfer market, the richer the club, whether financed by subsidies or not, the more expensive and usually more competent players it can purchase. The aid to clubs may be indirect. For example, if the State partially covers a club's bill on the renovation of its stadium (often legally required for security reasons), this enables a club to devote more resources to acquire new players.

4144 In European cups, the richer clubs who have bought the best players have an advantage over poorer clubs in the same competition. This advantage will have a cumulative effect in terms of financial benefits from ticket sales, advertising and sponsorship and sales of television rights.

4145 It can also be argued that "poorer" clubs from "poorer" Member States tend to lose some of their best players to rich foreign clubs. In the long-term this could hasten a lack of interest in the sport in the disadvantaged countries. It should be recognised, however, that the clubs which sell some of their best players are duly compensated for their loss.

The Commission position

4146 Article 92 of the Treaty of Rome prohibits aid granted by Member States which distorts competition in trade between Member States by favouring certain types of organisations or products, unless they are justifiable for special social or other reasons. Types of aid permitted by the Treaty include funding for projects which are of public interest.

⁸⁶ A notice of initiation appeared in OJ N° C 45; 22. 2. 95

4147 Sports clubs, in particular large football clubs, are part of a country's socio-cultural heritage, in the widest sense of the term. As well as being economic activities, sports clubs carry out other functions which include the use of their facilities for other leisure activities and cultural events; they contribute to the enhancement of a region by providing facilities valuable for the local community. Moreover, clubs often contribute to the strengthening of local prestige and civic pride. Such considerations mean that subsidies to sports clubs are likely to be exempt from the restrictions on state aids as imposed in the Treaty of Rome, since they cannot be fully compared to state aids granted to commercial enterprises.

4148 The Commission also feels that subsidies currently granted to sports clubs do not significantly distort competition in EU-wide events or on the transfer markets and do not prejudice those clubs not benefiting from aid. Moreover, it would be particularly difficult to measure distortion in terms of its effects.

4149 In April 1994, the European Parliament called upon the Commission⁸⁷ to carry out careful monitoring to ensure that free competition between top-class sports clubs is not distorted by excessive public financing.

4150 Regarding funding from betting and gaming activities, the Commission will not intervene in different local systems of support for non-commercial sporting or other cultural or charitable interests.

⁸⁷ European Parliament Report on the European Community and Sport; PE DOC A3-0326/94; 27. 4. 94

V Animals in sport

5001 The EU has enacted legislation on horses, dogs and pigeons. The majority of this legislation concerns horses.

5002 The legal foundation for EU regulations on animals is Article 43 of the Treaty of Rome, which entitles the Commission to propose legislative measures on agricultural matters.

Horses

5003 The Council adopted three guiding or "framework" Directives on horses ("equidae") in 1990. They cover:

- Animal health conditions governing movement and import from third countries of horses (Directive 90/426/EEC⁸⁸);
- Zoological and genealogical conditions governing intra-Community trade of horses (Directive 90/427/EEC⁸⁹); and
- Trade in horses intended for competitions and conditions for participation in competitions (Directive 90/428/EEC⁹⁰).

5004 For each of these framework Directives, there are a number of specific applicatory decisions. Important changes have recently been proposed to the Directive on trade in competition horses⁹¹.

Animal health conditions

5005 This Directive lays down minimum health requirements for the free circulation of horses within the EU and for their import into the EU.

5006 The high value of thoroughbreds has led the EU to be strict in the matter of imports of horses to the EU and circulation within the EU. An infected horse could spread its disease, and decimate horse populations.

⁸⁸ Council Directive 90/426/EEC; OJ N° L 224/90; 18. 8. 90

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Proposal for a Council Directive COM(94)11 final

5007 The prevention of a spread of an outbreak of African horse sickness in 1990, in Southern Spain and Portugal, was a widely publicised example of the Commission's involvement in regulating free movement of horses. The outbreak threatened to prevent equestrian events from taking place in Spain during the Barcelona Olympics.

5008 Under previous rules, once a disease was declared in an area of a country, the entire country was quarantined. The 1990 outbreak in Southern Spain therefore threatened the Barcelona area in this region, despite the fact that there was no evidence of the disease in this region. The Commission, in cooperation with the national and regional authorities, established the principle of "regionalisation". In the case of African horse sickness, this was established by Commission Decision 90/552/EEC⁹² as amended by Decision 92/531/EEC⁹³. The rules stipulated that only the area surrounding the region of the outbreaks had to be quarantined. The restrictions only applied to Andalusia and were lifted in November 1993⁹⁴. The same disease affected Morocco until 1993; the prohibition of imports from Morocco was lifted by Commission Decision 95/322/EC⁹⁵.

5009 In order for a horse to circulate freely within the territory of the EU, the Commission has laid down minimum conditions in terms of animal health; there must be no clinical signs of disease at inspection. Registered horses need to travel with their passport (see below).

5010 As for imports of horses into the EU, the Animal Health Directive imposes a series of rules for imports from third countries including the requirement that horses are from a country on the Commission's list of acceptable countries, are accompanied with a certificate from the veterinary authorities of the third country, and are certified to be free of diseases. Entry into the EU is considered to be the first point of debarkation at an airport or port where the necessary infrastructure is in place.

5011 As regards third countries, the list of countries free from dangerous diseases is constantly updated by the Commission after visits from the Commission's veterinarians. In order to prevent the disease from entering the EU, only horses from countries on the list can be imported.

⁹² Commission Decision; OJ N° L 313/90; 13. 11. 90

⁹³ Commission Decision; OJ N° L 334/92; 19. 11. 92

⁹⁴ Commission Decision 93/616/EC; OJ N° L 296/93; 1. 12. 93

⁹⁵ Commission Decision 95/322/EC; OJ N° L 190; 11. 8. 95

5012 An implementing Commission Decision (92/260/EEC⁹⁶) provides for less severe health requirements and veterinary certification for registered horses staying only a short period of time in the EU. These rules apply to horses admitted into the EU for up to three months, in particular to horses participating in competitions.

5013 Another Commission Decision establishes health certificates for the import of breeding horses (93/197/EEC⁹⁷). Sanitary rules have also been laid down for competition horses which enter the European Union after having been temporarily exported to a third country for competitive purposes and cultural events (93/195/EEC⁹⁸). These decisions are frequently updated to take into account the evolution of animal health throughout the world.

5014 The Commission has put in place animal health rules which will apply to horses returning from the next Olympic Games in Atlanta⁹⁹. The Commission is still in discussions with the relevant US authorities to ensure that no unjustified animal health barriers are erected which would restrict the participation of Community horses at the Games.

Zoological and genealogical conditions

5015 It is customary for horses to be registered in the studbook of its breed/race. Competitions are reserved for specific breeds as registered in studbooks. Each horse therefore has its own passport from the Association. Decisions by the Association are approved by a national Ministry (usually the Ministry of Agriculture).

5016 The Directive applies only to registered horses and requires the mutual recognition of studbooks and the mutual recognition of the Associations. Commission Decision 92/353/EEC¹⁰⁰ lays down the minimum criteria for approval or recognition of organisations managing studbooks for registered horses. A subsequent Commission Decision lays down minimum rules to ensure coordination between organisations managing studbooks.

5017 The Directive also sets minimum registration information requirements for the identification document. In cooperation with the International Equestrian Federation (FEI) and taking into account the recommendations of the Office International

⁹⁶ Commission Decision; OJ N° L 130/92; 15. 5. 92

⁹⁷ Commission Decision 93/197/EEC; OJ N° L 86/93; 6. 4. 93

⁹⁸ Ibid

⁹⁹ Commission Decision 95/99/EC; OJ N° 76/94; 5. 4. 95

¹⁰⁰ Commission Decision 92/353/EEC; OJ N° L 192/92; 11. 7. 92

Epizooties (OIE), a European Union passport has been established which must be used in the international movement of registered horses¹⁰¹.

Trade in competition horses and participation in competitions

5018 Directive 90/428/EEC governs the trade of competition horses and the conditions for participation in competitions. It concerns all competitions, including show-jumping, dressage, flat, steeple and trotting and relates to both registered and non-registered horses (with different provisions).

5019 The most important stipulation (Article 3) is that the rules of competitions may not discriminate on the basis of nationality (ie the country of registration of the horse). This rule of non-discrimination applies to entrance to competitions, judging and prize money or profits which accrue from the competition.

5020 There are two main exceptions to the rule of non-discrimination. First, a non-specified number of races can be reserved for horses registered in a specific studbook (reserved for the best horses), for the improvement of a breed (the best horses receive the prize money), for regional competitions (to select a regional champion), and for historic or traditional events (such as the Palio of Sienna). These exceptions only account for a minority of competitions.

5021 The second exception to the rule is that Member States are allowed to reserve 20% of prize money or profits for the safeguard, development and improvement of breeding (breeders' premiums). The decision to reserve a percentage of the prize money and the reasons for doing so, must be communicated to the Commission. A subsequent Commission Decision (92/216/EEC¹⁰²) obliges each Member State to appoint a coordinating authority to collect data on the criteria for reserving funds for breeding.

Proposed amendments to Directive 90/428/EEC

5022 The monitoring by the competent authorities of derogations from the conditions governing the organisation of competitions has raised certain practical problems (including reporting and the definition of breeds). Moreover, similar difficulties have also arisen as regards the percentage of prize money or profits to be reserved for the safeguard, development and improving of breeding. The Commission has therefore proposed, solely for the purposes of improving monitoring by the competent authorities, that the percentage of prize money and profits allocated to the various types of competition be specified. In its proposal, the Commission specified that 20%

¹⁰¹ Commission Decision 93/623/EEC; OJ N° L 298/93; 3. 12. 93

¹⁰² Commission Decision 92/216; OJ N° L 104/92; 22. 4. 92

of the total prize money or profits accruing from all competitions be retained for competitions which qualify for a derogation. At the time of writing, the proposal was still being discussed by the Council of Ministers of the EU.

Dogs and cats

5023 A distinction is drawn between pedigrees traded commercially and companion dogs, or pets.

5024 The UK and Ireland, given their geographic isolation, have up to now, restricted free movement of dogs and cats into their countries. As of July 1994, dogs traded commercially should circulate without quarantine at destination, as long as certain tests have been fulfilled and vaccinations carried out (Directive 92/65/EEC¹⁰³). Details of these tests and the veterinary certification accompanying the animals have been laid down in Commission Decision 94/273/EEC¹⁰⁴. Furthermore dogs and cats should be identified in conformity with the system laid down in Decision 94/274/EEC¹⁰⁵.

Pigeons

5025 The Commission has laid down minimum conditions in Directive 92/66/EEC¹⁰⁶ for the exchange of racing pigeons, on the basis of legislation existing at the national level. The objective is to prevent the spread of Newcastle disease and mainly concerns France, Belgium, the Netherlands and Germany.

¹⁰³ Council Directive 92/65/EEC; OJ N° L 268/92; 14. 9. 92

¹⁰⁴ Commission Decision 94/273/EEC; OJ N° L 117/94; 7. 5. 94

¹⁰⁵ Ibid.

¹⁰⁶ Council Directive 92/66/EEC; OJ N° L 260/92; 5. 9. 92

VI EU sources of funding for sport

6001 The EU funds a series of initiatives which could be of interest to sports organisations; the main categories are described briefly below¹⁰⁷.

Projects financed under the Structural Funds

6002 The EU contributes to the economic development of the EU's less developed regions through financial transfers from the Structural Funds. The three Structural Funds, (the European Regional Development Fund, the European Social Fund, and the Agricultural Fund) provide grants, in cooperation with Member States, to projects which meet their objectives of regional and rural development and creation of employment. Most Structural Funds money is targeted at the EU's poorest regions, that is Greece, Portugal, the Republic of Ireland, Southern Italy (Mezzogiorno), the new German Laender, parts of the UK, and parts of Spain, Austria and France (Corsica and overseas territories). Money from the Structural Funds is accessible through national, regional and local development authorities, as well as bodies responsible for training. The principle is for the EU to supplement national funding in order to promote economic and social projects which otherwise would not have taken place.

6003 Although sports infrastructure has not been targeted as a recipient of money from the Structural Funds, it can sometimes benefit, either directly or indirectly, from EU funding. To the extent that sports-related activities or infrastructure contribute to the objectives of economic development (i.e. promotion of local economic activities and the creation of employment), they may be eligible for funding from the Structural Funds. In particular, sports-related projects should explore opportunities under programmes which promote "activity tourism" and regeneration of urban areas; sports-related projects need to strive to "slot into" plans to develop tourism and urban areas.

6004 The decision to allocate grants under the Structural Funds to specific projects lies with the Member State rather than the European Commission and any applications or inquiries need to be targeted at the various relevant authorities in the Member States. Given different national and regional development priorities and policies, project eligibility varies from region to region. To secure EU finance, projects need to be co-financed either by Member States or by the sports organisations which stand to benefit.

¹⁰⁷ For more details, see the British Sports Council's publication "Focus on Brussels".

6005 Examples of direct intervention from the Structural Funds, in particular from the Regional Fund, include:

- ski lifts in Abruzzi, Campania and possibly in Austria;
- sport centres in a variety of Mezzogiorno regions;
- tennis courts and annexes in Campania;
- indoor swimming pool in Campania;
- pluridisciplinary centre for tourism, sport and leisure in Puglia;
- equestrian sports facilities in Puglia;
- nature park with sports areas in Calabria;
- cycling paths in Austria;
- improvement of port facilities (including improvement of facilities for sailing boats used for sporting purposes) in Ireland;
- walking trails in Ireland and Austria;
- angling facilities in Ireland;
- training schools for small aircraft in Ireland, as part of airfield development;
- sailing and water sports training facilities as part of port development in Ireland;
- golf clubs in Ireland (financed in the past in the context of promotion of tourism).

6006 Sports authorities of all levels should explore the possibilities of eligibility for funding with the appropriate national, regional or local authorities in their respective countries.

6007 The Structural Funds also provide money for projects which improve access to certain less favoured areas. Sports facilities in these areas will benefit indirectly from this form of EU funding. For example, the Structural Funds contributed to the improvements made to the road transport facilities around Barcelona in preparation of the 1992 Summer Olympics.

6008 The EU also contributes to national spending on training and education via the European Social Fund. If training grants are available from local, regional or national authorities, the EU is likely to have part-funded them.

Education and training programmes

6009 EU policy on education and training has been adapted and simplified in 1995 by bringing the most promising existing initiatives together in two new programmes. Both programmes may provide sources of funding for sports-related activities.

6010 The education programme is entitled "Socrates"¹⁰⁸ and runs from 1995 to 1999. Of particular interest to the sports world, for example, could be the new cooperation programme encompassed by Socrates which promotes the constitution of partnerships between schools in different Member States for the joint achievement of educational projects on themes of joint interest. Projects related to school sports, for example, could be eligible for support, as long as the criterion of three participating Member States is respected.

6011 The training programme is entitled "Leonardo da Vinci"¹⁰⁹. Training activities for trainers and managers in the sports field (for example, the creation of an education profile for sports managers) could benefit from funding under the Leonardo programme, as could the development of European-style qualifications for sports-related professions.

6012 The Action Programme for the Promotion of Youth Exchanges in the Community (Youth for Europe) continues to operate and it is possible that projects could be developed which would be eligible for funding under Youth for Europe III¹¹⁰. The aim of the Youth for Europe Programme is to promote an active sense of citizenship and mutual understanding among young Europeans by bringing together young people from different social, economic and cultural backgrounds. Special attention is accorded to the access for disadvantaged young people to the programme.

The Eurathlon programme

6013 In October 1994, Directorate-General X of the Commission launched the pilot phase of a new programme, Eurathlon, designed to provide a framework for Community subsidies for sports.

6014 The overall objective of the programme is to contribute to a better understanding and sense of solidarity between European citizens through their participation in sports events and to promote the role that sports can play in improving health and encouraging social and economic integration.

6015 786 project proposals were received following the first call for tender¹¹¹, of which 82 were selected for financing from the 1995 budget. The projects selected represent over 20 sports, ranging from team sports such as football, cricket, basketball

¹⁰⁸ OJ N° L 87/95

¹⁰⁹ OJ N° L 340/94

¹¹⁰ OJ N° L 87/95

¹¹¹ OJ N° C 297, 25. 10. 94

and hockey, to individual sports such as cycling, gymnastics and parachuting. Details of these projects are available from Sport Info Europe.

6016 In drawing up the call for tender for project proposals under Eurathlon II¹¹², DG X took into account its experience with the pilot phase. Under this programme, support will be available for projects which:

- promote exchanges between European citizens that contribute to a better understanding and acceptance of the social and cultural differences between Member States;
- encourage the improvement of the health of European citizens;
- support sporting activities with a social purpose, such as combating unemployment, racism and violence or promoting equality of opportunity between men and women;
- develop training programmes for managers and practitioners, including exchanges for trainers and the pooling of information related to training;
- support projects in Central and Eastern Europe and development cooperation.

6017 Project proposals may be submitted by non-profit-making sports organisations whose objectives, as set out in their statutes, include the promotion of sport. The organisation must have its headquarters in a European Union Member State. Public authorities, such as ministries and regional or local authorities can be associated as partners with a project.

6018 Sports organisations from at least three Member States must be involved in the execution and, if possible, the conception of the project, which must last no longer than one year.

6019 The Commission funds up to 50% of the budget submitted, with a floor intervention of 5,000 ECU and a ceiling of 50,000 ECU.

6020 Projects submitted will be evaluated by national committees, who will transmit their recommendations to the European Eurathlon Committee (panel). The European Eurathlon Committee is composed of representatives of the European Sports Forum, that is: two representatives from the Commission's DG X (providing the Committee's Presidency and Secretariat); three representatives from the non-governmental sports organisations, designated by the European Association of National Olympic Committees (AENOC) and the European Non-Governmental Sports Organisation (ENGSO); and three government representatives (according to the Troika principle). The Commission will take the final decision on the basis of the panel's recommendations.

¹¹² OJ N° C 262/95 & S 192/95; 7. 10. 95

6021 In granting assistance, the Commission will ensure that a balance is observed in terms of geographical distribution and different types of sports.

6022 The following types of projects will not be eligible under Eurathlon II:

- activities of a purely national nature;
- projects already receiving European Union financing from another source;
- profit-making activities;
- publications and feasibility studies;
- in principle, championships and competitions that are organised on a regular basis by recognised sports organisations.

6023 Application forms are available from the Commission's Offices in Member States and from DG X in Brussels. Applications for funding for 1996 must be completed (in two copies) and returned by registered mail, postmarked no later than 30 November 1995, to the following address:

Commission of the European Communities.
DG X-B-5 Sport Sector - Eurathlon programme
200 rue de la Loi
B - 1049 Brussels

Promotion of the consumption of milk

6024 In order to attain the objectives of the Common Agricultural Policy, the EU introduced a programme to promote the consumption of milk and milk products¹¹³. This programme funds initiatives which disseminate knowledge of the nutritional qualities of milk, and publicity and promotion campaigns which encourage the consumption of milk and milk products.

6025 Applications for Community financing should be made to the relevant national authorities rather than to the Commission. A list of relevant national authorities is annexed to the Commission regulation setting out the detailed rules for the programme to promote milk consumption¹¹⁴. The Commission is called upon to approve the selection of the national authorities. A call for tender is published every year in the EU's Official Journal. The closing date in 1995 was the end of August. Another call for tender will be published in 1996. In allocating funding, national

¹¹³ Council Regulation 2073/92 in OJ N° L 215/92; 30. 7. 92. The detailed rules for the funding of campaigns promoting milk consumption in the EU are published in Commission Regulation 3582/93 in OJ N° L 326/93 of 28. 12. 93

¹¹⁴ See previous footnote. The relevant national authorities are usually national ministries or intervention boards.

authorities give preference to projects involving more than one Member State and which include a robust cost-effectiveness analysis. In the past, sports organisations have been involved in EU-funded campaigns organised by the Belgian, Danish and French authorities responsible for the promotion of milk.

Sports for people with disabilities

6026 The Sport Sector within DG X of the Commission manages the EU programme "Sports for people with disabilities", which provides financial support for projects which promote the integration of disabled people through sports in the European Union. The more general aspects of EU policy of relevance to sports for people with disabilities are described in Section X of this report.

6027 The main objectives of the programme are to:

- ensure that as many as possible people with disabilities are aware of the potential benefits of participation in sporting activities;
- stimulate the integration of sports for the disabled within the able-bodied sports world;
- increase public awareness as to the social and economic integration possibilities of people with disabilities via the medium of sport.

6028 Funding is therefore aimed at both small scale events which provide opportunities for those people with disabilities that do not belong to a sports club or federation and large scale events with wide media coverage that stimulate public awareness of the different aspects of sports for the disabled.

6029 Appraisal of applications for funding under the programme is based on the following criteria:

- the project must originate from a Member State and from a legal body or organisation;
- the project must be open to participation from all Member States and include proposed participation from at least four;
- the application must include background, justification, aims and objectives, as well as a statement of what benefits will arise as a result of the project;
- the project must have sources of income other than the European Commission;
- the European identity of the project must be evident.

6030 All applications will be considered, but priority will normally be given to innovative projects, for example, projects that:

- introduce new sports or forms of sport;
- stimulate participation in new sports;
- have a positive effect on the dissemination and exchange of experience, knowledge and information;
- aim at people with more severe disabilities or others that will never have the possibilities to participate in international championships and Paralympics and/or;
- promote sport for people with disabilities in some new way.

6031 Applications must be sent to the National Committees¹¹⁵ of the Member State in which the project will be carried out (on a form obtainable from the National Committee), with a copy to DG X, before the first of September of the year prior to which the project takes place.

6032 The National Committee then sends the applications, with a justification of its recommendations, to both DG X and to the President of the European Committee on Sports for People with Disabilities. DG X takes the final decision on which projects to finance, based on the above-mentioned criteria and advice from the European Committee.

6033 Examples of events that have received financial support from the Commission include: the World Team Cup (world championship for tennis in wheelchairs); the Special Olympics World Games and the World Transplant Games.

Research in science and technology

6034 The Commission funds a variety of research programmes in science and technology. Although there are no specific research programmes for sport, funded areas of relevance to sports include medical research and biotechnology, agriculture and fisheries, energy, information and telecommunications technologies and industrial technologies. The aim of EU research programmes is to promote pan-EU research projects which, without EU finance, might not otherwise take place. The long-term aim is to increase EU competitiveness. The emphasis is on basic or pre-competitive research.

¹¹⁵ A list of National Committees is included in Appendix B

6035 In May 1994, the Council and the Parliament adopted the Commission proposal for a "Fourth European Community Framework Programme for research, technological development and demonstration activities"¹¹⁶. This "Fourth Framework Programme", as it is more commonly known, groups the various European Union research promotion programmes and will steer the European Union's action in the area of research up to 1998. The specific programmes were approved by the Council and Parliament in the course of 1994.

6036 In order to receive finance from most of the specific research programmes mentioned below, it is necessary to submit a detailed proposal in response to a call for proposals, which is usually published once every two years in the Official Journal of the EU. Applications for funding must normally be submitted within three or four months of the date of publication of the call for proposals. The publication of calls for proposals has now been harmonised: they appear only once every three months (ie on the 15th of March, June, September and December). We recommend that sports organisations consult the Official Journal on the four above-mentioned dates.

6037 In respect of the principle of subsidiarity, the EU does not want to replace national research in any way. Instead, it specialises in promoting research which involves more than one EU Member State, and which otherwise would not have been initiated.

Biotechnology and biomedical research

6038 The EU promotes research in the biotechnological and biomedical fields with potential applications in the fight against doping in sport¹¹⁷. These types of research would tend to be carried out by specialised non-sports-related companies and research institutes. However, to the extent that sports organisations could be involved in this research, they would stand to benefit from EU funding (eg pan-EU efforts to provide statistics on pathologies of athletes).

6039 Another example of past EU assistance to projects which are relevant for sport is the Commission support to a high-altitude research station, operated by an international team in the Himalayas (on the K2 mountain), which carried out studies in, among other areas, how the human organism copes with extreme altitudes; the results of their work are particularly relevant for mountaineering and airports.

¹¹⁶ European Council and Parliament Decision 1110/94/EC in OJ N° L 126/94; 18. 5. 94

¹¹⁷ Programme of research and technological development in the field of biomedicine and health, Council Decision 94/913/EC; OJ N° L 361/94; 31. 12. 94

Research in agriculture and fisheries

6040 In the new Agriculture and Fisheries Programme¹¹⁸, (which includes, among other areas, agro-industry and food technologies), the Commission has proposed that research should improve the food and drink industry's competitiveness and provide consumers with a safe and higher quality, more nutritious and health promoting diet. Research in new sports food could potentially fall under this objective.

Energy saving

6041 The Commission runs a Programme called Joule-Thermie¹¹⁹ which promotes research and technological development in the field of energy, including projects which demonstrate the rational use of energy and renewable energy sources. In order to receive finance under this programme, a project must use innovatory techniques, offer technically and economically viable prospects for subsequent commercial exploitation of the relevant technology, be safe and environmental-friendly, and be difficult to finance because of major technical and economic risks; commercial investment projects cannot be supported. Energy efficiency in buildings, including those used for sport would be potentially eligible. Calls for proposals are published in the Official Journal of the EU. In the 1980's, projects which demonstrated innovative energy-saving techniques for swimming pools were funded.

Information and telecommunications technologies and industrial technologies

6042 The Commission also promotes research cooperation between parties from different Member States in the areas of information technology and telecommunications. Again, the main emphasis is on basic or pre-competitive research.

6043 To the extent that high technology communication systems are used in sport, and a high degree of pan-European cooperation is involved in the development process, participation in an EU funded programme could be possible.

6044 It is also possible that certain specific programmes in the area of general telematics, such as health care services, distance learning and systems designed to promote rural development, could potentially find applications in the sports world.

¹¹⁸ Council Decision 94/805/EC published in OJ N° L 334/94; 22. 12. 94

¹¹⁹ Council Decision 94/806/EC in OJ N° L 334/94; 22. 12. 94

6045 A programme which might directly impact sport is TIDE¹²⁰, an EU-funded programme aimed at developing advanced technologies to assist the disabled and elderly. The programme is designed to stimulate technology transfer, make user requirements more transparent and provide a basis for the formulation of new technical standards for assistive technology. TIDE could in principle fund the applications of advanced technologies for improving access to the exercise of sports by people with disabilities through improvement of information services accessibility, technological updating of services supporting sport for disabled persons, or even through projects which apply advanced technologies in a better and more suitable manner and the manufacturing of devices adapted to sport (through CAD-CAM methods for example). TIDE could thereby fund the development of advanced technologies which facilitate the participation of disabled people in sport. One of the main eligibility criteria for TIDE is that the research and development involves a group of parties which include industrial participants from more than one Member State.

6046 Areas where TIDE is active and potential applications can be found for sport is, for example, in training using virtual reality environments, orientation and navigation devices and compensation of impairment by advanced prostheses and orthosis and other rehabilitation technology-based individual applications. In its Official Journal, the Commission regularly publishes calls for proposals for projects in certain research areas. Calls for proposals for TIDE opened on 15 September 1995 and will close on 15 January 1996.

Eastern and Central Europe and the CIS

6047 The EU funds technical assistance programmes for the Central and Eastern European countries and the Republics of the Commonwealth of Independent States (CIS). They are called Phare and Tacis respectively. Their overall aim is to contribute to the building up of market economies in these countries.

6048 Under Phare, there are programmes to develop the tourism sector in Poland and Romania¹²¹. The tourism sector has the potential to make a significant contribution to economic restructuring by attracting both foreign and domestic investment, creating jobs, earning hard currency, and promoting the growth of new small- and medium-sized businesses in addition to accelerating the privatisation of existing tourism infrastructure. In the context of the programme to develop the tourism sector in Poland, there has recently been a greater emphasis placed on

¹²⁰ TIDE falls under the Commission Programme to promote research in the field of telematics, Council Decision 94/801/EC, OJ N° L 334/94; 22. 12. 94. Details of TIDE are to be found under research area 8 under the telematics programme.

¹²¹ Although tourism programmes exist in certain other Phare countries, these do not currently focus on sports-related activity-based tourism.

improving "activity tourism", particularly in rural areas. Types of projects liable to be assisted include:

- equestrian tourism (horseback riding, horse-breeding farms...);
- water-based activities (fishing, yachting, sailboarding on lakes, water trails, canoeing...);
- mountain trekking; and
- cycling, (including mountain cycling).

6049 There is also the possibility of Phare funding being allocated to upgrade and promote the use of existing sports facilities in order to exploit them for youth sports holidays. This would build the revenue-generating potential of the region in which the site is located.

6050 There is clearly a potential for sports organisations from the European Union to be more involved in providing advice in the framework of Phare-financed projects. These opportunities need to be discussed with the relevant authorities in the Phare countries, from whom all applications for assistance must originate. In the case of the Polish tourism programme, the State Office for Sport and Tourism is the responsible authority.

6051 Under Tacis, it is unlikely that sports organisations would be funded directly under such initiatives. Indirectly, however, sports organisations and sports equipment manufacturers, for example, can benefit from general economic improvements in the region.

6052 In a totally different context to Phare and Tacis, DG X of the Commission co-financed a study carried out by the Nederlandse Sport Federatie on "bridging the gap" between sports authorities in Western and Eastern Europe. This study was published in 1991.

Rural and cultural tourism

6053 A few sports-related projects have been supported within the framework of Directorate-General XXIII's rural and cultural tourism initiative which started in 1991, for example :

- a project to develop trans-frontier tourism between France and Spain on the theme of fishing;
- two projects to develop cycling itineraries.

6054 In a 1992 Council Decision¹²², the EU agreed on a Community action plan to assist tourism. This has been followed up by a report from the Commission on Community measures affecting tourism¹²³.

¹²² Council Decision 92/421/EEC; OJ N° L 231/92; 13. 8. 92

¹²³ Report from the Commission, COM (94) 74

VII Environmental policy

The principles

7001 Having no legal base in the original Treaty of Rome, as environmental matters were not regarded as a necessary objective in 1958, the principles of the EU's environmental policy were set out in the Environmental Action Programme of 1973. Subsequent legislation based on Articles 100 and 235 of the Treaty mainly focused on trade creation and industrial pollution and tended to be reactive.

7002 The advent of the Single European Act and the first major revision of the Treaty in 1987 introduced Articles 130R, 130S and 130T which had the effect of specifically empowering the European Union to protect the environment. This meant that preventative measures could be taken in advance of potential problems developing. In addition, the Maastricht Treaty gives environmental policy an even higher priority and makes it no longer subject to a unanimous vote by the Council of Ministers, except in a few specific areas.

The Environmental Impact Assessment Directive

7003 The major Directive regarding the monitoring and control of the environment is the Environmental Impact Assessment Directive¹²⁴ which came into force in 1988. It is designed to ensure that environmental effects are taken into account by developers of certain projects and by the competent national authorities. It applies to private or public projects which, by virtue of their nature, size and location, are likely to have significant effects on the environment. Such projects are identified in two annexes to the Directive. The projects listed in Annex I must be subject to a compulsory environmental impact assessment. Projects listed in Annex II can be subject to an assessment where Member States consider that their characteristics so require.

7004 Some of the classes of projects listed in Annex II, under the headings of "infrastructure" and "other projects", concern the sports industry directly, they are:

- ski-lifts and cable cars;
- yacht marinas;
- racing circuits and test tracks.

7005 Other infrastructure projects may concern the sports industry indirectly in that they may include, or be attached to, sports complexes. They are:

¹²⁴ Directive 85/337/EEC; OJ N° L 175/85; 5. 7. 85

- holiday villages, hotel complexes and associated developments;
- urban development projects;
- construction of roads, harbours (including fishing harbours) and airfields;
- dams and other installations designed to hold water or store it long term;
- tramways, elevated and underground railways, suspended lines or similar lines of a particular type; used exclusively or mainly for passenger transport.

7006 The first five year review of the existing Directive's operation has shown that impact assessments have been required for several projects in Annex II, primarily yacht marinas, ski lifts and race tracks. The Commission has also received complaints from the general public, as well as bodies concerned with wildlife conservation and other environmental issues, about failures to carry out sufficient impact assessments. For instance, the assessment of ski lifts and cable cars has not taken account of the runs underneath them that are the primary cause of environmental damage.

7007 The Commission has formally submitted to the Council a proposal¹²⁵ to amend the environmental impact assessment Directive. If this proposal, which takes account of the five year review and complaints to the Commission about the existing Directive's operation, is adopted, the scope of Annex II will be increased to cover additional infrastructure projects which are directly or indirectly linked to sport. These are:

- works and installations for ski runs and bobsleigh runs (which will substitute for the category of ski-lifts and cable cars);
- golf courses and associated developments;
- holiday villages, leisure centres and cultural centres.

7008 The European Parliament's report¹²⁶ and resolution on the Winter Olympic Games, criticised the preparations for the Games in Albertville, France, as having ignored the provisions of the Environmental Impact Assessment Directive. The report claimed that this led to serious environmental damage being caused to that region of the Alps, for example through the clearing of mountain slopes, the use of snow-making machines and the construction or extension of multi-lane roads. The resolution called for future Olympic Games to recognise and respect the constraints of a sustainable natural and cultural environment and proposed that future Winter Olympic Games be sited permanently in one resort that already has the appropriate infrastructure, thus avoiding damage to other potential Olympic sites.

¹²⁵ OJ N° C 130/94; 12. 5. 94

¹²⁶ MEP Karl Partsch, PE DOC 154. 404. 4.R. 91

Conservation of natural habitats

7009 A Directive on the conservation of natural habitats and of wild fauna and flora¹²⁷ was adopted in May 1992, to be implemented by the Member States before May 1994. The Directive calls on the Member States to conserve natural and semi-natural habitats by creating a European network of classified special protection areas named "Natura 2000". Within these areas, steps should be taken to avoid pollution, deterioration of habitats and any disturbance of fauna and flora which could have a significant detrimental effect on the area. Although the aim is to balance conservation needs with local economic and recreation requirements, freedom to practice water-sports may be curtailed by national measures implementing this Directive.

¹²⁷ Directive 92/43/EEC; OJ N° L 206/92; 22. 7. 92

VIII Taxation

The principles

8001 Articles 95 and 96 of the Treaty of Rome prohibit discrimination of tax treatment on exports and imports of products from other Member States. Article 99 allows the EU to impose fiscal harmonisation measures "in the interest of" the Single Market. Currently, this rule has been interpreted in a minimalist way. Only matters which are deemed to be absolutely necessary for the realisation of the Single Market are addressed by the EU. In this manner, the principle of subsidiarity is respected.

8002 The main EU legislation enacting the principles laid down in the Treaty are the Sixth and Eighteenth VAT Directives¹²⁸. Every activity which has as its objective the practice or the development of sport, and is considered to be an economic activity, is taxable within the meaning of Article 4, paragraph 2 of the Sixth VAT Directive.

8003 There is debate as to whether certain bodies involved in sports are in fact "taxable persons", as defined by the same Article. This Article says that a taxable person is one who independently carries out an economic activity, ie exploitation of a tangible or intangible property in order to obtain revenue on a continuous or occasional basis. States, international organisations, regional and local authorities and bodies governed by public law are not considered to be taxable bodies.

8004 The Commission was asked by a Member of the European Parliament¹²⁹ whether a non-professional, non-profit-making yacht club could be liable to VAT. The Commission answered that under Article 13 (A)(1)(m) of the Sixth Directive, Member States are required to exempt, under conditions which they are to lay down themselves, certain services closely limited to sport supplied by non-profit-making organisations to persons taking part in sport. A yacht club is therefore eligible for exemption.

8005 The Sixth and Eighteenth Directives allow Member States to continue to tax transactions by non-profit making organisations if exemption is likely to create distortions of competition, such as to place at a disadvantage commercial enterprises liable to VAT.

¹²⁸ The Sixth Council Directive on the harmonisation of VAT; Council Directive 77/388/EEC; OJ N° L 145/77; 13. 6. 77 and the Eighteenth Council Directive on the harmonisation of VAT - Abolition of certain derogations in the Sixth Directive; Council Directive 89/465/EEC; OJ N° L 226/89; 3. 8. 89

¹²⁹ Written Question N° 1875/86 of 13. 11. 86, answered by Lord Cockfield on 22. 01. 87.

8006 The supply of goods and services by fund-raising events organised exclusively for their own benefit is also exempted from VAT, provided such exemption is not likely to cause distortion of competition. The main criteria which render activities eligible for exemption from VAT are that: the activity is in the public interest, distortions of competition are not created such as to place at a disadvantage commercial enterprises liable to VAT, and systematic profit-making is not the objective of the activity.

Key issues

8007 The main EU tax issue relevant to sport is whether sports activities are taxed or not and, if so, to what extent. In practice, Member States may limit the scope of the exemption to services closely limited to sport, supplied by non-profit making organisations to persons taking part in sport.

8008 While the majority of sports clubs¹³⁰ are organised on a non-profit basis, in some sports, such as golf and tennis, facilities provided by commercial clubs can be considered comparable to those supplied by voluntary sports organisations. It can be very difficult to distinguish between a purely commercial sports clubs and a non-commercial activity such as a sports club set up by a group of friends but which charges fees to cover the clubs' expenses.

8009 The main applications of EU VAT law regarding services closely linked to sports activities are detailed below.

Admission (tickets) to sports events

8010 In principle, admission fees to sporting events are not exempt from VAT. However, exemption of admission fees to sporting events was granted to those Member States which, at the time of their accession to the EU, already exempted such admissions. Exemption of admission to sporting events does not appear to have led to a distortion of competition between Member States, nor is it thought likely to do so in the future. The Commission has now proposed that instead of the continuation

¹³⁰ In 1993, with a view to implementation of EU Directives, the UK introduced changes to its tax regime on membership fees of non-profit making member sports clubs. In an answer to Parliamentary written question N° 424/95, the Commission stated that the United Kingdom government introduced changes to British VAT legislation relating to the treatment of supplies made by sports clubs. Under previous provisions, such supplies were taxed under derogation from the Sixth VAT Directive, which otherwise provides for the exemption of certain services closely linked to sports or physical education, supplied by non-profit making organisations to those taking part in such activities. That derogation has since been abolished and the United Kingdom has now provided for the exemption of these services in accordance with the Sixth Directive.

of this derogation to the general rule, a right of option should be granted to Member States on whether or not to tax this activity¹³¹.

8011 In practice, Member States currently apply different rules to admission fees. For example, the UK fiscal authorities apply normal VAT rates to admission fees. This is not the case in France. Such divergencies could lead to distortions of competition. Nevertheless, Directive 92/77/EEC on the harmonisation of the rates of VAT provides that a reduced rate may be applied to certain goods and services listed in Annex H of that Directive. Admission to sports events is expressly included in this list.

8012 Given the different tax treatment for admissions in different Member States, certain parties have raised the question as to whether it is possible for a Member State to opt not to tax a *specific* sports event. When, for example, the Winter Olympics were held in Albertville, the French authorities did not apply VAT to admissions, whereas should Manchester have been selected to host the 2000 Summer Olympics, under UK law, VAT should ordinarily have been applied on admissions.

Non-sports activities of sports clubs and organisations

8013 Besides purely sporting activities, sports clubs provide a series of other facilities including restaurants, bars, shops, etc. Lodging and restaurant operations are not strictly covered by the exemption. Nevertheless, a tolerance margin permits Member States to extend its scope to operations of minimal importance e.g. the sale of small quantities of food and drink to be consumed on the premises, carried out within the framework of the exempted activities. This is, however, subject to the condition that this exemption does not distort competition.

Transfer of players

8014 All the Member States consider that the indemnity paid when a player is transferred from one club to another constitutes a remuneration for a supply of services within the meaning of Article 2 of the Sixth VAT Directive and must be taxed. On the other hand, the amount of damages paid in the case of a breach of contract where one of the parties has failed to fulfil an obligation is not subject to tax.

Exclusive rights

8015 To the extent that the organisations which sell the rights are taxable, the sale and purchase of exclusive broadcasting rights are taxable.

¹³¹ COM(92) 215 final, OJ N° C 205/92; 13. 8. 92

Horse racing

8016 Currently there are major variations in the VAT rates applied by different Member States to the sales and training of horses. This tax differential has resulted in a shift in thoroughbred sales from the UK to France and Ireland. The UK responded to potential tax distortions by introducing a flat-rate farmer scheme, with as consequence a lower VAT rate levied on the sale of horses by such flat-rate farmers in the UK. Prize money is not taxed in most Member States.

Commemorative coins for sports events

8017 Legal tender is exempt from VAT, as long as it is normally used as a legal means of payment. Although commemorative coins for sports events are legal tender, they are not normally used as such and are considered to be taxable at the national VAT rates.

Temporary import of goods

8018 Since 1 January 1993 there has been a change in the rules applied to the temporary importation of goods. The concession that allowed a boat from one EU Member State to remain in the territory of another EU Member State, under VAT free arrangements of temporary importation of goods for a period of six months in any twelve, has been ended. Leisure boats moored in a Member State on 1 January 1993, which entered the territory in accordance with the rules on the temporary importation of goods (Article 14(1)(c) of the Sixth VAT Directive) may continue to benefit from this regime, as long as the provisions in force at the moment the boat entered the regime are in respected. The removal of the boat from the regime will be assimilated to an import into the Member State in which it is situated at the time. In other words, in the course of 1993, at the moment the period set in 1992 expired, VAT became due, unless:

- the boat was dispatched or transported out of the European Union;
- at the moment it was imported, the boat was placed under the temporary import regime provided for in Regulation (EEC) No. 1855/89, which entered into force on 1 January 1993 or under another regime for the suspension of duties as provided for in the European Union customs provisions in force (Article 7(3) of the Sixth Directive);
- the date of first use was prior to 1 January 1985; or
- the amount of VAT due upon the importation of the boat was insignificant.

8019 Supplies of boats after 1 January 1993 are fully taxable.

IX The ECU and sport

9001 The ECU is at present a composite currency unit or "basket" currency composed of a fixed amount of each currency of the European Union, excluding the currencies of the three new Member States, Austria, Finland and Sweden. The weighting of each currency, within the basket, reflects the relative economic importance of each Member State. At the beginning of Stage III of EMU (Economic and Monetary Union), the ECU will be transformed into the single currency of the EU.

9002 The present basket ECU offers several economic advantages for transactions involving several currencies: it can, due to its basket structure, reduce exchange risk, make hedging easier and increase financial stability. For European sports events, which involve revenue and expense flows to and from a variety of different Member States, there may be an economic case for resorting to the ECU rather than continuing to use the US Dollar or a variety of different national currencies.

9003 Given the relative stability of the ECU, treasury management of international federations could be made more secure; players receiving prize money or payment in ECU would not face problems with converting it into another currency or investing it in deposits, bonds, etc. From the federations' point of view, their budgets could be established well in advance, with relatively fewer risks of foreign exchange fluctuations.

9004 Due to the financial and economic rationale of using the ECU in international sports events and the widespread popularity of such events, this area could offer the European Union a significant opportunity for heightening public awareness of the ECU.

9005 On 31 May 1995, the Commission adopted a "Green Paper on the Practical Arrangements for the Introduction of the Single Currency". In this Green Paper, the Commission presented its proposals for an introduction scenario for the single currency which will replace, at the conversion rate of 1:1 the present basket ECU not later than 1999.

9006 A major issue of this introduction is the need to raise awareness and to gain acceptance for the new single currency. This is why the Commission encourages organisations involved in financial management of international sports events to consider the economic rationale of using the ECU, mainly in order to reduce exchange risk, and/or to explore the best strategies for preparing for the change over to the single currency.

X Sports for people with disabilities

10001 The Commission considers that sport can contribute to the founding of an autonomous life for people with disabilities, facilitating their economic and social integration as it provides opportunities for rehabilitation, leisure and competition.

10002 Commission initiatives in this area have been implemented by the Sports Sector in DG X of the Commission (details are provided in Section VI of this report) and by the division of DG V¹³² responsible for actions to support people with disabilities.

10003 DG V has launched a series of "Community action programmes to assist disabled people". The third action programme¹³³ "HELIOS II", running from 1993 to 1996, promotes equal opportunities for and the integration of disabled people, including the integration by sports in particular. The Commission initiatives aim to stimulate and coordinate activities in the Member States in order to promote a European dimension. All disability groups are covered.

The European Committee on Sports for People with Disabilities

10004 On the initiative of the European Commission (DGs V and X) and in response to growing demand from the various national sports organisations for disabled people, a European Committee on Sports for People with Disabilities was established on 19 November 1993.

10005 The Committee is composed of two representatives (one for the mentally handicapped and one for the physically handicapped) of each National Committee on sports for people with disabilities¹³⁴. It meets twice a year and acts as adviser to the Commission. Its tasks include delivering an opinion on applications for grants for sporting activities submitted to the Commission and promoting European initiatives in the field of sports for disabled people.

10006 The Commission encourages the National Committees on sports for people with disabilities to develop cooperation with all NGOs and national councils or organisations for sport for people with disabilities.

¹³² The Directorate General for Employment, Industrial Relations and Social Affairs.

¹³³ Council Decision 93/136/EEC establishing a Third Community Action Programme to assist Disabled People; OJ N° L 56/93; 9. 3. 93

¹³⁴ A list of the National Committees is given in Appendix B.

APPENDIX A

**List of Commission Directorates-General
which contributed to the study**

Appendix A

List of Commission Directorates-General which contributed to the study

DG I	External Economic and Political Relations
DG II	Economic & Financial Affairs
DG III	Industrial Affairs
DG IV	Competition
DG V	Employment, Industrial Relations & Social Affairs
DG VI	Agriculture
DG VII	Transport
DG X	Information, Communication, Culture & Audiovisual
DG XI	Environment, Nuclear Safety & Civil Protection
DG XII	Science, Research & Development
DG XIII	Telecommunications, Information Industry & Innovation
DG XV	Internal Market & Financial Services
DG XVI	Regional Policy
DG XVII	Energy
DG XXI	Customs Union & Indirect Taxation
DG XXII	Education, Training and Youth
DG XXIII	Enterprise Policy, Distributive Trades, Tourism & Cooperatives

APPENDIX B

European Committee on Sports for People with Disabilities List of National Committees

Appendix B

European Committee on Sports

for People with Disabilities

List of National Committees

Austria

Österreichischer Behindertensportverband (ÖSBV)

Brigittenauer Lände 42

1200 Vienna

tel: + 43 1/332 61 34

fax: + 43 1/332 03 97

Belgium

Belgisch Coördinatie Comité Sport voor Gehandicapten

Comité Belge de coordination du Sport

pour les personnes handicapées.

c/o B.O.I.C.

Bouchoutlaan, 9

1020 Brussels

tel: + 32 2/479 19 40

fax: + 32 2/479 46 56

Denmark

Dansk Handicap Idraets Forbund

Idraettens Hus

Brøndby Stadion, 20

2605 Brøndby

tel: + 45 42/45 55 55

fax: + 45 42/45 62 45

Finland

Finnish Paralympic Committee

Kumpulantie 1

00520 Helsinki

tel: + 358 0/31 31 92 12

fax: + 358 /146 24 04

France

Comité Français de Liaison pour les Activités Physiques et Sportives des Personnes Handicapées (COFLASPH)

42, Rue Louis Lumière
75020 Paris

tel: + 33 1/45 45 07 60

fax: + 33 1/45 45 31 82

Germany

Deutscher Behinderten-Sportverband e.V.

c/o DBS, Friedrich-Alfred-Strasse, 10
47055 Duisburg

tel: + 49 203/738 16 20

fax: + 49 203/738 16 28

Greece

Will be established soon.

Italy

Comitato Nazionale Italiano per i minorati

c/o C.O.N.I.

Foro Italice

Roma 00194

tel: + 39 6/36 851

fax: + 39 6/360 79 70

Ireland

Irish Sport Association for Persons with Disabilities

c/o Irish Wheelchair Association

Blackheath Drive, Clontarf

Dublin 3

tel: + 353 1/33 82 41

fax: + 353 1/33 38 73

Luxembourg

Comité National Luxembourgeois pour les personnes handicapées

c/o Comité Olympique National

7, Avenue Victor Hugo

1750 Luxembourg

tel: + 352/47 13 47

fax: + 352/47 13 49

Netherlands

Coördinatie Comité

c/o Nederlandse Sportbond voor Geestelijk Gehandicapten

P.O. Box 85273

3508 AG Utrecht

tel: + 31 30/236 37 47

fax: + 31 30/231 30 54

Portugal

Federação Portuguesa de Desporto para Deficientes

Rua de S. José 86, 1

1100 Lisbon

tel: + 351 1/342 20 01

fax: + 351 1/342 85 18

Spain

Comité de Deportes para Minusvalidos de la Comision de las Comunidades Europeas

c/o ANDE O'Donnell N° 37-1

28009 Madrid

tel: + 34 1/578 34 78

fax: + 34 1/578 28 42

Sweden

Swedish Sports Organisation for the Disabled (SHIF)

Idrottens Hus

12387 Farsta

tel: + 46 8/605 62 63

fax: + 46 8/724 85 40

United Kingdom

United Kingdom Coordinating Committee

c/o British Paralympic Association

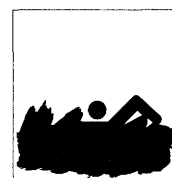
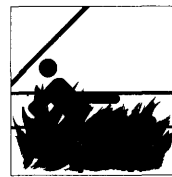
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FEEDBACK ON THE REPORT

*"The impact
of EC Activities
on Sport 1993"*

EUROPEAN COMMISSION

Directorate-General
"Information, Communication, Culture, Audiovisual"



Many people may think that the European Union and Sport have nothing to do with each other. This is not correct. A large number of Union rules and activities are of great importance for the Sports World. Some of them are more crucial than others. But even in very limited cases the relevance can be of major value to the sector concerned.

We have, therefore, for each of the last three years prepared a report which systematically describes and analyses the impact of Union activities on the sports world.

This report describes the feedback from sports organizations and others to the 1993 report.

I wish to thank "Coopers and Lybrand" for preparing the report in close cooperation with most Directorates-General in the Commission, with the sports organizations and with the Member States.

I also wish to thank all contributors to the feedback report. Only through active dialogue can we obtain the best results for everybody.



Niels Jørgen Thøgersen
Director, European Commission

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Executive summary

In July 1993, Coopers & Lybrand EU - then EC - Office finalised its study on the impact of European Community activities on sport. The study was requested by Directorate General X of the European Commission, and its objectives were:

- to document comprehensively the impact of Community legislation and policy on sport;
- to identify the position of interested parties in relation to the Commission's position on sport;
- to identify ways in which the Commission can continue to make a positive contribution to the development of sport in the EU.

The participants and observers at the European Sports Forum, held in November 1993, were invited to submit comments, as were the international and European sports federations.

This report sets out their comments and states their position on issues of particular concern and should be considered in conjunction with Part II of the original study.

General

Coopers & Lybrand's study has been well-received and is considered a very useful basis for further discussions with the EU on sport. It is felt to have helped in the identification of relevant European policies and laws.

Some regrets have been expressed at the absence of detail in the attribution of opinions formulated by the ministries and sports organisations. This study redresses this issue.

Additional sports policy aspects considered to be relevant concern regulatory aspects of associations and (sports) clubs, charities and lotteries and other games of chance, which are important to the management and financing of sport. These have now been addressed in the 1994 update of the original study on the impact of EC activities on sport.

In addition to these general comments, observations have been made on specific issues raised in the study.

Role of the European Union in sport

The comments made focus on aspects of EU competence in sports matters, and more generally on the principles to be applied in the conduct of an EU sports policy if such a policy were to be developed.

They stress the need to apply the *principle of subsidiarity* to a possible European sports policy and the need to preserve the independence of sports federations.

Coordination with other bodies

There is a clearly-perceived need to avoid overlap between any EU measures in respect of sport and those initiated or coordinated by other bodies such as the Council of Europe.

Creation of Working Group on sports

Various suggestions have been made concerning the role, functioning and composition of the European Sports Forum's Working Group, the establishment of which was agreed in November 1993. It is widely felt that this Working Group will allow for a coordinated approach on behalf of the sports world to EU policies and laws affecting sport.

Commission Sports Unit

The creation of an independent Sports Unit within the European Commission's Directorate General X has met with wide approval.

Such a Unit is seen to help ensure an adequate information exchange between the EU and the sports world as well as avoid duplication of work.

Free movement of persons and services

Most comments with respect to the *free movement of sportspersons* focused on whether or not restrictions should be allowed vis-à-vis foreign sportspersons. The study had recommended that the national sports federations should gradually bring their rules into line with the European provisions on free movement and allow for EU nationals practising sport in their countries not to be considered as foreigners.

This recommendation has met with general reluctance or even outright rejection from most parties for social, cultural and educational reasons. Fears are expressed about the potential monopolisation of players by financially strong teams and clubs.

The idea of increased *compatibility of qualifications* awarded for sports professions finds wide acceptance, particularly among various ministries, thus finding favour for the study's recommendations for either the harmonisation of the content of training courses or a comparative table to gauge the compatibility of qualifications awarded.

From the comments submitted with respect to *hooliganism*, the adequacy of current measures taken in the framework of the Council of Europe's Convention on the reduction of spectator violence may be confirmed.

Coopers & Lybrand's study recommends Commission investigation of minimum *insurance* requirements at international sports events. The responses do not present a clear consensus for or against such an initiative.

The comments made in respect of *advertising and sponsorship* concentrate on the permissibility of tobacco advertising and on sponsoring contracts between sports federations and broadcasters. The first issue is felt to be adequately covered by the "Television without Frontiers" Directive, while the second is considered to be an issue for national regulation.

Health and Safety

The study's recommendations on the combat of doping, especially those concerning the financing of education campaigns and information exchange programmes, have been well-received insofar as they complement the work already done by the Council of Europe in the framework of its Anti-Doping Convention.

Free movement of goods

The few comments received on the *transportation of sports equipment* do not suggest a need for further EU measures beyond enforcement of the rules on free movement of goods.

Involvement from the sports equipment manufacturers in the drawing up of *standards* relating to their products is called for by most commentators.

The use of the *Olympic Symbol* and emblems, according to various commentators, should be subject to the rules on intellectual property rights, rather than on free movement of goods. Any disputes on the ensuing rights of exploitation should be solved between the national olympic committees and the sponsors.

Competition policy

The issue of *transfer of sportspersons* has attracted most feedback among competition policy matters. Most commentators feel that the transfer system as it currently stands is justified, particularly on grounds of education and training costs incurred by sports clubs, and that any changes envisaged by the EU would need to be discussed at length with interested parties.

On the subject of *subsidies to sport*, most, but not all commentators, have indicated that state funding of sport does not impact international sport competitions.

European Union Funding (initiatives)

DG X funding for sport, especially in the framework of the newly-adopted EURATHLON programme, is on the whole welcomed, and detailed suggestions are made as to the nature and the criteria of such support.

It is pointed out - in line with the study's recommendations - that any EU financial support should be linked to clearly established goals of an EU sports policy.

Taxation

Tax matters concerning sports are considered to be subject to the subsidiarity principle and thus not requiring any EU initiatives.

The way forward

It becomes clear from the responses to the study that a number of issues need to be addressed in order to make progress with a European policy on sport. The feedback indicates that it is important that the European Commission states the objectives of such a policy in a clear and coherent manner. The Commission must step up its dialogue with the sports world in order to increase consensus on the issue of EU versus national competencies and on the avoidance of potentially overlapping activities by organisations with responsibilities for sport.

It may be concluded from the feedback given that the basic principles as listed in the study - transparency, consultation, consensus and coordination - still constitute the way forward to an effective and acceptable European Union sports policy.

I. Introduction

Background

1001 In July 1993, Coopers & Lybrand EU - then EC - Office finalised its study on the impact of European Community activities on sport. The study was requested by Directorate General X of the European Commission, and its objectives were as follows:

- to document comprehensively the impact of Community legislation and policy on sport;
- to identify the position of interested parties in relation to the Commission's position on sport;
- to identify ways in which the Commission can continue to make a positive contribution to the development of sport in the EU.

1002 The study was presented to the 3rd European Sports Forum in November 1993. The Forum is essentially composed of national Ministries responsible for sport, National Olympic Committees and national sports organisations. All participants and observers at the European Sports Forum were invited to submit comments on the study by March 1994.

