



EUROPEAN SPORT POLICY

Overview of sport issues on the EU agenda

9th edition, October 2019



Deutsche Fußball-Bund e.V. (DFB) with just over 7 million registered members – including more than one million women and girls – is one of the largest specialist sport federations in the world. Just short of 25,000 clubs and 155,000 teams take part in sporting activities organised by DFB. Since 1 December 2007, DFB has had its own EU office in Brussels.



DFL Deutsche Fußball Liga e.V. brings together the 36 professional football clubs in the Bundesliga and Bundesliga 2. Under its aegis, **DFL Deutsche Fußball-Liga GmbH (DFL)** organises Liga matches and markets Bundesliga and Bundesliga 2 at home and abroad.

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LIST OF CONTENT

ABBREVIATIONS AND EXPLANATIONS	4
LEGAL BASIS AND FUNDAMENTAL ISSUES	6
Sport enshrined in EU law – article 165 TFEU	6
3 rd EU Work Plan for sport 2017 to 2020	7
Specificity of sport	8
Macroeconomic significance of sport (satellite account for sport)	9
INTEGRITY OF SPORT	10
Good Governance in Sport	10
Fight against corruption in Sport	11
Fight against doping	12
Fight against match-fixing and fraud in sport competitions	13
Third Party Ownership	14
VOCATIONAL TRAINING AND QUALIFICATION	15
Cross-border recognition of sport diplomas	15
Comparability of diplomas	16
Players' agents	17
Dual career in sport	18
INTERNAL MARKET AND CONSUMER PROTECTION POLICY	19
Territorial-exclusive licensing of media rights in sport	19
Enforcement of property rights in sport	20
Free-to-air television transmission of major sporting events	21
Advertising for alcoholic beverages	22
Free movement of sportsmen and –women from EU member states	23
Non-discrimination of athletes from non-EU countries	24
Fight against ticket touting	25
EXTERNAL RELATIONS AND DEVELOPMENT POLICY	26
Sport in foreign policy and development aid	26
EDUCATION AND HEALTH	27
European strategy against overweight and obesity	27
EU Physical Activity Guidelines	28
JUSTICE AND SECURITY ISSUES	29
Fight against Racism and other forms of discrimination in football	29
Security at international football games	30
SOCIAL AND SOCIETAL POLICY	31
Voluntary activity	31
Social inclusion, integration and gender equality	32
Protection of minors	33
Social dialogue in football	34
ENVIRONMENTAL POLICY	35
Ban of microplastic on artificial turf pitches	35
TAX POLICY	36
VAT directive and direct taxation	36
FINANCING OF SPORT	37
EU funding for sport projects	37
Collective selling of media rights	38
Legal protection for sport event organisers	39
Competitive balance and financial stability	40
State aid for sport	41
Games of chance and online sport bets	42

ABBREVIATIONS

Organs of the European Union

EP	European Parliament
COM	European Commission
ECJ	European Court of Justice
EGC	European General Court (previously: Court of First instance)

Sport organisations

IOC	International Olympic Committee
FIFA	International Federation of Association Football
UEFA	Union of European Football Associations
ECA	European Club Association
European Leagues	European Professional Football Leagues
SROC	Sport Rights Owners Coalition
FIFPro	International Federation of Professional Footballers' Association
DOSB	German Olympic and Sport Confederation
DFB	German Football Association
DFL	German Football League
DFVV	German Association of Football Players' Agents

Other abbreviations

BMI	Federal Ministry of the Interior (responsible for sport)
BMBF	Federal Ministry of Education and Research
BMWi	Federal Ministry for Economic Affairs and Energy
BZgA	German Federal Institute for Health Education
KMK	Conference of the Ministers for Culture of the Länder
VdV	German Association of contracted football players
WMK	Conference of the Ministers for Economy of the Länder
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TI	Transparency International
EU	European Union
EEA	European Economic Area
MS	Member States
ESF	European Social Fund
ERDF	European Regional Development Fund
EAFRD	European Agricultural Fund for Rural Development
INTERREG	European Territorial Cooperation, part of EU's structural and investment policy for regions

EXPLANATIONS

The European Union

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) came into force on 1 December 2009. According to article 1 TEU, the European Union is the legal successor of the European Community and is given its own legal personality (article 47 TEU). In addition, the European Charter of Fundamental Rights has become legally binding in twenty-four EU Member States (MS) and majority decision-making in the legislative procedure has been extended to further policy areas (e.g. justice and home affairs).

The new treaties strengthened the role of the European Council. The Member States' Heads of State and Government set the EU's general policy objectives and its priorities. The position of the European Parliament (EP) has also been upgraded through its greater involvement in legislation by placing it on an equal footing with the Council of Ministers. For the first time, the Treaty gave national parliaments the right to contribute actively to European policy-making (article 12 TEU).

Legislative procedure

Ordinary legislative procedure in accordance with article 294 TFEU: the "ordinary legislative procedure" supersedes the co-decision procedure and will become the standard procedure for European legislation. The EP genuinely has the last word in this legislative procedure. Without the EP's assent, a legislative instrument proposed by the COM fails even if it has achieved the necessary majorities in the Council of Ministers.

If the EP proposes amendments to the COM's proposal in first reading and the Council of Ministers does not agree, the latter adopts a "common position". This common position is the formal endorsement of the agreement previously reached (but which is not yet binding) by Ministers (known as "political agreement" or in case of an agreement by Ministers before first reading in the Parliament known as "common approach") and which is the starting point for the second reading in the EP. If Council and EP still cannot reach agreement in second reading, a conciliation procedure follows (third reading).

