

Enlarged Partial Agreement on Sport

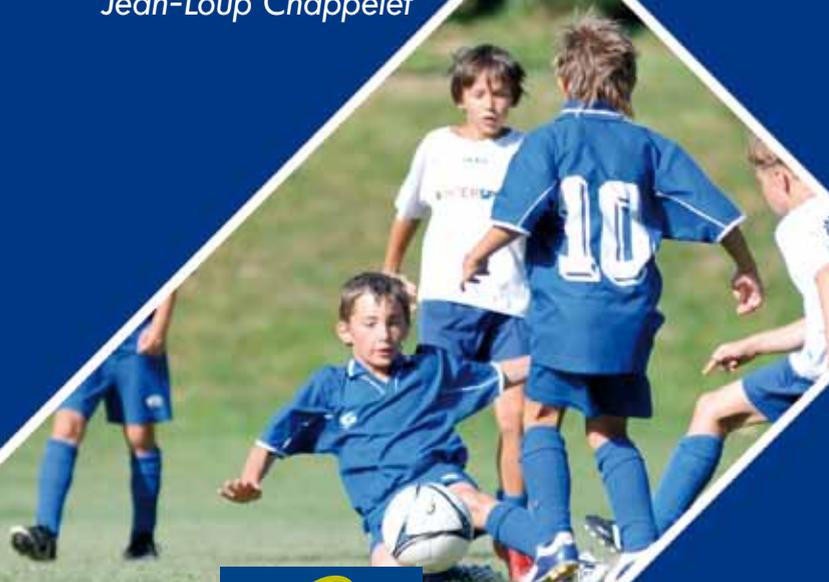


Accord Partiel Élargi sur le Sport



# Autonomy of sport in Europe

*Jean-Loup Chappelet*



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# **Autonomy of sport in Europe**

Jean-Loup Chappelet

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## Preface

This book was commissioned in 2008 by the Council of Europe's Enlarged Partial Agreement on Sport (EPAS) from the IDHEAP (Swiss Graduate School of Public Administration), which is associated with the University of Lausanne (Switzerland). It is based on a survey carried out in the spring of 2008 by the Council of Europe, which sent a questionnaire to European sports and governmental authorities. The survey was repeated in the spring of 2009, particularly to give national Olympic committees and national sports confederations an opportunity to reply in greater numbers than they had on the first occasion (see questionnaire at Appendix 1). Furthermore, an analysis of official documents issued by public authorities or European sports organisations enables the question of sports autonomy to be viewed in the context of not only the rules of the different sports, but also national and European law.

An initial version of this report was put forward in Athens (Greece) in December 2008 during the 11th Council of Europe Conference of Ministers responsible for Sport. The two subjects on which the conference focused were in fact autonomy in sport and ethics in sport. A working document and the resolution on autonomy in sport are reproduced in Appendix 2.

It has been possible to do this work in a very short period of time thanks to the assistance of two holders of the Master of Advanced Studies in Sport Administration diploma awarded by the International Academy of Sports Science and Technology: Amandine Bousigue and Benjamin Cohen. I am most grateful to them for their help and feel sure that this experience will be of great use to them in their future careers with international sports organisations.

The author particularly wishes to thank the EPAS and its secretariat, which provided support throughout the work. He would also like to thank France, which helped, in particular, to devise the operational method used to ensure that the survey of public and sports authorities was diligently carried out, and which followed every phase of the survey at meetings held in Strasbourg.

He would also like to mention the European experts consulted, who made it possible to identify the best practices in "negotiated autonomy" highlighted here.

The opinions which this book contains are those of the author and are not in any way binding on the Council of Europe EPAS or the persons consulted.

Lausanne, July 2009

Jean-Loup Chappelet  
Professor, IDHEAP



## Introduction

In Europe, as from the end of the 19th century, the bodies responsible for the codification of sports rules and the organisation of competitions generally took the form of non-profit-making associations. In this capacity, thanks to national legislation guaranteeing freedom of association, they enjoyed considerable autonomy from government in most European countries. It can even be said that, for most of the 20th century, the majority of European states allowed sports organisations to develop as bodies fully independent of the public authorities. For many years, clubs, regional and national federations and European or international federations, not to mention national Olympic committees (NOCs) and the International Olympic Committee (IOC), operated in virtually complete independence of local and national government and were self-regulating, while sport itself was becoming an increasingly important sociocultural and economic sector.

During the 1970s the Council of Europe became the first European intergovernmental organisation to take a real interest in this sector and to work with the sports movement. In 1976 it adopted the European Sport for All Charter, which was replaced by the European Sport Charter in 1992. It concerned itself with issues such as doping and spectator violence, which led to the adoption of a major convention on each of these subjects. Although the European Court of Justice (ECJ) delivered two judgments concerning the sports sector during the 1970s, it was not until the 1990s that the European Union began to intervene in sport, once sport had become an economic activity (the EU confined itself solely to this aspect, since there was no EU competence for sport in general at the time). The ECJ's Bosman judgment, delivered in 1995, was perceived by the sports movement as governmental intrusion into the autonomy of national and international sports organisations (those dealing with football, in this particular case).

In subsequent years a growing number of sport-related cases were brought before the European or national courts. Many were decided in favour of the sports organisations concerned, but a number of verdicts called into question certain sports rules and were regarded by the federations as encroaching on their autonomy. The sports movement began to call for a "sports exception" in Community law, or at least to emphasise the "specificity" of sport. The governments of the EU member states heeded these demands, going so far as to include in the Treaty of Lisbon of 2007 a provision (Article 149) on the promotion of sporting issues "while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."

However, this development did not really satisfy the European and international sports movement, since the “specific nature” of sport had not been clarified in that article. In 2006 the *Independent European Sport Review*, commissioned by the UK presidency of the EU, drew attention to the degree of legal uncertainty that still existed as regards the relationship between Community law and sporting regulation. According to the international sports organisations this uncertainty curtailed their autonomy. In July 2006 the ECJ’s Meca-Medina judgment reinforced their fears. Although it found in favour of the sports organisations concerned (the International Swimming Federation and the IOC), the ECJ stated, *inter alia*: “If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty.” This enigmatic phrase caused a strong reaction from the European sports federations and the IOC and FIFA (the Fédération Internationale de Football Association), since they regarded it as a significant retrograde step compared with earlier precedents set by the ECJ, and felt that there was an increased threat to their autonomy. It is true that most sports activities have an economic, or business, dimension and accordingly fall within the scope of the EU treaties. In addition, the concept of the conditions for engaging in a sport is very broad and covers themes such as athletes’ nationality and the anti-doping rules (challenged in the Meca-Medina case), which had until then been regarded as an autonomous preserve of the sports organisations. The title of the ECJ’s press release even read “The International Olympic Committee’s rules on doping control fall within the scope of Community competition law.”

The IOC then held a seminar in Lausanne in September 2006 on the autonomy of the Olympic and sports movement, to which it invited a number of its own members and the presidents of international federations and national Olympic committees. This seminar reasserted that autonomy was essential to the preservation of the values inherent in sport. A second seminar was organised by the IOC in February 2008. This one was devoted to a discussion of the “Basic Universal Principles of Good Governance of the Olympic and Sports Movement” as the fundamental basis for securing the autonomy of its member organisations and ensuring that this autonomy is respected by their partners.<sup>1</sup> The autonomy of the Olympic Movement has been chosen as one of the sub-themes of the 2009 Olympic Congress (under the theme of “The Structure of the Olympic Movement”). It was also a key item on the agenda of a meeting between the IOC and eight European secretaries of state for sport or their representatives, held in Lausanne in January 2008, and was due to be included on the agenda for regular meetings between the European Commission and the Olympic Movement starting in January 2009.

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1. The seventh and last principle is entitled “Harmonious relations with governments while preserving autonomy”. In particular it recommends co-operation, co-ordination and consultation with government bodies as the best way for sporting organisations to preserve their autonomy.

It can therefore be seen that, almost 15 years after the Bosman judgment, the autonomy of non-governmental sports organisations (sometimes abbreviated to sports autonomy) has become a highly topical concern. It has almost replaced specificity, the previously dominant and very closely related theme. It brings to mind – to varying degrees – the synonymous concepts of the independence and self-regulation of the sports movement. It is also very closely linked to the issue of governance, addressed by earlier Council of Europe studies and by the 10th Conference of European Ministers responsible for Sport, held in Budapest in 2004.

This subject raises many questions: Autonomy in relation to whom? Concerning which aspects? On what legal basis? Within which limits? Using which instruments? How is autonomy defined? The purpose of this book is to clarify the concept of sports autonomy. The first part gives an overview of recognition of the concept of autonomy in sports rules and regulations and in international law. The second part cites a number of examples of challenges to the autonomy of sports organisations resulting from government, judicial or other interference. The third part analyses the replies to a questionnaire on the subject sent out by the Enlarged Partial Agreement on Sport (EPAS) in 2008 and 2009. The fourth part investigates the restrictions on sports organisations' autonomy resulting from state law and *lex sportiva* (sporting rules and regulations as a whole). It presents the concepts of horizontal and vertical autonomy. The fifth part sets out the conclusions and proposes an operational definition of autonomy in sport. It introduces the concept of "negotiated autonomy". The sixth describes some of the best negotiated autonomy practices in Europe.



# **1. Overview of the recognition of the concept of autonomy**

To determine in which contexts the concept of autonomy is recognised, we shall first examine the instruments issued by sports organisations, followed by those originating from public authorities.

## **Recognition of the concept of sports autonomy by sports organisations**

This section is based on Appendix 3 to this report. We shall first consider recognition of the concept of autonomy in the Olympic Charter, that is the entire set of rules laid down by the IOC, governing its own functioning and that of the Olympic Movement; these rules went by various names until the designation “Olympic Charter” was finally adopted. Then we shall look at the rules of a number of international sports federations (IFs). For a brief presentation of the IOC, the IFs and the Olympic Movement, reference can be made to Chappelet (2008).

Under Pierre de Coubertin’s concept, which still holds true for the IOC, members were independent of their governments and represented the Olympic Movement within their country, rather than their country on the IOC. They were accordingly politically autonomous, and this autonomy was often reinforced by their financial independence. This autonomous status enjoyed by each of its members and its own resources allowed the IOC itself to be independent of political institutions, from which it received no subsidies. (The sole exception, in theory, was that members of the IOC belonging to royal families could not easily adopt a position differing from that of their governments.)

However, it was not until 1949 that the term autonomy first appeared in the Olympic Charter, and with regard not to members of the IOC but to the national Olympic committees (NOCs). Under Rule 25 of the charter of 1949,<sup>2</sup> being “independent and autonomous” became a requirement for recognition of the NOCs. This condition had not been mentioned in earlier versions of the charter, but had been discussed at a meeting of the IOC Executive Board and the international federations in 1946, during which a resolution was passed on joint resistance to any kind of political or commercial pressure. It can be noted that this criterion of autonomy was added to other older requirements at a time when the IOC was beginning to recognise NOCs

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2. The IOC regularly amends the Olympic Charter. The successive versions are therefore identified by their year of adoption by the session (annual general meeting) of the IOC. The numbering of the rules may change as new provisions are added or deleted.

within the Soviet bloc, not least in the USSR, a country which participated in the Olympic Games for the first time in 1952. It is therefore clear that what the IOC members had in mind was preserving independence and autonomy from governments, in particular those of Communist countries.

In 1955 this provision was strengthened. Rule 24 included a provision that "National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence." The following year this provision became a separate rule (25), printed in bold type. In 1958 it was added that NOCs which failed to comply with this rule would forfeit their recognition and lose the right to send participants to the Olympic Games. Note can be taken of the inclusion of a reference to commercial influence, which coincided with the timid beginnings of sponsorship and television rights at the Melbourne Games in 1956.

In 1968 the model constitution for a national Olympic committee, then part of the Olympic Charter (it has since been deleted), provided that members of an NOC were obliged to inform the IOC of any political interference in its operations. In 1971 Rule 24 provided that: "Governments cannot designate members of National Olympic Committees. ... In the event of any regulations or actions of the National Olympic Committee conflicting with International Olympic Committee Rules, or of any political interference in its operations, the International Olympic Committee member in that country must report on the situation" to the President of the IOC.

In 1989 the implementing provisions ("bye-law") concerning Rule 24 recommended to NOCs that they "raise funds to enable them to maintain their full independence, in particular from the government of their country or from any other organisation that controls sport in the country. Fund raising must, however, be undertaken in a manner that preserves the dignity and independence of the NOC from commercial organisations." It can be noted that this provision was introduced at a time when several NOCs were, like the IOC, beginning to develop significant sponsorship activities.

The following are the main provisions of the Olympic Charter currently in force (2007) as regards autonomy and related concepts:

*Rule 28 Mission and role of the NOCs*

...

3. The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes.

4. The NOCs have the exclusive authority to select and designate the city which may apply to organise Olympic Games in their respective countries.

5. In order to fulfil their mission, the NOCs may co-operate with governmental bodies, with which they shall achieve harmonious relations. However, they shall not associate themselves with any activity which would be in contradiction with the Olympic Charter. The NOCs may also co-operate with non-governmental bodies.

6. The NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal [qualifier added in 2004],<sup>3</sup> religious or economic pressures which may prevent them from complying with the Olympic Charter.

...

9. Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken.

*Rule 29 Composition of the NOCs*

...

4. Governments or other public authorities shall not designate any members of an NOC. However, an NOC may decide, at its discretion, to elect as members representatives of such authorities.

...

*Bye-law to Rules 28 and 29*

...

3. Recommendations

It is recommended that NOCs:

...

3.4 seek sources of financing in a manner compatible with the fundamental principles of Olympism.

It can therefore be seen that, as from the mid-20th century, the IOC recognised and required in the Olympic Charter that NOCs should be autonomous vis-à-vis governments (from both a political and a legal standpoint), and also vis-à-vis economic or religious authorities. This position has been fully supported since its foundation in 1990 by the ENGSO (European Non-Governmental Sports Organisation), an association which brings together Europe's national sports confederations (many of which act as NOCs).

Furthermore, for about the past 15 years, the IOC has expressly recognised that international sports federations (IFs) are independent of it (Rule 26 of the

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3. The IOC was apparently concerned about pressure from state legal systems and, in particular, from Community law.

2007 charter), subject to compliance with the charter and, since 2004, with the World Anti-Doping Code:

The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport.

Owing to its refusal to accept the World Anti-Doping Code, the FIA (the international motor sport federation) is no longer recognised as an IF by the IOC. The latter also forced a number of IFs – those responsible for ice skating (in 2002) and boxing, fencing, gymnastics and taekwondo (in 2004) – to revise what it regarded as the insufficiently impartial rules applied by these sports' judges.

The IOC today describes autonomy as a necessity for the Olympic and sports movement, since autonomy guarantees the preservation of the values of sport, the integrity of competitions, the motivation and participation of volunteers, the education of young people and their contribution to the well-being of all, women, men and children, thereby contributing to its credibility and legitimacy. According to the IOC, only an autonomous movement, namely one that is self-regulated and self-managed without any interference, can guarantee “a philosophy of life, exalting and combining in a balanced whole the qualities of body, will and mind” (Fundamental Principles of Olympism) (see VOC, 2009, p. 1671). In expressing these views, the IOC echoes the writings of its founder, who 100 years ago wrote that “the goodwill of all the members of any autonomous sport grouping begins to disintegrate as soon as the huge, blurred face of that dangerous creature known as the state makes an appearance” (Coubertin, 2009, p. 152).

In the same way as the IOC acknowledges the autonomy of IFs and NOCs, IFs in turn acknowledge the autonomy of their national federations (NFs), provided that the latter comply with the rules laid down at global level by the IF for the sport in question. However, the degree of this autonomy may vary, depending on the IF concerned.

For example, the statutes of the FISA (the International Rowing Federation), the UCI (International Cycling Union), the FEI (the International Equestrian Federation), the FIG (International Gymnastics Federation), the ITF (International Tennis Federation) and the FIS (International Ski Federation) strongly assert this principle (quoted by Latty (2007, p. 130) and Simon (1990, p. 84)):

FISA shall have no part in purely national questions. It shall allow its member federations complete autonomy internally. [Article 4 of the FISA Statute]

The UCI will carry out its activities in compliance with the principles of: ... non-interference in the internal affairs of affiliated federations. [Article 3 of the UCI Constitution]

Nothing in the Statutes shall authorise the FEI to intervene in national equestrian or any other matters not under the jurisdiction of the FEI, or shall entitle National Federations to submit such matters to the FEI for settlement under these Statutes. [Article 61 of the 21st edition of the Statutes of the FEI (no longer included in the current edition)]

Federations, continental unions and regional groups retain their entire autonomy and independence of action within the limits imposed by these Statutes. [Article 31 of the FIG Statutes]

The objects and purposes for which [the ITF] is established are to ... preserve the independence of [the ITF] in all matters concerning the game of tennis without the intervention of any outside authority in its relations with its Members. [Article IV.j of the ITF Memorandum of Association]

The FIS respects the autonomy of its affiliated National Ski Associations. [Article 4.2 of the FIS Statutes]

The International Mountaineering and Climbing Federation (UIAA) even recognises the principle of subsidiarity in its internal affairs: "The UIAA shall not undertake any activity which is more effectively done by its member associations" (Article 4 of the Articles of Association).

Other IFs are far less explicit. Examples are FIFA (the Fédération Internationale de Football Association), UEFA (the Union of European Football Associations) and the IAAF (International Association of Athletics Federations). For instance, the FIFA Statutes do not use the word "autonomy". Mention is merely made of the independence of members, namely the 208 national federations:

Article 17 Independence of Members and their bodies

1. Each Member shall manage its affairs independently and with no influence from third parties.
2. A Member's bodies shall be either elected or appointed in that Association. A Member's statutes shall provide for a procedure that guarantees the complete independence of the election or appointment. [2009 version]

Similarly, the word "autonomy" cannot be found in the UEFA Statutes, which instead impose a requirement regarding elections within member associations:

Member Associations must provide for the free election of their executive body. This obligation shall be included in their statutes. Where there is no such provision or where the Executive Committee considers an executive body of a Member Association not to have been established by free elections, the Executive Committee shall have the power to refuse to recognise an executive body, including an executive body set up on an interim basis. [Article 7 bis. 2, June 2007]

Nor does the IAAF use the word "autonomy", since Article 1 of its statutes merely states that it is made up of regularly elected member federations, which commit themselves to comply with its statutes and abide by the rules and regulations.

The pressure exerted by the IFs on NFs' autonomy therefore varies according to the sport and the subject concerned. Similarly, the autonomy of the continental associations in relation to the IFs for their sport varies greatly. The IOC exercises greater scrutiny over the autonomy of the NOCs than over that of the IFs. Generally speaking, this primarily concerns autonomy vis-à-vis governments, although other third parties are also taken into consideration.

## **Recognition of the concept of sports autonomy by public authorities**

This section first discusses recognition of the concept of autonomy in documents issued by intergovernmental organisations on sport-related themes (UNESCO, the Council of Europe, the European Union), followed by European countries' national legislation.

It is firstly interesting to note that the concept of sports autonomy is not mentioned in three intergovernmental instruments of the 1970s and 1980s relating to sport: the European Sport for All Charter, adopted by the Council of Europe in 1976 in the form of a recommendation to member states; the International Charter of Physical Education and Sport, adopted in 1978 by the General Conference of UNESCO; and the Anti-Doping Convention adopted in 1990 by the member states of the Council of Europe following a number of recommendations issued as long ago as the 1970s.

It was from the end of the 1980s onwards that sports organisations' autonomy began to be referred to by European intergovernmental organisations, particularly at meetings of the Council of Europe's Committee for the Development of Sport (CDDS). In 1992 the Council introduced the concept in Article 3 of the European Sports Charter:

Voluntary sports organisations have the right to establish autonomous decision-making processes within the law. Both governments and sports organisations shall recognise the need for a mutual respect of their decisions. [Article 3.3]

The issue was discussed at the 9th European Sports Forum, held in Lille in 2000 under the aegis of the European Commission, which brought together all the European sports organisations and the public authorities concerned. Paragraph 10 of the conclusions of the working party on the specific nature of sport read:

The participants urge that thought be focused on what constitutes the uniqueness of sport (its social and educational role, etc.) and on the consequences of this uniqueness (acknowledging the autonomy of sport for all rules of a non-economic nature: the rules of the game, protection of young people, provisions to guarantee fair competition, to ensure solidarity or to promote sport among the population at large).

At this gathering, sports autonomy was perceived as a consequence of the specificity of sport, which had become a general concern following the Bosman judgment delivered five years earlier.

At the end of 2000, following the European Commission's report on sport submitted to the European Council in Helsinki in December 1999, the heads of state and government of the European Union, gathered in Nice under the French presidency, adopted a declaration on the theme of sport. For lack of a ratified treaty giving the European Commission competence in this field, this "Nice Declaration" remains the highest-ranking instrument on sport for the 27 EU member states. Point 7 of this declaration reads:

The European Council stresses its support for the independence of sports organisations and their right to organise themselves through appropriate associative structures. It recognises that, with due regard for national and Community legislation and on the basis of a democratic and transparent method of operation, it is the task of sporting organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable and the make-up of national teams, in the way which they think best reflects their objectives.

The issue of autonomy was also addressed at length in Chapter 4 ("The organisation of sport") of the European Commission's White Paper on Sport, published in July 2007, which states, *inter alia*:

The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners. Nonetheless, dialogue with sports organisations has brought a number of areas to the Commission's attention, which are addressed below. The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected, and is ready to play a facilitating role or take action if necessary.

#### 4.1 The specificity of sport

Sport activity is subject to the application of EU law. This is described in detail in the Staff Working Document and its annexes. Competition law and Internal Market provisions apply to sport in so far as it constitutes an economic activity. Sport is also subject to other important aspects of EU law, such as the prohibition of discrimination on grounds of nationality, provisions regarding citizenship of the Union and equality between men and women in employment.

At the same time, sport has certain specific characteristics, which are often referred to as the "specificity of sport". The specificity of European sport can be approached through two prisms:

- The specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, or the need to ensure uncertainty concerning outcomes and to preserve a competitive balance between clubs taking part in the same competitions;

– The specificity of the sport structure, including notably the autonomy and diversity of sports organisations, a pyramid structure of competitions from grass-roots to elite level and organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis, and the principle of a single federation per sport;...