1003 The study was also presented to a meeting of international and European sports federations, who similarly were invited to submit comments on the study.

1004 The following study, finalised in July 1994, sets out the comments from the participants to the European Sports Forum and international federations. These comments were either presented at the Sports Forum's meeting in November 1993 or subsequently submitted in writing. It follows largely the same structure as the initial study, although an additional section on overall comments has been added.

1005 This feedback report should be read in conjunction with Part II of the original 1993 Sports Study (Impact of EC activities on sport) which covers the position of sports bodies and other interested parties vis-à-vis Community activities impacting sport.

1006 In parallel to this report, Coopers & Lybrand has produced an updated version of Part I of the original 1993 study on the impact of EC activities on sport.

Acknowledgements

1007 The organisations listed below provided their comments on the sports study and stated their position on issues of particular concern. We would like to express our thanks for their efforts:

Ministries

Bundesministerium für Gesundheit, Sport und Konsumentenschutz (Austrian Ministry of Health, Sport and Consumer Protection)

Ministère de la Culture et des Affaires Sociales - Communauté Française de Belgique (Ministry of Culture and Social Affairs - French Community of Belgium)

Kulturministeriet (Danish Ministry of Culture)

Ministère de la Jeunesse et des Sports (French Ministry of Youth and Sports)

Bundesrat (German Federal Council)

Bundesministerium des Innern (German Federal Ministry of the Interior)

Greek Ministry of Culture (General Secretariat for Sport)

Irish Department of Education (Sport Section; National Sports Council)

Ministère de l'Education Physique et des Sports (Luxembourg Ministry of Physical Education and Sports)

Ministerie van Welzijn, Volksgezondheid en Cultuur - (Dutch Ministry of Welfare, Health and Cultural Affairs)

Det Kongelige Kulturdepartement (Royal Norwegian Ministry of Cultural Affairs)

Direcção Geral dos Esportos (Portuguese Sports Institute)

Ministerio de Educacion y Ciencia - Consejo Superior de Deportes ("CSD") (The Spanish Ministry of Education and Science's Higher Sports Council)

UK Department of National Heritage

Council of Europe

Olympic movements

Association of the European National Olympic Committees (AENOC) Association des Comités Nationaux Olympiques Européennes (ACNOE)

Belgian Olympic and Interfederal Committee (BOIC) (Comité Olympique Interfédéral Belge) (COIB)

The (Danish) National Olympic Committee

Comité National Olympique et Sportif Français (French National Olympic Committee)

Nationales Olympisches Komitee (NOK) (German National Olympic Committee)

Comité Olympique Hellénique (Greek National Olympic Committee)

Olympic Council of Ireland (OCI)

Comitato Olimpico Nazionale Italiano (CONI) - (Italian National Olympic Committee)

Nederlands Olympisch Comité, Nederlandse Sport Federatie (NOC/NSF) (Dutch Olympic Committee/Dutch Sports Confederation)

British Olympic Association (BOA)

Sports confederations

European Non-governmental Sports Organisation (ENGSO)

Österreichische Bundes-Sportorganisation (Austrian Federal Sports Organisation)

Danish Gymnastics and Sports Associations (DGI)

Deutsche Sportbund (DSB) (German Sports Confederation)

Sports Councils of Great Britain, Scotland, Wales and Northern Ireland

British Sports Forum

Central Council of Physical Recreation (CCPR)

Sports federations

International Aeronautical Federation

Deutsche Badminton-Verband (German Badminton Federation)

Asociacion Clubs Baloncesto (ACB) (Spanish Basketball League)

Union Cycliste Internationale (UCI) (International Cycling Union)

International Equestrian Federation

European Union of Football Associations (UEFA)

International Handball Federation

International Ice Hockey Federation

International Motorcycling Federation

International Rowing Federation

Deutscher Segler-Verband (German Sailing Federation)

European Community Sailing Association

Finnish Tennis Federation

Spanish Tennis, Automobile and Swimming Federations

European Triathlon Union

International Yacht Racing Union

II. Overall feedback

General remarks

2001 The sports study has been well-received and is considered a very useful basis for further discussions with the EU on sport. It is felt to have helped in the identification of European policies and laws relevant to sport. The responsible ministries and sports organisations have welcomed the opportunity to express their concerns and will gladly participate in further discussions on a European sports policy. Various respondents regret, however, that most views expressed in Part II of the study (for practical and presentational reasons) have not been attributed to specific organisations.

2002 The *Austrian Ministry of Health, Sport and Consumer Protection and the Austrian Federal Sports Organisation* welcome the study which they consider to be an important tool for those with responsibilities in the field of sport in Europe.

2003 The *Danish Ministry of Culture* welcomes the study and proposes that specific sub-reports should be drawn up to study in-depth the most important subjects.

2004 The *French Ministry of Youth and Sports* is in favour of periodical updates to the study in order to pinpoint the problems often found to affect the lower end of the structural ladder of sports organisations. The working group from the European Sports Forum could supervise the updating of the study, bearing in mind the specific nature and autonomy of sport in any proposals for harmonization.

2005 The *German Federal Ministry of the Interior* considers that the study's first-time overview of EU-activities in respect of sport constitutes a valuable discussion-paper. It holds a positive opinion of the catalogue of facts, views, measures and decisions which are relevant for European sports policies and finds that the study offers a good overview of the essential problem areas.

2006 The Ministry regrets, however, that the opinions and statements made by sports organisations cannot be attributed, or only with great difficulty, to individual sources. It would have preferred a compilation of quotations.

2007 It considers that a better presentation and summary of potential Commission action points could have been given, and would welcome a separate Commission statement on the study and on the implementation of measures to be taken.

2008 The *Dutch Ministry of Welfare, Health and Cultural Affairs* welcomes the study which, it feels, offers a good insight into the Commission's activities and their possible impact on sport. Similarly to the German Ministry of the Interior, it regrets, however, that the responses to the questionnaires have been summarised in such a way that

possible differences of opinion between the Member States and/or governmental and non-governmental organisations cannot be distinguished. It is uncertain whether the views expressed represent unanimous, majority or minority standpoints, and consequently what forms the basis for the study's conclusions and recommendations. The Ministry proposes to make the responses available for inspection, if necessary ensuring anonymity.

2009 The *Royal Norwegian Ministry of Cultural Affairs* holds the view that the study is a very good basis for further studies in this important area.

2010 The *Portuguese Sports Institute* considers the study to be very useful and wishes to see it followed up by more specific measures. It is critical of any findings relating to the inadequacy of sports training facilities and organisation. It calls on the sports world to take the European Union's goals and activities into account in the way it organises itself.

2011 The *Spanish Ministry of Education and Science's Higher Sports Council* considers that the study should be used as a starting point. Once the European Sports Forum's working group will have completed its analysis, the Commission should propose solutions to the most serious and urgent problems identified in the study.

2012 For the *UK*, the study represents a basis for further policy discussion and clearly demonstrates the need for the Commission to develop its dialogue with Governmental and sports organisations, in order that its approach may accurately reflect sports concerns and ensure that resources are focused on real needs.

2013 The *Dutch Olympic Committee/Dutch Sports Confederation* considers the study an excellent overview and an important source of information at the current stage of development of a European sports policy, even it does not always agree to its conclusions.

2014 *ENGSO* (the European Non-Governmental Sports Organisation) views the final report as an excellent working paper for the future cooperation between sports organisations in Europe and EU bodies.

2015 The *German Sports Confederation* welcomes the European Commission's initiative to have a study undertaken into the effects of EU legislation on sport. It praises the well-structured presentation of the complex issues involved and considers the study a valuable working document for the sports federations.

2016 It regrets that the study's analyses do not give a clear weighting to the opinions expressed by (con)federations, the national Olympic committees, ministries, or manufacturers of sports equipment. It considers that these analyses have been worded in very general terms, only seldom attributing an opinion to any one federation.

Phrases such as 'most federations', 'a smaller federation is of the opinion that', 'an international federation', etc, abound. By way of illustration, the German sports confederation particularly refers to paragraph 10053, where the phrase 'an international sports organisation' does not adequately reflect that it combines the views of almost all AENOC and ENGSO members. The German sports confederation feels that the views of the national confederations and Olympic committees have not been given equal weight, nor have the views of the German sailing federation been incorporated in the study. Moreover, the confederation expresses its doubts as to the extent to which the views of the sports equipment sector, sponsors and sports agencies, have been included in the study's conclusions, even if these views are covered by the descriptive part (II) of the study.

Perceived omissions

2017 Certain comments have been made regarding sports policy aspects that are considered to be missing from the study:

2018 The *Austrian Ministry of Health, Sport and Consumer Protection*, together with the *Austrian Federal Sports Organisation* comment on a subject not covered by the study, namely European harmonisation of games of chance, such as lotteries. In the Austrian view, such harmonisation would create difficulties for the financing of sport. A decision on the regulation of such games and on the distribution of their revenues should be left to the individual states.

2019 Similarly, *ENGSO* expresses the opinion that a few issues of major concern to practically all sports organisations in Europe have been left out in the study such as lotteries and the Statute of European Associations.

2020 The *German Sports Confederation* would have liked the study to have covered also regulatory aspects of associations and (sports) clubs, charities and lotteries, as these are essential for the future of sport for all. EU laws, it is felt, could negatively impact the structure of German club-based sports activities, the system of tax relief granted to non-profit sports clubs which is indispensable to their independent management, and the financing of sports facilities and organisations from the proceeds of lotteries and betting. It urges for any definitive regulations to be 'sports-friendly'.

2021 The issue of lotteries has been addressed in the 1994 updated version of the study on the impact of EU activities on sports.

Role of the European Union in sport

2022 The comments made with respect to this issue focused on aspects of EU competence in sports matters, on the principle of subsidiarity and more generally on the principles to be applied in the conduct of an EU sports policy if such a policy were to be developed.

2023 The *Austrian Ministry of Health, Sport and Consumer Protection*, together with the *Austrian Federal Sports Organisation* favour a future revision of the Treaty on European Union Treaty to include an article on sports which, similar to the policy area of culture, observes the principle of subsidiarity.

2024 *Belgium's French Community's Ministry of Culture and Social Affairs* calls for the inclusion of an article on sport in the revised Treaty on European Union, modelled on its current Article 128 on culture and requests that a formal Council meeting of Sports Ministers be convened.

2025 The *German Federal Council* feels that the subsidiarity principle has been designed as a two-way system between the EU and the sports organisations. To ensure its smooth operation, the Federal Council recommends that national governments be briefed by the European Sports Forum's members on the tenor of the sports article to be included in the 1996 revision of the Treaty.

2026 The *German Federal Ministry of the Interior* considers that the study does not cover adequately certain fundamental principles of EU policy and emphasises what it sees as the five key points:

- The principle of subsidiarity should be clearly and firmly guaranteed. National responsibilities and the autonomy of sport may not be affected. The principle of subsidiarity may not be reduced to rules of procedure but should be the expression of a matter of principle.
- Transparency is a similarly important principle. EU decisions should be comprehensible to citizens as well as to state and non-state institutions. This principle includes legal clarity and the substantiation of decisions.
- Whenever the Commission should take any measures of political importance to sport, prior agreement should be reached with the responsible national organisations or institutions. This reflects the EU-acknowledged principle of democracy.

- Equally vital is the principle of consensus, according to which decisions should be taken on the basis of the widest possible agreement.
- Of relevance are moreover the prevention of overlapping activities, especially with the Council of Europe, and the non-exclusion of third countries.

2027 The Ministry feels that, also in view of sport's autonomy, there are fundamental reservations to be made in respect of a Council recommendation requesting that sports federations bring their statutes in line with EU legislation. As regards the request that the Commission considers the potential impact on sport when drafting EU policies, a decision should be taken first on the Commission's and therefore the EU's responsibilities in the area of sport. The study's very general formulation could well lead to the incorrect conclusion that the Commission should have as much competence as possible. However, the Ministry's view is that more in-depth discussions and decision-making will have to take place with the participation of national and international sports federations as well as of government authorities.

2028 The Ministry does not consider it opportune to take a position on the inclusion of a specific article on sport in a future revision of the Treaty on European Union. It feels that as yet there is no sufficient evidence or documentation of a political will on this issue, and that national and EU agreement is still required.

2029 The *Irish National Sports Council* is in favour of a more rigorous application of the ratified Maastricht Treaty to sports.

2030 The *Luxembourg Ministry of Physical Education and Sports* endorses the inclusion of a reference to sports in the Maastricht Treaty when it comes up for revision.

2031 The *Dutch Ministry of Welfare, Health and Cultural Affairs* considers that certain EEC Treaty rules, for example those concerning free movement, may not be applied immediately to sport. The interests of the players and of the public should be taken into account.

2032 The *UK* endorses the study's recommendation that the way forward should be marked by the proper application of the principle of subsidiarity, and by increased consultation, co-ordination and transparency. It underlines the study's observations that the EU's role in sport is and should remain limited.

2033 The *UK* agrees with the study's conclusion that there is a need for sports interests to be represented and heard within the Commission in order that it might develop a clearer and more effective approach to sport. It does not believe that there

is sufficient evidence at present to suggest that revision of the Treaty base is the appropriate way to achieve this.

2034 The UK believes that it is more effective and appropriate to develop the mechanisms for dialogue which already exist between the Commission and sports bodies, such as the European Sports Forum, and to look afresh at the administrative arrangements for dealing with sport within the Commission.

2035 In forming this view, it is mindful of the need to safeguard the principle of subsidiarity and the traditional independence of sports bodies.

2036 The *French National Olympic Committee* expresses as its opinion that the sports structures and regulations are applied worldwide and fears that EU economic legislation, if applied to sport, may result in their destabilisation.

2037 The *German National Olympic Committee* proposes an overall analysis of the Maastricht Treaty to check its compatibility with sport structures.

2038 The *Dutch Olympic Committee/Dutch Sports Confederation* would welcome a recommendation from the Council of Ministers:

- inviting the Commission to ensure that sport is taken into account when Community policies are drafted; and
- asking for due consideration to be given to the inclusion of a specific Article on sport in any future revision of the Treaty of Maastricht, to ensure sport is taken into account when establishing EU policies. The article on sport would be similar to those on culture or public health, taking full account of the subsidiarity principle and promoting cooperation rather than harmonization.

2039 The Dutch Committee/Confederation also suggests that the Commission, in consultation with the sports organisations, agrees upon a list of activities to be formally supported by the EU. It is prepared to contribute to such a dialogue.

2040 The *Danish Gymnastics and Sports Associations* support that sport is recognised in future changes of the Treaty on European Union - among these that the sports are defined as a means to develop the understanding between people.

2041 Regarding the inclusion of the concept of culture in the Treaty, the Danish Gymnastics and Sports Associations suggest that the concept of culture is connected with sports. The EU would thus deal with sport and culture at a large scale, ensuring that both elite and untraditional activities are given support.

2042 With regard to the Council Recommendation as proposed by the study, the *German Sports Confederation* rejects alignment of the sports federations' statutes to EU legislation, considering such to interfere with independent sports autonomy. It does support, however, inclusion of sports considerations into the Commission's drafting stage of any new policy measures. The possibility of including a separate article on sport in a future revision of the Maastricht Treaty is a subject of debate in German sports circles. Although such a reference to sport would ensure its consideration in any future EU policy-making, it should not result in additional EU competencies for the EU, with the consequent weakening of the principle of subsidiarity and of sport's autonomy. As with comparable rules applicable to culture and public health, the subsidiarity principle should be applied as a rule, and cooperation should be given precedence over harmonisation.

2043 The *Sports Confederation of the State of Hessen* concurs with the view of the confederation in its emphasis on the importance of gambling and gaming for the financing of sports organisations. It sees no role for the EU, either in respect of national subsidies or the regulation of gambling and gaming.

2044 The *International Aeronautical Federation* points out that very strict rules apply to sports using technical equipment and these are therefore doubly concerned by EU legislation.

2045 The *International Cycling Union (UCI)* feels that, insofar as EU legislation is specifically aimed at achieving economic and political union, it is difficult to accept the (unwanted) consequences of this legislation which would be contrary to the values of the sports world.

2046 The UCI points out that international sports authorities are responsible for ensuring worldwide uniform application of the rules applying to their sport. Insofar as national legislative measures affect their sport, therefore, the UCI believes that it is in the interest of international sports organisations that this national legislation is drawn up in consultation with the organisations themselves and that differences are reduced to a minimum. The EU should provide international federations with a clearly defined and harmonised role for members within the Union in order to further harmonisation of legislation which impacts sport. This is relevant for professional sport, insurance and doping.

2047 For the UCI, the impact of EU legislation on sport should be intentional and based on an appreciation of sports values; it should not be a neutral consequence of rules put in place for other purposes. The UCI therefore approves of an article on sport in the Treaty on European Union.

2048 The *International Equestrian Federation* favours a framework document explaining the relationship between the European Union and sport. It expresses

concern about the possible emergence of a single European federation over and above the national federations. The federations would welcome a clearer definition of the subsidiarity principle.

2049 The *International Handball Federation* wishes to draw attention to the problem of applying EU regulations to federations whose headquarters are based outside the European Union.

2050 The *International Motorcycling Federation* acknowledges the need for EU legislation and the importance of the basic principles of free movement and non-discrimination, but also wants the EU to take account of the interests and specific features of motorcycle sports.

2051 The *European Triathlon Union* wishes to ascertain the ultimate objective of the Commission's sports policy, i.e. does it seek:

- to build European teams, or
- to apply European regulations to sports professionals from outside the European Union who wish to take part in European competitions?

Coordination with other bodies

2052 There is a clearly-perceived need to avoid overlap between any EU measures in respect of sport and those initiated or coordinated by other bodies. A differentiation between EU and pan-European bodies with wider coverage is similarly felt to be unnecessary.

2053 The *Danish Ministry of Culture* considers that a division between EU- and pan-European sports organisations is neither desirable nor appropriate. The same regulations should be valid for all organisations.

2054 The *Royal Norwegian Ministry of Cultural Affairs* reminds the EU of the number of sports organisations already existing, and expresses its doubt about the desirability of the study's recommendation to set up either EU-level sports organisations where these do not yet exist, or EU Units within international federations.

2055 The *UK* feels that the dialogue now started between the EU and sports organisations will help sports bodies to understand the context for the Commission's involvement in individual issues. It will moreover help Governments better to coordinate the agencies involved with the development of sport in the Member States. It is important that such discussions take full account of existing structures both within (e.g. the European Sports Forum) and outside (e.g. the Council of Europe) the EU and of existing policy documents from these bodies. Any further work by the Commission should avoid duplicating work undertaken elsewhere. The working group

created at the Sports Forum held in November 1993 should be enlarged to include representatives of relevant international federations.

2056 The *Council of Europe* suggests that better use be made of existing structures and quotes as an example the exemplary cooperation between the Commission and the Council of Europe in devising the anti-doping and fair play campaigns. It calls for building upon the European sports charter.

2057 The *International Cycling Union* believes that EU legislation, when it concerns sport, should be drawn up in dialogue with international sports authorities. In this way, EU legislation could be applied taking into account the specificities of sport.

2058 The *European Community Sailing Association* draws specific attention to the need to set up a liaison office between the sports federations and the Commission for communication purposes and the production of a framework document analysing the main sources of conflict between the two.

2059 The *International Yacht Racing Union* calls for more openness and a greater flow of information between the Commission and the sports federations, in particular federations such as itself which are subject to a large number of rules and technical standards. It is in favour of more thorough consultation of sports federations in the preparation of new directives.

Creation of Working Group on sports

2060 Various suggestions have been made concerning the role and functioning of the European Sports Forum's Working Group on sports, the establishment of which was agreed in November 1993.

2061 The *German Federal Ministry of the Interior* approves of the suggestion to create a working group on sport, to be responsible for a continual and coordinated approach of EU-wide issues affecting sport. It confirms Germany's willingness to participate in such a working group.

2062 The *Greek Ministry of Culture's General Secretariat of Sports* endorses the proposal to set up a working group.

2063 The *Irish National Sports Council* demands a broader consensus before considering the establishment of a new working group.

2064 The *Luxembourg Ministry of Physical Education and Sports* welcomes the Commission's initiative to create an ad hoc working group and to make the Sports Unit a contact point to help improve the information flow.

2065 According to the *Dutch Ministry of Welfare, Health and Cultural Affairs*, the main subjects to be dealt with by the working group, should be: restrictions on foreign sportspersons, sports qualifications, doping, broadcasting rights and transfer of players. It is keen to hear when the working group will be installed and trusts that the group's activities can be monitored by regular reporting and discussion of its recommendations at the regular Sports Forum meeting.

2066 The *UK* supports the proposal for a working group to discuss specific issues and recommendations identified in the study. It is willing to participate in the activities of any group that may be established. It favours a pragmatic approach to its operation and stresses the need to keep open the channels of communication with other members of the European Sports Forum. It moreover calls for a bottom-up approach to the reorganisation of sport, i.e. from the level of federations and local bodies.

2067 *AENOC* feels that the working group should also include representatives from relevant international sports federations.

2068 The *Olympic Council of Ireland* fully supports the setting up of the ongoing working group. Regardless of the conclusions and recommendations made by this group, it will be necessary for each EU Member State to bring the issues contained in Coopers & Lybrand's study to the notice of the national sports federations. In addition, the public and the relevant political circles must be informed. To allow for a wide-ranging debate, therefore, each country should consider the creation of an ad hoc committee consisting of:

- Government representatives
- National (con)federations and the
- National Olympic Committee.

2069 The role of this committee would also include familiarising Government and political representatives, particularly European parliamentarians, with the issues involved. This would be part of the political process leading to :

- the Council of Ministers taking sport into account in the formation of EU policy;
- the inclusion of sport as an economic factor in a revision of the Maastricht Treaty.

2070 The *Italian National Olympic Committee* is in favour of setting up a working group and of a contact point in the Commission's sport section. It urges that AENOC should take account of the interests of its 47 affiliated countries.

2071 The *Dutch Olympic Committee/Dutch Sports Confederation* makes detailed recommendations on the composition of the working group:

- On behalf of governmental organisations:
3 individuals as approved by the representation of governmental organisations (possibly depending on the Council Presidency)
- On behalf of non-governmental organisations:
 - 1 representative from the European national Olympic committees (from an EU Member State) nominated by AENOC;
 - 1 representative from the European confederations (from an EU Member State) nominated by ENGSO;
 - 1 representative from independent sport from an EEA (European Economic Area) country (for instance nominated by ENGSO in consultation with AENOC)

with additional experts in certain subject areas as required.

2072 *ENGSO* feels that there should be an equal number of representatives from governmental and non-governmental organisations, the NGOs preferring to send the best experts (independently from the question of countries having the presidency in the EU in that period). *ENGSO* repeats its wish and readiness to play an active part in the proposed working group.

2073 The *German Sports Confederation* presents the same proposal for composition of the working group as the Dutch Olympic Committee/Dutch Sports Confederation (see paragraph 2071 above).

Commission Sports Unit

2074 The creation of an independent Sports Unit within the European Commission's DG X has met with wide approval.

2075 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* would welcome the creation of a special EU coordinating unit on sports which would help to improve the provision of information. A hand-book on EU responsibilities for sports issues which provides information on EU sources of funding is considered useful.

2076 The *Danish Ministry of Culture* proposes that the Sports Unit is attached to DG X's Culture Unit.

2077 The *German Federal Council* favours a higher profile for the Commission's Sports Unit.

2078 The *Dutch Ministry of Welfare, Health and Cultural Affairs* endorses the plan to reinforce the coordination of sports issues in a separate Sports Unit in DG X. Whether sport will be included in the Treaty on European Union, will depend, in the view of the Ministry, on a decision as to which issues need to be regulated at European level.

2079 According to the *UK* the report illustrates the need for the Commission to develop its understanding of the appropriate parties to be involved in policy discussions on sports issues. Issues which are specific to professional or semi-professional sports - such as the restrictions on non-nationals playing in national football leagues, ice hockey or basketball - will primarily require discussions with the sports organisations concerned. Discussions on wider issues affecting a number of sports are more likely to involve national sports federations, Olympic associations and sports councils. Issues relating to the possible revision of the Treaty base will involve Governments; and some issues - such as the development of the proposed sports programme and anti-doping initiatives should involve all parties. The current administrative arrangements within DG X are not adequate for this purpose and the annual Sports Forum does not provide sufficient time for a constructive two-way dialogue to develop between the Commission and sport. Moreover, the location of a sports function within the Directorate responsible for Audiovisual, Information, Communication and Culture means that sports considerations may be secondary to those concerned with other responsibilities. In consequence, there is currently insufficient opportunity for sports bodies to discuss proposals which may have major resource implications for both sport and the Commission.

2080 The *UK* agrees therefore with the study's conclusion that there is a need to enhance the dialogue that currently exists between the sports world and the Commission. The creation of a sports co-ordination post within DG X will help ensure that sports bodies receive better information about access to EU institutions and resources. The co-ordinator should also ensure that the Member States receive more systematically information on EU programmes and proposals concerning sport. To avoid duplication of work, this dialogue must involve a wide range of sports bodies including national and European associations. It should also involve close liaison with the Council of Europe and its Clearing House, particularly on issues which the Council already addresses such as sports development, doping, spectator violence and standards of ethical behaviour.

2081 The *Dutch Olympic Committee/Dutch Sports Confederation* is in full support of a clear coordinating role for a Sports Unit within DG X or elsewhere in order to channel information from the European Commission to the sports organisations and vice versa.

2082 *ENGSO* stresses that sport has become an irreplaceable part of today's culture and society and should therefore be taken into account in an appropriate way with the EU structures. *ENGSO* feels that within Directorate General X a sports section subordinated to Communication and Public Relations does not sufficiently reflect sport's high rank in our society and the important role it should play for the European citizen. Thus sport should have a more prominent place within the Commission by means of its own Sport Unit or, at least, be structurally attached to DG X's Cultural Unit.

2083 The *German Sports Confederation* expresses its support for the four principles on which any future cooperation between the EU and the sports federations should be based, via transparency, consultation, consensus and coordination.

2084 It strongly welcomes therefore the study's recommendations on the creation of a Sports Unit within the Commission's DG X, as such a unit will allow for the direct transmission of requests and concerns in respect of the EU's regulatory initiatives affecting sport. Similarly, such a unit will be able to convey the Commission's political decisions and proposals to individual members of sports bodies. The role of sport as a cultural phenomenon and factor of social stability would justify its incorporation in DG X's cultural domain.

2085 The *International Cycling Union* fully approves the creation and operation of a sports coordination desk in the Commission.

2086 *UEFA* approves of the study's recommendations on a Sport Unit within DG X with the job of coordinating Commission activities relating to sport. Staff from a variety of DGs are indeed involved in legislation and policies which influence sport and *UEFA* reports having encountered certain communications difficulties between different Directorates General. Coordination could help to alleviate such problems in the future.

Priority areas for discussion

2087 Various statements concern the nature of further action to be taken and the main topics to be discussed.

2088 *Belgium's French Community's Ministry of Culture and Social Affairs* feels it is now up to the European authorities, Commission, Council and Parliament, to state their position vis-à-vis the study and to propose concrete measures regarding sport.

2089 The *UK* believes that the report demonstrates the need to develop technical and legal discussions on priority issues such as:

- the mutual recognition of qualifications;
- the effect of competition policy on sport;
- the free movement of sportsmen and women;
- advertising and sponsorship;
- the transportation of sports equipment;
- the movement and labelling of doping products; and
- information and education on doping.

2090 The *UK* regards this list as non-exhaustive; other issues may also need to be discussed.

2091 It considers moreover that a further priority should be the production of publications targeted at the various sectors of the sports world (e.g. governing bodies, local authorities, manufacturers of equipment) explaining how the EU deals with specific issues of concern.

2092 The *German Sports Confederation* emphasises that any list of action points should be drawn up by the Commission in close cooperation with the European sports organisations.

III. Issue-driven feedback

Free movement of persons and services

Few comments dealt with this issue in general terms.

3001 The *UK* has listed the free movement of sportsmen and women among the seven priority issues on which, in its opinion, technical and legal discussions should focus.

3002 The *Olympic Council of Ireland* considers that the outcome of the Maastricht Treaty will have a bearing on this issue of free movement, which should be further examined.

Restrictions on foreign sportspersons

3003 Most comments with respect to the free movement of sportspersons focused on whether or not restrictions should be allowed vis-à-vis foreign sportspersons. The study had recommended that the national sports federations should gradually bring their rules into line with the European provisions on free movement and allow for EU nationals practising sport in their countries not to be considered as foreigners.

3004 This recommendation has met with general reluctance or even outright rejection from most parties.

3005 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* point at the restrictions applied in Austria to foreign sportspersons - whether amateur or professional - which affect (very seldom) their membership of a sports club or their participation in sports events. In principle there are no restrictions for naturalised players.

3006 The Austrian Ministry is not in agreement with the study's recommendations on free movement in sport. It provides five counter-arguments :

- Because of the social, educational, cultural and identity-building aspects of sport, its regulation is best left to the individual states. A strictly economic approach would result in biased and unjust measures to the detriment of sport.
- A country's cultural and national identity is reflected in the performance of its top players and national teams. As a result of unhampered free movement foreign sportspersons may gain the upper hand in sports clubs and there will be less demand for national players. This will lead to a worse performance of both top players and national teams.

- National, young players will be put at a disadvantage and may lose their motivation to practise sport. Consequently, sport will lose an important educational role. Its natural development will be damaged if it is only considered from an economic perspective.
- Financially strong teams and clubs will be unfairly favoured.
- The identification with sport of spectators, sponsors, providers of subsidies and opinion leaders, will decrease, particularly in regional and rural areas.

3007 The Austrian Ministry is of the opinion that the problem of free movement in sport is over-estimated. Sport's economic effects are small compared to overall EU economic revenues, particularly if the number of professional players (estimated at 15,000-20,000) is set against overall population figures (340 million). Austria favours the view that sport is to be considered as an important aspect of a country's culture to which the rule of subsidiarity applies.

3008 Similarly, the Ministry wishes to leave it to the individual Member States to decide on the distinction between professional and amateur sport. In the case of amateur sport, it would approve of a more generous application of European citizens' rights that would not impede membership of a sports club and the right to practise sport for reasons of physical well-being and social integration. Restrictions should remain, also in amateur sport, with respect to the organisation of sports events, especially championships, and with respect to the number of foreign players in a team. Austria points out that the majority of its sports activities, including top-level sport and national teams, is organised on an amateur basis. It feels moreover that its argumentation is strengthened by its status as a small country.

3009 *The Danish Ministry of Culture* regrets that Coopers & Lybrand's recommendations anticipate the outcome of the pending Bosman case.

3010 *The French Ministry of Youth and Sport* considers that the limitation on the number of foreign players in the first and second divisions in professional football is the logical consequence of the acceptance of the principle reserving the national team for national players (as per the Dona Mantero case on which the European Court of Justice has ruled). The existence of a quota of foreign players, as agreed by the gentlemen's agreement between UEFA and the Commission, is necessary to defend the cultural identity of all countries, an objective which has been upheld by the European Court of Justice (see for example its judgement on opening of shops on Sunday). The quota does not distort international trade given that identical restrictions apply to all Member States with professional football.

3011 The Ministry underlines that the removal of UEFA's 3 plus 2 restriction would pose a problem insofar as UEFA's rules cover a much wider geographical area than that covered by the Treaty of Rome.

3012 The *German Federal Ministry of the Interior* feels that with respect to the free movement of foreign players and sportspersons consideration should be given to aspects of sports policy rather than to labour law. The structure of sport, which has proved itself over many years and has been internationally acknowledged, requires the Commission to consult on and coordinate any action with the responsible national organisations.

3013 The Ministry considers that the proposed differentiation between foreign players from EU countries and from third countries is only feasible in the framework of international agreements and must be based on criteria which justify such differentiation. In further discussions on this issue it should be remembered that these matters of principle are unlikely to be abandoned easily.

3014 The *Greek Ministry of Culture's General Secretariat of Sports* suggests that a detailed analysis be drawn up of all restrictions pertaining to the free circulation of sportspersons in order to meet the various comments made by the national and international sports federations. Their views are considered particularly useful and felt to require inclusion in the updated version of the study.

3015 The *Dutch Ministry of Welfare, Health and Cultural Affairs* expresses as its opinion that the international sports organisations should not be forced to bring their statutes into line with EU laws. It justifies its opinion on the basis of sport's special characteristics such as the significance of national and/or club identity for supporters, thus making sport not a strictly economic activity, and the importance of internationally organised sport beyond EU borders. As a first step, the Ministry suggests that the national governments, together with the sports federations, study their current rules on participation of foreign and naturalised players and in how far these can be brought into line with EU regulations.

3016 Even though the *Royal Norwegian Ministry of Cultural Affairs* agrees with the principle of unrestricted participation in sports activities recommended in paragraph 19010 of the study, it is of the opinion that restrictions can be desirable in competition sports for reasons of national recruitment and to avoid a monopoly position by the teams and clubs with most resources. The Ministry would support equal restrictions in all countries if agreements can be reached between the international or European federations and the European Union.

3017 The *Spanish Ministry of Education and Science's Higher Sports Council* believes that, with the exception of national teams, the rules on the free circulation of workers should be applied to professional sportspersons. Regarding naturalisation of

sportspersons, the regulations of sports authorities should not be contrary to the Member States' rules.

3018 *AENOC* requests careful Commission examination of the reasons given to maintain restrictions on foreign sportspersons, in particular because of the specificity of sport.

3019 For this reason, it proposes that this question is discussed in depth by the working group created at the European Sports Forum held in November 1993; moreover, this working group should be enlarged to include representatives of relevant international federations.

3020 The *Italian National Olympic Committee* foresees that the presence of too many foreign athletes in clubs will have a negative impact on the indigenous players and athletes in a national team.

3021 The *Dutch Olympic Committee/Dutch Sports Confederation* prefers to have a sports policy developed similar to the EU's cultural policy, ie based on pluralism and differing national identities. Consequently, it demands that sports teams should have the right to select their players according to cultural and regional criteria. Sports activities should not be regarded as economic activities, especially considering European sport's long tradition of self-governance and of democratically constituted worldwide international rulings on the composition of representative teams.

3022 According to the Dutch Olympic Committee/Dutch Sports Confederation, supporters must have the opportunity to identify with their team; however, fully free movement of foreign players might lead to a monopolisation of the best players by the wealthiest clubs and to a weakening of youth policies.

3023 The *German Sports Confederation* rejects fully free movement in sports for well-known reasons: German sportspersons, especially young players would not be employed anymore in certain sports; financially strong teams or clubs would be favoured; a lessening of the identity felt between community and clubs might occur; there would be a risk of discontinuation of activities for the benefit of young players and of young people in general.

3024 The *German Badminton Federation* similarly rejects the study's recommendations with respect to foreign and naturalised sportspersons. It states that, as the European Commission does not consider the EEC Treaty rules (Articles 48, 59) to apply to amateur players and the European Court of Justice has not been requested so far to judge on discrimination against amateur sportspersons on grounds of nationality, it cannot be claimed that the right to free movement has been curtailed solely because sports bodies apply certain restrictions to the membership of other EU-

nationals. The badminton federation feels strengthened in its view by recent national jurisprudence.

3025 According to the *Spanish Basketball League*, it is necessary for sports organisations to be conscious of the vulnerability of any rules which limit the free circulation of sportspersons. The same degree of vulnerability, if not to a greater degree, is true of naturalisation.

3026 *The International Ice Hockey Federation* fears the negative impact of allowing an unlimited number of citizens from other countries. It claims that the stability of national championships will be destroyed, that education and development of young players will be negatively affected, that the richest clubs and the richest countries will dominate and that there will be a danger of strikes.

3027 To address these problems, the Federation wishes to negotiate with the Commission a Gentlemen's Agreement on professional players, similar to that which exists for football.

3028 *The International Cycling Union* expresses similar reservations concerning the study's recommendation on restrictions on foreign sportspersons.

3029 It feels that free circulation of persons and services can lead to undesirable consequences for sports, in particular regarding international competitions, and more specifically, international team competitions, in which national sentiments and identification with a team are generally recognised values of utmost importance to sport. Rules on free circulation should be applied in a manner which takes recognised sports values into account. As indicated in paragraph 1022 of the study, on Dona Mantero and national teams, the application of purely sports-related rules should remain possible. These exceptions would involve only a limited number of persons.

3030 *UEFA* is in complete agreement with the view which has been expressed by the majority of sports associations, i.e. that restrictions on the number of non-nationals should be maintained. The reasoning of the associations is that without such restrictions the best players would inevitably gravitate to the financially strongest clubs. There would also be a negative impact on youth policy and a decrease in spectator interest in local matches. It notes, for example, that even with nationality restrictions in place some 30% of the world's best footballers still play in the Italian First Division. What would the situation be like if there were no limitations at all?

3031 Consequently, *UEFA* argues strongly in favour of retaining the limitation on the number of foreign players. It is both surprised and disappointed to find out that the study concludes that all such limitations should be abandoned. According to *UEFA*, this conclusion appears to simply ignore the strong - even compelling - arguments put forward by the majority of sports associations.

3032 UEFA considers that the recommendations of the study are all the more difficult to understand given that they are made without any apparent reasoning. In particular, the damaging effects which would result from abolition of the rules - and which were clearly articulated by the sports associations - are simply felt to have been left unanswered.

3033 UEFA adds that the "dual system" envisaged in the study, under which player restrictions could remain in force for non-EU-nationals, would be both impracticable and unjustifiable. It feels that no reason is offered for this difference in treatment.

Restrictions on naturalised sportspersons

3034 In view of the close link between this issue and the possible application of restrictions on foreign players, any comments on the subject of naturalised players have usually been submitted as an integral part of a respondent's observations in respect of free movement of sportspersons. Any such comments have therefore been included in the previous section dealing with foreign sportspersons.

The rights of amateurs to practise sport

3035 The few comments made on this issue have been incorporated in the section on foreign sportspersons, because of its link with that subject-matter.

Sports qualifications

3036 The study has recommended either the harmonisation of the content of training courses for appropriate sports professions, or a comparative table to gauge the compatibility of qualifications awarded for those sports professions. From the comments received - particularly submitted by various ministries - the idea of increased compatibility of qualifications finds wide acceptance.

3037 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* prefer a table of comparisons of the different sports qualifications awarded in the EU and in third countries, rather than European or international harmonisation. Additional training should be offered if required, to make qualifications compatible, and applicants who seek recognition of their foreign qualifications should have the right of appeal if their application is declined. To support its view, Austria points at the high level of its education and training for sports trainers and instructors, eg ski-instructors, provided by the state in cooperation with the sports federations.

3038 The *French Ministry for Youth and Sport* believes that the application of European rules, as stipulated in the Treaty, should be based on a high level of consumer protection. The latter should ensure that, in carrying out physical and sports

activities, in particular those involving security of practitioners, the provisions of the Second Directive on mutual recognition of diplomas and qualifications should be applied, taking into account the geographical and regulatory specificities of all professions.

3039 The French Ministry argues that the profession of ski instructor in a flat country is not equivalent to the same profession in a mountainous country, especially because the security constraints are not the same. The security requirements imposed by the French authorities have been taken into account in defining the prior professional requirements of EU citizens who wish to become a ski instructor in France. In a similar vein, the profession of sailing instructor is regulated by a single qualification, which ensures adequate safety guarantees in all types of weather and all types of boats.

3040 The Ministry considers that, while the harmonisation of national qualifications is indeed desirable, it is vital to distinguish between qualifications, such as those in France, which are mandatory to carry out a profession and are issued by the State, and, on the other hand, qualifications which are issued by private organisations and do not contain mandatory requirements to carry out a profession.

3041 The *German Federal Ministry of the Interior* is in favour of harmonisation respectively mutual recognition of sports qualifications. It would approve of a table of comparisons of qualifications awarded within and outside the EU. However, it also calls for consideration of the recommended enquiries to be made by the international sports federations into the desirability of European or international qualifications which are to be achieved by the harmonisation of training curricula for certain sports professions.

3042 The *Dutch Ministry of Welfare, Health and Cultural Affairs* concurs with the recommendations made in the study. It sees a need for close involvement of the European Network for Sports Sciences in Higher Education in the proposed harmonisation.

3043 The *Spanish Ministry of Education and Science's Higher Sports Council* is of the opinion that the harmonisation of qualifications, if considered necessary, must be based on the work of the sports federations in order to develop qualifications at European level.

3044 The *UK* has listed the mutual recognition of qualifications among the seven priority issues on which technical and legal discussions should focus.

3045 The *German Sports Confederation*, represented in the German higher education system on sport, agrees to the study's recommendations on either harmonisation of training courses or on a table of comparisons of qualifications awarded. It would

welcome more detailed information on the practical implementation in the EU Member States of the two relevant Directives on mutual recognition of higher education diplomas.

3046 The *German Sailing Federation* emphasises the key role of qualifications to the sport of sailing. They serve principally the security of sportspersons, but also constitute evidence of technical sports qualifications. The federation stresses the need for mutual recognition of national certificates of qualifications.

Hooliganism

3047 From the comments submitted with respect to hooliganism, the adequacy of current measures taken in the framework of the Council of Europe's Convention may be confirmed.

3048 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Federal Sports Organisation* feel that EU action to combat hooliganism is unnecessary, in view of the measures taken in the framework of the Council of Europe's Convention on the Reduction of Spectator Violence and the cooperation between the international sports organisations. It underlines that Austrian black market activities in the sale of tickets have greatly decreased as a result of strengthened administrative and penal laws.

3049 The *German Federal Ministry of the Interior* equally does not feel the need for EU measures. It refers to existing inter-governmental cooperation in the framework of the Council of Europe's Convention and to working groups in the fields of the Interior and Justice to combat criminal activities of spectators. The Ministry underlines the policy, rather than just police, aspects involved in the combat of violent riots during sports events.

3050 *The Council of Europe* questions that the control of hooligans can or could be considered as a restriction of the rights of "free movement of persons". It feels that considerations of public security and public order are paramount here. It already made this observation earlier and is disappointed that no account has been taken of its comment in the final study.

Insurance

3051 The study recommends Commission investigation of minimum insurance requirements at international sports events. The responses do not present a clear consensus for or against such an initiative.

3052 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider that for reasons of individual privacy protection,

no insurance coverage of sports people, spectators or individual sports events can be made obligatory by either the EU or by the individual Member States. It must be up to each individual to take the necessary precautions. Although Austria would find it useful from the perspective of the sports organisations to harmonise minimum insurance requirements at transnational sporting events, it sees no legal basis for such an initiative.

3053 The *German Federal Ministry of the Interior* requests further study into the extent to which sports clubs, players and spectators will be covered by minimum insurance levels. The proposed consultation procedure between the sports organisations and the Commission could provide clarification of this issue.

3054 The *Spanish Ministry of Education and Science's Higher Sports Council* is in favour of the EU fixing minimum insurance coverage for sports events.

3055 The *German Sports Confederation* does not see the need for a Commission initiative - even in consultation with the appropriate sports bodies - in respect of minimum insurance requirements at transnational sporting events, as suggested by the study. It considers the relevant sports federations to be responsible for making any necessary arrangements.

3056 The *German Sailing Federation* does not concur with the International Yacht Racing Union's view that there is a need for the European Commission to identify and discuss with interested parties the establishment of responsibilities at sailing events. Consequently, it holds EU legislation in this field for dispensable.

Advertising and sponsorship

3057 The comments made in respect of advertising and sponsorship concentrate on the permissibility of tobacco advertising and on sponsoring contracts between sports federations and broadcasters.

3058 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* would not approve of the liberalisation of advertising of tobacco products and tobacco sponsorship. It considers sport to be an activity aimed at health promotion and as such incompatible with smoking which may damage health. Among the Austrian sports federations some concur with the Ministry's views, others stress the important sponsoring role of especially the tobacco industry. These federations welcome such sponsoring, which will indirectly support health promotion, and all the more so when state subsidies to sport may be in decline. The Ministry notes that tobacco advertising is not allowed on Austrian television following current agreements between the Austrian state television and the sports federations. However, new legal provisions are in preparation.

3059 The Ministry is of the opinion that national legislation should be applied to solve problems in respect of event versus broadcast sponsoring, which may arise as a result of the forthcoming introduction of Austrian private television stations. It feels that the sports federations and broadcasters should continue to be allowed to conclude agreements on these matters.

3060 The *German Federal Ministry of the Interior* considers that no further EU rules are necessary in addition to the 'Television without Frontiers-Directive' which regulates advertising and sponsoring by tobacco manufacturers. It expresses as its opinion that arrangements concerning advertising and sponsoring should be made by the sports federations themselves.

3061 *The Spanish Ministry of Education and Science's Higher Sports Council* agrees with the prohibition of advertising which stimulates the consumption of products which are dangerous to health. However, advertising and sponsorship for tobacco brands and alcoholic beverages should be allowed, as they provide an important source of finance for sports events, which otherwise might not be able to take place.

3062 The *UK* has listed advertising and sponsorship among the seven priority issues on which technical and legal discussions should focus.

3063 The *German Sports Confederation* is in favour of national federations possessing exclusive ownership of television advertising and sponsorship rights rather than the broadcaster, and calls for national regulatory measures.

Health and safety

Doping

3064 The study's recommendations on the combat of doping have been well-received insofar as they complement the work already done by the Council of Europe.

3065 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider that the Council of Europe's Anti-Doping Convention, which it has ratified, and the measures taken in the framework of this Convention by the national and international federations as well as by the International Olympic Committee, are sufficient to combat the use of doping. According to Austria the EU should refrain from taking any overlapping measures, but may play an important role in the stimulation of information and awareness campaigns and in the provision of appropriate financial support.

3066 The *Danish Ministry of Culture* believes that "enforcement of medical prescriptions for prohibited drugs" (anabolic steroids, growth hormones, testosterone ...) should be added to the list of main doping problems.

3067 The *German Federal Ministry of the Interior* feels that the national and international sports organisations should take primary responsibility for the combat against the use of doping. The Council of Europe's Anti-Doping Convention provides a basis for such efforts in all Member States, the substantial regulatory content of which is moreover available to third countries. Whereas the Ministry does not see a need for inclusion of research on doping in the existing European R&D programmes - it points at the wide range of studies and data already available - it does see a need for information and awareness campaigns on the risks of doping led by the European Commission. Such measures would not only have to include more detailed information to doctors on dangerous medicines and doping, but also the prevention of a black market in doping substances. The Ministry of the Interior feels that the further creation of, or EU support to, testing laboratories is unnecessary.

3068 The *Luxembourg Ministry of Physical Education and Sports* requests that the Commission looks into the possibilities of subsidizing the establishment of laboratories specialising in matters concerning doping.

3069 The *Dutch Ministry of Welfare, Health and Cultural Affairs* supports the recommendations made on information and awareness campaigns, however, it considers that these need to be coordinated with the Council of Europe's activities. It also supports the provision of financial assistance for more laboratories where doping tests may be carried out on behalf of the sports federations. It prefers such laboratories to be independent, however, and would therefore favour support to universities and similar organisations whose laboratories may thus be maintained to provide affordable tests.

3070 The Ministry feels that the EU could make an important contribution to the Council of Europe's anti-doping programme by the combat of illegal trade in doping substances amongst the EU member countries and between the EU and third countries. It expresses its concern about the easy availability of doping substances in certain member countries, which has also been the subject of recent correspondence among the national ministers responsible.

3071 The *Royal Norwegian Ministry of Cultural Affairs'* opinion is that the problem of doping cannot be handled by the sports bodies alone. In Norway national legislation concerning doping came into force in 1993. The law aims to restrict import, export, manufacturing, possession and conveyance of doping medicaments. Cooperation between the sport bodies as well as appropriate national legislation is vital to fight doping, which comes within the responsibilities of the Ministries of Justice, Social Affairs and Cultural Affairs. The Norwegian Ministry would welcome a Commission initiative to harmonize the rules concerning the prescription of doping preparations.

3072 According to the *Spanish Ministry of Education and Science's Higher Sports Council*, the Commission should initiate legislation only in matters in which it is competent and which are of more interest to the Member States, in order to avoid confusion and duplication, and given the existence of the Council of Europe's Convention and its wider geographical coverage.

3073 The *UK* has listed the movement and labelling of doping products and information and education on doping among the seven priority issues on which technical and legal discussions should focus.

3074 The *Danish National Olympic Committee* calls for harmonisation at EU level of the ban on all anabolic steroids and proposes joint information campaigns with various sports organisations.

3075 The *Danish Gymnastics and Sports Associations* welcome the European Union's and the Danish Parliament's efforts to solve the problems related to doping. The Danish Gymnastics and Sports Associations stresses, however, that legislation and prohibitions are not the only solutions available. They feel it is more important to focus on ethics and norms related to sports and also through public information to stress the unethical and the personally damaging aspects of the use of doping.

3076 The *German Sports Confederation* considers additional EU legislation to combat doping superfluous, given the existing rules laid down by the International Olympic Committee and the Council of Europe's Anti-Doping Convention. It would welcome, nevertheless, measures as proposed in the study - information and education campaigns, supplementary testing and research facilities, and monitoring of trade in forbidden substances - and EU financial support for these.

Action against AIDS

3077 No specific comments have been received on this issue.

Protection of young people at work

3078 With respect to the protection of young people the (few) respondents concurred with the study's conclusion that no EU measures are required beyond the proposed Directive on this matter.

3079 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* believe that there is no need for any EU initiative in this area.

3080 The *German Federal Ministry of the Interior* sees no need for further EU measures in this field beyond the proposed Directive on the protection of young workers which already contains suitable exemptions for young sportspersons.

Safety at sea

3081 No specific comments have been received on this issue.

Liability of service suppliers

3082 No specific comments have been received on this issue.

Stadia safety

3083 No specific comments have been received on this issue.

Free movement of goods

Transportation of sports equipment between Member States

3084 The few comments received on the transportation of sports equipment do not suggest a need for further EU measures beyond enforcement of the rules on free movement of goods.

3085 According to the *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation*, the current arrangements suffice and there is no need for any EU initiative in this area.

3086 According to the *German Federal Ministry of the Interior*, any - on the whole minor - problems relating to the transportation of sports equipment between EU member countries can be solved on-the-spot within the existing national and European regulatory framework. Further Commission initiatives to legislate in this area are therefore unnecessary.

3087 The *UK* has listed the transportation of sports equipment among the seven priority issues on which technical and legal discussions should focus.

3088 The *German Sailing Federation* claims that only a very small number of boats is transported across borders on road-trailers. Cross-border transport takes place, as the case may be, by sea, inland waterways, trailers or lorries. The requirements to be complied with apply similarly to industrial transports. Consequently, the requirements of free movement in sport are not always met.

Fire-arms

3089 No specific comments have been received on this issue.

Standardisation

3090 The respondents commenting on the study's section on standardisation particularly call for involvement from the sports equipment manufacturers in the drawing up of standards relating to their products.

3091 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* feel that only minimum standards for sports equipment are required so as not to hinder free competition. The international sports federations should have a right of co-decision in the drawing up of these standards and be consulted by the European Commission as appropriate.

3092 In the view of the *German Federal Ministry of the Interior*, the sports organisations and manufacturers should find a solution to issues concerning free movement or competition arising from the application of different standards. Commission initiatives are therefore not required. The Ministry requests, however, the participation of all appropriate national organisations, should the European Standardisation Committee's (CEN) development of standards in accordance with the Personal Protective Equipment Directive also include sports articles.

3093 The *Spanish Ministry of Education and Science's Higher Sports Council* agrees with the study's recommendations, but believes that more information should be provided to sports equipment manufacturers so that they may cooperate with CEN and CENELEC in matters of standardisation.

3094 The *International Rowing Federation* proposes that a policy paper be drawn up dealing specifically with technical standards and equipment, applying to sports.

3095 The *German Sailing Federation* would prefer an amended definition of 'craft intended solely for racing', as applied by the proposed Directive on safety requirements for recreational boats. Such craft are excluded from the scope of the Directive, however, the sailing federation underlines that racing craft are usually not intended for racing purposes alone. For that reason, it would like to see the Directive's exemption also apply to racing craft occasionally used for mass sports activities.

3096 The federation fears that the proposed testing and certification procedures will result in otherwise avoidable administrative expenditure, making such craft unnecessarily more expensive. It suggests therefore the cheaper option of self-certification.

The Olympic symbol

3097 The use of the Olympic Symbol and emblems, according to the comments received on this issue, should be subject to the rules on intellectual property rights, rather than on free movement of goods.

3098 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* are of the opinion that the Olympic symbol is protected by intellectual property rights and may therefore only be used in those countries where rights of usage have been acquired. Such rights should be agreed on between the individual national Olympic committees and sponsors. According to the Austrian Ministry such arrangements are not contrary to the European rules on free movement of goods. They may ensure continued financial support to sports in the countries concerned and avoid small or weaker national Olympic committees being put at a disadvantage.

3099 The *German Federal Ministry of the Interior* does not advocate EU involvement in the exploitation of the Olympic symbol and emblems. It feels that any problems should be solved among the parties involved, without EU interference. The Ministry emphasises that the national development of sport often depends to a large extent on the exploitation of the Olympic symbol and emblems.

3100 The *Olympic Council of Ireland* does not feel that the study's recommendations are clear-cut or satisfactory, given that the current IOC rules concerning commercialisation of the Olympic Symbol may be in conflict with the EU rules on the free movement of goods.

3101 While accepting the notion of the free circulation of goods, the Olympic Council of Ireland is disposed to the notion that the Olympic logo would be regarded as "intellectual property" and, as such, would not come under the normal EU rules regarding the free movement of goods. In view of the possible movement of goods bearing an Olympic logo from an EU country, the legal implications of the notion of "intellectual property" will need further careful examination by both the EU and the IOC, with a view to eventual accord.

3102 The *German Sports Confederation* claims, particularly on behalf of the German national Olympic committee, that intellectual property rights apply to the use of the Olympic emblem rather than the principles of free movement of goods. It would follow that the conclusion of licence agreements would be required for the emblem's rightful use.

Sports food

3103 No specific comments have been received on this issue.

Footwear labelling

3104 No specific comments have been received on this issue.

Quantitative restrictions on sports footwear

3105 No specific comments have been received on this issue.

Competition policy

3106 The issue of transfer of sportspersons has attracted most feedback among competition policy matters. Most parties feel that the transfer system as it currently stands is justified and that any changes envisaged by the EU would need to be discussed at length with interested parties.

3107 The *UK* has listed the effect of competition policy on sport among the seven priority issues on which technical and legal discussions should focus.

Exclusive broadcasting rights

3108 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* points out that only 60% of all Austrian households have access to cable or satellite television; therefore, they wish for the continued right of public broadcasters of small countries to broadcast large sports events which entail high licence fees. The EBU should consider this point in its collective acquisition of broadcasting rights, all the more so because it agreed in 1993 to facilitate access to such rights for non-member commercial stations.

3109 The *Dutch Ministry of Welfare, Health and Cultural Affairs* is in favour of maintaining the European Broadcasting Union (EBU) in the strongest possible position in order to protect public broadcasting interests. It does support nevertheless the possibility of access to sports programmes for non-member commercial stations, which is part of the exemption granted to EBU under Article 85 (EEC).

3110 *UEFA* is against undue liberalisation of television broadcasting rights, for which it seeks clearer rules and directives in order to create greater legal certainty.

3111 The *German Sailing Federation* points out that the percentage of total revenue raised from the sale of exclusive broadcasting rights amounts to approximately 3% in Germany.

Control of broadcasting of foreign events by sports federations

3112 With respect to article 14 of the UEFA Statutes, the *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* see a need to protect all sports disciplines, to encourage their active practice as well as for reasons of spectators' interest. It sees no abuse of the rules on free competition if such sports protection is given priority on social rather than on economic grounds.

3113 The *Dutch Ministry of Welfare, Health and Cultural Affairs* awaits the Commission's standpoint with respect to UEFA's article 14.

3114 The *Spanish Ministry of Education and Science's Higher Sports Council* is of the opinion that the dialogue between the Commission and UEFA should be extended to include UEFA's article 14. [Note by Coopers & Lybrand : This dialogue has in fact already been taking place and a mediator has recently been appointed].

3115 The *German Sports Confederation* favours exclusive rights for national federations and advocates the permissibility of national regulations, whether in respect of football or other sports, that protect home sports events.

