

***Common position of the Olympic and Sports Movement on the
implementation of the new Treaty on the Functioning of the European Union
(TFEU) on sport
(Lisbon Treaty)***

JANUARY 2010

1. Introduction

The Olympic and Sports Movement, led by the International Olympic Committee (IOC), took a common and clear position on the Specificity and Autonomy of Sport in the European Union (EU) in September 2008¹, which has been underpinned in the light of the Lisbon Treaty ratification and the new Treaty on the Functioning of the EU (TFEU).

The Olympic and Sports Movement welcomes the new provisions on sport in the TFEU² within Articles 6 and 165, and aims, through this new position paper, to propose a definition of the application of these two articles as well as a clarification of the new EU competence in the field of sport in a very practical way. The suggestions put forward by the Olympic and Sports Movement are in line with the Declaration on Sport, annexed to the conclusions of the French Presidency in December 2008, in which the *“European Council stresses the need to take account of the specific characteristics of sport, over and above its economic dimension”* and also called for *“the strengthening of that dialogue with the International Olympic Committee and representatives of the world of sport [...]”*

2. The TFEU and the specific nature of sport

The Olympic and Sports Movement is delighted to consider the new role played by the Council of the EU and the European Parliament in the field of sport. Their stronger involvement will allow defining in **an effective and stable way** the specific nature of sport and how this cornerstone principle should be taken into account in the implementation of a new EU policy in the field of sport.

On the basis of Article 165-4 of the TFEU, the EU Institutions are invited to adopt, after close consultation with the Olympic and Sports Movement, **a recommendation on the EU’s competence in the field of sport, which should provide concrete guidance on how to better take into account the specific nature of sport and confirm the autonomy of sports organisations.** This recommendation, already supported by the European Parliament in 2008, would be complemented by the Communication foreseen by the European Commission by mid-2010 in order to *“clarify the status of sport in EU law with regard to specific points, such as the composition of teams, the status of players’ agents, audiovisual right, etc...”*³ In this regard, the Olympic and Sports Movement must be a key player in defining which sporting rules shall be recognised as specific, and accordingly are to be governed uniquely by sports federations. The intention is not to obtain an exemption from EU law, but a specific application of EU law to sport.

Sporting Rules aim by definition to reach *“openness and fairness of sports competitions”* (TFEU Article 165-2), whether they concern grassroots sports or elite sports, whether they concern club competitions or national teams, individual or team sports, whether they concern local sports competitions or international sports competitions. The essence of sporting rules is to preserve the uncertainty of sporting competitions. Applying EU economic principles to sport, within the EU and

¹ Annex 1 : **“Position of the Olympic and Sports Movement on the Specificity and Autonomy of Sport” – September 2008**

² Annex 2 : **Provisions on sport in the Treaty on the Functioning of the European Union: articles 6 and 165 TFEU**

³ Resolution on the White Paper on sport adopted 8 May 2008 – Point 14

without any reference to the particularities of the sector, has an impact on the entire architecture of sport in the world. The EU should therefore reaffirm the right of sports federations to determine autonomously their organisation and the promotion of their respective sports on the basis of this specific application of EU law to sport. This would need to be taken into account harmoniously, especially when sport rules are challenged before the European Court of Justice and/or national jurisdictions.

E.g. the following sporting rules, which are general and applicable to the organisation of sport in the world, therefore deserve a specific treatment:

