



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL X  
Information, Communication, Culture, Audiovisual Media  
Audiovisual policy, culture and sport  
**Sport**

# **THE EUROPEAN MODEL OF SPORT**

**CONSULTATION DOCUMENT OF DG X**

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## INTRODUCTION

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In its September 1998 working paper the Commission identified sport as performing five functions: an educational, a public health, a social, a cultural and a recreational function. In economic terms sport is a rapidly growing area accounting for 3% of world trade and is one of the sectors most likely to generate new employment. In recent years, sport in Europe has developed rapidly. The increasing economic and commercial slant of sport has created a real change, for example in the field of TV-rights for sports events. Since 1974<sup>1</sup> the European Union has been dealing with sport and observing these changes from an economic point of view.

Provisions in the EC Treaty, secondary legislation, Community policies and decisions have an increasing impact on sporting practices and activities. These developments have caused a number of problems for sport in Europe. The Directorate-General for Competition (DG IV) of the European Commission, for example, has received 55 complaints relating to sport, on matters such as the role of sports organisations, television rights or commercial sponsoring. Most of these actions were brought after the ruling of the ECJ in the Bosman case.<sup>2</sup> This increase in the number of actions also reveals that there is a gap between the real world of sport and its regulatory framework.

In September 1998 the Commission issued a working paper in which it identified its policy on sport. It recognises that sport is not only an economic activity but also part of European identity. This social function of sport was also identified by the Intergovernmental Conference set up to revise the Maastricht Treaty, and a Declaration on sport was annexed to the Treaty of Amsterdam.

The Commission is aware that these developments raise questions regarding the future organisation of sport in Europe. It is ready and willing to help sport organisations to find solutions on the basis of their own initiatives. In order to assist the sports associations and following the Declaration of Amsterdam, the Commission wishes to consult the sports world to reflect on the future development of sport in Europe. In order to prepare the ground, the Commission is conducting a survey which will enable all parties involved to identify the problems caused by the changing situation and give them an opportunity to express their views and make suggestions on the future development of sport in Europe.

The Commission will use the findings for two purposes:

- to prepare for the European Conference on Sport (*Assises européennes du sport*) to be held in May 1999
- to identify more clearly the real features of European sport and to preserve them.

This paper describes the organisation of sport in Europe, its features and the recent developments. It highlights the problems which have arisen, and the attached questionnaire will enable the Commission to receive the comments of those concerned. All the interested parties are asked to send their answers to the European Commission (Directorate-General X, Sport Unit, Rue de la Loi 102, 1049 Brussels) **by 25 February 1999**.

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<sup>1</sup> Ruling of the ECJ: C-36/74 *Walraeve v UCI* [1974] ECR I-1405.

<sup>2</sup> Case C-415/93.

# CHAPTER ONE

## THE EUROPEAN MODEL OF SPORT

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### 1 THE EUROPEAN MODEL OF SPORT

From the end of World War II until the mid 80s two different models of sport existed in Europe, namely the East and the West European model. The former was more or less ideologically oriented; sport was a part of propaganda. In western countries European sport developed a mixed model, in which actions performed by governmental and non-governmental organisations existed side by side. It is also important to underline that sport has grown in parallel with television, basically in an environment of exclusively public television. Western European sport is thus the result of private and public activity. In the northern countries, the state does not regulate, whereas in the southern countries, the states play a regulatory role in sport.

#### 1.1 Organisation of sport in Europe

In the Member States sport is traditionally organised in a system of national federations. Only the top federations (usually one per country) are linked together in European and international federations. Basically the structure resembles a pyramid with a hierarchy.

##### 1.1.1 *Pyramid Structure*

###### 1.1.1.1 The Clubs

The *clubs* form the foundation of this pyramid. They offer everyone the possibility of engaging in sport locally, thereby promoting the idea of «sport for all». They also foster the development of new generations of sportsmen/women. At this level unpaid participation is particularly important and beneficial to the development of European sport. In Portugal, for example, there are about 70 000 unpaid coaches and 40 000 unpaid board and committee members.<sup>3</sup>

One feature of European Sport that is closely linked to this level is amateur sport. As stressed by Marcelino Oreja, Member of the European Commission responsible for sport, addressing the 7<sup>th</sup> European Sports Forum in 1997, amateur sport reflects that genuine, disinterested love of taking part in a sport. In this field, sport has a strong social function by bringing people together. In Austria, for example, about 39% of the population are members of a sport club or a federation.<sup>4</sup>

###### 1.1.1.2 The Regional Federations

Regional federations form the next level; the clubs are usually members of these organisations. Their area of interest is limited to a region in which they are responsible for organising regional championships or coordinating sport on a regional level. In some

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<sup>3</sup> Final Draft on Sport in the Member States, 1991.

<sup>4</sup> Sports Information Bulletin, “Sport for All”; Clearing House, 1997, 19.

