

Joint Statement of the participants of the first European Professional Sportspeople Forum of 31 January 2011

Introduction

We support section 4.1 of the White Paper on Sport that begins with the statement, "Sport activity is subject to the application of E.U. law". The term "specificity of sport" may be applied to address certain special requirements of sport but should be applied in a limited fashion as decided by the courts and not to allow sport organizations to avoid their obligations under European and national law.

We recognise the *acquis communautaire* in the field of Sport. Moves to promote the specificity of sport must not undermine the existing case law that has been built up by national and European courts. Moreover the European Court of Justice has always taken into account the "specificity of sport" in its judgments in every branche of industry.

Access to the national courts and the ECJ must remain an option for sportspeople. Any moves to strengthen dispute resolution mechanisms in sport must ensure that they do not undermine sportspeoples' rights as citizens and as workers to bring cases before national and European courts. If there is dispute resolution iins sports then equal representation is fundamental at all levels.

Where sport is an economic activity, the rights of sportspeople as citizens, employees and workers must be respected. Especially the right of sportspeople to organize collectively and to engage in social dialogue at the national and European level must also be respected and supported.

Sportspeoples' unions and associations are an essential part of the "sport movement". We reject any exclusive bilateral dialogue between the Olympic and Sports Movement and European institutions on this issue. The Commission should promote sportspeoples' unions' involvement and representation in all its different sports dialogues.

The concept of 'specificity of sport', as put forward by the Olympic and Sports movement in its position paper of January 2010, represents an erosion of the rights of sportsmen and women. Any application of the concept of the "specificity of sport" that has not been upheld by a decision of the European Court of Justice must be discussed with and approved by the athletes' representatives through social dialogue.

Social Dialogue

As stated in the White Paper on Sport, national social dialogue and European Sectoral Social Dialogue Committees must remain important tools in developing sport policy in Europe.

We acknowledge the European Commission's work to establish a social dialogue committee in professional football sector and for the whole sport and active leisure sector, respectively. We will do our utmost to achieve results in the autonomous social dialogue with the relevant social partners.

Structured dialogue

As social partners representing the essential stakeholder, European sportspeople, we assert that these views must be part of any structured dialogue that takes place in the context of the development of sport policy and a European Sport Programme. Neither the International Olympic Movement nor international federations have a mandate to speak on behalf of players, athletes and sportspeople.

Transfer rules

We support the Commissions plan to launch a study on transfer rules and provide guidance on that basis. Transfer rules are of immense importance for professional sportspeople in team sports.

We are of the opinion that parts of the different transfer rules violate the rights of professional sportspeople. The Commission needs to safeguard the conformity between the legal rights of sportspeople and the transfer rules.

Intellectual property and image rights

It should be remembered that sportspeople, as citizens and employees have rights to their image and reputation, data resulting from their individual performances on the playing field and the intellectual property resulting from such performances². These rights are the valuable commercial and moral property of sportspeople, and, as stated in the White Paper, require effective enforcement. Sportsmen and women reserve maintain their right to protect and exploit their own image, rights to the data relating to their performance and their intellectual property rights.

Sportspeople are often forced to give up or assign their image and intellectual property rights in order to be allowed to compete. When this pressure comes from a federation or the Olympic movement instead of an employer organization the sportspeople are placed in a position where he or she is unable to negotiate from a position of equality. There is often in fact no negotiation.

The member unions of the European Elite Athletes Association and FIFPro Division Europe are in a unique position to represent the collective image rights of their individual members and will put more focus on this in the future.

Anti-doping

We are committed to drug free sport and would support a fair and effective performance-enhancing drug testing regime that recognizes, respects and protects athletes' legal rights as employees, workers and European citizens. In areas where there is a clear economic element, anti-doping rules must be negotiated directly with employee social partner organizations through either a social dialogue or collective bargaining process.

The enforcement of anti-doping rules must be proportional and balanced. National and European governments should be proactive in the protection of sportspeople's fundamental rights. Anti-doping rules should conform to the law and not the other way around.

A large proportion of the small groups of top sportspeople selected for the Registered Testing Pools are clearly involved in sport as a economic activity and must not be denied their rights to collectively organize and be collectively represented. The Athletes Commissions of WADA and the international federations can in no way be understood to collectively represent sportspeople as they are neither democratically selected nor transparent in their operation. WADA needs to respect its own statutes regarding the representation of athletes and the precedence of national law.

We take the following specific positions:

- a) Anti-doping rules need to respect the fundamental rights of sportspeople;
- b) Sanctions for doping must be proportional and assessed on a case-by-case basis;
- c) testing should only take place in the context of training or matches and should not occur on days off or over holidays (except with the express agreement of independent sportspeople unions);
- d) Where appropriate, team whereabouts should be sufficient instead of individual whereabouts reporting;
- e) Professional sportspeople should be allowed to train with their teams during periods of suspension.
- f) More emphasis needs to be placed on anti-doping education and the rehabilitation of sports persons guilty of an anti-doping rule offence

We note that when recreational drugs are excluded, doping appears to be an extremely marginal activity, especially in European team sports such as ice hockey, basketball, volleyball, rugby and football. Smarter, more specific, and more proportional systems should be developed, where appropriate. In this context, we request that the Commission support a study that should make a cost benefit analysis of different aspects of anti-doping testing programs.

Sports betting

Problems regarding betting, match fixing and corruption rarely start with the sportspeople. On the other hand, they are the most vulnerable party and subject to sanctions. We call on the European Commission to support, as part of a future Sport Programme, educational programs designed to inform sportspeople about issues surrounding sports betting integrity. The members of the European Elite Athletes Association and the FIFPro Division Europe are in a unique position to implement these types of programs.

Corruption in sport

We recognize and commend section C4, clause 44, of the Coubertin Action plan of the White Paper on Sport relating to 'corruption, money laundering and other financial crime'.

Corruption, for the purposes of this statement, is defined as the misuse of entrusted power for personal gain, which may not necessarily be financial.

Corruption and conflicts of interest in sport have a substantial and negative impact on the position of sports people. Therefore, we call, in general, for more transparency and accountability in sport. Sportspeople's unions are prepared to play a positive role in this effort but recognize that all actors in sport including the Olympic movement, sports federations and leagues must tackle this problem through the adoption and implementation of codes of ethics, and the establishment of effective ethics commissions and compliance systems as is the norm in other industries.

We call for improved transparency and democracy to combat the potential for corruption and/or conflict of interest within the Olympic movement, sport federations and the World Anti Doping Agency. The Commission has an important role to play in promoting European values within international sports federations.

Education

We note with approval that the White Paper on Sport (2.3.) emphasizes the importance of “dual career” training for professional sport persons.

The European Commission needs to include the professional sportspeoples unions, as the employee social partners, in any effort to better prepare sports people for work after (or, in the case of semi-professional or elite amateur athletes, during) their sporting careers. Many effective transition programs, sponsored by sportspeoples unions, already exist and could be used as models.

Conclusions

Sport activity must remain subject to within the application domain of European and national law.

Any moves to promote the specificity of sport must not undermine sportspeoples' fundamental rights as citizens and employees or workers. It is essential that sportspeople continue to have recourse to national and European courts to safeguard their fundamental rights.

Social dialogue at the European level should be actively promoted by the EC to sports federations and clubs as the best way of protecting the specificity of sport and sportspeoples' fundamental rights and interests.

We are committed to ongoing dialogue with the Commission, the Council of Europe and the European Parliament on all areas of sports policy. It is essential that sportspeoples' unions be recognized as a fundamental part of the sports movement.