1. **Technical Rules of the different sports**, including the specific rules of the games (such as size of the field of play, size of the ball, number of players, duration of a match, time out, referee rules, etc.) and the organisation of the competitions (categories, different levels of competition, eligibility, qualification, limitation and repartition of participants, consequences, on the field and beyond, of violations of the rules, etc.). These rules, which are unique (one per sport) and universal, aim exclusively to set up the organisation of sport, whether it concerns team sports, individual sports, professional or amateur sport. They are closely connected to the worldwide sport pyramidal structure and the independence of sport governing bodies. Although the applicability of EU law in this field is very limited, the Olympic and Sports Movement shares the view that, with the new provisions on sport in the TFEU, the technical rules of the different sports could be better safeguarded.
2. **International sports competitions**: selection criteria for international sports competitions, sporting calendar, composition of national teams and release of national players, etc. These rules set up by international sports federations are applicable to competitions throughout the world and the organisation of the most popular sport events (Olympic Games, World Cup and World Championships, Continental Cups and Championships).
3. **Club competitions**: competition system as defined by the Sports Federation (e.g. promotion/relegation principle -the so-called “open system”), principle of territoriality of sports competitions, rules ensuring financial fairness of sports competitions and solidarity (e.g. prevention of multiple ownership), transfer windows, training of athletes, composition of teams, etc. These rules, which are applicable for club competition, aim to balance sports competitions and to reach “*openness and fairness of sport competitions*”, according to TFEU Article 165-2.
4. **Rules preserving the integrity of the game**: anti-doping rules, protection of minors, measures against illegal betting and corruption, regulation of activities of players’ agents or intermediaries, fight against racism and violence etc. These rules are also essential to reach “*openness and fairness of sport competitions*”.
5. **Rules related to dispute-resolution mechanisms in sport**: Arbitration in sport should be safeguarded and strengthened as an efficient and respected dispute-resolution mechanism. This fundamental principle, undoubtedly part of the specificity of sport, should be taken into account, especially when a case brought to arbitration is also challenged to European or/and national jurisdictions.

These rules define the framework of the specific nature of sport and guarantee stable and balanced sporting competitions as well as their integrity, which can be challenged. In line with the new provisions of the TFEU and the European Council declaration (2008) the EU Institutions are asked to safeguard these fundamental principles.

With regard to the EU context and the particularities of EU law, prior attention should also be paid to the following principles:

The issue related to **free movement of persons**, whether it concerns team club competitions (professional or amateur) or national teams' competitions (release of national players), should not be assessed exclusively in accordance with EU principles concerning free movement of workers or persons. The issue would need to be considered as a whole:

- Referring to education and training of athletes - whether it concerns training provided by professional clubs, amateur clubs or in the framework of national team selections;
- Referring to the integrity of sports competitions - sports rules preventing doping, violence, racism, corruption, and fraud, and aiming to protect ethics;
- Referring to mechanisms negotiated by sports governing bodies with representatives of the athletes in each sport.

Financial solidarity mechanisms should also not be assessed exclusively with regard to EU competition principles or internal market regulations, since they aim to ensure above all the development of harmonious sports practice in the world and to develop grassroots sport in particular. The collective selling of commercial and broadcasting rights of sports competitions, as well as mechanisms of training compensation, are therefore of utmost importance since they aim to guarantee a stable and equitable financial redistribution to sport actors throughout the pyramid of sport.

3. Further action to be taken in the light of TFEU articles 6 and 165

Consultation

The Olympic and Sports Movement proposes the setting-up of a **Permanent Bilateral Consultation Forum with the EU Institutions**, as outlined in the proposal attached⁴. This cooperation, initiated in 2008 with representatives of the European Commission, would be extended to the European Parliament and the ministers in charge of sport in the framework of the EU Council.

Funding

The new provisions of the TFEU enable the set-up of a specific **EU sports funding programme**, as well as an improved **mainstreaming** of sport in existing EU funding programmes (education, culture, youth, citizenship, environment, rural and urban development, humanitarian assistance, social issues, etc.). This will be most useful to support and stimulate sports-related projects throughout the EU.