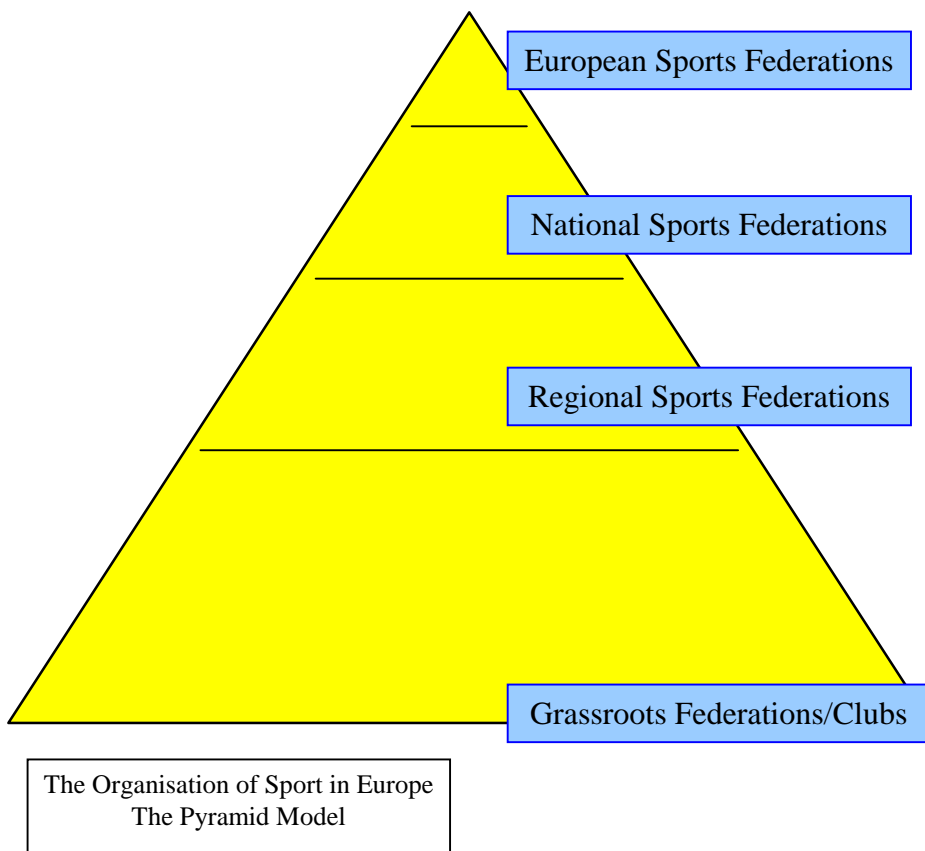
countries, Germany for example, there are regional-level umbrella organisations, which comprise all the clubs in one region.

#### 1.1.1.3 The National Federations

National federations, one for each discipline, represent the next level. Usually all the regional federations are members of the respective national federation. These federations regulate all general matters within their discipline and at the same time represent their branch in the European or International federations. They also organise national championships and act as regulatory bodies. As there is only one national federation for each discipline, they have a monopolistic position. In each country there is, for example, only one football federation. Only this federation can organise recognised championships. In some countries the role of the federation is regulated by national legislation.

#### 1.1.1.4 The European Federations

The top of the pyramid is formed by the European Federations, which are organised along the same lines as the national federations. Every European federation allows only one national federation from each country to be a member. By means of rules, usually involving sanctions for those taking part in championships which have not been recognised or authorised by the international federation, these organisations try to maintain their position.





### *1.1.2 A System of Promotion and Relegation*

The pyramid structure implies interdependence between the levels, not only on the organisational side but also on the competitive side, because competitions are organised on all levels. Thus, a football club playing at a regional level can qualify for championships on a national or even international level (e.g. the UEFA Cup) by winning promotion. On the other hand a club will be relegated if it fails to qualify. Relegation and promotion are standard features of every national championship. Because of the arrival of new competitors the championships are more interesting than closed competitions.

This system of promotion and relegation can also be found on a European level. In all disciplines the national federations (i.e. the top of the pyramid) are members of both European and international federations which in their turn organise European and international championships. Qualification for most of these tournaments, however, is usually decided at a national level.

This system of promotion and relegation is one of the key features of the European model of sport. The US has developed the model of closed championships and multiple sport federations. The same teams, once in this championship, keep on playing in this league. In Europe, there is a new tendency to try and combine both systems. In a recent proposal by UEFA, clubs would qualify not only by a system of promotion and relegation, but also by fulfilling economic and technical criteria.

## **1.2 The features of sport in Europe**

### *1.2.1 Grassroots approach*

One of the features of sport in Europe is that sport is based on a grassroots approach. The development of sport originates from the level of clubs. They organise sport on a local level. Sport traditionally has not been linked to a state or a business.

This is illustrated by the fact that sport in Europe is run mainly by non-professionals and unpaid volunteers. They are responsible for the operation of sport in Europe. For them sport is a pastime and a way of contributing to society. In this way sport in Europe differs from sport in the US where it is linked to business. In the US sport is based on a more professional approach and is operated mainly by professionals.

### *1.2.2 Commitment to national identity*

As is recognised by the Amsterdam Declaration, sport in Europe has important social relevance. The Declaration states explicitly that sport has a role in forging identity and bringing people together.

Sport represents and strengthens national or regional identity by giving people a sense of belonging to a group. It unites players and spectators giving the latter the possibility of identifying with their nation. Sport contributes to social stability and is an emblem for culture and identity.

Although sport in Europe has been confronted with globalisation, it can be seen as one of the last national passions. The commitment to national identity or even regional identity, therefore, is one of the features of sport in Europe.

### 1.2.3 *International competitions*

National teams are seen as representing a nation. The tradition in Europe has been for the different countries to compete against each other and to hold international competitions.

In Europe sport is one of the last national passions; a psychological need exists to confront to one another. Sport is a way of doing this without bloodshed. International competitions are an opportunity for European countries to demonstrate their culture and tradition, thus safeguarding the cultural diversity, which is one of the characteristics of Europe.

In this respect Europe differs from the US where there is no need for inter-State competitions. In the US for example, California does not have to compete against Texas.

### 1.2.4 *Negative aspects*

The social function of forging identity can have negative aspects as well, such as the rise of ultra-nationalism or racism and intolerance.

In the past dictatorships exploited the popularity of sport in Europe to promote their own ideology. The Nazi regime, for example, used the Olympic Games in Berlin as a means of promoting its ideology. Victories of national teams are often used as a tool for propaganda. The Mussolini regime presented Italy's success in the 1934 and 1938 football world cups as proof of the superiority of fascism over democracy. Also in the former East-bloc countries sport was ideologically oriented and used as propaganda.

The violence of hooligans is a problem facing sport in Europe. Hooliganism does not always have a link with politics. Some spectators who are victims of social or economic exclusion use sports events to express their frustration. These negative consequences of sport are unknown in the US.

## 1.3 **The importance of sport in Europe**

Traditionally the Member States of the European Union have hosted a significantly large percentage of world sports events: for example, 54% of Summer Olympics between 1896-1996 and 50% of football world cups between 1930 and 1998. This remarkable concentration of world sport events within the EU has been partly a result of history. Europe saw the start of the industrial revolution. The ensuing development towards economic and social progress enhanced the development of sport in Europe. Traditionally sport has its origins on the European continent; the Olympic movement, for example, came about as the result of a European initiative. Moreover, most of the important international sport organisations are based in Europe. Europe can therefore be considered the powerhouse of world sport. The latest developments are evidence that sport in Europe is very dynamic. The most important changes in sport in Europe will be presented in the next chapter.