As is explained in detail in the Staff Working Document and its annexes, there are organisational sporting rules that – based on their legitimate objectives – are likely not to breach the anti-trust provisions of the EC Treaty, provided that their anti-competitive effects, if any, are inherent and proportionate to the objectives pursued. Examples of such rules would be “rules of the game” (for example, rules fixing the length of matches or the number of players on the field), rules concerning selection criteria for sport competitions, “at home and away from home” rules, rules preventing multiple ownership in club competitions, rules concerning the composition of national teams, anti-doping rules and rules concerning transfer periods.

However, in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its *Meca-Medina* ruling. The Court provided a clarification regarding the impact of EU law on sporting rules. It dismissed the notion of “purely sporting rules” as irrelevant for the question of the applicability of EU competition rules to the sport sector.

The Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition rules, provided that these effects are proportionate to the legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual features of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport sector.

In its report on the White Paper, published in April 2008, the European Parliament also expresses full support for respect for the autonomy of sport and of its representative bodies.

In January 2008 the Parliamentary Assembly of the Council of Europe unanimously adopted Resolution 1602 (2008) on the need to preserve the European Sport Model, in which it stated “The independent nature of sport and sports bodies must be supported and protected, and their autonomy to organise the sport for which they are responsible should be recognised. The federation must continue to be the key form of sporting organisation, providing a guarantee of cohesion and participatory democracy.”

It also called on the governments of member states to “acknowledge and give practical effect to the specificity of sport and protect the autonomy of sports federations (governing bodies)”.

In the end, the only recent European intergovernmental instrument that fails to mention the concept of autonomy is the Enlarged Partial Agreement on Sport (EPAS), which was adopted in 2007. The 11th Council of Europe Conference of Ministers responsible for Sport, prepared by the EPAS and held in Athens in December 2008, nonetheless made autonomy one of its key themes, and culminated in the adoption of a resolution emphasising the importance of the autonomy of sports organisations and stating that the proposed definition was useful (see Appendix 2).

National legislation addresses the concept of autonomy in very different ways. As stated in the European Commission White Paper on Sport, "European sport is characterised by a multitude of complex and diverse structures which enjoy different types of legal status and levels of autonomy in Member States." The same applies to the member states of the Council of Europe. It will be seen in the third part of this book that 16 of the 29 countries which replied to the EPAS questionnaire mention the autonomy of the sports movement in their law on sport.

In the context of this report it is not possible to undertake an exhaustive study of status and level of autonomy. Some authors have written entire books on the links between national legislation and sporting rules and regulations. Examples are Jean-Marc Duval (2002) and Frank Latty (2007), who devotes the whole of the second part of his work to the degree of autonomy of *lex sportiva* within the state framework (pp. 419-618), followed by the international framework (pp. 619-766). In particular he discusses the situation in France, which is quite a special case, since the country's sports federations, while often delegated public authority for their sport, remain under the close supervision of the ministry of sport via the model statutes and numerous legislative measures in force.

The other extreme is represented by countries such as Germany (which has no federal law on sport), whose national sports organisations enjoy a very high degree of autonomy, the federal and *Länder* governments having delegated policy making in the field of sport to them. Chaker (1999, p. 22) writes that the autonomy of the sports movement is one of the three principles on which implementation of this policy is based, the other two being subsidiarity and partnership between public and sporting authorities.

In general, reference can be made to the surveys on national sports legislation and on good governance in sport commissioned by the Council of Europe (Chaker, 1999 and 2004). The author, André-Noël Chaker, divides the respondent countries into two categories (Chaker, 2004, p. 7):

- Those with non-interventionist sports legislation (Austria, Cyprus, the Czech Republic, Denmark, Finland, Germany, Latvia, Lithuania, the Netherlands, Switzerland, the United Kingdom) where sports organisations can be presumed to enjoy greater autonomy; and

- Those with interventionist legislation (Armenia, Azerbaijan, Croatia, Estonia, France, Georgia, Hungary, Italy, Luxembourg, Romania, Slovenia, Spain), where there is potentially less autonomy.

As this classification may be deemed too rudimentary, reference can also be made to that proposed by the Vocasport project on employment in sport across Europe, which was funded by the European Commission and concerned the 27 EU member states (Camy et al., 2004). It identified four main configurations that national sports systems may assume, according to the dominant role played by a particular sector:

- the “missionary configuration” (in which the voluntary sports movement predominates): Austria, Denmark, Germany, Italy, Luxembourg and Sweden;
- the “bureaucratic configuration” (in which the public authorities predominate): Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia and Spain;
- the “entrepreneurial configuration” (in which private stakeholders predominate): Ireland and the United Kingdom;
- the “social configuration” (in which social agents predominate): the Netherlands.

It can be said that sports organisations’ autonomy is greatest under the missionary configuration, followed by the social configuration and then the entrepreneurial configuration. The bureaucratic configuration leaves sports organisations far less scope for autonomy or, to be more precise, strictly regulates their autonomy through legislation.

These observations, which tend to overgeneralise, should naturally be tempered by country-by-country studies. It can nonetheless be noted that there is a strong correlation between the general perception of autonomy voiced by respondents to the EPAS questionnaire (see Part 3 of this report) and their country’s configuration according to the Vocasport classification.

To conclude the first part of this report, it can be seen that the concept of the autonomy of sports organisations, in particular NOCs, was clearly recognised by the Olympic Movement as early as the 1950s, and by European inter-governmental organisations from the 1990s. All have regularly reasserted this principle in the early years of the third millennium. However, it is striking that the documents issued by both sports and governmental organisations say little about this concept and propose no definition for it. In the next part of the report we will seek to narrow down this concept, drawing on European examples.

## **2. Examples concerning sports organisations' autonomy**

We shall first look at government interference in national sports organisations, followed by international ones. Then we shall consider a number of cases relating to autonomy dealt with by national courts, and subsequently cases brought before the European courts.

### **Government interference in national sports organisations**

There are numerous examples of such interference, but it truly poses a problem where it results in the provisional or permanent suspension of the national sports organisation concerned (NOC or national federation) by the governing international sports organisation (the IOC or the IF).

More often than not these cases concern repeated ministerial meddling with the composition of NOCs or NFs or with their elections. It was on this ground that the IOC suspended Iraq's NOC in 2008<sup>4</sup> and Panama's in 2007, and refused to recognise the election of new leaders of the Albanian NOC in 2009. Difficulties also arose in Kuwait in 2008, which led the IOC to supervise the elections to the country's NOC, and subsequently to threaten to suspend it in August 2009. This is a sensitive issue since many non-European NOCs are chaired by sports ministers, or even by the president of the country concerned (Nauru, Tajikistan, etc.).

Similarly, in 2008, FIFA (Fédération Internationale de Football Association) suspended the national football federations of Albania and Madagascar. It also threatened to suspend the Spanish federation due to government attempts to make it hold early elections. In the end, the government backed down for fear that the Spanish team would be barred from the Euro 2008 championship. In 2006 FIFA briefly suspended Greece's football federation on account of draft legislation reinforcing state control of the sport (in particular to prevent match fixing). It thereby pressured the Greek Parliament into making football a genuine exception to the country's sports law.

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4. In the end, following an agreement with the Iraqi Government, the IOC allowed four Iraqi athletes to participate in the Beijing Games under the authority of the officials of the suspended NOC and invited five government observers to the games in exchange for an undertaking concerning the transparent and fair election of an independent NOC. An association defending the rights of Iraqi athletes had considered lodging a complaint against the IOC with the International Court of Justice in The Hague, which would have been the first-ever attempt to submit an IOC decision on recognition to an international court established to settle disputes between state governments.

Interference restricting the very activities of NOCs or NFs is less frequent. The first significant example came when the United States Government intervened in 1980 to prevent the US NOC and those of other countries from participating in the Moscow Olympic Games. Most European NOCs refused to bow to this pressure to boycott the games, sometimes strongly relayed by their own governments (as was the case in the United Kingdom and in Italy), thus demonstrating their political autonomy. The German NOC, like those of many non-European countries, nonetheless decided not to send a team to Moscow. Similarly, the NOCs of many countries of eastern Europe (apart from Romania) could not resist the Soviet Government's call to boycott the Los Angeles Olympics in 1984. In 1999 the IOC also suspended the NOC of Afghanistan, whose government, dominated by the Taliban, had barred women from participating in sport. In 2003 it suspended Iraq's NOC, headed by one of the then president's sons, for failing to comply with the Olympic Charter and, above all, for the torture of athletes.

### **(Inter)governmental interference in international sports organisations**

As a result of the transnational nature of international sports organisations, which usually allows them to avoid government control, cases of such interference are rare. Mention can nonetheless be made of the United Nations resolutions on apartheid (the last of them in 1985), which caused international sports organisations gradually to suspend their relations with South Africa (until 1992) and Rhodesia (until 1980), although the NOCs or NFs of these countries were sometimes recognised and often racially integrated. In 1992 the UN also decreed a trade embargo on Yugoslavia, then in the throes of civil war. Spain, which was hosting the Barcelona Olympics the same year, applied this embargo, obliging the IOC to allow athletes from former Yugoslavia to participate as "independent athletes" although at the time it still recognised the then Yugoslav NOC (since superseded by Serbia's).

The case of the Taiwanese athletes' withdrawal from the Montreal Summer Olympics in 1976 also pointed to a decline in the IOC's autonomy, from which it drew certain lessons. A few days before the opening of these games, the Canadian Government went back on its earlier promises and refused these athletes leave to enter the country because it recognised the People's Republic of China as the sole government of China. The IOC protested but to no avail, and the Taiwanese turned down a last-minute compromise offered by the Canadian Government (Bousigue, 2008). Ever since, the Olympic identity card, issued by the Organising Committee for the Olympic Games (OCOG) to the athletes selected to participate, has served as a visa authorising entry into the host country. In addition, the IOC requires candidate cities wishing to host the Games, and their governments, to provide written guarantees of compliance with the charter (which, *inter alia*, provides for the

participation of all recognised NOCs). This is not always easy where certain provisions of the charter conflict with the public policy of the potential host state. This occurred, for example, with the Paris Olympic bid in 2008, as the anti-doping controls in force in France differed from those prescribed by the IOC.

More recently, in 2008, the IOC became involved in a complaint lodged with the Supreme Court of British Columbia (Canada) by female ski jumpers from various countries who wished to take part in the 2010 Winter Olympics in Vancouver (British Columbia). The athletes alleged sexual discrimination (prohibited by Canadian law), because the IOC only included their discipline in the Games for men. The IOC thus ran the risk of having its freedom to take autonomous decisions about the Olympic programme challenged by a local court. But this court declared that the IOC was not under its jurisdiction.

Extrajudicial interference in the affairs of international sports organisations by European public authorities is rare. Mention can be made of two examples.

In 2001 the Fédération Internationale de l'Automobile (FIA) was forced to divide its activities between two legally separate entities (one dealing with regulatory matters and the other with commercial affairs) in order to prevent the European Commission's Directorate General for Competition from intervening in the sport of motor racing.

Then in 2004 the European Parliament asked the European Commission to make representations to the IOC to get it to require its sponsors and suppliers to comply with decent labour standards. This led the IOC to initiate an internal debate on its social responsibility and to take measures vis-à-vis the OCOGs and their licensees.

## **Cases brought before national and European courts**

At national level numerous sport-related cases have been brought before the courts of European countries with the aim of challenging certain decisions by sports organisations and, hence, their jurisdictional autonomy. Generally speaking, the national courts have been reluctant to intervene in "sporting regulation", which they often consider to be part of the autonomous preserve of the national and international federations. Nonetheless, depending on the countries concerned, a whole corpus of sports case law has emerged, resulting in a corresponding reduction in national sports organisations' autonomy. It would be tedious to go over it here, and above all pointless, since all of these cases show that sports rules can sometimes be set aside under a national legal system.

The IFs and the IOC, in contrast, are themselves to a large extent outside the jurisdiction of the national courts because of their transnational nature. It is moreover for this reason that many sport-related cases are now systematically

brought before the EU courts, since Community law applies to the 27 EU member states and, through various agreements, many other countries in Europe and elsewhere. Mention can nonetheless be made of a few interesting cases in which international sports organisations' autonomy was (or could have been) affected by a national court's decision.

In 1979 Henry Hsu, a national of Taiwan, sought an injunction from a court of the Canton of Vaud against the IOC, of which he was a member, for failing to comply with a mandatory rule of the Swiss Civil Code (Article 75) allowing a member to challenge an association's decisions to which he had not officially assented. The IOC is indeed an association under Swiss law with its headquarters in Lausanne (Canton of Vaud). Henry Hsu was challenging a decision by the IOC requiring the Taiwanese NOC to change its name and emblem so as to allow recognition of the NOC of the People's Republic of China. In 1980 Henry Hsu withdrew his complaint, thereby avoiding a situation where an IOC decision would have been called into question by a local court. Since 1981 the IOC has enjoyed special status in Switzerland, recognised by the Swiss Government and reinforced in 2000, but it still has no judicial immunity.

In 1981, when the International Association of Athletics Federations (IAAF) still had its headquarters in London, a UK court ruled that it had incorrectly interpreted its statutes by solely authorising athletes from the People's Republic of China to participate in competitions, excluding those originating from Taiwan. However, in 1987 the UK High Court of Justice held that the IAAF had correctly applied its rules to the Swiss middle distance runner Sandra Gasser, who had failed a doping test. The IAAF considered that these and other cases (Krabbe and Reynolds) of external scrutiny of the way in which it interpreted its rules interfered with its autonomy to such an extent that, in 1989, it moved its headquarters to Monaco. This new location placed it beyond the reach of the UK courts, but not outside Monegasque jurisdiction. However, it thereby escaped from the European judicial area secured by the Brussels-Lugano system (whereby judgments are applicable throughout this area, whatever their country of origin), for Monaco is not a member of the European Union.

In 1995 Bernard Tapie, then Chairman of the Olympique de Marseille (OM) football club, lodged an appeal with a court of the Canton of Bern against a decision by UEFA barring the OM club from the Champions League following a proven case of match-fixing by Mr Tapie, who had manipulated the outcome of a French first division game between OM and Valenciennes. The cantonal court of Bern (where UEFA then had its headquarters) provisionally suspended the European federation's decision, thereby challenging not only its decision-making authority in sporting matters but also the lawfulness of its statutes, which prohibited appeal to a national court. UEFA and FIFA then threatened the French Football Federation with withdrawal of the 1998

World Cup from France. In the end, Bernard Tapie withdrew his appeal and UEFA's decision became enforceable. In 1995 UEFA moved to the Canton of Vaud, *inter alia*, to avoid the peculiarities of Bernese law (super-provisional measures).

In 2005 Charleroi Football Club (Belgium) and the G14 (a grouping of the 14 – subsequently expanded to 18 – leading European football clubs) took FIFA to court for non-payment of compensation when players employed by a club were required to play for their country's national team (Oulmers case). At the same time the G14 lodged a similar complaint against FIFA with the Swiss Competition Commission, since both FIFA and the G14 had their headquarters in Switzerland. The two cases were dropped following the disbanding of the G14 in 2008. If they had been successful they would have undermined FIFA's autonomy to decide on the (non-)payment of compensation to players. In the meantime, FIFA and UEFA had devised a solution which was apparently acceptable to all concerned.

In 2008 the British sprinter Dwain Chambers challenged the lawfulness of the statutes of the British Olympic Association (BOA) before the High Court of Justice in London on grounds of unreasonable restraint of trade. He had been penalised for using performance-enhancing drugs and had served his suspension, but the BOA had excluded him from the Beijing Olympics in accordance with a regulation of 1992 whereby athletes convicted of doping were banned for life from the Olympic Games. In the end the High Court found against him, although the penalty imposed by the BOA (a life ban from the Olympic Games) went far beyond the two-year ban provided for in the World Anti-Doping Code. The IOC has now instituted a systematic ban on participating in the next Olympic Games for all athletes given a minimum two-year suspension for drug use.

At European level no more than 100 sport-related cases have been brought before the European Court of Justice (ECJ) since the 1980s and before the European Court of Human Rights since the 1990s. Latty (2007, p. 833) puts their number at 76 before the ECJ and seven before the European Court of Human Rights. However, these cases are always of considerable importance because, in view of Europe's significant role in world sport, they affect both European and international sports federations. Here too, it is not possible to list all the cases, but mention should be made of a few particularly interesting examples. These cases have moreover been analysed in detail by a number of authors, such as Husting (1998), Miège (2000) and Latty (2007).

As noted in the introduction, following the verdicts in the cases of Walrave (cycling) in 1974 and Donà (football) in 1976, it was the ECJ's judgment of 1995 concerning the Belgian footballer Bosman that really unleashed a series of complaints by sportsmen and women against their organisations, whose decisions and/or rules were thus challenged in the European courts, resulting

in restrictions on their autonomy to determine sporting regulations. The Bosman judgment ultimately caused FIFA to change its rules on transfers of players in 2001 (Husting, 1998; Cohen, 2007). Similarly, FIFA amended its regulations on football players' agents following a complaint lodged by Laurent Piau, who contended that the rules previously in force restricted his access to this profession.

Conversely, in its judgments concerning complaints by the Belgian judoka Deliège, in 1996, relating to the selection criteria for participation in competitions, and the Finnish basketball player Lethonen, in 1999, regarding transfer deadlines, the ECJ held that other sports regulations were compatible with Community law (in particular the freedom of movement of workers and services). The ECJ also recognised international and national federations' autonomy to adopt selection and transfer regulations. The International Basketball Federation (FIBA) nonetheless decided to relax its rules on transfers following the Lethonen judgment.

In 2001, at a conference on "Governance in sport" organised by the European Olympic Committees and the FIA (Fédération Internationale de l'Automobile), the European Commissioner for Competition, Mario Monti, declared "the Commission is not, in general, concerned with genuine 'sporting rules'. Rules, without which a sport could not exist (that is, rules inherent to a sport, or necessary for its organisation, or for the organisation of competitions) should not, in principle, be subject to the application of EU competition rules. Sporting rules applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition" (quoted by Foster, 2005, p. 85). The European Commission henceforth recognised that sports rules did not infringe Community law provided that they pursued a legitimate aim (in particular of a sporting and social nature) and were proportional to that aim (Latty, 2007, p. 741).

It was for this reason that the Meca-Medina and Majcen judgment, when it was issued in 2006, was regarded as a retrograde step by the sports organisations, whose decision-making autonomy had been previously confirmed by a number of judgments delivered by the ECJ (see the Introduction). For the first time their freedom to determine anti-doping rules was challenged, whereas these rules were now governed by the World Anti-Doping Code, which had been incorporated in the national law of countries having ratified UNESCO's ad hoc convention, signed in 2005, a treaty under international law ratified by very large numbers of European states.

Some sportsmen and women are now prepared to go so far as to challenge sporting regulations before the European Court of Justice or the Council of Europe's European Court of Human Rights. In 2007, for instance, Argentine tennis player Guillermo Cañas, dissatisfied with a decision by the Court of Arbitration for Sport (CAS) in a case that he had brought against

the Association of Tennis Professionals (ATP), appealed to the European Commission's Directorate General for Competition not only against the ATP decision, but also against the CAS and WADA (the World Anti-Doping Agency). He has said that he will go to the ECJ if necessary. Yet, his case occurred in Mexico, the ATP is incorporated under the law of Delaware (United States) and the CAS is based in Switzerland. The same year, the Kazakhstani cyclist Andrey Kashechkin took the International Cycling Union (UCI) to court in his Belgian home town to challenge a suspension for doping. After losing his first court case, he stated his intention to take the matter as far as the European Court of Human Rights, since he believed that his human rights had been violated. If these complaints were successful, sports organisations' autonomy to determine anti-doping rules would be severely restricted. It could even be said that the whole system which the sports movement has gradually put in place to preserve its autonomy, as far as possible, through systematic recourse to arbitration by the CAS, would be at risk, at least in matters of doping, which accounts for about one third of the cases brought before the CAS.

## **Intrusions in sports organisations' autonomy by other sports organisations**

There are few examples of interference with sports organisations' autonomy by other sports organisations, as a result of the pyramid structure whereby the clubs are affiliated to the national federations, which are themselves affiliated to the international federations for the sport concerned. In addition, as we saw in the first part of this report, the IOC reserves the right to withdraw its recognition of NOCs and IFs which fail to comply with the Olympic Charter, its code of ethics or the World Anti-Doping Code. In the past, the IOC utilised this clause to threaten certain IFs whose rules on amateurism were deemed incompatible (this applied to the FIS and the IIHF (International Ice Hockey Federation) during the period after the Second World War). However, today it is entirely exceptional for a sports organisation to encroach upon the decision-making autonomy of a subordinate or parallel organisation (unless, of course, a decision is imposed from the outside).

Mention can nonetheless be made of the case of the Fédération Internationale de Volleyball (FIVB), which, in 2002, suspended the Argentine Volleyball Federation following commercial disputes linked to the hosting of the World Championship in Buenos Aires. This suspension prevented the Argentine team from participating in the 2003 Pan-American Games, despite a last-minute solution proposed by the Pan-American Sports Organization (PASO). The FIVB then took this last body before the IOC Ethics Commission for having attempted to breach its decision. The commission reiterated the principle that the IFs were autonomous, but reprimanded the FIVB for having violated certain fundamental principles of the Olympic Charter, in particular the right to

sport conferred on athletes and the right to practise a sport without any kind of discrimination. This case triggered other complaints which led the FIVB president to resign his IOC membership (he was a member of the IOC in his capacity as president of a leading IF). In 2009, a new FIVB president had the rule on commission on contracts which had been deemed by the IOC to be incompatible with the Olympic Charter, and which had given rise to the complaints against his predecessor, removed from the federation's statutes.

Again in 2002, the IOC barred Latvian bobsledder Sandis Prusis from competing in the Salt Lake City Winter Olympics, although he had previously been authorised to participate in them by his international federation (the FIBT) despite an earlier suspension for doping. Prusis lodged an appeal with the CAS, which decided in his favour on the ground that, by virtue of the IFs' autonomy, the IOC was not empowered to review their decisions unless it proved that they had violated the Olympic Charter. The CAS nonetheless acknowledged that the IOC had been right to exclude from the same games a female skier from Grenada, who had not been selected by her NOC, a verdict which fully endorsed the NOC's autonomy to select its own Olympic team (Rule 28 of the Olympic Charter).