Legislative instruments and other Community measures

Regulations and directives

A **regulation** is a legislative instrument which is generally applicable and all of whose provisions are binding directly in every MS. Regulations are comparable with national laws. A **directive** is a legislative instrument addressed to the MS and which is binding on every MS in terms of the objective to be achieved. However, it gives national agencies discretion to choose the form and means for reaching this objective. EU directives are comparable with national framework laws.

Decisions of the COM and the Council of Ministers

A decision is a legislative instrument which is binding in all its parts on the parties to which it is addressed. Decisions are always a response to an individual case. They can be addressed to EU bodies, to the MS or to natural or legal persons. Depending on which body takes the decision, a distinction is made between decisions of the Council and decisions of the COM. **Decisions of the Council** are adopted on the proposal of the COM with involvement of the EP. **Decisions of the COM** are elaborated in the comitology procedure.

Political recommendations

Recommendations are adopted in the first instance by the Council or, more rarely, by the COM. As official announcements of the EU, they have a real effect as instances of "soft law", but are legally non-binding. The MS are not obliged to implement EU recommendations at national level (article 288(5) TFEU). However, courts in the MS must take recommendations into account when interpreting European law.

Communications, green papers and white papers

Green papers seek to stimulate a debate at European level on fundamental policy goals. The consultations and hearings prompted by a green paper may lead to publication of a white paper.

White papers are prepared on the basis of the consultations carried out in the framework of an earlier green paper. A white paper proposes concrete measures for a future EU procedure. They are usually the last step prior to a legislative proposal.

Communications of the COM have no regulatory character. They set out the COM's political positions which often flow into subsequent legislative proposals. Consultations and hearings initiated by a green paper can be followed up by a white paper.

Legislative proposal of the COM

Following on from a white paper, the COM can present a **legislative proposal**. This proposal for an EU law takes the form either of a **directive** which the MS still have to transpose into national law, or of a **regulation** which the MS must apply directly.

Non-binding positions of the EP

An **own-initiative report** is a non-binding report by a committee of the EP on an issue which falls within its competence. The EP draws up these reports without a consultation or a request for a position. The committee then submits a draft resolution on the report for consideration by the plenary.

With a **resolution**, the EP can invite the COM to take certain measures when implementing the law. Since a resolution is non-binding, the COM is not obliged to respond to this invitation.

LEGAL BASIS AND FUNDAMENTAL ISSUES

Sport enshrined in EU law – article 165 TFEU

BACKGROUND

The Treaty on the Functioning of the European Union (TFEU) entered into force on 1 December 2009. Thus, for the first time the EU possesses its own competence in sport policy. It can take measures to support, coordinate or complement measures by the Member States (MS) in the field of sport and to contribute to **the promotion of European sporting issues** under the new article 165 TFEU.

In addition, the EU should promote fairness and openness in sporting competitions and protect the physical and moral integrity of sportsmen and sportswomen, especially the youngest, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

The European Parliament (EP) and the Council of Ministers can adopt incentive measures in accordance with the ordinary legislative procedure, and the Council of Ministers can issue political but legally non-binding recommendations for realisation of the stated objectives on proposal of the COM. However, national provisions are not to be harmonised.

DEVELOPMENTS

As a reaction to the new EU competence for sport, on 19 May 2011 the **Council of Ministers** for the first time adopted its own work programme for the period until 2014 and created six expert groups which concluded their work at the end of 2013. Work resulting from the **2nd EU Work Plan for Sport 2014-2017** was completed in 2017, with the five expert groups submitting legally non-binding recommendations to the COM, which, however, have not been implemented yet.

STATUS AND PROSPECTS

On 24 May 2017, the EU Sport Ministers adopted the **3rd EU Work Plan for Sport 2017-2020** (see **3rd Work Plan Sport**), determining the political points of emphasis of the Sport Ministers and their working groups until the end of 2019.

DFB / DFL

DFB and DFL come out in favour of safeguarding the autonomy, the pyramid structure and the specific characteristics of sport. That means in particular strengthening the importance of sport in society, maintaining fair and open sport competitions, more legal certainty in the application of competition law, better and more effective legal protection of property rights of the organisers of sporting events and more EU funding of sports facilities and amateur sport.

3rd EU Work Plan for sport 2017 to 2020

BACKGROUND

On the basis of the Lisbon treaty, the Council of Ministers transformed the previously informal meetings of Sports Ministers into new, official working procedures and decision-making structures (see **Sport enshrined in EU law**). The first official Council of EU Sports Ministers met on 10-11 May 2010 in Brussels. Since then, EU Sports Ministers generally met twice during each EU Council Presidency. Through the Council Working Party on Sport which has met regularly since 2010 as well as meetings of the Council of EU Sports Ministers, the relevance of national governments vis-à-vis European sport policy has increased.

In order to ensure successful implementation of the work plan, **expert groups** were put in place, building on the structures of the earlier COM working groups. The MS were represented by the experts they nominated.

The **COM** acted as secretary for the expert groups and provided them with support for logistics and content.

DEVELOPMENTS

On 24 May 2017, the EU sports ministers adopted the **3rd Work Plan sport 2017-2020**. In the next three-year cycle, the EU sports ministers will focus on the following topics:

- **Integrity of sport:** (e.g. anti-doping, combating match-fixing, good governance in sport associations, protection of underage athletes and specificity of sport)
- **Economic importance of sport:** (e.g. promoting innovation through sport, sport and the digital single market)
- **Social importance of sport:** (e.g., dual career, social inclusion, sport and health, importance of coaches, sport and the media, and sports diplomacy)

The 3rd Work Plan Sport provides for a **new working structure**. The Permanent Working Groups of the Council of Ministers will be reduced from five (2nd Work Plan Sport 2014-2017) to two (Expert Group on “Integrity of Sport” and Expert Group on “Human Resources Development and Management in Sport”). If necessary, the **COM**, which continues to be responsible for coordination and the secretariat, can set up ad-hoc groups (clusters) on individual topics. It can also use its own expert groups.