There is a European model of sport with its own characteristics. This model has been exported to almost all other continents and countries, with the exception of North America. Sport in Europe has a unique structure. For the future development of sport in Europe these special features should be taken into account.

## **2 CHANGES**

### **2.1 Moves towards globalisation**

Before the 50s sport at European level was a matter for national teams and representatives. Only teams and individuals representing their country went to compete abroad. One of the earliest examples is the World Cup, which dates from the first half of the 20<sup>th</sup> century.

After World War II the European countries agreed that in their own interest it was necessary to prevent future conflicts and peace needed to be safeguarded by common action. This move towards cooperation lent support to the first European community in 1952 and was behind the creation of pan-European television with the establishment of Eurovision and the European Broadcasting Union.

In parallel to these first steps towards European integration at political level came the emergence of European competitions for sport. UEFA was founded in 1954 and the European club competitions emerged. In 1955 the French newspaper L'Equipe came up with the idea of staging a European Cup.

Although the World Cup dates from the 1930s, only recently has sport become really global. An important factor has been television exposure of the most popular sporting events such as the Olympic Games and the World Cup.

### **2.2 Major changes in the 80s**

The IOC decided to abolish the distinction between amateur and professional sport, thus opening the Olympic games to everyone. It also allowed the games to be commercially sponsored, which led to a general commercialisation of sport. Sponsorship has now become one of the major sources of funding for sport.

In the mid-80s in most Western European countries, the state television monopoly was broken. As in the US, fierce competition ensued to win the broadcasting rights for major events. The sale of television rights and sponsorship account for 65-85% of the funding of sports events and have become the primary source of financing professional sport in Europe. What should also be taken into account is the rapid and far-reaching technological change affecting television.

The East bloc disappeared and with it the restrictions for those engaging in sport. This resulted in an increase in the number of eastern Europeans practising sport professionally.

The European Court of Justice recognised in the Bosman case that there is no reason why professional sports people should not enjoy the benefits of the single market and in particular the free movement of workers. This has resulted in national competitions being open to players throughout Europe and has revitalised major European Leagues.<sup>5</sup>

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<sup>5</sup> Consequences of the Bosman Judgment, memorandum from Commissioners Van Miert, Flynn and Oreja, SEC (96) 212 of 2 February 1996.

## **2.3 Recent developments in the 90s**

In order to contend with the creation of European super-leagues, many important clubs had to think about new ways of financing. Since November 1997 English football clubs (Manchester United, Tottenham Hotspur and many others) have been listed on the stock exchange. This allows them to acquire the financial means necessary to maintain their leading position in European sport. On the other hand, some investment companies gained influence by acquiring majority shareholdings in several football clubs, for instance the English National Investment Company (ENIC) already controls 4 clubs, namely Glasgow Rangers, Slavia Prague, Vicenza (Italy) and AEK Athens

The proposal for a closed league outside UEFA is new and has attracted the interest of many of Europe's top clubs. Within this league there is no system of promotion and relegation. It is a new form of competition, which has no link with the existing pyramidal structure.

The top clubs are interested in this Super League mainly because they are dissatisfied with UEFA's distribution of Champions League revenues. They see the initiative as a possibility of more money going direct to the participants and less to the administration of the competition. If things develop as in the US, where the system of closed competitions has existed for many years, the top clubs could increase their profits enormously. The new approach will see the big teams playing one another regularly, something the US has known for a long time with its major sports.

UEFA has been forced to react by proposing a new initiative which seeks to combine the traditional system of promotion and relegation and the closed championship system. What UEFA is offering clubs is a bigger share of the revenues generated by the sale of broadcasting rights.

## **3 PROBLEMS**

### **3.1 The role of sports federations**

Up to the 1980s sports federations were mainly regulatory bodies. As TV rights grew in importance, they began to negotiate these rights, thus acting like any other commercial company. The question that arises then is whether the federations can be regulatory bodies and private business entities at the same time. The top members of these federations as well as the grassroots members feel that their interests are no longer adequately represented.

What is more, in some countries leagues have been created that are independent of the national federation. In England and Spain this is true for football, in Spain, Italy and France for basketball.

#### *3.1.1 Problems with top members*

The most successful members of federations want a bigger share of the money earned by the federations, threatening otherwise to leave the federations and set up their own championships. Most national federations have rules which refuse their members the right to take part in championships that are not organised or authorised by themselves and penalising them if they do. If the leading European clubs were to participate in closed competitions, would they be excluded from the national championships? This would mean the end of one key feature of the European model, namely the commitment

to national identity. Should this national orientation be retained and if so, what is the best way to safeguard it?

### 3.1.2 *Problems with the grassroots members*

The grassroots members for their part complain that the federations no longer fulfil their “public” task, namely the promotion of sport. They also claim that the solidarity system providing them with money earned by the federation does not work properly. The question then is whether federations, which operate as private companies and at the same time have the role of promoting sport, can succeed in striking the right balance between these two tasks or whether a public organisation should be responsible for the promotion of sport. It is not clear what will happen to the federations if they lose both their top members and their grassroots members.

## 3.2 **Competition law**

In general the monopolistic role of the federations is not called into question, as their institutional structure is recognised to be the most efficient way of organising sport. The rules of most national and international federations stipulate that their members may only participate in sport events organised or at least authorised by the federations themselves. Problems may arise when one variant of the game thinks its interests would be better represented by a new federation. Should federations be allowed to compete freely for this market? In the case of boxing such competition is already reality: there are several international federations, such as WBF, WBO, WBA, WBC and IBF.

The question that arises then is whether the federations will have to change their internal rules and structure (only one federation per country and discipline) in order to comply with the EC Treaty provisions on competition and the single market and with judgments of the ECJ. If they do so, what will be the impact on the European system (Pyramid model)? In a recent decision, the Court of Arbitration for Sport<sup>6</sup> maintains that sports-governing bodies resemble governmental bodies as far as their structure and their role as regulatory bodies are concerned. It states that similar principles govern their actions, for example when changing the legislation or administrative rules.