A more recent case worth mentioning is that of the Polish Football Federation, whose officials were suspended by the Polish Government in October 2008 following a ruling by the arbitration court of the national Olympic committee that the federation had not dealt properly with cases of corruption. This constituted interference in FIFA's rules and Poland's Olympic rules with the backing of national law. FIFA threatened to suspend the Polish Football Federation from all international competitions, and UEFA threatened to withdraw its right to co-host Euro 2012. Ultimately, the federation and the Polish Government signed an agreement to restore normality rapidly on the basis of a jointly agreed road map.

In conclusion to this second part of the report it can be said that, despite the acknowledgments of autonomy by both sports organisations and the public authorities noted in the first part, there have been many cases of interference in the rules relating to the organisation of competitions or in the operation of organisations' statutes, not just by governments but also by sports organisations and athletes themselves, who no longer think twice about appealing to domestic courts or to national or international courts of arbitration. These all provide examples of a real decline in sports autonomy, albeit often justified by sporting regulations which are sometimes disproportionate to the sporting and sociocultural objectives pursued by sports organisations.

### **3. Analysis of replies to the EPAS questionnaire on autonomy in sport**

Following an initial survey in 2008, the Executive Secretariat of the Enlarged Partial Agreement on Sport (EPAS) in April 2009 sent a questionnaire on autonomy in sport (see Appendix 1) to the sports authorities, both governmental (ministries, offices of state secretaries) and non-governmental (sports confederations or national Olympic committees), of Council of Europe member states, including the 31 states parties at the time to the EPAS.<sup>5</sup>

The questionnaire covered five dimensions: 1. a conceptual study, 2. a political study, 3. a legal study, 4. a financial study and 5. a psycho-sociological study.

1. The conceptual study aimed to determine what those in charge of sport at the governmental and non-governmental levels meant by “autonomy”.

2. The political study set out to establish whether the concept of “sports autonomy” had been explicitly mentioned in general policy statements, speeches and other documents by ministers or state secretaries responsible for sport or by heads of national sports confederations over the previous 12 months and, if so, in what terms.

3. The legal study focused on inclusion of the concept of “autonomy of the sports movement” or “sports autonomy” in national legislative and regulatory instruments and in other relevant documents.

4. The financial study aimed to determine whether “financial autonomy” existed within European sports movements and, if so, what it entailed.

5. The purpose of the psycho-sociological study was to ask sports authorities to say whether they regarded their national sports movement as “autonomous” at the date of the survey and, if so, to gauge this autonomy on a quantitative scale. Another question raised was the areas in which further progress could be made towards greater autonomy in future.

The replies received to this questionnaire are summarised below, first from the standpoint of public sports authorities, then from that of non-governmental sports organisations. It can also be seen from the replies that this is the first survey on this theme in which the respondents had participated.

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5. As at 1 June 2009: Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, Monaco, the Netherlands, Norway, Poland, Portugal, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, and “the former Yugoslav Republic of Macedonia”. Observers: Czech Republic and Russia.

## **The public sports authorities' point of view**

As at 1 June 2009 replies had been received from the public sports authorities of 25 of the 31 EPAS member states (Andorra, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Latvia, Luxembourg, Monaco, the Netherlands, Norway, Poland, San Marino, Serbia, Slovenia, Spain, Sweden and Switzerland),<sup>6</sup> as well as from five countries not at the time members of the EPAS (Belgium, the Czech Republic, Romania, Russia and Ukraine). This represented a response rate of over 75% from EPAS member states. A total of 30 replies were received (the total number of Council of Europe member states being 47). The results can therefore be regarded as meaningful. The results are analysed for each dimension studied.

### **Conceptual dimension**

The most frequently cited synonyms or terms associated with autonomy were: independence (16 times); sports organisation or movement (14); democracy (12); freedom (10); and self-governance (8). Other key terms of interest less frequently cited included: apolitical nature, decentralisation, non-interventionism, specificity of sport and subsidiarity.

Few public sports authorities proposed a definition of the concept. Mention can be made of the following: "The right of sports organisations to decide independently of politics about the issues of their existence, activity and future" (Croatia) or Poland's reference to protection of the sports movement against government interference in a climate of mutual respect. Serbia pointed out that sports organisations had to be empowered to deal effectively (and autonomously) with their rules.

### **Political dimension**

From a political standpoint it can be seen that, over the previous 12 months, government statements or official documents made reference to sports autonomy in almost two thirds of the respondent countries, although no link can be established between the government's political complexion (right, centre, left) and the existence of such statements. This is therefore unquestionably a topical concern in Europe, irrespective of the government's leanings. Slovenia also said that this topic was a key focus of discussions with the sports movement during the Slovenian EU presidency. It goes without saying that, as underlined by respondents, the political situation in the broad sense is far more favourable to sports autonomy today than it was before the Berlin Wall came down.

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<sup>6</sup>. EPAS member states as at 1 June 2009 which did not reply: Albania, Armenia, Bosnia and Herzegovina, Liechtenstein, "the former Yugoslav Republic of Macedonia" and Portugal.

## Legal dimension

From the legal angle it can be seen that, although half of the respondent countries' constitutions make reference to sport, sports autonomy is only rarely mentioned (in two out of 15 cases: Denmark and Estonia). However, if a country has a law relating to sport, this refers to the autonomy of the sports movement in some 50% of cases and very often includes a legal definition of such autonomy. Figure 1 sums up the replies received.

Despite their diverging replies, almost all of the respondents (there were five exceptions: Azerbaijan, Croatia, Cyprus, Greece and Ukraine) considered their country's sports movement to be autonomous from a legal standpoint. The respondent from Cyprus indicated that the country's sports law expressly recognised the Olympic Charter (which requires that sports organisations should be autonomous).

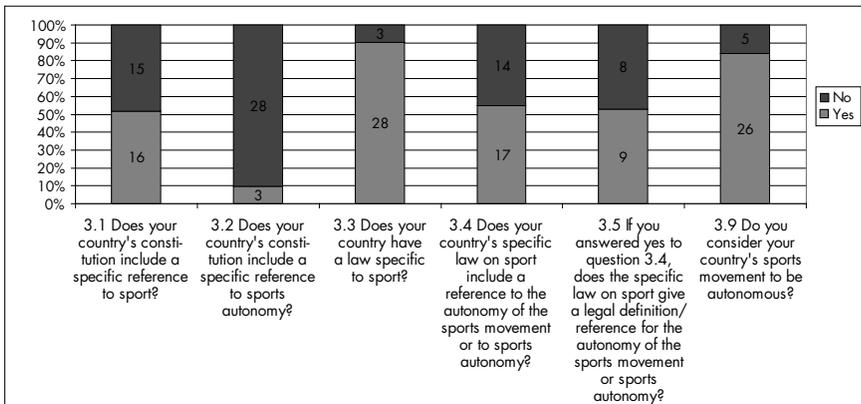


Figure 1 – Replies to the questions on the legal dimension of sports autonomy

## Financial dimension

From a financial standpoint all the respondent states financially supported their sports movements, which, in the majority of cases, could not exist or would be far smaller without this support (exceptions being Finland and Iceland). Nonetheless, according to the respondent public sports authorities this assistance did not undermine the financial autonomy of the sports movement in three quarters of the countries concerned. However, the uses made of these funds were subject to complex or less complex forms of government scrutiny in all but five countries. France stated that the situation varied considerably from one sport to another, citing the examples of football and tennis, which were more financially independent, and the modern pentathlon, which was less so. Latvia indicated that financial autonomy was subject to certain criteria and contractual requirements where public funds were involved, but that there must be no supervision of the management of funds originating

from sponsors or patrons. Figure 2 summarises the responses received (some countries did not reply to all of the questions).

Norway described an approach which could serve to define the financial autonomy of sport in Europe: the purpose of public funding of sport was to reinforce the framework for the performance of sport and physical activity in Norway. The sports movement was the largest segment of Norway’s voluntary sector. The public authorities considered it important to allow the sports movement to develop on its own terms. Public funding of sport was founded on sport’s inherent social value and must foster, rather than be substituted for, voluntary work. From this standpoint, public funding of organised sport took the form of basic grants, which came with a few general guidelines on how the funds were to be used. Within these guidelines the sports movement was free to determine its own objectives and priority activities. This freedom facilitated the financial autonomy of the sports movement in Norway. The Netherlands cited an ideal objective: the country’s sports organisations were self-financing, while government funding was intended to be used to relieve tensions.

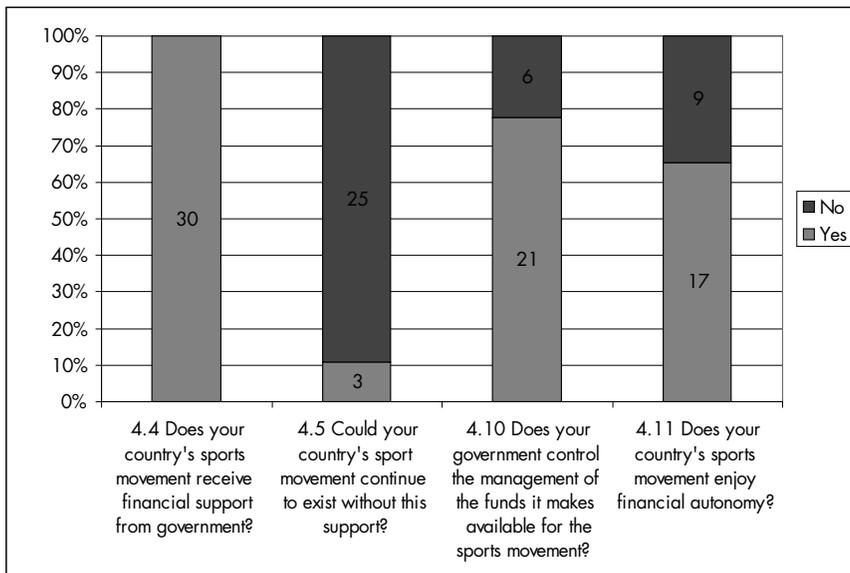


Figure 2 – Replies to the questions on the financial dimension of sports autonomy

### Psycho-sociological dimension

From this standpoint, three quarters of respondents considered their country’s sports movement to be autonomous, while the remainder regarded it as only partly autonomous. The only public sports authorities which took the view that their sports movements were not at all autonomous were those of Azerbaijan, Greece and Ukraine. Russia said that its sport was too autonomous!

On a scale from 0 (no autonomy) to 10 (complete autonomy), the respondent countries gave a mark of 9 for political and legal autonomy, whereas financial autonomy scored 6.5 and overall autonomy 8.2.

Greece recommended adopting a European policy for sports autonomy. Croatia proposed more tax relief for sport sponsorship. Slovenia stated that, as a social activity to which “general social rules” and regulations applied, sport could not be completely autonomous, but must function according to the operating standards and principles of society as a whole. France pointed out that, to give sport more autonomy, it would be necessary to look closely at what the stakeholders understood by the concept and initiate a political debate on the possibilities for improving the situation: “It would then doubtless become feasible to negotiate on a case-by-case basis the aspects and areas where autonomy could/should progress.”

## **The sports organisations’ point of view**

Few replies were received from non-governmental sports organisations, although the 2008 questionnaire, which had coincided with preparations for the Beijing Summer Olympics, had been sent out again in 2009. Only six international sports federations (athletics, basketball, boxing, football, gymnastics and ice hockey) – out of a potential total of 35 Olympic IFs – and one European federation (football) responded. One IF (volleyball) expressly refused to reply, since it disagreed with the aim of the questionnaire. Only eight national Olympic committees (Albania, Croatia, Denmark, Luxembourg, Serbia, Slovenia, Spain and “the former Yugoslav Republic of Macedonia”) replied. Seven sports confederations separate from their country’s NOC responded (the Czech Republic, Denmark, Finland, Hungary, Slovakia, Sweden and the United Kingdom), as did a small assortment of national federations, which had apparently obtained the questionnaire by indirect means, since it had been sent only to international federations (via the IOC and the associations of international federations for the Winter and Summer Olympics (the ASOIF and the AIOWF)), European federations, NOCs and national sports confederations (via the ENGSO).

In view of the low response rate (29 replies in all) and the disparity of the respondent sports organisations, no statistical processing giving a reliable overview of the situation was possible. The most interesting qualitative observations are set out below under the five headings of the questionnaire.

### **Conceptual dimension**

At the conceptual level the synonyms or keywords most often cited by the non-governmental sports organisations were independence and freedom from government and national or supranational political authorities. The Confederation of Slovak Sport Federations pointed out that autonomy was

a hypothetical ideal which was very difficult to achieve and that the present situation was far from corresponding to this ideal. The Luxembourg NOC believed that sports autonomy was in danger. Albania's NOC emphasised the need for free elections, democracy and the absence of political interference. The IAAF, UEFA and FIFA wanted more consultation with the public authorities.

The United Kingdom Central Council for Physical Recreation (CCPR) proposed a definition: "The autonomy of sport is its right to set its own rules and regulations and to be independent from political interference in the governance of sport for the benefit of sport and its participants (but within the confines of the law)". The Swedish confederation summed it up in a nutshell: "Setting its own objectives".

### **Political dimension**

Half of the respondents stated that the issue of sports autonomy had been addressed in political statements made by their organisations' heads over the previous 12 months. Several mentioned meetings on this subject hosted by the IOC in Lausanne or by NOCs. A number expressed disappointment that the European Commission's White Paper on Sport had not properly addressed this issue. These brief elements confirm that autonomy is a topical concern.

### **Legal dimension**

The great majority of respondents considered that the sports movement in their country or in Europe was autonomous from a legal standpoint (the exceptions being the IIHF, the United Kingdom's CCPR and the NOCs in the Balkans). In general, they considered that including a precise definition of autonomy in national or European legislation on sport would be useful. Such legislation would usefully supplement references to the principle of autonomy made in laws relating to sport in half of the respondent countries. It must, however, not be overlooked that several European countries have no law on sport (Germany, the Netherlands, the United Kingdom and Sweden).

### **Financial dimension**

All of the respondent sports organisations recognised that their government was the dominant provider of financial support to sport and, in most cases, issued guidelines on the use to be made of funds and monitored that use (Denmark and "the former Yugoslav Republic of Macedonia" appeared to be the exceptions). Among the respondent confederations, only those of Sweden and the United Kingdom considered that the sports movement could survive without public funding. This is also indirectly apparent from the fact that, to a large extent, the chief financial sources cited, apart from households, were municipal or national grants or lottery money, the last-named being

crucial to sport in many European countries, although it was under political and technological threat. Several organisations nonetheless underlined the need to raise funds in a more autonomous manner, in particular through commercial or television rights. The British Swimming Federation complained that it had to surrender elements of its autonomy in order to obtain government funds.

In most countries, some sectors of sport (particularly Olympic elite sport) received greater support than others (particularly sport for all and non-Olympic sports). Strangely, no organisation (not least the IFs and the NOCs) mentioned the financial autonomy engendered by the significant funds received from the IOC for participation in the Olympic Games.

### **Psycho-sociological dimension**

Only six respondent sports organisations considered that their country's sports movement was not autonomous (the Spanish NOC, four NOCs from Balkan countries and the Estonian Boxing Federation) and called for their law relating to sport to be improved in this respect. The others were divided between complete autonomy and partial autonomy, particularly in financial matters. Some organisations pointed out that financial autonomy was not an aim, especially with regard to the construction and operation of sports facilities, but solely autonomy in terms of governance.

UEFA stated that strong financial autonomy, as was generally the case in football, could result in excessive commercialisation, causing individuals or legal entities to invest in sports organisations (in particular football clubs). This might undermine the autonomy of the organisations concerned, while curtailing that of the governing sports organisations, since the interests pursued were not the same (profit-making versus the development of sport and social aims). It could even lead to the creation of private leagues, which would exert strong pressures on the traditional sports organisations or might even attempt to change the rules of the game (particularly with regard to the use of technology). UEFA, FIFA and the IIHF considered that the problem was not so much financial autonomy as legal autonomy, which these organisations rated at less than 5 on a scale of 0 to 10.

The CCPR considered it important that sports autonomy should not be further undermined by the European wish to harmonise sports laws and regulations or by non-essential transfers of power to European governmental organisations; in other words, the principle of subsidiarity should also be respected in sport.

In very general terms, it can be seen from the responses to this questionnaire, however imperfect it may be, that the vast majority of sports organisations and public sports authorities in the countries of Europe do not perceive autonomy as a real problem, apart, to some extent, from the financial angle.

Only the respondent international federations complained of a lack of legal autonomy, principally in relation to Community law.

## **4. Restrictions on sports organisations' autonomy**

The European examples concerning sports organisations' autonomy (Part 2) and the replies to the EPAS questionnaire (Part 3) bring to light a number of restrictions on sports autonomy resulting from legal provisions (national or international) and the entire body of sporting rules and regulations (*lex sportiva*). These two aspects are discussed in turn below, along with the solutions that can be envisaged so as to optimise sports organisations' autonomy. These restrictions are represented by the arrows in Figure 3, which symbolise organisations' (partial) dependence on others, as explained below.

State law mainly covers a whole country, but in federal states it may have a regional dimension (an example being cantonal law in Switzerland). In a state governed by the rule of law, as are all European states, state law is naturally binding on all that state's sports organisations, such as its NOC, national sports confederations (NSCs), national federations (NFs), regional federations, clubs, and so on. Local and regional government authorities, such as municipalities or regions, can also issue regulations which apply to the organisations located within their boundaries. An example is municipal regulation of local sports clubs.

The legal situation varies considerably from one European country to the next since some countries have no sports law, while others' sports laws involve greater or lesser restrictions on autonomy. Where no sports law exists, it is the law on freedom of association or another law that applies. Some countries (such as France) even impose model statutes on sports organisations that wish to be declared to be serving the public interest.

### **Restrictions resulting from state law**

As pointed out by Latty (2007, p. 449), irrespective of the individual case under consideration, the courts' attitudes to self-regulation by sports organisations vary in line with each country's legal tradition. Those with Romano-Germanic legal systems are traditionally more interventionist than those with common law systems. To this must be added the fact that things are organised very differently from one country to another, with greater or lesser degrees of centralisation or decentralisation at the level of the public authorities and greater or lesser consolidation of sports organisations (see Chaker, 1999, p. 52, for statistics relating to these characteristics).

As we saw in the third part of this work, the financial autonomy of sports organisations in European countries is sometimes restricted by guidelines on

the use of public funds. These organisations could better safeguard their autonomy by concluding target agreements or service contracts with the public authorities of the tier of government with which they deal. These public management instruments were devised as from the 1990s for other fields of public action in connection with the reforms aimed at modernising public sector management. However, they lend themselves to use in sport and are already being implemented, for example, in the case of national federations or local clubs in Germany, France and Switzerland. These agreements or contracts determine the sports organisation's target objectives over a number of years (usually four) and the services it is to supply in exchange for cash grants and subsidies in kind provided by a public authority.

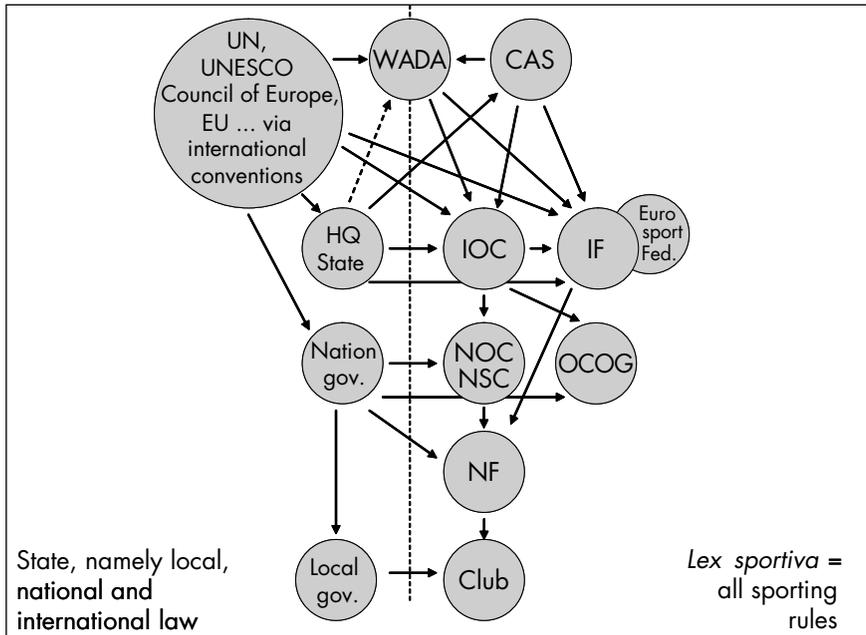


Figure 3 – Principal restrictions on sports organisations' autonomy

International or European sports organisations (such as IFs or European federations) usually derive some of their income from broadcasting or commercial rights linked to the events they run, and the Olympic IFs receive significant sums from the IOC linked to the organisation of the Olympic Games. These bodies therefore have a good deal of financial autonomy. Legally speaking, these transnational bodies are scarcely affected by the various states' laws taken individually, the exception being the law of their headquarters state, as we saw in the second part of the report (with the cases of Henry Hsu, concerning the IOC, and Olympique de Marseille, concerning UEFA).

Since about 40 of these organisations are located in the Swiss Confederation, Swiss law is of particular importance from this standpoint, but Switzerland's

law governing associations is generally deemed to entail few restrictions (it consists of only 20 articles of the Swiss Civil Code: Articles 60 to 79). Furthermore, as pointed out by Latty (2007, p. 449), the Swiss courts have, by gradually drawing a distinction between legal rules and the rules of the game, granted a form of jurisdictional immunity to the rules they regard as purely sport-related. This is far from true of other European courts. According to Burns (2003), it would be in the interest of European sports federations to base themselves in Belgium, in order to benefit from better recognition in Europe (thanks to a particular feature of Belgian law) and to bring more pressure to bear on the European authorities.

Most European states, including Switzerland and Belgium, are members of the UN, UNESCO and the Council of Europe and have ratified the international conventions issued by these intergovernmental organisations, which they have thus integrated into their national law. The conventions that have a significant role in sporting matters (and can sometimes restrict sports organisations' autonomy) are:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950);
- the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (Council of Europe, 1985);
- the Anti-Doping Convention (Council of Europe, 1989);
- the International Convention against Doping in Sport (UNESCO, 2005).