The **expert group on “Integrity”** deals, inter alia, with the Council of Europe’s “Convention on combating match-fixing”, as well as with issues of good governance in sport associations, corruption in sport, and the protection of underage athletes. The **expert group on “Human Resources Development”** works, inter alia, on “Guidelines for Basic Requirements related to the Skills and Competencies of Coaches.”

STATUS AND PROSPECTS

The **COM** is expected to submit, by the end of 2019, an interim report on the progress made. In early 2020, the EU Council of Sport Ministers is planned to evaluate the 3rd Work Plan Sport, whose results and findings are going to be integrated into the 4th Work Plan Sport 2021-2024 (to be adopted in the second half of 2020).

DFB / DFL

DFB and DFL welcome the involvement of the most important international and European sport associations in the work of the Council’s expert groups and most of the recommendations drawn up in the expert groups. The future “3rd EU work plan for sport 2017 to 2020” should be even more strongly oriented on solving concrete problems. In addition, more experts from the MS should take part in the work of the future working groups, organised sport should be better involved and the working structures of the expert groups should be simplified. Moreover, when presenting policy recommendations, the EU sport ministers and the COM should bear in mind the limits of its competence as enshrined in article 165 TFEU as well as the autonomy of sport.

Specificity of sport

BACKGROUND

Before the **ECJ** ruling in the case “**Meca-Medina**” **C-519-04 P** on 18 July 2006, the “specificity of sport” was understood as an option to constitute a general exemption of sporting rules from EU law. However, the ECJ made it clear that, although it continues to recognise the “specific characteristics” of sport, to be considered and interpreted in the framework of a proportionality test on a case-by-case basis. With this ruling, the ECJ rejected the concept of “purely sporting rules” as irrelevant for the applicability of EU competition provisions in the sport sector.

In its white paper (11 July 2007), the **COM** accepted this legal interpretation. Under this interpretation, all sporting rules can be examined from the angle of competition law. On the basis of individual cases to date, the following areas can be subsumed in the “specificity of sport”: Right to self-regulation and self-administration, separate competitions for women and men, rules of the game (duration of a game, number of players), rules governing selection criteria for sport competitions, “Home and away” rule, no multiple ownership in the case of club competitions, provisions for the composition of national teams, provisions on transfer periods, equality of opportunity between competing clubs, pyramid structure of competitions in amateur sports and professional sports, solidarity mechanisms between professional and amateur sport and introduction of licensing systems.

DEVELOPMENTS

The **COM's** legal assessment has not changed as a result of the mention of the “specific characteristics of sport” in article 165 TFEU. In order to establish the compatibility of a sport rule with EU law, the COM still wants to carry out a case-by-case approach. In June 2016, the COM published a brief study entitled **Mapping and Analysis of the Specificity of Sport**, the objective of which was to provide an overview of the ECJ's jurisdiction on sport since the year 2007 (COM's White Paper on Sport).

In 2015, **France** launched a new initiative in the Council of Ministers' working group designed to give more concrete form to the concept of the “specific nature of sport” or “specificity” used in article 165 TFEU, but was not supported by other MS.

In its judgement on the “**Bernard**” case **C-325/08** (16 March 2010), **ECJ** for the first time addressed the imprecise legal concept of “specific characteristics of sport” and found that, on the basis of the new provision, the specificity of sport must in future be taken into consideration when the proportionality of an EU measure is being assessed, but do not justify a general exemption from the EU's fundamental freedoms in the Treaty or EU competition law. In its judgment in “**QC Leisure**” **C-403/08** (4 October 2011), the ECJ pointed out that, in line with the requirements of article 165 TFEU, every MS is free to take further legislative measures to promote sport, e.g. by protecting the property rights of sport organisers.

On 14 October 2014 **UEFA** signed a legally non-binding cooperation agreement with the COM until 2017. This makes provision for regular cooperation on themes of shared interest.

STATUS AND PROSPECTS

On 8 December 2017, the **COM** decided in a case involving the International Skating Union (ISU) that ISU-internal rules providing sanctions for athletes taking part in speed-skating competitions not approved by the ISU, violate EU Competition Law and must be amended accordingly. Yet again, this confirmed that EU Competition Law takes precedence over the “specific character” of sport and in particular over the sport associations' autonomy to establish their own regulations.

In its 3rd Work Plan Sport, the **EU Council of Sport Ministers** has envisaged organizing a seminar on the specificity of sport, planned to be held by the end of 2019.

DFB / DFL

DFB and DFL believe that the EU must in future take greater account of the specificity of sport in line with article 165 TFEU when proposing new political or legislative measures. The mention of “specific characteristics” in article 165 TFEU calls for a new interpretation of the specificity of sport which safeguards the political will of the MS (strengthening the autonomy and legal certainty of sport).

Macroeconomic significance of sport (satellite account for sport)

BACKGROUND

For a long time, there was hardly any statistical data that made it possible to give a substantiated statement on the macroeconomic significance of sport for the EU. The aim of the COM was therefore to develop a methodological framework for collecting comparable macroeconomic data (gross value added and employment data) for the sport sector in the 28 MS. The EU wanted to use the new statistical database to establish comparable benchmarks for certain indicators and to directly deduce policy measures in the area of sport.

