

## **COMMON POSITION PAPER**

**of the members of the European Elite Athletes Association and SPORT PRO –  
UNI europa on the effects of the Lisbon Treaty in the area of sport**

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SPORT PRO – UNI europa is the European employee social partner for professional sports (not including football). The European Elite Athletes Association (EU Athletes) is a member of SPORT PRO and represents 30 players unions and approximately 25,000 sports people from across Europe.

**1. Overview**

SPORT PRO – UNI europa and the European Elite Athletes Association (EU Athletes), on behalf of their member organizations and sports persons<sup>1</sup> across Europe, welcomes the new provisions on sport contained in the Treaty on the Functioning of the European Union. However, it is essential that these not be applied in a way that undermines the fundamental rights of sportsmen and women.

This paper contains our detailed common positions for the consideration of the European Commission as it looks to develop its future work programme in the field of sport.

**2. “Specificity of Sport”**

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 judgements.

Access to the national courts and the ECJ must remain an option for sports people. Any moves to strengthen dispute resolution mechanisms in sport must ensure that they do not undermine sports peoples’ rights as citizens and as workers to bring cases before national and European courts.

Where sport is an economic activity, the rights of sportspeople as citizens, employees and workers must be respected. Especially the right of sportspeople to

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<sup>1</sup> In this paper references to ‘sports person’, ‘sportspeople’, ‘players’ and/or ‘athletes’ includes: Professional, Semi-professional, and Elite level amateur sportspeople, players and athletes, and (where applicable) those training for such roles.

Whilst team sports and individual sports can face different issues many of the core fundamental issues are the same.

organize collectively and to engage in social dialogue at the national and European level must also be respected and supported.

Players unions and associations are an essential part of the “sport movement”. EU Athletes rejects any exclusive bilateral dialogue between the Olympic and Sports Movement and European institutions on this issue. The Commission should promote player associations’ involvement and representation in its sports dialogue.

The concept of “specificity of sport”, as put forward by the Olympic and Sports movement, 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 approved by the athletes’ representatives through social dialogue.

### **3. Social Dialogue**

The members of the European Elite Athletes Association support the application of UNI europa and E.A.S.E. (European Association of Sport Employers) to the European Commission to form a European Sectoral Social Dialogue Committee and pledge their support to establish and actively participate in a European Social Dialogue in the Sport Sector.

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

For example, the issues surrounding player transfer systems and training compensation systems are a classic example of the need to address sport specific problems through European Social Dialogue.

In the run-up to the acceptance of European social dialogue in the sports sector, the social partners should be included and consulted in all dialogues and initiatives relating to the development of sport policy in Europe.

### **4. Working conditions**

We support point 3.1 of the White Paper on Sport calling for a sound knowledge base as a foundation for the launch of policy actions and enhanced cooperation.

We call on the Commission to support, and initiate, studies on the working conditions of sportsmen and women.

The Commission should be aware that a study on the working conditions of professional basketball players was implemented by UBE – the European Basketball Players Union and supported by a grant under the “Information and training measures for workers’ organizations” heading. This study revealed many areas of serious concern that merit further study including high rates of violence in the workplace, ethnic discrimination, and serious injury.

### **5. 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 sports persons' 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 athletes 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 sportsmen and women as they are neither democratically selected nor transparent in their operation. WADA need 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 sportsmen and women;
- 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 player associations);
- d) where appropriate, team whereabouts should be sufficient instead of individual whereabouts reporting;
- e) professional players 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.

We are extremely concerned that the free consent of athletes, as required by European data protection authorities on the basis of the relevant EU law is not present when athletes are threatened with sanctions or non participation if consent is not given for the transfer of sensitive personal data. We note that only 14% of basketball players responding to the previously mentioned UBE working conditions survey replied that they were aware of European data protection law.

We express concern that the effort announced by WADA, in the context of the EC initiated meeting on anti-doping held in Athens in May of 2009, to engage in dialogue with independent players unions has not been adequate to address the real concerns of sports people.

## **6. Intellectual property and image rights**

It should be remembered that sportsmen and women, 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 performances<sup>2</sup>. These rights are the valuable commercial and moral property of athletes, and, as stated in the White Paper, require effective enforcement. Sportsmen and women reserve 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 player is 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 are in a unique position to represent the collective image rights of their individual members for the purpose of funding social programs for players.

