EU LAW AND SPORT
in the name of autonomy and specificity

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• “The Union shall contribute to the promotion of European sporting issues while taking account of its specific nature, its structures based on voluntary activity and its social and educational function” (art. 165 TFEU).
The ‘economic’ dimension of sport

• 15 million people or 5.4% labour force
• Value-added of 407 billion euros
• Tool for local and regional development
• Tourism
The Organisation of Sport

• SELF-REGULATION respectful of:
  – Good governance principles
  – EU law

• The European Commission
  – Plays a “facilitating role” or
  – Takes action if necessary
• **Sport as economic activity:** EU LAW applies
  - Competition Law
  - Internal Market rules
  - No discrimination on basis of nationality
Specificity of the ‘Sport structure’

- Autonomy and diversity of sport organisations
- Pyramid structure of competitions
- One national federation per sport
The European Model of Sport
The “Pyramid” model

European Sports Federations
National Sports Federations
Regional Sports Federations
Grassroots Federations/Clubs
Characteristics

- Promotion and relegation
- **Grassroots approach (starting from the clubs)**
- **Stakeholders and their role (who does what)**
Artt. 45 TFEU Workers have the right to:

— accept offers of employment actually made;

— move freely within the territory of Member States for this purpose;

— to stay in a Member State for the purpose of employment;

— to remain in the territory of a Member State after having been employed in that State.
Reverse discrimination

• “National law” v. “EU law”:
  – Different scope
  – different goals

• EU Law does not apply to purely internal matters.
• Definition of «worker»:
  – A PERSON PERFORMS SERVICES OF SOME ECONOMIC VALUE FOR AND UNDER THE DIRECTION OF ANOTHER PERSON IN RETURN FOR WHICH HE RECEIVES REMUNERATION (Lawrie-Blum, C-66/85).

• «Community meaning» (Unger, C-75/63).

• Fundamental Principle: broad interpretation (Levin, C-53/81).

• Exceptions and derogations: strict interpretation (Kempf, C-139/85).
• **BAN ON “DIRECT” DISCRIMINATIONS**

*Art. 18 TFEU* on the basis of nationality

*Art. 45 TFEU:* ...

– Access to employment
– Pay
– Employment conditions

• Association agreement, Co-operation agreement, and so on.

• **SPORT:** Balog case, Simutenkov case
• NO « COVERT FORMS OF DISCRIMINATION” which, by the application of other criteria of differentiation, lead in fact to the same result. (cause 152/73 Sotgiu)
THE UEFA HOMEGROWN PLAYER RULE

**Homegrown**: player trained by a club for 3 years when he is between 15 and 21 years old

- 2006/2007 4 up to 25
- 2007/2008 6 up to 25
- 2008/2009 8 up to 25

No discrimination on the basis of nationality.
The case law of the ECJ

- “Sport is subject to Community law in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty”.
- **Walrave case**, C-36/74.
- **Donà v. Montero** case, C-13/76 (nationality clause).
- sports or economic activity?
  - C-51/96 **Deliège case**, C-176/96, **Lethonen case**, **Meca – Medina case** (doping).
DAVID v. GOLIAH!

Sport = economic activity = the end of transfer compensation

NO QUOTA!

Quid training?

The new FIFA regulations on Status and Transfer of Players
The Gentlemen’s agreement (2001)
– The five principles:
  • free of movement,
  • protection of minors,
  • training compensation,
  • solidarity mechanism,
  • dispute resolution and arbitration system.

FIFA Regulations
Training Compensation

- must be paid when:
  - a player signs his first contract as a professional,
  - on each transfer of a professional until the end of the season of his 23rd birthday.

ARSENAL have handed academy star ’98 Chris Willock his first professional contract.

Wayne Rooney has signed his first contract as Pro at 17yrs old with Everton.

Eden Hazard, from Lille to Chelsea (21 years) : 40 million €
Clubs from Europe:

First category: 90,000 euros
Second category: 60,000 euros
Third category: 30,000 euros
Fourth category: 10,000 euros
“A scheme providing for the payment of compensation for training where a young player, at the end of his training, signs a professional contract with a club other than the one which trained him can, in principle, **be justified by the objective of encouraging the recruitment and training of young players.** However, such a scheme must be actually capable of attaining that objective and **be proportionate** to it, **taking due account of the costs borne by the clubs in training both future professional players and those who will never play professionally** (para. 45).
Bosman versus Bernard

- Sport in so far as economic activity
- Free movement of workers
- Restrictions regardless of nationality
- Professional to professional
- End of (prof.) contract

- Sport in so far as economic activity
- Free movement of workers
- Restrictions regardless of nationality
- Amateur to professional
- End of (amateur) contract/training
ART. 101 T

Are incompatible (and void) with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may:

- affect trade between Member States
- have as their object or effect the prevention, restriction or distortion of competition within the common market.
Agreements which contribute to improving:

– the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit,

And which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
ABUSE OF DOMINANT POSITION

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.
Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
Fields of application in Sport

- Transfer rules
- Sale of tickets
- Broadcasting rights
- Monopoly of federations
- Multi-ownership of clubs
• EC law applies to Sport in so far it constitutes an economic activity (ECJ case law)
• No Activities “purely” social, artistic or sporting ......
• but then “MECA MEDICA” judgement of 18 July 2006...
• Test of “Necessity”
• Test of “Proportionality”
The Legal Methodology in the Meca Medina case

**STEP 1**: Are the EC anti-trust rules, i.e. Articles 81 and/or Art. 102 applicable to Sporting rules?

**STEP 2**: If EC anti-trust rules are applicable, does the sporting rule fall outside the prohibition of Articles 101 (1) and 102 TFEU?

**STEP 3**: Can the rule be considered compatible with EC anti-trust rules because it fulfils the conditions of Article 81(3) EC or because of an objective justification under Article 102 TFEU?
Step 1

1. Is the sports association that adopted the rule in question an “undertaking” or an “association of undertakings”?
   
   - a. The sports association is an “undertaking” to the extent it carries out an “economic activity” itself (e.g., the selling of broadcasting rights).
   
   - b. The sports association is an “association of undertakings” if its members carry out an economic activity.
   
   - If no economic activity, Articles 81 and 82 do not apply.
Step 2

• Compatibility of rules with the Community rules on competition cannot be assessed in the abstract.

• Taking into account:
  – “the overall context” in which the decision of the association of undertakings was taken or produces its effects.
  – Its objectives: measures inherent in the pursuit of those objectives and proportionate to them.
  – Proportionality of measures (quid sportive sanctions?)
Can the rule be considered compatible with EC anti-trust rules because it fulfils the conditions of Article 81(3) EC or because of an objective justification under Article 82 EC?

– Case by case approach
– No General sports exception!
Sporting rules that are more likely to comply with Art. 101 and Art. 102 TFEU

- Selection criteria for sport competition
- At home and away rules
- Transfer periods
- Nationality clauses for national teams
- Rules prohibiting the multiple ownership of clubs
- Antidoping rules
- Rules of the game
Sporting rules that are less likely to comply with Articles 81 and 82 EC

- Rules regulating professions ancillary to sport
- Rules excluding legal challenges of sports awards before ordinary Courts
- Rules limiting the number of foreign players
- Rules requiring transfer payments for players at the end of their contracts
CONCLUSION

ALL ROADS LEAD TO ROME BUT FIRST ...

THEY GO THROUGH BRUSSELS