



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.12.1999
COM(1999) 644 final

REPORT FROM THE COMMISSION TO THE EUROPEAN COUNCIL

**with a view to safeguarding current sports structures and maintaining the social
function of sport within the Community framework**

- The Helsinki Report on Sport -

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1. INTRODUCTION

"Recalling the Declaration on Sport attached to the Treaty of Amsterdam and recognising the social role of sport", the European Council, meeting in Vienna on 11 and 12 December 1998, invited "the Commission to submit a report to the Helsinki European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework". This report by the Commission is the response to the European Council's invitation.

Following this invitation and in accordance with the Amsterdam Declaration, numerous consultations were held (Olympic movement, sporting federations, sports industries, media, governments and Community institutions), especially at the "European Union Conference on Sport" organised in Olympia from 20 to 23 May 1999. Sport is one of the areas of activity that most concerns and brings together the citizens of the European Union, irrespective of age and social origin. More than half of them regularly do sport, either in one of the 700 000 clubs that exist in the Union or outside these clubs. Almost two million teachers, instructors and voluntary workers spend their working or leisure time organising sporting activities.

This social function of sport, which is in the general interest, has for some years been affected by the emergence of new phenomena which sometimes call into question the ethics of sport and the principles on which it is organised, be they violence in the stadiums, the increase in doping practices or the search for quick profits to the detriment of a more balanced development of sport.

This report gives pointers for reconciling the economic dimension of sport with its popular, educational, social and cultural dimensions.

2. THE DEVELOPMENT OF SPORT IN EUROPE RISKS WEAKENING ITS EDUCATIONAL AND SOCIAL FUNCTION

There are many common features in the ways in which sport is practised and organised in the Union, in spite of certain differences between the Member States, and there is therefore possible to talk of a European approach to sport based on common concepts and principles.

For several years, the European approach to sport has been affected by several phenomena:

- the rise in the popularity of sport in terms of the number of people doing and watching sport. A total of 37 billion television viewers watched the matches of the most recent football World Cup, which is nearly 600 million television viewers per match;
- the internationalisation of sport, with the increase in the number of international competitions. In 1999, 77 world championships and 102 European championships were organised in Europe;

- the unprecedented development of the economic dimension of sport, with, for example, the spectacular increase in television rights: the value of the television rights negotiated by the IOC has risen from USD 441 million in 1992 (Barcelona Olympic Games) to an expected USD 1.318 billion for the 2000 Olympic Games in Sydney.

These phenomena provide certain advantages for sport and society. Accordingly, the number of jobs created directly or indirectly by the sport industry has risen by 60% in the past ten years to reach nearly 2 million. It has to be recognised, however, that these phenomena may also cause tension.

One of the first signs of these developments is the overloading of sporting calendars, which, linked to the need to produce results under the pressure of sponsors, may be considered to be one of the causes of the expansion of doping.

A second consequence is the increase in the number of lucrative sporting events, which may end up promoting the commercial approach, to the detriment of sporting principles and the social function of sport.

A third symptom is the temptation for certain sporting operators and certain large clubs to leave the federations in order to derive the maximum benefit from the economic potential of sport for themselves alone. This tendency may jeopardise the principle of financial solidarity between professional and amateur sport and the system of promotion and relegation common to most federations.

Another consequence that has been observed is the hazardous future facing young people who are being led into top-level competitive sport at an increasingly early age, often with no other vocational training, with the resulting risks for their physical and mental health and their subsequent switch to other employment.

3. THE COMMUNITY, ITS MEMBER STATES AND THE SPORTING MOVEMENT NEED TO REAFFIRM AND STRENGTHEN THE EDUCATIONAL AND SOCIAL FUNCTION OF SPORT

The Declaration on sport annexed to the Amsterdam Treaty “emphasises the social significance of sport, in particular its role in forging identity and bringing people together”. Physical and sporting activities need to find their place in the education system of each Member State.

The values that they represent (equal opportunities, fair play, solidarity, etc.) must also be passed on by sports associations. Sport affects all social classes and age groups and is an essential tool for social integration and education.