In the framework of the working group “Sport and economics” created during the Austrian EU Council Presidency in 2006, the COM and MS started their work on an effective EU-wide statistical methodology, taking as their guide the definition of “sports activities” in the **statistical classification of economic activities in the European Union (NACE)**. The **Vilnius definition** of sport agreed between COM and MS in 2007 comprises the following goods and services:

- Statistical definition: this includes the “sporting activities” set out in NACE 92.6, rev. 1.1
- Narrow definition: all activities needed for the exercise of sport (goods and services on upstream markets); as well as all activities included in the “statistical definition”
- Broad definition: all activities needed as a prerequisite for sport, i.e. which have a link to sport without being necessary for the exercise of sport (goods and services on downstream markets); as well as all activities included in the “narrow definition”

DEVELOPMENTS

The **COM** called on MS to establish national satellite accounts in line with the **Vilnius definition**. At the time being, there are 10 national satellite accounts on that basis. On 22 November 2012, the COM published the **“Study on the contribution of sport to economic growth and employment in the EU”**. The purpose of the study was to identify the macroeconomic potential of sport as a stand-alone economic sector in the EU, in particular with regard growth and jobs. The study concluded that the sport sector accounts for 1.76% (174 billion euros) of total value added in the EU. The direct employment effect of sport is 2.98% on value added (2.94 billion euros). The economic significance of voluntary work in sport was not taken into consideration in these calculations.

The **Council of Ministers** had convened an expert group that submitted, in 2012, a **Manual for the Construction of a Sport Satellite Account**. As part of the 2nd EU Work Plan Sport 2014-2017, a further expert group on the economic significance of sport submitted its **Recommendations on how to measure the Economic Contribution of Sport**, published in January 2016.

In July 2013, with the report **“The economic dimension of sport in Germany”** and in the framework of the national accounts, **Germany** established a national satellite account for sport based on the “Vilnius definition”. It was revised at the end of 2015 on the basis of macroeconomic data for 2012.

STATUS AND PROSPECTS

The **3rd Work Plan Sport 2017-2020** (24 May 2017) does not feature any specific expert group on statistics any more. If required, ad-hoc groups may be formed to update the figures on the economic impact of sport through satellite accounts.

In April 2018, the **COM** published its second **“Study on the economic impact of sport through satellite accounts”**, with one of the findings being that, based on 2012 data, the sport sector contributes some **EUR 280 billion (equivalent to 2.12 percent) of value added in the EU**, and that it offers gainful employment to 5.67 million people (approx. 3 percent of the working population).

DFB / DFL

The DFB and the DFL basically support standardized statistical survey methods and data. As a result, volunteer/voluntary services in sport can be better taken into account. They also confirm the outstanding economic importance of professional sports in many MS. However, economic data alone do not allow for general statements to be made about the social importance of, and political challenges faced by, sport as a whole and should not be the sole or most important basis for future EU sport policies.

INTEGRITY OF SPORT

Good Governance in Sport

BACKGROUND

Accusations and scandals surrounding the management of sport organisations at national, European and international level have been piling up for several years. The sport organisations in question are reproached by the public for a lack of transparency, undemocratic decision-making procedures, corruption, violation of human rights, cronyism, bribery and personal enrichment. Good governance issues have also multiplied in connection with the award and implementation of major European or international sport events (e.g. FIFA football world championship, Olympic Games).

DEVELOPMENTS

The **COM** mentioned the theme of good governance of sport organisations for the first time in its “**White Paper on Sport**” (2007). Eight projects to promote good governance in sport were financially supported by the EU in 2011 in the framework of the so-called “preparatory measures”. The **Council of Ministers** also made good governance of sport organisations one of its priorities in the “**1st work plan of EU Sport Ministers 2011 to 2014**”. The expert group on “developing principles for good governance in sport” in September 2013 drafted a final report with 10 fundamental recommendations. The “**2nd work plan of EU Sport Ministers 2014 to 2017**” once more took up the theme. The new expert group on “good governance of sport organisations” in its final “**Report on promotion of the principles of good governance**” (21 July 2016), expressed the view that it is not sufficient for sport organisations to amend their rules and statutes. Rather, what is needed is a new governance and transparency culture in sport organisations with the EU playing a strong role in its implementation. Member states were recommended to reinforce their efforts in this field, in particular by providing additional funding for projects carried out by sports associations similar to the promotion priorities applied by the EU within the framework of the EU Sport Promotion Programme (ERASMUS+). On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report “**Integrated approach to Sport Policy: good governance, accessibility and integrity**” in which it invites sport associations to create a culture of transparency with an obligation to publish the remuneration of leading officials. Good governance is also regarded as a precondition for sport to be allowed to refer to an “autonomy of sport” in certain areas.

STATUS AND PROSPECTS

One of the objectives of the **3rd Work Plan Sport 2017-2020** (24 May 2017) is to create an environment where the sport community adopts more frequently internationally recognized measures applied in the non-sport sector to promote good governance, and where the expert group on “Integrity” collects and shares benchmark results.

On 24 January 2018, the **Council of Europe** adopted a legally non-binding resolution (No. 2200/2018) on “**Good governance in football**”, calling for greater efforts by FIFA and UEFA in connection with good governance and compliance with legal and ethical rules. e.g. by including a provision in their articles of association that persons holding public/political office may not be member of the Presidium or the Executive Board, or by revising the guidelines for supervisory boards and ethics committees. In addition, the competences of associations to regulate their respective sport should be more clearly separated from their economic activities, e.g. by establishing subsidiaries dealing with the commercial side of things. The parliamentary representatives of the 47 member states of the Council of Europe also called for the drafting of a legally binding “**good governance convention in sport**”.