3116 The *Spanish Basketball League* observes that the report does not call into question the legal link between UEFA's article 14 and television chains. Agreements between these television chains from different countries to exchange broadcasts should not be upset by sports organisations which lack jurisdiction over the television chains concerned.

3117 UEFA is entirely in agreement with the study's recommendations that there is a need for football to be protected from uncontrolled television and that any abuse of UEFA's article 14 (which is the mechanism through which television transmissions are controlled) must be eradicated. It concedes that, in the past, there may have been some isolated cases of abuse (often when football associations were placed under great pressure from broadcasters).

3118 Nevertheless, in June 1993, the UEFA Congress adopted a new version of article 14 and the UEFA Executive Committee adopted Broadcasting Regulations establishing a comprehensive regime governing cross-border televised transmissions of football. These regulations provide greater clarity and greater certainty. Thus, it is only in closely defined circumstances that a "receiving" football association could object to an incoming transmission of a football match played in another UEFA territory. In short, the new regulations simply remove the possibility of any potential abuse occurring.

Product endorsement

3119 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* distinguish between official sponsoring based on technical

grounds, in which case the label 'official sponsor' or 'official supplier' may be used, and the supply of products that bear no direct relation to sports, in which case sponsorship is obvious and use of the label is unnecessary. Technical reasons often take priority over economic considerations in the stipulation that certain products be used.

3120 The Austrian Ministry is largely in agreement with the study's recommendations on the duration of sponsorship agreements, ie four years to coincide with the Olympic cycle, to allow for long term planning and contract security. It considers free competition in the appointment of an official sponsor or supplier to be in the interest of the event organiser.

3121 The *German Federal Ministry of the Interior* does not favour EU involvement in product advertising. The provision to the federations of Commission guidelines on the application of competition policy, clarifying permissible practices, may not, in the Ministry's view, lead to sport's independence being jeopardised.

3122 The *Spanish Ministry of Education and Sciences' Higher Sports Council* feels that, only for technical reasons, should federations be allowed to impose the use of particular equipment. In other cases, free competition should apply.

3123 The *German Sports Confederation* feels that the use of official sports equipment in competitions may be justified for three reasons: quality control, uniformity in clothing assuring equal conditions for all participants, easier procurement of resources. It is in basic agreement with the study's recommendations and would welcome the suggested guidelines on the application of European competition rules to product endorsement and the use of equipment carrying the label 'official'.

Exclusive purchasing agreements

3124 No specific comments have been received on this issue.

Competition between federations

3125 The recognised necessity of a monopoly position for sports federations was reiterated by most commentators.

3126 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider the federations to represent sports interests, with the goal of coordinating the activities of their members. They do not consider them as enterprises in the economic sense. The co-ordinating role of the federations - one per type of sport - is all the more important in view of the existence of free competition at sports club level.

3127 The *German Federal Ministry of the Interior* is of the opinion that European competition policy applies only to a limited extent to sport, because of sport's distinct position and the relatively non-commercial activities pursued by sports organisations. It considers essential, however, that the monopoly position of sports (con)federations has been acknowledged. The Ministry requests further clarification of the applicability of the competition rules, should large commercial interests be at stake.

3128 The *Spanish Ministry of Education and Science's Higher Sports Council* considers that national federations should be allowed to maintain their monopoly positions for their respective sports, as necessary for their functioning and development.

3129 The *Greek National Olympic Committee* proposes to check the compatibility of the international commitments of the National Olympic Committees and national federations against Community rules.

Tickets sales by exclusive agencies

3130 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* welcome the study's recommendations that oppose the practice of making sales of tickets conditional upon the purchase of another linked service, considering such practices to be to the detriment of the consumer. They are in favour therefore of Commission discussions with the sports organisations to eliminate restrictions on competition in this field. Moreover they feel that compulsory public tendering procedures would indirectly benefit the organisers of sports events. The system of one ticket agency per Member State is approved of, both for security reasons and for the balanced composition, in terms of nationality, of a sports event's audience which will equally contribute to the fairness of the game played.

Transfer of players

3131 Most parties felt that the transfer system as it currently stands is justified and that any proposed changes would need to be discussed at length with interested parties.

3132 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* feel that the existing transfer system is justified on grounds of education and training costs incurred by the sports clubs, spectators' and sponsors' interests, development of the sport in question as a whole, and expenses incurred on behalf of the player involved. They make an exception, however, for transfer sums to be paid to the international federations in the case of a transfer of a non-national player, where they consider only an administrative fee to be due. It is only on this issue that the Austrian Ministry considers a Commission initiative to be necessary. Consequently, it is not in agreement with the study's recommendations.

3133 The *German Federal Ministry of the Interior* feels that the current rules in respect of transfer systems have proven their use and do not require any modification. They take account of sport's special characteristics, place emphasis on sports policy aspects and have been internationally recognised. Education and training expenses incurred by a sports club justify its charge of a transfer fee. The training of competitive young players, co-financed by these transfer fees, is a basic condition for the composition of national teams. The Ministry feels that sports policy must take precedence over competition and labour law and that consequently, no Commission initiatives will be required.

3134 The *Dutch Ministry of Welfare, Health and Cultural Affairs* looks forward to the Commission's decision on the complaints submitted in respect of the transfer system.

3135 The *Spanish Ministry of Education and Science's Higher Sports Council* agrees with the study's recommendations.

3136 *AENOC* particularly emphasises the problem of the transfer of sportspersons which, it believes, should be examined by the European Sports Forum's Working Group. Should any Commission involvement prove necessary, the Working Group would decide only after having gathered all relevant elements from the sports organisations.

3137 It considers it essential therefore that the Commission should liaise with international federations before it takes any decision in this matter, as is recommended in paragraph 19096 of the study. *AENOC* feels that too many changes to the rules on transfers should be avoided. These rules should protect the existence of the economically weaker sports associations. Transfer fees should be regarded as compensation for the training for a player.

3138 The *Italian National Olympic Committee* defends the transfer system, which will give sports clubs a return on any substantial investments made in the training of athletes.

3139 The *Dutch Olympic Committee/Dutch Sports Confederation* does not agree with the study's recommendation on automatic playing rights for sportspersons cleared for international transfer, even without agreement on a transfer sum. These transfer sums are felt to be justified by the training and instruction expenses incurred by the sports clubs. Any improvements to be made to the transfer systems currently in force must be the responsibility of the international sports federation.

3140 The *German Sports Confederation* considers that full liberalisation of the transfer-system, ie the application of harmonised employment laws in accordance with the free movement of workers, would distort competition. It especially fears the reduced attraction of sport in local communities and consequent financial damage for

small sports clubs. The confederation feels that transfer arrangements are justified by considerations of training costs incurred, both in remunerated and non-remunerated sport. It does not agree therefore with the study's suggestions, however, it is not against the general recommendations regarding contractual transparency and the verification of contractual stipulations with national employment laws.

3141 *UEFA* recalls that the study records that a majority of football associations are satisfied with the operation of the transfer system. Notably, it argues, even national Ministries have no objections to the system and feel that the matter was best regulated by the relevant sports governing bodies, in application of the subsidiarity principle.

3142 *UEFA* also recalls that the recommendations of the study were threefold:

- that the transfer system be compatible with national labour legislation;
- that the clubs should make players aware of the implications of signing a contract, especially as regards the possibility of later transfer;
- that players should be eligible to play for their new club immediately after the issue of an international transfer certificate - even if there is disagreement between clubs over the transfer fee.

3143 *UEFA* is quite satisfied with these recommendations. In fact, the relevant *UEFA* and *FIFA* provisions apply such a system already. In particular, it should be clear that a footballer wishing to play in another country can start playing for his new club as soon as the international transfer certificate is issued. The player does not have to wait until the respective clubs agree on an appropriate sum of compensation.

3144 *UEFA* considers it worthwhile referring to the circumstances of Jean-Marc Bosman, a Belgian player who claimed that *UEFA* and *FIFA* rules had effectively obstructed his move from a Belgian club to a French club. In fact, a single telephone call from Mr. Bosman to either *UEFA* or *FIFA* would have clarified the situation: he could have started playing immediately and the case would never have arisen.

3145 *The International Ice Hockey Federation* similarly fears that abolishment of transfer fees for players transferring from one club to another would threaten the existence of many small ice hockey clubs in Europe. Transfer fees are a traditional system for compensating the investment made in players by clubs and are an important source of club income.

3146 *The Ice Hockey Federation* nevertheless believes that players' rights to sign a new contract, upon expiry of the previous contract, should not be affected by the negotiations between the old releasing club and the new receiving club concerning the payment of the transfer (or "compensation") fee.

Restrictive trading practices

3147 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* support the enforcement of EU competition policy as it is of the opinion that anti-competitive behaviour of sports manufacturers will only be to the disadvantage of sports.

Subsidies to sport

3148 On the subject of subsidies to sport, most, but not all parties, indicated that state funding of sport does not impact international sport competitions.

3149 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider state subsidies to sports to be a decision to be made nationally, particularly as such subsidies will not affect international competition. They point out that Austrian state support to sports is only granted if a link exists with certain social and educational objectives.

3150 According to the *German Federal Ministry of the Interior*, state funding of sport impacts on international competition. Various subsidy rules serve to provide the national sports federations with the means for adequate sports activities. Any Commission initiatives could only be taken while observing the principles of subsidiarity, transparency, democracy, consensus and the avoidance of overlapping initiatives and exclusion of third countries.

3151 The *German Sports Confederation* is of the opinion that differing national subsidy schemes benefiting sport do not affect international competition.

3152 The *German Sailing Federation* does not concur with the view that government funding of sport may distort international competition.

Dumping

3153 No specific comments have been received on this issue.

Equidae and other animals in sport

Animal health conditions

3154 No specific comments have been received on this issue.

Zoological and genealogical conditions

3155 No specific comments have been received on this issue.

Trade in competition horses and participation in competition

3156 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider the current regulations, including those in respect of competition horses, to be sufficient.

European Union funding (initiatives)

3157 DG X funding for sport, especially in the framework of the proposed EURATHLON programme, is on the whole welcomed, and detailed suggestions are made as to the nature and the criteria of such support.

3158 According to the *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation*, the EU should promote sports as one of the important social values in today's 'leisure society'. The EU's budget of ECU 500,000 is very small compared to these promotional tasks. EU support would be welcomed not only for sports events with a European dimension, but also for regional events focusing on mass- and recreational sports which, although costly, will benefit the population as a whole.

3159 According to the *German Federal Ministry of the Interior*, the EU should provide information to sports organisations on appropriate EU funding programmes. It suggests that EU funds could for example be granted to improve sports facilities in structurally weak regions.

3160 The *Greek Ministry of Culture's General Secretariat of Sports* emphasises the importance of having sufficient time to prepare for funding applications to be submitted under the EURATHLON programme. It feels that this is necessary to ensure the proper implementation of projects.

3161 The *Spanish Ministry of Education and Science's Higher Sports Council* feels that the Commission should clearly and regularly inform sports Ministries on EU sources of financial assistance, application procedures and advice, in order to avoid favouring countries with most experience of the Brussels funding mechanisms linked with the objectives of the Structural and Cohesion Funds.

3162 The *UK* believes that addressing these issues will provide sport with a greater and longer-lasting benefit than the development of poorly conceived initiatives designed to promote cultural identity or an awareness of European citizenship. Moreover they address directly the major concerns identified by the sports bodies themselves.

3163 The *UK* does not believe that the study makes a sufficiently strong case to justify its proposals for a distinct EU sports development programme at this stage.

This should, in the UK view, be a longer term objective which might evolve from a more thorough discussion with sports organisations and Member States. This discussion should take account of a comprehensive evaluation of the successes and failures of the Commission's past policies in the field of sport and would provide sports authorities with some of the information required to assess the need for and value of the Commission's proposed sports programmes. This would be in keeping with the principles of dialogue and consultation espoused elsewhere in the study. Sport goes wider than the 12 Member States and the EU needs to acknowledge the sensitivities this can raise for non-Governmental sports organisations at pan-European level.

3164 If an EU sports programme were ultimately to be developed, the UK believes that the emphasis might more usefully be placed on projects initiated by sports bodies and offering practical benefit to them. The current proposal contains an imbalance in favour of loosely defined projects promoting a European cultural identity and while these may be perfectly legitimate in their own right, it believes that sport would benefit more if the Commission's sports programme also encouraged projects dealing with practical issues resulting from the single market.

3165 According to the UK, the study underlines the need for the EU to consider carefully its rationale for involvement in the promotion and organisation of sports events. The study is also felt to recognise that, in accordance with the principle of subsidiarity, sport is organised and delivered at the local level by independent sports organisations. Consequently there is no direct role for international organisations such as the EU in this process. The UK therefore fully endorses the study's observation that "only to the extent that there is a clear EU dimension to a sports project and that it does not fall within the competencies of national authorities should the EU fund sport."

3166 The UK feels that new initiatives such as the proposed EURATHLON sports programme should only proceed where these criteria are met and where the initiative for organising individual events clearly comes from sports authorities rather than from the Commission. Experience has shown that such events are most likely to be successful if they are conceived, organised and delivered at a local level.

3167 The *Council of Europe* wishes to consider ways in which it might be possible to ensure some coordination or complementarity between its own work in sport and the activities that the Commission will undertake in the EURATHLON programme. The geographical spread and the nature of this programme would suggest the desirability of some degree of complementarity.

3168 The *Dutch Olympic Committee/Dutch Sports Confederation* is of the opinion that the EU's current sports budget is not substantial when compared to other financial support programmes, taking into account that there are 100 million people who

practise sports in the EU alone. It sees the EURATHLON programme as a start, but also calls for regional support measures to improve sports facilities and to encourage the practising of sport.

3169 Concerning the EURATHLON programme, *ENGSO* highly welcomes a systematic EU programme for further development of sport in Europe and EU support to specific sport projects to the benefit of the European citizens. In this connection *ENGSO* wants to underline its readiness for cooperation and coordination, wherever needed.

3170 The *Danish Gymnastics and Sports Associations* recommends the creation of a special EU budget line for the exchange of young sportspersons. This budget line should aim to stimulate the creation of sports relations between young sportspersons in the European Union -not least between regions separated by greatest distance, which previously made this type of exchange prohibitively expensive.

3171 The *German Sports Confederation* supports the creation of a special sports unit within the Commission's DG X to provide information and advice concerning funding possibilities to national sports authorities. From the German perspective, it would favour EU financial support for:

- Improvement of the sports facilities in former East Germany
- Renovation of former military establishments used by the occupying forces for the benefit of sports clubs and federations
- Pilot projects on the environmentally-friendly design and construction of sports facilities
- Development aid covering aspects of sport, promotion of sport in Central and Eastern Europe, therapy and rehabilitation.

3172 The German confederation makes it very clear, however, that a distribution of EU funds solely or with preference to sports clubs or federations set up in accordance with the proposed Regulation on the Statute for a European Association, would be wholly unacceptable. This is especially so, as current German regulations on associations do not readily comply with the requirements of the proposed Statute.

3173 In its separate opinion on the proposed EURATHLON programme, the German Sports Confederation expresses its basic agreement to the programme's contents, which, in its view, must contribute to European cooperation and awareness of a multi-cultural and united European Union. In view of sport's cultural and socio-political importance throughout Europe, the confederation advocates the creation of a sports division with sufficient financial and personnel resources, which is to be either independent from or attached to the Commission's DG X's existing cultural division. It considers such an institutional arrangement more useful than sport's current subordination to the Commission's communication division.

3174 The confederation requests that the EURATHLON programme will be made to benefit European sport at grass roots level, rather than serve as a vehicle for the EU's communication policy.

3175 When deciding on the finance needed for the EURATHLON programme, the imbalance between support for sports events for the handicapped (1994 budget: ECU 1.2 mln) and for all other sports activities (1994 budget: ECU 800,000) should be avoided according to the confederation. It feels that the creation of a separate sports budget by the European Parliament could make a decisive contribution to the social benefits of sports for all European citizens.

3176 The confederation stresses that the evaluation of project applications for EURATHLON assistance must be made on the basis of the projects' content as well as on the priorities of a sports policy. It would like to see experts of the European Sports Forum, eg members of ENGSO and AENOC, to apply these criteria jointly with EU representatives. Technical, ie sports-related, criteria should form the basis of the allocation of EURATHLON funds; when applications exceed the funding available, it should be avoided that considerations of a geographical or legal nature (eg conformance to the Statute for a European Association) become decisive.

3177 The confederation welcomes the possibility of rotating partnerships in long-term project management. It underlines the importance of inclusion of the necessary financial resources in the budgetary planning for the full duration of such long-term projects.

3178 Certain additions to the text of the proposed EURATHLON programme are requested:

- 2.2.a Sports measures and events
Children to be included in the list of those, whose social integration may be the theme of sports events (in addition to young people and women)
- 2.2.b Education
Both initial as well as further training should be promoted. Such training measures should, in addition to organisers/managers, trainers, instructors and referees, also be targeted at sports physicians, sports instructors from sports-schools and sports scientists. The objective of joint training courses for these target groups should be the exchange of information between sports organisations (not only between sports federations) and the organisations listed in the proposed EURATHLON programme.

3179 The German Sports Confederation would welcome support for the following measures and events:

- **Mass and youth sports programmes providing meeting opportunities for all citizens**
- **Mass sports programmes such as:**
 - **Promotion of practical projects in the field of fitness-tests**
 - **"International Seniors' Games" (European-wide matches amongst senior players)**
 - **International Challenge Day**
 - **"European Walking Day"**
- **Youth sports programmes with a focus on meeting opportunities**
- **Sports programmes for socially-deprived groups**
- **Programmes on traditional sports as an expression of cultural identity, eg events in the framework of the Expo 2000 to be held in Hannover (presentation of regional sports activities)**
- **Embedding the concept of Fair Play in sport and in other domains of public life**
- **Seminars, workshops, inter alia for organisers/managers in sport, on sports management, public affairs, event planning, training issues, European issues such as the creation of exchange programmes between EU member countries for trainers, sports instructors, youth leaders and other staff members of sports organisations**
- **Training measures to stimulate the equality of women in sport**
- **The exchange of information and experience on the subject of the EU and sport, eg the field of work, the role and the labour market for trainers**
- **Further training for trainers, referees or other sports professionals, eg on:**
 - **Talent-scouting and promotion in a European context**
 - **Exchange of information and experience on the promotion of competition sport, including sports (boarding) schools etc**
 - **Exchange of information and experience on sports research with respect to competition sport**

- Exchange of information and experience on therapeutic and rehabilitation aspects of sports measures
- Stimulation of democratisation in sport in Central and Eastern Europe
- Advice (seminars, workshops, etc) on issues of sports management and organisation to develop strategy plans
- Development of sports infrastructure, particularly in the area of mass sport, including the design, planning and implementation of 'Sport for All' measures
- Further training for organisers/managers and other sports experts on specific subjects
- Stimulation of sport in Third World countries
- Development of mass sport, as well as of social work involving games, sport and recreation, as integral parts of useful recreation in developing countries.

Environmental policy

3180 No wishes are expressed for particular EU regulations in respect of environmental protection which go beyond the existing Environmental Impact Assessment Directive.

The environmental impact assessment directive

3181 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* do not see a special need for an environmental policy targeted at sports in view of its own, high environmental standards applicable in the construction of sports facilities.

3182 According to the *German Federal Ministry of the Interior*, the existing rules on environmentally-friendly sports facilities, while taking account of sports interests, may be considered sufficient.

3183 The *German Sports Confederation* considers current EU legislation sufficient to protect the environment, where it affects sport, in particular the Environmental Impact Assessment Directive. It would welcome EU promotion of the environmentally-friendly construction of sports facilities, while taking sports interests into account.

3184 The *German Sailing Federation* queries whether the obligation to conduct an environmental impact assessment with respect to harbours and yacht marinas, in accordance with the 1988 Directive, distinguishes sufficiently between large projects on the one hand and small to very small marinas and moorings on the other. It infers from the Directive's original objective that the obligation to carry out such an assessment would only apply to larger projects with a not inconsiderable environmental impact.

Conservation of natural habitats

3185 No specific comments have been received on this issue.

Taxation

3186 Tax matters are considered to be subject to the subsidiarity principle.

3187 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* advocate the application of the principle of subsidiarity in tax issues.

3188 The *German Federal Ministry of the Interior* expresses as its opinion that tax matters are the responsibility of the individual EU Member States, thus not requiring any EU initiative.

3189 The *German Sports Confederation* points out that there are no sports clubs in Germany which operate on a profit-making basis. It draws attention to the existence of both non-profit sports clubs and commercial suppliers of sports activities, which are in competition with one another. The confederation foresees a negative impact from the proposed Statute for a European Association, once implemented, which does not distinguish between non-profit associations and associations pursuing a commercial purpose; consequently it fears that the structure of German club-based sport, as well as the system of tax relief granted to non-commercial sports clubs which is indispensable for their independent management, will be jeopardised.

Admission (tickets) to sports events

3190 No specific comments have been received on this issue.

Non-sports activities of sports clubs and organisation

3191 No specific comments have been received on this issue.

Transfer of players

3192 No specific comments have been received on this issue.

Exclusive rights

3193 No specific comments have been received on this issue.

Horse racing

3194 No specific comments have been received on this issue.

Commemorative coins for sports events

3195 No specific comments have been received on this issue.

Temporary import of goods

3196 One brief comment was received on the transparency of the rules on temporary importation which took effect as of 1 January 1993.

3197 The *German Sailing Federation* is concerned about the lack of reliable information provided by the EU Member States on the temporary importation of goods for which new rules have applied since 1 January 1993. Particular issues of concern are administrative practices, certain tax issue and the valuation of privately bought or second-hand boats. The federation is of the opinion that legal security and the right of free movement for leisure boats are jeopardised as a result.

ECU

3198 No in-depth comments have been received on the use of the ECU in sport.

3199 The *Austrian Ministry of Health, Sport and Consumer Protection* and the *Austrian Federal Sports Organisation* consider it too early to express an opinion on the effects of the use of the ECU in sports, Austria being as yet still an applicant EU Member.

3200 The *Spanish Basketball League*, in conjunction with the European Professional Basketball League, is examining recourse to the ECU to remunerate foreign players and has prepared a report on this matter.

IV. Miscellaneous

4001 The *Finnish Tennis Federation* drew to our attention that in paragraphs 56 and 58 of the 1993 study, "Women's Tennis **Federation**" should be replaced by "Women's Tennis Association". In paragraph 57, the "Men's Professional Council (MPC)" should be replaced by "the Men's **International Professional Tennis Council (MIPTC)**". In paragraph 56, it should be noted that the European Tennis Association (ETA) is one of **four** rather than **three** regional associations.

4002 The *French Ministry for Youth and Sports* suggests that Annexes C and D of the report (The legislative and institutional framework and EFTA countries) are published in French.

4003 The *Greek Ministry of Culture's General Secretariat of Sports* requests that the reports on national legislation and practices (Annex C), as well as the Member States' opinions, as annexed to the sports study, are updated.

4004 The *French Ministry for Youth and Sport* has been omitted from the list of acknowledgements in the French translation.

4005 According to the *German Sailing Federation*, the International Yacht Racing Union's advertising code allowed for gradual restrictions on advertising in sailing, rather than - as stated in the study - being designed to protect the rights of sailors entering into sponsorship contracts.

4006 The *Spanish Basketball League (ACB)* makes a reference to the basketball leagues' opinion on a European Superleague. The ACB claims that in practice, such an option would be rejected given its lack of sports or economic viability. The announcement of the Glaxo Verona club to renounce its participation in the European league because of the poor sporting and economic yields is a significant illustration of this point.

V. Conclusions and recommendations

Conclusions - The Way Forward

5001 Overall, the study is felt to be an informative working document which has helped in the identification of EU policies and legal issues pertinent to sport and has presented them in an easily accessible form. The opportunity given to ministries responsible for sport, national Olympic committees, and national and international sports organisations and federations to comment and present their views is felt to have encouraged the debate between the European Commission and the sports world. The Sports Unit to be created within the Commission's Directorate-General X is expected to fulfil a pivotal role in channelling the information flow between the EU and all those with sports responsibilities; moreover, the majority of respondents expressed a willingness to participate in the proposed European Sports Forum's Working Group on sports, in order to contribute to a coordinated approach to EU issues by the sports world.

5002 There is a high degree of agreement on the study's recommendations. Nevertheless, there remain five areas of particular concern, three of these being of a general nature:

- EU responsibilities in sport and the principle of subsidiarity
- the role of EU versus pan-European sports organisations
- overlap and duplication of work

and two more directly affecting sportspersons:

- restrictions on foreign players
- the transfer of players.

5003 The comments received stress the need to apply the **principle of subsidiarity** to a possible European sports policy and the need to preserve the independence of sports federations. Even though there is wide consensus that a revised Treaty of Maastricht should contain an article on sport, the general view is equally that such an article should be modelled on the existing Article 128 on culture, which calls for cooperation and consideration of the appropriate interests when drafting EU policy, rather than providing for regulation or harmonisation at EU level. The over-riding concern is that the EU's responsibilities vis-a-vis sport should be well-defined.

5004 Various views also stress the need to **avoid overlap and duplication** of work and urge coordination where feasible with, for example, the Council of Europe.

5005 In respect of **restrictions applied to foreign sportspersons**, there is almost unanimous disagreement with the study's recommendations that the national sports federations should gradually bring their rules into line with the European provisions on free movement and allow for EU nationals practising sport in their countries not to be considered as foreigners. It is generally felt that the rules of free movement of persons should not apply to sportspersons and that special consideration should be given to the risks involved in allowing free movement of players. These risks include monopolisation of certain players by the financially strongest clubs and the loss of identification with the clubs by spectators and sponsors; moreover a negative cultural and educational impact is feared.

5006 There is similar - almost unanimous - resistance against alignment of the **transfer rules** to national labour legislation as harmonised at European level. Most views expressed indicate that the transfer system as it currently stands is justified on the grounds of training costs incurred by the sports clubs, and that considerations of sports policy must take precedence over competition and labour laws.

5007 There is wide-spread support for EU financial assistance for sports projects and various suggestions are made as to the nature and extent of such assistance. However, it is also pointed out - in line with the study's recommendations - that any EU financial support should be linked to clearly established goals of an EU sports policy.

The way forward

5008 It becomes clear from the responses to the study that a number of issues need to be addressed in order to progress with a European policy on sport. It is vital that the European Commission states the objectives of such a policy in a clear and coherent manner. The Commission must step up its dialogue with the sports world in order to increase consensus on the issue of EU versus national competencies and on the avoidance of potentially overlapping activities by organisations with responsibilities for sport.

5009 The outcome of the Bosman case must be awaited to further develop the Commission's stance on the restrictions on foreign players and on the transfer system; however, in view of the adverse reactions to EU involvement in these areas, the views of the sports world, obtained from continual dialogue, should be taken fully into account before any initiatives are taken.

5010 In addition to addressing the aforementioned contentious issues, it is recommended that the Commission prioritises, in conjunction with the Sports Forum's Steering Group and with the sports world in general, the non-contentious issues, ie

those on which there already exists substantial agreement as to the desirability of an EU initiative, so that rapid progress can be made in these areas.

5011 It may be concluded from the feedback given that the basic principles as listed in the study - transparency, consultation, consensus and coordination - still constitute the way forward to an effective and acceptable European sports policy.

**Coopers
& Lybrand**

The impact of European Community activities on sport

Final Report

July 1993



**Prepared by Coopers & Lybrand for DG X of the
Commission of the European Communities**

**Solutions
for Business**

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Executive Summary

1 **Coopers & Lybrand's European Community Office was mandated by Directorate-General X of the Commission of the European Communities, to carry out a study into the impact of European Community activities on sport. The objectives of the study were:**

- **to document comprehensively the impact of Community legislation and policy on sport;**
- **to identify the position of interested parties in relation to the Commission's position on sport;**
- **to identify ways in which the Commission can continue to make a positive contribution to the development of sport in the European Communities.**

2 **Part I of the study (Chapters I to IX) describes the legislation and policy of the Communities and their actual or potential impact on the organisation or practice of sport. Part II (Chapters X to XVIII) describes the position of interested parties in relation to the Commission's position. Part III draws conclusions and makes recommendations based on the findings in Parts I and II and suggests actions to implement the recommendations.**

Restrictions on foreign sportspersons

3 **The Treaty of Rome clearly recognises the right of EC citizens who are pursuing an economic activity to work in any Member State of the EC under the same conditions as nationals of that Member State. Such a right therefore applies to persons pursuing sport as a profession.**

4 **Sports bodies have internal rules which may have an adverse impact on the ability of non-native sportspersons to practice their sport on the same terms as a native of the country in which that sports body is operating, at both amateur and professional levels. These rules vary per sport.**

5 **Coopers & Lybrand recognise that the vast majority of participants in the study do not believe that it is desirable to lift restrictions on foreign players, or bring the rights of naturalised players in line with the rights of naturalised citizens. It is felt that lifting such restrictions would result in the best sportspersons being monopolised by the teams or clubs with most resources, less emphasis on youth policy and alienate spectators from their local teams or clubs.**

6 **Coopers & Lybrand are nevertheless of the opinion that the sports federations should move towards bringing their rules into line with EC law on free movement.**

Sports qualifications

7 The EC's legislation and policies in the area of qualifications are designed to facilitate the free movement of workers by ensuring the mutual recognition of qualifications gained for regulated professions in the different Member States and the establishment of a system for comparing vocational training qualifications.

8 If they have not already done so, the European or international level sports federations should ascertain the level of interest among their member federations in:

- either, developing European or international level qualifications by harmonising the content of training courses for particular professions within their sport;
- or, drawing up a table of comparisons of the different qualifications awarded for their sport in EC countries or wider.

Hooliganism

9 Of the ten sports investigated, the introduction of measures to combat potential violence was only reported specifically by the football and basketball federations. It is not considered necessary for the Commission to intervene in this area.

Insurance

10 The Commission believes that its only role with regard to insurance is to legislate for a single European market in the provision of insurance services. Many of the sports bodies indicated interest in further Commission action to set minimum standards for insurance provision at transnational events.

11 Coopers & Lybrand recommends that the Commission investigates this issue further, in discussion with sports bodies.

Advertising and sponsorship

12 Current EC legislation on television advertising and sponsorship does not appear to cause any problems for the sports bodies, and is sufficient to ensure the free provision of services in this area.

13 General problems related to advertising and sponsorship should be regulated by the federations themselves, focusing attention on contract terms, which define rights in case of conflicts.

Doping

14 As it does not fall within the competence of the EC to propose binding legislation specifically on testing sports persons for the illegal use of performance enhancing substances, the Commission's most recent action has been to draw up the Code of Conduct against Doping in Sport, which was adopted in February 1992.

15 The broad view of all the respondents to the questionnaire is that the main responsibility for combatting doping should lie with the sports bodies themselves and that the lead should be taken by the IOC.

16 The Commission should consider financing further education campaigns, financing information exchange programmes and part-funding the establishment of more testing facilities for sports federations with the least resources.

Transportation of sports equipment

17 Since 1 January 1993, with the elimination of all internal market frontier formalities, there has been no restrictions on the movement of goods from one Member State for temporary use in another. The federations replying to the questionnaires reported minor problems with the transport of sports equipment such as fire arms, racing cars, horses and boats between Member States. Such problems should be able to be resolved within the current regulatory framework.

Standardisation

18 The Community's standardisation legislation is designed to ensure that differing standards in different Member States do not adversely affect intra-Community trade, by setting minimum health and safety standards to which manufacturers must comply. The European standardisation body CEN, is currently working to develop standards for some sports equipment.

19 Coopers & Lybrand would recommend that the sports bodies that have reported problems of free movement or competition caused by differing standards encourage the manufacturers of the products involved to prepare a dossier for presentation to the European and/or international representatives of the sporting goods' manufacturers, with a view to ascertaining whether the scale of the problem warrants taking further remedial action.

The Olympic Symbol

20 Coopers & Lybrand agrees with the Commission that the current procedures for commercialising the Olympic symbol and emblems could come into conflict with

EC rules on the free movement of goods. Nevertheless, given the NOCs' concerns regarding their ability to raise the funds needed to develop sports in their respective territories, parties involved should try to resolve any potential disputes among themselves, without necessarily involving the Commission.

Competition policy

21 Commission involvement in competition policy related to sport is carried out on a reactive and case-by-case basis. The main sport-related areas in which the Commission has been called to examine cases under EC competition policy include: broadcasting rights, product endorsement, ticket distribution, competition between federations, government funding to sport and restrictive trading practices.

Broadcasting

22 In June 1993, the EBU agreed to improve access to sports events for non-member commercial stations. Following these amendments to their current acquisition procedures system, the Commission agreed to exempt the EBU from the provisions of Article 85(1) of the Treaty (for its acquisition of broadcasting rights) for a five-year period.

23 The second main broadcasting case concerns article 14 of UEFA's rules. Article 14 allows football associations, under certain circumstances, to prohibit the broadcasting of foreign events on their home territory. UEFA has recently amended article 14 of its Statutes, and the Commission is considering whether these new rules constitute an abuse of a dominant position by the football authorities.

Product endorsement

24 The Commission has examined three aspects of the Danish Tennis Federation's product endorsement policy: the acceptability of the label "official", the obligatory use of official equipment in competitions and the recourse to exclusive equipment distributors. The Commission felt that each of these practices contravened EC competition policy.

25 Our study confirms that EC intervention on the label official is considered unnecessary by sports federations and generates negative publicity for the EC. As long as the economic importance of this matter remains relatively limited, the EC should not intervene. Federations should make an effort, as most are already doing, to confine their obligations to use certain equipment to the events in which they are directly involved. We agree that sports federations should not publicly recommend specific distributors.

Competition between federations

26 The Commission was called upon by Belgian indoor football authorities to examine the Union Belge's (the main Belgian football federation) policy towards indoor football. In approaching this case, the Commission has stressed that it has nothing against the monopoly position of sports authorities as such; it is merely the abuse of the dominant position which is contrary to competition policy. Moreover, trade between Member States must be affected. The monopolistic structure of the sports world is therefore not called into question by the Commission. Discussions are ongoing to find a solution to the above case.

Ticketing

27 On ticketing procedures related to sport, the Commission questioned three aspects. Firstly, it queried the partitioning of the market by granting exclusivity to one agency per Member State. Second, it questioned the practice of citizens from a different Member State to where the agency was located being deprived of the opportunity to purchase a ticket at that agency, simply on grounds of nationality. Thirdly, the Commission was opposed to the practice of making the sale of tickets conditional upon the purchase of linked services from the agency such as accommodation or travel arrangements.

28 We cannot see major problems with the ticketing issue as there is a high level of consensus. Although most federations do not support the system of one ticket agency per Member State, this arrangement could be justified in certain circumstances linked to spectator segregation, the fight against hooliganism and even distribution of tickets per country as long as competition is respected and the monopoly position of the agency is not abused.

Transfer of sportspersons

29 The Commission has not yet reached a decision on the complaints it has been addressed by footballers regarding the football transfer system and whether the imposition of such a system might constitute an abuse by a football federation of a "dominant position". It is therefore not possible to say at this stage to what extent the transfer systems in other sports might also be called into question.

30 Until such a time that the Commission reaches a decision on the football transfer system, Coopers & Lybrand would recommend that the sports federations verify the compatibility of their rules with national labour law legislation and encourage clubs to ensure that, in signing a contract with individual sportspersons, that person is aware of the federation's rules regarding transfers. They should also ensure that a sportsperson with a letter of clearance from the national federation to leave one

country should automatically be allowed to participate in sport in another EC country notwithstanding agreement between clubs on possible compensation amounts.

Government funding of sport

31 The Commission's has received occasional complaints arguing that clubs from countries which provide relatively more funding to sport have a competitive advantage in international competitions over those from less generous Member States. The vast majority of sports organisations and the Commission agree that differences in the level of funding to sports organisations does not distort international competition.

Animals in sport

32 EC legislation on equestrian sports and horse racing is a good example of how it is possible for the EC and the sports authorities to cooperate to their mutual advantage. We recognise that the fact that only one sport is concerned by this legislation and that a small number of staff Commission are involved has facilitated the successful working relationship between the federations and the EC. Coopers & Lybrand recommends that this experience should be drawn upon, to the extent possible, in order to be applied to other sports.

EC sources of funding

33 The EC funds a series of initiatives which should be of interest to sports organisations as potential sources of finance. The EC should assist the sports authorities in finding their way through the maze of EC funding by supplying them with basic relevant information.

34 When the EC funds specific sports events, it should be wary about generating resentment from the sports world by giving the impression of hijacking sports for its own political and communications purposes. Only via discussions with the relevant sports authorities can this be achieved.

Environmental policy

35 The construction of sports facilities has sometimes provoked complaints on environmental grounds from the general public or environmental groups. However, Member States' planning legislation and the EC's Environmental Impact Assessment Directive as implemented by the Member States are thought sufficient to provide the necessary controls and complaints procedures.

36 It is not considered necessary for the Commission to take any further specific action in this area.

Taxation

37 Taxation is a good example of how subsidiarity should work. Tax is mainly an issue for Member States, as long as no distortion is caused between commercial and non-commercial sports clubs.

The ECU

38 Given the recent disturbances to the European Monetary System, it is considered that the time is not appropriate for initiatives to promote the use of the ECU among sports organisations.

The way forward

39 Transparency, consultation, consensus and coordination are the way forward. Given:

- the low level of awareness amongst sports bodies of how EC activities impact them;
- the differences in the way sport is organised in each Member State;
- the differences among sports;
- the complexity of many EC policies and legislation;
- the dispersion of responsibility within the Commission for policies which affect sport; and
- the will of both sports organisations and the Commission to cooperate;

the Commission should define a clear role for the Sports Unit within DG X or elsewhere as a coordinator for sport. This coordination should involve channeling information from the EC to the sports organisations and from the sports organisations to the relevant Commission officials.

40 The Council of Ministers should adopt a recommendation:

- inviting sports bodies to bring their rules into line with EC legislation in the different areas identified by this report;
- inviting the Commission to ensure that sport is taken into account when Community policy is being drawn up; and
- inviting due consideration to be given to including a specific Article on sport in any future revision of the Treaty of Rome, in order to ensure sport is taken into account when establishing Community policies. The Article

would be similar to those on culture or public health which, taking full account of subsidiarity, promote cooperation rather than harmonisation.

41 The Commission should also, in consultation with sports organisations, agree upon a list of activities which would be formally supported by the EC.

42 This study should be viewed as a starting point for subsequent debate by the European Sports Forum in November 1993.

Introduction

Background

1 Coopers & Lybrand's European Community Office was mandated in July 1992 by Directorate-General X of the Commission of the European Communities (subsequently referred to as the Commission), to carry out a study into the impact of European Community activities on sport. The objectives of the study were:

- to document comprehensively the impact of Community legislation and policy on sport;
- to identify the position of interested parties in relation to the Commission's position on sport;
- to identify ways in which the Commission can continue to make a positive contribution to the development of sport in the European Communities.

2 The following report, finalised in July 1993, is the result of this study.

Acknowledgements

3 Coopers & Lybrand wishes to extend its thanks to everybody within the Community institutions, sports bodies, ministries and other organisations that gave freely of their time to complete questionnaires or to meet the study team for in-depth interviews. Without their cooperation, it would not have been possible to complete the study. A full list of acknowledgements is included in Annex B of the report.

Scope

4 Part I of the report (Chapters I to IX) describes the legislation and policy of the Communities and their actual or potential impact on the organisation or practice of sport. This includes mass or recreational sport, as well as professional or elite sport.

5 Part II (Chapters X to XVIII) describes the position of interested parties in relation to the Commission's position. For this purpose and in conjunction with DG X, ten sports were selected as illustrative of a cross-section of different types of team and individual sports which rely, to different extents on the use of equipment. These sports were:

- athletics;
- basketball;
- cycling;
- equestrian sport;

- football;
- motor racing;
- sailing;
- skiing;
- swimming; and
- tennis.

6 Part III of the report (Chapters XIX and XX) draws conclusions and makes recommendations on possible ways for the Commission to continue to make a positive contribution to the development of sport in the European Communities.

Methodology

7 The study was carried out according to the following methodology.

Compilation of preliminary working document

8 The first stage of the study comprised a series of interviews carried out with Commission officials and Members of the European Parliament in July, August and September of 1992. The information gathered during these interviews, complemented by an analysis of all relevant documentation, was consolidated in a Preliminary Working Document. The Document was circulated to the officials interviewed for comment, then distributed to the participants of the European Sports Forum meeting in November 1992.

9 The Council of Europe was also kept informed of the study, a presentation being made to the Council in February 1993.

Compilation of postal questionnaires

10 The Preliminary Working Document was also used as a basis for the second stage of the study, which was to compile questionnaires for distribution to interested parties. Targeted questionnaires were developed for:

- the national federations in each of the 10 selected sports in the 12 Member States;
- the European and/or international level bodies of these sports.
- the National Olympic Committees in the Member States, the European Association of National Olympic Committees and the International Olympic Committee;
- the relevant national Ministries of the Member States;
- national and European level sports confederations in the Member States.

11 The second section of this report is based on the written replies received to the above questionnaires. A list of the organisations which returned questionnaires together with the organisations interviewed (see below) is included in Appendix B.

12 Although not within the primary scope of the study, questionnaires were also distributed to those EFTA Ministries and confederations which have observer status at the European Sports Forum meetings. Their replies have been reproduced verbatim in Annex D.

Interview programme

13 The replies to the questionnaires were complemented and supplemented by information gathered from a series of face-to-face (or, in a minority of cases, telephone) interviews. The interview targets were selected in collaboration with DG X and included both selected organisations which had received a postal questionnaire and other interested parties, such as broadcasters, sponsors, equipment manufacturers and sports lawyers.

14 The above methodology was chosen in order to achieve the greatest breadth of current opinion possible. While every effort has been made to achieve a comprehensive overview of each of the sports, certain facts may have been omitted because they were not included in the questionnaire responses or were not revealed during the interviews.

15 In this context, it is important to note that the views reflected in Part II of the report are those documented as a result of the questionnaires or as a result of face-to-face interviews. Where reference is made to a "majority" of national federations, the majority relates to the number of federations which replied to the study, and not to the total number in existence.

PART I

**EC legislation and policies which have an impact
on sports**

Final report: July 1993

I The free movement of persons and services

The principles

1001 Free movement of persons and services is embodied in the Treaty of Rome as one of the "Foundations of the Community".

1002 A distinction is made between free movement of workers (ie employees), freedom of establishment (of self-employed persons setting up a permanent place of business in another Member State) and freedom to provide services (where there is no establishment of a permanent place of business in the Member State in which the service is being provided). In every case, the Treaty of Rome recognises the right of EC citizens pursuing an economic activity to work in any Member State of the European Community under the same conditions as nationals of that Member State.

The main provisions

Free movement of workers

1003 Article 48 gives a worker the right to reply to an offer of employment in any Member State and to reside in that country to carry out that employment. Member States are therefore obliged to abolish any discrimination based on nationality with regard to employment, remuneration and other conditions of work and employment. Member States can only restrict this right with regard to public service jobs, or if they can justify such a restriction on the grounds of public policy, public security or public health.

Free establishment

1004 Article 52 gives self-employed persons who wish to move to and establish a business in another Member State the same rights as those described for workers.

Mutual recognition of qualifications

1005 As Articles 48 and 52 alone would not stop discrimination taking place through the host Member State's refusal to accept a professional qualification for a regulated profession that had been acquired in the home Member State, Article 57 gives the Council the power to enact legislation for the mutual recognition of such qualifications.

1006 Following a period of a number of years when Directives on specific professions were enacted, two important Directives were approved to establish general systems

of mutual recognition. The first Directive¹, which entered into force in January 1991, covers higher education and training diplomas of at least three years duration. The second Directive², which will come into force in the Member States in 1994, covers higher education studies of less than three years duration, as well as vocational training certificates and attestations of competence granted through secondary, general or professional educational programmes.

1007 Further details regarding the above Directives, the work of the European Centre for the Development of Vocational Training (CEDEFOP) and the work of the European Network for Sports Sciences in Higher Education regarding comparison of qualifications, are given below.

Freedom to provide services

1008 Article 59 requires the abolition of restrictions on the free provision of services supplied by a national of another Member State. Article 60 defines the services concerned.

Key Issues

1009 To date, the actual or potential impact on sport of the Community's rules on the free movement of people and services covers the following issues:

- restrictions on foreign sportspersons;
- the right of amateur EC sports persons to practise sport;
- sports qualifications;
- hooliganism;
- insurance;
- advertising and sponsorship.

1010 Each of these issues is considered in more detail below.

Restrictions on foreign sportspersons

1011 The governing bodies of certain sports impose rules which restrict the freedom of professional sports persons to play for teams in Member States where they are not nationals. This is an issue that has been particularly highlighted in the case of professional football, the major aspects of which are discussed below, but other sports experience similar problems.

¹ Directive 89/48/EEC; OJ N° L 19/89

² Directive 92/51/EEC; OJ N° L 209/92

Rules on the fielding of foreign nationals

1012 According to the Union of European Football Associations (UEFA)³, it was common in the 1950s and 1960s for players to move freely between the Member States, which resulted in many clubs having a majority of foreign players. The national associations saw this phenomenon as detrimental to the national game, contending that clubs were recruiting experienced foreign players rather than their own juniors. UEFA holds that it is for this reason that many national football associations introduced rules restricting the number of foreign players allowed to play in a domestic team.

1013 Complaints about this practice prompted the Commission to take action to encourage UEFA to abolish of such restrictive rules, contending that they were contrary to EC rules on the free movement of workers.

1014 In April 1991, following discussions with the Commission, UEFA decided to modify its regulations to facilitate the free movement of footballers. The main effect of this modification is that, since the 1992/93 season, the number of "non-eligible" players (ie players who are not eligible to play for the national team of the Member State in which their club is situated) that can be included in the referee's official report, cannot be limited by national associations to less than three. The referee's official report can also include the names of two "assimilated foreign players" ie two non-nationals who on that date have been playing in their country of residence for an uninterrupted period of five years, including three in youth teams. These rules apply to all first division leagues and from 1996/97 will be applied to all other professional leagues. The Commission and UEFA have agreed to hold consultations every four years to review the system.

Restrictions on naturalised sportspersons

1015 A related problem to restrictions placed on the number of foreign nationals in a team, is that of the limitations placed by sports federations' rules on players who have become naturalised citizens of the country in which they are residing.

1016 Disputes concerning the rules of the French basketball association illustrate this problem.

³ Working paper for Round Table meeting in Florence, 31 January 1992 entitled "Notes de l'UEFA sur l'accord entre la Commission des Communautés Européennes et l'UEFA".

1017 This association had limited the number of foreign players allowed to play in the national championships to two. The clubs had frequently tried to bypass this rule by asking their players to acquire French nationality. The association decided to combat this situation by ruling that of the ten players listed on the match card, at least eight had to have been licensed by the federation for more than five years. This rule was annulled by the Conseil d'Etat in 1984.

1018 The association subsequently adopted a regulation in 1986 which allowed clubs to field a maximum of two players who would be ineligible to play for the French team in international competition under the rules of the International Basketball Federation (FIBA). ~~This 1986 regulation included a clause to the effect that players who had been nationalised for less than three years were considered to be foreign players.~~ The regulation was found by the Conseil d'Etat to be contrary to the French law of 1983 which abolished all transition periods for naturalised persons and stated that a person having acquired French nationality through naturalisation was entitled to benefit from all the rights of a French citizen as of the date of his naturalisation.

1019 The FIBA rule on naturalisation still exists and, where applied by national federations, runs counter to EC rules in that it prevents an EC citizen who has become a naturalised citizen of another EC country from fully exercising his or her profession.

The Court of Justice position

1020 In the 1970s, the European Court of Justice (ECJ) interpreted Community free movement rules with regard to sports persons in two major preliminary rulings requested by national courts. The first case⁴ concerned two Dutch motorcycle pacemakers who wanted to work for cycling teams of other Member States but were restricted from doing so by the rules of the International Cycling Association. These rules stipulated that the pacemaker had to be the same nationality as the cyclists in the team. The second case⁵ questioned the rules of the Italian Football Federation, according to which only players who were affiliated to the federation were allowed to take part in matches, membership of the federation being, in principle, only open to players of Italian nationality. Both sets of rules were held by the complainants to be contrary to Community law.

1021 In making its judgment in the Walrave case, the Court said that where the practice of sport had the character of gainful employment or remunerated service, it constituted an economic activity within the meaning of Article 2 of the Treaty and

⁴ Walrave and Koch v. A.U.C.I; Case 36/74; judgment of 12. 1274.

⁵ Donà v. Mantero; Case 13/76; judgment of 14. 7. 76.

therefore fell within the scope of Articles 48 or 59, which call for the abolition of discrimination based on nationality.

1022 However, the Court also said that the prohibition of discrimination based on nationality did not affect "the composition of sport teams, in particular national teams", the formation of which was "a question of purely sporting interest" and as such, had nothing to do with economic activity.

1023 In the *Donà* case, the Court stated more categorically that the adoption of rules that discriminate on the grounds of nationality, even by a "sporting organisation", unless they related to matters that were only of a sporting, rather than an economic interest, were incompatible with Articles 7, 48 and 59 of the Treaty.

1024 More recently, footballer Jean Marc Bosman brought before the Court of Justice an action to have what he termed the "gentleman's agreement" between the Commission and UEFA declared void. In its ruling of 4 October 1991⁶, the Court rejected this action as inadmissible on the grounds that there had not been a formal agreement or formal contract between UEFA and the Commission. The Commission could not, therefore, be challenged under Article 173 of the Treaty.

1025 While not concerned specifically with sport, another Court of Justice decision in 1992⁷ concerned the possession of Member State and third country nationality and the exercise of the right of establishment. The Court ruled that a Member State may not ignore the fact that a person possesses the nationality of another Member State and that a person may rely on such nationality for the exercise of fundamental freedoms which flow from the EC Treaty.

The Parliament position

1026 In its 1989 report on the free movement of professional footballers in the Community⁸, the European Parliament (EP) took the stance that UEFA and the national football federations were breaching Community law by limiting the number of foreign players in a team, although it agreed that national teams should respect the nationality principle.

⁶ *Bosman v. the Commission*; Case C-117/91; judgement of 4. 10. 91

⁷ *Micheletti and others v. Delegación del Gobierno en Cantabria*; Case C 369/90; judgment of 7. 7. 92

⁸ *Janssen van Raay* report, 1. 3. 89. EP DOC Series A, Doc A2-415/88

1027 It also agreed that the Commission was restricted in its options for action because the private nature of the associations and federations involved prevented recourse to Article 169, which requires the proceedings to be brought against a Member State or its public authorities.

1028 Since the Van Raay report, certain Members of the European Parliament (MEPs) have continued to argue strongly that any restrictions based on nationality, that effectively curtail a player's freedom to choose in which country he would like to play, contravene Article 48 of the Treaty of Rome.

1029 In a November 1991 debate in the European Parliament, MEP Hugh McMahon refuted the contention that total free movement was detrimental to young football players, citing the case of Ireland, where the relatively small size of the population means that it is unable to support a full-time professional league. He said that the future career prospects of young Irish players were in fact threatened if their freedom to move to other countries was restricted.

1030 Although MEPs had urged the Commission to take action to prevent such discrimination, they were not happy with the outcome of the Commission's action as manifested by the changes made to the UEFA regulations, which they considered did not go far enough.

The Commission position

1031 In the Commission's opinion the modifications to UEFA's regulations constitute a step in the right direction, as UEFA had wanted to maintain stricter conditions on the fielding of non-nationals by link up the number to two. The Commission and UEFA will hold consultations every four years to verify that the system is operating properly. The Commission's intention is that this arrangement will smooth the transition towards complete freedom of movement for footballers.

1032 The Commission has also reiterated that it is limited in its course of action as the restrictions on the number of non-nationals who can play are imposed by private individuals rather than public authorities. Initiating proceedings under Article 169 of the Treaty is therefore difficult, as this Article requires the proceedings to be brought against a Member State, its public authorities or official organs for not having fulfilled an obligation under the Treaty.

The right of amateurs to practice sport

1033 Several cases of discrimination based on nationality in amateur sports have been brought to the attention of the Commission. In the case of the amateur basketball leagues in Italy and Greece, and the squash and tennis leagues in Belgium, amateurs from other Member States who are resident in the Member State of the

league in question have either been prevented from competing in championships, or have had to comply with different rules to those governing national of the country.

1034 This is particularly a problem for young people who have moved with their families to another Member State, but who are not permitted by the sports clubs or federations to play in national or international competitions for their host country.

The Court of Justice position

1035 The ECJ has not yet been referred any cases specifically relating to discrimination against amateur sportsmen on the grounds of nationality. However, it had interpreted the meaning of Article 7 of Regulation 1612/68⁹, which sets out Member States' obligations in relation to the free movement of workers and their families. Article 7 says that they should benefit from the same social and fiscal advantages as nationals. The ECJ has interpreted "social benefits" the conditions necessary for the full integration of the worker and his family in the host country.

The Commission position

1036 The basic Commission position is that amateurs, that is persons who are not practising sport as an economic activity, do not have recourse to Treaty Articles 48 and 59. In response to a written question concerning the requirements of the Royal Belgian Tennis Federation for participation in Belgian club competitions, which are more stringent for nationals of other Member States than for Belgians, the Commission responded¹⁰ that there was no legal basis on which the Belgian Tennis Federation could be required to open its competitions to all EC nationals, as the Commission could only be required to act in respect of discrimination related to the pursuit of a sport as a profession.

1037 The Commission is, however, aware that difficulties may arise in cases where it is difficult to distinguish between the status of amateur and semi-professional, (there being many forms of recompensing a sports person apart from purely monetary rewards).

1038 The Commission also feels that cases of discrimination against amateurs on the basis of nationality do restrict a person's freedom to move to and reside in another Member State and therefore are a barrier to creating a true People's Europe. Indeed, the ECJ's jurisprudence on the meaning of social benefits within Article 7 of Regulation 1612/68 could conceivably include the right to join a sports federation and

⁹ OJ L 257/68; 19. 10. 68

¹⁰ Written European Parliament Question 1868/90; OJ C 63; 11. 3. 91

play at any level. In this case, the individual would first have to complain to a national court of law, which may then seek a ruling from the ECJ.

1039 It should also be noted in this context that in May 1992, all EC Member States adopted the Council of Europe's European Sports Charter. The signatories to this Charter agreed several principles, some of which are relevant to the discussion of the right of amateurs to the practice sports in all Member States. They are:

- that sport is a social activity in the sense of being part of human society and therefore part of culture in the broad sense;
- that no discrimination on the basis of nationality should be permitted regarding access to sports facilities or to sports activities;
- that everyone with ability should have the opportunity to improve their standard of performance in sport and reach levels of personal achievement and/or publicly recognised levels of excellence.

1040 With reference to the first principle, if the Maastricht Treaty is ratified, the Community will have specific competence for cultural policy. If the link between sport and culture is accepted, this will reinforce the Community's scope for non-binding initiatives in this area.

1041 With reference to the second and third principles, all governments who have signed the Charter should take action to ensure that sports federations' rules that discriminate against non-national amateurs are eliminated. This could be particularly effective in the Southern Member States, where the Governments have the greatest control over the federations' activities.

Sports qualifications

1042 Both mutual recognition Directives described above apply to regulated professions, ie occupations which can only be entered by those who hold a diploma, certificate or other qualification from the national training system, as stipulated by legal, regulatory or administrative provisions.

1043 Sports qualifications issued by national federations or other sports bodies would fall within the scope of the Directives if these organisations have been formally delegated the power to issue such qualifications, or if they are chartered bodies. The Directives operate on the principle that recognition is based on mutual trust, without any prior co-ordination of the types of training for the various professions concerned. Requests for proof of professional experience by the regulating authority in the host Member State, or insistence on an adaptation period or aptitude test, are to be permitted where the length of training or the course content differs substantially.

1044 Qualifications for teaching physical education in schools are regulated in every Member State and are normally obtained after three or four years of higher education. They therefore fall within the scope of the first general Directive and we are not currently aware of any problems having been brought to the attention of the Commission relating to this type of sports qualification.