## 3.3 **Multiple ownership**

As mentioned before, some investment companies control different football clubs listed on the stock exchange. This might be detrimental to sport, for genuine sporting competition might be distorted. In response to a parliamentary question the Commission stressed that rules laid down by sports organisations to prevent clubs with the same owner taking part in the same competitions, whether national or international, would not be covered by the competition rules laid down in the EC treaty. These rules, however, have to be limited to their purpose, namely to ensure the uncertainty as to the results of competitions, and must remain in proportion to the sporting objective pursued.<sup>7</sup> In a recent case brought by AEK Athens and Slavia Prague against UEFA, the Court of Arbitration for Sport ruled that it was unlawful for UEFA to pass new rules prohibiting participation in the same competition by clubs jointly owned without giving the football clubs concerned a reasonable time to prepare for this change. The Court found that these

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<sup>6</sup> Court of Arbitration for Sport, 17 July 1998, CAS 98/200.

<sup>7</sup> Answer given by Mr Van Miert on behalf of the Commission to a written question, OJ C 310, 9.10.1998.

new rules were put into force in haste, thus surprising the clubs and depriving them of the chance to take measures. The Court, however, did not refer to the lawfulness of these rules.<sup>8</sup>

### 3.4 Finance

The Bosman case has had huge financial repercussions for sport in Europe. Before the Bosman ruling transfer fees provided the game with much of its financial resources. When transfer fees were abolished, footballers' salaries soared and clubs had to make huge investments. The financing of sport in Europe since then has changed dramatically. It now depends increasingly on revenues derived from sponsorship and other commercial communications.

The revenues from sports events depend on the attractiveness of a sport for the general public. The problem is that not every sport is as suited to television as football. There is a risk that only the commercially attractive sports will survive and other smaller sports become endangered. The income received from the sale of broadcasting rights is transforming the sports world and widening the gulf between amateurs and professionals and between the top and bottom of sport in Europe.<sup>9</sup>

The characteristics of sport (uncertainty of results, equality of competitors) recognised by Advocate-General Lenz in the Bosman case make the sport market different from any other commercial market. The Advocate-General suggested that there should be a distribution of income in order to maintain a competitive balance. It is necessary to examine if and how sports income needs to be distributed among the clubs and associations. This can have consequences for the financing of sport in Europe.

UEFA has established a solidarity system for the distribution of Champions League revenues. According to UEFA this system serves to maintain a competitive and financial balance among the clubs and to promote football in general.<sup>10</sup> The large football clubs accuse UEFA of not being transparent in financing and distribution. The smaller clubs complain that more money should go to the lower levels of the pyramid. It is debatable whether the UEFA system is operating properly and whether there is a need for such a system.

In most Member States lotteries finance sport. Most money is derived from betting on football results. Football feels that it is entitled to more of the money than other sports. There is a problem of how the money should be spent. The existing sports federations in Europe receive money from the state and also receive revenues from the sale of television rights. But can this still be justified? How should state aids be awarded to sport?

In closed competitions the money stays within the organisation, which is self-sufficient and does not therefore feel any need to help other sports. Any move towards such competitions could be detrimental to sport in Europe.

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<sup>8</sup> Court of Arbitration for Sport, 17 July 1998, CAS 98/200.

<sup>9</sup> Competition Policy Newsletter No 2 1998.

<sup>10</sup> UEFA solidarity system, 16.

## **4 QUESTIONS**

### **4.1 Role of the national federations**

1. Can we keep the model of only one federation for each Member State?
2. Is it satisfactory to have one federation doing everything from management of teams - thus acting as a multinational - to organisation of leagues and promotion of sport? Are they able to combine these tasks adequately?
3. Do you think the national federations are capable of fulfilling their new commercial role i.e. the selling of television rights, making of contracts, alongside the other roles of promoting sport and organising competitions?
4. Public non-profit organisations organise large-scale "sport for all" events. Does this mean that national federations cannot organise such competitions?
5. Does this threaten the position of the federations?
6. What will happen to federations if they lose the grassroots members and the top members? What will be the role of the federations?
7. Should federations do no more than set the rules, promote sport and organise competitions for national teams?

### **4.2 Emergence of closed competitions**

1. When closed competitions emerge, the top clubs will leave national competitions. Will national leagues still be attractive in future or will they become too small? Could national leagues be devalued because of closed competitions?
2. Will the emergence of closed competitions jeopardise inter-country competitions?
3. Will closed leagues threaten the link between sport and nationality?
4. If private leagues go ahead (closed competitions) what ties should they have with existing federations?
5. If Europe starts to move towards this model, should conditions be imposed on these leagues?
6. Participation in closed leagues will be by invitation, thus breaking with the principle of qualification. Is it necessary to have a system of qualification and promotion and relegation? Do you think it is important to have a link with the national pyramid structure?
7. Is there any advantage for Europe in moving towards the US model for sport?
8. Closed competitions cause practical problems. Do you foresee any problem for having players available for national competitions? Are there problems in setting the calendar? Is there a need for coordination and in what way could this be achieved?

### **4.3 Solidarity**

1. Is it necessary to have solidarity between the top and the grass roots of sport?
2. Do you think that because of closed leagues the solidarity between top-class professional sport and the grass roots will be broken?
3. Is there a need for a solidarity system? Which sports should receive contributions and how can the distribution be justified?
4. Are there positive or negative effects when the solidarity is broken? Must public funds be provided to replace the present income generated by federations?
5. Do you think the UEFA solidarity system operates properly to produce equality between the different clubs and sports?

### **4.4 Promotion of sport**

1. How should this objective be achieved?
2. Should there be a separation of public money for promotion of sport and private money generated by commercial activities?
3. Should there be a public budget for promotion of sport? Is there a need for a division between amateur and professional sport?
4. Do you think the national federations are capable of promoting sport?
5. Do you think that with a system of closed competitions sport can be adequately promoted?

### **4.5 European model of sport**

1. Can we keep the European model of sport as it exists today?
2. Should we keep the status quo or does the system need adjusting?