DFB / DFL

DFB and DFL are committed to the objective of good governance of sport organisations. Through the associative structure and committee membership of DFB and DFL it is ensured that decision-making is based on democratic principles. DFB has made its management and supervisory structures as well as the assignment of tasks in relation to its subsidiary DFB GmbH even more transparent in 2019. Moreover, in 2016 DFB introduced a compliance management system with comprehensive compliance regulations (Ethics Code) included in its statutes and set up an ethics committee within the association. The compliance regulations, in particular the detailed code of conduct provides employees with clear and concise orientation. The statutes and the annual reports are publicly available for reasons of transparency. DFB complies with its social responsibility through a department specifically concerned with, for example, comprehensive programmes on anti-discrimination, combating sexual harassment, match-fixing etc. DFB's members, which also include DFL e.V., are required to create their own compliance provisions.

Fight against corruption in Sport

BACKGROUND

Corruption in the form of abuse of a function or public office for one's own benefit and to the detriment of others or the general public, can be found in all sectors of the economy. It is estimated that corruption costs the EU economy around EUR 120 billion every year across all sectors of the economy, which is equivalent to about 1% of the EU's gross domestic product. Due to the increasing globalisation and the economic success of individual sporting events, top-level sport increasingly attracts corruption. Lack of transparency and corruption contribute, inter alia, to exploitation, promotion of organised crime and tax fraud, e.g. in connection with dubious transfers and brokering in sports, but also at the time of nominating candidates for senior positions, selling media and advertising rights or hosting major sports events.

DEVELOPMENTS

As early as in its **White Paper on Sport** (11 July 2007), the **COM** stated that professional sport was facing new constraints and challenges, such as commercial pressure, corruption and money laundering. In its non-legally binding **"Resolution on the White Paper on Sport"** (8 May 2008), the **EP** disapproved of the abusive practices of some players' agents, which, it complained, had led to corruption, money laundering and the exploitation of underage players and athletes.

On 6 June 2011, the **COM** adopted a comprehensive set of laws and measures to combat corruption. The **anti-corruption package** consisted of a "communication on combating corruption in the EU" on the specific objectives of the fight against corruption, as well as a "decision to establish a reporting mechanism for the regular assessment of the fight against corruption" and a "report on the implementation of anti-bribery measures in the private sector". On 3 February 2014, the COM published an **"EU Anti-Corruption Report"** that presented the as-was data on corruption in the respective MS.

On 20 May 2015, the **EP** and the **Council of Ministers** adopted a **"Directive on the Prevention of the Use of the Financial System for the Purposes of Money Laundering and Terror Financing"** intended to further develop criminal sanctions at EU-level and oversee the financial system.

STATUS AND PROSPECTS

The **"3rd Work Plan Sport of the EU Sports Ministers 2017-2020"** (24 May 2017) also envisages anti-corruption measures in sport for the first time. The expert group on "Integrity" has been tasked with preparing a proposal for "Council Recommendations for future EU action against corruption in sport" by the end of 2019.

On 24 July 2019, the **COM** published a **"Report on the assessment of risks in the field of money laundering and terrorist financing, with implications for the internal market and cross-border activities"**. Among other things, the COM points out that it will add new economic sectors that have raised negative attention to the watch list. This includes, for the first time, **professional football**. The COM considers it a global economic sector of considerable importance, with its organizational structures and the lack of transparency creating "fertile ground" for the use of unlawfully acquired money. In particular, the COM felt that the investment of questionable transfer sums without any discernible yield on the capital invested justified the inclusion of professional football on the watch list.

DFB / DFL

DFB and DFL are committed to fighting any kind of corruption in sport. Since 2016, the DFB has introduced a compliance management system featuring various anti-corruption measures that are regularly updated and whose implementation is closely monitored. Already in 2011, the DFB and the DFL jointly adopted a voluntary code of conduct on "Hospitality Packages at Football Events against the Background of Legal Requirements" and issued a set of guidelines for this purpose. Since the guideline was positively welcomed by the professionals in daily practice, it was updated in 2017 and reedited after several legislative changes with the participation of the German ministries of the Interior and Justice, respectively.

Fight against doping

BACKGROUND

The use of unauthorised drugs worldwide constitutes a major threat for sport. Doping runs counter to the principle of open and fair competition and damages the image of sport. For individual athletes, especially adolescents, doping can cause serious and permanent damage to health. The World Anti-Doping Code of the World Anti-Doping Agency (WADA) sought inter alia to harmonise the different anti-doping provisions and sanction possibilities. It contained for example stricter rules on whereabouts and the transmission of personal data to a data base (Anti-Doping Administration System – “ADAMS”) in Canada. As a general rule, the prior express consent of the sportsperson is necessary for the transfer, exchange and processing by WADA of an athlete’s personal data generated with the Internet-based Anti-Doping Administration System (ADAMS).

DEVELOPMENTS

At the 4th World Anti-doping Conference on 15 November 2013 in Johannesburg (South Africa), **WADA** adopted the current WADA code which entered into force on 1 January 2015. Among other things, it provides for longer bans following doping violations (e.g. an ineligibility period of four years for intentional violations), more flexible measures for less clear-cut doping incidents, stronger cooperation with athletes, new concepts for planning tests, analyses of doping samples and their storage as well as better protection of minors.

On 20 December 2011, the **Council of Ministers** agreed in a resolution on a common representation of the EU in WADA’s Foundation Board and nominated three EU representatives from the group of EU Sport Ministers who defend the EU’s common position (27 November 2012), currently being Romania, Belgium and Portugal. With a resolution of 25 November 2015, the **Council of Ministers** came out in favour of continuing the joint positioning and representation of the EU vis-à-vis WADA. The COM should take over systematic preparation of representatives of the Council of Ministers. On 30 July 2016, Sport Ministers from 19 MS issued a joint position in which they called for continuation of the fight against doping.