⁴ **Annex 3 : Proposal for a Permanent Consultation Forum between the Olympic and Sports Movement representatives and the EU Institutions**

Specific attention shall also be paid to the following issues:

The integrity of sporting competitions:

Doping:

Whilst sport organisations, in close cooperation with WADA, are solely responsible for managing doping controls and issuing disciplinary sanctions in case of an anti-doping rule violation, the EU should, based on Article 165-2 of the TFUE, support the work of WADA and the existing cooperation between sports organisations and public authorities. This also includes the Council of Europe. The EU Institutions should play a crucial role in encouraging EU Member States within the EU Council to adopt legislation or policies that are in accordance within the WADA Code, and should strengthen the implementation thereof. Based on the existing share of practices coordinated by the European Commission within a specific working group, this cooperation could be further developed and also include judicial and police cooperation across the EU on doping networks and trafficking. Furthermore, the EU should support research projects developed in the field of anti-doping, through the existing EU funding programmes and the future sports programme, in order to improve detection, prevention and education.

Gambling and betting:

- Integrity of competitions is threatened by illegal and irregular betting, which has developed rapidly and outside the control of sports federations and public authorities. Corruption acts linked to betting are also increasing. The Olympic and Sports Movement therefore asks the EU Institutions to continue their effort and pay more attention to the integrity aspects of this issue by taking into account the international dimension of this problem. Better cooperation and information is needed from public authorities to sports organisations when it comes to illegal and irregular betting, whilst those stakeholders of the Olympic and Sport Movement which are already using early warning systems should provide State authorities with relevant information in case of irregular betting activities.
- Sports rights owners: In addition, the EU Institutions are asked to support the arguments brought by sports organisations regarding their legitimate right to control the legal framework surrounding sports events. The protection of the integrity of sports competitions is one of the numerous aspects behind the reinforcement of sports rights owners, together with the consolidation of commercial rights and the stability of financial solidarity mechanisms. Sports governing bodies should be consulted on the type of bet and subjects of betting that are possible to be made on their events in order to preserve the integrity of sport. This is also to ensure that gambling and betting operators, without any distinction (physical or on-line betting operators), provide sufficient and appropriate guarantees to safeguard the integrity of sports competitions and the protection of the sports organisations' property rights as well as intellectual property rights. The EU should facilitate close cooperation between public authorities in charge of the regulation and control on gambling (States mainly), the gambling and betting operators and obviously sports governing bodies.

- **Financing of sport:** the EU should ensure that the funding of sports federations will not be jeopardised by this new betting and gambling context. The financial stability of sports organisations, and more especially of grassroots sports organisations, would need to be considered a priority when assessing the integrity of sports competitions and gambling activities. Based on the ongoing EU study of internal market barriers to the financing of sport, the EU is encouraged to further develop exchange of best practices and coordinated actions on the financial impact of gambling and betting for grassroots sports organisations.

Athletes' protection, education and training

The protection of minors, coming from Europe as well as from outside Europe, needs to be addressed through close cooperation between the EU Institutions and the Olympic and Sports Movement representatives.

Furthermore, there is a necessity to substantially increase funding for sport in schools, through stimulation mechanisms to be initiated by the European Commission and Member States.

The issue of dual career should also be addressed through close cooperation between the EU Institutions and the Olympic and Sports Movement representatives. As underlined by the Declaration of EU Sport Ministers (November 2008), "*dual curriculum of education and sport is vital for the training of young professionals and high-level athletes to enable them to prepare for future life after their sports careers have ended*". Facilitating the participation of young athletes in the existing student mobility programmes of the EU could be a first concrete action in this context.

Volunteering

Volunteering is also vital for most sports organisations in the world. Whilst in 2010 the European Commission will publish a study on volunteering in Europe, which includes a part devoted to sport, the EU Institutions should continue their efforts, prioritise this issue and cooperate with all relevant sports actors in the future, whether they are local, national, European or even international actors. The prospect of a European year devoted to volunteering in 2011 is already an encouragement for the EU to move forward and hopefully to fully include sport in line with the provision of the TFEU.