The European Convention on Human Rights dates from the immediate post-war period but has, since the 1980s, been utilised in connection with doping in sport (see the Kashechkin case referred to above). It has been suggested that the IOC should incorporate the concept of human rights into the Olympic Charter (Marguénaud, 2008).

In addition to these conventions which have force of law in the (numerous) European countries that have ratified them, intergovernmental organisations have adopted many resolutions, recommendations and declarations concerning certain aspects of sport, which are, to differing degrees, binding on their member states, and hence on the sports organisations based there. A past example is certain UN resolutions instituting embargoes against a number of countries (South Africa, Rhodesia (present-day Zimbabwe), Yugoslavia).

The World Anti-Doping Agency (WADA) has special status. It is a foundation under Swiss private law, but UNESCO's International Convention against Doping in Sport makes it responsible for the fight against doping and for formulating a World Anti-Doping Code. Its structure and its equal funding by the Olympic Movement and public authorities moreover reflect its simultaneously private and public service nature. Its decisions are binding on all

organisations that have signed the world code, not least the IOC and the IFs. As provided in the code, an appeal against a WADA decision lies to the Court of Arbitration for Sport (CAS), a private court set up by the Olympic Movement to avoid, as far as possible, national courts' intervention in sport (see below). It can be noted in passing that the World Anti-Doping Code was drafted to prevent incompatibilities with states' public policy or breaches of human rights, according to Kaufmann-Kohler et al. (2003).

Lastly, Community law, that is the law deriving from the treaties and conventions ratified by European Union member states, plays a very specific role in sporting matters, since it is directly binding on all the EU member states (of which there are currently 27) and partly binding on all states that have signed bilateral co-operation or association agreements with the EU (numerous Council of Europe member states, including Switzerland, and many non-European countries). According to the Treaty of Lisbon, and in particular Article 165 thereof, sport is now an EU competence. Nevertheless, sports organisations' autonomy has been encroached upon, above all since the 1990s, by decisions taken by the European Commission and the EU courts in matters where sport could be regarded as an economic activity and therefore subject, *inter alia*, to the rules on freedom of movement and of competition which are part of Community law.

In this connection, European and international sports organisations have underlined sport's specificity in the hope of seeing it excluded from the scope of Community law (for instance via an exemption). This possibility, which looked like a dead end following the publication of the European Commission's White Paper on Sport in 2007, could now be opened up again following the initiative taken by the governments of France and the Netherlands in 2008. In the *Independent European Sport Review* (2006), international sports organisations and the UEFA proposed to the European Union that it adopt a number of recommendations, instructions, guidelines, voluntary agreements and other soft law instruments that could better preserve sports organisations' autonomy and afford them increased legal certainty with regard to cases brought against them before the European Commission and courts.

Michel Platini, President of UEFA, summed up the position of European sports organisations in a speech to ministers of foreign affairs made in Brest in July 2008: "The European sports movement does not wish to be above the law. On the contrary, we need laws in order to protect the true values of sport. However, these laws need to be written and interpreted in a way that recognises the specificity of sport and the autonomy of its institutions. Sport is not just an economic activity like any other. We need a legal framework that protects the things that form the essence and beauty of sport: its educational, social and civic values. At the moment, sport is experiencing numerous regrettable developments, thanks in particular to the blind application of European

law to sport. European competition law cannot be used to govern automatically and exclusively the world of sport."

Thus UEFA wishes the UK Government to introduce a law giving greater power to its national federation (the Football Association, known as the FA) over the management of the main English football league (Premier League) and the supervision of referees. This was made clear in 2009 in the evidence given to the United Kingdom's All-Party Parliamentary Football Group.

With similar aims in mind, six European team sport federations (basketball, football, handball, ice hockey, rugby and volleyball) listed the fields in which sports autonomy could be improved, through negotiation with the European Commission, in a document of July 2008 entitled "Safeguarding the heritage and future of team sport in Europe", which was submitted to the French EU presidency. These federations primarily propose that the European Council should request the Commission to implement "the most effective means to recognise the specificity of sport within a clear legal framework" in accordance with the principles set out in the paper concerning training of players, transfers, agents and good governance of clubs and federations. They call for the establishment of "an appropriate European licensing framework and financial management body, to be administered by the relevant European sports federations."

It can therefore be seen that the complete autonomy often aspired to by transnational sports organisations can in fact only be an autonomy exercised under the scrutiny of their headquarters state and the states where they operate. Nonetheless the national courts rarely interfere in the internal functioning of these bodies. When asked to decide cases by complainants, they simply verify that the organisations are applying and complying with the sports rules that they have set for themselves. On the other hand, since the 1990s, transnational sports organisations' autonomy has been restricted at European level via the conventions and treaties ratified by European Union or Council of Europe member states.

## **Restrictions resulting from *lex sportiva***

On account of the pyramid system which gradually became the norm in sport in the course of the 20th century, the autonomy of lower-ranking sports organisations is restricted by the higher-ranking ones. For instance, a club is bound by the rules of its national federation (NF), which is itself bound by those of the international federation (IF) for its sport and of the national Olympic committee (NOC) for its country. These last two bodies may be recognised by the International Olympic Committee (IOC) if they comply with the Olympic Charter and related instruments such as the Olympic Code of

Ethics<sup>7</sup> and the World Anti-Doping Code, but this recognition can be withdrawn. However, these restrictions on their autonomy are freely accepted by the organisations of the Olympic Movement, which is in point of fact defined as all the legal and natural persons who agree to be guided by the Olympic Charter (see Rule 1 of the charter).

To avoid the need to refer disputes between sports organisations and/or athletes to the national courts (deemed to be slow and costly), the Olympic Movement established the Court of Arbitration for Sport (CAS) in 1983. Most sports organisations, and particularly the IOC and WADA, now recognise the CAS as the final court of appeal for their disciplinary proceedings. Through the decisions it has taken over the years, the CAS has helped to bring sporting rules into line with the basic principles of law (equal treatment, the right to a hearing, proportionality of penalties, and so on). In other words, sports organisations have voluntarily adapted their rules to avoid systematic findings against them by the CAS or by national courts. The CAS is based in Lausanne and is governed by the principles laid down in Chapter 12 of the Swiss federal law on private international law. Its decisions cannot be appealed against, except in the event of alleged violations of its own procedural rules, in which case an appeal lies to the Swiss federal tribunal (the highest Swiss court), a remedy that has been exercised only very infrequently. The CAS is accordingly *de facto* the Supreme Court administering *lex sportiva*, in other words, the whole body of rules and regulations issued by sports organisations. It has unquestionably strengthened the autonomy of international sports organisations, despite the gradual adaptation of their rules to comply with the general principles of law.

*Lex sportiva* is a huge body of regulations of all kinds issued by tens of thousands of non-governmental organisations (NGOs), covering over 100 sports and applicable at local, national or transnational levels. They are often badly drafted, leaving the door open to challenges which could have been avoided. The Olympic Charter, drawn up by the IOC, is merely the tip of an enormous iceberg, which is constantly changing and becoming ever-more complex. Three kinds of “sporting rules” can be identified in this regulatory jungle:

- rules of the game;
- competition rules;
- club rules.

Rules of the game are the technical rules according to which a given sport is played. Examples are: in football a penalty has to be taken from a spot 9 metres from the opposing team’s goal; in the 110-metre hurdles race, the hurdles must be 1.06 metres high and set at a distance of 9.15 metres

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7. Several IFs have adopted their own codes of ethics so as to avoid being over-committed to the IOC’s. They include the IFs for baseball (IBAF), cycling (UCI), football (FIFA), gymnastics (FIG), wrestling (FILA), skating (ISU) and archery (FITA).

between each hurdle; an amateur boxing match lasts three rounds. These rules constituted the very basis for the establishment of the European and international federations, one of whose first objectives was to harmonise the rules followed in the different countries. They have been adapted to developments in the various sports and to the needs of television (examples being the introduction of the tie-break in tennis, the golden goal rule in football, and the libero in volleyball). These rules have only very rarely been challenged in national courts, and in such cases the courts have generally been unwilling to concern themselves with them or with their (sometimes very complex) interpretation, which is a matter for judges, referees and umpires on the field of play or for appeals boards once a competition is over. It is inconceivable that a national court should make an offside decision! Even the CAS, before which a number of cases have been brought (especially in respect of the 1996 Atlanta and 2004 Athens Games), refrained from overturning decisions given by Olympic judges, referees and umpires.<sup>8</sup> Nor do governments intervene, unless the rules are in breach of public policy, which would be the case, for example, if a boxing federation were to adopt a rule stipulating that each bout should continue until the death of one of the participants.

What can be termed club rules, or statutes, are those adopted by each non-governmental sports organisation operating on a non-profit-making basis to regulate its own functioning, such as the rules determining who can become a member; how its president or chair is appointed; when it holds general meetings, etc. These rules must be in accordance with the law of the state in which the organisation has its headquarters, and often with that country's legislation on non-profit-making associations.<sup>9</sup> In Switzerland, for example, an association must have a management body, hold regular general meetings, be registered in the commercial register if it carries on commercial activities, and have its accounts audited by an outside body if it has more than 50 employees. However, under the general legal framework applicable to all legal persons, sports organisations have considerable autonomy. Here too, this autonomy is limited solely by general legal principles, such as the principle that members must not be forbidden from appealing to the national courts, a prohibition which was included in too many sports organisations' statutes for many years, and still is in some cases (see the oath sworn by IOC members under Rule 16 of the Olympic Charter).

What may be termed competition rules are all the regulations governing competitions organised for a given sport over a given period. For example,

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8. The New York courts, however, intervene in the Americas Cup rules, since they were originally set out in a deed of gift filed with the Supreme Court of the State of New York.

9. Or other laws governing legal entities: for instance, the international federations for sailing (ISAF), water-skiing (IWSF) and squash (WSF) are companies limited by guarantee under UK law; the International Tennis Federation (ITF) is a "company limited by shares" registered in the Bahamas (Latty, 2007, p. 432).

the World Alpine Skiing Championship takes place every two years in a location chosen by the International Ski Federation; in Olympic football only three players over 23 years of age may be included in each squad; gymnasts participating in the European championship must be over the age of 15. Competition rules can be divided into those directly concerning the athletes (age, nationality, gender, conduct, use of prohibited substances, and so on) and those concerning the organisation of the competition proper (date, venue, equipment, logistics, sponsorship, broadcasting, betting, and so on). Historically speaking, competition rules have been laid down over time by the sports organisations with a view to running events in which participants at all levels can compete and, at the same time, creating a source of revenue for the organisers. They constitute a heritage for these organisations and for sport in general, although they can be strongly influenced by commercial considerations (for example, as regards the frequency of major competitions, broadcasting times or the possibility of betting on the outcome).

It is these competition rules that have been most frequently challenged before the national courts and the CAS (particularly in doping matters), in cases where much is at stake in the competition and, above all, where the rules affect the participating athletes, who can be regarded as sports workers. It can therefore be said that sports organisations' autonomy to decide these rules is currently contingent on the nature of the events they govern: the more professional and commercial the event, the greater the risk that the rules will be challenged. Much depends as well on the legitimacy of these rules in respect of the holding of competitions or the achievement of sporting objectives. Weatherill (2007) speaks in this context of the "conditional autonomy" of sports federations in the event of a clash between Community law and *lex sportiva*. He interprets the Meca-Medina judgment of the Court of Justice of the European Communities (see introduction) as recognition by that court that the rules of sport may conflict with European treaties in so far as this is justified by legitimate sporting concerns based on experience.

The European team sport federations (which often have a very large professional branch) listed 16 categories of (competition) rules which they would like the European Union to work with to adopt guidelines geared to preserving their autonomy (ETSF, 2008). These are the rules on: the structure of championships and timetables; the national character of championships; the movement of players between teams; attendance at sports events; the release of players to participate in national teams; doping and other disciplinary matters; club licensing systems; ownership of clubs in the same competition; the activities of agents; local training of players; selling of commercial rights; clubs' financial stability; sporting and financial solidarity; arbitration as a dispute resolution mechanism; intellectual property; and sport's integrity in relation to betting. These European federations propose to negotiate on certain areas with the European Commission as a matter of priority.

The diagram in Figure 4 shows all the rules which to some extent overlap for the same sport and which, it should not be forgotten, exist for each organised sport and sporting discipline, since rules are an inseparable part of the concept of sport. The Olympic Charter contains the statutes of the IOC as a club, the rules on the organisation of the Olympic Games (a prestigious competition if ever there was one) and the rules on the functioning of the Olympic Movement, as well as some very general rules of sport (fair play, respect, non-discrimination, etc.).

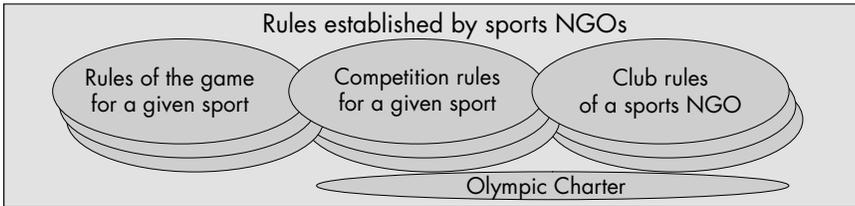


Figure 4 – The three categories of sports rules

It would be highly desirable to have a complete, up-to-date collection of these sports rules at European level. At its headquarters in Lausanne the CAS keeps a library of the regulations issued by those sports organisations that recognise it. An electronic database would be a more effective solution and would facilitate access. A project to establish a database could be set up with European funding.

In sum, it can be seen that sports organisations' autonomy is restricted by the law of the countries in which they operate, above all as regards competition rules. The traditional dichotomy between the rules of the game and the legal rules, which long prevailed in case law (especially following the Kummer decision of 1973), is no longer appropriate. It is necessary to specify which categories of rules of the game are at issue, rather than talking about their "sporting nature", which is strictly speaking impossible to decide. Furthermore, autonomy to set rules of sport is conditional on the legitimacy of their sporting objective and on their proportionality vis-à-vis the situations encountered.

## **Horizontal versus vertical autonomy**

Following this study of the restrictions on overall sports autonomy, whether recognised by law or noted in practice, it is also helpful to draw a distinction between two forms of autonomy of sports organisations: horizontal and vertical. Figure 5 shows the principal sporting bodies (public authorities and sports authorities) at the different levels of the system of governance. It facilitates an understanding of these two types of autonomy.

Horizontal autonomy is that enjoyed at a given level (local, regional, national, European or international) by a sports organisation in relation to its corresponding public authority of the same level, for example a club in relation

to “its” municipal sports department, a national sports federation in relation to “its” ministry of sport, a European federation in relation to the European Commission or the Executive Secretariat of EPAS, the last-named bodies reporting to the sports ministers of, respectively, European Union and Council of Europe member states. There is also a Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS) within UNESCO.

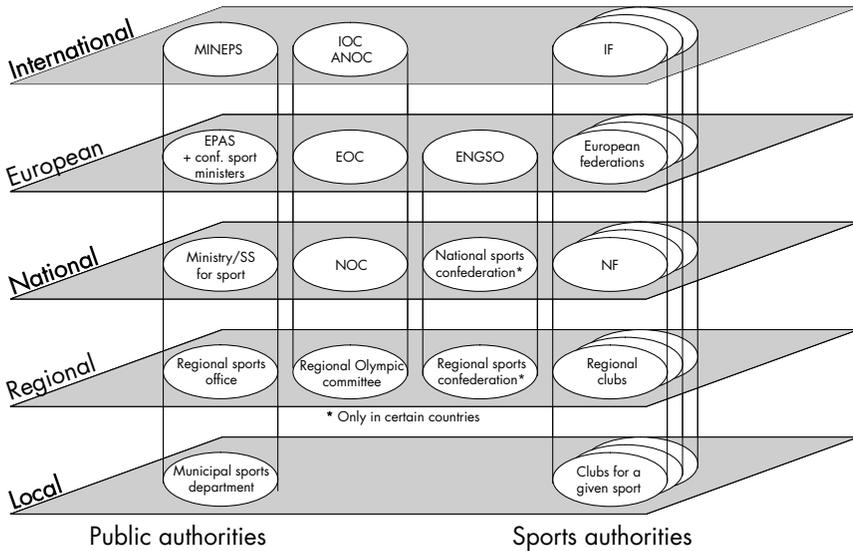


Figure 5 – The horizontal and vertical organisation of sport

Sports organisations are encountering growing difficulties in securing complete horizontal autonomy because states are increasingly subsidising sport and therefore adopting mechanisms to ensure the proper use of the funds allocated. This form of autonomy above all entails good co-operation between public and sports authorities of the same level within the legal framework specific to that level, which varies considerably according to the region, country or continent concerned. It is negotiable to some extent, depending on the resources made available by the local, regional or national authorities. At European and international levels, there is a need to reinforce such co-operation/negotiation.

Vertical autonomy is that enjoyed by lower-ranking sports organisations in relation to higher-ranking ones within the same sport or on the occasion of a multi-sport competition. Examples are a club in relation to its national (or sometimes regional) federation, a national federation in relation to its European and/or international federation, an NOC in relation to the IOC and also to the European Olympic Committees (EOC) and the world-level Association of National Olympic Committees (ANOC). A significant restriction

on this autonomy derives from the fact that the sports rules applied to a given sport are the same throughout the world. The international federations (IFs) tolerate just a few departures from the standard rules in certain countries or continents. However, athletes and officials willingly accept the rules for their sport, especially where they participate in it at a competitive level. This vertical autonomy is "supervised" by WADA (for doping matters) and the CAS (for all sport-related issues which both parties are willing to refer to it, including appeals against decisions taken by WADA).

As we have seen, these vertical and horizontal forms of autonomy can be incompatible. For instance, a national federation may be required to respect its IF's rules on nationality, but these rules may clash with its own country's law or with the rules of the union to which it belongs. It can even be said that, in Europe, the challenge to vertical sports autonomy from the European public authorities is growing, as sports policy is interconnected with all kinds of other policies that increasingly come within the EU's competence (economic matters, competition, employment, education, health, etc.). Here too, closer co-operation between European public and sports authorities should make it possible significantly to reduce these incompatibilities and should result in greater autonomy for European sport. This is doubtless what the continent's sports organisations are seeking when they call for sports autonomy. In the international (non-European) context the situation is more difficult, since the IFs and the IOC today have no qualified corresponding public authorities (except in doping matters through the UNESCO International Convention against Doping in Sport of 2005 establishing WADA). However, as already mentioned, the situation in Europe directly influences many non-European countries which have signed agreements with the European Union. A negotiated form of sports autonomy in Europe would therefore have worldwide impact.



## 5. Summary

By way of a conclusion, we first propose a definition of sports autonomy that takes account of the various aspects of the concept discussed in this report. We then comment on this definition.

The autonomy of sport is, within the framework of national, European and international law, the possibility for non-governmental, non-profit-making sports organisations to:

1. establish, amend and interpret rules appropriate to their sport freely, without undue political or economic influence;
2. choose their leaders democratically, without interference by states or third parties;
3. obtain adequate funds from public or other sources, without disproportionate obligations;
4. use these funds to achieve objectives and carry on activities chosen without severe external constraints;
5. draw up, in consultation with the public authorities, legitimate standards proportionate to the fulfilment of these objectives.

It must first be said that this definition applies to non-governmental sports authorities, which are usually non-profit-making, such as the IOC, IFs, European federations, national or regional federations and sports clubs, all of which are private entities legally independent of the public authorities and the commercial sector. Historically, it is these organisations that have regulated sport in Europe and worldwide and, in this capacity, they deserve to have their autonomy recognised under the national law of the countries where they operate and under international law as recognised by these countries when they accede to international conventions or treaties. In the context of the principles of the rule of law, it is on the other hand inconceivable to absolve them from compliance with this legal framework. It is nevertheless desirable to recognise the right of the sports movement, like that of other communities (including religious ones), to a form of transnational legal organisation that can relieve states of concerns which are not part of their primary responsibilities and which can, in accordance with the subsidiarity principle, more appropriately be dealt with by organisations closer to the persons concerned.

As stated in the first indent of the above definition, this autonomy first concerns freedom to establish, amend and interpret “sports rules”, that is to say the rules of the game, competition rules and club rules. These rules – on which

sports activities are based – must be established after consultation of the interested parties by the bodies officially responsible for this role and must be in keeping with public policy and the general principles of law. It would be useful to have a permanently up-to-date electronic database of these rules. They must also be interpreted firstly by impartial judges, umpires or referees on the field of play and subsequently by transparent disciplinary bodies, whose decisions may be the subject of appeals to the CAS or even to national courts. Sports autonomy therefore encompasses sports organisations' self-regulation, a concept which Latty (2007, p. 444) defines as a combination of internal setting and supervision of rules which primarily relate to those who subscribe to them.

The second indent of the above definition focuses on the importance of democratic appointment of the leaders of sports associations at all levels, since cases of local or national government interference have been regularly observed in such matters. It also outlaws interference by third parties (media, sponsors, investors, etc.), who must be kept out of the appointment process. This also entails an obligation for sports organisations to hold regular elections, representative of stakeholders, on the basis of clear procedures and in accordance with the principles of good governance. It would also be desirable to disqualify persons holding public office from appointment to an office in the sports world. The legal independence of organisations should be supplemented by the independence of their key officials from governments, sponsors, media and other sports organisations.

The third indent addresses the issue of financial autonomy, making the point that there can be no true autonomy without financial resources. However, whether resources are of public or private origin, they must not entail strict obligations for the sports organisations concerned, other than the obligation to manage these funds properly (using proper accounting). From this standpoint, it would be interesting to apply the concept of a consideration supplied by the sports organisations to the public authorities which subsidise them, as is the case with the money they receive under traditional sponsorship contracts concluded with private firms. Such a consideration can be defined in the agreements on targets or other similar documents concluded with a given level of government. "Good" self-regulation of the sports sector is already in itself a useful consideration supplied to the public sector, which is thereby relieved of non-sovereign tasks. Thus a move could be made towards financial supervisory bodies for professional (team) sports.