# CHAPTER TWO

## SPORT AND TELEVISION

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### 5 DEVELOPMENT OF SPORT AND TELEVISION IN EUROPE

Since the 1950s television and sport have been developing in parallel: both were organised at a national level, with one public TV-channel and one federation per country. At a European level, they are members of European federations or organisations, such as the UEFA for European football or the EBU (Eurovision) for the western TV stations. The equivalent to the European movement on political level is the emergence of European competitions for sport. UEFA was founded in 1954 and the European club competitions emerged. In 1955 the French newspaper L'Equipe came up with the idea of staging a European Cup.

The scene in the US was different: private TV stations and professional sporting federations were interested in higher profits. The TV-networks compete with each other for the most interesting and spectacular sports events. Advertisers, in their turn, are out to attract big audiences, which they usually find at sports events. This close interdependence of sport, television and advertisers in the US has led to a completely different approach towards sport as compared with Europe.

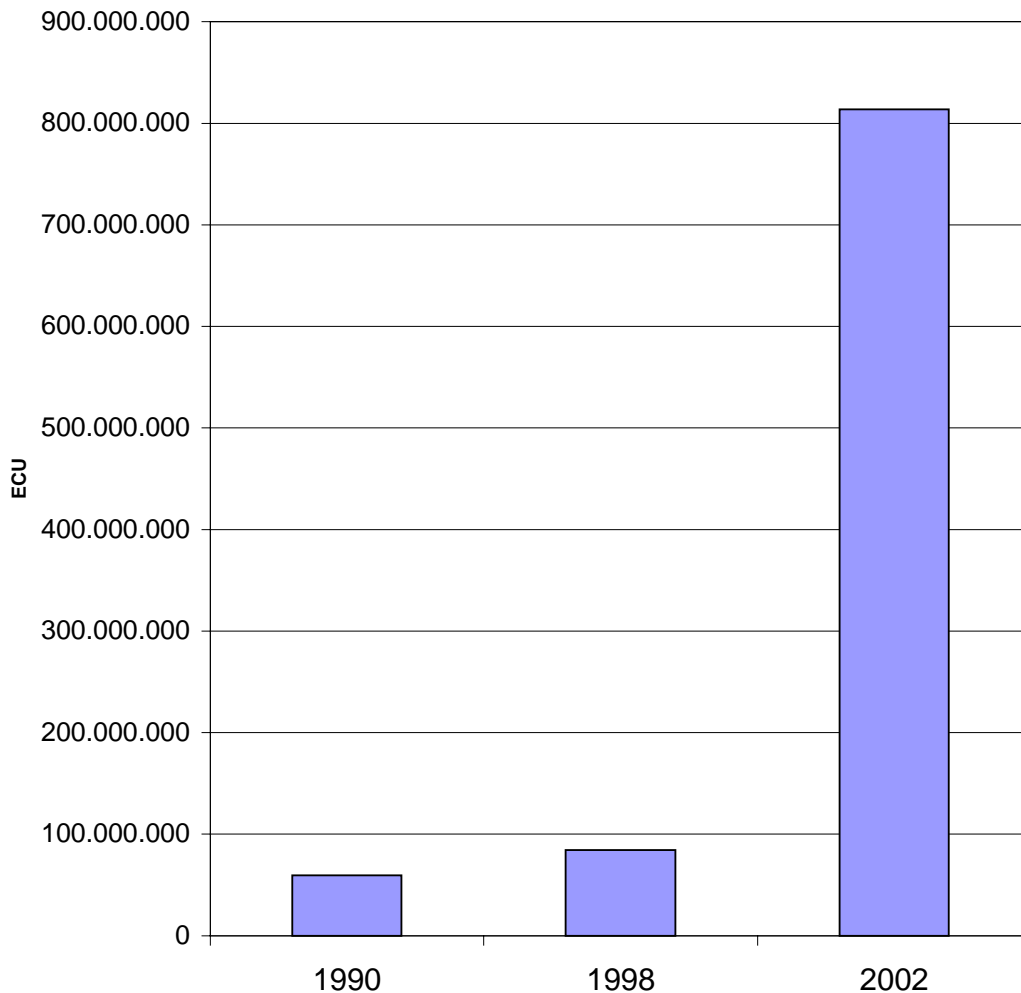
In the mid 1980s private television arrived in most west European countries, thus breaking the public television monopoly. Since then competition between TV networks has pushed up prices for the broadcasting rights of major sports events, such as the World Championship.

Another reason for the keener competition was the progress in audiovisual technology. The development from analog to digital television led to the appearance of many new broadcasters in Europe. This new audiovisual framework, particularly the arrival of pay-per-view television, led to intensified competition for broadcasting major sports events, which has always been an appropriate way of attracting new viewers or new subscribers to pay-per-view networks.

To meet the needs of televised sport, some sports federations changed the rules or introduced new ones. This suggests that there is already close interdependence as far as the commercial side of sport is concerned. The FIBA, the International Basketball Federation, for example, introduced the time-out for TV-sports, and the International Tennis Federation the tie-break, which stops tennis matches from going on indefinitely. The International Volleyball World Union has recently changed the rules to allow a point to be scored in each *exchange*, rather than, as was the case up to now, only by the serving team.

## 6 BROADCASTING RIGHTS

TV-rights have become the major source of income for most sports disciplines. In football, for example, they bring in more than gate money, so most clubs are more interested in selling TV-rights to the highest bidder than in selling all tickets.



*Football World cup - Broadcasting rights 1990-2002*

For TV-networks, on the other hand, broadcasting major sports events, especially football matches, has always been a way of obtaining the best viewing figures. This, together with fierce competition in the audiovisual sector, led to the explosion of prices for broadcasting rights.

## 6.1 Ownership of broadcasting rights

A fundamental element concerns the ownership of broadcasting rights to sports events. This question has been dealt with under national law. Cases before several national courts concerning broadcasting rights to national football matches give some indications. In a recent case in Germany the Bundesgerichtshof took the view that broadcasting rights generally belong to the clubs, which are considered to be the natural owners of these rights. The question whether federations may also have a claim to ownership in different circumstances has not been answered.<sup>11</sup>

After this decision, the Bundestag inserted a clause in the German cartel law, stating that the German Football Federation can sell the broadcasting rights of the future closed leagues.<sup>12</sup> The German Football Federation and representatives of the clubs agreed that the clubs themselves could sell the broadcasting rights of their home matches in the UEFA-Cup, the Cup Winners Cup and the UI Cup.