External relations

As stated in the TFEU (Article 165-3) "*the EU and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport*". This measure should raise awareness within the EU of the importance of the international organisation of sport and the numerous difficulties that the international sports organisations face when confronted with the application of EU principles. It should also, following the EU White Paper on sport⁵, allow the EU Institutions to promote the use of sport as a tool in their cooperation and development policy with third countries. Whilst the Olympic and Sports Movement is ready to share its large experience, the EU Institutions are asked to create synergies and facilitate the support of projects for the development of sport and the development via sport in developing countries within the existing external agreements between the EU, its Members States and third countries.

⁵ EU White paper on sport - Chapter 2.7 « sharing our values with other parts of the world »



Furthermore the “*promotion of the European dimension of sport*” (TFEU Article 165-2) should be accompanied by the international dimension of sport. The EU should facilitate the organisation of international sports events in the EU and extend the possibility of implementing EU regulations with more flexibility, taking the examples of the visa dispensations adopted by the EU Institutions for major international sports events organised in Europe.



Synthesis of the Recommendations from the Olympic and Sports Movement on the implementation of the new Treaty on the Functioning of the European Union (TFEU) on sport

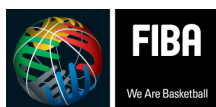
1. The specific nature of sport, promoted in the TFEU, should be regarded as a cornerstone of a new EU policy in the field of sport. In this regard, the EU Institutions are asked to adopt a position on EU competence in the field of sport in order to provide concrete guidance on how to better take into account the specific nature of sport.
2. Sports policy was guided in the past mainly by the jurisprudence of the European Court of Justice. The new legal framework provided by the provisions on sport in the TFEU should allow the EU Institutions to go beyond the strict application of EU law principles by their “specific implementation” to the field of sport, and to define precisely the implementation of a new EU competence.
3. Sporting rules aim, by definition, to reach “openness and fairness of sport competitions” as mentioned in the TFEU. The EU should reaffirm its support for the independence and autonomy of sports federations and their right to determine autonomously their organisation and the promotion of their respective sport. The TFEU should be used to safeguard and stabilise the established worldwide pyramidal sport structure and the following sporting rules: technical rules of the different sports, international sports competitions, club competitions, rules preserving the integrity of the game and rules related to dispute-resolution mechanism in sport.
4. The free movement of persons should not be assessed exclusively in accordance with the relevant EU principles. The issue should be considered as a whole by taking into account issues such as “fairness of sports competitions”, “training and education of young athletes” or mechanisms agreed within each sport.
5. Financial solidarity mechanisms – such as collective selling of media rights - should also not be assessed exclusively with regard to EU competition principles or internal market regulations, since they aim to ensure, above all, the development of harmonious sports practice in the world and to develop grassroots sport in particular.
6. Preserving the integrity of sports competitions is vital for the harmonious and credible development of sport at worldwide level. In the field of anti-doping, whilst sports organisations, in close cooperation with WADA, are solely responsible for managing doping controls and issue disciplinary sanctions in the event of anti-doping rule violations, the EU Institutions are asked to encourage Member States to adopt policies that are in accordance with the WADA Code and to contribute to its implementation. Judicial and police cooperation across the EU on doping networks and trafficking should be further developed.
7. The fight against illegal and irregular betting as well as corruption induced by betting activities requires common efforts from all stakeholders even at international level. The EU Institutions should contribute to a common strategy aiming at better protecting sports competitions. The EU Institutions should therefore support the legitimate rights of sports governing bodies to reinforce the control of the legal framework surrounding sports events, which would also allow the safeguarding of commercial rights in order to ensure sustainable financial redistribution and the consolidation of solidarity mechanisms.
8. Protection of minors, adequate dual career systems and a sufficient number of volunteers are cornerstones for the healthy development of elite and grassroots sport in the future. All activities introduced by the EU Institutions contributing to these objectives are greatly welcomed by the Olympic and Sports Movement.
9. The TFEU allows for improved mainstreaming of sport in existing EU funding programmes and the setting-up of a new sports funding programme. The preparation on the latter should be carried out in close cooperation with the Olympic and Sports Movement.
10. The worldwide dimension of sport should be better taken into account following TFEU Article 165-3. This disposal will improve, within the EU, awareness of the importance of the international dimension of sport.
11. A Permanent Bilateral Consultation Forum between the EU Institutions and the Olympic and Sports Movement should be set up.