3.1. Enhancing the educational role of sport

The Commission’s White Paper on Education and Training¹ stresses that “*knowledge is defined as an acquired corpus of fundamental and technical knowledge and social skills*” that concern “*relational skills, such as the ability to cooperate and work as part of a team, creativeness and the quest for quality*”, all of which are values

¹ “Teaching and learning – towards the knowledge-based society”, Commission White Paper on Education and Training, OPOCE, Luxembourg, 1995.

conveyed by sport. With this in mind, Community action, within the context of its educational and training programmes, could focus on the following objectives:

- **improving** the position of sport and physical education at school through the Community programmes;
- **promoting** the subsequent switch to other employment and future integration onto the labour market of sportsmen and women;
- **promoting** convergence between the training systems for sports workers in each Member State.

Moreover, the Council of Europe rightly stressed that sport is also “*an ideal platform for social democracy*”². It is therefore important for the existing Community programmes to make use of sport in combating exclusion, inequalities, racism and xenophobia.

Furthermore, the violence that sometimes develops at sporting events is unacceptable. As part of the European Union’s objective to provide its citizens with a high level of protection in an area of freedom, safety and justice, the responsible authorities will have to step up their cooperation in order to prevent this type of violence.

3.2. Joining forces to combat doping

The Vienna European Council also wished to underline “*its concern at the extent and seriousness of doping in sports*”. It mentioned the need for mobilisation at European Union level and invited the Member States and the Commission “*to examine possible measures to intensify the fight against this danger*”, together with the sports bodies.

The measures implemented by the Commission,³ in close cooperation with the Member States, have focused on three fronts:

- **Referring** this matter to the European Group on Ethics. The opinion issued by this Group suggests a number of avenues that could be explored by the State authorities and sporting organisations;
- **Cooperating** with the Olympic movement to create a world anti-doping agency and to make sure that it works independently and transparently;
- **Mobilising** Community instruments to supplement and strengthen the work already carried out by the Member States in the areas of research, public health, education and youth, but also cooperation, as provided for by the third pillar. Further work needs to be done to improve legislative coordination.

However, this work will come to nothing unless the public authorities and the sporting organisations tackle the root causes of the rise in doping. The development of the fight against doping also depends on the general development of sport.

² “Social cohesion and sport” Clearing House – Sport Division of the Council of Europe – Committee for the Development of Sport, Strasbourg, March 1999.

³ Community support plan in the combat against doping in sport, COM (1999) 643 of 1.12.99.

4. CLARIFYING THE LEGAL ENVIRONMENT OF SPORT

As underlined by the conclusions of the European Union Conference on Sport organised by the Commission in Olympia in May 1999, *"sport must be able to assimilate the new commercial framework in which it must develop, without at the same time losing its identity and autonomy, which underpin the functions it performs in the social, cultural, health and educational areas."*

While the Treaty contains no specific provisions on sport, the Community must nevertheless ensure that the initiatives taken by the national State authorities or sporting organisations comply with Community law, including competition law, and respect in particular the principles of the internal market (freedom of movement for workers, freedom of establishment and freedom to provide services, etc.).

In this respect, accompanying, coordination or interpretation measures at Community level might prove to be useful, for example in the area of the fight against doping. They would be designed to strengthen the legal certainty of sporting activities and their social function at Community level. However, as Community powers currently stand, there can be no question of large-scale intervention or support programmes or even of the implementation of a Community sports policy.

4.1. The increase in the number of conflicts

The economic developments observed in the area of sport and the responses of the various State authorities and sporting organisations to the problems that they raise do not go far enough to guarantee that the current structures of sport and its social function can be safeguarded. The increase in the number of court proceedings is the sign of growing tension.

- Certain clubs contest the collective sale of television rights. Several complaints have been submitted to national courts, and the judgments delivered at national level have come to differing conclusions. The question of the collective sale of such rights is also raised in certain cases pending before the Commission;
- the Bosman judgment, delivered by the Court of Justice in December 1995 on the basis of the principle of freedom of movement for workers, has had major repercussions on the organisation of sport in Europe. It has done much to eliminate certain abuses and to promote the mobility of sportsmen and women. However, the sporting federations - which, incidentally, have not set up a new alternative system to the one condemned by the Court - consider that it has widened the economic gap between clubs and between players and has caused problems for the training of young people in clubs. Certain clubs which have established training centres for professional sportsmen and women have seen their best people leave, without them receiving any compensation for the investment they have made in training;

- there are differences in fiscal legislation, and hence in the taxation of professional sportsmen and women or of sporting clubs, within the European Union. This situation is a source of inequality between countries and clubs and contributes to the phenomenon of ever higher offers;
- several Member States of the European Union have recently announced measures to limit or manage the effects of the commercialisation of sport. While these measures obviously help to preserve the principles and social function of sport, they may increase the disparities between Member States of the European Union and cause problems in the area of Community law.
- certain complaints also concern the monopoly of federations on the organisation of sporting competitions, the ownership of several clubs by one person (multiple ownership), the rules on the geographical organisation of sport, the statutes of professional clubs and certain commercial operations carried out by the federations.