The fourth indent conversely points out the key need for sports organisations to be able to set themselves objectives and perform (sports) activities without being manipulated by their public and above all their private financiers. Sports autonomy also means the ability to pursue purely sport-related goals, in particular the development of sport and the progress of its practitioners. There is often political interference, but commercial pressures should not be

overlooked. Sports organisations generally assert that they are free of such pressures, but this is difficult to verify since their contracts with sponsors and television are not public documents. It can, however, be seen that the rules of sport are regularly changed to make events more attractive to television viewers, or to allow or prohibit the use of certain equipment. Moreover, it was specifically media, financial and commercial interests that gave rise to the intrusion of Community law into the sports sector. Third parties (sponsors, media, investors, equipment manufacturers, and so on) should accordingly not be overlooked in any consideration of the autonomy of sport, and it must be a well-established principle that they should not impinge on that autonomy.

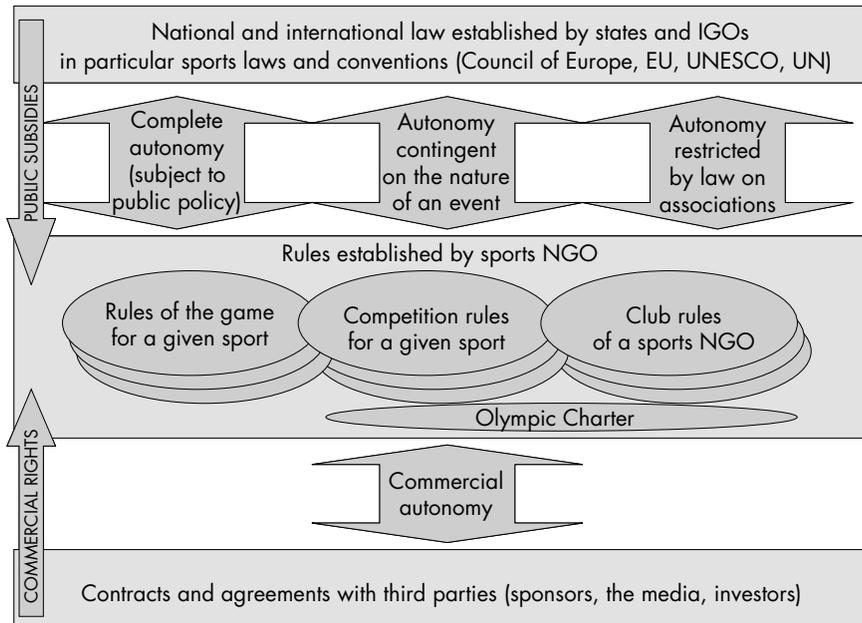


Figure 6 – The four degrees of autonomy of sports organisations

Lastly, the fifth and final indent recognises that autonomy can result from co-operation, co-ordination, consultation and even negotiation between parties, far more than from each party ignoring what the others do. This is true both locally and nationally (levels at which the EPAS questionnaire, moreover, did not reveal any major problem of autonomy). It should be even more the case at the European level, where transnational organisations were long exempt from the supervision of lawfulness and proportionality normally performed by public authorities in a democratic state. This point is consistent with the seventh principle of good governance adopted by the IOC at its second seminar on sports autonomy held in 2008 (see note 1 on p. 8). It echoes the first indent, since, following consultations and the adoption of soft law instruments by the public authorities, sports rules may be altered so as to avoid legal disputes.

Figure 6 sums up the situation, identifying four degrees of autonomy of sports organisations depending on the category of sports rules and the kinds of parties involved (public or private): virtually complete autonomy (as regards the rules of the game), contingent autonomy (as regards competition rules), (slightly) restricted autonomy (as regards club rules) and commercial autonomy (governed by contracts signed with third parties).

In conclusion, it can be said that autonomy is one of the fundamental criteria for a modern model of sports organisation. It is a praiseworthy principle, which is socio-economically justifiable in developed societies. Today, however, this principle clashes with the increasing complexity of the international and Olympic systems and with the growing economic dimension of sport, which unquestionably facilitates its financial autonomy but also entails new risks due to the involvement of third parties (sponsors, media, investors, gamblers and so on).

Sports organisations must work with states to develop a new model of sports autonomy falling somewhere between the ideal of complete autonomy and an undesirable superficial autonomy; it is a question of finding a halfway point between liberalism and interventionism, what might be described as a "negotiated autonomy", typical of the "social configuration" identified by the Vocasport project. Sport will not be able to continue to develop harmoniously unless strong negotiated co-operation is established between sports organisations and governments, based on mutual understanding and respect, as well as regular consultations.

At European level the Council of Europe could very well be the appropriate intergovernmental organisation within which to discuss and implement such a model, since its geographical scope and its membership in practice coincide with those of European federations and confederations for the various sports.

## **6. Best practices in negotiated autonomy<sup>10</sup>**

This part will describe several examples of balanced and structured relations between the sports movement and public authorities at national or supranational level, which may be regarded as so many cases of negotiated autonomy for sport. The examples, deliberately limited to Europe, are grouped according to the country/international intergovernmental organisation/non-governmental organisation concerned.

### **Council of Europe**

#### **The Enlarged Partial Agreement on Sport (EPAS)**

In 2007, following over 30 years of activities relating to European sport policies, the Committee of Ministers of the Council of Europe adopted Resolution CM/Res(2007)8 setting up the Enlarged Partial Agreement on Sport (EPAS), in order to give new impetus to pan-European co-operation on sport and to take up the challenges currently facing sport in Europe. The EPAS was set up to promote sport and the positive values that it represents, to create international standards and to establish a framework for a pan-European platform of intergovernmental co-operation on sport. It is also the intention to help public authorities in the member states of the agreement (31 countries in June 2009), sports federations and the NGOs holding observer status (ENGSO, UEFA and WADA at the time of writing) to engage in discussions with a view to making sport healthier and fairer, in a context of better governance.

The EPAS was set up to monitor existing standards, develop responsibilities and exchange good practices (this publication being one of the means of achieving the last-named objective). In drawing up its own strategies, it bases itself on the Council of Europe standard-setting instruments already in force, such as the European Sport Charter, Code of Sports Ethics, European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches and the Anti-Doping Convention. In 2009, its programme of activities is focused on following up the resolutions adopted at the 11th Council of Europe Conference of Ministers responsible for Sport (which concern ethics, autonomy and co-operation with the European Union and WADA) and on sport's contribution to integration and intercultural dialogue.

Through the setting up of a consultative committee bringing together sports organisations, the EPAS intends to develop dialogue and co-operation between states and the sports movement. Thus it offers an appropriate setting

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10. These examples have been put forward by a number of European experts, whom I should like to thank here, and particularly Antonello Bernaschi, Stanislas Frossard, Krisztina Göntér, Jean-Luc Janiszewski, Nicolas Lhoist, Pierre Mairesse and Akos Reinhardt.

for discussing or even negotiating standards, and for monitoring these across a geographical area virtually identical to that covered by the European branches of international sports federations.

### **Parliamentary Assembly of the Council of Europe**

The Parliamentary Assembly of the Council of Europe (PACE) held a debate in 2008 on the need to protect the European sports model from the commercial excesses of certain professional sports, particularly where television broadcasting rights are concerned. Taking up the rapporteur's proposals, the PACE called for more co-operation between sports authorities and public authorities. Members called for the specific character of sport to be recognised and for the autonomy of sports federations to be protected. The Assembly can thus offer a platform for European sports organisations wishing to raise elected representatives' awareness of the various issues relating to the autonomy of sport. Some European parliaments have also considered these issues, including the United Kingdom's, which has set up an All-Party Parliamentary Football Group (APPPFG).

## **European Commission**

### **European Sport Forum**

Since the early 1990s, the European Commission has been holding an annual European Sport Forum, bringing together representatives of European sports organisations and governments. The original idea came from the European Olympic Committees (EOC), the association of all European national Olympic committees. The first forum took place in Brussels in 1991, and the most recent was held in Biarritz (France) in 2008. The ENGSO (European Non-Governmental Sports Organisation), various European countries' NOCs, European and international sports federations, the IOC (International Olympic Committee), sports ministries, the European Parliament and the Council of Europe have regularly been involved in the work of the forum.

The forum is merely an advisory body, but has made a great contribution to improved dialogue and understanding among European sport's various stakeholders. It has enabled sport's problems to be highlighted and solutions compatible with Community law to be considered. Its recommendations have increasingly been taken into account by the European Commission as it draws up its sport policy. Meetings of the forum are prepared by a steering group on which are represented the three member states of the European Union Troika, the EOCs and the ENGSO.

### **Social dialogue in the sport sector**

Since the late 1980s, and especially since the signing of the Amsterdam Treaty (1997), the European Union has been promoting a structured dialogue

between both sides of industry (representatives of employers and employees) in every sector of economic and social life. It is one of the key components of European social policies. This dialogue under the auspices of the Commission is intended, through negotiation, to nip potential conflicts between stakeholders in the bud, preventing them from ending up in the courts. It enables common rules to be agreed on working conditions and industrial relations, giving rise to collective agreements and other contractual documents which can gradually be integrated into Community law.

In its White Paper on Sport (2007), the Commission calls for such social dialogue to be set up in the sport sector as well, particularly for the most highly professionalised sports. It was introduced to football following a dialogue – not co-ordinated by the Commission – involving UEFA, the EPFL (European Professional Football Leagues) and FIFPro (International Federation of Professional Footballers' Associations). In July 2008, a Social Dialogue Committee for football was officially set up by the European Commissioners responsible for sport and social affairs. The aforementioned associations were joined by the sport's recently created ECA (European Clubs Association). The partners invited UEFA to chair their dialogue.

Outside the football world, other sportspersons are said to be keen to see a social dialogue established at European level. Examples are the cyclists who asked the European Commission for precisely this in 2007 and the elite European athletes who formed an association (EU Athletes) the same year. It is difficult to set up such a dialogue because of the lack of partners to represent employers at European level. European or international sports federations cannot really claim to represent all the stakeholders, particularly team owners, event organisers, fitness club owners, etc. In order to alleviate this problem, a European Association of Sports Employers (EASE) was set up in 2003 by five employers' organisations from four European countries, including the CoSMoS (Conseil Social du Mouvement Sportif) which set the early pace in this field in France. EASE has grown to a 2009 total of eight members. It has combined with EURO-MEI, the European organisation representing wage-earners in the media, entertainment and arts sector, to co-ordinate a European Commission-funded project to develop social dialogue throughout the sport sector, known as the CC (Content and Contact) Project. This project should enable a social dialogue committee in the sport sector to be set up in the years ahead, under the aegis of the European Commission, thus making it possible, *inter alia*, to engage in negotiations among the main stakeholders to agree on sports rules providing greater legal certainty for all. A social dialogue of this kind may also culminate in the drafting of common codes of conduct covering matters such as training, working conditions and the protection of young people. This is therefore a good example of negotiated autonomy for sports organisations in the context of the regulation of labour relations in sport.

## **World Anti-Doping Agency**

### **World Anti-Doping Code**

The World Anti-Doping Code was drawn up in 2003 by the World Anti-Doping Agency, an international organisation within which the Olympic Movement and governments are equally represented. The code is revised every four years to take account of changes in the situation (the first revision took place in 2007). It is recognised by over 100 states, which have ratified an ad hoc convention drawn up by UNESCO in 2005. The convention also recognises WADA as the organisation responsible for the fight against doping at international level. The International Convention against Doping in Sport drew heavily on a similar convention adopted by the Council of Europe in 1989, which is still binding on most of its member states and some other states, following work which began in the 1970s.

In 2008, the Council of Europe highlighted serious problems thrown up by the version of the code adopted in 2007, and applicable with effect from 2009, relating to the new rules on international exchange of data concerning athletes and their personal details which have to be continually updated (the "whereabouts rules"). These standards were unacceptable in relation to most European legislation on data protection and human rights. These problems were highlighted at the 11th Council of Europe Conference of Ministers responsible for Sport, held in Athens in December 2008, a conference at which the Spanish State Secretary for Sport was elected as the Council of Europe's representative on the Executive Committee of WADA. Early in 2009, a meeting in Madrid was attended by the various stakeholders, including the Council of Europe and WADA, in an effort to come up with improved rules on data exchange, which were subsequently unanimously approved by the WADA Executive Committee. Thus negotiation between sports and governmental organisations made it possible to prevent certain anti-doping rules from being easily challengeable in European courts, but without compromising the fight against doping.

## **Fédération Internationale de Football Association (FIFA)**

### **FIFA standard co-operation agreement**

In 2007, the Fédération Internationale de Football Association adopted a standard co-operation agreement. This is a model agreement for signature between a state's national football federation and its government (sport ministry or other responsible body). It is intended to regulate relations between the two parties and to harmonise the respective tasks of each in respect of the administration of national teams and football competitions in the signatory state, as well as security, finance and any related issues. The aim is to ensure the best possible co-operation and the partnership necessary to the good

governance and the development of football in the state concerned, within FIFA rules. To a certain extent such an agreement may be negotiated between the parties, thus allowing a national federation to make the scope of its autonomy perfectly clear. There are few examples of signed agreements to date, however. Ultimately, such agreements could become compulsory for any country participating in the football World Cup.

## **The European Olympic Committees (EOC)**

### **Liaison office**

In the early 1990s, the German sports movement and certain regions (*Länder*) felt the need to set up and finance a German sports office in Brussels to be responsible for monitoring and analysing European Union activity relating to sport. Support gradually came for this office from the national Olympic committees of several European countries and the association, European Olympic Committees (EOC), as well as a dozen international and European sports federations. It publishes a bimonthly newsletter for members. As well as its monitoring activity, it is responsible for representing the interests of the EOC and its members, and particularly for lobbying the European Commission. It may be said to have made a strong contribution to the gradual inclusion of sport in European documents and treaties, right up to the Treaty of Lisbon, although this integration has not yet been finalised to the satisfaction of the sports movement.

In 2009, this Brussels structure became the official office of the EOC. Thus the Olympic Movement has a standing body liaising with the European institutions, one which can do much to promote negotiated autonomy. Early in 2009, regular six-monthly meetings started between the European Commission (represented by the Commissioner responsible for Sport) and the Olympic Movement (represented by the presidents of the IOC and the EOC), affording an opportunity to deal with all major issues for sport in the medium or longer term.

## **Union of European Football Associations**

### **Sale of broadcasting rights for European competitions**

In 2005, UEFA agreed with the European Commission's Directorate General of Competition on the principles which should govern the sale in the European Union and European Economic Area of the television broadcasting rights for its main competitions (Champions League, UEFA Cup and UEFA Super Cup) for maximum periods of three years and per package of matches. UEFA thus negotiated to its own full satisfaction its autonomy to regulate the sale of its rights (competition rules), in order to avoid appeals of uncertain outcome being made by European television channels or networks under Community competition law.

## France

### **Agreements on objectives (*Conventions d'objectifs*)**

In 1945, the state assigned to itself by law the sole power to select teams to represent France and to award the title champion of France, while immediately delegating this power to national federations on condition that they accepted certain organisational provisions. On the basis of the 1984 Sport Act (*loi sur le sport*), this delegation was extended to all the activities of approved national federations. Agreements on objectives between the sport ministry and each individual federation were set up from 1987 onwards. Such agreements cover several years and are the main tool of the financial partnership between the state and the sport movement. They are a tangible expression of the willingness of the sport ministry and its voluntary-sector partners to work together on the public service mission of developing physical and sports activities. Such activities are the operational and financial result of a sport policy based on partnership (entailing dialogue between two leading players in the sporting sector) and on a contract (entailing mutual commitments evaluated each year). The whole process is based on a critical review by the federation concerned after each Olympic Games, and the definition of a federal strategy, objectives, priorities and means for the next four years. Each year, meetings are held between the ministry and the federations to check that commitments are being honoured, and results are evaluated.

Financial assistance from the state within this framework amounted to almost €89 million in 2008. These financial resources were supplemented by the provision, again in 2008, of 1 671 managerial staff for the local, regional and national levels of sport. A decree of 2005 specified their role and the conditions in which they carry it out. Specially tailored instruments clearly define their duties, responsibilities and working conditions: letters of assignment, outline agreements, regional technical team agreements. The practice of agreements on objectives between the state and the sport movement has been continuously improved over the past 20 years. The system is now part of the arrangements intended to ensure that French federations and sports groupings have the degree of autonomy that their members wish, although a few voices are heard complaining that the French Ministry of Health and Sports interferes too much.

### **National Directorate for Management Supervision (DNCG)**

Under France's Sport Act, the articles of the French Football Federation (FFF) and an agreement between the federation and the French Football League (LNF), a National Directorate for Management Supervision (DNCG) has been set up to provide legal and financial supervision of affiliated clubs and to ensure that they meet the conditions set by FFF and UEFA rules for participation in competitions. The main objective is to ensure clubs' solvency

for the forthcoming season, if necessary by restricting or prohibiting player recruitment, or by demoting a club to a lower division if it lacks the financial resources to get through the season. The DNCG comprises three national committees and regional committees, each made up of members, appointed by organisations representing employers and staff in French football, who are not members of the governing bodies of the FFF, LNF or clubs. Although it lacks legal or financial autonomy, it is deemed independent and representative by those who work in the sector.

The DNCG is acknowledged to have contributed, since it was set up in 1984, to the good financial health of French clubs as compared to some of their European counterparts. Healthy finances foster good governance and greater autonomy from the public authorities, especially financial autonomy. Some would like to see the French model expanded into the rest of Europe, so that every national federation can better regulate professional football in its country, and UEFA itself in 2000 adopted a system of licences for clubs taking part in its competitions which goes in the French model direction.

### **Conciliation by the CNOSF**

France's Sport Act of 1984 confers on the French Olympic and Sport Committee (CNOSF) a conciliation role in the event of disputes (other than those relating to doping) between affiliated members of sports clubs, the clubs themselves and approved national federations. Since 1992, conciliation has been compulsory prior to any application to the national courts in respect of a dispute resulting from a decision taken by a federation in the exercise of its public powers (see the above paragraph on agreements on objectives). This procedure has the major advantage for the sport movement of making it possible to try to resolve disputes between its members autonomously and speedily, thereby avoiding the need for the courts to get involved. It can even begin before a federation's internal remedies have been exhausted. Between 1992 and 2007, 2 814 applications for conciliation were examined, of which 589 were deemed inadmissible, while 485 (approximately 21% of those which were deemed admissible) culminated in an agreement between the parties during the procedure. Of the 1 740 conciliation proposals made, 1 087 (62%) were accepted. Overall, more than 70% of the disputes were resolved, thus preserving the vertical autonomy of sport in France. Furthermore, only around 30% of the unresolved disputes were the subjects of complaints to the appropriate national courts (source: [www.comite-olympique.asso.fr/art/84/statistiques.html](http://www.comite-olympique.asso.fr/art/84/statistiques.html)).

## **Germany**

### **German Olympic Sport Confederation (DOSB)**

In 2006, the German Sport Confederation (DSB) and the National Olympic Committee for Germany (NOK) merged to form the German Olympic Sport

Confederation (DOSB), which thus became the sole umbrella organisation for sport in Germany, bringing together almost 100 national federations representing over 27 million members, which makes it by far the largest non-profit-making social organisation in the country. It receives no government subsidies for its administrative budget. The German federal government and the regional governments (*Länder*) co-operate with the DOSB on the basis of three principles fully accepted by all: autonomy, subsidiarity and partnership. This co-operation takes place to the satisfaction of the sports movement and the German public authorities, whereas previously some tensions had been evident.

The German Federal Ministry of the Interior (which also has sport in its remit) has signed a contract with the DOSB to support high-level German sport. The contract clearly sets out both parties' mutual rights and obligations in return for a financial contribution from the federal state. Another example of close co-operation is the fight against doping, involving an integrated system of contributions from the government and from German sport, on the basis of a 10-point action plan drawn up by the DOSB. These two examples demonstrate the possibility of negotiating autonomy for sport at national level in two sensitive fields: doping and elite sport, especially when unity of the sports movement has been fully achieved. Such negotiated autonomy is symbolised by an annual meeting between the board of the DOSB and the President of the Federal German Republic.

## **Hungary**

### **State Secretariat for Sport of the Ministry for Local Government**

Hungary has had a sport act since 1996. In 2000, the act was amended to place the activities of sports federations under the legal supervision of the independent prosecutor general, instead of the state secretariat for sport. This provision, for which Hungarian sports organisations had been calling, improved their legal autonomy. Where financial autonomy is concerned, the act provides for state subsidies to be awarded by an annual ministerial decree to five of Hungarian sport's governing organisations (national Olympic committee, paralympic committee, confederation of sports federations, sport for all committee, and disability sport committee). It is these five organisations which decide, on the basis of transparent criteria, how the sum awarded by the state from its annual budget is to be divided among their members.

## **Italy**

### **Italian National Olympic Committee (CONI)**

The CONI has been a completely independent and autonomous public body since the post-war period. While it is under the supervision of the office of the

Italian Government's Under-Secretary for Sport, this only verifies the lawfulness of its acts, and not their merits. Thus the CONI did send an Italian team to the Moscow Summer Olympics in 1980, although the Italian Government did not allow any athletes who were members of the armed forces to take part. The CONI is financed from the profits of gambling on sport, as well as from other sources (state subsidies, sponsorship, sale of services, etc.). It redistributes some of its income, on the basis of transparent rules, to the national sports federations, which are now private bodies regulating their sport autonomously, and which, in particular, have independent appeal bodies ("sports tribunals").

Sport autonomy is explicitly recognised in Italy's Sport Act of 2003, which states that:

Article 1 – General principles

1. The Republic shall recognise and promote the autonomy of the national legal system relating to sport, as linked to the international legal system [*lex sportiva*] relating to sport for which the International Olympic Committee is responsible.
2. Relations between the systems mentioned in paragraph 1 shall be regulated on the basis of the principle of autonomy, other than in cases in which subjective legal situations connected with the legal system relating to sport are of effective importance to the legal system of the Republic [Italian Law].

Article 2 – Autonomy of the legal system relating to sport

1. In application of the principles to which Article 1 refers, the regulation of questions relating to:
  - a. the proper conduct of sports activities and competitions;
  - b. the behaviour regulated by disciplinary rules, and the imposition and application of disciplinary penalties relating thereto;
  - c. the admission and affiliation to sports federations of companies, sports clubs and individuals;...

is reserved for the legal system relating to sport.<sup>11</sup>

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11. Art. 1. Principi generali

1. La Repubblica riconosce e favorisce l'autonomia dell'ordinamento sportivo nazionale, quale articolazione dell'ordinamento sportivo internazionale facente capo al Comitato Olimpico Internazionale.