In **Germany**, a new National Anti-Doping Code (NADC) entered into force in 2015. Moreover, a new anti-doping law came into force on 17 December 2015. The law introduces new criminal offences and sets out to strengthen cooperation between sport and state in the prosecution of doping infringements. The law makes self-doping punishable so that competitors who intend to give themselves advantages in organised sport with doping will be covered for the first time. Also now punishable is the acquisition and possession of small quantities of doping agents for self-doping. In addition, data exchange between NADA, courts and public prosecutors is regulated by law.

On 18 May 2018, the new **EU General Data Protection Regulation** (2016/679) entered into force. The regulation does not provide for any derogation from the principle of express consent for transfer of the personal data of athletes, e.g. to combat doping or match-fixing in sport. However, a corresponding “public interest” arguing in favour of a derogation for the exchange of personal data without prior consent for the purpose of combating doping could be derived from recital 112.

STATUS AND PROSPECTS

The “**3rd Work Plan Sport of the EU Sports Ministers 2017-2020**” (24 May 2017) features only few anti-doping measures. In terms of content, the ministers decided to collect expert opinions of the future revision of the WADA code, and to convene ad-hoc expert meetings if and when the EU and the MS prepare a joint position for negotiations in the framework of the WADA coordination forum (CAHAMA). On 30 April 2019, the **Council of Ministers** resolved to update the criteria for a joint representation of the EU in the WADA foundation council and for the preparation of WADA meetings.

DFB / DFL

DFB regularly adapts its anti-doping guidelines and statutes, in coordination with the international football federations (FIFA and UEFA), to the new requirements of the WADA Code and works very closely with the German NADA. DFB and DFL can carry out doping tests in relation to all national matches (championship matches of the Bundesliga and Bundesliga 2, 3rd league, national women’s league, A and B junior national leagues, matches of the DFB cup and super cup). In addition, training tests can be organised for players of the Bundesliga and Bundesliga 2 as well as for players from NADA’s national test pool (e.g. players in the A national team). Training centres for junior players are obliged to implement and document annual courses to educate about and prevent doping in elite sport (U16-U23). Since 2016, NADA has been carrying out doping controls in training and during competitions. With a volume of more than 2,000 samples per year, Germany forms part of the leading group of states worldwide in this respect.

Fight against match-fixing and fraud in sport competitions

BACKGROUND

A core characteristic of sport is that the outcome of its competitions cannot be predicted in advance. Sport competitions in which the outcome is open require continuous regulatory flanking measures by sport organisations in order to preserve the integrity of sport. The influence of external third parties on sport leads to the credibility of a competition, its sporting value and its appeal being damaged. Experience in recent years shows that sport is not immune to manipulation of the outcome, e.g. via doping (see **Fight against doping**) or in connection with sport bets. According to the **Council of Europe**, the expression “manipulation of sport results” covers the arrangement of an irregular alteration of the course or the result of a sporting competition or any of its particular events (such as matches, races) in order to obtain an advantage for oneself or for others and to remove all or part of the uncertainty normally associated with the results of a competition.

DEVELOPMENTS

On 14 May 2013, the **IOC** decided to put in place a global “**Early-warning system of the Olympic movement**” to monitor betting activities in the framework of international sporting events. On 30 May 2013, **UNESCO World Sport Ministers** adopted the “**Berlin Declaration**” in which they recommended that UNESCO Member States examine the feasibility of putting in place a provision in penal law on sport fraud. National and international sport associations have been invited to take additional preventive measures to combat manipulation of results. **UEFA** nominated national gambling delegates in all 53 member associations and is also advocating the introduction of a crime of sport fraud in all MS of the EU.

On 18 September 2014, the **Council of Europe** passed a legally binding “**Convention on the manipulation of sports competitions**”, which has been signed by 25 States. The Convention has so far been fully ratified by 2 states. In its “**Conclusions on combating match-fixing**” (28-29 November 2011), the **Council of Ministers** called for additional educational programmes and better monitoring systems, in particular for online betting. The expert group on “combating match-fixing” asked the MS and the COM to ratify and implement the Council of Europe’s Convention rapidly.

The **EP** called on 3 November 2011 in a legally non-binding “**Written declaration on combating corruption in European sport**” and in the non-binding “**Resolution on online gambling in the internal market**” (15 November 2011) and the “**Resolution on the European dimension of sport**” (2 February 2012) for additional measures such as the creation of a property right for sport organisers, a common definition of “sport fraud” and a corresponding penal provision in the MS. On 14 March 2013, the EP adopted a non-binding “**Resolution on match-fixing and corruption in sport**” in which it invited the COM to develop a coordinated approach to the fight against match-fixing and to better coordinate the efforts of all stakeholders. On 2 February 2017, the EP adopted another legally non-binding own-initiative report “**Integrated approach to Sport Policy: good governance, accessibility and integrity**” and invited the MS to introduce concrete criminal offences for match-fixing. In recent years, the COM has financially supported several European projects of sport organisations to combat match-fixing through EU support programmes (see **EU funding for sport**).

In **Germany**, a “**Law on the criminalisation of fraud in sport competitions and manipulation of professional sport competitions**” placed two new criminal offences (§§ 265c, 265d) in the criminal code. Match-fixing agreements with fraud in sport competitions and match-fixing agreements without fraud in sport competitions where the agreement relates to high-level competitions of a professional character (manipulation of professional sport competitions) are now punishable.

STATUS AND PROSPECTS

Almost five years after the signing ceremony, the **Council of Europe’s Convention on the Manipulation of Sports Competitions (Macolin Convention)** entered into force on 1 September 2019. The EU’s accession thereto (a COM proposal for a decision by the Council of Ministers has been on the table since July 2017) continues to be blocked by Malta’s veto.

Germany signed the Convention in September 2014; however, no definite date for the completion of the ratification process is on the horizon. Envisaged in the Convention, the “National Platform” met for the first time in Germany in June 2019.