On the other hand, other measures have been taken at Community level, in keeping with the principle of subsidiarity, which are strengthening the legal framework while preserving the "common interest" dimension of sport. One example is the decision taken at the time of the 1997 revision of the "Television without frontiers" Directive. Under the terms of the revised text, the Member States may take measures, in keeping with Community law, to ensure that the general public has access to major sporting events.

4.2. The need for convergent endeavours

If it is advisable, as wished by the European Council, but also the European Parliament⁴ and the Committee of the Regions⁵, to preserve the social function of sport, and therefore the current structures of the organisation of sport in Europe, there is a need for a new approach to questions of sport both at European Union level and in the Member States, in compliance with the Treaty, especially with the principle of subsidiarity, and the autonomy of sporting organisations.

This new approach involves preserving the traditional values of sport, while at the same time assimilating a changing economic and legal environment. It is designed to view sport globally and coherently. This overall vision assumes greater consultation between the various protagonists (sporting movement, Member States and European Community) at each level. It should lead to the clarification, at each level, of the legal framework for sports operators.

The European Union would have an essential part to play in implementing this new approach, given the increasing internationalisation of sport and the direct impact of Community policies on European sport.

⁴ Resolution of the European Parliament on the role of the European Union in the field of sport, OJ C 200, 30.6.1997.

⁵ Opinion of the Committee of the Regions on "The European model of sport", CdR 37/99, 15.9.99.

4.2.1. *The Community level*

In terms of the economic activity that it generates, the sporting sector is subject to the rules of the EC Treaty, like the other sectors of the economy. The application of the Treaty's competition rules to the sporting sector must take account of the specific characteristics of sport, especially the interdependence between sporting activity and the economic activity that it generates, the principle of equal opportunities and the uncertainty of the results.

With a view to an improved definition of the legal environment, it is possible to give examples, without prejudice to the conclusions that the Commission could draw from the in-depth analysis of each case, of practices of sports organisations.

4.2.1.1. Practices which do not come under the competition rules

The regulations of sporting organisations drawing up rules without which a sport could not exist, or which are necessary for its organisation or for the organisation of competitions, might not be subject to the competition rules. The rules inherent to sport are, first and foremost, the "rules of the game". The aim of these rules is not to distort competition.

4.2.1.2. Practices that are, in principle, prohibited by the competition rules

These are restrictive practices in the economic activities generated by sport. They may concern, in particular, restrictions on parallel imports of sports products and the sale of entrance tickets to stadiums that discriminates between users who are resident in a particular Member State and those who live outside that Member State.

Sponsoring agreements that close a market by removing other suppliers for no objective reason are prohibited. The systems of international transfers based on arbitrarily calculated payments which bear no relation to training costs seem to have been prohibited, irrespective of the nationality of the player concerned.

Lastly, it is likely that there would be a ban on the practice of a sporting organisation using its regulatory power to exclude from the market, for no objective reason, any economic operator which, even though it complies with the justified quality or safety standards, has not been able to obtain a document from this organisation certifying to the quality or safety of its products.

4.2.1.3. Practices likely to be exempted from the competition rules

- The *Bosman* judgment mentioned above recognised as legitimate the objectives designed to maintain a balance between clubs, while preserving a degree of equality of opportunity and the uncertainty of the result, and to encourage the recruitment and training of young players. Consequently, it is likely that agreements between professional clubs or decisions by their associations that are really designed to achieve these two objectives would be exempted. The same would be true of a system of transfers or standard contracts based on objectively calculated payments that are related to the costs of training, or of an exclusive right, limited in duration and scope, to broadcast sporting events. It goes without saying that the other provisions of the Treaty must also be complied with in this area, especially those that guarantee freedom of movement for professional sportsmen and women;

- it is likely that short-term sponsoring agreements based on an invitation to tender and with clear and non-discriminatory selection criteria would be authorised;
- any exemptions granted in the case of the joint sale of broadcasting rights must take account of the benefits for consumers and of the proportional nature of the restriction on competition in relation to the legitimate objective pursued. In this context, there is also a need to examine the extent to which a link can be established between the joint sale of rights and financial solidarity between professional and amateur sport, the objectives of the training of young sportsmen and women and those of promoting sporting activities among the population. However, with regard to the sale of exclusive rights to broadcast sporting events, it is likely that any exclusivity which, by its duration and/or scope, resulted in the closing of the market, would be prohibited.