1045 Problems could occur over the teaching of sports outside schools, where sports professions have developed differently and require different levels of qualification in each Member State. Very few European level diplomas exist in the sports world comparable to the European Water Sports Instructor's Diploma, which was based on the diploma issued by the French State¹¹, subsequently adopted by the European Water Sports Commission in 1988.

1046 In certain Member States, such as France where there is a national recognition system, some sports professions tend to be highly regulated. This has led to complaints being made to the Commission by British and Danish ski-instructors who have been fined for working in the French Alps without holding a qualification considered to be equivalent to the French qualification.

1047 In cases which fall outside the scope of both Directives and until Directive 92/51/EEC has entered into force, the jurisprudence of the Heylens and Vlassopoulou cases (see below) will apply. This means that the applicant has at least the right to receive a reasoned opinion as to why the equivalence of his qualification has not been recognised as sufficient by the authority controlling entry to the profession in question. In any case, a Member State is obliged to compare the qualification of the applicant with the qualification required in its territory.

1048 In this context, the European Centre for the Development of Vocational Training (CEDEFOP) has been carrying out detailed work to establish, for given occupations, the common skills of holders of vocational training qualifications. For each of the occupations examined, the work of CEDEFOP results in:

- a Community description of the practical occupational requirements;
- a comparison table of diplomas, certificates and other vocational training qualifications issued in each Member State.

1049 The system does not lead to the legal recognition of diplomas, but it provides a valuable technical support for the application of arrangements under the general recognition systems provided for by the Directives described above.

¹¹ Written Question N° 2962/87; OJ C1; 2. 1. 89

1050 In December 1990 the Council adopted a new Resolution¹², to extend the scope of CEDEFOP's work from solely "skilled worker" occupations to a larger number of those professions where there tends to be considerable cross-border occupational mobility. However, the Member States and a group of national coordinators must be consulted before the Commission selects a group of occupations to be studied by CEDEFOP and, to date, sport has not been one of these areas.

1051 The only sector currently being studied by CEDEFOP which is partially sports-related, is the sector of tourism. The description of the occupation of "leisure/tourist assistant", which has now been published in the Official Journal¹³, includes:

- setting up and maintaining games, leisure and sports facilities and the corresponding equipment;
- providing and running planned games and leisure activities;
- maintaining and performing minor repair work on games equipment and other entertainment and sports installations.

1052 The European Network for Sport Sciences in Higher Education is also active in this area. This Network groups together training and research establishments and structures specialising in sports and physical education within the countries of the EC. Since 1990, it has been working on two projects :

- the formulation of a European model for a training structure capable of incorporating the various training levels for most sports-related occupations;
- the harmonisation of existing training courses through agreements between the Member States on the broad lines of the content of training, defined on the basis of the professional profiles of the various sports-related occupations.

1053 The proposed training structure for sports-related occupations draws on the Council Decision of 16 July 1985 on the comparability of vocational training qualifications between Member States. The Network has applied this structure, which comprises five training levels, to the occupation of coach. For each of the levels, it has specified the tasks involved and the specific activities, evidence of training, entry conditions and the minimum duration of the training, the coach should have undergone for the qualification to be valid. It would like this proposal to be debated by all the bodies concerned at both national and Community level, before being

¹² OJ N° C 109; 24. 04. 91

¹³ OJ N° C 320; 7. 12. 92

adopted by the Commission as a proposed sectoral Directive for the occupation of coach.

1054 The activities of the Commission's Transport Directorate-General (No. VII) may be relevant for aeronautical sports particularly regarding recognition of licences and permits for airborne border-crossings and for the use of radio frequencies. Discussions between the EC and the relevant aviation sports authorities should take place to establish what EC action may be necessary.

The Court of Justice position

1055 ECJ jurisprudence on the issue of the mutual recognition of qualifications has been laid down in the cases of Heylens¹⁴ and Vlassopoulou¹⁵. In the Heylens case, which preceded the adoption of the general Directives, the Court ruled that, where a Member State refused to recognise the equivalence of a diploma granted to a worker who was a national of another Member State, it had to be possible for this decision to be made the subject of judicial proceedings in which its legality under Community law could be reviewed. The Court also ruled that the person concerned had to be able to ascertain the reasons for the decision.

1056 The Vlassopoulou case further specified that, in a disputed case of recognition, if the national judge (on the basis of a comparison of diplomas) found that the qualifications and knowledge of the person wishing to practice the profession were equivalent to that which would be required of a national, then the Member States had to accept equivalence. If the equivalence was only partial, the host Member State could ask the applicant to prove that he or she had acquired the necessary knowledge or qualifications either through professional experience or by taking courses. If refused acceptance, the applicant had the right to a reasoned explanation and to contest the decision in a national court.

1057 The Court has also given more recent decisions regarding tourist guides in three separate cases brought by the Commission against France, Greece and Italy¹⁶. This jurisprudence could be important, in particular, for non-resident providers of services. In each case, the Court found that non-national tourist guides could not be

¹⁴ UNECTEF v. Georges Heylens and others. Case 222/86; judgment of 15.10.87.

¹⁵ Irene Vlassopoulou v. Ministerium für Justiz, Bundes und Europaangelegenheiten Baden-Württemberg; Case C - 340/89; judgment of 7.5.91.

¹⁶ Cases C-154/89; C-180/89 and C-198/89; judgments of 26.2.91

prevented from accompanying groups of tourists into these countries on the basis that they did not hold the necessary national diploma as there could be no grounds for exceptions based on the 'general good'. The only exception that could be made would be guiding in museums and historical monuments, where it was admitted that a specialised guide may be required. It has to be underlined that these cases only concerned Article 59 and the temporary cross-border provision of services.

The Commission position

1058 In the case mentioned above of British ski-instructors being prevented from, or fined for practising in France, the Commission has issued a notice to the French authorities, who have promised to change their legislation to comply with EC rules by the autumn of 1993.

1059 The Commission stresses that EC citizens should not assume an automatic right to practice their profession in another Member State. A formal procedure for recognition of their qualification will be required in most cases.

Hooliganism

1060 The increasing incidents of violence between rival supporters at all levels of football matches have resulted in such measures as fenced grounds, all-seater stadia, the banning of alcohol consumption and the restriction of some matches to home supporters only.

1061 Other measures that have been suggested to prevent violent incidents include the UK Government's proposal (which was not implemented) to introduce identity cards for football supporters.

The Commission position

1062 In a written European Parliamentary question¹⁷ the Commission was asked whether the UK Government's proposal to introduce identity cards could be a breach of Community law. The proposal would have had the effect of preventing unaccompanied foreign nationals entering UK football grounds. The Commission replied that it did not contest the right of Member States to adopt legislation restricting entry to football grounds in order to reduce the level of violence as long as such legislation was drafted to take into account the situation of unaccompanied football supporters from other Member States, who had a right, as people receiving services, to free movement under Article 59 of the Treaty.

¹⁷ N° 2293/88 OJ C 276; 30.10.89

1063 The Commission nevertheless feels that it could be argued that it is against EC law on free movement to stop groups of "potential" hooligans from going to international matches. It is only after they have committed an act of violence in another Member State, that they can legitimately be stopped from attending subsequent matches abroad (that is persons with no prior conviction for such offenses).

Insurance

1064 Sports persons are involved in activities in the course of their daily work that leave them very susceptible to injury. Equally, several tragic events in the last ten years, where the safety standards of sports stadia have proved inadequate, have highlighted the need for adequate insurance coverage.

The legislative context

1065 The EC has enacted legislation to ensure that a single European insurance market is created. The Third Framework Directive on non-life insurance¹⁸, which is due to enter into force on 1 July 1994 for nine Member States, 1 January 1997 for Spain and 1 January 1999 for Portugal and Greece, extends the scope of the Second Non-Life Directive to enable insurance companies to sell policies to private individuals (as opposed simply to large-risk groups). Once implemented at national level, individual EC citizens will be able to buy insurance for injuries through sport from insurance companies that are not locally established. The contract law that applies will usually be that of the policyholder's country of residence. If the location of risk and the policyholder's home base are different, the policyholder may be permitted to choose between the two, although a Member State has the option to impose the contract law of the policyholders' residence.

The Commission position

1066 Apart from ensuring the implementation of the above Directive, the Commission does not consider that it has a role to play in enacting sports-specific insurance legislation for, for example, transnational events. It believes that the onus lies with clubs, players and spectators to ensure that their own insurance is adequate when participating in such an event.

¹⁸ Council Directive 92/49/EEC; OJ N° L 228/92

Advertising and sponsorship

1067 Many commercial companies use sports events, organisations, teams and sports players as an advertising medium. By association, their products, and the company itself are "cloaked" with the positive images represented by sport. Different types of events at different times enable companies to match the appeal of products with different audiences.

1068 Sponsorship is the practice of associating a commercial entity with a programme or event in exchange for a financial contribution from that company as distinct from patronage, which requires no commercial benefit. Sponsorship is motivated by the fact that the sponsor improves its image by being linked to the characteristics of the programme or event it sponsors. Sponsorship can be distinct from advertising, or alternatively, the rights to place advertisements or boardings can form part of a sponsorship agreement. In 1991, sponsorship of sports amounted to approximately ECU 2 billion.¹⁹

1069 Typically, sponsorship of an event, including advertising at the event, is purchased separately from advertising during the broadcasting of an event. Advertising time during a broadcast is usually purchased from the broadcaster, whereas sponsorship rights are bought from event organisers, sports federations or other bodies governing sports, sports marketing agencies, leagues, teams and individual sports players. Event organisers usually sell exclusive broadcasting rights to a network or consortium of broadcasters such as the EBU, frequently requiring that event sponsors be given the right of first refusal to acquire advertising time during the broadcast of an event.

1070 Television sponsorship is not very well developed within the EC. There is certainly a large market to develop, particularly in the trans-frontier niche, such as, for example, large pluri-national sporting events. The development of this market could bring large sums of money both to the media and to sport, thereby financing broadcasts which might otherwise have not been made, but it could also run the risk of "disfiguring" the final broadcast. This debate is particularly important in the context of increased financial needs in the world of sport.

1071 There are two basic types of sponsorship: programme or broadcast sponsorship (when the broadcaster arranges sponsorship for his programme) and event sponsorship (when the event organiser arranges sponsorship for an event). Programme sponsorship is the least developed of the two, with certain notable exceptions. An important issue in the future will be the linkage between the two types of sponsorship. For example, if Kodak sponsors an event, but Fuji has a sponsorship contract for a

¹⁹ Source ISL Marketing (as reported in the Economist, 25 July 1992).

television programme in which that event features prominently, there will clearly be a conflict. This issue might be resolved by dialogue between the sports organisations and television companies, the results of which could be incorporated into contracts.

1072 Previously, in order to secure the most lucrative financial benefit from the sale of broadcasting rights, event organisers allowed broadcasters a high degree of flexibility in terms of selection of advertisers. As the number of broadcasters increases, however, the balance of power is shifting from the broadcasters to the programme suppliers (event organisers). Both event and broadcast sponsorship are increasingly offered as a single package, with a proportion of the advertising time already committed to parties selected by the event organiser or the rights holder.

1073 Television and radio advertising and revenue generated thereby is the property of the broadcasters involved. Whilst sports federations, if they organise an event and/or control a specific venue, will benefit from advertising opportunities which might or might not form part of a sponsorship package.

1074 The revenue generated from the sale of sponsorship and advertising opportunities to commercial entities represents a significant proportion of income for many sports organisations.

Television advertising and sponsorship rules

1075 Until recently, television broadcasting was organised along essentially national lines. The development of cheaper and more effective programme transmissions of television programmes prompted the Commission to formulate a Directive²⁰ to open the increasingly transfrontier television broadcasting market. It was dubbed the "Television Without Frontiers" Directive. In so far as sports programmes form a significant part of total broadcasting, the Directive has an impact on sport.

1076 The aim of the Directive is to have one set of minimum requirements for the territory of the EC. The idea is to respect national differences while, at the same time, harmonising national legislation so that different rules are not applied in different Member States. The principle is that the rules of the Member State where the broadcaster is established should apply, and would necessarily be compatible with those of other Member States. Member States remain free to insist on stricter rules for their own broadcasters.

²⁰ Directive 89/552/EEC; OJ L 298/89; Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

1077 The Television Without Frontiers Directive has sections on both television advertising and sponsorship which are of direct relevance to sports.

1078 The basic principle guiding Commission policy is that of the free provision of services as per Article 59 of the Treaty. This Article provides for the abolition of restrictions on the free provision of services to nationals of another Member State.

1079 Rules on advertising are formulated in conjunction with national market specifics. Following the growth in the transnational nature of broadcasting and the economic importance of the broadcasting industry, the Commission introduced EC rules so that pan-EC advertising is possible for goods saleable on a pan-EC basis.

1080 The Directive provides for a series of minimum requirements, both qualitative and quantitative, on television advertising. The main provisions include a maximum daily broadcasting time for advertising, rules on maximum frequency of advertising breaks, on the amount of advertising time per given hour and on rules restricting the content of advertising during news, children's and documentary programmes.

1081 The Directive bans direct and indirect advertising for cigarettes and other tobacco products and the tobacco sponsorship of television programmes.

1082 Another proposed Directive²¹ banning all forms of advertising for tobacco products is being discussed by the Council. As it currently stands, the proposed Directive would ban all advertising of tobacco products (not only television advertising), both direct and indirect, beyond the point of sale. Tobacco logos would therefore be banned from sporting events. Such a measure would also effectively prohibit the sponsorship of sporting events by tobacco manufacturers. At the time of writing, a minority of countries including Denmark, Germany, the Netherlands and the UK are blocking the proposed Directive.

1083 The Commission has not tabled any proposals on advertising for alcoholic beverages and has not given any indications that it plans to do so in the near future.

1084 The Television Without Frontiers Directive includes a chapter on copyright, which has been replaced by a proposed Commission Directive²² to coordinate legislation on copyright and neighbouring rights which broadcasters must acquire when either broadcasting by satellite or retransmitting by cable across two or more Member States. The proposal hopes to achieve a balance between enabling broadcasters to

²¹ OJ N° C 167; 27.06.91 - Amended proposal for a Council Directive on advertising for tobacco products.

²² OJ N° C 255; 01.10.91 as amended by OJ N° C 25; 28.01.93

transmit across borders while ensuring adequate protection of copyright. To accomplish this equilibrium, a minimum level of harmonisation of Member States' rules is needed. The proposal should clarify the conditions for transfrontier broadcasting of sports events, including for specialised pay-television channels.

1085 A French member of the European Parliament, Mr. Yves Fremion, has drafted an own initiative report²³ on patronage and sponsorship in culture and sport. The report appeals to Member States to encourage patronage of events with limited or no credit to the sponsor. The rationale is to protect the rights holders and the consumer from any undue outside influence. Sponsors view many of the Fremion proposals as unworkable and contend that their implementation would severely reduce the revenue generation capacity of many sports organisations.

1086 At the time of writing, the Fremion report had not been adopted by the European Parliament. Upon adoption, it would fall to the Commission and Council to decide upon suitable follow up action to its recommendations.

1087 In order to set the Commission's activity in the area of Commercial Communication - a term which comprises not only advertising but also direct marketing and distance selling - the Commission is preparing a consultation paper.

1088 The aim of the consultation paper is to take an overall look at the industry engaged in commercial communication, particularly advertising, and to examine what, if any, form of regulatory framework would be appropriate to ensure a coherent and consistent approach by the Commission.

²³ DOC PE 201.820 of 16/09/92

II Health and safety

Key issues

Doping

2001 In the increasingly competitive world of both amateur and professional sports, large financial rewards in the form of prize money and/or sponsorship contracts are pushing sports persons to strive for ever greater physical achievements. The use of illegal performance enhancing drugs to reach these heights has become the scourge of the modern sports world. Also, the introduction of increasingly sophisticated body-boosters makes detection more difficult.

2002 Testing for drugs is increasingly widespread. Where international federations have taken a firm line and adopted stringent procedures and protocols, testing can be very effective and have far-reaching effects on the sport.

The Commission position

2003 It is not within of the European Communities competence to introduce binding legislation on the specific testing sports persons for the illegal use of performance enhancing substances.

2004 The use of drugs in sport does, however, contravene the provisions of binding EC harmonisation Directives for health and medicinal products. This legislation is designed to prohibit the use of medicinal products for purposes other than for the diagnosis or treatment of recognised pathological states, to prevent their use in unauthorised forms and dosages²⁴, to prevent their unauthorised sale (black market) or prescription²⁵, and their advertisement²⁶.

2005 Recent Community activity in the field of doping is based on the Council Resolution of 3 December 1990 on "Community Action to combat the use of drugs, including the abuse of medicinal products, particularly in sport"²⁷.

²⁴ Directive 65/65/EEC; OJ N° L 22/65 (last amended by Directive 89/341/EEC)

²⁵ Directive 75/319/EEC; OJ N° L147/75 (last amended OJ N° L 250/84)

²⁶ Directive 84/450/EEC; OJ N° L 250/84

²⁷ OJ N° C 329/90

2006 The Resolution stressed that action taken by the Community in this area should complement the work of the Council of Europe and take into account its Anti-Doping Convention. It also advocated an educational and preventive approach, geared particularly towards young people. Through this Resolution, the Council invited the Commission to draw up a code of conduct to combat the use of drugs in sport. Annex II of the Resolution also asked the Commission to propose measures in the areas of:

- training information and health education initiatives against the use of drugs in sport;
- current drug use practices;
- drug-testing methods and cooperation between laboratories;
- research on the effects of drug-taking on health (within the Community biomedical research framework programme).

2007 The requested Code of Conduct against doping in Sport was drafted by the Commission and approved by the Council in its Resolution of 8 February 1992²⁸.

2008 The key aims of the Code are to increase awareness of the dangers of doping to health and to help change the attitudes and behaviour of those closely involved in order to encourage drug-free sport. It calls on young people, parents, educational institutions and athletes to advocate that participation in sport should be free from doping, and for the latter to act as role models. It encourages health professionals, the entourage of sports teams (managers, coaches, trainers, etc) and sports organisations to actively prevent doping and encourage fair play. It calls for cooperation between sports organisations on issues related to the status and control of doping. Testing laboratories are asked to continue their current work and to monitor for, and warn authorities about, the appearance of new drugs with performance enhancement potential. Finally, the Code calls on the media to provide the public with information about athletes' training programmes and the negative consequences for health of doping.

2009 One of the actions undertaken by the Commission to disseminate the Code has involved adapting it slightly to enable, in particular contexts, elements of it to be transferred to postcards, posters and stickers. Demand for this material from sports ministries and other bodies, has been high. Promotional material was also distributed at the Winter and Summer Olympic Games, the School Games in Nantes and the Tour de France.

2010 DG X and the Directorate-General responsible for health and safety (DG V) are now concentrating their efforts on trying to encouraging the Member States to disseminate the Code. In the meantime, positions are being developed within these

²⁸ OJ N° C 44; 19.02.92

DGs as to how to progress the other four measures mentioned in Annex II of the 1990 Council Resolution.

Actions against AIDS

2011 Some sports federations have already adopted interim measures to fight AIDS. The Council has adopted a decision on a plan of action in the framework of the 1991 to 1993 "Europe against AIDS" programme. This programme could also be applied in favour of the world of sport. Four actions are relevant to sports authorities and organisations :

- informing and increasing the awareness of the public and certain target groups;
- health education for young people;
- measures to combat discrimination against H.I.V. - infected persons;
- research and international cooperation.

Protection of young people at work

2012 In January 1992, the Commission adopted a proposal for a Directive on the protection of young people's health and safety at work²⁹. The proposal sets out a number of minimum standards dealing with exposure to various occupational risks arising from physical, chemical and biological agents and certain types of work, as well as the working environment, with particular reference to night work, working time and admission to employment. In the proposal, "young person" refers to all persons under 18 years of age, "adolescent" refers to any young person of between 15 and 18 years and "child" refers to any person of less than 15 years of age. There is a general provision prohibiting the employment of children, but a derogation is provided for in Article 4 which makes it possible to employ children in cultural, artistic, sports and advertising activities, so long as this is commensurate with their physical and psychological health.

2013 This approach has been opted for in conformity with the law in force in most of the Member States and with the international conventions and recommendations which allow children to take part in such activities. It does however impose additional protective conditions and provisions.

2014 The terms of the derogation in Article 4 would be determined by the competent authorities of the Member States.

²⁹ OJ N° C 84; 04.04.92 amended OJ N° C 77; 18.03.93

Safety at sea

2015 Although the Commission was considering the need for minimum safety standards for pleasure and sports craft the recent Communication entitled "A Common Policy on Safe Seas"³⁰ relates only to commercial shipping and not recreational boating or competitive sailing.

Liability of service suppliers

2016 The proposed Council Directive on the Liability of Suppliers of Services³¹ seeks to establish a reversal of the burden of proof of liability in the case of accidents. This means that the service provider would have to prove that he had not been negligent in the provision of a service, rather than the injured party having to prove the service supplier had been negligent. The definition of "service" is wide enough to cover those in the sporting world and would even apply to services provided free of charge. If adopted in its current form, this Directive could have significant implications for sports coaches, organisers of sporting events, rescue teams, etc. The proposal has met with substantial opposition from the Member States, who argue that the matter is better dealt with at national level.

Stadia safety

2017 In 1990, the Italian Standardisation Organisation made a formal request to the Commission to mandate CEN to draw up safety standards for sports stadia. Such a mandate has not yet been forthcoming. Nevertheless, the CEN technical bureau meeting in June 1993 agreed to create a technical committee on spectator accommodation (TC 315). This technical committee will be responsible for developing standards for architectural design and performance requirements for spectator accommodation at entertainment venues, including: sports stadia; sports halls; and indoor and outdoor facilities. The standards would apply to the safety of the spectators, comfort and visibility.

³⁰ COM (93) 66 final

³¹ OJ N° C 12; 18.01.91

III The free movement of goods

The principles

3001 The free movement of goods is another of the "fundamental freedoms" of the European Community. The establishment of an integrated internal market requires the elimination of customs duties between the Member States and the prohibition of quantitative restrictions. Also important in the context of this study are the Community's harmonisation policies regarding the technical specifications of goods, and Regulations enacted within the scope of the Common Agricultural Policy in the case of equestrian sports. The latter are dealt with in Chapter V on Animals in Sport.

The main provisions

3002 EC Treaty provisions envisage the total suppression of national measures which adversely affect intra-Community trade. To ensure the free movement of goods, Community law has a number of instruments at its disposal:

- Articles 12-17: prohibition of customs duties and taxes having equivalent effect;
- Articles 30-36: prohibition of quantitative restrictions and measures of equivalent effect.
- Article 37: prohibition of exclusive rights for imports and exports of any State monopoly or agency of a commercial character.
- Articles 92-94: prohibition of State aid in so far as it affects intra-Community trade and threatens to distort competition.
- Articles 95-96: prohibition of fiscal discrimination.

3003 Other instruments provide for the harmonisation of national laws and standards and the creation of common rules, in particular:

- Articles 100 & 100A: the main bases in the Treaty for harmonising Member States laws which restrict the functioning of the internal market. Harmonisation can be total or optional. Total harmonisation means that Member States have to permit goods complying with the Directive to be freely imported and marketed and also have to prohibit the sale of goods not complying with the Directive. Optional harmonisation involves only the former of these obligations.

- Article 235: creation of EC rules where no other Treaty article applies.
- Other provisions relate to special sectors, such as transport and agriculture.
- Secondary legislation also prevents new obstacles to intra-Community trade. For example, a Council Directive³² laying down a procedure for the provision of information on technical standards and regulations.

The new approach

3004 With regard to Articles 100 and 100A mentioned above, prior to 1985, the procedure for initiating, approving and in many cases amending detailed harmonisation Directives was extremely cumbersome. A "new approach" was therefore adopted³³ whereby subsequent standardisation Directives only defined essential safety requirements for products. Products must conform with these essential requirements in order to enjoy free movement throughout the Community.

3005 The technical specifications relating to the "new approach" Directives are drawn up by the competent European level standardisation bodies on a mandate from the Commission, following consultation with the Member States. Once a European Standard (EN) has been agreed, it has to be implemented at national level by being given the status of a national standard and by withdrawal of any conflicting national standards. Conformity of a product with the national standards transposing the harmonised standards, confers a presumption of conformity with the essential requirements covered by the harmonised standards. Conformity with the technical standards is not, however, obligatory. The producer can also conform only to the minimum standards in the Directive, to be eligible to carry the CE mark.

Key issues

3006 The EC's rules on the free movement of goods have an impact on various sports-related activities:

- the transportation of sports equipment from one Member State to another, including fire-arms;
- the standardisation of equipment specifications;

³² Council Directive 83/189/EEC amended by Directive 88/182/EEC; OJ N° L 81/88.

³³ Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards; OJ N° C 136; 04.06.85

- the commercial exploitation of the Olympic Symbol
- the production and marketing of sports food;
- footwear labelling.

Transportation of sports equipment between Member States

3007 As of 1 January 1993, the elimination of all administrative documents in intra-Community trade, in combination with the new VAT regime, has made superfluous previous arrangements for the temporary importation of goods. Temporary import of sports equipment, for competitions or other sporting activities, are therefore completely free of restrictions, with the exception of such items as fire-arms.

Fire-arms

3008 A Directive on control of the acquisition and possession of weapons, was adopted by the Council of Ministers in 1991³⁴. While the Directive institutes strict procedures for the transfer of weapons from one Member State to another, it imposes more lenient rules on sportsmen and marksmen. They may, without prior authorisation, be in possession of one or more fire-arms classified in annexes C and D of the Directive (annexes which correspond to two of the four categories into which the Directive classifies weapons), during a journey through two or more Member States. This journey has to be for the specific purpose of engaging in a marksmanship competition and only applies providing that they possess a European firearms certificate for each firearm, and that they are able to substantiate the reasons for their journey, in particular by producing an invitation.

3009 These exceptions to the general rules do not apply to journeys to a Member State which prohibits the acquisition and possession of the firearms in question.

3010 The European firearms certificate is a document issued by the authorities of the Member States and includes a minimum amount of information as set out in annex II of the Directive.

³⁴ Council Directive 91/477/EEC; OJ N° L 256/91

Standardisation

Recreational craft

3011 In May 1992, the Commission proposed to the Council a Directive on the essential safety requirements for the design and construction of recreational boats³⁵. The proposal applies to recreational craft of all types with a hull length of 2.5 to 24m, regardless of the means of propulsion. Excluded from the scope of the Directive are: craft intended solely for racing, including rowing racing boats; canoes and kayaks; sailing surfboards; powered surfboards; and various other minor categories.

3012 The essential safety standards concern boat identification, builder's plates, protection from falling overboard and means of recovery, visibility from the main steering position and the provision of an owner's manual. Structural requirements include stability, buoyancy, openings in the hull, deck and superstructure, cockpits and wells, water removal, carrying capacity, compartmentation, life-raft stowage, escape hatches for multihulls and mooring and towing standards. Propulsion, fuel, electrical, steering and gas systems will have to meet certain requirements and fire protection and navigation lights will also be standardised. Once a recreational craft has met all the requirements it will be allowed to carry a CE mark of conformity which will enable the boat to be used in any part of the Community.

3013 If the proposal were to be adopted, Member States would be expected to draw up the necessary measures before 1 January 1995 for implementation by 1 July 1995. The European Parliament has given its first reading to the proposal and the Commission and Council are working to produce a common position on the amended proposal by November 1993.

Sports equipment

3014 As stated above, under the new approach to standardisation adopted by the Commission, the European standardisation bodies, are responsible for developing detailed technical specifications.

3015 Within the European Committee for Standardisation (CEN), standardisation relating to sports equipment is dealt with by Technical Committee N° 136, which is responsible for sports, playground and other recreational equipment and by Technical Committee N° 161, which is responsible for protective clothing. Examples of standards currently being developed by these Committees include goals for football, handball and hockey, stationary training equipment, paragliding equipment, gymnastics

³⁵ OJ N° C 123; 15.05.92 , amended in OJ N° C 59; 02.03.89

equipment, balls for tennis, rugby, basketball and volleyball, safety harnesses and lines and buoyancy devices.

3016 It is possible that CEN's work on sports-related standards will be added to under the third mandate of the Personal Protective Equipment Directive.³⁶ An early meeting between CEN and the Commission clarified that this Directive was not restricted to the workplace, but the first and second mandates for this Directive did not include any sports items.

3017 A decision has not yet been taken on which sports items will be included in the 3rd mandate and the sporting goods manufacturers are opposing too wide an interpretation of the term "protective equipment" (see Part II, Chapter XII).

The Olympic symbol

3018 The commercial exploitation of the Olympic symbol is the most important source of income for the Olympic movement. In addition to the Olympic symbol itself (the five interlocking rings) Olympic emblems may also be designed and exploited. An Olympic emblem is an integrated design associating the Olympic rings with another distinctive element. They may be created by the International Olympic Committee (IOC), a National Olympic Committee (NOC), or an Organising Committee of the Olympic Games (OCOG).

3019 According to the Olympic Charter, all rights to the Olympic symbol itself belong exclusively to the IOC. It is stated in the Charter that "even if the national law or trademark registration grants to an NOC the protection of the Olympic symbol, such NOC may only use the ensuing rights in accordance with instructions received from the IOC Executive board".

3020 In practice, in the large majority of Member States, the Olympic symbol is registered as a protected trademark. The owner of the trademark is either the NOC of the State concerned, or the IOC. In some States, both IOC and NOC have registered the Olympic symbol in their own name. Spain, France, Belgium and Portugal have legislation in force which grants exclusive rights to their respective NOCs to commercialise the Olympic symbol on their own behalf.

3021 The Olympic Charter also obliges the NOCs and the OCOG, when exploiting the Olympic emblem, to avoid any conflict of commercial interests in the territories of other NOCs. The Charter states that an NOC Olympic emblem "may not be used for any advertising, commercial or profit-making purposes whatsoever in the country of another NOC without the latter's prior written approval".

³⁶ Council Directive 89/656/EEC : OJ N° L 393/89

3022 The issue of ownership of the symbol and emblems and the right to use them alone, or in combination with various designations, such as "official worldwide sponsor of the Olympic Games", is increasingly important for the IOC and NOCs, as commercial exploitation of the symbol and emblems through advertising, sponsorship, or suppliership contracts is crucial for the maintenance of their income.

3023 The Nairobi Treaty on the protection of the Olympic symbol, which was concluded on 26 September 1989 is designed to ensure that the exclusive right of commercialising the Olympic symbol belongs to the IOC.

3024 - The Treaty provides in its first article that the contracting parties shall refuse or invalidate the registration of the Olympic symbol or any emblem containing the Olympic symbol as a trademark and that the commercial use of the Olympic symbol shall be prohibited, unless the IOC authorises such use.

3025 Two exceptions are applied to the obligation. First, where the symbol or emblem was registered or legally used prior to the date of entry into force of the Treaty and secondly, where the NOC of the state concerned and the IOC have not reached any agreement concerning the commercialisation of the Olympic symbol.

3026 The existence of this Treaty has not had a major effect on the existing situations in the Member States, as Italy and Greece are the only signatories and, in derogation from article 1, they have not expropriated their respective NOCs. The other Member States have not acceded to the Treaty, preferring to maintain the situation whereby their respective NOCs commercialise the symbol or emblems.

The Commission position

3027 The issues of trademark registration, the relative balance between the rights of the IOC and the NOCs or OCOG to exploit the Olympic symbol and emblems, and the proportions of revenue falling to each, are matters for discussion between the various Olympic bodies.

3028 On the other hand, the Commission feels that the obligation on NOCs and the OCOG not to use their emblems for any commercial or profit-making purposes in the country of another NOC, without that NOC's permission, may lead to a partitioning of the Community market which coincides with the territories within which the respective NOCs hold their national trademark registration. This would be contrary to the principle of the free movement of goods as set out in the Treaty of Rome.

Sports food

3029 A Council Directive of 1989³⁷ (Framework Directive) on the approximation of the laws of the Member States relating to foods for particular nutritional uses mentions nine groups of foods for which provisions will be laid down by specific Commission Directives. One of these groups is "foods intended to meet the expenditure of intense muscular effort, especially for sportsmen". Given the current work load and priorities it is unlikely that the Commission will adopt this specific Directive before 1994. According to the Framework Directive, such a Directive for the products concerned could include, in particular, provisions on the essential compositional requirements, the quality of the raw materials used, hygiene requirements, labelling, presentation and advertising and sampling and analytical procedures.

Footwear labelling

3030 The Commission submitted a proposal for a Council Directive³⁸ on the labelling of the materials used in the main components of footwear for sale to the final consumer in March 1992. It has since proved quite controversial and during the Edinburgh Summit in December 1992, it was announced that the Commission was planning to revise it.

3031 As it stands at the time of writing, the proposal aims to prevent any barriers to trade in the Community for footwear and to help consumers identify what materials have been used in their composition with the use of pictograms.

3032 The manufacturer or his authorised agent established in the Community would be responsible for supplying and ensuring the accuracy of the labels. If neither the manufacturer nor his agent are established in the Community, the shoe retailer would be responsible for the correct labelling of his merchandise. The provision of the proposal would also apply to mail-order catalogues.

Quantitative restrictions on sports footwear

3033 The Commission controls the commerce between EC Member States and state-trading countries, including China. EC involvement in this area is relevant for the sports equipment manufacturing industry insofar as the majority of sports footwear is now manufactured in China and therefore fall under EC regulations on this matter.

³⁷ Council Directive 89/398/EEC; OJ N° L 186/89

³⁸ OJ N° C 74/92

3034 Up to the end of 1992, Member States had national quotas in place on imports of sports footwear from China. Once the Single Market came into existence at the beginning of 1993, national quotas were no longer permitted. Disparities among Member States import rules, which remain in operation, are no longer acceptable and need to be removed. A proposed regulation (COM(92) 455 final) was tabled in order to remove these disparities.

3035 This proposal has not yet been adopted by the Council. In the meantime, the old regulation which imposed national quotas is still being applied on a temporary basis. Member States, on an ad hoc basis, request permission from the Commission to import stipulated quantities of footwear from China, and the Commission usually approves requests.

3036 Sport equipment manufacturers have lobbied to exclude high-tech sports shoes from this Regulation, on the basis that their import would have no adverse effects on the EC's shoe industry (as the EC's market share of this type of shoe is minimal). "High-tech sporting shoes" are defined as those with a cost (cif) of more than 15 ECU for use in sporting activities.

3037 The World Federation of Sporting Goods Industry (WFSGI) claims that a Community-wide quota on footwear from China will increase the price of sports footwear within the EC and encourage footwear manufacturers in the EC to transfer their activities to non-EC countries where costs will be lower. Beside the loss of economic activity incurred by the EC, this relocation would also cause significant prejudice to equipment manufacturers as approximately nine months lead time is necessary for a product to get from the drawing board to the market.

IV Competition policy

The principles

4001 EC competition policy covers conditions of competition in trade between commercial enterprises on the territory of the EC.

4002 The main rules of EC law on competition policy which have an impact on sport are the following Articles of the Treaty of Rome:

- Articles 85 and 86 on "agreements" or concerted practices between "undertakings" and abuse of a dominant position respectively;
- Article 91 on dumping;
- Article 92 on the degree of state aid permitted.

Concerted practices and abuse of dominant market position

4003 Articles 85 and 86 of the Treaty aim to promote true freedom of choice for consumers, and to avoid barriers to trade within the internal market. Article 85 prohibits "all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States, and which prevent, restrict or distort competition within the Common Market". Only in clearly defined situations (as discussed below) are agreements still allowed.

4004 Article 86 bans the abuse of a dominant market position which affects trade between Member States.

4005 In applying Articles 85 and 86 to sport the EC will have regard to the circumstances of each individual case. These Articles apply only to cases involving what the Treaty calls "undertakings" and when trade between Member States is affected.

4006 "Undertakings" refers to commercial organisations in the widest sense of the term. "Undertakings" are considered to be any entity carrying out "economic or commercial activities such as production, distribution or the supply of services". Existing case law establishes that any person participating in the economic process will qualify as an undertaking. Even individuals have been held to constitute undertakings. Sports federations and associations and sports clubs are considered to be undertakings under the Treaty, because they exercise what the Commission sees as an "economic or commercial" activity.

4007 An economic or commercial activity does not necessarily involve making profits. It is the nature of the activities practised, rather than the generation of profit or legal status, which determines the economic or commercial character. In the Macrotron case³⁹, the European Court of Justice ruled that the non-profit nature of an entity has no impact on the applicability of EC competition policy. The Commission's Decision on film purchases by German television stations⁴⁰ also stipulates that competition policy covers economic activities "regardless of whether or not intended to earn profits".

4008 Furthermore the distinction between professional and amateur status also does not affect per se whether EC competition rules apply.

4009 Football can therefore be considered as an economic activity, in so far as professional football clubs organise matches with other clubs and entry to matches is on a paying basis. In this sense, football clubs which "produce" matches can be considered "undertakings" under Article 85 of the Treaty. To participate in competitions at a national level and to participate in other sports-related activities at the national level, clubs and their members are often affiliated to the national sports federations. National football federations and clubs are therefore associations of undertakings to which competition policy clearly applies. In return for their services to clubs, the national federations often levy a percentage of the receipts from matches organised by clubs. The federation is responsible for negotiating exclusivity of broadcasting contracts for the matches it organises (national cup, national team,...) For league football and European club competitions, television contracts are negotiated by clubs or leagues. From a competition policy point of view, it is important that clubs are free to negotiate individually and independently from their national federation.

4010 Manufacturers and distributors of sports equipment are clearly also considered to be "undertakings".

4011 The second pre-condition required in order that EC competition law may apply, is that trade between Member States is affected or could potentially be affected. If trade between Member States is not affected, national law will apply. Again, trade is interpreted by the Commission in the general sense of the term. The activities of an "undertaking" are generally considered to fall under the definition of trade. In the world of sport, agreements between national sports federations clearly affect trade

³⁹ Klaus Höfner and Fritz Elser v. Macrotron GmbH (case C-41/90, judgment of 23.04.91, OJ N° C 132); 23.05.91

⁴⁰ Commission Decision of 15 September 1989 in Case IV/31.734 - Film purchases by German television stations, OJ N° L 284/89

between Member States. Agreements on the trans-frontier exchange of televised sports programmes is but one well-publicised example.

4012 The two above-mentioned pre-conditions are common to both Treaty Articles (85 and 86). Besides these two requirements, there are a series of other pre-conditions specific to one or other of Articles 85 and 86.

4013 Article 85 applies to "agreements", "decisions" or "concerted practices". Moreover, these arrangements must "prevent, restrict or distort" competition within the EC. For example, the manifest agreements between broadcasters, described below, and between federations, such as those taken by EBU members also described below are judged by the Commission to be decisions of associations of undertakings.

4014 Complaints can be addressed to the Commission under Article 86 if the subject of the complaint has a dominant position in the market and there is abuse of the dominant position. In the market for organising and "supplying" events, the fact that only one federation often covers a sport in a Member State gives that federation, under certain circumstances, a dominant position in that market. It must be immediately said that the existence per se of a dominant position is not in conflict with the provisions of Article 86. Only when a dominant position is abused, can the EC be called upon to intervene to ensure that competition takes place. An example of abuse of dominant position would be for one supplier of a service to exclude other potential suppliers from entering a market. The Commission is currently examining a number of cases related to "abuse of dominant position" in the world of sport, as set out below.

4015 The Commission has on various occasions been called upon by sports organisations and companies to ensure that competition takes place in the sports world in a non-restricted manner. Competition issues have been raised regarding the following questions:

- Exclusive broadcasting rights:
 - a) the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters;
 - b) the degree to which sports federations should be allowed to control the broadcasting of sports events on their home territory, under Article 14 of UEFA.
- The label of "Official": should sports equipment manufacturers be allowed to endorse specific brands of equipment with the logo "official"?

- **The use of sports equipment:** should sports federations and organisations be allowed to insist on the use of certain brands of sports equipment?
- **Purchasing of sports equipment:** to what degree should sports federations and organisations be allowed to recommend the purchase of sports equipment exclusively from certain distributors?
- **Competition between federations:** to what extent should different federations be free to organise competitions for the same sport?
- **Ticket sales: exclusive agents.**
- **Transfer of players.**
- **Restrictive trading practices of sports equipment manufacturers and distributors.**

Exclusive broadcasting rights

4016 There are two main sports-related broadcasting issues which have been examined by Directorate-General IV (Competition) of the Commission:

- the acquisition of exclusive broadcasting rights for sports programmes by a broadcaster or group of broadcasters; and
- the degree to which sports federations and associations should be allowed to control the broadcasting of foreign sports events on their home territory.

4017 These two issues are discussed below and are also examined in a parallel study on exclusive broadcasting rights carried out for Directorate-General X of the Commission.

The acquisition of exclusive broadcasting rights

4018 Television rights to sports events are normally granted for a given territory, usually per country, on an exclusive basis. Exclusivity is, as a general rule, considered to be necessary in order to guarantee the value of a given sports programme, in terms of viewing figures and advertising revenues which it can achieve. Television rights are normally owned by the organiser of a sports events, who is able to control the access to the premises where the event is staged. In order to control the televising of an event and to guarantee exclusivity, the organiser admits only one "host broadcaster" to produce the television signal. As part of this contract, the host broadcaster will, at least, secure certain broadcast rights in its own territory. Further rights to exploit the television coverage will either:

- remain with the host broadcaster as creator and thereby owner of the television material; or
- be controlled by the rights owner of the event. This will either be in the form of a licence to exploit the material or as an assignment of all rights, save for a licence of certain or all rights in its own territory, by the host broadcaster.

The importance of exclusive broadcasting rights

4019 The main broadcasting issue involving the EC is the acquisition of exclusive broadcasting rights. The importance of exclusive broadcasting rights can be explained quickly. In the highly competitive broadcasting industry, broadcasters, be they national or private, in order to survive, must strive to differentiate themselves from other broadcasters. To do so, they endeavour to offer programmes not available on other channels in order to attract a maximum number of viewers. The more viewers, the more potential consumers see advertisements. The more people see publicity, the more the advertisers and sponsors are willing to pay to have their advertisements shown, and the more revenue generated for the broadcaster. In return, the broadcaster will be willing to pay more to secure the exclusive rights. Exclusivity is therefore a central power force in driving the sports/television relationship.

4020 Major sports events are among the programmes which attract the most viewers. As the salaries of sports professionals and the costs of sports infrastructure have increased, revenue from advertising has become by far the most important source of income for most televised sports organisations. In recent years, the amounts television companies have paid for exclusive broadcasting rights have risen significantly. The 1992 summer Olympics generated a total of approximately 562 million ECU from television rights contracts.

4021 The issue of exclusive broadcasting rights must be seen in the context of the ongoing struggle between public and private broadcasters. In the past, public television companies dominated the market. Increasingly, private broadcasters are competing with national public mission broadcasters and, in addition, international sports rights agencies have entered into the market. These agencies enable sports organisers to maximise revenue by selling the rights country by country, without getting themselves involved in various negotiations with individual broadcasters. This has facilitated rights acquisitions by commercial channels who are not members of the European Broadcasting Union (EBU) (see below for details on the EBU).

The danger that large broadcasters may dominate small broadcasters

4022 In this highly competitive broadcasting market, exclusive broadcasting rights are a necessary part of the normal functioning of that market. While the EC accepts the concept of exclusivity, the duration and scope of exclusive rights can be anti-competitive: In the Commission's view, the duration of exclusivity has to be defined differently with respect to different types of programmes. With regard to sports events, the Commission feels that exclusivity should be limited to one-off contracts covering one event or one sports season.

4023 The EC can intervene when it is called upon by market players to ensure that all potential acquirers of exclusive rights have equal access to programmes. The Commission's role is therefore one of ensuring competition in the market of exclusive broadcasting rights. The Treaty of Rome has mandated the Commission to ensure that differences in the buying power of broadcasters or groups of broadcasters do not prevent fair competition. There is a real danger that large groups of broadcasters will dominate the market, to such an extent that smaller broadcasters are effectively prevented from competing. National public mission broadcasters from smaller Member States often fall into the category of smaller broadcasters.

4024 The ability of large buying groups to appropriate to themselves the exclusive rights of an increasing number of events is particularly important in a context in which sports organisations are starting to demand more money for exclusive rights. Possible solutions range from the reservation of television rights for large sports events for the national broadcaster, as is the case in Norway, to total liberalisation of the market.

The danger that minority sports will be neglected

4026 An associated danger is that minority sports will receive less television exposure. Sports which do not yet attract sufficient viewers to interest advertisers may lose out to sports attracting large audiences. On the other hand, minority sports may not necessarily suffer in the event of a liberal view on exclusivity. The fact that the exclusive rights may already belong to other broadcasters may force television companies with less resources to look into broadcasting less popular sports. An example of this is snooker, which has grown from a minority sport to a leading television sport in the UK.

4027 The Commission has been called upon to examine four cases which are of direct interest to the above-mentioned issues. These cases are as follows:

- **Film Purchases by German Television Stations⁴¹**
- **La Cinq versus EBU⁴²**
- **Screensport versus EBU Members⁴³**
- **EBU-Eurovision System⁴⁴**

4028 The first two cases are only indirectly related to sport but are important in that they provide certain legal precedents which are relevant for the EBU-Eurovision System. The latter two cases, the Screensport v. EBU Members and the EBU - Eurovision System cases, relate more directly to sport. Solutions were reached on both cases. The Screensport v. EBU Members opposed two specialised sports channels, while the EBU - Eurovision System case involved exclusivity in television coverage of sports events. Moreover, the latter case is not only relevant to sport, but also impacts other televised events.

The Screensport v. EBU Members: the facts of the case

4029 The Screensport v. EBU members case investigated the potential distortion of competition which resulted from the fact that Eurosport participated in the collective purchasing system from which Screensport was excluded.

4030 Screensport and Eurosport were, until February 1993, major competitors in the market of specialised sports channels. Until this date, Eurosport was owned by certain members of the European Broadcasting Union, details of which are given below. TESN (the European Sports Network) is owned by ESPN, a major US sports channel, Canal + and Générale des Eaux of France. Screensport was the UK link in the TESN network of sports channels.

4031 The European Broadcasting Union (EBU) is currently one of the most important players in the world of broadcasting within the EC. It is an association of radio and television organisations set in 1950 with headquarters in Geneva. It has no commercial aim. Active membership is open to public mission broadcasters that is, companies which are subject to a number of obligations by national law and practice

⁴¹ Film purchases made by German Television Stations, Commission Decision of 15 September, 1989, OJ N° L 284/89.

⁴² La Cinq v. EBU, Commission Decision of 14 August, 1990.

⁴³ Screensport v. EBU Members, Commission Decision of 19 February 1991, OJ N° L 63/91

⁴⁴ EBU-Eurovision System, case IV/32. 150, Commission Decision of 11 June 1993, OJ N° L 179/93

concerning their programmes and their audience coverage. Purely commercial broadcasters are not admitted as members.

4032 The EBU operates a collective purchasing and transmission system. By acting on behalf of a series of television companies, it allows many public mission television companies access to programmes to which they would not otherwise have had access, being financially unable to purchase the rights. The EBU is the operator of the "Eurovision" Network.

4033 An important role of the EBU is to protect smaller broadcasters by enabling them to have access to certain highly attractive programmes, which otherwise would have been too expensive.

4034 Screensport claimed that the benefits of the EBU's collective purchasing system had been expanded to Eurosport thereby allowing Eurosport better access to European sports events than Screensport. In this context, Screensport formally complained to the Commission that it was not receiving fair access to sports coverage.

The Commission position

4035 As indicated above, the Commission believes that broadcasters, public or private, are considered as undertakings and therefore Articles 85 and 86 may apply. It also saw clear evidence of a restriction of competition resulting from the collective purchasing system. The Commission felt that trade between Member States was affected in that Eurosport was in competition with Screensport for the same types of sports programme, intended for international broadcasts.

4036 This dispute was solved in January 1993 when, rather than continuing as competing sports channels, the shareholder of TESN agreed to acquire a holding in Eurosport, and Eurosport to purchase a share of TESN. TESN agreed to cease sports broadcasting in Europe on its own behalf, and both parties undertook not to compete with the activities of their newly created joint ventures. TESN and Eurosport decided to cooperate in order to provide a single service that would ensure the survival of one pan-European sports channel since they believe that "the current structure of the market and development prospects are such that financial equilibrium cannot be achieved by two channels".

4037 The new version of Eurosport will have the following public-service obligations. In addition to major international and European sporting events, Eurosport will broadcast sports with a small following and of limited commercial appeal, sports involving minorities and programmes which highlight the cultural and educational aspects of sport.

EBU - Eurovision System: the facts of the case

4038 The Commission carried out an investigation to determine to what extent the EBU's system for the acquisition of exclusive broadcasting rights, including for sports programmes contravened EC competition policy and whether this system could be exempted within the meaning of Article 85 (3) and under which conditions, in order to limit the anti-competitive effects of the EBU's system.

4039 The EBU has a collective purchasing system for the acquisition of broadcasting rights, including for sports events. This system pools the resources of EBU members and increases their bargaining power to competitively acquire broadcasting rights and allows public mission broadcasters, particularly from smaller countries, access to quality programming which would otherwise prove too expensive to purchase. Once the rights have been acquired, only EBU members are entitled to broadcast the events during a designated period of exclusivity.

The Commission position

4040 The Commission does not believe that exclusive broadcasting rights are anti-competitive per se; the duration and scope of exclusivity can, however, be anti-competitive. In the case of the EBU, it is the collective purchasing of television rights which comes within the scope of Article 85 (1).

4041 In the EBU - Eurovision System case, the restriction of competition stemmed from the joint purchasing of rights (which, on the other hand, also provides a number of benefits). The Commission felt that the EBU was imposing very strict conditions on non-members for the purchase of EBU-acquired rights. The access to those rights for non-members on reasonable terms was required by the Commission in order to reduce the restriction of competition vis-à-vis non-members and to allow non-members also to benefit from the advantages of the Eurovision System.

4042 In reaching its Decision, the Commission took into consideration the EBU's agreements that if its powers to carry out collective purchasing of exclusive rights were removed, it would probably have to cease operating and there would be no organisation to facilitate purchasing for smaller market players. Moreover, minority sports would suffer.

4043 Following negotiations between the Commission and the EBU, the EBU introduced new provisions to improve access to sports events for non-member commercial stations. Better terms and conditions are now offered to non-members for the acquisition of broadcasting rights for deferred transmissions, extracts and news and also for live transmissions of events which the EBU members do not themselves broadcast live. In view of these changes, the Commission agreed, to exempt the EBU from the application of Article 85 (1). The exemption safeguards the fulfilment of the

EBU members' public mission while at the same time allows third-party channels appropriate access to sports programmes.

The control of broadcasting of foreign sports events by sports federations

4044 The issue of abuse by sports federations of their dominant position over the broadcasting of foreign events was drawn to the Commission's attention where it related to practices in the world of football.

4045 UEFA, the European Union of Football Associations, is Europe's highest football authority. It acts as the federation of national football federations, determining the rules applying to each of the member federations. Only one national football federation per country⁴⁵ is recognised by UEFA and the International Federation of Football Associations (FIFA). Under UEFA Statutes, football federations own the exclusive rights to authorise the broadcasting, transmission or reproduction of the matches they organise by broadcasters or associations of broadcasters. These rights are often sold for substantial sums of money. The rights to European Cup matches are held and sold by the organising clubs rather than UEFA. As mentioned above, the freedom of clubs to negotiate individually is important from a competition policy point of view.

4046 The televising of football is subject to a degree of control in all EC countries. For example, in England it is not possible to watch live Premier League football on a Saturday afternoon. This is because all other matches (professional, junior and amateur) are normally played at that time. Thus, according to UEFA, to allow the transmission would damage attendances.

4047 Article 14 of the UEFA Statutes provides the mechanism for regulating cross-border transmissions of football. However, the operation of the Article has been controversial and has led to complaints before the EC Commission. (see below)

4048 Following lengthy negotiations with the Commission, UEFA has now reached agreement on the structure of a new regime to regulate cross-border transmissions. The main features of the regime are the establishment of "free, protected and closed" time slots.

4049 During "free" slots television transmission of football could take place without any restrictions whatsoever. During "protected" time slots, it would be possible for a "receiving" association to object to an incoming transmission, but only under tightly controlled conditions (ie, when there would be a "direct clash" with domestic match

⁴⁵ With the exception of the UK, where four separate football associations are recognised for England, Scotland, Wales and Northern Ireland.

schedules). Finally, during "closed" time slots, there should, in principle, be no transmissions of football (though there would be exceptions for important international matches and Cup finals).

4050 The effect of the application of article 14 is that if a match on television (irrespective of whether it is live or deferred, whole, partial or repeated) would coincide with an important local match, the national football federation may withhold its authorisation from the broadcaster. If, for example, a European Cup match between Ajax Amsterdam and Bayern Munchen takes place in Munich, the Dutch television broadcasting the match in the Netherlands must be granted prior permission from the Dutch football federation to televise the match. The Dutch federation must assess whether the transmission of the match into the Netherlands would damage attendances at local games being played at the same time. In the past, television companies were sometimes obliged to compensate the federations for the privilege to broadcast. However, one of the reforms introduced by the new UEFA regime is a ban on any such type of financial compensation. Similarly, federations had been accused of delaying their decisions on broadcasts until the last moment. A further reform introduced by the new UEFA regime is to establish clear procedural steps for the authorisation process.

4051 The main reason behind this rule is that UEFA feels that football fans should be encouraged to go to live matches, and football players should participate at amateur or youth matches, rather than simply to watch them on television. In this way, local football and football in smaller nations stand a better chance of developing.

4052 As with the EBU-Eurovision system case, the issue of control over the broadcasting of sports events is important insofar as revenue generated from advertising and sponsorship and the sales of exclusive rights for sports events, is the main source of funding for the sports world.

4053 The Commission's examination of article 14 is also important in that it focuses attention on the degree to which protection should be given to national sports events and under what circumstances. Moreover, the Commission's policy on article 14 is not just applicable to football; it is relevant to all sports in which federations strive to generate a maximum of financial resources via broadcasting of sports events.

4054 The Commission's final decision on the matter is likely to impact not only European football, but also world football rules. FIFA is awaiting the outcome of the decision before drafting its equivalent to UEFA's article 14, in order to ensure full compatibility between UEFA and FIFA rules.

The facts of the cases

4055 Certain television broadcasters (TESN⁴⁶, BSkyB⁴⁷ and ITVA⁴⁸) have officially complained to the Commission about the old article 14 of UEFA's Statutes. Other television companies have complained unofficially.

4056 The complainants argue that control over television football transmissions is in no way justified and that article 14 of UEFA's Statutes should be abrogated.

4057 In a separate but related case, the Football Association (FA) of England, the governing body of football in England, had concluded agreements with the BBC (the national public mission broadcaster) and BSkyB (a company with new satellite channels including a dedicated sports channel). The agreement effectively shared exclusive broadcasting rights for the Football Association's matches, between the two broadcasters for a five year period. In addition, the BBC and BSkyB were granted exclusive permission under article 14 for the transmission of all foreign matches where article 14 permission was necessary. ITVA (the Independent Television Association) contested this exclusivity for foreign matches.

The Commission position

4058 The Commission agreed that the FA's agreements with the BBC and BSkyB granting exclusive permission to broadcast foreign matches was "not only contrary to Article 85 (concerted practices) of the Treaty, but also an abuse of a dominant position by the FA (Article 86)"⁴⁹. At the request of the Commission, this exclusivity was removed from the agreements. Pending the Commission's decision on article 14 of the UEFA statutes, the FA has undertaken to apply article 14 in a manner which does not discriminate between, on the one hand, BBC and BSkyB and, on the other hand, third party broadcasters such as ITV.

4059 The Commission agreed to examine the case of article 14 of UEFA under competition policy rules because it considers that the application pre-conditions are fulfilled. That is, there is a decision of an association of undertakings (various national

⁴⁶ Case N° IV/33.742

⁴⁷ Case N° IV 33.245

⁴⁸ Case N° IV 33.145

⁴⁹ Draft notice concerning a notification in cases N° IV/33.145 - ITVA/Football Authorities and N° IV/33.245 - BBC, BSB and Football Association, OJ C 94; 03.04.93.

and European football federations); the decision has the effect of preventing trade between Member States since the broadcasting of certain matches is prohibited; UEFA and football federations are considered to be "undertakings" within the meaning of EC competition policy; and, given that only one federation per country is recognised by the UEFA, in certain circumstances, they can be considered to have a dominant position in the "market" for football.