2. I rapporti tra gli ordinamenti di cui al comma 1 sono regolati in base al principio di autonomia, salvi i casi di effettiva rilevanza per l'ordinamento giuridico della Repubblica di situazioni giuridiche soggettive connesse con l'ordinamento sportivo.

Art. 2. Autonomia dell'ordinamento sportivo

1. In applicazione dei principi di cui all'articolo 1, e' riservata all'ordinamento sportivo la disciplina delle questioni aventi ad oggetto:

- a. il corretto svolgimento delle attivita' sportive ed agonistiche;
- b. i comportamenti rilevanti sul piano disciplinare e l'irrogazione ed applicazione delle relative sanzioni disciplinari sportive;
- c. l'ammissione e l'affiliazione alle federazioni di societa', di associazioni sportive e di singoli tesserati.

The solution adopted by the Italian legislature for the CONI and sport is a good example of negotiated autonomy at national level. This legal framework conducive to autonomy nevertheless faced a challenge in the shape of the ups and downs which recently affected Italian professional football. The sector's economic dimension forced those involved – sometimes legitimately – to turn to the national courts. It became clear that it was vital for appeal bodies to be completely independent of sports organisations' executive and legislative organs.

## **Netherlands**

### **Good Sport Governance Code**

In 2005, at the initiative of the National Olympic Committee and National Sport Federation of the Netherlands (NOC\*NSF), the country's sport federations adopted a code of good governance (Good Sport Governance Code). This contains 13 recommendations grouped in six areas: coherence and transparency; procedure for the election and appointment of officials; separation between executive, policy making, supervisory and implementation duties; definition of the duties, powers and responsibilities of management; role of the general meeting; code of conduct. Some 26 of the 72 Dutch federations then undertook to check that they were in conformity with the code. As the new century's first decade progressed, however, the organised sport sector continued to lose ground to the commercial sector of fitness and other sport service providers. In 2007, the NOC\*NSF decided to offer its member federations better support by, for instance, helping them to draw up strategic plans and launching an Internet site setting out the best managerial practices in sport in the Netherlands.

In 2008, the Good Sport Governance Code was combined with a classification system whereby federations are awarded one, two or three stars, on the basis of their service quality. Two thirds of federations were awarded a single star (the lowest category), but are working to improve their classification. Those awarded no star have been recommended to merge with others. Ultimately, any federations not meeting the minimum governance and quality standards set will have their subsidies greatly reduced or even cut off. The NOC\*NSF has thus, in the space of a few years, managed to negotiate with its member federations an improvement in their governance practices fully justifying their financial autonomy.

## **Switzerland**

### **Swiss Sport GAAP**

In 2004, Swiss Olympic, which is the confederation of Swiss national sports federations and Switzerland's National Olympic Committee, adopted a set of accountancy standards for itself and its member federations. These standards,

described in a handbook issued by a major accountancy firm (PwC), are entitled "Swiss Sport GAAP". As the name indicates, they are based on GAAP (Generally Accepted Accounting Principles), adapted to the needs of Swiss sport following negotiations with the main stakeholders. The handbook contains numerous model documents which are ready for use. The federations recognised by Swiss Olympic must adopt this model for their accounts and annual balance sheet in order to continue to qualify for grants. Grants from the federal government, formerly paid directly to national federations by the Federal Sport Office, are in practice paid in full to Swiss Olympic, which is responsible for distributing them among its members on the basis of sporting and other criteria, including precisely the criterion of proper accounting which enables the use made of the grants received to be identified. A system of strategic annual discussions between Swiss Olympic and its member Olympic sport federations is now being set up. While maintaining federations' management autonomy, their umbrella association guarantees that the funds allocated by the federal state and other sources can be imputed, thanks to the Swiss Sport GAAP.



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## **Appendices**

Appendix 1

EPAS questionnaire on autonomy in sport in Europe

Appendix 2

Working document and Resolution No. 2 on autonomy in sport, adopted by the 11th Council of Europe Conference of Ministers responsible for Sport, Athens, 10-12 December 2008

Appendix 3

Chronological study of the Olympic Charter and a selection of documents issued by sports organisations with regard to the concept of autonomy

## **Appendix 1: EPAS questionnaire on autonomy in sport in Europe**

Strasbourg, 29 May 2008

Circular letter EPAS 1

*To the Heads of Delegation and observers to the Enlarged Partial Agreement on Sport (EPAS)*

cc. Permanent Representations

Subject: Questionnaire on autonomy in sport in Europe

Dear Delegate,

The Secretariat of EPAS has finalised the questionnaire on autonomy in sport in Europe adopted by the Bureau. This questionnaire comprises five approaches and aims to better understand the situation of autonomy in sport.

In order to gather the widest input for the 11th Council of Europe Conference of Ministers responsible for Sport which will be held in December, I kindly ask you to fill in the questionnaire and send it back by e-mail to Claire Fraser (claire.fraser@coe.int) before 30 June 2008.

Please also send this questionnaire to your national sports umbrella organisations in order to have their answers and thus broaden the results. Some organisations may have already received it through ENGSO; in this case, they do not have to fill it in again.

Yours sincerely,



Stanislas FROSSARD  
EPAS Executive Secretary



Strasbourg, 22 May 2008

EPAS (2008) 2rev

## **Enlarged Partial Agreement on Sport (EPAS)**

### **Questionnaire on autonomy in sport in Europe**

(to be filled out in French or English only and sent to the Secretariat by 30 June 2008)

#### **Categories of responding entity**

- A. Public authority in charge of sports policies
- B. National sport umbrella organisation   
(for example national sports confederation or national Olympic committee)
- C. International federation/organisation

#### **Contact person**

Organisation:

Country:

Mr  Ms

First name:

Surname:

Position:

Postal address:

Tel.:

Fax:

E-mail address:

Date:

## **Background**

The practice of physical and sporting activities in Europe is founded on a collection of positive individual and collective values that the Council of Europe has endeavoured to promote since the adoption of the European Sport for All Charter in 1976. Due to their changing nature, some of these values remain fragile and could even disappear from the culture of sport if we do not guard against their disappearance, as underlined by the 1999 "Helsinki report on sport".<sup>12</sup> It is therefore not surprising that the attention of politicians, legislators, administrators or sports executives may be drawn to their preservation from time to time.

The autonomy of the sports movement, or "sports autonomy" as some call it, is one of the elements whose protection or reinforcement is regularly solicited. The Council of Europe explicitly recommended it in 1986,<sup>13</sup> as did the heads of state and governments of the European Union in 2000.<sup>14</sup>

More recently, in January 2007, while the European Union was considering a modified treaty, the International Olympic Committee (IOC), through its president, Jacques Rogge, voiced the opinion that an "important reference to the autonomy of sports organisations [was] missing". Mr Rogge's letter was addressed to heads of state and to ministers for foreign affairs and sport, and invited their responses.

Shortly thereafter, Joseph Blatter, the president of the international football federation (FIFA), followed in Mr Rogge's footsteps. At a meeting in Zurich on Friday 5 October 2007, Mr Blatter made the following statement to an assembly of journalists from the largest European press agencies: "The president of the IOC, Jacques Rogge, sent a letter to the presidents of the European Union governments concerning the specificity of sports in general. FIFA completely supports the IOC on this subject. Our point of view is the following: we respect the national and international political organisations in their efforts to put into place laws in support of sports. But we ask, along with the IOC, that the political institutions respect the existing rules and statutes and allow sports organisations to maintain their autonomy."

These aspirations towards autonomy (or for more autonomy) at international level are legitimate in free societies. They are also expressed at national level. However, it is rare for this idea to be put forth so explicitly. It is therefore

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12. "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", Brussels, 10 December 1999, COM(1999)644 final.

13. New forms of collaboration in sport (seminar at Papendal, Netherlands, 1986).

14. Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies (Presidency Conclusions, Nice European Council Meeting, 7-9 December 2000, Annex IV).

reasonable to examine the meaning behind such a request, and to question its real and concrete dimensions in Europe, even the possibility of its evolution.

The present study aims to establish the current "state of play" with the goal of enabling informed political discussion on the matter at pan-European level.

As far as methodology goes, a survey by questionnaire will be carried out in June of governmental and non-governmental (sports confederations or national Olympic committees) sports authorities of the 25 countries who are party to the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe.<sup>15</sup>

The questionnaire comprises five approaches: (1) a conceptual study, (2) a political study, (3) a legal study, (4) a financial study, and (5) a psycho-sociological study.

1. The conceptual study aims to determine what governmental and non-governmental sports authorities understand by the concept of "autonomy".

2. The political study intends to establish whether, and in what terms, the concept of "sports autonomy" has appeared in political statements, speeches, documents, etc., from relevant government politicians or representatives from national sports confederations (in the course of the past 12 months).

3. The legal study concentrates on the inclusion of the concept of "autonomy of the sports movement" or "sports autonomy" in legal texts at national level, as well as relevant non-legal documents.

4. The financial study seeks to determine whether "financial autonomy" exists in European sports movements, and if so, how it is realised.

5. The psycho-sociological study has the objective of asking sports authorities to specify whether they consider that their national sports movement is "autonomous" (at the date of the questionnaire). And if that is the case, they are asked to place this autonomy on a quantitative scale. We shall also attempt to learn in what areas this "autonomy" could progress in the future.

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15. As at 22 May 2008: Andorra, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, Monaco, the Netherlands, Norway, San Marino, Serbia, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", and the United Kingdom.

## 0 – Preliminary question

Has your organisation previously responded to a survey on “the autonomy of the sports movement in Europe”?

Yes:

No:

If “yes”, please indicate:

- the year:
- the name of the organisation conducting the survey:
- and the title or main subject of the survey:

## 1 – Conceptual study

The conceptual study aims to determine what governments and sports authorities understand by the concept of “autonomy”.

People asked to spontaneously associate words with the name “Pierre de Coubertin” responded with the following terms: “Olympic Games”, “sport”, “aristocracy”, “modern pentathlon”, “20th century”, “France”, etc.

If you were to associate very rapidly and spontaneously between 5 and 10 words (or phrases) with the term “autonomy of the sports movement”, what would these words be?

1.1.1

1.1.2

1.1.3

1.1.4

1.1.5

1.1.6

1.1.7

1.1.8

1.1.9

1.1.10

## 2 – Political study

The political study intends to establish whether, and in what terms, the concept of “sports autonomy” has appeared in political statements, speeches, documents etc., from relevant government politicians or representatives from national sports confederations, (in the course of the past 12 months).

Question 2.1 to be answered only by public authorities and national sports organisations (cat. A and B)

2.1. What is the political trend of the party (or parties) currently in power in your country?

- left:
- centre left:
- centre :
- centre right:
- right:

Question 2.2 to be answered only by public authorities (cat. A)

2.2. Has there been any reference to the concept of “the autonomy of the sports movement” in political statements, speeches, etc. and/or relevant government documents (in the course of the past 12 months)?

Yes:

No:

If yes, can you (briefly) indicate in what context this reference was made?

Question 2.3 to be answered only by sports organisations and federations (cat. B and C)

2.3. Please indicate if there has been any reference to the “autonomy of the sports movement” in political declarations by those in charge of sports organisations or federations (in the course of the past 12 months), and/or relevant policy documents by the sports organisations or federations in your country.

Yes:

No:

If yes, can you (briefly) indicate in what context this reference was made?

Question 2.4 to be answered only by public authorities and national sports organisations (cat. A and B)

2.4. Has your country chosen to entrust the main part of the responsibility of physical activities and sports management to:

- a ministry and/or a secretariat of state or a state agency:
- a sports confederation or a national Olympic committee:
- to both of them:

### 3 – Legal study

The legal study concentrates on the inclusion of the concept of “autonomy of the sports movement” or “sports autonomy” in legislative texts at national level, as well as relevant non-legal documents.

Questions 3.1 to 3.7 to be answered only by public authorities and national sports organisations (cat. A and B)

3.1. Does your country’s constitution (or the fundamental law of your country) include a specific reference to sport or physical activity?

Yes:

No:

3.2. Does your country’s constitution (or the fundamental law of your country) include a specific reference to “the autonomy of sports”?

Yes:

No:

3.3. Does your country have a law (or several laws) specific to sport, or other legislation of relevance to sport (for example, association acts)?

Yes:

No:

3.4. Does the specific law (or laws) pertaining to sport, or other legislation of relevance to sport in your country, include a reference to “the autonomy of the sports movement” or “the autonomy of sport”?

Yes:

No:

3.5. If the answer to the previous question is “yes”:

Does the law (or laws) pertaining to sport, or other legislation of relevance to sport in your country, include a legal definition of “the autonomy of the sports movement” or “the autonomy of sports” or a reference to these concepts?

Yes:

No:

If “yes”, what is the definition (or reference)?

3.6. Are there other public documents, non-legal but with a relevance to the implementation of sports policies (for example, governmental programme on sport, governmental sports strategy), that would describe the status of sport

and/or “the autonomy of the sports movement” or “the autonomy of sports” in your country?

Yes:

No:

If “yes”, please describe:

3.7. Are there other non-public documents, documents with a relevance to the implementation of sports policies (for example, statute of the sports confederation, internal sports regulations, sports movement’s strategy) that would describe the legal status of sport and/or “the autonomy of the sports movement” or “the autonomy of sports” in your country?

Yes:

No:

If “yes”, please describe:

Question 3.8 to be answered only by international federations and organisations (cat. C)

3.8. Are there other non-public documents, documents with a relevance to the implementation of sports policies (for example, Olympic Charter, internal sports regulations, sports movement’s strategy) that would describe the status of sport and/or “the autonomy of the sports movement” or “the autonomy of sports” in your country?

Yes:

No:

If “yes”, please describe:

Questions 3.9 to 3.10 to be answered by all responding entities (cat. A, B and C)

3.9. A public law theory<sup>16</sup> definition concerning the autonomy of institutions stipulates that “it is the situation of communities or establishments having not got their full independence towards the State, they are part of and to which they are connected, but endowed with an entire internal freedom to govern themselves or to administrate themselves”.

With regard to that definition, do you consider the sports movement of your country (or in Europe, if you are cat. C) to be autonomous?

Yes:

No:

Comments:

16. Gérard Cornu, *Vocabulaire juridique*, PUF, Paris, 1987.

3.10. If you answered “no” to questions 3.4, 3.5 or 3.8, would you consider that a legal definition of “the autonomy of the sports movement” or a mention of “the autonomy of the sports movement” in a law or in other relevant documents would be useful:

at national level?

Yes:

No:

at European level (for example, in a political recommendation or in a treaty on sport)?

Yes:

No:

#### **4 – Financial study**

The financial study seeks to determine whether “financial autonomy” exists in European sports movements, and if so, how it is realised.

Questions 4.1 to 4.11 to be answered only by public authorities and national sports organisations (cat. A and B)

4.1. Please indicate how the term “financial autonomy of the sports movement” is defined or generally understood in your country/sports authority, and mention its main characteristics.

4.2. What are the main financial sources of the sports movement in your country? Please differentiate between various levels and parts of the sport sector, if relevant.

4.3. Can these financial sources be ranked by their order of importance?

Yes:

No:

If “yes”, what is their ranking? Please differentiate between various levels and parts of the sport sector, if relevant.

(a)

(b)

(c)

(d)

(e)

4.4. Does the sports movement in your country obtain financial support from the government?

Yes:

No:

4.5. Could the sports movement in your country continue to exist, as it is organised today, without financial support from the government?

Yes:

No:

Comments:

4.6. Would you say that, compared to the financial means at the disposal of the sports movement in your country, the amount of governmental financial support and consequently the “relative dependence” of the sports movement in your country on governmental financial support would be located between:

	Average degree of dependence of sports entities at national level (e.g. national federation, sports confederation)	Average degree of dependence of sports entities at regional level (e.g. regional sports association)	Average degree of dependence of sports entities at local level (e.g. local sports club)	Average relative dependence of all sports entities
0% and 25%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26% and 50%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51% and 75%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
76% and 100%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.7. In your country, are any sports sectors “strongly supported” by governmental subsidies and others “weakly supported”?

Yes:

No:

If you have answered “yes” could you please give:

- an example of a “strongly supported” sector:
- an example of a “weakly supported” sector:

4.8. Does the government give guidance on the use of the funds it places at the disposal of the sports movement in your country? (for example, allocation

of funds is defined by law, contract or decision for specific goals like elite sport, fight against doping, sport facilities, etc.)

Yes:

No:

If "yes", please explain:

4.9. If you answered "yes" to question 4.8, what is the percentage of the funds placed at the disposal of the sports movement in your country that can be used for needs identified by the sports movement?

0% and 25%

26% and 50%

51% and 75%

76% and 100%

4.10. Does the government control the management of the funds it places at the disposal of the sports movement in your country, for example, by setting conditions (for example, reporting requirements, auditing procedures, etc.)?

Yes:

No:

If "yes", please explain:

4.11. Can the sports movement in your country be defined as "financially autonomous"?

Yes:

No:

Please explain:

## 5 – Psycho-sociological study

The psycho-sociological study has the objective of asking sports authorities to specify whether they consider that their national sports movement is "autonomous" (at the date of the questionnaire), and if this is the case, they are asked to situate this autonomy on a quantitative scale. We shall also attempt to learn in what areas this "autonomy" could progress in the future.

5.1. On the whole, can the sports movement in your country or under your authority be described as "autonomous" at the present time?

Yes:

No:

Neither yes nor no:

5.2. Please elaborate on the answer given in 5.1 and include, if relevant, variations in the sports movement’s state of autonomy depending on the aspect of autonomy in question (political, legal, financial, etc.)

5.3. If you had to place “the autonomy of the sports movement” on a scale of 0 to 10, where a mark of 0 would represent “a total absence of autonomy” and a mark of 10 “complete autonomy”, what mark would “the autonomy of the sports movement” obtain in your country?

	Absence of autonomy										Complete autonomy
Political autonomy	0	1	2	3	4	5	6	7	8	9	10
Legal autonomy	0	1	2	3	4	5	6	7	8	9	10
Financial autonomy	0	1	2	3	4	5	6	7	8	9	10
Your overall rating of the autonomy of the sports movement in your country	0	1	2	3	4	5	6	7	8	9	10

Question 5.4 to be answered only by public authorities (cat. A)

5.4. If the sports movement in your country is not yet considered to be “completely autonomous”, what recommendations could be made in order for the sports movement to obtain more autonomy in the future?

Question 5.5 to be answered only by national sports organisations and international organisations and federations (cat. B and C)

5.5. If the sports movement in your country is not yet considered to be “completely autonomous”, what recommendations could be made in order for the sports movement to obtain more autonomy in the future?

5.6. This study has looked at five aspects of the sports movement autonomy (conceptual, political, legal, financial, psycho-sociological). Is there any other aspect of the sports movement autonomy which would be worth exploring?

Yes:

No:

If “yes”, what would it be?

## **Appendix 2: Working document and Resolution No. 2 on autonomy in sport adopted by the 11th Council of Europe Conference of Ministers responsible for Sport, Athens, 10-12 December 2008**

### **Working document and preliminary points for discussion**

#### *Introduction*

The concept of the autonomy of sports organisations, particularly national Olympic committees (NOCs), was clearly identified by the Olympic Movement back in the 1950s, and by European intergovernmental organisations from the 1990s onwards. It has been regularly reaffirmed in the new millennium by both parties. The lack of development and absence of a definition of the concept in both sports and government organisations' documents is, nevertheless, striking.

Furthermore, notwithstanding affirmations of autonomy made by both sports organisations and public authorities, there have been many examples of interference in the rules associated with the holding of sports competitions, interference not only by governments, but also by sports organisations and athletes, no longer showing any reluctance to appeal to national or European courts. Although such action is sometimes justified, it entails genuine losses of autonomy for sport.

The question of relations between non-governmental organisations (NGOs) and states is within the Council of Europe's remit, since it is covered by the European Convention on Human Rights (Article 10 – Freedom of association), and as many rules and recommendations have been adopted on the status of NGOs and their relations with the public authorities (one example being the Fundamental Principles on the Status of Non-Governmental Organisations in Europe). In the sport sector, the Council of Europe attaches great importance to the autonomy of the sport movement. Autonomy is one of the principles underlying decisions by the sport movement, according to the Council of Europe's European Sport Charter, which is the reference point for the development of sport policies.

Aware of the difficulties arising in the absence of a common and harmonious perception of the concept of sports autonomy, the Enlarged Partial Agreement on Sport (EPAS) invites the 11th Council of Europe Conference of Ministers responsible for Sport to acquaint itself with EPAS' work and to discuss the question of sports autonomy.

### *The situation in EPAS member states*

In May 2008, the EPAS Secretariat, as proposed by France, distributed to sports authorities in the 25 EPAS member states, both governmental (ministries, state secretariats, etc.) and non-governmental (sports confederations, national Olympic committees) a questionnaire on autonomy in sport in Europe. The questionnaire covered five dimensions:

1. conceptual: interpretation of what is meant by "autonomy";
2. political: frequency and circumstances of references to autonomy by political and sports officials;
3. legal: references to autonomy in legislative and regulatory texts;
4. financial: interpretation of the concept of financial autonomy for the sports movement;
5. psycho-sociological: perception of the degree of autonomy of the sports movement.

By 1 August 2008, replies had been received from the public authorities responsible for sport in almost all 25 EPAS member states, as well as from some countries not currently members. The total was 26 replies, 80% of which had come from EPAS members. At that same date, six international and European sports federations had replied, as had four national Olympic committees (NOCs), six sports confederations and several national federations, totalling 23. The low number of replies and the disparity between the respondent sports organisations mean that representative findings cannot be extrapolated, but a qualitative analysis of the replies does reveal some tendencies.

On the conceptual level, the replies showed that few public sports authorities offered a definition of autonomy. The concepts most frequently associated with autonomy were independence, sports organisation/sports movement, democracy, freedom and self-governance.

The idea most frequently cited by sports organisations was that of independence from governments and from national or supranational political authorities. Such independence, however, was not taken to entail hermetically sealed partitioning, for major international federations wished for more consultation with public authorities.