4.2.2. *The national level*

The national State authorities also need to clarify the legal rules in order to safeguard the current structures and the social function of sport.

One way of safeguarding the national federal structures could be to provide for them to be recognised by law in each Member State of the Union. Other ways of achieving this objective would be the partnership agreements between the State and the sporting federations and to grant the representative sporting federations a specific status which could be based on that of the professional associations. There is also a need to examine, in legal terms, the legal status of clubs, their purchase or the participation of commercial or financial groups in their equity.

4.2.3. *The level of sporting organisations*

In order to clarify the legal environment of sport, it is also necessary for the federations to make an effort to define their missions and statutes more precisely. The pyramid structure of the organisation of sport in Europe gives sporting federations a practical "monopoly". The existence of several federations in one discipline would risk causing major conflicts. Indeed, the organisation of national championships and the selection of national athletes and national teams for international competitions often require the existence of one umbrella organisation bringing together all the sports associations and competitors of one discipline.

The federations should also perform tasks such as the promotion of amateur and professional sport and carry out a role of integration into society (young people, the disabled, etc.). Their statutes should explicitly state these missions. These responsibilities should be translated effectively into practice by financial mechanisms of internal solidarity and the structural and solidarity-based relationship between competitive sport and amateur sport. Operations with an economic dimension should be founded on the principles of transparency and balanced access to the market, effective and proven redistribution and clarification of contracts, while prominence is given to the "specific nature of sport".

It must be stressed that the basic freedoms guaranteed by the Treaty do not generally conflict with the regulatory measures of sports associations, provided that these measures are objectively justified, non-discriminatory, necessary and proportional.

There is also a need to find solutions, in partnership with the sporting federations, in order to develop alternatives to the transfer systems condemned by the Bosman judgment.

5. CONCLUSION

If the Commission is asked whether it can guarantee that the current development of sport will not jeopardise the current structures and social function of sport, its unequivocal answer is that it cannot. It is indeed important to remember that the Commission has no direct responsibility for sport under the Treaty.

In order to safeguard the current sports structures and maintain the social function of sport, there is a need for a new approach to questions of sport. The first step towards such a new approach is for the various protagonists involved to respect a common foundation of sporting principles:

- The European Union recognises the eminent role played by sport in European society and attaches the greatest importance to the maintenance of its functions of promoting social integration and education and making a contribution to public health and to the general interest function performed by the federations;
- The integrity and autonomy of sport must be preserved. The purchase of sporting clubs by commercial bodies (communication groups etc.) must, if permitted, be governed by clear rules, out of a concern for the preservation of sporting structures and ethics;
- The system of promotion and relegation is one of the characteristics of European sport. This system gives small or medium-sized clubs a better chance and rewards sporting merit;
- Doping and sport are diametrically opposed. There can be no let-up in the fight against doping;
- The “trade” in young sportsmen and women must be combated. Each young sportsman or woman trained by a club for top-level competition must receive vocational training in addition to sports training.

On the basis of these principles, there is a need for a new partnership between the European institutions, the Member States and the sports organisations, all moving in the same direction, in order to encourage the promotion of sport in European society, while respecting sporting values, the autonomy of sporting organisations and the Treaty, especially the principle of subsidiarity.

Insufficient coordination between the protagonists of sport (federations, Member States and the European Community), all of them working in isolation, would risk thwarting the efforts to achieve these shared principles. However, the convergent efforts of the European Community, the Member States and the sporting federations could make an effective contribution to the promotion in Europe of sport that is true to its social role, while ensuring that its organisational aspects assimilate the new economic order.

ISSN 0254-1475

COM(1999) 644 final

DOCUMENTS

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16 17 05 10

Catalogue number : CB-CO-99-648-EN-C

**Office for Official Publications of the European Communities
L-2985 Luxembourg**