Document on behalf of the Olympic and Sports Movement submitted by:

- The International Olympic Committee (IOC)
- The European Olympic Committees (EOC)
- The Association of International Olympic Winter Sports Federations (AIOWF)
- The Association of Summer Olympic International Federations (ASOIF)
- SportAccord (previously known as GAISF, General Association of International Sports Federations)

With the specific cooperation and support of:

- The International Basketball Federation (FIBA)
- The International Football Federation (FIFA)
- The International Ice Hockey Federation (IIHF)
- The International Rugby Board (IRB)



Annexes:

Annex 1 (attached): “Position of the Olympic and Sports Movement on the Specificity and Autonomy of Sport”
(September 2008)

Annex 2: Provisions on sport in the Treaty on the Functioning of the European Union: TFEU articles 6 and 165

Annex 3: Proposal for a Permanent Consultation Forum between the Olympic and Sports Movement and the EU Institutions

Annex 2: Provisions on sport in the Treaty on the Functioning of the European Union: TFEU articles 6 and 165

TFEU Article 6:

“The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action, at European level, shall be:

- (a) protection and improvement of human health;
- (b) industry;
- (c) culture;
- (d) tourism;
- (e) education, vocational training, youth and **sport**;
- (f) civil protection;
- (g) administrative cooperation.”⁶

TFEU Article 165 (ex Article 149 TEC) - TITLE XII - EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT

“1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education,
- **developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.**

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, on a proposal from the Commission, shall adopt recommendations.”

⁶ Consolidated version of the Treaty on the Functioning of the EU – Council of the EU – April 2008 (6655/1/08 REV 1)

Annex 3: Proposal for a Permanent Bilateral Consultation Forum between the Olympic and Sports Movement representatives and the EU Institutions

The EU Institutions and the Olympic and Sports Movement will set up, in 2010, a Permanent Bilateral Consultation Forum. The cooperation initiated in 2008 with the European Commission will thus be enlarged to the European Parliament and the ministers in charge of sport in the framework of the EU Council. Regular meetings will take place at least every six months prior to the meeting of sports ministers, possibly by setting up specific working groups if required by the agenda of the EU Council.

This permanent bilateral consultation forum will also assess, on a regular basis, any activities of the EU Institutions impacting sport (for example, the European Court of Justice rulings, European Commission initiatives, European Parliament resolutions, etc).

The first meeting shall take place before the first formal Sports Ministers' Meeting under the Spanish Presidency of the EU in May 2010.

In order to prepare this new cooperation with the EU Institutions, bilateral working groups will also be set up to cover most of the issues mentioned by the position papers from the Olympic and Sports Movement (September 2008 and January 2010) and any other relevant issue in the future, such as:

- Relations between the Olympic and Sports Movement and the EU Institutions (general coordination, strategy, follow-up EU issues, and relations with EU Institutions)
- Implementation of the Lisbon Treaty:
 - Interpretation of the specific nature of sport
 - Follow-up implementation by the EU Institutions and the Member States
 - Autonomy and governance issues
 - Coordination and follow-up of court cases at EU level, national level and international level (CAS), and coordination between ordinary justice and sports arbitration mechanisms
- Integrity of sports competitions: doping, gambling, protection of minors, agents, etc.
- Sport and society (education, youth, health, social role of sport, volunteering, and disability)
- Financing of sport (sports rights, financial solidarity mechanisms and development of grassroots sport, and public and private financing of sport).