On the political level, references to sports autonomy were found to have been made during the past year in government statements or official documents in almost two-thirds of respondent countries, without any correlation between governments' political leaning and the frequency of statements. Thus the subject does seem to be on Europe's "political agenda".

Half of respondents from the sports movement said that the question of autonomy in sport had been mentioned in their officials' statements during

the previous 12 months. Several organisations referred to the relevant work of the International Olympic Committee (IOC) or NOCs. Finally, some sports organisations expressed regret that the EU White Paper on Sport had not said more about the question. These few indications confirmed the currency of the subject.

On the legal level, while half of responding states had a constitution which referred to sport, it was rare for sports autonomy to be mentioned. On the other hand, in approximately half of the countries where a law on sport existed, that law mentioned the autonomy of the sports movement, and it very often contained a legal definition of that autonomy. In spite of these divergent replies, virtually all public authorities took the view that the sports movement in their country was legally autonomous.

Among representatives of the sports movement, virtually all respondents said that the sports movement was legally autonomous in their country or in Europe. Most said that it would be useful for a definition of autonomy to be given in the rules governing sport at national or European level. Such a reference would usefully supplement the texts on autonomy in half the respondent countries. Some major international and European team sport federations said that legal autonomy was threatened by the European capacity to harmonise certain rules internationally, on the basis of public international law or Community law, sometimes leading to transfers of powers from the sports movement to public authorities. Consequently, this concept of legal autonomy needed to be defined Europe-wide, so as to strike the right balance.

On the financial level, all respondent states gave their sports movement financial support, without which, in most cases, it would exist on a far more modest scale. According to the public authorities in three quarters of respondent states, however, this assistance did not compromise the sports movement's financial autonomy. States nevertheless controlled the funds made available with a greater or lesser degree of sophistication, with the exception of a few countries which did not exercise any control.

All the respondent sports organisations acknowledged that the government provided sport with financial support and, in most cases, gave instructions as to the use of these subsidies. Most sports confederations took the view that the sports movement could not survive without public funding. Several organisations emphasised the need to generate their own resources more autonomously, particularly through commercial or television rights. UEFA nevertheless said that strong financial autonomy, if it was the result of extreme commercialisation of sports organisations (particularly clubs), could also have the effect of reducing national and international sports organisations' autonomy. The pursuit of profit could in fact be to the detriment of social objectives and of the development of sport which was the aim of the sports movement.

On the psycho-sociological level, three quarters of the countries which replied said that their sports movement was autonomous, the other quarter considering that it was only partly so. The public authority in a few countries considered that sport was not autonomous at all, while one government said that its sports movement was too autonomous.

Most sports organisations described their own degree of autonomy as somewhere between "complete autonomy" and "partial autonomy", especially in respect of financial aspects. Some of them emphasised that financial autonomy was not their aim, particularly in respect of the building and running of sports facilities: it was only autonomy in terms of governance that they demanded.

A historical study shows that the autonomy of the sports movement has suffered on several occasions in recent years. An analysis of the replies submitted to the questionnaire, however, gives a clearer view of the situation. They reveal the diversity of the approaches taken to the subject of autonomy. The great majority of sports organisations and public authorities responsible for sport in European states do not regard autonomy as under threat, other than, to a certain extent, financially. Furthermore, the international federations (IFs) which replied complain of a lack of legal autonomy, mainly vis-à-vis Community law.

#### *An attempted definition*

Having analysed the references made to the concept of autonomy, and on the basis of the replies submitted to the questionnaire and a study of the disputes that have arisen, and noting that no attempt has ever been made by any international organisation to offer a definition, the EPAS proposes to refer to the draft definition below in future discussions.

The autonomy of sport is, within the framework of national and international law, the possibility for non-governmental non-profit-making sports organisations to:

1. establish, amend and interpret rules appropriate to their sport freely, without undue political or economic influence;
2. choose their leaders democratically, without interference by states or third parties;
3. obtain adequate funds from public or other sources, without disproportionate obligations;
4. use these funds to achieve objectives and carry on activities chosen without severe external constraints;
5. in consultation with the public authorities, contribute to the drafting of legitimate standards proportionate to the fulfilment of these objectives.

This definition is intended to be applied to non-profit-making non-governmental sports organisations such as the International Olympic Committee (IOC), international federations (IFs), European federations, national and regional federations and sports clubs, all private entities legally independent of public and commercial authorities. Such organisations regulate sport in Europe and worldwide, and therefore aspire to have their autonomy recognised in national, European and international law. It is, on the other hand, inconceivable to absolve these organisations from the obligation to comply with the general and objective rules which, in the context of the rule of law, apply to all subjects of law. It is nevertheless desirable to recognise, for the sports movement as for other communities (particularly religious ones), a form of transnational legal organisation which relieves states of concerns which are not among their prime responsibilities, and which, in accordance with the principle of subsidiarity, can be more appropriately dealt with by organisations closer to the persons concerned.

*The possibility freely to establish, amend and interpret rules appropriate to their sport, without undue political or economic influence*

This aspect of autonomy relates firstly to the freedom to adopt, amend and interpret “rules of sport”, meaning the rules of the game, competition rules and club rules. Such rules, which underpin sports activities, must be adopted following consultation of the interested parties by the bodies created under the statutes for this purpose, and must be in accordance with public policy and the general principles of law. They must also be interpreted firstly by impartial judges or referees/umpires at sports venues, and subsequently by transparent disciplinary bodies, against whose decisions appeals may be made to arbitration bodies, in so far as these are allowed by the domestic legislation in force, or to national courts, in cases which are required to be dealt with by national courts. The autonomy of sport therefore encompasses self-regulation by sports organisations, namely the production and supervision of their own rules concerning first and foremost their members.

*The possibility to choose their leaders democratically, without interference by states or third parties*

Here it is the importance of the democratic appointment of sports clubs’ leaders at every level that is underlined, since cases of interference by local or national government are regularly reported. No influence should be brought to bear by third parties (media, sponsors, investors, etc.), which must be kept out of the election of such officials. Autonomy also requires holding regular elections which are representative of the stakeholders, in accordance with the principles of good governance. Rules should be drawn up making certain public offices incompatible with certain posts in sport, so that organisations’ independence goes hand in hand with that of their leaders.

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*The possibility to obtain adequate funds from public or other sources, without disproportionate obligations*

This aspect relates to financial autonomy, emphasising that there is no true autonomy unless access is possible to financial resources. Such resources, however, whether they come from the public or the private sector, must not bring with them major constraints for sports organisations. If we view the matter from this angle, it would be interesting to apply the concept of a consideration to be supplied by sports organisations to the public authorities which subsidise them, as in the context of sponsorship contracts. Such a consideration may be set out in agreements on objectives or in similar documents. Self-regulation of the sports sector in accordance with the principles of good governance is already in itself a worthwhile consideration for the public sector, which is thereby relieved of non-sovereign duties.

*The possibility to use these funds to achieve objectives and carry on activities chosen without severe external constraints*

This suggestion contrasts with the previous aspect, emphasising the importance for sports organisations of setting themselves objectives and carrying out (sports) activities without being used as instruments by their public or private sources of funding. The autonomy of sport must make it possible to pursue purely sporting objectives, especially in terms of the development of the sport itself and its practitioners. Interference is sometimes political, but commercial influence, as exerted when the rules of the game are altered to make a sport more telegenic, should not be overlooked. And it is precisely such media and commercial interests which have caused the intrusion into sport of Community law. The role of sponsors, media, investors in sport, etc., should not therefore be overlooked when we defend sports autonomy.

*The possibility, in consultation with the public authorities, to contribute to the drafting of legitimate standards proportionate to the fulfilment of these objectives*

Finally, autonomy can clearly arise out of co-operation, co-ordination, consultation, and even negotiation between the parties far more than if the different parties ignore each other. This is true at local, as at national, level. It deserves to be even more true at European level. It echoes the first aspect, for, after consultation and the adoption of soft law instruments by the public authorities, the rules of sport can be amended with a view to avoiding legal disputes.

*Conclusion*

It can be said that autonomy is one of the fundamental criteria for a modern model of sports organisation, and as one of the features of the European sport model. There is good reason for the public authorities to recognise the

autonomy of the sports movement, for autonomy allows it to organise better within the context of its federations than it could under the leadership of the public authorities, so as to offer sports activities to the public and thereby create the public benefits expected of it (public health, education, social integration, etc.). This is a praiseworthy principle, which is socio-economically justifiable in developed societies. Today, however, this principle clashes with the increasing complexity of the international and Olympic systems and with the growing economic dimension of sport, which unquestionably facilitates its financial autonomy, but also entails new risks due to the involvement of third parties (sponsors, media, investors, gamblers, and so on).

Faced with a changing environment, sports organisations and states must continue their dialogue in order to define the concept of autonomy, while bearing in mind the fact that this model will have to be applicable in varying situations. At European level the Council of Europe could very well be the appropriate intergovernmental organisation within which to discuss and implement such a model, since its geographical scope and its membership in practice coincide with those of European federations and confederations for the various sports.

The ministers are invited to discuss a few questions connected with autonomy in sport:

- How are the expectations of the sports movement to be reconciled with the public authorities' approach to sport?
- In view of the diversity of approaches and practices, is it possible to adopt a recommendation in support of autonomy for the sports movement?
- Which good practices could be promoted in order to uphold and strengthen the autonomy of the sports movement?

## **Resolution No. 2 on autonomy in sport**

The European ministers responsible for sport, meeting in Athens for their 11th conference:

- Convinced of the need to determine the fundamental principles that should be incorporated in a general policy for autonomy of the sport movement;
- Conscious of the substantial work done previously by the Committee for the Development of Sport (CDDS) in developing policies designed to promote in practice the autonomous functioning of the sport movement;
- Remembering the conclusions relative to autonomy as represented in Resolution 1602 (2008) 1 "The need to preserve the European sports model" adopted on 24 January 2008 by the Parliamentary Assembly of the Council of Europe;

- 
- Aware that the concept of autonomy of the sport movement covers different realities depending on cultures and organisational models and wishing to respect this diversity;
  - Welcoming the work done in Europe to prepare position papers and studies on autonomy in sport, whether at the initiative of governments, international organisations or the sport movement;
  - Considering that non-governmental sports organisations (whether at international, European or national level) are key players for the development and continued survival of democratic sport, and also make a unique contribution to the realisation of societies based on the rule of law, pluralist democracy and respect for human rights – which are the guiding principles of the Council of Europe;
  - Reaffirming their commitment to the principles of good governance in sport and reiterating that the implementation of principles such as democracy, accountability, fairness, solidarity and transparency is key to widening the popularity of sport and strengthening the position of sports NGOs in civil society;
    - Note with satisfaction the research conducted in the context of the EPAS concerning the autonomy of sport in Europe;
    - Consider the proposed definition to be a useful contribution to the political debate on autonomy of sport;
    - Invite the EPAS to expand its research on autonomy to all member states of the European Cultural Convention of the Council of Europe and to complete it with examples of good practice, with a view to its publication in paper and electronic version;
    - Invite countries and sports organisations which have not yet done so to complete the questionnaire on autonomy in sport so as to help broaden this study;
    - Reiterate their view that as part of the autonomy of sport, the specific features of sports should be properly taken into account when law (international, European or national) is applied on sporting issues;
    - Suggest to the EPAS that the joint meetings between the public authorities and the sport movement be used to discuss:
      - the various positions on the question of autonomy;
      - subjects of dispute;
      - the possibility of promoting, at European level, a definition of autonomy;
      - potential operational indicators specifying this definition, making it possible to analyse and discuss practices;

- Welcome the invitation of the Czech Republic, in the framework of its European Union presidency, to co-operate in future works on the issue of autonomy.

Athens, 10-12 December 2008

### **Appendix 3: Chronological study of the Olympic Charter and a selection of documents issued by sports organisations with regard to the concept of autonomy**

(Particular references to the concept of autonomy are in italics.)

#### **Documents from the IOC**

*1946: Olympic Charter – No reference to the notion of autonomy*

“National committees must be constituted so as to include representatives of the national governing bodies as well as the members of the International Olympic Committee of that country.”

*1949: First appearance of the notion of autonomy in the Olympic Charter*

“Article 25: A National Olympic Committee recognized as such by the International Olympic Committee must fulfil the following requirements: It should include in its organization representatives of all national governing bodies in that country whose sport is included in the Olympic Program, it must include among its members the Members of the International Olympic Committee of that country, it must recognize not more than one body or association in its own country as the National Governing Body of a sport which is the body recognized by the International Federation of that Sport, it shall be the official for all Olympic matters in its own country. All arrangements concerning its taking part in the Olympic Games and all communications on such matters shall be addressed to it. It must be *independent and autonomous*.”

*1955: Olympic Charter – Direct reference to the notion of autonomy*

...

“Article 24: *National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence*. Because of the importance of National Olympic Committees which are in complete charge of the Olympic Movement in their countries, great care must be exercised in choosing members, who should be men of good standing, upright character, sound judgment, independent mind, and a knowledge and belief in Olympic Principles.”

*1956: Olympic Charter*

“Articles 24 and 25: *National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence*.”

*1958: Olympic Charter*

"Article 24: Because of the importance of National Olympic Committees which are in complete charge of the Olympic Movement in their countries, great care must be exercised in choosing members, who should be men of good standing, upright character, sound judgment, independent mind, and a knowledge and belief in Olympic Principles..."

Article 25: *National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence. National Olympic Committees that do not conform to the Rules and regulations of the International Olympic Committee forfeit their recognition and consequently their right to send participants to the Olympic Games."*

*1962: Olympic Charter*

"Article 25: *National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence. National Olympic Committees that do not conform to the Rules and regulations of the International Olympic Committee forfeit their recognition and consequently their right to send participants to the Olympic Games."*

*1966: Olympic Charter*

Similar text as in Olympic Charter 1962. See Article 10, Recruitment of IOC members:

"Members of the IOC will not accept from governments, organizations, or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote."

*1968: Model constitution for National Olympic Committees (this model constitution was prepared and drafted as a guide for NOCs)*

"Article VI, General Provisions: Number 4: It is the duty of the members of this Olympic Committee, when there is no member of the International Olympic Committee in the country, to report to the International Olympic Committee, in the event of any regulation or actions of this Committee conflicting with International Olympic Committee Rules or of *any political interference* in its operations.

The President of the International Olympic Committee has the power to appoint a member from another country to investigate and report."

"Number 5: National Olympic Committees must be *completely independent and autonomous and entirely removed from political, religious or commercial influence to conform to the Rules and regulations of the IOC.*

National Olympic Committees that do not conform to the Rules and regulations of the International Olympic Committee forfeit their recognition and consequently their right to send participants to the Olympic Games.”

*1971: Olympic Charter*

I. Fundamental principles 7: Only citizens of a country or area in which a National Olympic Committee recognized by the I.O.C. operates, are qualified to participate in the Olympic Games under the colours of that country or area. Recognition of a National Olympic Committee in such a country or area: 1. Does not imply political recognition. 2. Is dependent on the country or area having had a stable government for a reasonable period.

II. The IOC – Recruitment 11: Members of the IOC represent and promote the interests of the IOC and of the Olympic Movement in their countries and in the organizations of the Olympic Movement in which they serve. Members of the IOC will not accept from governments, organizations, or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote.

III. NOCs – Article 24 paragraph 4: *National Olympic Committees must not associate themselves with affairs of a political or commercial nature.*

Article 24 paragraph 11: Governments or other public authorities shall not designate any members of an NOC.

... In case the acts or regulations of a National Olympic Committee might be in contradiction with the Olympic Rules, or might be the object of *any political interference*, the IOC Member of that country must address a report on the situation to his president in order to take appropriate measures.”

“Article 25: National Olympic Committees must be *completely independent and autonomous and must resist all political, religious or commercial pressures*. National Olympic Committees that not conform to the rules and regulations of the International Olympic Committee forfeit their recognition and consequently their right to send participants to the Olympic Games.”

*1989: Olympic Charter*

“III. Article 24. C. Autonomy: *NOC must be autonomous and must resist all pressures of any kind whatsoever, whether of a political, religious or economic nature*. In pursuing their objectives, NOCs may co-operate with private or government organizations. However, they must never associate themselves with any undertaking which would be in conflict with the principles of the Olympic Movement and with the Rules of the IOC.”

“Bye-Law number 11: Governments shall not designate any member of an NOC...”

"Bye-Law number 13 to Rule 24: NOCs are recommended: *to raise funds to enable them to maintain their full independence, in particular from the government of their country or from any other organization that controls sport in the country. Fund raising must however be undertaken in a manner that preserves the dignity and independence of the NOC from commercial organizations.*"

#### *2002: Establishment of the IOC International Relations Commission*

"The International Relations Commission was established in 2002, with a mandate to facilitate and promote the relationship between the Olympic Movement, particularly the International Olympic Committee (IOC) and National Olympic Committees (NOCs), and governments and public authorities. It uses the network of relations and expertise of its members, who have all had, or currently hold, a political function in their respective country or region at different levels, to strengthen existing dialogue and co-operation, and to contribute to resolving conflicts when possible. Although *independent and autonomous*, the IOC, NOCs and IFs have worked for the establishment of strong partnerships with governments to ensure the coherent and long-term development of sport world-wide.

In this framework, the Commission supports the communications efforts made by the IOC in providing information on its policies, actions and mandate with respect to governments, as well as international, regional and national governmental organisations. It also prepares position papers on specific political issues related to sport and advises the IOC President and the Executive Board accordingly. It works in close co-operation with the IOC Department of International Cooperation and Development and the Department of NOC Relations. The Commission meets once a year."

#### *2004: Olympic Charter*

"Article 16: Members: 1. Composition of the IOC: 1.5 Members of the IOC will not accept from governments, organizations, or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote."

"Article 28: Mission and Role of the NOCs:

Number 5: In order to fulfil their mission, the NOCs may co-operate with governmental bodies, with which they shall achieve harmonious relations. However, they shall not associate themselves with any activity which would be in contradiction with the Olympic Charter. The NOCs may also co-operate with non-governmental bodies.

Number 6: The NOCs must *preserve their autonomy* and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Olympic Charter."

“Article 29: Composition of the NOCs: Number 4: Governments or other public authorities shall not designate any members of an NOC. However, an NOC may decide, at its discretion, to elect as members representatives of such authorities.”

“Bye-Law number 3.4 to Rule 29: It is recommended that NOCs: seek sources of financing in a manner compatible with the fundamental principles of Olympism.”

## **Documents from sports organisations other than the IOC**

*27 March 2003: UEFA press release “Associations want legal framework”*

“Europe’s national football associations have adopted a resolution calling for a firm legal framework for sport in future European Union legislation.

### *Unanimous acceptance*

The resolution was adopted unanimously by the 52 UEFA member associations at the XXVII Ordinary UEFA Congress in Rome on Thursday, following a speech by Per Ravn Omdal, UEFA vice-president and president of the Norwegian Football Association.

### *Legal recognition*

In his speech [...] Mr Omdal said that UEFA’s objective was to enshrine the legal recognition of the specific nature of sport in a future EU Treaty, and to protect the *autonomy* of European sport’s governing bodies. This is to enable them to do their job properly, free from unnecessary interference from political authorities at national and European level.

### *Key principles*

The Congress resolution gave support to key principles promoted by UEFA, such as solidarity and links between football’s élite and grassroots, education and training of young players, integrity of competitions, the fight against racism and drug abuse, and protecting the specificities of sport and the *autonomy of governing bodies*.

### *New challenge*

‘The new challenge we face today concerns the legal basis of sport in the EU Treaty,’ said Mr Omdal, ‘As we speak, the Convention on the Future of Europe has already begun drafting the EU’s new Constitutional Treaty, which Europe’s leaders will be debating throughout 2004 and perhaps beyond. Part of this Treaty could potentially contain a new legal basis for sport – it is no exaggeration to say that the outcome of the discussions and the nature of the final text may have profound implications for the future of sport in Europe.’

*Clear, stable and consistent*

Mr Omdal explained that the aim of UEFA and its associations was a legal framework in the new EU Treaty that was clear, stable and consistent, which should give a firm legal base to the principles set out in the Nice Declaration issued by European heads of state in December 2000.

*[Greater] legal certainty*

'This is not about obtaining an exemption from EU or national law,' he said. 'We are not, and should never be above the law. What we do need is a greater legal certainty. The good and proper running of football demands a proper framework for sport in EU law.' UEFA's working group on EU matters has held a number of high-level meetings with EU ministers and officials in recent months to put over the European body's point of view, and Mr Omdal said that the ministers had been sympathetic to UEFA's arguments.

*Vital contribution*

'Our efforts will not cease until we have achieved our aims,' Mr Omdal stressed to the associations. 'Over the coming weeks, we can all make a vital contribution to the discussions in the European Convention and in our national governments. UEFA's 52 members give us the political legitimacy and the ability to approach every member of the European Convention, as well as every EU member state – old and new.'

*Important step*

UEFA will be contacting its member associations in the coming days to inform them how each country could make an individual contribution at national level to achieving the European body's objective. 'Now is the moment when the European Convention will be drafting the new Treaty provisions relating to sport,' said Mr Omdal. 'The resolution is an important step in our campaign to give sport in Europe a better legal base for the future'."

*2 July 2003: Statement by UEFA Chief Executive Officer Gerhard Aigner*

"The specificity of sport, which distinguishes it from other types of economic activity, and the *autonomy of governing bodies* need to be protected. At the moment EU law is not providing the right legal framework."

*April 2005: UEFA, Vision Europe*

*"3.1.2 European Football – Governance and structures*

A future legal environment and sports-law jurisprudence shaped by UEFA and the values of European football, leading to legal certainty and full judicial recognition of the *autonomy of sports structures* and the specificity of sport.

...

Football is able to work in different legal contexts as long as the autonomy of the football movement and its structures is respected.

...

UEFA believes that the football structures should be constructed, as much as possible, with properly functioning, clean democracies including consultative structures open to all key stakeholders. In order for the football family to justify both its *autonomy and the specificity of sport*, and to maintain our legitimacy as governing bodies, we need properly functioning clean democracies with transparent principles.

...