4060 The Commission usually considers "abuse" (of a dominant position) to mean "distorted use" and "lack of transparency". Regarding distortion, it has been claimed that the foreign matches are being banned even when their timing does not conflict with national matches. The precise time span, such as one or two hours before and/or after a game are still being negotiated between the Commission and UEFA.

4061 The Commission feels that UEFA's old article 14 was contrary to Article 85 (1). The revised article 14 may be exempted under Article 85 (3), if its anti-competitive effects are deemed to be limited to the extent necessary for the protection of live football in stadia. The Commission is anxious to bring the recourse to article 14 back to the reasonable limits of its original purpose.

4062 Discussions on the potential competition restricting effect of UEFA's revised rules are continuing, in order to ensure a greater transparency of the procedures involved while retaining the same philosophy. For example, the question of the timing of broadcasts will be clarified (such as the time period in which a clash might occur between a live and a broadcast match). It is also likely to ensure non-discrimination by the federations between national and foreign matches.

Product endorsement

4063 The Danish Tennis Federation (DTF) case currently being examined by the Commission is illustrative of three inter-related issues concerning sports equipment. These are :

- The use of the label "official".
- The obligatory use of "official" equipment in federation competitions.
- The obligatory purchase of equipment from specific distributors for use in federation competitions.

4064 At the time of writing, no official decision has been taken by the Commission on the DTF case. Discussions are ongoing between the Commission and the DTF to reach a compromise.

The use of the label "official"

4065 Many sports federations grant the label of "official" to certain sports equipment and manufacturers are willing to pay to have their equipment recognised as "official" because the fact that equipment is "official" leads to more sales. The money manufacturers are willing to pay is important in financing federations.

The facts of the case

4066 The Danish Tennis Federation (DTF) has made an agreement which designates three brands of tennis balls; Penn, Tretorn and Slazenger, as "official" tennis balls. In counterpart, the DTF has been financially rewarded. A Danish parallel importer has complained to the Commission about this practice, on the ground that the agreement does not comply with EC competition rules.

The Commission position

4067 The Commission's point of view is that the granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the product. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. The label "official" would also be acceptable if it was justified for technical reasons. However, for tennis balls, there is very little difference among first grade balls (as recognised by ITF technical tests).

4068 The Commission hopes that by focusing on the DTF case, other federations will be encouraged to change their practice before there is recourse to legal action by the Commission. In the UK, the label "official supplier" of tennis balls was disallowed for the same reasons. A solution was reached when the sponsors became "members of a tennis ball sponsoring group", a label which proved acceptable to the Commission.

The obligatory use of "official" equipment

4069 One of the basic missions of national sports federations is to organise competitions for their member clubs and affiliates. Not only do federations actively organise competitions, but many clubs organise competitions under the auspices and guidelines of the federation.

4070 One way of generating additional funding is for federations to promote the exclusive use of particular brands of sports equipment both for competitions they organise and for competitions organised under their auspices. Manufacturers are willing to pay for the privilege of this form of promotion.

The facts of the case

4071 The DTF had originally stipulated that only Penn, Tretorn and Slazenger tennis balls could be used in tournaments organised by and under the auspices of the DTF. A Danish parallel importer complained that this practice constituted an abuse of dominant position by the DTF.

4072 In the meantime, the DTF has proposed a reduction in the scope of application of its obligation to use officially sponsored balls.

The Commission position

4073 A distinction needs to be made between competitions organised by the DTF and competitions organised under the auspices of the DTF. The Commission does not contest the ability of the DTF, for the competitions it organises, to select specific tennis ball(s) as long as competition was not restricted in the original process of designating the exclusive equipment. Exclusive contracts should not be for an "abusively" long period of time. The duration of one season may be a good indication of an acceptable duration.

4074 The Commission does not accept exclusive contracts imposed by the federations for competitions that they do not organise, even if the events are under the auspices of the federation. Such a practice is considered to be an abuse of the DTF's dominant position in Danish tennis. The Commission claims that the DTF is, in effect, using its monopoly position to impose certain brands, without providing sufficient technical justification. Moreover, it is doing so for its own (financial) profit. The Commission does, however, agree with the obligation to use grade 1 balls, because this restriction is based on technical considerations.

4075 Moreover, competition should have been open when bids for the endorsement contract were called for at the outset. The Commission must interpret on a case by case basis whether the duration of the contract is too long, and whether the price is excessive (often linked with the duration). As already mentioned above, the duration of one season may be a good indication of an acceptable duration.

4076 Tretorn complained about the UK Lawn Tennis Federation's insistence on the use of pressurised balls in UK competitions. Tretorn happens to be the only large manufacturer which does not make pressurised balls (although it does make grade 1 balls) and therefore feels it is being arbitrarily discriminated against. The UK federation said it prefers pressurised balls because they respond faster. The Commission has told Tretorn that as long as the UK federation has technical reasons for its decision, there is nothing it can do. The only exception is if Tretorn can prove that the rule had been set up with a view to excluding Tretorn, a situation which would be extremely difficult to prove.

Exclusive purchasing agreements

4077 For commercial reasons, manufacturers sometimes sign exclusive distribution agreements with certain distributors. Some federations are reported to recommend their affiliates to purchase their equipment through exclusive distributors. This allows federations a supplementary source of revenue.

The facts of the case

4078 In competitions organised under the auspices of the Danish Tennis Federation (DTF), not only do tennis balls have to be of a specific brand but, that specific brand needs to be purchased through specific distributors. In the DTF's Official Magazine, a boxed text indicates that tennis balls should be purchased via specific distributors, the justification being that these companies help tennis, so tennis players should reciprocate.

4079 A complaint against the DTF was officially registered by the Commission. The Commission is currently taking action against the manufacturer, the distributor and the DTF.

The Commission position

4080 The Commission believes that the above arrangement does not comply with EC competition policy, in particular with Regulation 1983 of 1983⁵⁰. This Regulation permits exclusive distribution agreements as long as "parallel imports" are also allowed. Parallel imports permit imports of the same product from other Member States, (regardless of the exclusive distribution agreement with a distributor in the home Member State). Therefore, if a wholesaler discovers a cheaper source of the same product abroad, it must be free to import that product. Similarly, the seller in the foreign Member State must be free to practice "passive" exports, that is, without making active efforts to attract customers abroad. Exclusive distribution agreements do not, however, allow "active" exporting. "Active" denotes the organisation of publicity campaigns and the use of warehouses and sales representatives etc.

4081 The Commission views the parallel import rule as an absolute requirement in terms of competition policy. This is because it is the only guarantee that exclusive distribution agreements do not lead to significant price differentials between Member States, which would clearly run the risk of harming consumer interests. By recommending its affiliates to purchase at a specific distributor, the DTF effectively restricts competition.

⁵⁰ Regulation 1983, OJ N° L 73/83.

4082 Another recent example of the application of this principle is the Commission decision in March 1992 to impose a fine on Dunlop Slazenger International (DSI) and All Weather Sports, the sole distributor for Dunlop in the Benelux. DSI was accused of using various means to block exports of balls to other Community Member States in order to protect its sole distributors in those States.

4083 As indicated at the beginning of this section, no official decision has been taken by the Commission on the DTF case.

Competition between federations

4084 In principle, anyone is free to set up a sports federation. There is no legal barrier to prevent the creation of a separate or "competing" federation for a variant of a sport. For this reason, established federations sometimes require exclusivity from their affiliates by requiring the latter to agree to participate only in sports events organised by the federation to which they are affiliated.

4085 A problem may arise when a variant of the game feels its interests would be better promoted by a separate federation. This is particularly likely in sports where the success of one variant is likely to take away from the mainline variety of a sport. The more powerful established federation might be tempted to hamper the creation of an alternative federation. The weaker federation runs the risk of being squeezed out of the market by its larger competitor.

4086 This poses the related question of the extent to which more than one federation should be allowed to govern any sport or variation of a sport. Should federations be allowed to freely compete for the market, and to what extent should rules for competition apply? Should the most efficient and powerful entities be allowed to dominate? Should cases such as boxing, where there are a number of competing federations⁵¹, be promoted? The issue is the extent to which the authority of a federation covers a sport, including its variants.

4087 Total freedom to compete would allow powerful private entities, whether they take the form of federations or not, to organise on their own behalf parallel competitions, which could take players and spectators away from established competitions. Views differ as to whether this freedom would make a positive or negative contribution to sport.

4088 Underlying the entire issue of the authority of the federations are financial interests. Although reliable information is difficult to obtain on the amounts in question, revenues from exclusive television rights, advertising at matches and tickets

⁵¹ WBO, WBA, WBC, and IBF.

to matches are a significant source of income for sports organisations and for commercial entities involved.

The facts of the case

4089 In Belgium, the football federation is the Union Belge Royale des Sociétés de Football Association (URBSFA), more commonly known as the "Union Belge". Its role is to promote and organise all forms of football in Belgium.

4090 The organisation of indoor football (5-a-side) has been regionalised in Belgium. The Francophone Federation of Indoor Football (Ligue Francophone de Football en Salle or LFFS) and the Flemish Federation (VZVV) are now responsible for the organisation and promotion of indoor football for their respective territories. Both indoor football associations are represented at the national level by a national federation. The main reason for establishing the national indoor federation was that only one federation could be recognised by the international football authorities.

4091 In 1985, FIFA, the world football authority, decided to take a more active interest in indoor football and integrated indoor football into its network; only one national federation per country would be recognised by UEFA and FIFA.

4092 FIFA's decision to take control of indoor football may have been motivated by the suitability of indoor football to television. Indoor football is very spectacular, with significantly more goals scored per minute than 11-a-side football. It is also easier to film an indoor game given the reduced size of the pitch. The nature of the indoor game allows for more opportunities for advertising breaks and so more revenue can be generated. Moreover, indoor football physically requires less space and therefore entails less infrastructure costs, this at a time when the renovation requirements of stadia is increasing to improve safety. An additional attraction is that indoor football, given that it takes place on a smaller scale than ordinary football, is less prone to hooliganism and football violence.

4093 FIFA's decision to integrate indoor football was rejected by the indoor football authorities. They felt that their own Indoor Football Federation would be in a better position to promote this sport. FIFA reacted to this refusal to integrate by banning indoor football participants from international competitions run by FIFA (the majority of existing competitions); this was achieved by prohibiting double affiliation for players. In Belgium, therefore, players affiliated to the indoor federation were no longer able to play in matches organised by the Union Belge, the only Belgian affiliate of UEFA and FIFA.

4094 The Union Belge's policy had the effect of preventing amateurs and professionals from participating in both types of football during the one season. The impact is less serious for professionals who are not generally double affiliated.

Amateur players, however, often participate in both types of football during the course of the same season. The Union Belge allowed no indoor games during the weekend, except during holiday periods. Referees affiliated under the Union Belge were not allowed to referee indoor games. The intention of these measures was clear: to prevent indoor football from competing with 11-a-side football.

4095 The Belgian courts were consulted on the matter and ruled against the Union Belge, but only during the course of the ongoing season at the time of the judgement. During subsequent seasons, there were no legal impediments to prevent the Union Belge from continuing its discrimination against indoor football.

4096 It was for this reason that the Francophone Federation of Indoor Football subsequently complained to the Commission about the practices of the Union Belge.

The Commission position

4097 The Commission considers that Articles 85 and 86 of the Treaty can be applied to the practices of the Union Belge in relation to the indoor federation.

4098 Federations are considered to carry out economic activities, and therefore qualify as "undertakings" to which competition policy applies. Agreements also existed between the Union Belge and certain indoor football authorities. Trade between Member States is affected as many competitions go beyond national borders.

4099 The Commission feels that the Union Belge prevented free competition in the market for Belgian football. Insofar as the Union Belge has a dominant position in this market, being the only federation recognised by UEFA, the Union Belge is abusing its dominant position.

4100 The Commission is in the process of examining the case, and has communicated to the Union Belge the reasons why it believes the Union Belge's practices infringe EC competition policy. No formal decision has been reached in the case.

4101 Other cases of conflicts between sports authorities have been called to the attention of the national courts in various EC Member States, such as the dispute between the Italian sailing and yachting federations. National courts are deemed to be competent to handle these matters, and sometimes rule against sports authorities for abusing a dominant position as they did in the Italian sailing case.

Ticket sales by exclusive agencies

4102 Distribution of tickets for some major sporting events is based on the principle of exclusive distribution in each Member State. The organising committee of the event enters into agreements with an exclusive ticket distributor in each Member State. For

the privilege of exclusivity, agencies are willing to pay considerable amounts of money.

4103 Strict separation of Member States' national markets has thus taken place. Consumers and travel agencies in foreign Member States are sometimes prevented from buying tickets and travel agencies selling tickets in one Member State have undertaken not to sell them in another.

4104 The main reason behind this system of national quotas has been to ensure fairness in the distribution of tickets so that countries of different sizes and financial means, receive their fair share of tickets. The principle of quotas, however, fails to take into account the Community dimension.

The facts of the cases

4105 In 1991, a German tourist agency complained to the Commission that it could not obtain tickets to the Barcelona Olympic Games for its clients. In Germany, only the Deutsche Reisebüro had the right to sell tickets to the Olympics. A similar situation existed in all other Member States both for the Barcelona and Albertville Olympic Games.

4106 Moreover, the German agency which was granted exclusivity commonly made purchase of tickets conditional on the purchase of accommodation and travel services from the same organisation.

4107 The Commission was also called upon to examine the ticket distribution system for the football World cup in Italy in 1990.

The Commission position

4108 The Commission's view was that the agreements between the Organising Committee of the Olympics and the exclusive distributors infringed Articles 85 and 86 of the Treaty on two main points.

4109 First, the practice of strict territorial exclusivity, by which only residents could purchase tickets from the distributing agency, was considered unacceptable under Article 85 by the Commission on the basis of European Court of Justice case-law.⁵²

4110 Second, under Article 86 of the Treaty, the exclusive agency clearly had an indisputable dominant market position. This dominant market position was abused in so far as the exclusive agent obliged purchasers of tickets to concurrently purchase other services (accommodation and travel) which were dissociable from the ticket.

⁵² ECJ case Consten - 13 July 1966, Tipp - Ex - 8 February 1990

4111 Under no circumstances could these two practices be exempted from EC competition rules. The Commission's position on excluding EC nationals purely on nationality grounds is that this practice is totally unacceptable and contravenes the basic principles of the Treaty of Rome. The same is true when consumers are forced to purchase other services alongside their ticket to a sports event. Although the Commission felt that these practices contravened EC rules on free circulation of services, it approached the problem from the angle of competition policy.

4112 On the issue of having one ticket agency per Member State, the Commission's position is more flexible. When exclusive agencies are designated on a competitive basis, that is, that there has been fair competition between competing agencies, when awarding the contract, the Commission will accept the agreement. Precise details of what is meant by fair competition are contained in Commission Regulation 1983/83⁵³.

4113 Regarding the distribution system for tickets at the 1990 World Cup for football, the Commission ruled that the Italian Football Federation's exclusive agreement with one tour operator for the organisation and sale of package tours to the World Cup, was not compatible with EC competition rules. The safety arguments put forward in support of the arrangements were not justified, as a number of tour operators other than the one selected could have complied fully with the organiser's requirements in this respect.

4114 Given that this was the Commission's first decision on ticket sales for a sporting event, no fines were imposed. Similar infractions in the future are likely to be subject to a fine.

4115 Following the position taken by the Commission, the Organising Committees of the Olympics in Barcelona and in Albertville and the ticket distributors have altered their contractual arrangements so that the nationals of a Member State can now also buy tickets directly from the Organising Committees or from distributing travel agencies based in other Member States.

Transfer of players

4116 As part of a "gentlemen's agreement", UEFA has accepted the principle that "any professional footballer should be free to play for another club at the end of his contract with his former club, irrespective of the usual negotiations between the buying and the selling club concerning compensation, in particular for real and demonstrable costs incurred in training young players". Compensation for the development and training costs of young players is the main justification given by clubs for transfer fees.

⁵³ Commission Regulation 1983/83, OJ N° L 173/83.

4117 The need to agree such a principle had been raised by cases such as that of footballer Jean-Marc Bosman. In summary, Bosman, having reached the end of his contractual period with the Royal Football Club of Liège and having accepted a position with the French club of Dunkerque, was prevented from moving to France because of difficulties between the two clubs in arranging for the payment of the agreed transfer fee. These difficulties resulted in the French football federation not receiving the required transfer authorisation from the Belgian football union. Because of the delay, Dunkerque rescinded the contract with Bosman.

4118 Bosman took his case to the national tribunal requesting that he should receive compensation for loss of earnings and that the case be referred to the ECJ. In finding for Bosman on all counts, the Liège Court of Appeal, on 28 May 1991, recognised his right to transfer.

The Commission position

4119 The Commission has now received various complaints alleging that the system for transfer of football players now breaches the EC's competition policy rules laid down in Article 85 and 86 of the Treaty of Rome. On 20 November 1990, Jean-Marc Bosman addressed a complaint to the Commission which questioned the compatibility of the payment of transfer fees with Article 85. In response to this complaint, the Commission recently opened procedures, as it is entitled to under Article 11 of the Treaty, by asking the Belgian Football Authorities for information regarding the case of Jean Marc Bosman.

4120 The Commission would approve of a standard contract for footballers to be endorsed by all federations, associations and clubs, as this would help to regulate the transfer fee issue. The contract would set out the general principles governing certain aspects of the contractual links between clubs and professional players. The Commission's feeling is that such a standard contract would be beneficial to players and clubs alike, but it is a matter for clubs and associations to work out in conjunction with UEFA.

The Parliament position

4121 In an annex to the Janssen van Raay report⁵⁴, the European Parliament said that it considered that transfer fees obstructed workers in freely selecting their employer and that this was a "modern form of slavery". It also pointed out that individual players refrained from bringing proceedings because the power of the

⁵⁴ Annex drawn up on behalf of the Committee on Legal Affairs and Citizen's Rights; 23.3.89.

employers' monopoly was such that an action could herald the end of their professional careers.

4122 Mr van Raay has since drawn up another draft opinion on the European Community and Sport⁵⁵ which reiterates this stance.

Restrictive trading practices

4123 The application of EC competition policy to commercial companies manufacturing and distributing sports equipment is a general application of EC competition policy, and is not specific to the sports world. The aim is to prevent restrictive trading practices and to promote fair trade.

The facts of cases

4124 Each year, a number of restrictive practices are brought to the attention of the Commission by commercial entities complaining about market conditions. These cases have included windsurfing equipment, sailing boats, tennis shoes and tennis balls.

4125 The circumstances surrounding the cases vary enormously, and include such matters as price-sharing and market-sharing agreements, and the application of dissimilar conditions to equivalent transactions. The parties involved in the cases mentioned above are invariably manufacturers and distributors of sports equipment.

The Commission position

4126 Article 85 precludes concerted practices in trade between Member States. It prohibits price-sharing agreements and the limitation and control of production or markets. It forbids the sharing of markets and sources of supply, and the application of dissimilar conditions to equivalent transactions. It also forbids contracts which force acceptance of products with no connection to the subject of the contract. Trade between Member States must be affected for Article 85 to be applied.

4127 In order that the application of competition policy does not discourage desirable cooperation between enterprises, certain exceptions are allowed if they "promote production or distribution of goods or promote technical or economic progress, while allowing consumers a fair share of the resulting profit". All restrictive practices must be notified to the Commission, which pronounces on whether competition is breached. The Commission has also put in place "block exemptions" including for the areas of patent licensing agreements, classes of exclusive distribution and purchase agreements and patent licensing, which otherwise would be precluded

⁵⁵ Doc PE 204.507 of 31 March 1993

under Article 85⁵⁶. Notification is not necessary if a block exemption covers the trade practice.

4128 Article 86 forbids abuse of a dominant position. The existence of a dominant position must be examined on a case by case basis.

Subsidies to sport

4129 Sports bodies in many countries receive assistance and subsidies of various kinds from national, regional or local authorities. Examples of financial assistance to football clubs include the Spanish government writing off the debt of all first division clubs in 1990, and the state aid to French football clubs. Sports activities in many Member States are financially assisted by lottery, toto and other forms of sports betting activities. Another form of assistance is the sponsorship of teams by large private companies, such as the sponsorship of Juventus by the Agnelli Group in Turin.

4130 Financial assistance from the state gives football clubs an advantage in two main respects. It enables them to acquire players in the expensive trans-frontier transfer market, and to participate in European cups. On the issue of the the player transfer market, the richer the club, whether financed by subsidies or not, the more expensive and usually more competent players it can purchase. The aid to clubs need not even be direct. For example, if the State partially covers a club's bill on the renovation of its stadium (often legally required for security reasons), this enables a club to devote more resources to acquire new players.

4131 In European cups, the richer clubs who have bought the best players have an advantage over poorer clubs in the same competition. This advantage will have a cumulative effect in terms of financial benefits from ticket sales, advertising and sponsorship and sales of television rights.

4132 It can also be argued that "poorer" clubs from "poorer" Member States tend to lose some of their best players to rich foreign clubs. In the long-term this could hasten a lack of interest in the sport in the disadvantaged countries. It should be recognised, however, that the clubs which sell some of their best players are duly compensated for their loss.

The Commission position

4133 Article 92 of the Treaty of Rome prohibits aid granted by Member States which distorts competition in trade between Member States by favouring certain types of organisations or products, unless they are justifiable for special social or other reasons.

⁵⁶ For details see Regulation 19/65/EEC of 2 March 1965, OJ N° L 36/65

Types of aid permitted by the Treaty include funding for projects which are of public interest.

4134 Sports clubs, in particular large football clubs, are part of a country's socio-cultural heritage, in the widest sense of the term. As well as being economic activities, sports clubs carry out other functions which include the use of their facilities for other leisure activities and cultural events; they contribute to the enhancement of a region by providing facilities valuable for the local community. Moreover, clubs often contribute to the strengthening of local prestige and civil pride.

4135 Due to the fact that sports clubs contribute to the quality of local life and prestige, subsidies granted to them can be justified. This added benefit means that subsidies to football clubs are likely to exempt from the restrictions on state aids as imposed in the Treaty of Rome, since they cannot be fully compared to state aids granted to commercial enterprises.

4136 The Commission also feels that subsidies currently granted to sports clubs do not significantly distort competition in EC-wide events or on the transfer markets and do not prejudice those clubs not benefiting from aid. Moreover, it would be particularly difficult to measure distortion in terms of its effects.

4137 Regarding funding from betting and gaming activities, the Commission will not intervene in different local systems of support for non-commercial sporting or other cultural or charitable interests.

Dumping

4138 The Commission has competence to regulate dumping, that is the practice of an exporter selling a product at below the price at which it is sold on its home market. Dumping is prohibited by EC commercial policy. Article 91 of the Treaty of Rome empowers the Commission to authorise Member States injured by dumping to take protective measures, such as restricting imports or imposing anti-dumping duties.

4139 Dumping is relevant to sport when EC manufacturers of sports equipment, such as sports shoes or tennis rackets, are the victims of dumping practices from foreign competitors outside the EC. Should this be the case, official complaints can be made to Directorate-General I of the Commission, which will determine whether a case of dumping exists and, if so, what can be done to protect and/or compensate prejudiced EC firms.

V Animals in Sport

5001 The EC has enacted legislation on horses, dogs and pigeons. The majority of this legislation concerns horses.

5002 The legal foundation for EC regulations on animals is Article 43 of the Treaty of Rome, which entitles the Commission to propose legislative measures on agricultural matters.

Horses

5003 The Council adopted three guiding or "framework" Directives on horses ("equidae") in 1990. They cover:

- Animal health conditions governing movement and import from third countries of horses (Directive 90/426/EEC⁵⁷)
- Zoological and genealogical conditions governing intra-Community trade of horses (Directive 90/427/EEC⁵⁸)
- Trade in horses intended for competitions and conditions for participation in competitions (Directive 90/428/EEC⁵⁹)

5004 For each of these framework Directives, there are a number of specific applicatory decisions.

Animal health conditions

5005 This Directive lays down minimum health requirements for the free circulation of horses within the EC and for their import into the EC.

5006 The high value of thoroughbreds has led the EC to be strict in the matter of imports of horses to the EC and circulation within the EC. An infected horse could spread its disease, and decimate horse populations.

⁵⁷ OJ N° L 224/90

⁵⁸ Ibid

⁵⁹ Ibid

5007 The prevention of a spread of an outbreak of African horse sickness in 1990, in Southern Spain and Portugal, was a widely publicised example of the Commission's involvement in regulating free movement of horses. The outbreak threatened to prevent equestrian events from taking place in Spain during the Barcelona Olympics.

5008 Under previous rules, once a disease was declared in an area of a country, the entire country was quarantined. The 1990 outbreak in Southern Spain therefore threatened the Barcelona area in this region, despite the fact that there was no evidence of the disease in this region. The Commission, in cooperation with the national and regional authorities, established the principle of "regionalisation". In the case of African horse sickness, this was established by Commission Decision 90/552/EEC⁶⁰ as last amended by Decision 92/531/EEC⁶¹. The new rules mean that only the area surrounding the region of the outbreaks has to be quarantined. The current restrictions apply only to Andalusia and should, in principle, be lifted at the end of 1993.

5009 In order for a horse to circulate freely within the territory of the EC, the Commission has laid down minimum conditions in terms of animal health; there must be no clinical signs of disease at inspection.

5010 As for imports of horses into the EC, the Animal Health Directive imposes a series of rules for imports from third countries including the requirement that horses are: from a country on the Commission's list of acceptable countries; are accompanied with a certificate from the veterinary authorities of the third country; and are certified to be free of diseases. Entry into the EC is considered to be the first point of debarkation at an airport or port where the necessary infrastructure is in place.

5011 As regards third countries, the list of countries free from dangerous diseases is constantly updated by the Commission after visits from the Commission's veterinarians. In order to prevent the disease from entering the EC, only horses from countries on the list can be imported.

5012 An implementing Commission Decision (92/260/EEC⁶²) provides for less severe health requirements and veterinary certification for registered horses staying only a short period of time in the EC. These rules apply to horses admitted into the EC for up to three months.

⁶⁰ OJ N° L 313/90

⁶¹ OJ N° L 334/92

⁶² OJ N° L 130/92

5013 In order to facilitate the import of competition horses, Commission Decision 93/321/EEC⁶³ provides for less frequent identity and physical checks on the temporary admission of horses, to compete in the EC, from Sweden, Finland, Norway and Switzerland .

5014 Another Commission Decision establishes health certificates for the import of breeding horses (93/197/EEC⁶⁴). Sanitary rules have also been laid down for competition horses which enter the Community after having been temporarily exported to a third country for competitive purposes and cultural events (93/195/EEC⁶⁵).

Zoological and genealogical conditions

5015 It is customary for horses to be registered in the studbook of its breed/race. Competitions are reserved for specific breeds as registered in studbooks. Each horse therefore has its own passport from the Association. Decisions by the Association are approved by a national Ministry (usually the Ministry of Agriculture).

5016 The Directive applies only to registered horses and requires the mutual recognition of studbooks and the mutual recognition of the Associations. Commission Decision 92/353/EEC⁶⁶ lays down the minimum criteria for approval or recognition of organisations managing studbooks for registered horses. A subsequent Commission Decision lays down minimum rules to ensure coordination between organisations managing studbooks.

5017 The Directive also sets minimum registration information requirements for the identification document, with a view to establishing a European passport for horses.

Trade in competition horses and participation in competitions

5018 Directive 90/428/EEC governs the trade of competition horses and the conditions for participation in competitions. It concerns all competitions, including show-jumping, dressage, flat, steeple and trotting and relates to both registered and non-registered horses (with different provisions).

⁶³ OJ N° L 123/93

⁶⁴ OJ N° L 86/93

⁶⁵ Ibid

⁶⁶ OJ N° L 192/92

5019 The most important stipulation (Article 3) is that the rules of competitions may not discriminate on the basis of nationality (registration in another Member State). This rule of non-discrimination applies to entrance to competitions, judging and prize money (or profits) which accrue from the competition.

5020 Exceptions to the rule of non-discrimination will be allowed, when notified to the Commission, for the following reasons: competition reserved for horses registered in a specific studbook (reserved for the best horses), for the improvement of a breed (the best horses receive the prize money), for regional competitions (to select a regional champion), and for historic or traditional events (such as the Palio of Sienna). These exceptions only account for a minority of competitions.

5021 The other exception to the rule is that Member States are allowed to reserve a certain percentage of prize money or profits for the safeguard, development and improvement of breeding. This percentage should not currently (1993) exceed 20%. The decision to reserve a percentage of the prize money and the reasons for doing so, must be communicated to the Commission. A subsequent Commission Decision (92/216/EEC⁶⁷) obliges each Member State to appoint a coordinating authority to collect data on the criteria for reserving funds for breeding.

5022 The Commission is in the process of drafting harmonised rules for registration in studbooks and a European passport for horses.

Dogs

5023 A distinction is drawn between pedigrees traded commercially and companion dogs, or pets.

5024 The UK and Ireland, given their geographic isolation, have up to now, restricted free movement of dogs into their countries. As of July 1994, dogs traded commercially will circulate without quarantine at destination, if certain tests have been fulfilled and vaccinations carried out. (Directive 92/65/EEC⁶⁸).

⁶⁷ OJ N° L 104/92

⁶⁸ OJ N° L 268/92

Pigeons

5025 The Commission has laid down minimum conditions in Directive 92/66/EEC⁶⁹ for the exchange of racing pigeons, on the basis of legislation existing at the national level. The objective is to prevent the spread of Newcastle disease and mainly concerns France, Belgium, the Netherlands and Germany.

⁶⁹ OJ N° L 260/92

VI EC sources of funding for sport

6001 The EC funds a series of initiatives which could be of interest to sports organisations, some of the main categories are described briefly below⁷⁰.

Projects financed under the Structural Funds

6002 The EC contributes to the economic development of the EC's less developed regions through financial transfers from the Structural Funds. The three Structural Funds, (the European Regional Development Fund, the European Social Fund, and the Agricultural Fund) provide grants, in cooperation with Member States, to projects which meet their objectives of regional and rural development and creation of employment. Most Structural Funds money is targeted at the EC's poorest regions, that is Greece, Portugal, the Republic of Ireland, Southern Italy (Mezzogiorno), parts of the UK, and parts of Spain and France (Corsica and overseas territories). Money from the Structural Funds is accessible through national, regional and local development authorities, as well as bodies responsible for training. The principle is for the EC to supplement national funding in order to promote economic and social projects which otherwise would have not taken place.

6003 Although sports infrastructure has not been targeted as a recipient of money from the Structural Funds, it can sometimes benefit, either directly or indirectly, from EC funding.

6004 The decision to allocate grants under the Structural Funds to specific projects lies however, with the Member State rather than the Commission of the EC. Given this, development priorities and policies and project eligibility vary from region to region.

6005 Examples of direct intervention from the Structural Funds, in particular from the Regional Fund, include:

- ski lifts in Abruzzi and Campania;
- sport centres in a variety of Mezzogiorno regions;
- tennis courts and annexes in Campania;
- indoor swimming pool in Campania;
- pluridisciplinary centre for tourism, sport and leisure in Puglia;
- equestrian sports facilities in Puglia;
- nature park with sports areas in Calabria;

⁷⁰ For more details, see the British Sports Council's publication "Focus on Brussels"

- improvement of port facilities (including improvement of facilities for sailing boats used for sporting purposes).

6006 Sports authorities of all levels should explore the possibilities of eligibility for funding with the appropriate national, regional or local authorities in their respective countries.

6007 More indirectly, the Structural Funds provide money for projects which improve access to certain less favoured areas. Sports facilities in these areas will benefit from this form of EC funding. For example, the Structural Funds contributed to the improvements made to the road transport facilities around Barcelona in preparation for the 1992 Summer Olympics.

6008 The Funds also promote the development of tourism, particularly in rural and less developed areas. Urban areas in need of regeneration are another habitual receiver of EC regional aid. To the extent that sports facilities are part of a global project, they may receive funding.

6009 The EC also contributes to national spending on training and education via the European Social Fund. If training grants are available from local, regional or national authorities, the EC is likely to have part-funded them.

Education and training programmes

6010 The ERASMUS programme to encourage cooperation between the EC and EFTA's higher education institutions currently funds a number of Inter-University Cooperation Programmes (ICPs) for courses on sports education.

6011 The PETRA programme (for the vocational training of young people and their preparation for adult and working life), run by the Task Force for Human Resources, Education, Training and Youth, has supported some sports-related projects. These projects have been undertaken within the Youth Initiatives Projects section of the programme and have included for example :

- a project geared towards disadvantaged young people in an area of Portugal, which, with the support of a sports club, has set up an association which attempts to combine sports activities and training courses for such young people;
- the building by young people, of a 14 person, 24 foot canoe, which will be used and designed by various groups for adventure and sporting trips; and

- the management and running of a sail training vessel by 40 young people, offering training in navigation, electronics and culinary skills, and team building.

6012 Other education and training programmes managed by the Task Force do not currently fund sports-related project, but it is possible that projects could be developed which would be eligible for funding, for example, under the exchange programme called Youth for Europe, or the language programme called Lingua.

DG X financed programmes

6013 DG X encourages the development of sport by means of cooperation between sports organisations in different Member States. Eligible projects must have an EC dimension, and must involve pan-EC cooperation.

6014 DG X is planning a specific programme on sport which will finance:

- communication using sport as a medium;
- youth schemes and exchanges of sportsmen and women;
- training and recognition of qualifications;
- action to combat doping;
- sport for the disabled.

6015 Eligibility for funding will be based on the following criteria:

- the potential impact of the project on the sense of belonging to the Community;
- the Community nature of the event (covering the territory of several Member States or involving teams from several Member States) and the image of the Community that it can project to the outside world;
- the degree to which the promotion of events involves representatives of all twelve Member States;
- respect for the competence of sporting authorities in the organisation of the event.

6016 Funding from DG X may also be available for initiatives which favour the development of sports in Eastern and Central Europe (see below).

Research in industrial technologies, including information and telecommunications technologies

6017 The EC is active in encouraging the development of new technology within the EC. It focuses on promoting research cooperation between parties from different Member States. Most EC research programmes are designed to increase EC

competitiveness, particularly in the areas of information technology and telecommunications.

6018 There are no EC programmes specifically aimed at sports activities, given that sport does not generally require a high degree of information technology. However, to the extent that high technology communication systems are used in sport, and a high degree of pan-European cooperation is involved in the development process, participation in an EC funded programme could be possible. EC intervention is usually only envisaged if the project is unlikely to go ahead without EC funding. It is therefore necessary to prove "conditionality" between the research project and EC funding.

6019 It is also possible that certain specific programmes in the area of general telecommunications, such as health care services, distance learning and systems designed to promote rural development, could potentially find applications in the sports world.

6020 A specific EC funding programme which might directly impact sport is TIDE, an EC-funded programme aimed at developing advanced technologies to assist the disabled and elderly. The programme is designed to stimulate technology transfer, make user requirements more transparent and provide a basis for the formulation of new technical standards for assistive technology. TIDE could therefore fund the development of advanced technologies which facilitate the participation of disabled people in sport. One of the main eligibility criteria for TIDE is that the research involves a group of parties from more than one Member State.

6021 Examples of the types of projects which could be eligible for EC funding could include high-precision timing instruments, computer networks such as those used at the Olympics to register and monitor all participants, and construction techniques for infrastructure such as stadia. The Commission regularly publishes in its Official Journal calls for tenders for projects in certain research areas.

Science and technology

6022 The Commission also funds a variety of different programmes in science and technology. Funded areas of relevance to sports include medical research and biotechnology. The aim of EC research programmes is to promote pan-EC research projects which, without EC finance, might not otherwise take place. The long-term aim is to increase EC competitiveness.

6023 Potentially relevant EC Programmes include the promotion of pan-European statistical research, specialised research into molecular approaches, cellular and organism approaches and ecology and population biology. The BRIDGE Programme promotes cross-border research to speed up the production of biological data,

materials and processes. Research in the biotechnological field may find applications in the fight against doping in sport. These types of research would tend to be carried out by specialised non-sports-related companies and research institutes. However, to the extent that sports organisations could be involved in this research, they would stand to benefit from EC funding (eg pan-EC efforts to provide statistics on pathologies of athletes).

6024 In respect of the principle of subsidiarity, the EC does not want to replace national research in any way. Instead, it specialises in promoting research which involves more than one EC Member State, and which otherwise would not have been initiated.

Eastern Europe and the CIS

6025 The EC funds technical assistance programmes for the Central and Eastern European countries and the Republics of the Commonwealth of Independent States (CIS) and Georgia. They are called PHARE and TACIS respectively. Their overall aim is to contribute to the building up of market economies in these countries. It is unlikely that sports organisations would be funded directly under such initiatives. Sports equipment manufacturers, for example, could benefit from general economic improvements in the region countries.

6026 The Commission (DG X) co-financed a study carried out by the Nederlandse Sport Federatie to "bridge the gap" between sports authorities in Western and Eastern Europe.

6027 DG X is currently examining an initiative in favour of sport in Eastern and Central Europe.

Export promotion to Japan

6028 The EC funds a special export promotion programme for EC exports to the Japanese market. The current campaign has targeted five areas, one of which is sports equipment. Detailed market information is available from the Commission to sports equipment manufacturers interested in exporting to Japan⁷¹.

⁷¹ Directorate-General I's Japan Desk, Telephone 32.2.295 11 11.

Rural and cultural tourism

6029 A few sports-related projects have been supported within the framework of DG XXIII's rural and cultural tourism initiative which started in 1991, for example :

- a project to develop transfrontier tourism between France and Spain on the theme of fishing;
- two projects to develop cycling itineraries.

VII Environmental policy

The principles

7001 Having no legal base in the original Treaty of Rome, as environmental matters were not regarded as a necessary objective in 1958, the principles of the EC's environmental policy were set out in the Environmental Action Programme of 1973. Subsequent legislation based on Articles 100 and 235 of the Treaty mainly focused on trade creation and industrial pollution and tended to be reactive.

7002 The advent of the Single European Act and the first major revision of the Treaty in 1987 introduced Articles 130R, 130S and 130T which had the effect of specifically empowering the Community to protect the environment. This meant that preventative measures could be taken in advance of potential problems developing. In addition, if the Maastricht Treaty is ratified, environmental policy will be given an even higher priority and will no longer be subject to a unanimous vote by the Council of Ministers, except in a few specific areas.

The Environmental Impact Assessment Directive

7003 The major Directive regarding the monitoring and control of the environment is the Environmental Impact Assessment Directive which came into force in 1988. It is designed to ensure that environmental effects are taken into account by developers of certain projects and by the competent national authorities. It applies to private or public projects which, by virtue of their nature, size and location, are likely to have significant effects on the environment. Such projects are identified in two annexes to the Directive. The projects listed in Annex I must be subject to a compulsory environmental impact assessment. Projects listed in Annex II can be subject to an assessment where Member States consider that their characteristics so require.

7004 Some of the classes of projects listed in Annex II, under the headings of "infrastructure" and "other projects", concern the sports industry directly, they are:

- ski-lifts and cable cars;
- yacht marinas;
- racing circuits and test tracks.

7005 Other infrastructure projects may concern the sports industry indirectly in that they may include, or be attached to, sports complexes. They are:

- holiday villages, hotel complexes
- urban development projects;
- construction of roads, harbours (including fishing harbours) and airfields;

- dams and other installations designed to hold water or store it long term;
- tramways, elevated and underground railways, suspended lines or similar lines of a particular type; used exclusively or mainly for passenger transport.

7006 The first five year review of the existing Directive's operation has shown that impact assessments have been required for several projects in Annex II, primarily yacht marinas, ski lifts and race tracks. The Commission has also received complaints from the general public, as well as bodies concerned with wildlife conservation and other environmental issues, about failures to carry out sufficient impact assessments. For instance, the assessment of ski lifts and cable cars has not taken account of the runs underneath them that are the primary cause of environmental damage.

7007 A proposal to amend this Directive currently exists in draft form. If this draft, which takes account of the five year review and complaints to the Commission about the existing Directive's operation, is adopted as it stands, the scope of Annex II will be increased to cover additional infrastructure projects which are directly or indirectly linked to sport. These are:

- works and installations for ski runs and bobsleigh runs (which will substitute for the category of ski-lifts and cable cars);
- golf courses and associated developments;
- holiday villages, leisure centres and cultural centres.

7008 The European Parliament's report⁷² and resolution on the Winter Olympic Games, criticised the preparations for the Games in Albertville, France, as having ignored the provisions of the Environmental Impact Assessment Directive. The report claimed that this led to serious environmental damage being caused to that region of the Alps, for example through the clearing of mountain slopes, the use of snow-making machines and the construction or extension of multi-lane roads. The resolution called for future Olympic Games to recognise and respect the constraints of a sustainable natural and cultural environment and proposed that future Winter Olympic Games be sited permanently in one resort that already has the appropriate infrastructure, thus avoiding damage to other potential Olympic sites.

⁷² PE 154.404. 4.R. 91, MEP Karl Partsch

Conservation of natural habitats

7009 A Directive on the conservation of natural habitats and of wild fauna and flora⁷³ was adopted in May 1992 and is due to be implemented by the Member States before May 1994. The Directive calls on the Member States to conserve natural and semi-natural habitats by creating a European network of classified special protection areas named "Natura 2000". Within these areas, steps will need to be taken to avoid pollution, deterioration of habitats and any disturbance of fauna and flora which could have a significant detrimental effect on the area. Although the aim is to balance conservation needs with local economic and recreation requirements, freedom to practice water-sports may be curtailed by national measures implementing this Directive.

⁷³ Directive 92/43/EEC; OJ N° L 206/92

VIII Taxation

The principles

8001 Articles 95 and 96 of the Treaty of Rome prohibit discrimination of tax treatment on exports and imports of products from other Member States. Article 99 allows the EC to impose fiscal harmonisation measures "in the interest of" the Single Market. Currently, this rule has been interpreted in a minimalist way. Only matters which are deemed to be absolutely necessary for the realisation of the Single Market are addressed by the EC. In this manner, the principle of subsidiarity is respected.

8002 The main EC legislation enacting the principles laid down in the Treaty are the Sixth and Eighteenth VAT Directives⁷⁴. Every activity which has as its objective the practice or the development of sport, and is considered to be an economic activity, is taxable within the meaning of Article 4, paragraph 2 of the Sixth VAT Directive.

8003 There is debate as to whether certain bodies involved in sports are in fact "taxable persons", as defined by the same Article. This Article says that a taxable person is one who independently carries out an economic activity, ie exploitation of a tangible or intangible property in order to obtain revenue on a continuous or occasional basis. States, international organisations, regional and local authorities and bodies governed by public law are not considered to be taxable bodies.

8004 The Commission was asked by a Member of the European Parliament⁷⁵ whether a non-professional, non-profit-making yacht club could be liable to VAT. The Commission answered that under Article 13 (A)(1)(m) of the Sixth Directive, Member States are required to exempt, under conditions which they are to lay down themselves, certain services closely limited to sport supplied by non-profit-making organisations to persons taking part in sport. A yacht club is therefore eligible for exemption.

8005 The Sixth and Eighteenth Directives allow Member States to continue to tax transaction by non-profit making organisations if exemption is likely to create distortions of competition, such as to place at a disadvantage commercial enterprises liable to VAT.

⁷⁴ The Sixth Council Directive on the harmonisation of VAT, OJ N° L 145/77, and the Eighteenth Council Directive on the harmonisation of VAT - Abolition of certain derogations in the Sixth Directive, OJ N° L 226/89

⁷⁵ Written European Parliamentary Question 1875/86 of 13. 11. 86, answered by Lord Cockfield on 22. 01. 87.

8006 The supply of goods and services by fund-raising events organised exclusively for their own benefit is also exempted from VAT, provided such exemption is not likely to cause distortion of competition. The main criteria which render activities eligible for exemption from VAT are that: the activity is in the public interest, distortions of competition are not created such as to place at a disadvantage commercial enterprises liable to VAT, and systematic profit-making is not the objective of the activity.

Key issues

8007 The main EC tax issue relevant to sport is whether sports activities are taxed or not and, if so, to what extent. In practice, Member States may limit the scope of the exemption to services closely limited to sport, supplied by non-profit making organisations to persons taking part in sport.

8008 While the majority of sports clubs are organised on a non-profit basis, in some sports, such as golf and tennis, facilities provided by commercial clubs can be considered comparable to those supplied by voluntary sports organisations. It can be very difficult to distinguish between a purely commercial sports clubs and a non-commercial activity such as a sports club set up by a group of friends but which charges fees to cover the clubs expenses.

8009 The main applications of EC VAT law regarding services closely linked to sports activities are detailed below.

Admission (tickets) to sports events

8010 In principle, admission fees to sporting events are not exempt from VAT. However, exemption of admission fees to sporting events was granted to those Member States which, at the time of their accession to the EC, already exempted such admissions. Exemption of admission to sporting events does not appear to have lead to a distortion of competition between Member States, nor is it thought likely to do so in the future. The Commission has now proposed that instead of the continuation of this derogation to the general rule, a right of option should be granted to Member States on whether or not to tax this activity⁷⁶.

8011 In practice, Member States currently apply different rules to admission fees. For example, the UK fiscal authorities apply normal VAT rates to admission fees. This is not the case in France. Such divergencies could lead to distortions of competition. Nevertheless, Directive 92/77/EEC on the harmonisation of the rates of

⁷⁶ COM(92) 215 final, OJ N° C 205; 13.08.92

VAT provides that a reduced rate may be applied to certain goods and services listed in Annex H of that Directive. Admission to sports events is expressly included in this list.

Non-sports activities of sports clubs and organisations

8012 Besides purely sporting activities, sports clubs provide a series of other facilities including restaurants, bars, shops, etc. Lodging and restaurant operations are not strictly covered by the exemption. Nevertheless, a tolerance margin permits Member States to extend its scope to operations of minimal importance - e.g. the sale of small quantities of food and drink to be consumed on the premises - carried out within the framework of the exempted activities. This is, however, subject to the condition that this exemption does not distort competition.

Transfer of players

8013 All the Member States consider that the indemnity paid when a player is transferred from one club to another constitutes a remuneration for a supply of services within the meaning of Article 2 of the Sixth VAT Directive and must be taxed. On the other hand, the amount of damages paid in the case of a breach of contract where one of the parties has failed to fulfil an obligation is not subject to tax. It does not constitute consideration for the supply of services.

Exclusive rights

8014 To the extent that the organisations which sell the rights are taxable, the sale and purchase of exclusive broadcasting rights are taxable.

Horse racing

8015 Currently in Member States there are major variations in the VAT rates applied to the sales and training of horses. This tax differential has resulted in a shift in thoroughbred sales from the UK to France and Ireland. Prize money is not taxed in most Member States.

Commemorative coins for sports events

8016 Legal tender is exempt from VAT, as long as it is normally used as a legal means of payment. Although commemorative coins for sports events are legal tender, they are not normally used as such and are considered to be taxable at the national VAT rates.

Temporary import of goods

8017 Since 1 January 1993 there has been a change in the rules applied to the temporary importation of goods. The concession that allowed a boat from one EC Member State to remain in the territory of another EC Member State, under VAT free arrangements of temporary importation of goods for a period of six months in any twelve, has been ended. Leisure boats moored in a Member State on 1 January 1993, which entered the territory in accordance with the rules on the temporary importation of goods (Article 14(1)(c) of the Sixth VAT Directive) may continue to benefit from this regime, as long as the provisions in force at the moment the boat entered the regime are respected. The removal of the boat from the regime will be assimilated to an import into the Member State in which it is situated at the time. In other words, in the course of 1993, at the moment the period set in 1992 expires, VAT will become due, unless:

- the boat is dispatched or transported out of the Community,
- at the moment it is imported, the boat is placed under the temporary import regime provided for in Regulation (EEC) No. 1855/89, which entered into force on 1 January 1993 or under another regime for the suspension of duties as provided for in the Community customs provisions in force (Article 7(3) of the Sixth Directive).
- the date of first use is prior to 1 January 1985,
- the amount of VAT due upon the importation of the boat is insignificant.

8018 Supplies of boats after 1 January 1993 will be fully taxable.

IX The European Currency Unit and sport

9001 In the view of the Commission, the popular nature of sports and high attendance figures at major sporting events could offer the Community a forum for heightening public awareness of the European Currency Unit (ECU). Unfortunately, an initiative to allow participants and spectators to use a magnetic card, nominated in ECU, as a method of payment during the Barcelona Olympics did not succeed because it was not possible to develop the appropriate magnetic support.

9002. From the economic perspective, the Commission believes that sports federations would benefit considerably from using the ECU as the currency for European tournaments, rather than the Dollar, which suffers more than the ECU from exchange rate fluctuations. The ATP tennis tour has shown interest in this idea.

9003 In the Commission's view, the advantages to any sports federation of using the ECU for business in Europe are based on its relative stability: international federations' treasury management would be made more secure; players who received prize money or payment in ECU would not face problems with converting it into another currency, or investing it in deposits, bonds etc. From the federations' point of view, their budgets could be established months in advance, with relatively few risks of foreign exchange fluctuations.

PART II

The position of sports bodies and other interested parties

X The free movement of persons and services

Introduction

10001 Of the ten sports investigated in the study, the main problems regarding the compatibility of the federations' rules on the fielding of foreign players, with the Treaty of Rome's provisions on the free movement of people, relate to the team sports of basketball and football. Nevertheless, the rules applying to other sports could also potentially cause difficulties.

Restrictions on foreign sportspersons

Athletics

10002 Under the International Amateur Athletic Association (IAAF) rules, no athletes or club may take part in an athletic meeting in a foreign country without the written approval of their governing body. Equally, no athlete may have affiliation abroad, without previous authorization from the original federation. In practice, this latter rule has not been applied within the EC and is only an issue for top level athletes. Once a transfer has been made, the federation of the country in which the athlete is residing cannot enter the athlete's name for meetings in another country without previous authorization from the original federation. In addition, the organisation of the European Club Championships, which is soon to be taken over by the European Athletic Association (EEA) from the clubs, will be subject to restrictions on the number of foreigners per team.

10003 In the Olympic Games, World Championships and World Cups, as well as in Continental, Regional or Area Championships or Cups open to all IAAF members in the area or region, each federation may only be represented by nationals of that country (by birth, naturalisation or registration, or by acquiring citizenship through the procedure legally recognised in that country).

10004 Having once represented a federation in such an event, the athlete cannot represent another federation, except in one of a few circumstances. One of these exceptions is when the athlete has been resident in a country for at least three years since the date when he/she last represented another country and as long as he/she has acquired citizenship. The period may be reduced to one year if both federations and the IAAF agree. Nevertheless, one federation even limits the number of "foreign" athletes who are so qualified to a quarter of the team.

10005 As far as inter-club events within the same country are concerned, the federations have their own eligibility rules for foreign athletes. Two federations, for example, require an athlete to have been registered as resident in the country for six

months before he/she can compete in club teams, and for two years before he/she can compete in the national championship. In another federation, only one foreign athlete is allowed in each team.

10006 Only one federation has no limit on the inclusion of foreign athletes. The only stipulation is that they should be registered with the federation by 1 January each year.

Basketball

10007 FIBA, the International Basketball Federation, sets out rules limiting the number of foreign players in official international competitions which are controlled by FIBA. No distinction is made between EC, Eastern European and American nationals. The number of foreign players is restricted to two. Two assimilated players are also permitted. These are players that have been naturalised for three years. In theory, the national federations are free to have their own regulations which are valid only within the territory of the respective national federations. In practice, all the national federations follow these rules for international matches. The majority also apply them to their national first division matches and half of the federations apply them to other divisions. Only one federation allows a greater number of foreign players (three) than FIBA guidelines in their professional league games.

10008 Generally, stricter rules are applied to divisions other than the first division (particularly in the smaller federations), for example, allowing only one or no foreign players in women's leagues. The feeling is that these stricter rules are necessary in order to develop indigenous talent.

10009 It is interesting to note, however, that a small federation (Luxembourg), while restricting its two top National divisions (National I and National II) to one foreign player, allows three foreign players from Division I downwards. Most of these foreign players are EC residents working in Luxembourg. Of the total number of licensed players in Luxembourg, 600, or 17%, are foreign.

10010 Two of the national federations disagree with FIBA rules on foreign players. In one case this is because they consider that the presence of any foreign players in national championships undermines the process of "producing" national players. In the other case, it is because FIBA's rules on naturalisation are not in line with national law, which means that the same teams cannot be fielded for the national championship and for the European Cup.

10011 While all federations allow foreign amateurs to play in all the amateur leagues for which they are responsible, most impose the same rules for the fielding of teams as are applied in the professional leagues (although some exempt young players under 18).

10012 It should be remembered that most foreign players in basketball teams in EC Member States are American and could be increasingly from Eastern Europe, with only a minority being EC nationals. FIBA contend that if they do not have the same rules for EC and non-EC teams, the EC teams will have an advantage in international club games.

10013 FIBA defines "naturalised players" as players who have changed nationality, or who have opted for one of two federations, holding, by birth, dual nationality. In the case of a change of nationality, the player has to be naturalised for three years before playing for the national team. Most federations use the same guidelines, but one federation assimilates any player who has played with a national youth team, while another assimilates foreigners who start playing in a school team or equivalent and move up to "junior" category. One federation requires that the player has lived for seven consecutive years in the country, which is the same period that would be required for naturalisation.

Cycling

10014 The UCI, cyclism's International Federation, is responsible for the rules for the approximately 160 top international events each year, including such races as the Tour de France. There are approximately 50 professional teams worldwide, which draw on an approximate total of 1000 professional riders.

10015 Previously, among professional teams, national status was required of 70% of team riders. Currently, the UCI stipulates that up to 60% of a team can be foreign. This higher level of foreign participation was agreed upon following pressure from international sponsors of teams. The UCI feels that the national element is a vital component of sport, and is convinced that spectators will only watch a sport if their national heroes are participating.

10016 Rules on foreign amateurs vary from Member State to Member State; some have no restrictions, while others limit the number of foreigners to 1 or 2 per team.

10017 Given the physically demanding nature of competitive cycling, it is generally accepted to be necessary to carefully gauge the age when young cyclists turn professional. Legislation at the national level varies from country to country, but a licence is generally mandatory. Exceptions to the rules are occasionally allowed and the UCI admits that in cases of conflict between a rider and the national federation, the national legislation on freedom of choice would be likely to prevail over the national federations' rules.

10018 The UCI felt that the distinction between amateur and professional was becoming increasingly irrelevant. Some categories of races are already "open" and the cycling authorities said the IOC may accept professional cyclists as of the 1996 Games.

The UCI will replace its professional licence with new "categories" of riders based on performance.

10019 The majority of national federations restrict the numbers of foreigners participating in national and top regional competitions. In two countries, foreigners can make up an entire national team.

10020 Most national federations (all but the UK) were satisfied with current rules.

Equestrian sports and horse racing

10021 Equestrian sports mainly involve individual competitors. In the relatively few team events, club membership is the main eligibility criteria; clubs do not restrict membership on the grounds of nationality.

10022 For equestrian sports, the International Equestrian Federation (FEI) has restrictions on eligibility for international events, and equestrian sports federations agree with these rules. In horse racing, there are no teams as such; instead competitors race against each other on an individual basis.

10023 There are no restrictions limiting the participation of foreigners in professional or amateur racing events. Participation in races is usually conditional upon being properly licensed. There were no objections to the current situation.

10024 All jockey clubs allow foreign amateurs to participate in the amateur events they organise.

Football

10025 Under rules established by the Football Associations, the majority of FAs limit clubs to fielding a maximum number of players in their first (or premier) division, and in many cases, also for second, third (and fourth) division matches. The majority limit clubs to a maximum of two or three foreign players; one FA imposes limitations only on non-EC nationals.

10026 Nearly all FAs agree with current rules on the number of foreign footballers allowed. UEFA feel that the gentlemen's agreement with the Commission allowing "three plus two" foreign players is functioning well and to the benefit of football. UEFA argues that this limitation favours the encouragement of local players by creating the attainable prospect of one day playing for the country's best team rather than seeing the top slots filled with the best foreigners. UEFA considers the "three plus two" agreement as striking a good balance between free circulation and protection of domestic football. Moreover, since the "three plus two" limitation applies only to "single events", it is not contrary to EC rules on free movement.