## **7. Agents**

The members of EU Athletes recognize problems and conflicts of interest in the player transfer market. They support the process underway to study and potentially regulate the player agent industry in Europe. They call for more transparency on player transfers and agent fees and insist that players associations be involved in efforts related to the licensing and/or accreditation of agents.

## **8. Racism and discrimination**

Racism and discrimination in sport remains a problem. Efforts in this area should be a part of any European Sport Programme. We encourage the Commission to also support an emphasis on the issue of racism and discrimination faced by athletes at work within the European Sport Programme. While 1% of respondents in the 4<sup>th</sup> EUROFOUND European working conditions survey replied that they suffered from discrimination due to ethnic background, 18% of American basketball players playing in Europe reported problems with discrimination.

## **9. Violence in the workplace**

We call upon the Commission to expand its efforts to combat violence in sport (2.6, White Paper on Sport) to include violence in the workplace for players. The recent study on the working conditions of basketball players revealed that violence in the workplace is a major problem in that sport.

## **10. Sports betting**

We call on the European Commission to support, as part of a future Sport Programme, educational programs designed to inform players about issues surrounding sports betting integrity. The members of the European Elite Athletes Association are in a unique position to implement these types of programs.

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<sup>2</sup> Subject to the effect of other laws protecting, for example, the public right to information.

## **11. Health and safety**

As part of any European Sports Programme, a study should be supported into health and safety issues in professional sport.

A comparison of responses to questions on health and safety in the UBE working conditions survey to the EUROFOUND European working conditions survey revealed that playing basketball ranks as one of the unhealthiest professions in Europe.

The England Rugby Injury & Training Audit 2008-09 found that 769 match injuries at Guinness Premiership clubs were reported - an average of two injuries per club per match.

## **12. Protection of Minors**

We support Section 4.5 of the White Paper on Sport and request an update on the status of the study on child labour undertaken as a complement to the monitoring of the Directive on the Protection of Young People at Work.

Players unions should be included in any exchange on actions and initiatives to address the moral and physical integrity of young sportspersons as addressed under point (43) of the Coubertin Action Plan.

## **13. Social insurance**

The sport career is short and high risk. In many countries, social legislation does not take this adequately into account. Point 3.2 of the White Paper on Sport only addresses public support for sport from the perspective of the federation or event organizer. We encourage a re-examination of this point and that an initiative be made to include the position of the sports person in the discussion on public sector support for sport.

Concretely, as part of a European Sport Programme, we call for a study, leading to action, on how legislation, funding and tax schemes might be structured to better support health insurance, unemployment insurance, pension insurance and educational programs for sports people. Examples of these types of public support already exist at the national level and could be used as a basis for this study. Furthermore there could be benefit in the Commission studying the transferability of social security provision, especially pensions, within different European countries.

## **14. Amateur status**

We note that a number of sports federations and even some national laws require that certain sportspeople are classified as amateurs. This is despite the sportspeople earning significant income both directly and indirectly by playing their sports. The result of this is that such sportsmen and women are excluded from social security provision and employment protection.

Furthermore a number of professional sportspeople playing for their national teams are denied employee status by the federations, not given labour contracts and so are denied the basic employment rights such as injury insurance. This is despite the players clearly being engaged in an economic activity.

Whilst the tradition of amateurism is important in sport and should be respected, it must not be forced upon sportspeople against their will, especially when they are engaged in an economic activity.

There would be benefit in the proposed European work programme including research into the scale of the abuses of amateur status in 'professional' sport.

We also recognize the important role that elite amateur athletes play within certain indigenous sports to enhance the social and cultural fabric of society. Their position must also be protected and supported.

## **15. 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 players 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 players unions, already exist and could be used as models.

We also request information on the study on the training of young sportsmen and women mentioned in the White Paper on sport (2.3.)

## **16. Corruption in sport**

The members of the European Elite Athletes Association 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, the EU Athletes member associations call, in general, for more transparency and accountability in sport. Athletes associations 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.

## **17. Structured dialogue**

As the social partner representing the essential stakeholder, the European sports person, 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.

## **18. Conclusions**

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

Any moves to promote the specificity of sport must not undermine sportspersons 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.

Structured 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 players' fundamental rights and interests.

SPORT PRO – UNI Europa and EU Athletes are committed to ongoing dialogue with the Commission on all areas of sports policy. It is essential that player associations be recognised as a fundamental part of the sports movement.