#### 6.1.6. Political intervention in football

Selected option: UEFA and the member associations to work towards full independence and autonomy for the football family. A formal policy should also be elaborated in order to:

- ensure members are treated in the same way;
- identify certain types of political intervention/influence as clearly prohibited;
- identify other types of intervention/influence to be treated on a case by case basis, taking into account the request of the member association concerned;
- ensure that any actions are well co-ordinated with FIFA; and
- to recognise that the political authorities also play an important role as a partner in supporting European sport/football.

Rationale: It is important that all members are treated in the same way when cases of political intervention occur.

In addition to the above actions, the adoption of standard statutes by member associations should assist the situation, as should increased transparency, accountability, absence of corruption, democracy and solidarity as discussed elsewhere."

*28 April 2005: FIFA Press Release – FIFA and IOC discuss common ground.*

...

"Both Presidents considered their joint efforts for the *autonomy of sport and protection against governmental interference* to be very important. In recent years, FIFA has noted that such interference occurs increasingly in an ever more sophisticated manner. The IOC and FIFA deem it crucial to continue

and reinforce their co-operation for the *preservation of sports autonomy* with a view to convincing other international federations to join them in their efforts.”

*2006: Independent European Sport Review*

Direct and indirect references to the concept of autonomy.

*2-5 April 2006: The XV ANOC General Assembly that met in Seoul, capital city of the Republic of Korea, adopted the following resolution*

...

“4. Relations between NOCs and governments

4.3. To maintain a firm position in the defence of the National Olympic Committees’ *independence and autonomy*, facing up to any type of interference or intervention on the part of governmental sports authorities which would go against such *independence and autonomy*.”

*20 September 2006: Common statement by certain European team sport federations*

“European Commission White Paper project on sport welcomed. The European team sport federations of football (UEFA), basketball (FIBA Europe), handball (EHF), ice hockey (IIHF) and volleyball (CEV) have today met in Brussels to discuss important matters related to the future of European sport and issued the following statement:

“1. The team sport federations welcome and support the Independent European Sport Review as a concrete expression of how to implement the content of the Nice Declaration on the Specific Characteristics of sport approved by the EU Heads of State in 2000 and the Amsterdam Treaty Declaration on sport from 1997.

2. Sport is a social expression – not a business like any other – and fulfils a unique social, educational and cultural role which benefits society as a whole.

3. The European Sports Model, including the pyramid structure and as defined in more detail in the Independent European Sport Review, is currently under threat and must be preserved.

4. *The autonomy and independence of sports governing bodies*, underpinned by good governance, to manage their own sports are crucial for the future development of sport in Europe.”

*21-22 September 2006: Resolutions of the first seminar on the autonomy of the Olympic and sport movement*

"Meeting in Lausanne on 21 and 22 September 2006, representatives of the IOC led by their President, representatives of the International Olympic Sports Federations led by the ASOIF and AIOWF Presidents, representatives of the NOCs from throughout the world led by the ANOC President, as well as representatives of the ARISF, GAISF and IPC agreed:

...3. To underline that the autonomy of the Olympic Movement and all its constituents is essential in order to guarantee the preservation of its inherent values, all of which are at the service of improvement of individuals and society in general; of particular importance is to protect the integrity of sport competition. This is why all the attending organisations will strive to ensure the best possible maintenance of these principles, which should provide for their increased efficiency, better service to society and good governance.

4. To emphasise that nowadays the development of sport necessarily results in collaboration with governments and supranational governmental organisations, the role of which is fundamental. The Olympic Movement desires full and harmonious co-operation with these associations based on the mutual *respect of the autonomy of the respective structures and organisations...*"

*28 September 2006: FIFA media release, "Full FIFA support for resolutions of IOC seminar on sports autonomy"*

"FIFA wishes to stress its full support for the resolutions adopted during the First Seminar on the Autonomy of the Olympic and Sports Movement, held on 21-22 September in Lausanne and attended by IOC President Jacques Rogge, representatives of the international federations of 28 out of the 35 Olympic sports (in most cases the Presidents), 22 National Olympic Committee leaders and several IOC members.

*The autonomy of sport is essential* in order to preserve the integrity of all competitions and the values of solidarity and democracy within the sporting world. We must avoid the interference of external influences which often have interests other than the purely sporting ones, whether economic, political or countless others,' indicated FIFA President Joseph S. Blatter, the keynote speaker during the opening of the seminar.

'But we must also note that *this autonomy* brings with it the *obligation for good governance by the sporting authorities*, promoting transparency and open-mindedness. In order to find the best solutions, we need dialogue and co-operation with all the parties involved, especially with governmental authorities, always *respecting the mutual competences of each entity*,' he added. The action plan and resolutions adopted during the meetings can be viewed on the official website of the International Olympic Committee (IOC)."

*18 October 2006: FIFA media release, "Unanimous appeal to defend the autonomy of football"*

*"Meeting in Zurich today (18 October 2006) under the chairmanship of Dr. Viacheslav Koloskov (Russia), the FIFA Associations Committee launched a vigorous appeal for international solidarity to defend the autonomy of sport and particularly football."*

*20 October 2006: UEFA media release,  
"UEFA backs final Independent European Sport Review.  
Revised review launched at European Sports Ministers meeting  
in Moscow"<sup>17</sup>*

*"UEFA has today fully endorsed, and repeated its commitment to, the finalised Independent European Sport Review (Independent Review) at its launch today at a meeting of 49 European Sports Ministers in Moscow.*

This final report has taken into account feedback received from key stakeholders, following the original launch of the Independent Review at the end of May of 2006, and is a significant step forward in the European dialogue on the future of sport.

Speaking in Moscow UEFA President, Lennart Johansson, said: 'The work of the Independent Review is to be welcomed and will help football face the challenges ahead. The final report represents a significant step forward in the European dialogue on the future of sport and offers a real opportunity to gain proper recognition for the specificity of sport.' Sport, and football in particular, faces turbulent times. In football, wealth is steadily being concentrated in the hands of a minority, there is a lack of financial transparency within parts of the game, clubs and individuals are increasingly challenging sporting rules and governing bodies in the law courts and sporting values as a whole are under threat.

Sports governing bodies therefore need legal certainty to address these key issues. If they are unable to set the rules of the game, sport will become a free-for-all where the richest can buy success. To counter this trend UEFA is convinced that as the governing body of European football it must seek to work hand-in-hand with the appropriate political bodies. For European problems we need European solutions, which is why UEFA is seeking a partnership with the EU to assist in tackling these issues. Sport is not above the law and its governing bodies must respect the law of the land, but our governments and regulators should recognise sport's specificity. Sport is unlike any other

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17. This press release should be read in conjunction with the press release of 23 October 2006 in the French version of this publication.

economic activity and does not operate to 'normal' commercial rules. In football the very basis of the leagues and competitions could not exist without other teams taking part: competing teams need each other, and they all have an interest in the unpredictable nature of the sport. This explains the autonomy of European sport. It is a massive social movement that has organised itself from the very beginning.

However, to earn this autonomy sports bodies must provide good governance, work for the good of all stakeholders and adopt measures to promote competition on the field of play. In football these include a licensing system to ensure financial transparency, central marketing of media rights, redistribution of revenues down to the grassroots, relegation and promotion between leagues and rules to encourage training of young players. UEFA has adopted all of these policies in recent years.

The European sports model, a pyramid where the money from the elite at the top trickles down to feed the grassroots at the bottom, is at stake here. UEFA fully believes that the Independent Review offers a way forward on all these issues and can contribute to the future well-being of European sport and football in particular."

*9 May 2007: Joint statement by UEFA and the European governing bodies of basketball, handball and volleyball defending the existing model of sport in Europe*

"Recent and upcoming EU court cases could have a very damaging effect on all sports across Europe. These cases could effectively hand the definition of sports rules from sport itself to the judges in the European Court of Justice. Sport, including its social, educational and cultural features, would risk being treated exactly like any profit-making business.

...

European sport is not asking for an exemption from the law or to be above the law.

European sport is, however, asking the EU, after more than 30 years of cases and challenges, to finally provide the necessary legal certainty and stability – which will not exist until there is a clear legal recognition of the specificity of sport.

...

We believe that the overwhelming majority of sports fans across Europe want to see competitive and balanced competitions. They want to see strong national team competitions as well as exciting club competitions. They want to see local young talent being developed and given a chance. They want

to see promotion and relegation and no breakaway leagues. They do not want their sport to be run by businessmen and judges.

...

In conclusion, the European team sports reiterate their support for the EU White Paper on Sport, provided that it fulfils its original purpose – namely to outline concrete measures to implement the Nice Declaration.”

*23 May 2007: Article from UEFA website, “European Sports Model Study”*

“The Strasbourg-based Council of Europe is to launch a study into the European Sports Model, and discuss the need to preserve this model within the modern-day sports environment.

#### *Motion for a resolution*

The study follows a motion for a resolution presented to the Council’s Parliamentary Assembly by, among others, José Luis Arnaut, the senior Portuguese politician who chaired the Independent European Sport Review which was issued last year, and which put forward a series of crucial recommendations for the well-being of football in Europe.

#### *Deeply rooted*

The motion argues that the European Sports Model is deeply rooted in European civil society and is an important expression of our culture and attitude towards sporting values. It is, the motion says, a democratic model that serves to ensure sport remains open to everyone – the model resembles a pyramid structure, with grassroots and clubs constituting the base of the pyramid and offering maximum scope for local participation.

#### *Twin principles*

The motion explains that European Sports Model, based on this pyramid structure, is underpinned by the twin principles of financial solidarity and promotion and relegation. It adds that sport has a specific nature that sets it apart from any other field of business activity. ‘Sport has important social, educational and cultural functions. It recognises that solidarity between different levels in sport (in particular, between professional and amateur) is a fundamental aspect of sport,’ the motion says.

The motion quoted in UEFA’s news article goes on to say: ‘The independent nature of sports bodies should be supported and protected and their autonomy to organise the sport for which they are responsible should be recognised. The federation should continue to be the key form of sporting organisation providing a guarantee of cohesion and participatory democracy.’”

*15 June 2007: Joint statement of UEFA and the European governing bodies of basketball, handball and volleyball to defend the existing model of sport in Europe*

"We have been able to read a draft of the White Paper and the principal reaction is one of deep disappointment. We have discovered a lengthy document that simply describes the current situation but unfortunately adopts a very timid and indecisive attitude towards the key issues. The draft addresses neither the autonomy of sport, nor implementing legal stability in sport, nor any co-operation in addressing criminal issues in society which may find expression through sport."

*11 July 2007: Joint statement by the IOC and FIFA – European Union White Paper on Sport: Much work remains to be done*

"The Olympic and sport movement acknowledges the publication of the EU White Paper on Sport. They note that, whilst the concept of a White Paper on Sport was to be welcomed, the content of the final version represents – unfortunately – a missed opportunity.

The White Paper is structured in full contradiction with the actual architecture of the Olympic movement, ignoring in particular the regulatory competences of the International Federations, the division of responsibilities between the latter and their European Confederations, the global nature of the issues and challenges currently affecting sport as well as the solutions which are today necessary.

As sports governing bodies at world level, we are all committed to the protection of fair and open competition, to the promotion of athlete and player education and training, to the maintenance of competitive balance, and to the need to protect the integrity of our respective sports. These are all key features of the European sports model and we would like to see the European Commission work alongside us to defend and nurture this model of sport – not just for the future development of sport but for the benefit of society as a whole.

Whilst the White Paper contains certain positive elements (regarding, for example, the recognition that national teams play an essential role across all sports in terms of identity and financial solidarity), we are disappointed that the EU has not reached firmer conclusions with regard to some of the key issues facing sport today, thus contributing to its future healthy development.

It was in particular expected that the White Paper would give concrete expression to the Nice Declaration including providing sport with a more stable legal environment for the future, fully recognising both the autonomy and specificity of sport as well as the central role and independence of the sports federations (governing bodies) in organising, regulating and promoting their

respective sports. Concretely, there needs to be a clearer legal environment as regards the scope of regulatory discretion for sports governing bodies in sports-related matters.

Looking forward however, we will continue to co-operate with the EU Member States, the European Parliament and the Commission, with particular attention to the appropriate inclusion of sport in the Reform Treaty to be debated and finalised by the inter-governmental conference. Much work remains to be done.”

*5 October 2007: IOC press release “IOC optimistic about seeing article on sport strengthened in the EU Reform Treaty”*

“The International Olympic Committee (IOC) welcomes the discussions that will be held in the coming days in Brussels surrounding the role of sport within Europe. These discussions are important steps towards the draft of a reform treaty agreed upon by the 27 Member States of the European Union (EU) last June.

This new project offers a great opportunity to strengthen the role of sport in Europe and the structures through which it performs. Sport is the biggest social movement in the EU and plays a key role in the fields of integration, education and health. The IOC is convinced that the creation of a legal basis for sport in the EU Reform Treaty would better address the needs of sport and provide a sound legal framework for the future.

‘The responsibility sport has in society and the autonomy with which it regulates itself are central to its credibility and legitimacy’, said IOC President Jacques Rogge. ‘Autonomy thus means preserving the values of sport and the existing structures through which it has developed in Europe and around the world. Sport can play its unique role thanks to its autonomy, and this role would be seriously compromised if sport-governing bodies are subject to public interference. Therefore the IOC and the sports movement as a whole hope that this aspect will be taken into consideration’, he added.”

*February 2008: Resolution of the second seminar on the autonomy of the Olympic and sports movement*

“1. To welcome this Second Seminar for the breadth and depth of the contributions made by the entire Olympic and Sports Movement, thus demonstrating our abiding interest in this subject and our commitment and unity in addressing it as a priority.

2. To reiterate that the Autonomy of the Olympic and Sports Movement is essential for the development of sport and the promotion of its values, for the benefit of all athletes.

3. To express the will of the Olympic Sports Movement to co-operate and work together with governments and international institutions within a framework of mutual respect, to make sport and its benefits available to all citizens of the world.

4. To evaluate the evolution of the Autonomy of sports organisations during the last 18 months, recognising the significant contribution made by all members of the Olympic Movement, while acknowledging a number of specific cases of serious interference which prove that this principle is not yet universally accepted.

5. To emphasize Good Governance as the fundamental basis to secure the Autonomy of Olympic and Sports organisations and to ensure that this Autonomy is respected by our stakeholders.

6. To provide in principle support for the draft document entitled 'Basic Universal Principles of Good Governance of the Olympic and Sports Movement', which was presented to the Seminar, and to include the recommendations and modifications expressed during the Seminar prior to presentation at the 2009 Olympic Congress.

7. To immediately create the Olympic and Sports Network tasked to preserve our Autonomy and to ensure that this Network facilitates the exchange of information and provides a global analysis, which will be used as a basis for future decisions and actions where necessary."

*13 February 2008: IAAF press release, "IAAF backs autonomy of sport initiatives"*

"IAAF President Lamine Diack has supported calls from the IOC and other Olympic stakeholders to unite and act quickly to counter threats to the autonomy of the Olympic and sports movement in general. As a member of the IOC International Relations Commission, President Diack was in Lausanne for a two day summit called the 'Autonomy of Sport Conference.'

Seven resolutions were approved by representatives from the IOC, national Olympic committees and international federations gathered at the symposium. Nearly 200 delegates attended the meeting.

It was agreed that the Olympic Movement should 'co-operate and work together with governments and international institutions within a framework of mutual respect, to make sport and its benefits available to all citizens of the world'. "

*24 April 2008: Joint declaration adopted by the French and Dutch Ministers for European Affairs and responsible for Sport together with the governing bodies of basketball (FIBA Europe), football (UEFA), rugby (IRB, FIRA-AER), volleyball (CEV), handball (EHF), and ice-hockey (IIHF)*

"1. The parties recognise the great benefits that sport brings to society, in terms of, for example, social cohesion, integration and education. As such, it is vital that the central role and autonomy of sports federations in the organisation, regulation and promotion of their respective sports be recognised. It is also essential to stimulate the European Sports Model, with its pyramidal structure and its solidarity mechanisms.

2. Following up the Franco-Dutch Memorandum of 25 October 2007 on the Specificity of Sport in Europe, which raised a series of points to be clarified, it is possible today to start with three of the main areas of concern to team sports in Europe: training and education, governance of clubs and players' agents. ...

3. In addition to the three priority subjects mentioned above, the European sporting movement needs overall stability and legal security in order to preserve, promote and develop sport. As things stand, the European sports federations do not have the necessary legal security to be able to fulfil their statutory tasks, notably to be able to build the best national teams and to maintain the importance and status of international matches and tournaments.

4. The French and Dutch governments have already clarified their position on this subject in the above-mentioned Memorandum, notably by asking the European Commission, which is competent and has the necessary legal means, to clarify the status of sport according to EU law on a certain number of points.

5. Today, the French and Dutch governments have asked the European team sports, in consultation with their respective international federations and internal interest groups, to present concrete proposals, so that they can be jointly examined during the French Presidency of the European Union in order to propose, before the end of this year, a series of concrete measures."

*July 2008: Joint declaration by European team sport federations:  
"Safeguarding the heritage and future of team sport in Europe"*

"Preamble

Sport is facing an increasing number of legal challenges and, as a result, is going through a period of deep uncertainty. If we are to protect the values of the European sports model, it is fundamental that sporting regulations may evolve within a stable legal environment, in order to meet the respective needs and specific circumstances of all team sports. It is essential, to maintain

effective self-regulation, that sports bodies are ready and able to meet the various challenges, in accordance with the principle of subsidiarity.

## 1. Introduction

1.1. At the outset, it should be clearly stated that the need to protect the 'specificity' of sport is not an attempt to put sport above the law. It is rather an attempt to recognise and respect the true values of sport within the law.

1.2. This document responds to the request by various Member States of the European Union to sports governing bodies to present concrete proposals to safeguard the future development of team sport in Europe, in particular, by better defining the legal environment in which the relevant European sports federations (working under the auspices of their international federations) and their members and stakeholders operate.

1.3. Sport is of great importance to the European public and delivers many benefits to society, especially in terms of integration, education, public health, team-work and social cohesion/inclusion. As such, it is vital that current sports structures be protected and that the specific characteristics of sport be taken into account when EU law is applied in this sphere. The Nice Declaration, adopted by the Member States of the European Union in 2000, already points firmly in this direction.

1.4. The 'White Paper' on Sport, issued by the European Commission in July 2007, was the first comprehensive attempt to describe how EU law affects sport and, as such, was welcome. However, describing the issues faced by sport is not enough: it is also necessary to address the issues in a way that delivers legal certainty. The European Parliament has also recognised the need to define more concretely the meaning of sporting specificity and to provide sports bodies with the legal security they need to carry out their functions effectively. This will, in turn, give concrete expression to the political sentiment underlying the Nice Declaration.

1.5. Legal security and certainty can be delivered using a variety of EU legal instruments, such as category exemptions, guidelines, communications or other generic rules. Article 165 of the new Treaty will (when ratified) create a further possibility, in the form of recommendations.

The European Council should now invite the European Commission to follow up on the 'White Paper' and set out a clear definition of the specificity of sport, employing the most appropriate legal instruments, and thus allowing federations to organise, regulate and promote their respective sports safely within the framework of EU law and the principle of subsidiarity. This task should be carried out in conjunction with the sports governing bodies (for example, the European sports federations as stated in both the White Paper on Sport and the European Parliament report on the White Paper), who are

responsible for involving their own internal 'stakeholders' in the decision-making process.

## 2. Specificity and autonomy of team sports in general: broad definition

2.1. There is no question of seeking to remove the sports sector from the scope of application of EU law. However, it is both possible and necessary to explain in a clear way how the specificity of sport will be recognised when EU law is applied. Appropriate guidance on the application of EU law to team sport should cover a wide variety of subject areas and be as practical as possible. There is a broad measure of consensus within the team sport family as to the subjects that should be addressed, including the need to preserve uncertainty of outcome, to foster open competition, to create a more level playing field, to safeguard the integrity of team sport; and generally to protect the values of the European sports model. In several of these areas there have already been supportive statements expressed by EU institutions, including the European Council, European Parliament, European Commission and the Court of Justice. It is now time to put this into a more coherent legal framework."

*26 January 2009: IOC press release*

"Representatives of the Olympic Movement, led by the President of the International Olympic Committee (IOC), Jacques Rogge, today met with Ján Figel', European Commissioner for Education, Training, Culture and Youth, and his delegation at the IOC headquarters in Lausanne. The meeting came as a follow-up on the action points specified in the recent European Council Declaration on Sport, which was presented in the Conclusions of the French Presidency of the European Union (EU) in mid-December 2008. In the Declaration, the heads of state call on the European Commission to strengthen its dialogue with the IOC, besides underlining the values of sport and its specific characteristics above its economic dimension. The promotion of the autonomy of the Olympic and Sports Movement as well as the protection of the integrity and fairness of the competitions has been high on the IOC's agenda over the years.

Topics of today's discussions included:

- the specificity and autonomy of sport;
- the financing of sport and betting;
- the application of EU competition law and of free movement principles in the field of sport;
- the fight against doping.

During the meeting, Ján Figel' confirmed his respect for the autonomous and self-regulatory character of sports organisations. He also recognised that sport is organised internationally and built on a worldwide pyramid system,

Today's meeting allowed for an exchange of views on a number of topics currently on the EU agenda for sport which are of interest to international sport stakeholders and notably the Olympic movement. The list of topics discussed included:

- the financing of sport, with particular regard for the issue of sport betting rights and fair return to sport;
- the fight against doping and the results of the recent EU Conference on Anti-Doping in Athens;
- the implementation of the White Paper on Sport and the launch of a Preparatory Action in the field of sport financed from this year's EU budget;
- work to be launched in the area of combined education and sports training for high-level sportspeople ('dual careers');
- the continued structured dialogue with the sport movement, in view of the next EU Sport Forum to be held in April 2010 and of the possible entry into force of the sport provisions of the Lisbon Treaty.

After the meeting, Commissioner Figel' said that 'the positive spirit of co-operation created in Lausanne at the beginning of the year continues to shape the dialogue between the Commission and the sport movement. The Commission is very supportive of having a regular exchange of views on EU-related topics with the IOC and other international stakeholders.'

IOC President Rogge said the meeting 'reaffirmed the benefits of closer co-operation between the IOC and the European Commission. Organised sport has a unique and important role in society. By working together, we can improve our ability to bring the benefits of sport to the European Union and find more effective ways to combat doping, illegal betting and other threats to sport.'"

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