10027 Only half of FAs draw the distinction between assimilated and other players; conditions for assimilation usually involve the requirement to have played for five years in that country.

10028 Under FIFA rules, amateurs are free to move from country to country. Some Member States have rules which do not draw the distinction between amateurs and professionals. A majority of Football Associations allow foreign amateurs to participate in teams in all amateur events for which they are responsible, although a somewhat more modest majority allow amateurs to form an entire team to participate in all events for which they are responsible.

10029 FIFA's rules on naturalisation follow passport rules as applied by countries. Once a player has a passport of a country, he/she can be considered to be a national for football purposes. However, once a player has played for a national team, the player is linked to that national team forever and cannot play for the national team of another country even if a change of nationality has been effectuated.

10030 The professional footballers' associations, FIFPRO, are not opposed to national teams being composed only of national players. In all other cases they argue that clubs should be free to engage and field any number of EC nationals, but that there should continue to be restrictions on the number of non-EC nationals. FIFPRO do not believe that this would result in the richer clubs gaining advantage over the smaller clubs, as long as the current transfer fee system is abolished. Nor, they believe, would it result in the decline of national teams.

10031 The question of whether or not a player is eligible to be selected for the national team is also considered important by FIFPRO. In their view, the federations should not be in a position to say that a person who is naturalised has to wait a certain number of years before being able to play for that country. The investigation into whether the person has asked to be naturalised purely for sporting reasons should be held initially, at the time of their application, and their request denied if this is found to be the case. Once naturalised, however, they should immediately be given the same rights as nationals of that country.

10032 A petition was recently brought to the Commission's attention on behalf of three Welsh clubs which complained about not being allowed to compete in England's (pyramid) football system (unless the Welsh teams agreed play their home matches at a ground located on English territory). The Welsh clubs regretted not being allowed to play in their home towns in Wales and asked the Commission to act to rectify this situation. The Commission answered that it could not intervene in this case as it was an internal matter for UK law.

Motor sport

10033 Motor sport teams are not limited to a maximum number of foreign drivers in professional or amateur races, except in the case of speedway.

10034 Any number of foreign drivers are allowed in "open" national events, that is events that are listed in the international calendar issued by the International Federation (FISA).

10035 As far as national championships are concerned, the rules vary from federation to federation, but most are relatively open. In some cases, there may be restrictions on the foreign drivers' right to earn championship points. For team events, three national federations and the FISA allow foreigners to make up an entire amateur team.

Sailing

10036 Restrictions on foreigners competing apply only in national championships, international team competitions and national Olympic teams or if the event is being used to select the national team. In one federation, foreigners may compete in the national championship if they fulfil a residency requirement.

Skiing

10037 International competitive skiing is not team orientated, but consists of individuals who are trained by and compete on behalf of their nation as part of a national team. All skiers must conform to the International Skiing Federation's (FIS) eligibility rules with regard to nationality and can only compete for one country, subject to these conditions.

10038 Foreign amateurs are allowed to participate in amateur events, subject to the rules for each competition.

10039 In the related winter sport of ice hockey, players who are EC nationals are free to leave to play in the professional leagues in US or Canada, but face certain restrictions when moving from one EC country to another.

Swimming

10040 There are often restrictions on the numbers of foreigners allowed to participate in national championships and always for national teams. Nationality is required or a certain duration of residence is necessary. In one country, foreigners can compete in open events providing they are members of a national federation which in turn is a FINA member. Another country reported that before a swimmer moves

to a local club from a foreign club, the agreement of the foreign federation is usually requested.

Tennis

10041 Restrictions on foreign players in national championships and team events organised by nationality are dictated by rules laid down by the International Tennis Federation (ITF). These rules closely follow the IOC eligibility rules. A foreigner has to have been a permanent resident of the country for which he wants to play for a period of thirty-six consecutive months immediately preceding the event.

10042 The general feeling is that the character of international events will be destroyed if teams composed of non-residents or non-nationals are permitted to enter without some permanent connection with the country they are to represent.

10043 The federations apply their own rules to club events. These rules vary from one country, where teams can be made up entirely of foreign amateurs, to two federations which do not allow any foreign amateurs to compete in club championship. Three federations restrict participation of foreign players in national team championships to one player per team.

10044 In the case of another federation, each player, of whatever nationality, who first becomes affiliated to a club in that country, is considered for competition purposes, to be a national of the country.

Olympic Movement and Sports Confederations

10045 The general view is that foreigners should have the right to practice the sport of their choice and to participate in the competitions of their choice but that the rules on foreign sportspersons are primarily a matter for the respective sports federations. The overall policy is the responsibility of the international federations of each sport with the rules and regulations being determined at the national level by national federations, in line with the rules at the international level.

10046 Discrimination based on nationality was reported to be a problem only in the case of national championships and not in the case of regular competitions, although it is recognised that problems may arise where success in championships sometimes leads to a sportsperson's selection for participation in the national team.

10047 One international sports organisation considered a satisfactory compromise to be a system in which non-nationals could participate in national championships (making them "open"), but in which the title of "national champion" is reserved for nationals.

10048 NOCs and confederations agreed that although participation of foreigners in sports activities should be encouraged, the number of foreign participants in teams should be restricted in order to maintain the national identity and character of teams.

10049 To be eligible for participation in the Olympic Games, a competitor must comply with the Olympic Charter, as well as with the rules of the relevant International federation, as approved by the IOC. Competitors must be nationals of the country of the NOC which enters them. A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant international federation and who subsequently changes nationality, cannot participate in the Olympic Games as a representative of the new country for three years following the acquisition of the new nationality.

10050 The NOCs and confederations are of the opinion that total freedom, including the right to participate in national teams would reduce the national emotional tie and the identity link: some referred to the Commission/UEFA "gentleman's agreement", which was perceived to be an acceptable compromise and an example to follow.

10051 Some NOCs felt that a high level of participation of foreign players would prevent young nationals from developing their skills by reducing their motivation. It was argued that a lot of foreigners in a team were likely to discourage the development of national talent because young nationals could believe that they would be replaced by foreigners at the top level. Moreover, clubs would feel that it was no longer necessary to invest in their youth policies through which they now develop national talent.

10052 One confederation was convinced that the current inevitable trend towards the internationalisation of sport will gradually reduce the problem of access of foreigners and felt that it may not be necessary for the EC to enforce its non-discrimination, free circulation and competition rules in this area: increasing public pressure will allow residents of a Member State access to regional competitions, notwithstanding their nationality. The exception for participation in national championships may, however, be maintained.

10053 An international sports organisation felt that the idea of an EC team would not be feasible and does not take into account the reality of sport, particularly given the potential differences in the interests of the 12 Member States and those of the other 33 countries of Europe.

Ministries

10054 There is a range of opinions among the ministries on the issue of restrictions applied to the fielding of foreign players. A majority of the ministries believes that total liberalisation is not desirable and that certain restrictions (along the lines of the UEFA rules) continue to be necessary for the following reasons :

- to secure the local or regional identity which is one of sports specific characteristics;
- to avoid risks of "showbusiness" teams which would alienate spectators;
- to ensure an even playing field between those clubs which can and those which cannot afford foreign stars;
- to preserve the need to promote a youth policy which will develop indigenous talent for national teams.

10055 In one country, national legislation restricts the number of foreign players in football clubs in order to favour the national team.

10056 At the other end of the spectrum are the ministries which believe that there should be a progressive move towards the unrestricted fielding of foreign players, for all teams other than the national team.

10057 In one case, that of one of the smaller football nations, the continuation of the UEFA restrictions has a serious effect on the national game, particularly at the international level, because top level players need the experience they gain in the larger football leagues of other countries, the national league being too small to provide that experience.

Sports qualifications

Athletics

10058 Some national federations award coaching qualifications of different levels. The majority have also employed foreign coaches and have had no problem recognising the equivalence of their qualifications. Only one federation expressed an interest in the introduction of an EC level standardised coaching qualification.

10059 One federation pointed out that the problem of ascertaining whether their foreign staffs' experience and qualifications complied with national law did not arise, as 99% of the sports coaches and administrators come from the voluntary sector.

Basketball

10060 A majority of countries have recognised qualifications relating to basketball. The most common of these is a coaching qualification, which, in the majority of cases, is awarded by the appropriate national authority (such as the Sports Ministry), in two cases by the national federations and in one case by a national school for coaches.

10061 All the federations state that their member clubs have employed foreign trainers. Only two had experienced any problems in ascertaining whether their qualifications complied with national law, one of which was thought to be more of a cultural problem than a legal problem.

10062 FIBA issues an international qualification for referees, but this is not considered a regulated profession as the latter are reimbursed for their refereeing while continuing with their own professions.

10063 FIBA is receiving some funding from the EC in order to promote coaching as a profession.

Cycling

10064 The cycling federations in all Member States have coaching/training qualifications, usually awarded by the national federation. Professionals usually are required to have licences. Some national federations have qualifications for masseurs, and team managers.

10065 A majority of national federations recognised equivalence of sports qualifications acquired in other Member States, and would like to see the introduction of European level qualifications in cycling.

10066 The majority of national federation members employ or have employed foreign staff. None of them have experienced problems in ascertaining whether their foreign staff's qualifications complied with national law.

Equestrian sports and horse racing

10067 In horse racing, all Member States have recognised qualifications or licences for trainers and jockeys; they are usually awarded by the jockey club. In Germany and France, state-controlled instruction is provided. Qualifications are sometimes conditional upon disposing of adequate facilities for horses. Other recognised qualifications in some countries include stable lad/apprentice and technicians.

10068 For equestrian sports, four out of the six equestrian sports federations have recognised trainer/coach/instructor qualifications, and some have stable lad

qualifications. The FEI has qualifications for judges, course designers, veterinarians and stewards.

10069 Most jockey clubs and equestrian sports federations employ or have employed foreign staff, sometimes, for horse racing, subject to the acquisition of local licences, and none had experienced problems in ascertaining whether their foreign staff's qualifications complied with national law.

10070 All jockey clubs and the majority of equestrian sports federations recognised equivalence of sports qualifications acquired in other Member States. A minority of jockey clubs and a majority of equestrian sports federations would like to see the introduction of European level qualifications. The German equestrian sports federation felt that the harmonisation of state-controlled instruction would be difficult because only Germany and France have this system.

Football

10071 There is general agreement that a mutually recognised standard of qualification for football would be useful. The vast majority of Football Associations recognise the equivalence of sports qualifications acquired in other Member States. The most popular types of qualification in football are trainer and coach.

10072 All but one Football Association would like to see the introduction of European level qualifications for football-related professions especially for coaching and training. The remaining challenge is to determine the specifics of the level of qualification which will be mutually recognised.

Motor sport

10073 Half of the federations have employed foreign managers or trainers.

10074 Half of the federations would also like to see the introduction of European level qualifications for motor sport-related professions. One federation is already working towards common qualification levels for drivers entering and progressing through the sport at a national level.

Sailing

10075 The area of sports qualifications is key to the sport of sailing, as training and education are central to the maintenance of the sport's safety record.

10076 With regard to recreational boating, it is the opinion of the European Boating Association (EBA) that an amended form of the current UN Resolution N°14 Certificate of Competence should be adopted as a mutually recognised certificate

throughout the EC. This certificate should include certain minimum requirements necessary to satisfy each Member State that the holder presents no threat to other water users.

10077 Problems have arisen because the Netherlands now requires skippers to hold a licence. In the UK, the yachtmasters' qualification is very rigorous but does not result in a licence. Some UK skippers have subsequently been refused entry to Dutch waters.

10078 All of the federations award recognised qualifications for sailing, generally for examiners or instructors for different classes of boat.

10079 None of the federations' member clubs have employed foreign managers or trainers and two federations do not yet recognise sailing qualifications acquired in other Member States, although they say that they plan to do so.

10080 The majority of federations would like to see European level qualifications for trainers and coaches and the European Community Sailing Association (ECSA) is in the process of establishing coaching/training qualifications. The draft qualifications are designed to define minimum levels of competence for each of two attainable levels in such skills as sailing ability; boat handling; safety of students; teaching ability (both ashore and afloat); interpersonal skills and equipment maintenance.

10081 The International Sailing Schools Association is also active in the area of the harmonisation of qualifications.

Skiing

10082 The professions of ski instructor and ski coach are regulated professions in those countries where skiing is well developed. These qualifications are awarded by the ski federations.

10083 There is a difference of opinion between the federations that replied to the questionnaire as to whether the introduction of EC level qualifications for instructors would be desirable. One federation feels that it would not be appropriate as skiing qualifications and experience need to be recognised on a worldwide basis, as specified by the International Skiing Federation (FIS).

10084 The English Ski Council (ESC) stressed the importance of the mutual recognition of qualifications for skiing. Many UK instructors wish to work on snow once qualified and recognition needs to be given to the appropriate qualifications awarded by the Ski Councils of England, Wales, Scotland and Northern Ireland and by the British Association of Ski Instructors (BASI). BASI and ESC qualifications are

recognised by the appropriate International Skiing Authorities for teaching and coaching respectively. Difficulties have arisen in that the French Ski Instructors Association and also, increasingly, the Austrian and Swiss Associations, are refusing to acknowledge the authority of the International Associations in this respect.

Swimming

10085 The swimming federations in most Member States award their own coaching and teaching qualifications. These qualifications can involve a series of different levels of attainment and rigorous examinations. Some national federations have qualifications for lifesaving and management officials.

10086 A majority of national federations recognise equivalence of sports qualifications acquired in other Member States, and would like to see the introduction of European level qualifications in swimming. The UK national federation felt that the introduction of National Vocational Qualifications would probably address this matter across EC Member States.

10087 All of the federations' members employ or have employed foreign staff. None of them experienced problems in ascertaining whether their foreign staffs' qualifications complied with national law.

Tennis

10088 The ITF operates a worldwide officials' training programme. It trains and appoints officials to an objective standard to officiate at international events.

10089 The main recognised qualification relating to tennis is that of coach. In two countries, a university sports degree is required before a coaching qualification can be accorded. Many clubs employ foreign coaches and only one reported experiencing problems with ascertaining whether their qualifications would be accepted as equivalent to that required under their own national law.

10090 In one country, coaches wishing to teach have to sit an "equivalence" examination for the technical part of the equivalent national qualification. For the general knowledge part, the foreign diploma is validated by the Ministry.

10091 The ETA stated that it would not like to see the introduction of European level qualifications for tennis-related professions, but the majority of the national federations would be in favour of such an initiative for coaching and teaching qualifications in clubs, associations and schools; umpires and referees; and tournament organisers.

10092 One federation feels that the ETA would be the appropriate body to award such qualifications.

Olympic Movement and Sports Confederations

10093 The issue of sports qualifications is not generally perceived as an area in which NOCs or sports confederations need to be involved.

10094 No consensus was apparent on the role of the EC in this area. While some NOCs stressed that the EC should respect training and education systems established by voluntary organisations, others wished to see EC financed work on the comparability of Member States' sports qualifications. An international sports organisation said that the EC should create bridges, for example by opening discussion channels perhaps between the official education system and a private system specific to sport.

10095 The view of one international organisation was that sports organisations needed to work out, in line with EC Directives on qualifications, a system of mutual recognition and freedom of circulation between Member States with the governments' role confined to financing the system.

Ministries

10096 One Ministry emphasised that in its country, matters to do with sports qualifications were led by the governing bodies of sports. In all other Member States, they were government led.

10097 All of the ministries feel that it is important to continue work on an EC level to facilitate the comparability of Member States' qualifications in the sports field. In this context, the majority actively support the work of the European Network of Sports Sciences in Higher Education and would like it to continue. It was stressed that the principle of subsidiarity should be borne in mind, that recognition of qualifications delivered by both governmental and non-governmental bodies should be accommodated and that the competencies acquired during training, not merely the duration of the training, must be considered.

Hooliganism

Introduction

10098 The majority of the sports investigated in this study have not experienced any problem of hooliganism or violent behaviour by either spectators or players, they

are: athletics; cycling; equestrian sports and horse racing; motor sport; sailing; skiing and tennis.

Basketball

10099 FIBA rules require all national federations to ensure that they institute complete control of stadia, have only seated places and have unobstructed gangways. In addition, some federations have put in place their own guidelines, which include, for example, requiring clubs to collaborate with police, to ban alcoholic drinks and to have their own security staff. The main problem is caused by organisers selling more tickets than there are seats.

10100 Only the Spanish Federation reported being required by law to take measures to combat potential hooliganism. An anti-violence committee has been created to monitor the safety of stadia, the promotion of fair play, the identification of violent groups and criteria for defining high risk groups.

10101 There is no support from the federations for the introduction of identity cards for home supporters, although some federations did not completely rule out the possibility, if the incidence of violence at basketball matches were to increase substantially.

Football

10102 Hooliganism is a major problem for football, the importance of which varies significantly from country to country. Hooliganism should be considered as a social problem rather than simply a football problem, with different causes in different countries. In the majority of Member States, national legislation requires the Football Association to take measures to combat hooliganism. An even larger majority of Football Associations require their clubs to take supplementary measures to combat hooliganism.

10103 There was very limited support for the adoption of national legislation which would permit the introduction of an identity card for supporters. UEFA indicated that identity cards were closely examined by the football authorities but rejected on practical grounds.

Swimming

10104 Only one national federation reported hooliganism as an issue, specifically concerning waterpolo.

The Council of Europe

10105 Following the Heysel Stadium disaster in 1985, the Council of Europe's signatories adopted the European Convention on the Reduction of Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches. Parties to the Convention undertake to ensure that adequate public order resources are employed, to facilitate close cooperation and exchange of information between the police forces of the different localities involved and to apply, or to adopt, legislation which provides for those found guilty to receive appropriate penalties. It also promotes safety at stadia and the prohibition of alcoholic drinks. Ticket sales and segregation are explicitly mentioned as areas for particular care and attention. Its implementation is monitored by a Standing Committee which meets every eight months.

10106 In the Council of Europe's view, the argument that it could be against EC law on free movement to stop groups of potential hooligans from travelling to matches, would seem to ignore the considerations of public safety and security which led to the drawing up of the Convention.

Ministries

10107 A minority of the governments have not implemented any specific legislation to combat hooliganism or spectator violence, relying on their existing police regulation and penal code.

10108 Several ministries mentioned the fact that, having ratified the Council of Europe Convention, they have taken or are taking the necessary measures to implement its recommendations.

10109 In the UK, three specific pieces of legislation cover, respectively, the control of alcohol at sporting events, football spectators and football offenses. In addition, a reduction of the pool betting levy has enabled a substantial sum of money to be spent on making football grounds all seating.

10110 Most of the ministries are not contemplating the introduction of further measures, although they do not rule out the possibility of reacting to potential new problems. The UK does intend to draw up legislation to combat football ticket touts, as this practice is felt to undermine segregation and safety arrangements at matches.

10111 The TREVI Group⁷⁷ is considered by the ministries to have carried out important work in the fight against hooliganism, particularly crucial has been the agreement which has enabled police to forward details on the movements of hooligans to their counterparts abroad. This is felt to have been crucial in deterring misbehaviour.

Insurance

Athletics

10112 Half of the federations which replied to the questionnaire believe that the Commission should draw up legislation to cover insurance obligations at transnational athletic events. One reason given was to ensure that third party liability insurance is a basic requirement placed on an event organiser.

Basketball

10113 A majority of federations, including FIBA and the International Wheelchair Basketball Federation (IWBF) think that the Commission should draw up legislation to cover insurance obligations at transnational sporting events. They feel that this would be an improvement on the current situation for several reasons: it would limit the bureaucracy involved in ascertaining the insurance situation in each Member State, would be practical for the international federations, would provide certainty of cover, uniformity, adequate protection of players travelling abroad and, in some countries, would redress a lack of reference to insurance obligations in national legislation. One federation suggests that the Commission should carry out a comprehensive technical study on this issue.

Cycling

10114 A majority of national federations are obliged to take out insurance for international and national events. Of those which are not, insurance is taken out by event organisers and licence holders. A majority of national federations agree that the Commission should draw up legislation to cover insurance obligations at international sporting events, but only a minority think this should also be the case for national events.

⁷⁷ The TREVI Group comprises EC Ministers of Justice and of the Interior; the Group meets regularly to discuss police and security problems relating to the opening of the Community's internal borders.

Equestrian sports and horse racing

10115 Three jockey clubs and three equestrian sports federations reported being obliged to take out insurance for international events. Five jockey clubs and five equestrian sports federations reported being obliged to take out insurance for national events.

10116 Three jockey clubs felt that the Commission should draw up legislation to cover insurance obligations at international sporting events. Jockey clubs were split on whether EC legislation should cover national events. All equestrian sports federations, bar one, were also in favour of EC legislation covering national events. The FEI would like to see the introduction of third party coverage for organisers and horse-owners. Reasons for approval of EC legislation include clarification, uniformity and a reduction in complexity.

Football

10117 In the majority of countries, the organiser of national and international events are obliged by law to take out insurance for football matches. As to the desirability of EC legislation on insurance, FAs were split on whether the EC should draw up legislation to cover international events, and a majority were against EC legislation covering national events. UEFA insists on organisers taking out insurance for UEFA matches.

Motor sport

10118 All federations are obliged to take out insurance for all users of racetrack facilities for both national and transnational events. It is therefore not regarded as necessary for the EC to introduce legislation in this area.

Sailing

10119 The International Yacht Racing Union (IYRU) pointed out that it is often difficult to establish responsibilities at sailing events. The rules of sailing state that it is the responsibility of the helmsman to decide whether is safe for the boat to put to sea, but there are cases where the organiser of the event could be held responsible for starting a race, for example, in the case of youth races. The IYRU feels there is a need for the Commission to identify the problem and then convoke interested parties to discuss the issues.

10120 A minority of the national federations, as well as the IYRU, think that the EC should draw up legislation to cover insurance obligations at transnational and national sailing events, as it is financially prudent for hosts to have public liability insurance and because some clubs currently do not take out third party insurance.

Skiing

10121 There is a difference of opinion between the federations as to whether or not the EC should draw up legislation to cover insurance obligations at transnational and national skiing events. Some believe that it would contribute to the prevention of accidents, while others believe that there are sufficient rules on insurance, as specified by the FIS.

Swimming

10122 A majority of national federations are obliged to take out insurance for national and international events, and agree that the Commission should draw up legislation to cover such obligations, to for example improve clarity, uniformity and certainty of cover.

Tennis

10123 All federations and clubs have to take out compulsory insurance to cover players and spectators using their facilities for national and international competitions.

10124 The majority also believe that the Commission should draw up legislation to cover insurance obligations at transnational sporting events. The minority believe that such an initiative would not be desirable, as insurance should be left to participants and spectators and the basis for regulating insurance should be international rather than European.

Olympic Movement and Sports Confederations

10125 Although no problems were reported in the field of insurance, a narrow majority of NOCs would favour EC legislation covering insurance in sport. One NOC drew a distinction between insurance covering professional sport and amateur sport. One international sports organisation favours a competitive market in insurance, as it will reduce the price of insurance for consumers.

Ministries

10126 Three ministries are of the opinion either that the Commission should not draft legislation to cover the insurance obligations of the various parties involved with the organisation of transnational sporting events or that this is not a priority issue. The remainder are open to such an initiative, if it centers on ensuring a minimum level of insurance coverage at such events. The current agreement between France, Italy and Spain, whereby the insurance provided in one of these countries is binding on the other two, was cited as an example of the type of initiative that could be considered.

Advertising

Athletics

10127 Advertising revenue received by the national federations ranges from 1% to 10%, none of which is received from the advertising of tobacco products. The federations concur that sports advertising should be harmonised at EC level.

Basketball

10128 Advertising is an important source of revenue for the majority of federations. It ranges from as low as 5% to as high as 30% of total income. None of it is derived from cigarette or tobacco advertising. FIBA, in fact, bans advertising for both tobacco and "hard liquor" (whisky, gin, etc).

10129 The majority of federations favour total liberalisation of sports advertising, believing that too much legislation can deprive the small federations of the income they need to survive. Those federations without advertising revenue have found it difficult to obtain contracts.

10130 The minority of federations favour the status quo of EC level harmonisation, as they feel that total liberalisation would lead to the over-commercialisation of the sport and that limits have to be set on the frequency and number of advertising breaks as well as the content of the advertisements during children's sports programmes.

Cycling

10131 National cycling federations and the UCI received between 0% and 20% of their total revenue from advertising. No national federations received revenue from advertising tobacco.

10132 National federations were split on whether advertising should be totally liberalised or harmonised.

10133 A minority of the organisations believe that national federations should have a greater role in negotiating advertising revenue.

Equestrian sports and horse racing

10134 A minority of both jockey clubs and equestrian sports federations were aware of EC rules on television advertising. Two jockey clubs were negative about EC involvement in advertising. Only one jockey club, one equestrian federation and the

FEI received (minimal) revenue from advertising and no revenue is received from the advertising of tobacco.

10135 There was no consensus as to whether advertising should be totally liberalised or harmonised at the EC level.

Football

10136 All but one Football Association received income from advertising accounting for an average of 10% to 20% of total revenue. Only one FA received revenue from advertising tobacco. A majority of FAs claimed to be aware of EC legislation on advertising.

10137 There was a wide diversity of responses to our questionnaire on who should regulate advertising, although most favoured harmonisation at the EC level or national regulation.

Motor sport

10138 Half of the national federations receive revenue from advertising. It accounts for 0.5% to 1% of total revenue and none is reported to derive from advertising cigarettes or other tobacco products; (we received reports to the contrary from the Olympic Movement). There is an even split between the federations as to whether sports advertising should be totally liberalised, harmonised at EC level or regulated nationally. Current EC rules are thought to have had either a neutral or negative effect on motor sport.

10139 Those who think it should be totally liberalised consider that it is practically impossible to establish a uniform policy, due to the differences between the various sports and the relative impact of different products.

10140 The majority of national federations believe that they should play a greater role in negotiating advertising revenue, for example by employing professionals and establishing certain policies which could enhance proper commercial planning.

Sailing

10141 The majority of federations receive revenue from advertising, accounting for 0.2% to 10% of their total revenue. None is from cigarettes or tobacco advertising. Half of the federations believe sports advertising should be totally liberalised and regulated solely by IYRU rules.

Skating

10142 One of the ski federations answering the questionnaire receives 5% of its revenue from advertising, none of which is from advertising cigarettes or other tobacco products. The federations are not in favour of EC legislation in this area, preferring to see advertising regulated nationally or totally liberalised.

Swimming

10143 The majority of national federations receive up to 12% of their total revenue from advertising.

10144 FINA bans the advertising of tobacco, alcohol and drugs, and all national federations claim to respect these rules. The UK has a system by which, in cases of doubt, advertisements should be submitted to the national federation for approval.

10145 Most national federations felt advertising should be totally liberalised.

Tennis

10146 The majority of federations receive revenue from signage and programme page advertising. It accounts for 5% to 20% of their total revenue. None is derived from advertising cigarettes or other tobacco products. Revenue from television and radio advertising is enjoyed solely by the broadcasters.

10147 The majority of the federations believe that sports advertising should be totally liberalised and feel that EC rules have had a negative or neutral effect on their sport. The minority think it should be regulated nationally.

10148 A minimum level of harmonisation at EC level is considered desirable to reduce barriers that national advertising rules may create to transnational broadcasting. However, it is the federations' opinion that since most sports are organised on a worldwide basis, any harmonisation must take account of practices globally.

Olympic Movement and Sports Confederations

10149 The Olympic Charter prohibits athletes from carrying advertising on their clothing or equipment. Only the manufacturer of the article or equipment may be identified, providing that it is not marked conspicuously for advertising purposes and that it does not appear more than once. Equally, no publicity is permitted in and above the stadia and other competition areas which are considered part of the Olympic sites. A potential sponsor therefore has to calculate for the additional cost of buying broadcasting time to raise awareness of its sponsorship activities.

10150 The importance of advertising and sponsorship revenue for NOCs and confederations differs from country to country. For example, in Italy, sponsorship revenue is marginal, the main source of revenue coming from betting on football, while in Belgium and in the Netherlands, sponsorship is a vital source of income.

10151 The financial importance of advertising and particularly sponsorship, was underlined. This revenue is all the more important given the voluntary and non-profit nature of many sports organisations. Revenue collected is used to develop sport and youth involvement in sport. Were this source of income to be removed or reduced, increased government funding would become necessary to replace it.

10152 Advertising revenue for NOCs and confederations ranges from 0% to 23%. No revenue is generated from advertising for tobacco products. Tobacco advertising was reported as only being used in motor racing.

10153 The majority of NOCs favour harmonisation of advertising rules at the EC level as long as national differences and the "autonomy and national exclusivity of sports governing bodies" are respected. One NOC argues, on the other hand, for the liberalisation of advertising, stating that it is an economic phenomenon which cannot be confined within national borders and should be regulated by the market. Another NOC argues that EC regulations should only concern alcohol and tobacco advertising.

10154 Some sports confederations favour national regulation; they feel that as tobacco products are available on the open market, sponsorship by tobacco companies should be allowed.

Ministries

10155 There is a consensus among the ministries that revenue derived from contracts with advertisers is an acceptable source of finance for sporting bodies. They encourage sports bodies to maximise funding from such commercial sources, as it enables government funds to be devoted to developing the "sports for all" concept.

10156 Most governments restrict tobacco advertising at sports events, particularly those events aimed at under-18 year old. This is achieved, in the majority of cases, through legislation; in a minority of cases, codes of practice are enforced. The French law of 10 January 1991 is unique in the EC for its complete ban on all forms of tobacco advertising.

10157 Half of the ministries believe that the responsibility for regulation of tobacco advertising should remain at national level, the other half preferring to see a measure of EC-level harmonisation.

Sponsors

10158 Sports sponsors believe that any regulatory structure should take account of global and not just European practices, and the different natures of and practices associated with different sports. It should also be flexible enough to permit development and growth, the growth of "barter" arrangements being a good example of a recent development. They would, therefore, support a minimal harmonisation at the EC level which, while respecting the differences between sports, as well as the national differences, seeks to reduce any obstacles that national regulations may place in the way of international development.

The Council of Europe

10159 The Council of Europe's Committee for the Development of Sport (CDDS) has been dealing with advertising and sponsoring since the end of the Seventies when advertising in sport already transcended national lines. The result of this work is laid down in Recommendation R(80)1 of the Committee of Ministers on Sport and Television and in the Sponsorship Code, which was adopted in 1983.

10160 Chapter III of the European Convention on Transfrontier Television provides minimum rules for advertising in the context of the transfrontier transmission of programme services. The definition of advertising is confined to cases where transmission time has been given to the advertiser in return for remuneration. Advertising at sports event (on panels, clothing, or equipment) falls outside the scope of the Convention.

10161 The Television Without Frontiers Directive was elaborated in full cognisance of the provisions of the European Convention on Transfrontier Television (and *visa versa*). Accordingly, there is a high degree of convergence between the respective instruments regarding advertising.

Sponsorship

Athletics

10162 All the national federations who answered the questionnaire and the IAAF receive funding from sponsorship. It amounts to between 10% and 75% of total revenue. Much of this total may be "in kind", that is the federation or club will not have to pay for the equipment used by the sports players (eg. track suits for the national team). In one country, the manufacturer of the track suit is the official sponsor of the national team.

10163 No sponsorship by tobacco companies is permitted under IAAF rules and none of the national federations feel that it should be allowed. The IAAF is, however, of the opinion that until a worldwide consensus is reached, those federations not allowing sponsoring by tobacco companies will be disadvantaged.

10164 One federation reported that it had been involved in cases where the sponsorship of events had conflicted with the sponsorship of programmes and concerned the independence of broadcasters.

Basketball

10165 The majority of the national federations and the IWBF receive funding from sponsorship. As with advertising, it ranges from as little as 5% to as much as 30% of total revenue. A FIBA rule insists that club sponsors must not be in conflict with the FIBA sponsors. If this happens, an agreement is reached between the parties as to how to resolve the conflict.

10166 Only one federation reported a conflict between event and programme sponsorship, mainly as a result of rival manufacturers in the same sector of the market. Another pointed out that even three way potential clashes can arise if the team's own shirt sponsor is a competitor of both the event and the programme sponsor. FIBA has also experienced problems when its own sponsors were competitors of one of the Final Four national team sponsors.

10167 All the national federations that answered the question believe that national federations should be playing a greater role in helping clubs negotiate sponsorship contracts. FIBA would like to see itself playing a greater role in international competitions only. One of the reasons given by the national federations is that they tend to have more professional expertise in marketing and sponsorship than the clubs and can provide the "long term view". The federations can also ensure that the elements of revenue derived from sponsorship are used to develop the grass roots of the sport.

10168 The majority of federations are not against the Commission's position in its proposed Directive to ban all advertising of tobacco products, which would effectively prevent sponsoring by tobacco manufacturers.

10169 Nevertheless, one federation thinks that the sponsorship of sports events by tobacco companies should be allowed because it represents an important source of revenue and because it does not believe that such sponsorship either gives sport a bad image or encourages smoking. Another is ambivalent because, while it recognises the dangers, believes that tobacco advertising can bring in revenue to augment government support.

10170 A third thinks that if tobacco sponsorship is forbidden, many other forms of sponsorship that could be potentially detrimental to health and the environment should also be banned. As with advertising, there is a fairly even split between the federations wishing to see harmonisation at EC level and those believing that it should be totally liberalised. Another federation thinks that sponsoring should be regulated nationally.

Cycling

10171 Revenue in professional cycling is mainly derived from sponsorship. Lack of ownership of the leading cycling events results in the national federations and UCI not being in a position to select the sponsors, and therefore not being able to control the finance of their sport.

10172 The national federations themselves receive 15% to 25% of their funding from sponsorship revenue.

10173 No national federations receive sponsorship revenue from tobacco companies although a minority believe they should be allowed to, on the basis of freedom of choice for consumers.

10174 The national federations did not agree on whether advertising should be totally liberalised, harmonised or regulated nationally.

10175 Some national federations reported conflicts between event and broadcast sponsorship; they were confronted with the difficulties of reconciling the interests of teams and event organisers and between national competitions and individual events counting towards national competitions.

Equestrian sport and horse racing

10176 Half of the jockey clubs and half of the equestrian sports federations receive approximately 1% (for jockey clubs) and up to 3,5% (for equestrian sports federations) of their funding from sponsorship, with one jockey club receiving 30%, of which a small part was from a tobacco company. The FEI receives 9% of its revenue from sponsors. A majority think that the sponsorship of events by tobacco companies should be allowed for reasons of freedom of choice and financial benefits. One argued that the public is well aware of the risks of tobacco. One equestrian federation pointed out that 80% of its members were under 18 and should not be encouraged to smoke.

10177 A majority of jockey clubs and half of the equestrian sports federations felt that sponsorship should be totally liberalised, the remainder, in the case of jockey

clubs, prefer harmonisation at the EC level, and, in the case of equestrian sports federations, national regulation.

10178 No jockey clubs and only one equestrian national federation reported conflicts between event and broadcast sponsorship.

Football

10179 Most Football Associations receive revenue from sponsorship, often in slightly larger quantities than for advertising, and represents an average of approximately 20% of total revenue. Again, only one FA was partially funded from sponsorship by tobacco companies. Beer, however, was reported as an important source of sponsorship revenue in some countries. A large minority of Football Associations felt that sponsorship by tobacco companies should be banned.

10180 There was little consensus on who should regulate sponsorship, although, in comparison to football's view on advertising, there was less support for EC harmonisation and more support for total liberalisation.

10181 Only two Football Associations, reported cases of conflict between event and programme sponsorship.

Motor sport

10182 Half of the national federations receive funding from sponsorship, amounting to up to 15% of total revenue.

10183 None of the federations are sponsored by tobacco companies, but believe that it should not be prohibited. The reasoning is that, as tobacco products are available on the open market, there should be no objection to competition between brands via sponsorship or advertising. The federations believe that tobacco sponsorship has no appreciable impact on smoking habits, but does represent a legitimately exploitable competition between brands from the point of view of advertising and sponsorship. There is also a feeling that the public are over-protected and that providing the sponsor is not offensive, no restrictions should apply.

10184 The majority of federations believe sponsorship should be totally liberalised, while the minority believe it should be regulated nationally. None believe it should be harmonised at EC level.

10185 Three federations and the FISA reported experience of conflicts of interest between event and programme sponsors. In one case this concerned conflict between the track owner's advertising and that of the promoters and team sponsors. Another case related to tobacco sponsorship at the Formula One World Championships.

Sailing

10186 Sponsorship in sailing began in the late 1970s and 1980s when wind surfing attracted sponsors. Sponsorship of yachting followed later. Sponsorship rules have been relaxed over the years, but the IYRU advertising code is designed to protect the rights of sailors entering into sponsorship contracts.

10187 The majority of national federations receive funding from sponsorship which amounts to 3.6% to 25% of total revenue. None of the sponsorship revenue is from tobacco companies, but half of the federations think that such sponsorship should be permitted. There is no consensus among the federations as to whether sponsorship regulation should be harmonised at EC level, totally liberalised or regulated nationally.

Skiing

10188 All of the ski federations answering the questionnaire receive revenue from sponsorship. It amounts to between 27% and 40% of total revenue. None of the federations are sponsored by tobacco companies and none think that it should be permitted. As with advertising, preference is again expressed for national regulation or total liberalisation rather than EC level regulation. No incidents of conflict between event and programme sponsors were reported.

Swimming

10189 All national federations were partially financed through sponsorship (proportions ranged from 5% to 15%).

10190 No national federations receive sponsorship revenue from tobacco companies and none believe they should be allowed to.

10191 Contrary to advertising, a majority of national federations felt that sponsorship should be regulated nationally.

10192 No national federations reported conflicts between event and broadcast sponsorship.

Tennis

10193 The majority of federations receive funding from sponsorship which amounts to between 5% and 28% of total revenue. None is from tobacco companies, although one federation and the ETA believe that this should be allowed. The majority of federations believe that sponsorship should not be regulated at either national or EC level, but totally liberalised.

10194 A growing problem reported is the conflict between event and programme sponsors. For example, in 1992, conflict arose between the Davis Cup sponsors (Diadora and Opel) and the Eurosport programmes sponsors (Nike and Peugeot).

10195 In the view of the federations, national legislators have interpreted EC law to ensure that the broadcaster is the rights owner of sponsorship in connection with the television programme. The broadcaster does not normally consult, or take account of, the event organiser in negotiations on programme sponsorship. Nor is there a requirement for the broadcaster to avoid programme sponsors which are in direct competitor with event sponsors. Programme sponsorship can, therefore, seriously prejudice sources of revenue from event sponsors due to "clutter", particularly in cases where the loss of income to the sports body cannot be made up through increased television rights fees.

10196 Another potential threat comes from the possible use of the EPCIS system, which can electronically alter television pictures, particularly advertising hoardings, so that a broadcaster can replace the name of an event sponsor appearing on a hoarding with another name, which then appears on the transmitted television pictures.

Olympic movement and Sports Confederations

10197 The majority of NOCs receive revenue from sponsorship, in amounts ranging up to 60%. No NOCs are sponsored by tobacco companies, and most are against this practice as they believe that it can induce sportspersons to smoke. Motor racing is the only sport which continues to be sponsored by tobacco companies.

10198 All but one NOC favour harmonisation at the EC level for the same reasons as for advertising.

10199 The majority of NOCs would favour greater involvement in negotiating sponsorship contracts, particularly in relation to the Olympic Games. One NOC felt that most NOCs and their member federations were ill-equipped to handle these issues. The same NOC pointed to the danger of NOCs relying too heavily on external commercial intermediaries for help. It felt that there was clearly a role for NOCs and the international sports organisations to play in advising member federations, particularly the smaller ones.

10200 Some sports confederations felt that national territorial exclusivity for advertising and sponsorship should be respected by the EC; otherwise the stronger governing bodies of bigger countries could "dry up" the financial resources of smaller countries.

The Council of Europe

10201 Chapter IV of the European Convention on Transfrontier Television deals with sponsorship. As for advertising, the sponsorship of events which are transmitted or re-transmitted in programme services, falls outside the scope of the Convention.

10202 In addition, the Sponsorship Code, which was adopted in 1983, sets down guidelines for national sports organisations when concluding sports sponsorship agreements.

Ministries

10203 To a greater or lesser degree, most ministries feel that sponsorship of sport by tobacco companies should be allowed, with certain restrictions. One country, however, intends to introduce a national law from 1995 that would place wide restrictions on such sponsorship.

10204 In general, the restrictions (whether legislative or agreed codes of practice) are applied to ensure that tobacco sponsorship is not allowed at events that are primarily for under 18 year-olds and that the tobacco sponsorship of other events is aimed at encouraging brand change rather than smoking itself. This is achieved by ensuring that the advertising pictures, only the brand name, and not the product.

10205 Four countries would favour harmonisation of tobacco sponsorship rules at EC level.

Sponsors

10206 A major sponsor of sport is generally satisfied with EC legislation on advertising and sponsorship, but would welcome legislation addressing comparative advertising and "ambush marketing" in order to provide protection for consumers from deliberate product confusion. The company feels that concerns about over-commercialisation of sport are understandable, but that the issue should be resolved by the market.

10207 A major brewer focuses approximately 10% of its sponsorship and advertising budget on sport. The company operates its own code of practice, by not advertising at or sponsoring events that have as their direct target audience those under 18 years of age. Equally, the company is not involved in motor racing (where they believe the potential drinking/driving link to be dangerous) or in boxing.

10208 They see the new French law banning alcohol advertising as potentially dangerous for their business, if it is used as a model on which to harmonise alcohol advertising at EC level.

10209 The company considers the use of the label "official" to be a legitimate practice in a free market.

10210 Some other sponsors feel that the EC Directive on Television Broadcasting has had a negative effect on sport. As adopted into national legislation, the Directive has enshrined the position of the broadcaster as the owner of all rights in regard to programme sponsorship of a television programme or a sporting event. This has a negative effect on sport in that, unless the contract with the broadcaster secures otherwise, there is no share of revenue from programme sponsorship for the sport concerned and no requirement on the broadcaster to avoid entering into agreements with programme sponsors who are direct business or product category competitors of the event sponsors. If sports are unable to exert some control on the broadcasters' activities, their events become less attractive to potential event sponsors and the income of the sport from sponsorship can be seriously jeopardised.

10211 Certain sports and competitors elect to maintain an association with tobacco companies or opportunities for tobacco companies to be so associated. Some of those that choose to follow this path currently receive substantial support from tobacco companies which, if removed, would have potentially far reaching effects.

10212 Sponsors are conscious of a growing number of examples of conflict between sponsoring events and sponsoring programmes. In the long term interests of all concerned, it would be preferable for broadcasters to have clearly defined obligations and responsibilities towards events and event sponsors.

10213 In order to ensure transparency in sport, "rights holders" should enter into formal, structured contractual relationships with broadcasters, sponsors and other parties, clearly defining the respective contractual rights and obligations.

10214 The International Chamber of Commerces (ICC) Sponsorship Committee has also drawn up a code of practice which was adopted by the ICC and is now being implemented in 99 countries.

Agents

10215 A leading agent for international sport argued that sponsorship should be regulated by the market, even when programme sponsorship conflicts with event sponsorship. Respective rights and obligations can be clearly stated in contracts.

XI Health and Safety

Doping

Athletics

11001 The IAAF has its own rules on the control of drug abuse and works together with the IOC and other Olympic federations, with whom a joint declaration was signed in 1989. In the same year, random testing outside competition was initiated and Member federations of the IAAF are now obliged to comply with IAAF rules. Sanctions range from a three month to a life ban, depending on the substance involved.

11002 One federation pointed out, however, that testing is very costly and random tests are only carried out for high level competitions.

Basketball

11003 FIBA has instituted its "Regulations governing Doping Control and the Use of Drugs", which prohibit basketball players from using all the products that appear on the list of barred substances or methods of doping published by the International Olympic Committee, with the exception of "beta-blockers".

11004 All players taking part in competitions organised by FIBA must agree to undergo doping control tests. The Regulations state that tests should also be carried out at the Olympic Games and the World Championships. They should also be carried out at the Continental Championships, National Championships and official cups and tournaments for FIBA clubs, if the organising bodies, such as the national federations, have the appropriate facilities. The Regulations also state that unannounced doping control tests should be carried out during training sessions.

11005 Any player found guilty of doping is subject to:

- suspension for two years for the first infraction;
- a lifelong ban after the second infraction.

11006 There appears to be little consistency in the approach of the national federations to the control of drugs. Although FIBA has instituted specific rules on testing for use of illegal performance enhancing substances, only a minority of the federations have adopted them in their entirety. One federation has adopted National Olympic Committee rules, one is currently testing only foreign (ie. American) players, two have players tested by the state authorities according to Ministry rules, one has

adopted a regulation approved by its own country's National Anti-doping Council, and one has not instituted rules.

11007 FIBA believes that national legislation should fight against the use of drugs, while sporting authorities should be responsible for the fight against doping.

Cycling

11008 Cycling is an endurance sport in which there have been cases during key international events of riders who tested positive for use of doping substances. Races are often held over significant distances, and sometimes involve several countries. Coordination among governing authorities in different countries is therefore necessary.

11009 The UCI has a detailed code against doping, with rules on testing for use of drugs during international competitions. Federations have adopted UCI rules. The UCI can face problems if national Ministries promote national rules on doping which differ from those of the UCI. In some cases these rules are not enshrined in national law, but are merely sets of principles.

11010 Only one national federation was aware of the EC Code of Conduct. There was no support for EC initiatives in doping.

Equestrian sports and horse racing

11011 The FEI insisted that being dope-free is essential to the integrity of its sport.

11012 Half of the jockey clubs and a majority of the equestrian sports federations were aware of the EC Code of Conduct. All jockey clubs and equestrian sports federations had instituted rules on testing for use of drugs for horses. In horse racing most are based on article 6 of the International Agreement on Breeding and Racing agreed by the International Conference of Racing Authorities. This article stipulates that no horse may contain in its tissue, body fluid or excreta, substances prohibited by article 6. Thresholds exist for certain substances. If tests are positive, horses are disqualified and trainers penalised.

11013 In equestrian sports, all federations have adopted the FEI's rules. The FEI has detailed veterinary regulations which include chapters on controls at international events, medication control, and standard sampling procedures for prohibited substances. It has its own laboratory and veterinarians.

11014 There was no consensus on support for EC initiatives in doping. Although standardisation of doping rules is generally perceived as desirable, one equestrian federation said there were already too many bodies involved in anti-doping while

another equestrian federation felt EC rules would not be necessary. The FEI felt more resources were needed to achieve a more comprehensive system.

Football

11015 The great majority of FAs have instituted specific rules on testing for use of drugs. Approximately half were aware of the EC Code of Conduct on the matter. FIFA and UEFA have doping regulations for the matches they organise.

Motor sport

11016 Half of the federations have instituted specific rules to combat doping. They follow the IOC list of banned drugs and the FISA regulations.

Skiing

11017 The national federations in the countries which host competitive skiing events have instituted rules on testing for use of drugs.

Sailing

11018 The International Yacht Racing Union's (IYRU) anti-doping rules were finalised towards the end of 1991. They basically follow the IOC's rules, but take into account the specific nature of sailing and its consequences. For example, sailing is a sport in which competitors may compete successfully into their advanced years. Because older sailors may be prescribed medication which relates to ageing, the IYRU list permits the taking of some medication which would not be permitted in track athletes. Dispensation from taking a substance on the banned list may also be granted if the competitor suffers from sea sickness or asthma.

11019 These rules are now being adopted by member federations.

Swimming

11020 FINA has established medical rules and a list of banned substances. Most national federations have instituted rules on testing for use of drugs based on those of FINA. Two national federations said they had adopted IOC rules. There was no support for EC initiatives in doping.

Tennis

11021 The International Tennis Federation's (ITF) rules on doping follow those of the IOC. They are of the opinion that sports bodies should administer their own programmes, as governments are not suited to carry out this task. Tennis players first

considered testing to be an infringement on their rights; most now see it as necessary to promote their sport.

11022 All the federations follow either ITF rules or national legislation. In France, for example, the federations are obliged by a law of 1989 and decrees of 1991 and 1992 to follow certain procedures to combat doping.

Sports' bodies suggestions for EC actions

11023 Concrete suggestions from the federations for further EC initiatives are:

- instituting a standard drug testing certificate, which, if not in order or out of date, could lead to players being refused participation in international events;
- the control of the sales of pharmaceutical products to sports persons;
- more publicity campaigns, particularly involving prominent sports personalities;
- funding from the Commission to assist sports bodies in setting up facilities and employing personnel to carry out more testing;

Ministries

11024 The majority of countries have not implemented specific anti-doping legislation, but the ministries have been closely involved in the development of the national federations' programmes. Some of those countries that have ratified the Council of Europe's Convention have also set up committees to monitor its implementation. Where legislation is in place, it tends to reinforce the existing rule of the international federations and the IOC and NOCs. The French law of June 1989 requires all French sports federations to adopt anti-doping rules.

11025 The French have also ensured that all medicine sold in France that contains prohibited doping substances, mentions this fact on the enclosed instructions leaflet.

11026 Few further measures are contemplated currently by Member States, although in one country, talks on anabolic steroids may lead to their criminalisation.

11027 All ministries agreed that there could be benefits from more coordination between the Member States on research in connection with doping (eg. into laboratory detection methods and new compounds that could enhance performance) as well as on preventing the free movement of doping substances.

11028 The scope for further EC involvement in this issue is thought by the ministries to be limited. Suggestions include :

- financial support for testing facilities;
- creating analysis laboratories at EC level;
- arranging information and coordination meetings for government officials and specialists from each country;
- consideration of labelling of doping substances on the IOC list;
- harmonising rules for prescriptions, especially for anabolic steroids, testosterone, etc.
- measures to combat trade in illicit drugs;
- information exchange programmes at EC level;
- health promotion campaign related to sport.

11029 There is a strong feeling that this work should be led by the Council of Europe, to avoid duplication of effort.

Council of Europe

11030 Under the aegis of the Council of Europe, sports ministers agreed on an anti-doping convention. The Anti-Doping Convention provides a framework for the harmonisation of rules and regulations against doping and for the coordination of efforts to combat doping. The obligations of the public authorities are complementary to and coordinated with those of the sports organisations.

11031 In particular, the Convention provides for measures to restrict the availability and use of banned agents and methods; it encourages the establishment of doping control laboratories and cooperation among existing laboratories and the setting up of appropriate anti-doping education programmes. The Parties to the Convention have also undertaken to co-operate amongst themselves on matters covered by the convention and to encourage their sports organisations, and through them the international sports organisations, to formulate and apply appropriate measures to combat doping in sport.

11032 The implementation of the Convention is supervised by the Monitoring Group, which meets once a year.

11033 The Council of Europe feels that care should be taken during implementation of the EC Code of Conduct against doping in sport in order to avoid duplication of effort and to concentrate on its educational purpose. It would also welcome the development of additional texts, provided they complement the provisions of the Council's own anti-doping convention.

11034 Other initiatives that the Council would like to see taken at EC level include education and information campaigns, together with the development of agreements on preventing the circulation of anabolic/androgenic steroids and peptide hormones, including pharmaceutical preparations.

Olympic Movement and Sports Confederations

11035 The IOC's rules on doping are adopted by NOCs. Some NOCs recommend their national sports federations to adopt IOC rules. One NOC argued that the IOC rules should be the sole point of reference because they reflect the views of the organisations which count, that is those which train sportspersons.

11036 Most NOCs and confederations were aware of the EC's Code of Conduct.

11037 The IOC and some NOCs and confederations stressed that an additional EC system of doping rules or a supplementary list of prohibited substances from the EC would be neither necessary nor useful. In their view, there are already too many organisations involved in this matter and doping should be dealt with mainly by the sports world, sometimes in conjunction with the national authorities. Most NOCs would, however, welcome EC support for information campaigns against doping and financial support to sports organisations to counter doping. One NOC pointed out that EC support for sports research projects would be useful if coordinated with the existing organisations which are active in this field. The potential problem of developing one set of conditions within the EC and another for European non-EC members was also highlighted.

11038 One confederation felt that doping was often used as a political instrument. It would therefore be better that doping be handled by the sports organisations themselves. At most, the EC could be involved in limiting the import and export of illegal substances and labelling requirements for drugs, although the Council of Europe's CDDS has already carried out considerable work in this area.

11039 AENOC felt that since the problem of doping is not confined to the EC, it is more appropriate for the Council of Europe to continue its work in this field. In parallel to the work of the sports movement, national legislation should be harmonised and adapted to IOC rules in the matter.

Protection of young people at work

Athletics

11039 None of the federations are aware of any problems related to the employment of young people in athletics. On the other hand, as regards competing in the sport, young persons are only permitted to compete within certain age groups and over certain distances, or with specified equipment.

Cycling

11040 The employment of young people in the world of competitive cycling which might adversely affect their physical or psychological development was reported as an issue by two national federations and the UCI.

11041 In two countries, national federations reported specific rules for under 18 year olds on distances, and gears specially calibrated for young riders.

Equestrian sports and horse racing

11042 Only one jockey club and two equestrian sports federations were aware of problems concerning the employment of young people in competitions which might adversely affect their development.

11043 A minority of both jockey clubs and equestrian sports federations reported problems affecting young people where there is no employment contract and when no education scheme is in place. One equestrian federation felt failure to have a written contract could lead to excessive hours.

11044 A majority of jockey clubs and minority of equestrian sports federations have specific rules relating to the employment, training and participation in competitions of those under 18 years of age.

Football

11045 No Football Associations were aware of any problems related to the employment of young footballers. Most football associations have specific rules on young players including limitations on the age from which young players can turn professional, and on youth training. UEFA pointed out that there have been some problems when young players have been signed for excessively long durations, particularly when the contract allows the club to drop the player but does not allow the player to freely leave the club. UEFA condemns these practices.

11046 FIFPRO believes that the main problem in football in relation to the protection of young people is that of young amateurs (or in many cases their parents) being persuaded by a professional club to sign a contract to join that club at some point in the future. In this contract they undertake not to sign with any other club which may approach them in the interim.

Motor sport

11047 FISA's regulations do not include any rules on this matter. The national federations generally only require that driving license rules are followed, but one federation said that it must seek approval of parents before involving young people under the age of 18 in the sport.

Skiing

11048 Two federations replying to the questionnaire have specific rules relating to the employment, training or participation in competitions of young people under the age of 18, in accordance with FIS regulations.

Swimming

11049 Although there are participation conditions for competitions, including age limits, this was not reported as an issue for any national federations.

Tennis

11050 The ITF has been concerned about young players competing strenuously at too early an age and has produced "Guidelines and Rules for the Participation of Junior Players in the Professional Game". For example, players aged 12 and under may only compete in a maximum of four foreign competitions in any calendar year. The men's professional tennis tour (ATP) and the Women's Tennis Association (WTA) also have similar rules.

Ministries

11051 The ministries generally feel that the proposed Directive on the protection of young people at work is of little relevance to the sporting world, as employment contracts (with clubs) for example, can only be established for those who have attained the age of majority and generally only for particular sports.

Council of Europe

11052 The general view of the CDDS with regard to young people in sport is set out in Articles 1 and 6.2 of the Sports Charter. The Code of Ethics also refers to a certain number of principles to be respected when working with children.

Safety at sea

Boating

11053 The European Boating Association (EBA) has written to the Commission regarding possible Community initiatives that would have an impact on the rules applying to the use of recreational boats in the EC. Although the Commission is currently not taking action in this area, these views are summarised below:

Registration and licensing of vessels

11054 The EBA considers that there is no proven need for compulsory registration of recreational boats and points out that several European countries have recently relaxed their requirements in this respect. The German system of identification, whereby the name of the vessel and the port or recognised organisation to which the owner belongs is shown on the craft, should be sufficient.

Safety and navigation equipment

11055 The EBA considers that the sea conditions around the EC differ so widely that, while the EC could legitimately require vessels to carry suitable buoyancy equipment for each crew member and that those vessels fitted with gas appliances, inboard engines or inboard fuel storage should carry appropriate fire extinguishers, the national watersports federations should be given the responsibility of issuing advisory guidelines for the equipping of recreational boats used in their territorial waters.