## 6.2 Collective selling

Sport is, according to the ECJ “subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty”.<sup>13</sup> Nonetheless, sport differs from other economic activities: usually a market player is trying to compete with others to get a bigger share of the market, and a loss of one market player, for example due to his financial instability, will be a gain for the others. In sport, however, the competing clubs need their competitors in order to make the championship interesting and exciting. Therefore a competitive balance between competitors has to be maintained. A championship comprising one major club that attracts all the financial resources and therefore dominates the tournament will not be as interesting as a championship with equal and economically solid competitors. This difference compared with the competitive relationship between undertakings in other markets was already identified by the Advocate-General in the Bosman case.<sup>14</sup>

As the selling of TV-rights constitutes the major source of income, smaller or lesser-known clubs could find themselves in financial difficulties, whereas top European clubs will be able to ask for more money than today. In order to prevent the gap between big and small clubs widening, the Advocate-General Lenz acknowledges the need to adopt rules that guarantee a certain equality among clubs. The question arises whether the collective selling of broadcasting rights could be a means of preserving this balance.

Collective selling of broadcasting rights may constitute an arrangement restrictive of competition contrary to Article 85(1) of the EC Treaty, if it affects trade between Member States. In this case the Commission will have to examine whether such arrangements satisfy the criteria for exemption.

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<sup>11</sup> Decision of the German Bundesgerichtshof, December 11, 1997 in *Deutscher Fussball-Bund, UFA Film and ISPR v Bundeskartellamt*.

<sup>12</sup> *Franfurter Allgemeine Zeitung*, 8 May 1998.

<sup>13</sup> Case C-36/74 *Walraeve v UCI* [1974] ECR I-1405.

<sup>14</sup> Case C-415/93; paragraph 227 of the opinion of the Advocate General.

### 6.3 Exclusivity

Broadcasters depending financially on advertising revenue try to attract as many viewers as possible in order to generate revenue. Sports, particularly football, attract large audiences and are therefore a prime target for broadcasters. Exclusive broadcasting rights allow the broadcasters to offer programmes not available on other channels, thus, building up audience, substantially increasing revenue and differentiating themselves from other broadcasters. For the organisers, on the other hand, exclusive broadcasting rights ensure maximum short-term profitability of an event.

The Commission does not believe that exclusive broadcasting rights are anti-competitive *per se*, the duration and the scope of exclusivity might, however, infringe the treaty provisions on competition. The anti-competitive nature of exclusive broadcasting rights depends on the individual circumstances of a case. In the *CODITEL II* decision,<sup>15</sup> the ECJ found that exclusive licences of performing rights did not *per se* infringe Article 85(1). The Court concluded by stating that the exercise of these rights may infringe Article 85(1) where there is a specific situation “in the economic or legal sphere the object or effect of which is to prevent or restrict the distribution [...] or to distort competition on the [...] market [...]”. The Court pointed out that the specific characteristics of this market had to be taken into account.

Certain parallels could be drawn with exclusive broadcasting rights to sports events, the special features, however, of the relationship between sport and television have to be considered.

### 6.4 Acquisition of football clubs

In recent years, large media groups have been buying an increasing number of football clubs. The French group Canal+, for example, controls Paris Saint Germain and Servette Genève. The question arises whether this monopolistic position - owning the broadcasting rights and exploiting them by one's own networks - is compatible with EU competition policy. In connection with the proposed acquisition of Manchester United by Rupert Murdoch's BskyB, Mr Van Miert, Commissioner responsible for competition, stated in reply to a parliamentary question that this acquisition was not caught by the turnover threshold tests set by Community legislation, and therefore national law was applicable.<sup>16</sup>

The Commission stressed, however, that it will keep a close watch on all instances of interpenetration between sport and the audiovisual industry and that it will ensure that such acquisitions comply with Community rules, where appropriate.<sup>17</sup>

## 7 RIGHT TO INFORMATION

While the television monopoly existed, viewers who wanted to could usually watch popular sports events without problems. Today, however, a viewer might have to buy a

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<sup>15</sup> Case C-262/81.

<sup>16</sup> Answer given by Mr Van Miert on behalf of the Commission in response to a parliamentary question, OJ to be published.

<sup>17</sup> Answer of the Commission in response to a parliamentary question, OJ to be published.

decoder, take out a cable subscription or make additional payments (pay per view). Some sports are considered to be of national or heritage importance, therefore, free broad access by the means of free access television should be guaranteed. This essential right to information led to the amendment of the “Television without frontiers”<sup>18</sup> Directive, and the insertion of the new Article 3a. It stipulates that Member States may take measures to ensure that broadcasters under their jurisdiction do not broadcast major events on an exclusive basis, thus depriving a substantial proportion of the public in this Member State of the possibility of watching these events. The Member State concerned must draw up a list of designated events, whether national or international, which it considers important for society. Member States must also ensure that broadcasters under their jurisdiction do not exercise exclusive rights in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of watching the events designated by another Member State.

## **8 THE FUTURE ROLE OF PUBLIC TV IN EUROPE**

The Court of First Instance declared in its judgment in *Telecinco v European Commission*<sup>19</sup> that the European Commission failed to fulfil its obligations under the EC Treaty by not adopting a decision following two complaints about state aids for Spanish public television. The Commission wants public television channels to introduce separate accounting to differentiate between programmes that serve the public basic supply as defined by law and all other programmes, such as sports or entertainment, which will have to be financed by advertisements and sponsorship.

State aids will only be allowed for the public tasks; for all other tasks public funding would be subject to the provisions of the Treaty. This could imply that public broadcasters would have to look for other ways of financing in order to purchase the broadcasting rights of sport events.

It then has to be seen whether this development is detrimental to sport as such, in that the general public might be obliged to pay more (whether decoders or pay per view) in order to watch sport events. On the other hand, some TV-networks with smaller financial resources may have to consider broadcasting less popular sports, thus promoting “minority” sports, which have received less public attention up to now. A good example of this is snooker, which has grown from a minority sport to a leading television sport in the UK.