DFB / DFL

DFB and DFL welcome the new provisions in national criminal law against match-fixing and fraud in sport competitions. Since 2005, DFB and DFL have been combating match-fixing in football through various preventive measures (amendment of provisions in sport-related legislation, systematic monitoring of Bundesliga games down to the 5th league, DFB Cup, international matches as well as junior and women’s leagues, cooperation with crime detection authorities, international cooperation with UEFA and FIFA). In June 2011, the DFB appointed its own integrity officer and an anti-corruption officer. In July 2012, DFB and DFL pooled their previously separate prevention campaigns in the project “United against match-fixing” and expand the scope of the project continuously (last in 2018). To ensure the widest possible dissemination of information and instruction vis-à-vis all players, referees, trainers, officials and family members, DFB and DFL decided to develop a so-called multiplier system and provide the clubs with wide-ranging educational and information material. Together they appointed an ombudsman as an independent and external discussion partner in doubtful cases. Since 2018, it has been a mandatory requirement for the licensed teams of the Bundesliga and Bundesliga 2, as well as for the youth academies, to organise (and provide evidence of actually having organised) annual seminars educating their U16 to U23 squads on the dangers and prevention of gambling addiction and match fixing.

Third Party Ownership

BACKGROUND

The question of the involvement of private investors in professional players' economic rights ("third-party ownership" – TPO) has been playing an increasing role in professional football and in other sports. TPO entails agreements between a club and a private third party (investor, sport agency, etc.) whereby the third party receives a share of the player's future marketing or transfer revenues. A number of forms of TPO should be distinguished:

- "Investment TPO" (club or third person [an investment fund, private person or bank share revenues from transfer rights])
- "Financing TPO" (clubs sell players' economic rights to a third person [an investment fund, private person or bank])
- "Recruitment TPO" (players' agents offer players to clubs and agree a percentage share of future transfers).

DEVELOPMENTS

With circular no. 1464 of 22 December 2014, **FIFA** banned third-party ownership of players' economic rights from 1 January 2015 in order to protect the integrity of matches and to prevent private third parties from exerting an influence on clubs' sport-related decisions.

According to a 2015 study commissioned by the **European Club Association (ECA)**, TPO agreements within Europe are used by 5 to 8% of professional football clubs. In the Balkan countries, nearly 50% of all clubs used TPO, followed by Portugal (20%) and Spain (5 to 10%). The study came to the conclusion that there is regularly an imbalance between the negotiating power of clubs and financial sponsors. This is said to lead to agreements with one-sided benefits and high returns for the private third party. Accordingly, in order for the financing instrument itself to continue to be useful, strict regulation is therefore needed.

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report "**Integrated approach to Sport Policy: good governance, accessibility and integrity**" in which it called for sports persons to be protected against abusive practices such as ownership of players' economic rights, with a view to the integrity of sport competitions as well as general ethical concerns. The MEPs called upon the COM to consider prohibiting TPO on transfer rights by enacting EU legislation and to urge the MS to take additional measures to assert players' and athletes' rights.

STATUS AND PROSPECTS

On 2 February 2015, the **Spanish and Portuguese professional football leagues** filed a complaint against the ban on TPO by FIFA with the COM's Competition Directorate General. The COM has not yet decided whether it will launch an official complaint procedure against FIFA or will reject the complaint from the two leagues. It published in March 2018 a final report "**Recent changes and economic and legal consequences of player transfers**", expressing concern that a strict TPO ban could lead to a "black market" in transfers.

On 1 April 2015, **UEFA** and the European department of FIFPro filed their own complaint with the COM against the practice of TPO in which the admissibility of this financing model in general is questioned. TPO is said to damage the interests of players, clubs and fans, and to undermine the integrity of football through the strong dependence of clubs on individual persons.

On 29 August 2018, a **Belgian court of appeal** in Brussels decided not to submit a complaint by the Belgian football club RFC Seraing to the ECJ for a preliminary ruling; the club had claimed the FIFA ban breached EU competition law.

DFB / DFL

FIFA, UEFA, ECA, most European professional football leagues and FIFPro support very strict regulation of third-party ownership of players' economic rights. However, for the time being a complete ban is not supported by all the members of ECA and European Leagues. DFB implemented the FIFA provisions with the ban on third-party ownership as stipulated in § 28a of the game rulebook on 1 May 2015. For its part, DFL has incorporated the corresponding FIFA requirements in § 5a of its player licensing rules ("Lizenzordnung Spieler" – LOS). Accordingly, neither clubs nor players may conclude an agreement with a third party whereby a third party has a total or partial claim to compensation on the future transfer of a player from one club to another or is given any right in connection with a future transfer or transfer compensation. All existing agreements must be registered in FIFA's Transfer Matching System (TMS). In the meantime, the DFB ban on an agent having an economic stake in the proceeds of a future transfer in the event of a player's onward sale has been confirmed by the Frankfurt Higher Regional Court (Oberlandesgericht/Court of Appeal) (February 2016).

VOCATIONAL TRAINING AND QUALIFICATION

Cross-border recognition of sport diplomas

BACKGROUND

The mobility of workers and self-employed persons within the EU continues to increase. Problems often arise when there is a need for the receiving country to recognise the vocational qualification gained in his or her home country of the worker/self-employed person who wants to move into another MS. This relates above all to classical “independent professions” such as pharmacist, architect or doctor. In MS where access to and the exercise of sport professions are regulated, the qualifications acquired in other MS are not automatically recognised. There are currently 4,700 professions that are regulated on the basis of a professional qualification. For sport, the issue of cross-border recognition of vocational qualifications arises, for instance, in connection with players’ agents and trainers. In its 16 May 2002 ruling in case **“COM vs. Italy” C-142/01**, the ECJ decided in the case of a qualified ski instructor that a MS could not make recognition of vocational certificates of qualifications dependent on the principle of mutual recognition, whereby the authorisation to exercise a profession depends on recognition by a national committee of the equivalence of diplomas and mutual recognition. A comparable case **“Commission vs. France” C-200/08** concerning a snowboard instructor was suspended on the urging of the COM following the conclusions of the Advocate General (16 July 2009) because France adjusted the recognition rules in line with the COM’s proposals.