Zoning

11056 The EBA agrees that suitable areas for pleasure boating and water sports should be identified and separated from bathing areas by internationally recognised buoy systems but that the Commission should restrict any action to recommending that local authorities consider such zoning.

XII Free movement of goods

Transportation of sports equipment

Cycling

12001 A minority of national federations reported having problems at customs.

Equestrian sports and horse racing

12002 No jockey clubs reported having had problems at customs when transporting sports equipment across EC borders.

12003 Half of the equestrian sports federations reported problems caused by Italian and to a lesser extent French customs when importing horses from other EC countries. Delays at borders were reported to be commonplace following checking of papers and compulsory veterinary inspection.

Football

12004 None of the Football Associations had experienced problems at customs in transporting sports equipment across borders for events in other EC Member States. For football, only personal equipment is transported across borders.

Motor sport

12005 Half of the federations reported problems when transporting competition cars across EC borders. Racing cars are required to have an ATA "carnet", there being no automatic recognition that they are sports vehicles. Duties must also be paid on Tools and equipment, or security given. This federation suggested the introduction of a "passport" for such vehicles.

Sailing

12006 In sailing, the crossing of borders is more complicated because the boats often cross borders on road trailers. This then involves inspection of boats by non-maritime officials and the emphasis is on compliance with road transport rules.

12007 A minority of federations has experienced problems when moving from country to country, particularly because of the fact that different forms are needed for each country when passing through customs.

Skiing

12008 One federation reported having had problems with transportation of ski equipment between Member States before 1993, but since then, has had no problems. Another federation reported occasional difficulties with rifles, as used by the decathlon teams.

Ministries

12009 The majority of ministries were not aware of any problems having been notified to them regarding the transport of sports equipment. Those ministries that did report problems stressed that they tended not to be serious and generally resolvable. They involved transport of :

- horses;
- expensive boats; and
- guns.

Olympic Movement and Sports Confederations

12010 Approximately half of the NOCs and most confederations reported that problems had been experienced in the past with the transport of weapons for shooting events.

12011 A minority of NOCs and confederations had also experienced problems with the transport of horses. These problems have now been resolved: one NOC praised the Commission's legislation on horses during the Olympic Games as exemplary.

12012 One international sports organisation thought that harmonisation of national legislation should be pursued for transport issues.

Standardisation

Athletics

12013 The IAAF has adopted a series of technical standards for the athletic disciplines it controls. No problems have been reported regarding these standards.

Basketball

12013 One federation identified restrictions on competition caused by different standards relating to safety measures and the control and detection of doping.

Another felt that the differences in the size of sports halls in different countries would make standardisation difficult to realise.

Equestrian sports and horse racing

12014 A minority of jockey clubs and equestrian sports federations were aware of differences between Member States which restrict the free movement of goods. The example of tack (bridles and the length of the whip) was given by some jockey clubs.

Cycling

12015 One national federation reported restrictions on free movement caused by different standards for cycling gear.

Football

12016 None of the National Football Associations, nor FIFPRO, were aware of differences between Member States relating to any aspect of football which restrict the free movement of goods or free competition.

Motor sport

12017 The specifications for competition cars differ from country to country, as do standards for obtaining driving licenses.

Sailing

12018 The Directive relating to recreational craft will lay down essential requirements for compliance to EC standards in the building of boats. This should remove the barriers to trade currently caused by boat construction rules in force in three EC countries, although there appears to be a problem with the definition of racing yachts, which are excluded from the scope of the Directive.

Swimming

12019 A minority of national federations identified restrictions on competition caused by different standards. The example of differences in pool measurements which influenced competition was given.

Tennis

12020 One federation reported that two national makes of court covering could not be marketed in another Member State, because they did not conform to the standard fixed in that country.

Ministries

12021 The majority of ministries were unaware of any difficulties relating to differing standards for sports equipment. Only one Ministry reported that two of its sports equipment manufacturers had some product standardisation problems. The smaller countries tend not to have sports equipment manufacturers who export products.

Olympic Movement and Sports Confederations

12022 Most NOCs were not aware of differences in standards relating to sports which restrict the free movement of goods or free competition. One confederation reported that it was working in close cooperation with CEN and its own national authorities in the setting of standards for the construction of sports surfaces. An international sports organisation favours EC rules on standardisation and safety standards as long as the opinions of sports bodies are taken into account.

Sporting goods manufacturers

12023 Sporting goods manufacturers are currently taking issue with the proposed extension of the 3rd mandate of the Personal Protection Equipment Directive to several categories of sports equipment and attire. (See Section III in Part I).

12024 One argument is that this Directive was originally intended to ensure minimum safety standards for protective equipment for professional workers who are open to risks not chosen by themselves. Risks linked to sport are, on the other hand, explicitly or implicitly accepted by the participants, who have the option to avoid such risks.

12025 The sporting goods manufacturers do not contest that the 3rd mandate should include such items as mountaineering ropes and life jackets, but products such as cycling goggles, ski poles and athletic and leisure footwear are considered to be items which help the individual to practice the sport, rather than to protect the individual from injury or death.

12026 Other objections, from the footwear industry in particular are:

- technical tests to ensure conformity which would reduce patent protection;
- the three months increase in lead time for a new product to be marketed, which is a serious issue in an industry with a constantly changing market;
- the fact that the date of approval of the product appears next to the CE mark which would adversely affect marketing strategies, as retailers are not willing to accept what appear to be outdated models (footwear being very fashion dependent).

The Olympic Symbol

National Olympic Committees

12027 The NOCs stressed that any liberalisation of their rights to commercialise the Olympic emblem in territories other than their own, would adversely affect their power to raise the funding which is necessary for the development of sport in their respective countries. Liberalisation would create competition amongst the NOCs for sponsorship contracts, with the likely consequence that the strongest NOCs would be in a position to corner the market, at the expense of the smaller NOCs. The NOCs are therefore apprehensive that the application of EC rules would threaten national territorial exclusivity.

12028 In the opinion of one NOC, the Olympic emblem should, in any case, be considered as part of the packaging, rather than part of the product and a distinction should therefore be made between the issue of the free movement of goods and intellectual property rights.

12029 Three NOCs reported experiencing problems with companies that were using the Olympic symbol without prior approval or payment for its use.

World Federation of Sporting Goods Industry (WFSGI)

12030 According to the WFSGI, the main problem experienced by their members, in relation to the Olympic symbol and emblems, stems from the confusion as to which emblems can be commercialised by whom when it comes to the Olympic Games themselves. In theory, the Organising Committee of the Olympic Games has the right to license the use of its emblem (with the approval of the NOC of the country concerned), but if the exploiter of the rights wants to market outside the country where the games are being held, it has to negotiate with each NOC for permission.

Sponsors

12031 A British brewer who imported a Spanish beer that had won official beer status at the Barcelona Olympics and carried the emblem of the Organising Committee, came into conflict with a rival brewer who sponsored and had the emblem rights of the British Olympic Committee. A solution was negotiated between the two breweries.

XIII Competition policy

Introduction

13001 Much of the debate surrounding the comptability of the federations' rules with competition policy hinges on whether or not the federations are abusing their dominant position. Most federations have a de facto dominant position because the European or international federations for each sport only recognise one national federation in each country.

13002 In the view of most federations and the Council of Europe, the idea of a free market in sports governing bodies would result in the model used by professional boxing, with three different competing international federations. They feel that the result would be chaotic and subject sport, to a greater extent, to the unbridled influence of money.

Exclusive broadcasting rights

Introduction

13003 The attraction of sports programmes and, hence, the level of competition for television rights varies according to the type of sport and the type of event. Mass sports such as football, tennis and motor racing tend to attract large audiences.

13004 Organisers of such events are often the national or international associations which hold a monopoly situation with regard to television rights to certain events or certain types of sports.

Athletics

13005 Broadcasting rights for athletics events are sold by the international, European, or national federations, the organising party or, in one case, the country's organisation for elite sports. The percentage of funding received in return for the granting of these rights ranges from 0% to 20%.

13006 One federation has an agreement with the national broadcaster to grant it exclusive rights for a package of athletics events. The package consists of high profile events such as the annual IAAF meeting and the national championships, but only on the condition that less attractive national events are also broadcast.

13007 The IAAF feels that it has a good partnership with television, whereby both its authority and expertise are accepted by the television companies. Two of the

national federations believe athletics is becoming dominated by television and seek a more equal relationship between themselves and the broadcasters.

13008 One of the smaller federations is sometimes required to pay the broadcaster for televising its athletics events, rather than being in a position to sell these rights. It would like to be able to veto the broadcasting of foreign events, but cannot, as it is not recognised as having a legitimate right to do so by the local television company. It feels that the broadcasting of foreign events can adversely affect participation and audiences and that some events appear to be staged for television purposes only. Television companies can dictate the timing of events, for example, to coincide with prime time viewing.

13009 The IAAF and two national federations believe that the European Broadcasting Union (EBU) should not have a privileged negotiating position for the purchase of such rights. On the other hand, the EEA stated that there was a good partnership between athletics and television on the basis of existing contracts between the EEA, the EBU and the host-broadcasters.

13010 The majority of the federations believe these rights should be allowed to extend for more than one season. A four year period is seen as a reasonable amount of time to allow the less interesting events to be supported by stronger events such as the European Championships.

13011 Both the IAAF and the EEA feel that national federations should have the power to veto the broadcasting of foreign events, in order to protect their national events and their own television rights.

Basketball

13012 The answers from the majority of federations, indicate that ownership rights for national first division matches may be held by the federations, the clubs, the league (on a mandate from the clubs), or the television companies (particularly satellite television).

13013 The percentage of funding received from the sale of exclusive broadcasting rights ranges from 3% to 21%. Exceptionally, in the case of the Spanish League Organisation, the percentage rises to 70%.

13014 The EBU owns the broadcasting rights for the major international competitions, but only FIBA and a minority of national federations believe the EBU should have this privileged negotiating position. They believe it results in greater and more uniform coverage of the sport within Europe than would be the case with other broadcasting companies. At the same time, FIBA feels entitled to hold all the television rights for international competitions.

13015 The federations who are against the EBU having a privileged position feel that there should be a free market.

13016 FIBA has worked with the EBU for eight years (two contracts of four years duration each) as they feel that this arrangement gives basketball the greatest possible exposure. Nevertheless, they still feel that basketball is screened too late in the evening and might consider alternative arrangements when the EBU contract comes up for renewal in 1994. The amount being paid for exclusive broadcasting rights has increased five-fold in the last four years in response to competition.

13017 A majority of the federations believe that exclusive broadcasting rights should be allowed to extend for more than one season. Long-term programming (eg on the basis of four year contracts) is thought to be beneficial for the television company and for the federation.

13018 All federations would like to see television giving more prominence to basketball as a sporting activity⁷⁸, rather than a commercial event. Some believe that more time should be given to the grass roots and women's games. Only a small minority believe that basketball is becoming dominated by television.

13019 Only a minority of national federations and FIBA feel that the broadcasting of foreign events can damage the development of basketball in their country. One federation said that it can interfere with the broadcasting of national games and therefore lessen the interest of the advertising media. Another federation believes that it may be harmful, but that it depends on the method and the approach adopted for such broadcasts. The general opinion is that it raises the profile of the sport and that it is good experience for players to watch US basketball or European Cup games on television.

13020 It is interesting to note that the national federations do not believe that they have the power to veto the broadcasting of foreign games on their territory, whereas, according to FIBA, they do have this right, but they do not use it.

Cycling

13021 Apart from the World Championships, which are owned by the UCI, most major events which are sought by broadcasters are owned by the organisers rather than the national federations. Nevertheless, some national federations reported receiving up to 50% of their revenue from broadcasting.

⁷⁸ In Ireland, basketball receives only 10 hours annual coverage.

13022 National federations were divided in their opinion as to whether the EBU should be exempted from competition policy rules. A majority of national federations and the UCI favour contract durations which are longer than one year.

13023 Only a small minority felt that their sport was becoming dominated by television.

13024 National federations do not have power to veto the broadcasting of foreign events and all national federations feel this practice should not be allowed in their sport. None felt that broadcasting of foreign events could damage the development of sport in their country. On the contrary it may help to promote the growth of sport.

Football

13025 Ownership of broadcasting rights for first division football are owned either by the Football Associations, the home clubs or the leagues. In all cases, however, the Football Associations are responsible for selling the rights. An average of approximately 21% of total revenue of FAs is generated from this source.

13026 Only a small minority of Football Associations believe that the EBU should be allowed certain privileges in negotiating television rights for football events.

13027 Apart from one FA, there was unanimous approval that the duration of exclusive television rights contracts should be longer than one year for reasons of stability, planning and continuity.

13028 All Football Associations were in favour of having the right to veto the broadcasting of foreign football events. Broadcasting of foreign football was seen as a threat by the majority of Football Associations and most Football Associations had occasionally used their veto in order to protect indigenous football. In one important footballing country, however, the Football Association felt that broadcasting of foreign football helped rather than threatened the sport in their country. Two Football Associations reported not having the power to veto foreign football.

13029 A narrow majority of Football Associations felt that football was not becoming too dominated by television, but certain FAs felt that clubs are becoming increasingly dependent on commercial revenue and that kick-off times are often determined in function of television. Only a minority wished to see the relationship between football and television change.

13030 FIFPRO is of the opinion that negotiating contracts on a yearly basis is time consuming and that longer contracts can benefit federations by keeping remuneration at a certain level even in years when there are likely to be less interesting matches. Longer contracts also allow for sound financial management. On the other hand, at

a time when football is becoming increasingly popular and economically powerful and when there is much greater competition between an increasing number of television channels, the more frequent renewal of contracts may allow federations to maximise their revenue.

Equestrian sports and horse racing

13031 The television rights for racing events are generally owned by the racecourses. Only in one country did the jockey club report owning the rights. In one country the tote pays for the privilege of having races broadcast. In the UK, the rights are sold to SIS (Satellite Information Services), a commercial service owned by bookmakers, for transmission to off-course betting outlets.

13032 In equestrian sports, the FEI owns the television rights to the World Cup and championships. Event organisers and equestrian sports federations seem to share most of the remainder. Only one equestrian sports federation and the FEI received revenue from broadcasting rights.

13033 There was no clear view on whether the EBU should be exempted from competition policy rules.

13034 For security of income and commercial reasons, the majority of jockey clubs and equestrian sports federations favour contract durations of longer than one year.

13035 Most jockey clubs and equestrian sports federations would like to see their sport given more prominence by television, as it is perceived as contributing to the development of the sport; the counterpart is that broadcasting of sport helps televisions' audience figures, particularly in countries with well-established betting traditions. Only a minority of jockey clubs and equestrian sports federations felt that their sport was becoming dominated by television.

13036 Only one jockey club (and no equestrian sports federations) claimed to have the power to veto the broadcasting of foreign events, and only two jockey clubs and no equestrian sports federations felt this practice should be allowed in their sport. It was not seen as an issue by one equestrian federation. One jockey club drew the distinction between broadcasting of foreign racing for information purposes only, to which they had no objections, and the broadcasting of foreign events in order to take bets on their outcome. In the latter case, the jockey club was alone in feeling that in some cases their activity was jeopardised by foreign broadcasting. Underlying this issue is the ongoing conflict between France and the UK on the regulation of betting and the attempted penetration of the French market by large UK bookmakers.

13037 Only one equestrian federation felt that broadcasting of foreign events would damage the development of their sport.

Motor sport

13038 The television rights for top motor sports events are generally owned by the federations and in one case by the organising clubs. FISA own the broadcasting rights to the Formula 1 World Championships. This position has been recognised by all the national federations for an undetermined period.

13039 The percentage of the federations' funding received from the sale of exclusive broadcasting rights is minimal, except in the case of FISA, where the proportion is 20%.

13040 All but one of the national federations believe that the EBU should not have a privileged negotiating position. There is a feeling that lack of competition will increase the cost to the viewer.

13041 Half of the federations believe exclusive broadcasting rights should be allowed to extend for more than one season.

13042 Two federations feel that they should have the power to veto the broadcasting of foreign events, but this view is not held by the other federations or FISA.

13043 None of the federations feel that the broadcasting rights of foreign events could damage the development of sport in their country.

13044 One federation would like to see the relationship between sport and television change to include more joint planning, based on the relative values of the events shown.

Sailing

13045 The percentage of total revenue raised from the sale of exclusive broadcasting rights ranges from 3% to 21%.

13046 Only one federation believes that the EBU should have a privileged negotiating position, as this affords uniformity and greater coverage of the sport.

13047 There is some feeling among the federations that sailing has had to change for the sake of television rather than for the sake of the sailor, an example being the change to the Olympic Regata format.

Skiing

13048 The rights to televise skiing events are owned by the national ski federations. The percentage of revenue received from the sale of these rights ranges from 3% to 21%.

13049 The federations do not believe that the EBU should have a privileged negotiating position, because this has reduced the potential income from television events.

13050 One federation believes skiing is becoming too dominated by television, but that this applies to most elite sports and is something that skiing has to live with.

Swimming

13051 The national federations own the television right for the events they organise and the LEN owns the rights for European events. They usually sell their rights to the national television broadcaster or, for major events, to the EBU. In some cases, external intermediaries are used. The percentage of funding received by national federations from broadcasting rights ranges from 0 to 5%, and 30% in the case of LEN.

13052 Most national federations were satisfied with the current role of the EBU and would favour an exemption for EBU from competition policy rules. For administrative and practical reasons, most national federations favour contract durations of longer than one year.

13053 Most national federations would like to see their sport given more prominence by television; a minority felt that their sport was becoming dominated by television.

13054 National federations do not have power to veto the broadcasting of foreign events in the way football federations do, and all national federations feel this practice should not be allowed in their sport. None felt that broadcasting of foreign events would damage the development of sport in their country. On the contrary it may help.

Tennis

13055 The exploitation of television rights represents from 14% to 20% of total revenue for the organisations within the sport. Apart from direct income to the rights holders, the distribution of an event on television underpins the value of event sponsorship.

13056 There is an even split between the federations that endorse the EBU having a privileged negotiating position and those that think a totally free market should prevail.

13057 All the federations believe that exclusive broadcasting contracts should be allowed to extend for more than one season as there are a great many practical and technical factors that cannot be adequately addressed in contracts which run for short periods only.

13058 Half of the federations answering the questionnaire thought that tennis was becoming dominated by television and that the broadcasting of foreign events could damage the development of tennis in their country. They therefore would endorse having a power of veto over the broadcasting of foreign events.

Olympic Movement and Sports Confederations

13059 NOCs and sports confederations are not usually involved in the sale of broadcasting rights. They nevertheless argue that exclusive rights should cover a duration of more than one year as sports federations often work within four year preparation and competition cycles (Olympics and World Championships).

13060 Two NOCs wanted more television coverage for minority sports and one wanted more revenue for sport. One confederation would appreciate more attention for "sport for all".

13061 There is no consensus as to whether sport is becoming too dominated by television, particularly as the situation varies from sport to sport. Tennis was quoted as an example of a sport in which the ill-effects of television have been experienced, causing a reduction in the number of spectators attending events.

13062 Although transnational broadcasting of sport events is the natural consequence of the internationalisation of sport and broadcasting, some NOCs, particularly from smaller countries, feel that it is justified for sports organisations to retain some influence in the matter, particularly in cases when a number of sports events are transmitted simultaneously: reasons include the threat caused to local events, possible reduction of the value of sponsorship and falls in the number of entries to local events.

13063 Other NOCs and confederations felt that the broadcasting of important sports events from abroad, particularly those which involve some of their own nationals, help to promote sports in their own country.

13064 The involvement of the EBU was not criticised. On the contrary, two international organisations perceived the EBU as operating on a solidarity basis, thereby enabling smaller broadcasters to acquire the rights to popular sports events : without the EBU, many smaller television companies would have insufficient resources to acquire these rights. Moreover, the EBU increases the chances of broadcasting of minority sports, which might not interest large private broadcasters.

13065 Only two NOCs reported conflicts between event and broadcast sponsoring. One example of such a conflict was given in football: as a precondition for participation in the final round of the European cup, UEFA forced the Brugges football team to abandon its sponsor, VTM, the Flemish private television, and to wear the logo of VTM's leading rival, BRTN, a public television and member of the EBU consortium. The settlement of this dispute was not seen as a matter for the EC.

Ministries

13066 Where national legislation (either on competition policy, intellectual property, the media or sports-specific) regulates broadcasting rights with regard to sports events, it is generally with a view to ensuring that the holder of the exclusive rights allows other broadcasters access in order to make short information reports for general or sports news programmes (this may be on a paying or non-paying basis). The concern is to ensure the general public's right to such information. In some cases, the law will give priority for acquiring the rights for events of major importance to public broadcasters, or will prevent such events being shown exclusively on a pay-per-view basis. Other than these general principles, there is complete freedom for the event organiser and the broadcaster to decide contract terms.

13067 In principle the ministries consider exclusive broadcasting rights to be necessary to the survival of high-level sport and sporting events, provided they comply with competition policy and do not deprive a large section of the viewing public from watching events of national importance. The outcome of legal disputes in several countries have confirmed these principles.

13068 There is also some concern that domestic broadcasting organisations in smaller countries could be undermined if events of national importance become the exclusive preserve of trans-national broadcasters, with consequent negative social and cultural implications.

The Council of Europe

13069 The Council of Europe has addressed the issue of the exercise of exclusive broadcasting rights in the context of its Recommendation N° R(91)5 on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context. It recommends that the broadcaster,

with the exclusive rights to cover a major sporting event of public interest, should allow broadcasters from other countries to produce short reports on the event, either by recording the signal of the primary broadcaster, or by being allowed access to the site.

Sponsors

13070 In the view of a major sponsor of sport, the effectiveness of exclusive broadcasting rights is diminished if advertisers do not have the flexibility to approach sponsorship in a variety of ways, including multi-annual transactions. Advertisers often must invest substantial resources over a long period of time to build an association, in the minds of the consumers, between the advertised product and the the broadcast of a particular event. In addition, the negotiation of a new contract each year can result in a waste of the resources for the advertiser, the broadcaster and the sports body. This can drive up the cost of participation and ultimately cause sponsors to question the value of sports advertising. This has already begun to occur.

13071 The sponsor believes that utilising sports events and broadcasts of such events as an advertising medium is beneficial to the world of sport, including consumers and participants, because without the support of commercial sponsors, many sporting activities would not be financially viable.

13072 Sponsors feel that contracts of more than one season's duration are essential as, the broadcaster needs to be able to:

- develop its style, knowledge and expertise in the coverage and/or presentation of given sports and/or events; this in turn leads to the development of loyal audiences with the benefits for advertising sales for the broadcaster and dedicated exposure for the sport;
- forward plan and advise sports in order to avoid scheduling clashes.

13073 Sports federations and rights owners need to be able to:

- predict future income and plan accordingly;
- include events, of possibly lesser attraction, in contracts with major events thereby gaining additional exposure;
- demonstrate to sponsors and other possible commercial partners the existing and likely future scale of coverage and exposure;
- count on and develop loyal audiences.

13074 The ability to conclude and preserve exclusive contracts between sport and television beyond the short-term is the bedrock upon which such relationships have been based and would founder if restricted to one or two years, to the detriment of the sport, the broadcaster and the viewer.

13075 The most common difficulties encountered by sports federations revolve around the difficulties, particularly for minor sports, of gaining television broadcast exposure and control of television rights. This is particularly the case for events taking place in public places, such as marathons, together with access to archive footage. Further difficulties often encountered centre on the practices of different broadcasters, or even different producers of the same broadcaster, in what credits are allowed at events and/or for sponsors.

EBU

13076 The EBU stressed the very short shelf-life of sport and the fact that the results of the event cannot be predicted. A purely economic analysis of broadcasting rights and sport will not give sufficient weight to cultural and considerations specific to small countries.

13077 Sport is primarily a national product. There is no significant single European market for the broadcasting of sport, but instead, a series of sub-markets in which national broadcasters operate. Each market has its own culture; (for example, prime time begins at different times in each market).

13078 The EBU holds that it does not have a dominant position in the broadcasting of sport. Moreover the increase in the number of broadcasters has strengthened the bargaining position of the rights seller and increased revenue for rights' holders.

13079 Limiting the anti-competitive effects of exclusive broadcasting rights contracts by putting a one-year ceiling on them is opposed by the EBU. It views multi-year contracts as being essential for planning, investment and continuity reasons. The precise duration of the contract should vary from sport to sport. The image a television channel may wish to project needs also to be taken into account. It may want to specialise in a particular sport and be willing to pay for exclusivity, but only if exclusivity can be guaranteed over a relatively long period of time.

13080 The EBU also stressed that the rights to non-live transmission are an important part of any exclusive rights contract for an event. In some cases they are essential, such as for the Atlanta Olympics, when many events will take place during the middle of the European night. A priority period is needed so that the owner of the live rights can also have exclusivity over the non-live rights.

13081 One EBU member with a statutory remit to cover sport, considers that the EBU does have an important role to play in support of public service broadcasters and is of particular value in maintaining terrestrial coverage.

13082 One terrestrial television channel with a statutory remit to cover sport, would like to see UEFA's article 14 abolished. This channel, having bought rights to broadcast foreign football matches, is having to seek approval on a weekly basis from a national football association before showing them.

Agents

13083 A leading agent for international sport considered a four-year duration for exclusive broadcasting contracts as acceptable, but stressed that there should be different approaches for different sports, each of which have distinctive requirements. A host of practical difficulties render it problematic to operate contracts on a short-term basis. Television rights and sponsorship budgets for broadcasters and federations need to be drawn up well in advance in order to ensure high levels of quality of service. It is in the consumer's interest that sufficient time, expertise and attention are given to contracts, and this is not possible during a one-year lapse of time. The agent reiterated the importance of this source of revenue for sports federations.

13084 An open market in broadcasting and sponsorship is perfectly capable of self-regulation. For example, it has become clear that the exclusivity which the organisers of the Wimbledon tennis competition have granted to one entity has reduced the popularity of the event among tennis supporters, because less viewers have had access to broadcasts of the competition. The organisers must act upon this situation in the light of their specific priorities. Similarly, market forces should be allowed to determine the position of the EBU in the broadcasting market. If the EBU can live up to its reputation for quality and wide-ranging coverage, it will not need to be singled out for special treatment.

Product endorsement

Athletics

13085 From 0% to 13% of the federations' revenue is generated by selling exclusive equipment contracts which are sometimes an integral part of sponsorship agreements. Such contracts are entered into for both financial and technical reasons and the labelling of such products as "official" is considered to be acceptable.

13086 Only one federation thinks that the label "official" should only be given to a quality-controlled product. The majority of the federations think that these contracts should be subject to a time limit of a maximum of four years. Half of the federations who replied and the IAAF require the use of certain equipment of a specific brand or brands for certain events. IAAF rule 150, for example, states that in all international competitions, the implements used must comply with IAAF specifications and that these implements will be provided by the organising committee. Competitors

are not allowed to use any other implements. The IAAF's exclusive contracts with manufacturers are timed to coincide with IAAF elections, that is every four years.

Basketball

13087 Up to 10% of the federations' revenue is generated by selling exclusive equipment contracts to manufacturers. The majority think that these contracts should be subject to time limits of a maximum of three years.

13088 In the case of balls for basketball, manufacturers pay for their balls to be approved technically by the German Testing Unit and subsequently for the FIBA stamp of approval. Balls from one of the approved manufacturers are then chosen for international competitions. This form of product endorsement is a source of revenue for FIBA and is promoted primarily for financial reasons.

13089 The majority of the national federations and FIBA think that it is justifiable to grant the equipment of certain manufacturers the status of "official" equipment, first because it allows the federation to guarantee the technical quality of the equipment and secondly because it represents an extra source of income for the federations. However, the responses to the questionnaire indicate that none of the federations grant the label of "official" to equipment for purely technical reasons and quite a few grant it only for financial reasons.

13090 One federation is against such endorsement which it regards as incorrect interference in the movement of goods and incompatible with the principles of the sports movement. Only two federations think that the Commission alternative of only allowing manufacturers to qualify their product by saying that the company is part of the "official sponsoring group" is viable in terms of attracting manufacturers to sponsor the federation. Most think that such terminology would be considerably less attractive to sponsors.

13091 Only two federations encourage their affiliates to purchase equipment from particular distributors, one giving the reason that they feel that they are the "experts" who can give professional guidance and assistance. The majority of federations (excluding FIBA) think that this practice should be allowed, as long as it is in the form of a suggestion rather than an obligation.

Cycling

13092 A majority of national federations sometimes require the use of equipment (including sportswear, drinks, spare-parts, photo-finish, and timing equipment) of a specific brand for certain events, usually for both financial and technical reasons. Up to 15% of national federation revenue is generated from this source.

13093 A majority of national federations think that the granting of the label "official" is justified. The UCI felt that "official" could not be equated with quality. No clear picture emerged on the viability of an alternative label.

13094 Most national federations think that exclusive contracts with manufacturers should not be subject to time limits, and a one-year duration was not seen as reasonable.

13095 No national federations encourage their affiliates to purchase equipment from particular distributors, but a minority feel this practice should not be prohibited by the EC.

Equestrian sports and horse racing

13096 Most jockey clubs do not grant the label official. Only one jockey club requires the use of equipment of a specific brand for technical reasons (for jockeys' body protectors, all-weather hurdles and wings and first aid kits). No revenue is generated from this source.

13097 The majority of equestrian sports federations think that the granting of the label official is justified, mainly for income reasons. One equestrian federation asked "what's in a word?" and considers it "meddling" to change well-established practices. There is no clear trend on the viability of the alternative label "official sponsoring group". Only one equestrian sports federations requires the use of certain equipment of a specific brand for certain events, mainly for financial reasons.

13098 Half of the equestrian sports federations think that exclusive contracts with manufacturers should be subject to time limits ranging between 1 and 4 years. A majority of equestrian sports federations did not consider a one-year ceiling to be reasonable.

13099 No equestrian sports federations encourage their affiliates to purchase equipment from specific distributors, and only two think it is a practice which should be allowed.

Football

13100 Nearly all Football Associations agreed that the practice of granting official status to equipment used by sport is justified. The link with quality was given as a reason both for and against this practice. Most FAs accepted that their revenue could be maintained by products marketed under the label "official sponsoring group", which more correctly describes the relationship between the product and the endorser.

13101 Most Football Associations require the use of a specific brand of equipment, but often only to equip their national teams. Endorsement of this equipment is given for both financial and technical reasons, and usually represents less than 5% of the total revenue of Football Associations.

13102 Only one Football Association felt that a time limit of one year for exclusive endorsement contracts was acceptable. All other favoured either no time limit at all or a longer time limit; the proposed duration for the time limit ranged from 2 to 6 years.

13103 A small minority of Football Associations encourage affiliates to purchase equipment from particular outlets, but most felt the practice should be allowed.

Motor sport

13104 All the national federations think that the granting of the label "official" is justified as it ensures the public of some selection criteria, supervised by the governing body. The FISA believes it is only justified for safety equipment (helmets, racing suits, etc.).

13105 A majority of national federations require the use of certain equipment of a specific brand for certain events. For example, specifications for tyre and gasoline in some formulae are made to ensure an "even playing field" for all competitors.

13106 Only a minimal percentage of the federations' revenue is generated by selling exclusive equipment contracts. They are all of the opinion that such contracts should be subject to time limits (ranging from one year to four years).

13107 Two federations encourage their affiliates to purchase equipment from a particular distributor and so achieve substantial cost advantages for the competitors by doing so.

Sailing

13108 The majority of national federations think that the granting of the label official is justified, but one federation, on the grounds that it is not equipped for the objective testing of sailing equipment, has a policy of non-endorsement of products.

13109 The federations involved believe that exclusive contracts with manufacturers should be subject to a time limit of a maximum of five years.

13110 The majority of the federations think that it is legitimate to encourage their affiliates to purchase equipment from particular distributors, on condition that the product is of top quality and that the federation receives some revenue in return.

Skiing

13111 Product endorsement through the granting of the label "official" is felt to be justified, in that it represents a guarantee of technical quality control and an extra source of income for the federations. It can amount to up to 10% of the federations' income. One season is thought to be a reasonable time limit for exclusive contracts with manufacturers. None of the federations require the use of a specific brand of equipment for events.

Swimming

13112 Official suppliers sometimes provide small amounts of money to use their products, but, in most cases, only cost free equipment is supplied. A minority of national federations sometimes require the use of equipment of a specific brand for certain events. Up to 5% of national federation revenue is generated from this source.

13113 A majority of national federations think that the granting of the label "official" is justified; this is mainly for income reasons. One national federation added that proper testing and quality would be pre-requisites for the granting of the label official. The alternative label of "official sponsoring group" is considered viable by only a minority of federations.

13114 All national federations think that exclusive contracts with manufacturers should be subject to time limits, usually for a period of four years in order to coincide with the Olympic cycle. A one year duration was not seen as reasonable.

13115 A minority of national federations encourage their affiliates to purchase equipment from particular distributors, and feel this practice should not be prohibited by the EC.

Tennis

13116 All the tennis federations replying to the questionnaire feel that the granting of the label "official" is justified. They point out that it can be used:

- to ensure standardisation in general;
- to ensure standardisation for a single event;
- to endorse non-sports products.

13117 In addition, the term official is not necessarily a quality label, it may just formalise a contract, for example, "official partner" or "official supplier". In this case, the term merely implies that the product is of a sufficient quality to attract the endorsement of a sport or event. Such contracts are important generators of revenue

at a time when revenue is difficult to secure. Public procurement procedures are always respected.

13118 A minority of national federations require the use of certain equipment of a specific brand or brands for certain events.

13119 No federations encourage their affiliates to purchase equipment from particular distributors. One federation reports that affiliates are encouraged to sign contracts with companies and use outlets for purchasing equipment which are geographically most convenient. This involves more companies and sponsors, so that no single company or brand of product dominates the tennis market.

Olympic Movement and Sports Confederations

13120 All NOCs and confederations endorse the practice of granting "official" status. The main reason is that uniformity of equipment conditions ensures fair competition, particularly in the context of the four year Olympic cycles. Other reasons included finance, quality control and tradition. Some organisations emphasised the fact that they felt the term "official" was not misleading for the consumer.

13121 There was no resistance to open tendering procedures for such contracts. This would ensure transparency and equalise opportunities for competitors.

13122 Where NOCs received revenue from the endorsement of products marketed under the label of "official", certain minimum technical requirements needed to be met, but the arrangements are also financially-inspired. It is, however, difficult to draw the line between the financial and technical justifications for product endorsement.

13123 All NOCs and confederations agreed that endorsement contracts should be subject to time limits, but the duration should be decided on a case-by-case basis by sports federations in line with their competition periods. A four-year, rather than a one-year, period is recommended in order to coincide with the duration of the Olympic cycle. During those four years, equipment should remain the same in order to avoid unsettling variations for using the equipment user.

13124 No NOCs or confederations said that they encouraged their affiliates to purchase equipment from particular distributors, although over half felt the practice should be allowed.

Sporting goods manufacturers

13125 In the view of sporting goods manufacturers, the label "official" does not convey quality in the eyes of the consumer; it merely describes the link between the

equipment manufacturer and the organisation attributing the label "official". In this sense, it helps promote brand awareness, but only indirectly stimulates sales.

13126 The sports goods manufacturers point out that it is also necessary to draw the distinction between sports equipment used to practice a sport and goods that are secondary to the sport, such as soft drinks, where there can be no confusion in the eyes of the consumer about the meaning of "official".

13127 Regarding the issue of federations obliging their members to use certain equipment, the sporting goods manufacturers regard this as a matter in which the Commission should not interfere, because it is a legitimate funding opportunity for the federations and because it contributes to the standardisation of playing conditions in competitions.

Sponsors

13128 A major sponsor believes that consumers generally understand that advertisers purchase the right to associate their products with particular events or organisations, and that the term "official" in connection therewith simply means that the event or organisation has decided to make that product available exclusively at its competitions, meetings, or offices. The sponsorship contracts with which this firm is familiar specifically state that use of the word "official" cannot be associated with phrases such as "approved for use as" or "selected or chosen by".

13129 The firm believes that the practice of granting official status to its products is justified because it communicates support by the firm of an organisation or event and therefore adds to the value of the sponsorship. If such terminology were prohibited, it would have a negative impact on the associational value the firm seeks in entering into and supporting sponsorship activities.

13130 Other sponsors see three reasons for using such a label:

- to ensure an element of standardisation in equipment for competitions, particularly separate competitors forming part of a whole, to allow for accurate comparison and to protect against one party having an unfair advantage;
- to signify endorsement of the product; this is an indication that the product is of sufficient quality to be approved;
- to generate income.

13131 They also feel that exclusive contracts should be subject to time limits and be on the basis of competitive tendering. The contract period time limits should reflect the circumstances pertaining to each particular deal and should be sufficient to allow the development of enough means of production and marketing strategies.

13132 The view of these sponsors is that a one-year ceiling on the duration of exclusive product endorsement contracts is totally unreasonable. It should be negotiated on the basis of market conditions which depend upon a whole range of commercial factors.

Agents

13133 A leading agent for international sports considered a four-year duration of exclusive broadcasting contracts as acceptable, but stressed that there should be different approaches for different sports with different requirements. In practice, it would be extremely difficult to have short-term contracts. Television rights and sponsorship budgets for broadcasters and federations need to be drawn up well in advance. Levels of quality of sponsorship, given the practical difficulties involved, require a longer duration. It is the consumers' interest that sufficient expertise and attention is focused on contracts; this is not possible during a one-year lapse of time. With a single-year duration sponsorship would not be possible, thereby depriving sports federations of the revenue generated from this source.

Transfer of players

Athletics

13134 The transfer of athletes between clubs is governed by the rules of the national federations. In only one federation are transfer fees payable but, in order to avoid the development of a "market" for athletes, this federation establishes (on an annual basis) a table of transfer fees. This table is established in line with the athletes' performances. Fees are paid to the federation rather than to the athlete and are regarded as a partial refund of the club's investment in training the athlete. Should an athlete leave the country, no fees are charged. Neither are fees due if the athlete is under 18, or if he or she needs to move to another city for job, education or family reasons.

13135 One federation is currently considering the introduction of a system of payment in compensation for training costs when an athlete moves clubs, even at the end of his contract. The calculation of the payment due to the releasing club would be based on the number of years the athlete had served with the club, up to a maximum limit.

13136 In other federations, the club is obliged to grant an athlete's transfer request without the payment of fees, as long as the athlete is in good standing with his club. Contracts of a specific nature or duration do not exist. Half of the federations that answered the questionnaire believe that the current rules were satisfactory: the other half thought that the actual negotiation of transfers and the contract terms between clubs and players could be improved.

Basketball

13137 The international transfer of players is governed by FIBA's rules, which state that the player is free to change club and country. There is no transfer fee payable if the players' contract has expired. Transfer fees are only payable when a player is bought while still under contract. Transfer with payment is not allowed in any circumstances for players under 19, in order to avoid exploitation.

13138 The transfer of players between clubs within a Member State is governed by the federations' own rules in the majority of cases, by both the federations' rules and national law in a minority of cases and in one country, Greece, by national law alone. In each case where the national law is involved, the federations think that the system should be completely revised. The aspects thought to be most in need of revision are the negotiation of transfers, the level of transfer payment and the contract terms between clubs and players.

13139 One federation suggested that athletes with contractual obligations should have the same status as members of the liberal professions, with top level sports clubs organised along the lines of enterprises. Another federation believes that there should be worldwide rules relating to transfers.

13140 A majority of the other the federations, whose own rules govern transfers, think that the system is satisfactory.

13141 One of the basketball leagues also believes that, for international transfers, the rules imposed by each country on its clubs should be harmonised, as the current situation causes legal inconsistencies. The English Basketball Association, for example, has a "standard" contract and would welcome the extension of this practice to other countries.

13142 The federations⁷⁹ think that it is important that transfer fees continue to be paid to compensate the selling club for the time and money spent on developing the player, particularly in the case of the small feeder clubs.

⁷⁹ Except for Ireland, which does not have a transfer fee procedure

13143 FIBA's view is that there should only be compensation paid where there is a valid contract between the club and the player. After the contract has expired it believes that the player must be free to change clubs without compensation.

13144 Other reasons for justifying transfer fees were that they:

- provide finance for scouting;
- provide finance for educational activities.

Cycling

13145 The general principle is that upon termination of contract, no transfer fees are payable. Only in exceptional cases, when there is mutual consensus between clubs, can a mid-season transfer take place and this sometimes involves compensatory amounts.

13146 One national federation reported that transfer fees were paid in professional cycling.

13147 All the national federations indicated satisfaction with the current system of transfers.

Football

13148 The transfer of football players from one club to another is regulated by an internal system regulated by the Football Association (FA) of each country. In a minority of cases, the system is governed by the FA in conjunction with national law. During the contract period, transfers are negotiated by mutual agreement between the three parties involved, that is the club from which the player leaves, the acquiring club and the player. A transfer fee, or "compensatory" amount is agreed upon between all parties. On termination of contract, the transfer system is regulated by mandatory agreed compensation to the ceding club.

13149 For transfers between clubs in different European countries, including both EC and the other 33 European countries, and indeed worldwide, during the contract mutual agreement is necessary, including for the amount of compensation. Upon termination of contract, UEFA has an established system of rules under which a transfer fee is determined mainly by a players age and revenue. Under this system UEFA insists that the player is immediately free to join and play for another club, and that the payment of a transfer or compensation fee is a separate issue. The Football Associations, however, in describing their own systems for transfers within their borders tend to assimilate the end of the contract to the payment of a fee.

13150 When a player's contract ends and a fee is not mutually agreed by the acquiring and ceding clubs, the case is taken before a special internal national football tribunal. The football authorities in each country have their own tribunal. For international transfers, the case is handled by FIFA's internal football tribunal. Despite recent cases brought to the attention of national courts, UEFA points out that the vast majority of transfers (95%) are rapidly and efficiently agreed between the clubs involved. Only in 5% of cases, is recourse to the tribunal necessary, and only in a small minority of these cases are there any problems.

13151 In all cases, Football Associations reported being satisfied with the current system of transfers and transfer fees. They felt that compensation was justified in order to finance training costs, development of young players, infrastructure and facilities, and feared that liberalisation would lead to enrichment of the most powerful clubs. Only FIFPRO, the international football players union disagrees and calls for complete revision of the system.

13152 FIFPRO is of the opinion that the principle accepted by UEFA and the Commission at the time of the "gentlemen's agreement", that is that any professional footballer should be free to play for another club at the end of his contract with his former club, "irrespective of the usual negotiations between the buying and the selling club concerning compensation, in particular for real and demonstrable costs incurred in training young players", is ambiguous and unworkable in two senses:

- the player can only really be free if there is no payment of any type of compensation;
- the transfer fees currently paid are patently not confined to real and demonstrable training costs as:
 - "stars" fees are much higher than fees demanded for "non-stars", although they have received the same training; and
 - transfer fee are still paid regardless of whether the player is leaving his first, second, or third club, only the first of which really incurred substantial training costs.

13153 FIFPRO would like to see the French system, which they consider demonstrates freedom of contract, adopted throughout the EC (Spain and Portugal already having similar systems). In summary, the French system obliges a footballer to sign a four year contract, with fixed conditions, with the initial club that trains him. The first club to which he transfers is obliged to pay the initial club compensation for training. This fee is low and is calculated according to precise rules laid down in the French Football Association's Charter. At the end of this second and any subsequent contract, the player is free to move to another club, without any transfer fee being payable to the ceding club.

Motor sport

13154 As motor sport is primarily an individual sport, the transfer fee question is really only relevant to Formula One drivers who move teams during a season. Their contract has to be registered by a board of lawyers in Switzerland. Otherwise, there are no restrictions, providing the federations' rules regarding the suitability of drivers are respected.

13155 One federation specified that once a driver of any nationality has acquired a sports driving licence issued in their country, the "foreigner" effectively becomes a "national" in the eyes of the federation, although this does not give him the right to drive for the national team.

Sailing

13156 The term "professionals" in the sailing world refers primarily to instructors or coaches. There is no transfer of professional sportsperson between clubs at present and hence, no transfer fees. One federation is of the opinion, however, that this question may become more relevant as the sport becomes more professional.

Skiing

13157 There are no rules governing the transfer of skiers between clubs, other than nationality eligibility rules. In general, this means that skiers must hold a valid passport and register as a resident of the country to which they are moving. No transfer fees are payable in any circumstances.

Swimming

13158 Transfers are governed by the national federations. In one federation, the agreement of the club is usually necessary to transfer, although up to the age of 12, transfers are free. Exceptions to transfer rules are made in cases where the swimmer changes jobs or residence. Fees are only paid in exceptional cases, and only involve limited monies. When a country has a world class team in a particular sport, the chances of small monies for transfers is increased. Sometimes small amounts of money are exchanged between clubs for transfers, without the intervention of the national federation.

13159 When contracts have been signed between sportspersons and clubs they must be respected; upon expiration of contracts there are usually no restrictions. Most national federations indicated satisfaction with the current system.

Tennis

13160 The transfer of tennis players between clubs is generally governed by the federations' own rules. In the case of one federation, a tennis player is allowed to take part in official team competitions for only one association and for one affiliated club from 1 December to 30 September of the following year. A transfer of eligibility for a tournament is therefore only possible between 1 October and 1 November. Transfer fees are paid even if the player has come to the end his/her contract. The justification given for the payment of transfer fees is that they compensate for the high financial investment in young players.

13161 A second federation reported that the transfer of players between clubs during their contract depends on stipulations in the individual contract. On termination of the contract, the player is free to ask for a transfer. Transfer fees are paid even if a player has come to the end of his contract. The amounts due are fixed by the annual general meeting and are viewed not as fees but as compensation for the investment of the former clubs. They are only applicable to high ranking young players.

13162 A third federation operates a system whereby the player needs the authorization of the club and the regional association if he/she wishes to move during the contract. On termination of contract the player is free to transfer and there is no transfer payment between clubs.

13163 In a fourth federation, a "training compensation" fee is due only for players between the ages of 14 to 29. If the clubs cannot reach an agreement on the fee, either the player continues to play for his former club, or goes for one year without playing on the inter-club circuit and is a free agent. There is also a "chamber de reconciliation" (arbitration court) which can decide on transfer issues.

13164 While the majority of the federations are satisfied with the transfer arrangements, the European Tennis Association (ETA) and two of the federations consider that they could be improved.

Olympic Movement and Sports Confederations

13165 A majority of NOCs and confederations consider transfer fees to be justified as a compensation for training young sportsperson. Most consider the current transfer systems to be satisfactory, although in one country, while the system for amateurs is considered satisfactory, the system for professionals is deemed to require improvement.

13166 The NOCs and federations contest that the vast majority of youth sports training is carried out by smaller clubs on a voluntary basis and that complete freedom

of transfer would enable the richer clubs to purchase the best sportsperson, and would discourage the smaller, often unsubsidised, clubs from investing their limited resources in training and developing young sportsperson. This would jeopardise the social role played by many grassroots sports organisations.

13167 In this context, some NOCs likened the payment of transfer fees to the notion of "goodwill" as used in accounting. One confederation saw the receipt of transfer fees as a return on investment which needs to be compensated in order to encourage the development of sport. The Association of European National Olympic Committees (AENOC) felt that the transfer system was similar to that of VAT, whereby an honest fee on value-added is paid and approved the principles behind the UEFA system on transfers.

13168 An argument against transfer fees was given by one NOC, who pointed out that in industry, when workers leave a company from whom they may have received training, there is no system to compensate that company.

Ministries

13169 In most countries, the working relationship between a professional sportsperson and his or her club is governed by general labour market legislation, with no specific provisions regarding contracts in the sporting world. The ministry position in these countries is, generally, that the matter of transfer fees should be left to the governing bodies of the sport in question and that such fees are probably unavoidable (although unrealistically high in some cases). Disputes regarding contracts can be referred to the federations' arbitration body or to normal labour tribunals in most cases.

13170 In three countries (Belgium, Spain and Greece) there is specific legislation relevant to this issue. Belgian laws regulate the contracts of remunerated and non-remunerated sportsperson. A Greek law determines contract terms for footballers and a Spanish law transposes general labour regulations taking into account the specificities of sport. The latter will ban transfer fees from 1995 but will allow payments to be made to the ceding club in compensation for preparation or training, providing that the compensation and terms are previously agreed in the joint contract between the club and the player.

13171 One ministry feels that an EC Directive to allow players to move freely at the end of their contract, with no interference from the club that trained them, should be adopted.

Government funding of sport

Basketball

13172 All the national federations and the IWBF receive some form of funding from their national, regional and local authorities (FIBA does not). Only two federations believe that such funding distorts international competition in basketball.

Cycling

13173 All national federations receive some form of government funding, including grants and lotto revenue, and only one feels that differences in the level of this funding distort international competition.

Equestrian sports and horse racing

13174 A minority of jockey clubs receive some form of government funding; of this minority, two of them do not believe that this distorts international competition.

13175 All equestrian sports federations receive some government funding and only one believes it distorts international competition.

Football

13176 Most Football Associations received government funding in some form or other, and only one felt that aid currently granted to football distorts competition in EC-wide events or in the transfer market.

Motor sport

13177 The majority of the federations receive some form of government subsidy. One of them believes that this may distort international competition.

13178 In one case, a federation receives a small portion of the revenues from betting on soccer. This is used to develop promising drivers and improve structures.

Sailing

13179 The majority of federations receive some form of government support and half of them believe that such funding may distort international competition.

Skiing

13180 All the federations receive some form of government support. None feel that such support distorts international competition in the sport.

Swimming

13181 Most national federations receive some form of government funding, and none feel that discrepancies in this funding distort international competition.

Tennis

13182 The majority of federations receive some form of government support. One federation believes that such funding may distort international competition.

Olympic Movement and Sports Confederations

13183 All NOCs and confederations receive some form of government funding. None believe it distorts competition.

Ministries

13184 All of the ministries make funds available to support the activities of sports bodies at national, regional and local levels. They do not feel that such funding causes any distortion of competition, although one ministry thinks this may become an issue if European leagues become a reality in certain sports.

Competition between federations

13185 The general opinion from sports authorities was that the Commission should make greater efforts to account for the specificities of sport. Most sports authorities conceded that they are and should be subject to the provisions of national law. Only a small minority which felt that a special "lex sportiva" should be applied. One NOC summed up by stressing that as long as both the EC and the sports authorities act in a reasonable manner, most problems will be avoided. In most cases, national law recognises sport-specific tribunals set up to handle disputes on sports.

13186 There was almost consensus that one federation per sport per country was the best way to organise sport, a fact which is not challenged by the Commission. Nobody wants a multiplication of federations as seen in international boxing.

13187 Football, as are many other sports, is organised around the principle of single federation control. Any football which takes place outside the scope of the

single FIFA-recognised federation is not considered to be "official" football. Although, in principle, there is nothing to prevent alternative federations from setting up parallel competitions, UEFA is very wary of non-official football. Given the large public following of the game of football and its revenue-generating capacity, the organisation of football needs to be tightly controlled in order to prevent abuse. UEFA feels that unofficial football runs the danger of being motivated by personal financial gain rather than the good of the sport as a whole.

Ticketing

Athletics

13188 Two of the federations who answered this question and the EEA favour having one ticket agency per Member State for international events because it gives greater control and improves revenue by reducing commissions. They do not, however, find it acceptable that agents make the purchase of tickets conditional on buying other services or products and believe that EC residents should be free to purchase tickets in any EC country.

Basketball

13189 The majority of federations favour having more than one ticket agency per Member State for international events. They also agree that the purchase of tickets should not be made conditional on buying other services or products. All but one federation believes that EC residents should be allowed to purchase tickets in any EC country. This federation was concerned that it would be less easy to ensure that particular blocks of tickets are sold to the supporters of one team, which is one of the methods used to control potential hooliganism.

Cycling

13190 No national federations favour having only one ticket agency per Member State for international events.

13191 With one exception, no national federations accept that agencies should be allowed to make the purchase of tickets conditional on buying other services.

13192 All national federations believe EC residents should be free to purchase tickets in any EC country.

Equestrian sports and horse racing

13193 Only one equestrian sports federation favours having one ticket agency for international events.

13194 This is less of an issue for horse racing, as only national events are organised. The majority of jockey clubs do not favour having only one ticket agency per Member State for international events.

13195 No jockey clubs or equestrian sports federations accept that agencies should be allowed to make the purchase of tickets conditional on buying other services, but most jockey clubs have no view.

13196 All jockey clubs and equestrian sports federations which answered the questionnaire believed that EC residents should be free to purchase tickets in any EC country.

Football

13197 A majority of Football Associations were against having only one ticket agency per Member State for important events. Only two found it acceptable that exclusive agencies sell their tickets as part of a package including other agency services. Although a majority of Football Associations agreed that nationals and residents from any Member States should be free to purchase tickets in any EC country, most underlined that safety and hooliganism need to be taken into account. UEFA accepts the EC's position on ticketing but emphasized that serious consideration must be given to security implications.

13198 FIFPRO thinks that nationals from any Member States should be free to buy their tickets in any country, but that there should be a limit to the number of tickets a single person is allowed to purchase, to prevent any one person buying enough tickets to constitute a security risk (by fans of the opposing team having access to seats in the rival supporters part of the stadium).

Motor sport

13199 All of the federations favour having more than one ticket agency per Member State for international events and do not find it acceptable that agents make ticket purchases conditional on buying other services or products.

13200 All of the federations believe that EC residents should be free to purchase tickets in any EC country.

Skiing

13201 There is disagreement between the federations about the merits of restricting ticket distribution to a single agency per Member State. Reasons given include overall coordination and control.

Swimming

13202 A minority of national federations favour having only one ticket agency per Member State for international events, mainly for publicity and practical reasons. These reasons, however, were also be used against the case of exclusivity.

13203 No national federations accept that agencies should be allowed to make the purchase of tickets conditional on buying other services.

13204 All national federations believe EC residents should be free to purchase tickets in any EC country.

Tennis

13205 Only one federation thought that there might be circumstances in which it would be preferable to have one ticket agency only per Member State for international events, to, for example, prevent ticket touting.

13206 No federations find it acceptable that agents make purchase of tickets conditional on buying their services and believe that EC residents should be free to purchase tickets in any EC country (with one federation making a caveat in relation to controlling hooliganism).

13207 The ITF respects IOC and FIFA parameters on acceptable procedures for the sale of tickets. They point out that the Commission should communicate its decision on ticketing issues directly to the federations, so they are fully aware of permitted procedures.

Olympic Movement and Sports Confederations

13208 The Organising Committees have argued that national quotas for tickets are necessary to guarantee that all countries are granted participation proportional to their population and not of their financial capacity. In addition, sales of tickets should be controlled in such a manner as to avoid hoarding by spectators until soon before the event and subsequently demanding extortionate prices (touting). The Commission was of the opinion that a greater level of competition in the distribution of tickets is not incompatible with the maintenance of certain national quotas.

13209 Security at the stadium has also been advanced as an argument in favour of quotas. All tickets sold to persons from one nation will be located in the same part of the stadium, in such a way, potential conflicts between nationalities can be avoided. While this is theoretically true, supporters of the Olympics would not seem to pose a serious security threat.

13210 Exclusivity on a national basis has traditionally been used for the Olympic Games as the best system to ensure that each country can acquire a fair share of tickets, to avoid a black market and to improve security at events by separating nationalities. Ticketing and the practice of exclusivity is not seen by the IOC as a business issue and therefore should not be a target of EC competition policy. Nevertheless, the IOC has agreed in the past to change its ticket arrangements to comply with EC rules.

13211 All NOCs favour having one exclusive ticket agency for important international events, usually to control hooliganism and spectator violence by separating nationalities. This reason is valid for other sports than football. Just because there has not yet been a problem at the Olympic Games does not mean that exclusivity should not be maintained. Other elements to consider include ensuring a fair distribution of tickets among nationalities.

13212 NOCs are split on the acceptability of EC residents being free to purchase tickets in any EC country. Again, security is given as a reason, as well as the custom of ticket rationing to give each country its fair share. One NOC requests that for high risk events, the EC should be prepared to accept restrictions on the sale of tickets.