## **9 QUESTIONS**

### **9.1 Collective selling and duration of exclusivity**

1. Is collective selling an appropriate means of preserving financial equality in European sport?

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<sup>18</sup> Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in the Member States concerning the pursuit of television broadcasting activities. (OJ L 202/60 of 30.7.1997).

<sup>19</sup> Case T-95/96.

2. In the event of collective selling, how should the revenues be allocated at European level?
3. Where commercial leagues exist, how should they work with the grassroots sport?
4. Should collective selling be allowed only as a guarantee for equal competition (as is the case in the US, where the commercial leagues state that they need the collective selling of broadcasting rights in order to work properly) or should it be attached to a solidarity fund as suggested by Advocate-General Lenz?
5. What in your view are the criteria for determining the length of exclusivity?
6. If federations keep their monopolistic role, is it necessary to organise the sale of broadcasting rights by a call for tenders?

## **9.2 Interpenetration between sport and the audiovisual industry**

1. Do you think that the purchase of sports clubs by audiovisual groups could have a negative influence on the development of sport?
2. Could such interpenetration interfere with the normal development of sports competitions in Europe?
3. How could the ethics of sport be protected in these cases?

## **9.3 The right to information**

1. Do you think that sport is threatened by pay-per-view television?
2. How must a balance be struck between the interest of sports organisations to generate revenues by selling broadcasting rights and the need for public exposure of sport on public television?

## **9.4 The role of public TV**

1. What should be the role of public TV in promoting sport?
2. Should public TV broadcast “minority” sports as part of its public supply task?
3. Is it therefore right that public television using public funds should compete with private television in order to purchase broadcasting rights for sports events?

## **CHAPTER THREE**

### **SPORT AND SOCIAL POLICY**

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Sport has significant social functions, identified by the Commission in its working paper on sport.<sup>20</sup> The role of sport in our society in the fields of education, environment, health and employment will be outlined in the following paragraphs.

#### **10 SPORT AND EDUCATION**

Sport can perform an educational function, in that it is a means of giving a true view of some values in life, such as competitiveness. In today's world, children have to realise that life is not always easy and that one has to fight for one's ideas and aims in order to achieve them. On the other hand, the competitive features of sport should not be exaggerated; respect for other people is important. This is the point of the concept of "fair play". Sport is extraordinary in that it combines these two features, and that is why the influence of sport in the education of adolescents is particularly important.

Another value that can be derived from practising sports is the ability to resist the temptation to give up at the first hurdle but to overcome it. Sport is a means of identifying our limits, abilities, strengths and weaknesses. The refusal to give up and the determination to win can be transferred to real life.

Both amateur and professional sport are a major entertainment industry, but sports people also have to spend much time training. So sport shields those who practise it from many of the dangers of modern society, such as alcohol, tobacco or drugs in general.

#### **11 SPORT AS A MEANS OF SOCIAL INTEGRATION, COMBATING RACISM AND PROMOTING TOLERANCE**

While sport promotes a number of positive ideals, it also has negative aspects in relation both to individuals (injuries, doping) and collectively (intolerance, violence). Some European initiatives have been launched to combat racism, discrimination and violence. These initiatives, described in the document "Sport Society",<sup>21</sup> can be distinguished by their target groups (such as immigrants, national minorities, women, homosexuals, disabled and socially less privileged people) and countries. It is interesting to note the importance attached to sport as a means of promoting greater involvement of immigrants, for example, in the life of society. These initiatives are designed to help build a society that is more open and tolerant.

Another social aspect of sport is its important integration function. For example disabled people often are better integrated in a community through their participation in a team or championship.

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<sup>20</sup> The Development and Prospectus for Community Action in the Field of Sport, Brussels, 29 September 1998

<sup>21</sup> SportSOCIETY, study carried out by Clearing House in the framework of the EURATHLON programme

## 12 SPORT AND ENVIRONMENT

Problems linked to the environment usually attract wide attention on account of their impact on our everyday life.

The Olympic movement, which unites sports organisations, athletes and individuals under the guidance of the Olympic Charter, has a very important role in the fields of sport and the environment. It has two main objectives – to ensure that the Olympic Games take place in a spirit of respect for the environment and to lead a global awareness programme promoting respect for the environment.

But to what extent can sport be a danger to environment? Some sports, football for example, need extensive facilities and specific infrastructure. Others (such as skiing) take place entirely in the natural environment. Sport and its facilities have a multifaceted impact on nature: the conservation of biological diversity, the protection of the ecosystem, pollution, handling of resources and waste, health, safety and safeguarding the cultural heritage.

## 13 SPORT AND PUBLIC HEALTH

The Latin tag *Mens sana in corpore sano* – a healthy mind in a healthy body – is more apposite than ever today. In the information society, where people spend so much of their working and leisure time at the computer, physical activity is more and more important as a means of keeping fit.

The link between practising sport and the beneficial effects on health is no longer questioned. Many studies have been carried out showing that practising sport leads to an improved physical condition. Another finding of these studies was that inactivity, being a risk factor for many illnesses, is a major health problem for western societies.

Two questions then arise: What form of physical exercise offers most benefits to most people and what is the best policy to encourage the practice of this sport.

Another important aspect is sports injuries. It has been recognised that a preventive approach is needed in order to limit injuries. The Council of Europe has launched research under the WHO's "health for all" action plan in order to improve understanding of this problem and elaborate a preventive strategy. The main risk factors can be divided into two categories – internal risks, i.e. those linked to the person practising sport, and external risks, i.e. those not linked to the person but to other circumstances. Preventive measures come in various forms, including warm-up exercises, strict enforcement by referees and heavier punishments.

Although there is an inherent risk of injury in all physical activity, the other beneficial effects of sport make up for it.



## 14 SPORT AND DOPING

In the world of both amateur and professional sports, the importance of revenues is increasing, and many top athletes therefore go to their physical limits in an effort to outdo each other. The increasing use of illicit substances to enhance performance in this competitive climate has become a major problem in the world of sport. An important aspect of this problem is that it is very hard to detect these substances in the human body. Although the problem is seen as a recent one (Tour de France 1998), it should not be forgotten that it has been with us for years.