13213 They are also split on the concept of exclusive agents selling tickets as part of a package including accommodation and travel. Those in favour claim that this is the most attractive part of the deal for the agent and its main opportunity to guarantee a return on the sponsorship contract. There was no opposition to recourse to tendering procedures before selecting the agent. One NOC suggested that the agreement with the agent should be subject to a minimum percentage of tickets being sold on a ticket-only basis.

Ministries

13214 All of the ministries think that EC citizens should be able to purchase tickets for sporting events in any Member State and that the agencies selling the tickets should not be permitted to make such purchases conditional on the purchase of other services. The majority are not, however, against the use of exclusive agencies, if this is regarded as the most appropriate way of controlling segregation of fans and hence combatting violence.

XIV Animals in sport

Equestrian sports and horse racing

EC Legislation on Equidae

14001 With one exception, all the national federations (jockey clubs and equestrian sports federations) approved of EC rules on health requirements for the importation of horses into the EC. The national federations were consulted when the legislation was drawn up and so the EC's rules also reflect their views. The only concern is the extent to which certain national federations are able and willing to abide by these rules. Most feel that the rules are necessary to protect horses' health and control epidemics of contagious diseases, without imposing undue restrictions to importation. One pressed for additional compulsory testing for equine viral arthritis prior to importation.

14002 A large majority also approve of EC rules for free movement of horses within the EC. One jockey club raised the issue of confidence in some Member States' ability to observe EC rules. The FEI found these EC rules particularly helpful.

14003 All federations, bar one equestrian sports federation, approved of EC rules to harmonise registration of breeds so that specific breeds are protected, particularly now that the cross-border movement of horses is increasing.

14004 A clear majority agreed that Member States should be allowed to reserve certain races for their own horses. Jockey clubs from smaller countries raise the point that there is a greater need for their horses to be allowed to compete abroad. For other events, there should be no discrimination.

14005 The majority of federations approved of EC rules on non-discrimination regarding the percentage of prize money to be reserved for the improvement of national breeding. Although one jockey club, from a large country, would prefer 40% to be reserved for special breeding and regional competitions, the majority favoured a decrease of the reserved percentage over time. Another jockey club looked to the Commission to ensure that these exceptions are not abused.

14006 A minority of jockey clubs, including those from important racing countries, and half of the equestrian sports federations were against EC legislation on passports for horses: national studbook and racing authorities are already responsible for this matter and racehorse passports are already harmonised via the FEI passport, which is considered satisfactory. The FEI would not oppose an EC passport as long as it is fully compatible with the FEI passport.

14007 A majority of jockey clubs were against EC intervention in the regulation of other animals involved in sport. Many equestrian sports federations did not feel that it was appropriate for them to have a position of this issue.

14008 In general the FEI feels that EC Directives have made a positive contribution to their sport, although some Directives still remain to be implemented.

XV EC sources of funding

Athletics

15001 None of the federations reported having taken part in EC funded programmes. One federation had received a subsidy for the organisation of an international event. EC funding is being sought for the European Athletic Championships in Helsinki in 1994.

Basketball

15002 Only the IWBF had received EC funding in the form of a contribution towards the infrastructure and organisation of the 1993 Eurochampionship.

Cycling

15003 No national federations had received EC funding.

Equestrian sports and horse racing

15004 Only two jockey clubs and no equestrian sports federations, had received funding from the EC for their sport; one had received funding for education and training.

Football

15005 Only two associations, both of which are located in regions with lagging economic development, reported having received EC funding for the development of football.

Motor sport

15006 None of the federations have benefitted from EC funded programmes or subsidies.

Sailing

15007 One federation has received minimal funding in the form of event sponsorship.

Skiing

15008 None of the federations have benefitted from EC funded programmes or subsidies.

Swimming

15009 Only two national federations had received funding from the EC, for one-off events. One national federation felt that the EC's sponsorship had very limited impact, and that, in this sense, EC money is not appropriately allocated. It would be more beneficial to sport if the EC provided help for significant events, such as the European Championships. Current aid does not portray any image of Europe to the youth.

Tennis

15010 Only the ETA has received EC funding.

Ministries

15011 A minority of ministries are aware that certain sports organisations have benefitted indirectly from ESF and EAGGF funding for certain educational, training and other activities. A number of physical education institutes and universities have also joined the ERASMUS programme.

15012 Only three ministries reported being the recipient of funds for sports-related activities.

15013 The rest of the ministries are not opposed to such a programme and, in order of preference, would like the target groups to be the disabled and young people, with actions in the areas of education and training and amateur sports.

15014 As to whether a sports-specific EC funded programme would be viewed positively by the ministries, one thought not and another thought that this could cause duplication of effort and that the wider scale of Council of Europe projects was preferable.

The Council of Europe

15015 The Council of Europe's Committee for the Development of Sport is in favour of EC funding initiatives that support sports activities in compliance with the spirit of the Sports Charter and the Code of Ethics. The Council believes that, whenever possible, funding of activities or events should not be restricted to EC Member States but should be made available on a pan-European basis in order to contribute to the strengthening of a wider European identity.

Olympic Movement and Sports Confederations

15016 The EC is seen by NOCs and confederations as having invested in sport only in terms of its own image-building and communication. For example, at the Barcelona and Albertville Games, the Commission made a financial contribution in order to promote the EC dimension to the Olympics. This was viewed by some parties as an attempt to use sport for political purposes. The majority of NOCs and the IOC would prefer to see EC money invested in developing sport in areas where finance is truly needed.

15017 Only two NOCs reported having already received funding from the Commission, to provide education and training support for sport in Eastern and Central European countries, for the European Youth Olympic Days, and for programmes for the disabled. The NSF's report "Sport in the Member States of the European Community" was co-financed by the EC, the Dutch government, and the Danish and German sports confederations.

15018 There were no objections to an EC funding programme for sport. The most favoured areas for EC funding in order of preference are : sport for the disabled, youth sports promotion and exchanges, amateur sports and sports education and training, including training for board and committee members, coaches and youth leaders. There was also support for EC financial intervention for general sports development programmes ("sport for all") and for initiatives involving the exchange of knowledge on sport for women, for the elderly and for the promotion of health and of sport as a lifetime activity. There was some support for assisting sports in Central and Eastern Europe: the German Sports Confederation felt that the European Regional Development Fund should contribute to the improvement of sports centres in the New Laender. All but one NOC agreed that no EC money should go to professional sports.

XVI Environmental policy

Athletics

16001 The federations of three countries stated that legislation existed which required the prior investigation of the environmental impact of constructing a new athletics stadium or improving an existing one. They were aware that there had been complaints regarding the construction of new stadia.

Basketball

16002 The federations of two countries stated that legislation existed which required investigation into the environmental impact of constructing a new basketball stadium and three federations were aware of complaints on environmental ground of such construction.

Cycling

16003 In approximately half of the Member States, national federations said that legislation existed which required investigation into the environmental impact of building new cycling facilities.

16004 There was little awareness of complaints on environmental grounds regarding the construction of cycling facilities.

Equestrian sports and horse racing

16005 Jockey clubs and equestrian federations in five Member States said that legislation existed which required investigation into the environmental impact of constructing infrastructure.

16006 A minority of jockey clubs and half of the equestrian sports federations were aware of complaints on environmental grounds regarding the construction of racing infrastructure in their countries, mainly because of the hygiene conditions of racetracks and stables, noise near racetracks and water pollution.

Football

16007 In most countries, legislation exists which requires investigation into the environmental impact of constructing a new football stadium. Approximately half of the Football Associations were aware of complaints on environmental grounds regarding the construction of football infrastructure. Only a minority of FAs were in

favour of including a specific mention of football stadia in the EC Environmental Impact Assessment Directive.

Motor sport

16008 In five countries, legislation exists which requires investigation into the environmental impact of constructing a new racetrack, or improving an existing one.

16009 Half of the federations were aware of complaints on environmental grounds regarding the construction of racetracks. One federation thought that increasing concern about environmental issues might force a change in venue for some events.

Sailing

16010 In four countries, legislation exists which requires investigation into the environmental impact of constructing yacht marinas. Three federations were aware of complaints on environmental grounds regarding the construction of sailing marinas in their countries.

16011 There was a strong feeling that environmentalists who did not sail were less well qualified than sailors, most of whom were conservationists, to propose measures on the protection of natural habitats used for recreational boating.

16012 In the opinion of the European Boating Association, it would not be reasonable for an EC Directive to limit discharges from vessels direct into the water while the standard and availability of appropriate shore facilities differ from marina to marina. Until standard facilities are available, such as improved public lavatories, full on-land sewage treatment and provision of pump-out facilities for moored vessels, regulation should be by local bye-law.

Skiing

16013 Two of the federations reported that they were aware of complaints on environmental grounds regarding the construction of skiing infrastructure in their countries.

Swimming

16014 In approximately half of the Member States, national federations said that legislation existed which required investigation into the environmental impact of constructing a new swimming pool.

16015 No national federations were aware of complaints on environmental grounds regarding the construction of swimming pools in their countries.

Tennis

16016 In four countries, legislation exists which requires investigation into the environmental impact of constructing a new tennis stadium. Half of the federations were aware of complaints on environmental grounds about such construction.

16017 In one country, the federation has set up a Committee for environmental issues. The Committee is advised by the national sports federation's committee for environmental issues.

Olympic Movement and Sports Confederations

16018 Three out of seven NOCs and two sports confederations were aware of complaints on environmental grounds regarding the construction of sports facilities in the EC. Examples included outdoor sports such as kayak, orienteering, motor sports, shooting and water skiing. Solutions reached revolved around hearings with both sports and environmental organisations and, in one case, a special standing committee was set up to handle these matters.

16019 The IOC has now introduced rules which emphasise protection of the environment when the Olympic Games are held.

16020 One confederation stressed that problems centred on the impact of locating sports infrastructure in external nature areas, and the noise generated by sports facilities, which disturb nearby neighbours.

Ministries

16021 Implementation of the Environmental Impact Assessment Directive has taken a similar form in all the Member States. None think that sports stadia should be mentioned specifically in the Directive, as they generally fall into the category of Annex II "urban development projects". As such they are only subject to an environmental impact assessment if they are judged to have a significant environmental effect. In any case, such an option is open to individual Member States under the "stricter rules" provisions of Article 13 of the Directive.

16022 Complaints received by ministries have concerned tennis courts, shooting ranges, and tracks for motorised sports. Such complaints are dealt with through the usual planning enquiry mechanisms and appeals procedures of each Member State.

16023 In Germany, there is also specific legislation on noise prevention relating to the planning and construction of sports stadia. It sets out strict maximum permissible noise levels to be examined at the planning stage.

The Council of Europe

16024 The first Council of Europe text concerned with sport and nature protection, Recommendation R(81) 8 on Sport and Physical Recreation and Nature Conservation in Inland and Water Areas goes back to 1981. More recently, Article 10 of the European Sports Charter deals with the compatibility of sports activity and the environment, introducing for the first time in a text concerned with sport, the notion of sustainable development.

16025 Furthermore, the European Convention on the preservation of wildlife and natural environment (the Berne Convention, 1976) could be invoked if sports facilities were to be built on sites falling under the protection of the Convention.

XVII Taxation of sports activities

Athletics

17001 Only one athletic federation believes that non-commercially operated sports clubs compete with commercially operated clubs. Three federations feel that the Commission should play a role in the harmonisation of VAT affecting sport, but only one believes that differences in national tax treatments affect international competition in athletics.

Basketball

17002 There is currently no uniformity in the levying of VAT on sports or sports-related activities. In a few countries, there seems to be some confusion over the VAT laws - some sports bodies being taxed on some of their operations while others are not. In other countries, there is a fairly even split between the number of EC countries that do and do not levy VAT on the activities of both commercial and non-commercial sports clubs, admission to sports events, sponsorship and advertising contracts and the transfer of players.

17003 FIBA believes that non-commercially operated sports clubs do compete with commercially operated sports clubs (companies), to the extent that they are actively involved in trade or business, such as advertising during competitions.

Cycling

17004 Half of the national federations believed that non-commercially operated sports clubs compete with commercially-operated sports clubs. Differences in national taxation were regarded by a majority of national federations as affecting international competition.

17005 No national federations were aware of EC rules affecting taxation, and approximately half felt that the EC should be playing a role in harmonising VAT on sport.

Equestrian sports and horse racing

17006 Taxation is an important issue for horse racing, given the large commercial interests involved.

17007 No equestrian sports federations and the two jockey clubs which answered did not believe that non-commercially operated sports clubs compete with commercially-operated clubs.

17008 Differences in national taxation were regarded by three out of five jockey clubs and two out of five equestrian sports federations as affecting international competition. The UK jockey club felt the Commission should work to establish a level playing field for the commercial activities of horse racing, bloodstock breeding and betting. The small return horse racing receives from the off-course betting market is responsible for the low prize levels in that country, which acts as a disincentive for foreign owners to race their horses in the UK. The UK equestrian federation also felt that the combination of high taxes and relatively low prizes was having a very negative impact on equestrian sport in the UK.

17009 Only one JNF and no equestrian sports federations were aware of EC rules affecting taxation. The majority of the jockey clubs and equestrian sports federations felt that the EC should be playing a role in harmonising VAT on sport.

Football

17010 The great majority of Football Associations felt that the activities of non-commercially operated sports clubs did not compete with commercially-oriented clubs. Approximately half of the Associations felt that differences in national tax treatment affected international football competitions. A majority were in favour of the EC playing a role in the harmonisation of VAT affecting sport. Associations were unaware of EC rules on taxation currently affecting their sport.

Motor sport

17011 Only one federation believes that non-commercially operated sports clubs compete with commercially operated sports clubs.

17012 The majority of the federations feel that the Commission should play a role in the harmonisation of VAT on sport. They are particularly concerned about VAT being charged on motor racing cars, which constitute the main "equipment" in the sport.

Sailing

17013 The sailing fraternity has been adversely affected by the introduction of new EC rules on VAT from January 1993. The additional costs for both EC and non-EC boat owners could force foreign tourist traffic into non-EC waters.

17014 The federations do not believe that differences in national tax treatment adversely affect international competition and do not believe that the Commission should have a role in harmonising VAT affecting sport.

Skiing

17015 The ski federations believe that non-commercially operated sports clubs compete with commercially operated sports clubs but that there are no problems associated with such competition.

17016 Two federations also believe that the EC should play a role in the harmonisation of VAT relating to sport. One of them believes that Article 13(m) of the Sixth Directive is confusing.

Swimming

17017 Taxation was not seen as a major issue in swimming. Only one national federation believed that non-commercially operated sports clubs compete with commercially-operated clubs. Differences in national taxation were only regarded by one national federation as affecting international competition.

17018 No national federations were aware of EC rules affecting taxation, and approximately half felt that the EC should be playing a role in harmonising VAT on sport.

Tennis

17019 Two federations believe that non-commercially operated sports clubs compete with commercially operated sports clubs.

17020 Half of the federations would like to see the Commission play a role in the harmonisation of VAT affecting sport, for example, by exempting federations from paying VAT on balls, racquets, etc. when developing tennis.

17021 Three federations think that differences in national tax treatment adversely affect international competition in tennis. There was also a suggestion that the EC should encourage tax incentives to prevent international federations from leaving EC countries for Switzerland, which is courting most international federations.

Olympic movement and Sports Confederations

17022 In the view of one confederation, most sports clubs are run on a voluntary basis. To the extent that clubs sell commercial services, they are subject to tax. Only non-commercial fitness centres, tennis and squash clubs compete with commercially-oriented operations.

XVIII Use of the ECU

Basketball

18001 Only the IWBF uses the ECU. It does so for its financial operations in the European zone. Other federations have not considered using the ECU because they do not know enough about it and they tend to use the traditionally "strong" currencies of the Deutsch Mark, the Swiss Frank and the US Dollar.

Cycling

18002 No national federations use the ECU for any financial operations. One national federation reported having invested in the ECU and having lost money.

Equestrian sports and horse racing

18003 Only one jockey club and no equestrian sports federations use the ECU for any financial operations. The Swiss Franc is the currency of the FEI. It did not consider it appropriate for an international federation to privilege EC countries by using the ECU.

Football

18004 No Football Associations use the ECU; they either considered it unnecessary or simply had not considered it at all.

Motor sport

18005 None of the federations use the ECU as they have only minimal financial operations with other countries.

Sailing

18006 No sailing bodies use the ECU, as there are insufficient cross border transactions to warrant it.

Skiing

18007 None of the federations use the ECU, as they need a currency whose use is accepted worldwide and not just in Europe.

Swimming

18008 Only one national federation used the ECU for any financial operations, and this was for a European Community event. Otherwise, the federations have few financial dealings with foreign federations and find existing payment methods are easy, accurate and convenient.

Tennis

18009 The international rules for tennis only permit the use of the US Dollar, Swiss Francs or local currency.

Olympic Movement and Sports Confederations

18010 None of the NOCs or confederations carry out financial operations in ECU.

Ministries

18011 None of the ministries have taken any initiatives to encourage the use of the ECU by sports organisations and they do not consider there to be a case for them doing so.

PART III

Conclusions and recommendations The way forward

XIX Conclusions and recommendations

Introduction

19001 Part III contains our conclusions and recommendations on the main issues covered in Parts I and II of this report. Before listing our recommendations, we have summarised EC policy and legislation and the position of sports authorities and interested parties.

The free movement of persons and services

Restrictions on foreign sportspersons

19002 The Treaty of Rome clearly recognises the right of EC citizens who are pursuing an economic activity to work in any Member State of the EC under the same conditions as nationals of that Member State. Such a right therefore applies to persons pursuing sport as a profession.

19003 The position of persons who are subject to discrimination on the grounds of nationality when pursuing a non-economic activity, such as persons practising a sport without remuneration, is less clear cut. In principle, such a person has no recourse to the Treaty. However, secondary EC legislation on Member States' obligations in relation to the free movement of workers and their families requires that they should be fully integrated in the host country. If a case came before the European Court of Justice, it would be likely to give a wide interpretation of the "social benefits" to which they should be entitled, such as the possibility to practise the sport of their choice, in line with the concept of a "People's Europe".

19004 It is evident from the information gathered during the study that sports bodies have internal rules which may have an adverse impact on the ability of non-native sportspersons to practise their sport on the same terms as a native of the country in which that sports body is operating, at both amateur and professional levels. These rules vary per sport but fall into two broad categories:

- rules relating to "foreign" sportspersons ie persons who are resident in the country of the sports body, but who have not become naturalised citizens of that country;
- rules relating to "naturalised" sportspersons ie persons who have legally acquired the nationality of the country in which they reside and wish to practise sport.

19005 **Restrictions on foreign sportspersons take two main forms:**

- **limits on the number of foreigners fielded in a team;**
- **limits on the sportspersons' eligibility to join a club, or to take part in all events organised by the club or federation to which the club is affiliated.**

19006 **Restrictions on naturalised sportspersons usually take the form of the sports body's regulations insisting on the person waiting a number of years after his or her legal acquisition of the required nationality before becoming eligible to play for a team in which the number of foreigners is subject to limits or before representing his adopted country at an international event.**

19007 **In the context of this study, the key point concerning the above rules is that they are applied by the sports bodies, without distinction, both to "EC foreigners" (for example a French person residing in Italy) and to "non-EC foreigners" (for example, an American residing in Spain). The effect of applying such rules to EC citizens, in particular those practising sport as an economic activity, is to curtail their right to free movement as set out in the Treaty of Rome.**

19008 **When the issue of amateurs was raised, the distinction between amateurs and professionals was reported as being increasingly irrelevant. Instead, federations regulate access to competitions on the basis of "eligibility" as determined by level of competence in each sport.**

Recommendations

19009 **Coopers & Lybrand recognise that the vast majority of participants in the study do not believe that it is desirable to lift restrictions on foreign players, or bring the rights of naturalised players in line with the rights of naturalised citizens. It is felt that lifting such restrictions would result in the best sportspersons being monopolised by the teams or clubs with most resources, less emphasis on youth policy and alienate spectators from their local teams or clubs.**

19010 **Coopers & Lybrand are nevertheless of the opinion that the sports federations' should move towards bringing their rules into line with EC law on free movement. We would suggest, therefore that the competent international or European federations should review their internal rules relating to foreigners. Those national federations operating within the EC should be given the flexibility to allow EC citizens residing in their country not to be considered as foreigners. Restrictions on the number of foreigners in a team, or restrictions on joining a club and taking part in all events organised by the club or federation would then only apply to non-EC citizens.**

19011 In addition, sports federations should also review their internal rules concerning naturalised sports persons and ensure that they are in line with each Member States' national law on the rights accruing to citizens (both EC and non-EC) who have legally acquired the nationality of that country.

Sports qualifications

19012 The EC's legislation and policies in the area of qualifications are designed to facilitate the free movement of workers by ensuring the mutual recognition of qualifications gained for regulated professions in the different Member States and the establishment of a system for comparing vocational training qualifications.

19013 The evidence provided in the returned questionnaires showed that many sports clubs and federations have employed coaches and trainers from other Member States, without any problems having been experienced in ascertaining whether or not such staff are qualified appropriately.

19014 On the other hand, problems were reported in the case of skiing and sailing. These problems had arisen because the country in which the sportsperson wanted to practise had sports-related qualifications that were regulated within a national training system and had refused to accept the equivalence of that person's qualification which has been awarded by the private system of the sports bodies in his or her own Member State.

19015 There was a fair degree of interest from federations in the development of European level qualifications in their sport, for coaching qualifications in particular. Other respondents considered the work on the equivalence of sports-related qualifications in the different Member States to be a priority and the continuation of the work of the European Network of Sport Sciences in Higher Education was strongly supported by the Ministries.

Recommendations

19016 If they have not already done so, the European or international level sports federations should ascertain the level of interest among their member federations in:

- either, developing European or international level qualifications by harmonising the content of training courses for particular professions within their sport;
- or, drawing up a table of comparisons of the different qualifications awarded for their sport in EC countries or wider.

Hooliganism

19017 The Commission has stated that it would not object to Member States' taking measures, such as the introduction of supporters' identity cards, which may restrict the free movement of "known" hooligans (that is supporters having committed previous offenses) as long as such measures did not prevent other EC citizens from continuing to enjoy their right to free movement and to free provision of services and as long as they did not seek to control the free movement of "potential" hooligans (that is supporters with no previous convictions on hooliganism offenses).

19018 Of the ten sports investigated, the introduction of measures to combat potential violence was only reported specifically by the football and basketball federations, although all federations obviously have to abide by the legislation that has been introduced in some individual Member States. Measures have also been undertaken by the Member States that are signatories of the Council of Europe's Convention on the Reduction of Spectator Violence.

Recommendations

19019 As the reputation of certain sports is put at stake by incidents of spectator violence, it is in the interests of the relevant sports federations to continue to react to new situations and to take any measures that may be necessary combat such behaviour.

19020 Ministries could give consideration, as has the UK government, to the introduction of measures to control ticket touts, whose practices can undermine segregation and other safety arrangements, if this is seen as a problem.

19021 It is not considered necessary for the Commission to intervene in this area, apart from continuing its activities via the TREVI Group (Ministers of the Interior and Ministers of Justice) on EC cooperation on police and security issues.

Insurance

19022 The Commission believes that its only role with regard to insurance is to legislate for a single European market in the provision of insurance services. In relation to sport, it is of the opinion that the onus should lie with clubs, players and spectators to ensure that they will be adequately covered when participating in or attending a sporting event.

19023 In contrast to the Commission's position, a majority of the federations participating in the study, from all the sports except motor racing and sailing, thought that the Commission should draw up legislation to harmonise minimum insurance requirements at transnational sporting events. The majority of Olympic Committees

and sports confederations agreed with this view. All but three Ministries were also open to such an initiative.

Recommendations

19024 Coopers & Lybrand recommends that the Commission investigates this issue further, in discussion with sports bodies.

Advertising and sponsorship

19025 In 1989, the Council approved a Commission Directive, dubbed "television without frontiers", which sets out minimum requirements, both qualitative and quantitative, for television advertising and sponsorship. The Directive bans direct and indirect advertising for cigarettes and other tobacco products and the tobacco sponsorship of television programmes.

19026 The Commission has also proposed a Directive which would ban all types of advertising of tobacco products beyond the point of sale, and not just television advertising as in the Television Without Frontiers Directive. A blocking minority of Member States oppose the adoption of this Directive.

19027 Advertising is generally perceived as an acceptable source of finance for sports. Its importance varies significantly between sports, accounting for up to 20% of total federation revenue. Practically no federations are funded by revenue from tobacco advertising. Most sports organisations are in favour of liberalisation of rules on advertising, although a minority recognise that a minimum level of harmonisation can be helpful, as long as national differences and autonomy are respected.

19028 Sponsorship is an even more important source of revenue for sport than advertising, accounting in some cases for the majority of federations' funding. Only motor racing was reported as deriving revenue from tobacco advertising. Nevertheless, many sports federations, a majority in some sports, felt that sponsorship by tobacco companies should be allowed. Their reasoning for allowing tobacco sponsorship included the freedom of choice, revenue generation for the development of sport, and that the sponsorship would not induce people to smoke. Furthermore, a majority of Ministries responsible for sports did not oppose sponsoring by tobacco companies, albeit as long as certain restrictions apply.

19029 Sports authorities generally felt that rules on sponsorship should be liberalised; a minority were in favour of purely national rules, and there was little or no support for harmonisation at the EC level.

19030 Some sports organisations (a minority) reported conflicts between event and broadcast sponsorship; problems brought to our attention included dissension between

club and event sponsors, and between event and programme sponsors. The agreements between international federations and their affiliates sometimes oblige the latter to choose sponsors which do not fall into the same product category as those of the former.

19031 Some interviewees pointed out that many sports organisations lack experience in handling some of the complicated business- and finance-related issues of sponsorship.

Recommendations

19032 Current EC legislation on television advertising and sponsorship does not appear to cause any problems, and is sufficient. General problems related to advertising and sponsorship should be regulated by the federations themselves, encouraging increased attention to contract terms, which define rights in case of conflicts. This is all the more important since national legislators have interpreted EC law so that the broadcaster rather than the event organiser is considered to be the owner of sponsorship rights of a televised sports event. Unless the contract with the broadcaster secures otherwise, there is no legal obligation for a share of revenue from programme sponsorship to go to sport.

19033 Federations should be encouraged to make fuller use of national contractual law. We approve efforts by some sports authorities to inform and assist other sports bodies in the preparation of more robust contracts.

Health and safety

Doping

19034 EC legislation that has an indirect impact on the fight against doping includes Directives designed to prohibit the use of medicinal products other than for the diagnosis or treatment of pathological states, to prevent their use in unauthorised forms and dosages and to prevent their unauthorised (black market) sale or prescription and their advertisement.

19035 As it does not fall within the competence of the EC to propose binding legislation specifically on testing sports persons for the illegal use of performance enhancing substances, the Commission's most recent action has been to draw up the Code of Conduct against Doping in Sport, which was adopted in February 1992.

19036 The responses to the questionnaires indicated that the European and international federations for each of the sports had adopted anti-doping rules and had recommended that their national member federations follow them. Most of these sets

of regulations are based closely on the anti-doping rules of the International Olympic Committee. In some Member States, specific anti-doping legislation is in place and tends to reinforce the sports bodies' rules, as well as implementing the recommendations of the Council of Europe's Anti-Doping Convention.

19037 The broad view of all the respondents to the questionnaire is that the main responsibility for combatting doping should lie with the sports bodies themselves and that the lead should be taken by the IOC. The main problems now in the view of the sports bodies lie in:

- ensuring adequate labelling on prohibited medicines;
- the cost of implementing the existing rules;
- the speed of development of new doping substances;
- the continuing illicit trade in doping substances.

19038 Further EC action in this area would only be considered useful if it addressed the above questions, or concentrated on information and publicity campaigns. Above all, it was stressed that duplication of effort between the Commission and the Council of Europe should be avoided.

Recommendations

19039 Coopers & Lybrand is of the opinion that the areas outlined in Annex II of the December 1990 Council Resolution in Community Action to combat the use of drugs (see Part I, Chapter II of this report), should continue to be investigated, as they would seem to fit the criteria desired by the federations for further Community initiatives.

19040 In addition, the Commission should consider:

- financing of further education campaigns;
- financing of information exchange programmes;
- part-funding the establishment of more testing facilities for sports federations with the least resources;
- examine the policing of free movement of forbidden substances within the EC;
- using EC research programmes in the fight against doping.

Protection of young people at work

19041 The Commission's proposed Directive on the protection of young people's (under 18) health and safety at work is primarily designed to set minimum standards with regard to exposure to occupational risks and certain types of work. Article 4 of the proposal provides for a derogation from the ban on the employment of under 15

year olds, making it possible to employ children in sports activities, so long as this is commensurate with their physical and psychological health.

19042 The majority of federations responding to the questionnaire were not aware of any problems in relation to the actual employment (ie with a contract of employment) of young people in their sports. On the other hand, many of the federations have rules which apply to the participation of young people in competitions.

Recommendations

19043 Coopers & Lybrand do not see a need for any further action by the Commission or the sports bodies in this area.

The free movement of goods

Transportation of sports equipment between Member States

19044 Since 1 January 1993, with the elimination of all internal market frontier formalities, there have been no restrictions on the movement of goods from one Member State for temporary use in another. This applies to all goods which are not normally subject to prohibitions or restrictions of trade. Fire-arms would normally be subject to such restrictions. Therefore, the 1991 Directive on the control of weapons, institutes strict conditions for the transfer of weapons to other Member States, but includes more lenient rules for sportsmen and marksmen.

19045 The federations replying to the questionnaires reported very few problems with the transport of sports equipment between Member States. The problems that did occur, occasionally, related to boats, motor cars, horses and guns (used in decathlon teams). It was stressed in most cases that these problems were not viewed as serious and had generally been resolved on an ad hoc basis.

Recommendations

19046 Besides ensuring that the Commission's rules on free movement of goods are respected, no further action is considered to be necessary with regard to this issue.

Standardisation

19047 The Community's standardisation legislation is designed to ensure that differing standards in different Member States do not adversely affect intra-Community trade, by setting minimum health and safety standards to which manufacturers must comply.

19048 The third mandate of the Commission to the European standardisation body (CEN) under the Directive on Personal Protective Equipment (PPE) may include items of sports equipment. Discussions are ongoing as to the scope of this third mandate.

19049 If adopted, the proposed Directive on Recreational Craft would also harmonise standards for boat building.

19050 A number of federations gave examples of differences in standards for sports equipment that adversely affect the free movement of goods (for example, competition cars, cycling equipment, riding tack, and tennis court coverings) or adversely affect competition (for example, different swimming pool sizes and requirements for driving licences).

19051 From the point of view of sporting goods' manufacturers, the main problem in this area relates to the possible scope of the Commission's third mandate to CEN for the PPE Directive. While they have no argument with the inclusion of items such as life jackets and mountaineering ropes, they are concerned that the Commission will use too wide a definition of what is considered to be protective and include cycling goggles, ski poles and sports shoes, for example. This would increase the price and decrease the market potential of these items, thus having a detrimental impact on their business.

Recommendations

19052 Coopers & Lybrand would recommend that the sports bodies that have reported problems of free movement or competition caused by differing standards encourage the manufacturers of the products involved to prepare a dossier for presentation to the European and/or international representatives of the sporting goods' manufacturers, with a view to ascertaining whether the scale of the problem warrants taking further remedial action.

19053 It is also recommended that sports bodies inform themselves, via their national standardisation body, of the work being carried out by CEN on the standardisation of sports equipment. They would then be in a position to ensure that their opinions were taken into account, if necessary.

The Olympic symbol

19054 Although the Commission has not issued an official position on the matter in response to a complaint, it feels that current IOC rules concerning the commercialisation of the Olympic symbol and emblems could lead to a partitioning of the Community market which could in turn restrict the free movement of goods.

19055 The National Olympic Committees (NOCs) would be against the strict application of EC rules, as they feel that any threat to their national territorial exclusivity would create competition among the NOCs for sponsorship contracts. The likely consequence would be that the smaller NOCs would lose out to the larger NOCs, thereby adversely affecting their capacity to raise funding. They point out that the funding raised is put back into the development of sport.

19056 In the opinion of one NOC, the Olympic emblem should in any case be considered as part of the packaging, rather than part of the product and a distinction therefore made between rules concerning the free movement of goods and intellectual property considerations.

19057 The problem reported from the point of view of the sports manufacturers was a lack of transparency as to which Olympic organisation had the right to commercialise which symbol or emblem during the Olympic year.

Recommendations

19058 Coopers & Lybrand agrees in principle with the Commission's view that the current procedures for commercialising the Olympic symbol and emblems, as laid down in the Olympic Charter, could come into conflict with EC rules on the free movement of goods. Nevertheless, in practice, the NOCs' concerns regarding their ability to raise the funds needed to develop sports in their respective territories do carry some weight and, unless the number of incidents in which problems are reported increases significantly, we are also of the opinion that any potential disputes should continue to be resolved between the parties involved, without recourse to litigation, or action by the Commission.

19059 Those Olympic bodies that do exploit their right to commercialise the Olympic symbol or emblems, particularly during the year of the Olympic Games, should ensure that the territorial extent of those rights is transparent for the sponsor before the signature of the contract.

Competition policy

19060 Commission involvement in competition policy and sport is carried out on a reactive and case-by-case basis. The main sport-related areas in which the Commission has been called to examine cases under EC competition policy include: broadcasting rights, product endorsement, ticket distribution, competition between federations, government funding to sport and restrictive trading practices.

Exclusive broadcasting rights

19061 Two main sport-related broadcasting issues were called to the Commission's attention. The first is the acquisition of exclusive broadcasting rights for sports programmes by a group of broadcasters, in particular by the European Broadcasting Union (EBU), and whether this allows fair competition.

19062 In June 1993, the EBU agreed to improve access to sports events for non-member commercial stations. Following these amendments to their current acquisition procedures system, the Commission agreed to exempt the EBU from Article 85 for the acquisition of broadcasting rights for a five-year period.

19063 The majority of the responses to our questionnaires indicated that the EBU should not be granted special privileges and lead us to conclude that they felt the EBU should be subject to competition policy.

19064 There was general agreement that a reasonable contract duration for exclusivity should be in the region of four years in order to coincide with the Olympic cycle and for practical and organisational reasons.

19065 The second main broadcasting issue called to the attention of the Commission is the UEFA article 14 case which examines the federations' control of broadcasting for foreign events on their home territory. The Commission is looking at this question in terms of abuse of a dominant position by the football authorities.

19066 Article 14 of the UEFA Statutes provides a mechanism for regulating cross-border transmissions of football. The main feature of the regime is the establishment of "free, protected and closed" time slots. The philosophy behind UEFA's article 14 rule is that in order to protect domestic football, it is necessary to ensure that football fans are encouraged to go to see and participate in local matches rather than simply watching football on television. UEFA recently adopted a new version of its article 14 and is currently discussing the matter with the Commission.

19067 Most national sports federations, besides football federations, did not have provisions allowing them to veto the broadcasting of foreign events and were against having such provisions.

Recommendations

19068 As a solution has been already reached between the Commission and the EBU on the acquisition of rights case, recommendations would be redundant.

19069 On the article 14 case, while we recognise that in certain cases, domestic football may need to be protected, UEFA should eradicate abuse of article 14.

Product endorsement

19070 The Commission examined the Danish Tennis Federations's product endorsement policy on three aspects: the acceptability of the label "official", the obligatory use of official equipment in competitions and the recourse to exclusive equipment distributors.

19071 The Commission felt that each of these practices contravene EC competition policy. The granting of the use of the label "official" to sponsors is misleading for the consumer because it unjustifiably attributes a label of quality to the product. The Commission accepts the word "official" as long as it is clear that the label conveys a relation of sponsorship. Furthermore, there should be a competitive tender before allocating the label to a specific sponsor.

19072 On the obligation to use official equipment for competitions, the Commission accepts that the organiser of a competition can select the equipment it sees fit to choose. It is only when the federations are not responsible for the organisation of a competition, even if that competition is organised under the auspices of the federation, but nevertheless use their strong position to oblige its affiliates to use a particular brand of equipment, that the Commission sees abuse of the federations' dominant position in tennis; this practice restricts competition between sports equipment manufacturers.

19073 The final point to which the Commission objects is the practice of a federation encouraging its affiliates to purchase their equipment, (which they are obliged to use in the federation's competitions), from specific distributors. This is seen as an abuse of the federations's strong position by restricting competition among suppliers.

19074 Product endorsement is a useful revenue supplement for many sport organisations accounting for up to 15% of total revenue for some federations. The vast majority of sports organisations were convinced that the use of the label "official" was fully justifiable, and was not misleading for the consumer; consumers understood the nature of the relationship between the sponsor and the federation. One federation remarked "what's in a word?" and considered it "meddling" on behalf of the Commission to interfere in these well-established practices.

19075 An alternative label to that of official was viewed as satisfactory only by a minority of national federations.

19076 The recourse to selected official equipment for federation competitions varied significantly from sport to sport. Those recommending specific brands of equipment, which represented a minority of the total, felt this practice was justified for a combination of financial and technical reasons. Technical reasons include

ensuring a guarantee of quality, identical playing conditions for events, and safety reasons in some cases. Federations did not report recommending specific products for events they do not organise.

19077 There was a clear acceptance that the duration of endorsement contracts should be subject to time limits. Regarding the duration of the limit, one year was very rarely viewed as acceptable. The recommended duration varied from sport to sport and from country to country. Sponsors felt the duration should be determined by the market, while a four-year limit seemed acceptable to most sports organisations, often stating that coincidence with the Olympic cycle was necessary.

19078 A small minority of sport federations recommend their affiliates to purchase equipment from specific distributors. With exceptions based on revenue and advisory reasons, there is agreement between the EC's position and that of the sports world that exclusive distribution practices are inappropriate.

Recommendations

19079 Our study confirms that EC intervention on the label official generates negative unnecessary publicity for the EC. The commercial interests at stake, while important to many federations, are not major commercial activities. There is no evidence to suggest that the consumer is seriously misled, although more market research would be necessary to determine the extent of the influence of the label official. For products which are not an integral part of the sport, such as a soft drink or an airline, it is clear that the relationship is a sponsorship one. As long as the economic importance of this matter is relatively limited it does not merit EC intervention and the negative publicity it would generate.

19080 Federations should make an effort, as most are already doing, to confine their obligations to use certain equipment to the events in which they are directly involved. In determining whether federations are abusing their position in imposing the use of certain equipment, it can be very difficult to draw the line between the technical and financial justifications for product endorsement. In terms of duration of contracts the EC should take into consideration that there is near consensus that more than one year is necessary.

19081 The parallel import principle is a fundamental one for the EC. We agree that it is inappropriate for sports federations to become involved in this area and should not publicly recommend specific distributors.

19082 Given the importance of product endorsement to many federations, we recommend the Commission to provide guidelines to federations on the application of competition policy on this issue clarifying which practices are allowed and which are not.

Competition between federations

19083 The Commission was called upon by Belgian indoor football authorities to examine the Union Belge's policy towards indoor football. The indoor federation claimed that the Union Belge's policy prevented football players from alternating, during the course of the season, between the Union Belge's competitions and indoor football competitions. The indoor federation felt the Union Belge was abusing the dominant position it has in Belgian football.

19084 The Commission's position is that sports federations are subject to competition policy and that the Treaty of Rome requires the Commission to ensure that sports authorities do not abuse the strong position they have in their respective sports. Contrary to the fears of some federations, the Commission has nothing against the monopoly position of sports authorities as such; it is merely the abuse of the dominant position which is contrary to competition policy. Moreover, trade between Member States must be affected. The monopolistic structure of the sports world is therefore not called into question by the Commission. In the indoor football case, the Commission has communicated to the Union Belge why it believes the Union Belge abused its dominant position. Discussions are ongoing to seek a solution.

Recommendations

19085 EC competition policy applies to sports federations, as long as it is clear that important commercial interests are at stake. We recognise that the commercial activities of sports bodies are usually minor in comparison to non-commercial activities, but feel that this is not sufficient grounds for exemption from competition policy.

Ticketing

19086 The Commission was called upon to investigate ticketing practices for the Barcelona and Albertville Olympic Games and the 1990 Football World Cup in Italy. The Commission questioned three aspects of ticket distribution. Firstly, it queried the partitioning of the market by granting exclusivity to one agency per Member State. Second, it questioned the practice that citizens from a different Member State to where the agency was located are deprived of the opportunity to purchase a ticket at that agency, simply on grounds of nationality. Thirdly, the Commission was opposed to the practice of making the sale of tickets conditional upon the purchase of linked services from the agency such as accommodation or travel arrangements.

19087 In sports where ticketing was an issue, most sports federations felt there should not just be one ticket agency per Member State for sports events including for international events. Football Associations underlined that safety and hooliganism need to be taken into account. Ticket agencies should not be allowed to make the sale of

their tickets to sporting events conditional upon other services. Finally, there should be nothing to stop foreigners from purchasing tickets outside their country. The majority of Ministries are not against the use of exclusive agencies.

19088 The Olympic Movement stressed that exclusivity had traditionally been the best system to guarantee the respect of national quotas, to avoid the black market and to improve security. For this reasons they agreed that there should be only one agency per Member State. Opinion is divided as to whether non-nationals should be allowed to purchase tickets outside their country and whether linking tickets sales to other services should be banned. Justifications for this point of view include the prevention of hooliganism and the financial benefits from exclusivity contracts. There was no opposition to ensuring that fair tendering procedures were mandatory.

Recommendations

19089 We cannot see major problems with the ticketing issue as there is a high level of consensus particularly on eliminating restrictions on access to tickets on grounds of nationality and on opposing the practice of making sales of tickets conditional upon the purchase of another linked service.

19090 Nevertheless, although most federations do not support the system of one ticket agency per Member State, this arrangement could be justified in certain circumstances, such as a manifest danger of hooliganism, as long as competition is respected and the monopoly position of the agency is not abused by practices such as making tickets conditional on sales of other services.

19091 We agree with the federations which invoked the Commission to communicate its policy to the sports world. The Commission should hold discussions with the sports authorities to arrive at a compromise, by finding an equilibrium between ensuring that competition is not restricted and catering to the needs for the organisation of sport.

Transfer of sportspersons

19092 The Commission has not yet reached a decision on the complaints it has been addressed by footballers regarding the football transfer system and whether the imposition of such a system might constitute an abuse by a football federation of a "dominant position". It is therefore not possible to say at this stage to what extent the transfer systems in other sports might also be called into question.

19093 In seven of the ten sports studied, the national federations have rules by which the sportspersons have to abide if they wish to transfer from one club to another, or from one team to another. These rules usually set periods within which transfers are possible, to avoid "opportunistic" transfers being made towards the end

of a season and or the culmination of a championship or league competition. In all of these sports, some form of transfer fee exists if the player wishes to move to another club or team during the term of his or her contract.

19094 Transfer fees on expiration of contract were only reported to exist in relation to football and in the case of one tennis federation.

19095 The majority of national federations indicated satisfaction with the current system of transfers. They also thought that transfer fees themselves could be justified on the grounds of compensation to the ceding club for the investment in training the sportsperson. The Ministries tended to concur with this position and thought that the matter could be best dealt with by the governing bodies of sport, as long as individual contracts with sportspersons did not breach any regulations laid down by sports laws or labour laws.

Recommendations

19096 Until such a time that the Commission reaches a decision on the football transfer system, Coopers & Lybrand would recommend that the sports federations should:

- verify the compatibility of their rules with national labour law legislation;
- encourage clubs to ensure that, in signing a contract with individual sportspersons, that person is aware of the federation's rules regarding transfers, so that he or she is clear about their commitments to the club and the club's commitments to them in terms of duration of contract and procedures for transferring to another club within the federation or abroad;
- ensure that a player with a letter of clearance from the national federation to leave one country should automatically be allowed to play in another notwithstanding agreement between the clubs on possible compensation amounts.

Restrictive trading practices

19097 The EC's competition policy also applies to commercial companies manufacturing and distributing sports equipment. Restrictive trading practices involving price-sharing and market-sharing agreements and the application of dissimilar conditions to equivalent transactions are banned. Examples of unfair competition involving sports equipment include cases on windsurfing equipment, sailing boats, and tennis equipment. The Commission examines complaints brought to its attention on a case-by-case basis to determine the extent to which these trading practices violate the provisions of the Treaty of Rome.

Recommendations

19098 There is no disagreement on this issue, given its purely commercial nature. Competition policy will continue to be applied to commercial entities in a manner which is not specific to the world of sport. Therefore no further action is necessary.

Subsidies to sport

19099 The vast majority of sports organisations and activities receive public assistance. The level and forms of the assistance varies significantly from Member State to Member State. The Commission's has received occasional complaints arguing that clubs from countries which provide relatively more funding to sport have a competitive advantage in international competitions over those from less generous Member States.

19100 While the Commission has the competence to prohibit aid which distorts trade between Member States, it has not intervened in this area because subsidies as currently granted to sport do not significantly distort competition in EC-wide events nor on the transfer market. No prejudice is caused to clubs not benefiting from assistance. Moreover, as well as sometimes being economic activities, sports clubs carry out other functions to the extent that assistance to them could not be assimilated to state aid as granted to commercial enterprises.

19101 The vast majority of sports organisations agree that differences in the level of funding to sports organisations does not distort international competition.

Recommendations

19102 This is clearly not an area for EC involvement or action.

Dumping

19103 The Commission can be called upon by EC companies, including sports equipment manufacturers, which consider themselves to be victims of dumping from third countries. The will examine the complaint to determine whether a case of dumping exists and, if so, what can be done to protect or compensate prejudiced firms.

Animals in sport

19104 The EC has put in place a series of legislative measures laying down minimum health requirements for the free circulation of horses within the EC and for their import into the EC. It also has drafted legislation on trade in competition horses,

rules on participation in competitions, and rules for intra-community trade of horses. A series of applicatory decisions are also being put into place.

19105 There was a very high percentage of awareness and approval of the EC legislation on horses. The federations stressed that the legislation reflected their points of view and that they had been consulted when the legislation was drawn up.

Recommendations

19106 EC legislation on equestrian sports and horse racing is a good example of how it is possible for the EC and the sports authorities to cooperate to their mutual advantage. We recognise that the fact that only one sport is concerned by this legislation and that a small number of Commission Officials are involved has facilitated the successful working relationship between the federations and the EC. Coopers & Lybrand recommends that this experience in horses should be drawn upon, to the extent possible, in order to be applied to other sports.

EC sources of funding for sport

19107 The EC funds a series of initiatives which are of interest to sports organisations as potential sources of finance. Although there is no funding instrument dedicated to sport, funding possibilities exist for regional development, education and training, research and development and for a variety of other areas. The Commission is planning a specific funding programme on sport.

19108 Only a very small minority of sports authorities reported receiving any EC funding whatsoever for their activities, and many were only vaguely aware that such funding opportunities existed. The EC was seen by many National Olympic Committees as investing in sport purely in terms of its own image-building, rather than assisting sport in areas where aid was truly needed. The EC's intervention was viewed by some as an unwelcome attempt to use sport for political purposes.

19109 Notwithstanding, the majority of sports authorities would welcome a specific EC funding programme for sport for the disabled, youth sports promotion and exchanges, amateur sports and sports education.

Recommendations

19110 The EC should assist the sports authorities in finding their way through the maze of EC funding by supplying them with basic relevant information. When federations take the initiative, the EC's sports coordination unit should be able to steer them in the right direction. On the other hand, sports authorities need to be

more active in finding out about EC funding opportunities, and in proposing initiatives which would fulfil the eligibility criteria for funding.

19111 DG X should be wary about generating resentment from the sports world by giving the impression of hijacking sports for its own political and communications purposes. Only via discussions with the relevant sports authorities can this be achieved.

19112 Only to the extent that there is a clear EC dimension to a sports project, and that it does not fall within the competencies of national authorities, should the EC fund sport.

Environmental policy

19113 Both the Environmental Impact Assessment Directive and, to a lesser extent, the Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, have an impact on sport. The effect of the former may be to delay the construction of certain sports facilities while an environmental impact assessment is carried out, while the latter may result in Member States curtailing the practice of water sports, such as sailing in areas that have been designated as protected areas under the Directive.

19114 A high number of federations participating in the study reported being aware of complaints having been made on environmental grounds regarding the construction of new, or alterations to existing, sports infrastructure. Only the cycling and swimming federations were unaware of any complaints.

19115 The Ministries were also aware of complaints, but considered that national planning and construction laws, together with national legislation implementing the Environmental Impact Assessment Directive, were sufficient to protect the environment and to provide the general public with adequate complaint mechanisms and appeals procedures. All thought that it would not be necessary to mention sports stadia specifically in any potential revision of the Environmental Impact Assessment Directive.

Recommendations

19116 It is not considered necessary for the Commission to take any specific action in this area.

19117 The sports federations may consider following the IOC's lead and introducing rules which emphasise protection of the environment when large scale sporting events are organised.

Taxation

19118 The EC has put into place a series of framework directives which allow Member States a large degree of interpretation in determining whether sports activities should be taxable or not, and if so to what extent.

19119 Apart from the exception of taxation of horses in the UK and some other sports in the UK, there was a consensus between the sports world and the EC that different levels and system of taxation did not distort competition in the EC.

19120 There is evidence of agreement between the EC and sports organisations that competition between voluntary sports organisation and non-voluntary sports organisations did not create distortions of competition.

Recommendations

19121 Taxation is a good example of how subsidiarity should work. Tax is mainly an issue for Member States, as long as distortion is not caused.

Use of the ECU

19122 Only the International Wheelchair Basketball Federation reported using the ECU for its financial operations in the European zone. None of the other federations had considered using the ECU. For those federations who needed to execute international transactions, the US Dollar or Swiss Franc were the most common currencies used.

Recommendations

19123 Given the recent disturbances to the European Monetary System, it is considered that the time is not appropriate for initiatives to promote the use of the ECU among sports organisations.

XX The way forward

20001 From carrying out this study, it is clear that both the Commission of the European Communities and the sports organisations wish to see an improvement in how they work together to the benefit of sport within the Community. Complete transparency is desired, with progressive steps being taken after due consultation with the relative sports organisations.

20002 The questionnaires and interviews showed there was a low level of awareness within sports federations of how EC activities could impact sport and what actions the EC had taken to assist sport.

20003 The lack of awareness and knowledge is partially due to the fact that sport is organised in different ways both from country to country and by sport. As a result there is often an overlap in representation and differences of opinion between national and international federations. This could lead to inconsistent representation to the EC.

20004 Initiatives should be taken at three levels: by the Commission, by the Council of Ministers and by the sports organisations themselves.

Commission initiatives

20005 As the report indicates, there are many ways in which EC activities impact sport. Looking in from the outside, sports bodies often view the Commission as a complex organisation which does not always act in a coherent manner. The initiatives suggested below are designed to rectify this problem.

A coordinator for sport

20006 The EC's involvement in sport is very dispersed and segmented. Staff from a variety of different Directorates-General are responsible for legislation and policies which may have an impact on sport. As specialists in their own area, they may be unaware of this impact. They may also be unaware of the work of other Directorates-Generals in this area, and particularly of the existence of DG X's Sports Unit.

20007 In these circumstances, there is a clear role for the Sport Unit to play in terms of carrying out the function of coordinator for the Commission and its various Directorates-General for the sports world. This unit should be responsible for internal coordination within the Commission and organise a two-way flow of information into and out of the Commission. The concerns of the sports world on EC legislation would be relayed directly to the relevant Commission services and staff. In a similar manner, the policies and drafts from the Commission would be communicated to relevant

persons in each nominated sports body. This simple development would contribute to improving the general framework of cooperation between sport and the Commission. The modalities and location of the information point would need to be determined.

20008 In setting up this system, a clear coordination mandate would be necessary to go beyond simply being a contact point.

20009 The Sports Unit should strive to promote the consciousness of sport in other Directorates-General so that the impact of EC legislation on sport is fully taken into account.

A programme aimed at promoting sport

20010 The Commission should agree a list of actions which would be formally supported by sports federations and governmental bodies. These actions would then form the basis for the request for a budget line, for example, in the areas of:

- exchange programmes for young sportspersons;
- improving training for sports managers;
- encouraging sport for disabled people;
- education against doping;
- dope testing facilities.

20011 For the Commission to be involved in such programmes, there must be an EC dimension.

Recommendation by the Council of Ministers

20012 The Council of Ministers should adopt a recommendation:

- inviting sports bodies to bring their rules into line with EC legislation in the different areas identified by this report;
- inviting the Commission to ensure that sport is taken into account when Community policy is being drawn up; and
- inviting due consideration to be given to including a specific Article on sport in any future revision of the Treaty of Rome, in order to ensure sport is taken into account when establishing Community policies. The Article would be similar to those on culture or public health which, taking full account of subsidiarity, promote cooperation rather than harmonisation.

Initiatives by sport organisations

20013 The sport organisations should look to the federations who were consulted by the EC during the drafting of legislation on horses. These federations stressed that the legislation fairly reflected their points of view.

20014 Each sport should ensure they are organised for effective representation at the EC and they are aware of the impact of existing and proposed activities on their sport and for example, consider setting up an EC level organisation where one does not exist, or an EC unit within an international federation. Regular communication among sports federations could also be improved. Regular contacts with DG X's Sports Unit is recommended.

20015 In the short-term sports organisations should take three initiatives:

- ascertain the interest or desire for a European coaching qualification in their sport;
- ensure national federations' regulations on naturalised sportspersons are in line with national legislation;
- verify the compatibility of national federation transfer rules with national labour law.

Summary

20016 In the past, sport has been used by the EC as a means of communication. In the future, sport could be used as an example of the proper application of the principle of subsidiarity and increased transparency.

20017 In carrying out this study, the very important role that sport plays in terms of promoting social stability was confirmed. In parallel, major developments are affecting sport; these include increasing commercialisation and professionalism and the changes taking place in Eastern and Central Europe which have totally transformed the previous modus vivendi of sport in these countries (not being part of the mandate of this study). We hope this report contributes in encouraging reflection on behalf of the sports world on the changes.

20018 The ideas discussed in our section on The Way Forward should be part of the agenda at the European Sports Forum meeting and at a special meeting with sports federations, both to take place in November 1993. The study should be viewed merely as a starting point for debate.

20019 The study is the result of a high level of support and assistance from national and international sports organisations. Without the support of these non-governmental and governmental organisations, the study would not have been possible. Without the support and assistance of the same organisations, the EC cannot optimise its services to sport.

20020 Transparency, consultation, consensus and coordination is the way forward.

Glossary

AENOC/ACNOE	Association of European National Olympic Committees
ATP	Association of Tennis Professionals
BASI	British Association of Ski Instructors
BBC	British Broadcasting Company
CDDS	Steering Committee for the Development of Sport
CEN	European Committee for Standardisation
DG	Directorate-General (of the Commission of the EC).
DG X	Directorate-General X of the Commission
DSI	Dunlop Slazenger International
DTF	Danish Tennis Federation
EBA	European Boating Association
EBU	European Broadcasting Union
EC	European Communities
ECJ	European Court of Justice
ECSA	European Community Sailing Association
ECU	European Currency Unit
EEA	European Athletic Association
EN	European Standard (Norm)
ESC	English Ski Council
ETA	European Tennis Association

FEI	Fédération Equestre Internationale
FIBA	Fédération Internationale de Basketball
FIFA	International Federation of Football Associations
FIFPRO	International Federation of Professional Football Players
FINA	Fédération Internationale de Natation Amateur
FIS	Fédération Internationale de Ski
FISA	Fédération Internationale du Sport Automobile
IAAF	International Amateur Athletic Federation
IOC	International Olympic Committee
ITF	International Tennis Federation
ITV	Independent Television (UK)
ITVA	Independent Television Association Limited (UK)
IWBF	International Wheelchair Basketball Federation
IYRU	International Yacht Racing Union
LEN	Ligue Européenne de Natation
LFFS	Ligue Francophone de Football en Salle
NOC	National Olympic Committee
OJ	Official Journal (of the EC)
TESN	The European Sports Network
UCI	Union Cycliste Internationale
UEFA	Union des Associations Européennes de Football
URBSFA	Union Royale Belge des Sociétés de Football Association

VAT	Value-Added Tax
VZVV	Flemish Federation of Indoor Football
WFSGI	World Federation of the Sporting Goods Industry
WTA	Women's Tennis Association
OCOG	Organising Committee of the Olympic Games