The Olympic Games have always been confronted with this problem. The first champions hardly hid their magic potions. It was the death of an athlete in Rome 1960 that alerted sport authorities to the dangers of doping. But the problem really blew up in 1998: routine check detected banned pharmaceutical substances at the Festina team. To make matters worse, huge sums of money are involved – 1 billion dollars.

The situation in the Member States is quite different. In some Member States, for example in Spain or Great Britain, the government has introduced anti-doping legislation in accordance with rules issued by the IOC or the national federations. In other Member States, Germany or Italy for example, regulation is in the hands of the national federations. French legislation provides for criminal penalties for use of medicinal substances. As usual, differences between the legislation of the Member States can constitute a potential barrier to the free movement of services. In sport, an athlete may be allowed to take medicinal substances in one Member State whereas the same substance is on the prohibited list in another Member State.

The Community does not have powers to develop a policy to combat doping. The Commission, however, is aware of the importance of this problem and is willing to act under different policies and in the context of cooperation in the fields of justice and home affairs.

Some Community Directives on health issues are also important for sport, as they prohibit the use of medicinal products for purposes other than those for which authorisation was given (the diagnosis or treatment of recognised pathological states) and the use of these substances in non-authorised forms and doses.<sup>22</sup> Furthermore Community legislation bans the sale of such substances without prescription<sup>23</sup> and advertising of such products.<sup>24</sup> This recent activity of the European Union has been emphasised by a Resolution of the Council of 3 December 1990 on Community action to combat the use of drugs, including the abuse of medicinal products, particularly in sport.<sup>25</sup> It is underlined that cooperation between the Member States of the Community and the Council of Europe takes place in a spirit of complementarity.

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<sup>22</sup> Directive 65/65/EEC, as last amended by directive 89/341/EEC

<sup>23</sup> Directive 75/319/EEC, as last amended by Directive 89/341/EEC

<sup>24</sup> Directive 84/450/EEC

<sup>25</sup> Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 3 December 1990 on Community action to combat the use of drugs, including the abuse of medicinal products, particularly in sport, OJ C 329

Sports people are covered by the provisions of the Directive on the introduction of measures to encourage improvements in the safety and health of workers at work,<sup>26</sup> Article 6 of which provides that the employer shall take measures for the safety and health protection of workers, and in particular in order to avoid risks. The use of medicinal substances, which often have severe side effects, can constitute a risk that has to be avoided by the employer.

## 15 SPORT AND EMPLOYMENT

Sport has developed into a major source of employment, already identified as such by the Commission in its White Paper on growth, competitiveness and employment. The Commission suggests that “Member States should address existing barriers to maximising the job creation potential of ... areas of new employment growth and activity by a range of measures aimed at anticipating and accelerating ... new jobs growth.” Measures could include those which “promote the development of new employment opportunities through the use of public-private partnerships at all levels, and notably in potential growth areas such as ... sport ....”<sup>27</sup>

Originally sport was mainly organised by unpaid amateurs. But now, many people want to practise sport on a professional basis to earn their living. This trend towards the development of professional sport, coupled with the fact that most people have greater leisure time and prefer to practise sport, has led to the creation and growth of employment in the fields of sport.

But there is a downside too. The risk of injuries and the risk of lacking adequate education are problems that particularly concern adolescent sport people. Most of them start at an early age in order to turn professional and tend to neglect their education. By the age of 30 their career is usually at an end, for two reasons: first, most of the professionals have pushed their body to its limits for the last years, and second, a new generation of professionals is taking over. Therefore, these problems concern the problem of protecting minors as well. Children are often pushed to turn professional by their parents or trainers for different reasons, but only sometimes they really succeed in professional sport and earn a living from it.

In 1994 the Council adopted a directive on the protection of young people at work.<sup>28</sup> It applies to any person under 18 years of age having an employment contract. The directive requires the Member States to adopt measures to prohibit work by children. Yet, Member States may make legislative or regulatory provision for the prohibition not to apply in certain areas, such as cultural activities.

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<sup>26</sup> Directive 89/391/EEC

<sup>27</sup> White Paper on growth, competitiveness, and employment The challenges and ways forward into the 21st century, COM(93) 700 final, Brussels, 5 December 1993

<sup>28</sup> Council Directive 94/33/EC of 22 June 1994, OJ L 216

## **16 QUESTIONS**

### **16.1 Education**

1. Do you think that the European network of Universities and sport schools should be strengthened?
2. Is there a problem in the mutual recognition of qualifications?
3. Do you think that the sport is well integrated in the education system?

### **16.2 Social integration**

1. What form of European action can most effectively combat racism and intolerance?
2. How could Community action best contribute to the integration of less privileged groups?
3. How can sport contribute to combating inequality between men and women?
4. What does positive discrimination mean in the context of sport competitions?
5. How could Community action best contribute to the integration of disabled people?

### **16.3 Environment**

1. In what field should the Community act? Better information, subsidies for pilot projects or support for research on the impact of sports facilities?

### **16.4 Public health**

2. What is the role played by “sports for all” in the improvement of public health?
3. Do you have the means of determining whether the negative impacts of sport on health (injuries etc.) are offset by the positive effects?
4. Are the federations capable of promoting the “sports for all” idea?

### **16.5 Doping**

1. Does the absence of a common list of medicinal substances constitute a barrier for the practise of sport?
2. Do you think that excessively restrictive legislation could endanger the attribution/allocation of sports events in Europe?
3. Do you think it is desirable to strengthen the approximation of national legislation?
4. Which is in your view the degree of responsibility of the different persons involved in doping, such as athletes, doctors or executives?
5. In some US major leagues, athletes are allowed to take medicinal substances. Do you think that this could be a model for Europe?

6. On which field should possible Community action focus? Education, research, awareness campaign, cooperation in the fields of justice and home affairs or information in the package leaflet of medications?

## **16.6 Employment**

1. Should there be greater training facilities for those who want to become professional sports people?
2. Should there be a management/labour dialogue in the fields of sport?
3. Should there be framework (contractual or regulatory) for working hours and pay, and what are your suggestions for the establishment of this framework?
4. Should there be training schemes adapted to the career structure of sport?