The 5 September 2005 **“Directive on the mutual recognition of vocational qualifications” (2005/36/EC)** sets out the criteria that MS must apply if they want to link access to a regulated profession or its exercise on its sovereign territory to the possession of particular vocational qualifications, including sport-related services (sports grounds, organisation of sporting events, etc.). For instance, the profession of ski instructor requires very different formal and practical qualifications in the MS which can lead to obstacles to cross-border mobility of this professional group within the EU.

DEVELOPMENTS

The new **“Directive on the recognition of professional qualifications and administrative cooperation through the internal market information system” (2013/55/EU)** entered into force on 20 November 2013. The directive sets out to create a harmonised framework for professions recognised or regulated at national level in order to facilitate taking up employment across borders. Among other things, the amended directive provides for the introduction of a European professional card (“Europass”) which is intended to promote the cross-border mobility of workers in the EU and to facilitate the recognition of diplomas. Furthermore, an EU-wide database for regulated professions will be established which will enable workers to verify whether and how their profession is recognised and regulated in another MS. In sport, several professional profiles fall under the definition of regulated professions, e.g. ski instructor, sport manager as well as sport and gym instructor.

In January 2016, the COM published a study **“Mapping of professional qualifications and relevant training for the profession of ski instructor”** which offers a comprehensive overview of the different conditions and requirements in relation to ski instructor training in the 28 MS as well as in Iceland, Norway, Liechtenstein and Switzerland.

STATUS AND PROSPECTS

On 22 November 2017, the **Council of Ministers**, in its **“Conclusions on the role of coaches / PE teachers in society”**, called on the MS to contribute to promoting the broader role of coaches, to support education programmes and information campaigns, to share good practice examples in the field of coach education and to encourage the development of previously acquired skills and a lifelong learning system for them. The EU Sport Ministers also called on the COM to examine whether the work of the expert group for Skills and Human Resource Development might not include the drawing up of guidelines for basic requirements on the skills and competences of coaches. The COM is due to hold, by the beginning of 2020, a seminar on “Sporting Qualifications and Competences for Coaches / Physical Education Teachers”.

DFB / DFL

Under the DFB training regulation, the state-recognised football coach licence is applicable across the country. This means that its holders are guaranteed recognition everywhere in Germany. At the same time, the holder of the German football coach licence acquires the UEFA professional licence which gives him the right to exercise this profession in all UEFA member federations. The DFB training regulation also provides that an EU citizen, who has obtained a coaching license in an EU member state and wishes to acquire a German licence must take a test whose content is specifically related to football. The DFL Licensing Regulations, in Article 5 Nos. 1 a) through c), put various different UEFA licenses on a par with the corresponding DFB licenses.

Comparability of diplomas

BACKGROUND

In order to increase the cross-border mobility of working and learning EU citizens, in May 2005 the **COM** published a working paper with priorities for the development of a **European qualifications framework for lifelong learning (EQF) as well as a European credit point system in vocational education and training (ECVET)**.

EQF encompasses all qualification levels in general, vocational and academic education and training and identifies eight uniform reference levels geared to learning outcomes. Quality and performance requirements of vocational training courses in the MS are intended to become more transparent through an alignment of the different national qualification systems on the EQF and to increase the quality level of trainers and educators generally. In sport, the qualification requirements of all those with a sport-related vocational training who would like to become professionally active in another MS are at stake. EQF also relates to sport-relevant qualifications, whether formal (e.g. diplomas such as sport management), non-formal (e.g. trainer licences) or informal (e.g. acquired through voluntary activity).

ECVET is one of several European initiatives for recognition of learning experience acquired in different countries and in different types of learning institutions. The system is a voluntary framework which describes qualifications in terms of units of learning outcome. Each of these units is assigned a given number of ECVET credit points on the basis of common European standards. To this end, the acquisition of qualifications from voluntary activity (e.g. youth tutors) and sport-specific training and qualification possibilities are also credited (e.g. training to become a club manager, trainers in amateur sports).

DEVELOPMENTS

In August 2013, the “**Draft DOSB framework guidelines on classification in DQF**” commissioned by **DOSB** recommended classification of the qualifications examined in those guidelines under level 4 (“autonomous planning and processing of professional task complexes [...] in a specialised [...] field of activity”) or level 5 (“autonomous planning and processing of professional task complexes [...] in a specialised [...] field of activity”). The highest classified “Coaching licence type A” of the respective sport discipline’s elite sport level should be classified under level 5, just below level 6 earmarked for the university bachelor’s degree. In **Germany**, work continues on developing an NQF (German qualification framework for lifelong learning – DQR) with the German Federal Ministry of Education and Research (BMBF). On 20 November 2013, the “**Joint resolution on the DQR**” was announced by the Conference of Education Ministers, the Conference of Economy Ministers, BMBF and BMWi was announced. They have agreed that a DQR should be introduced which makes it possible to assign qualifications from general education, higher education and vocational education (including training) to the different levels of EQF on the basis of individual learning outcomes. In addition, a permanent DQR working group and a federal-regional coordination point have been put in place.

STATUS AND PROSPECTS

The **COM** continuously calls on the MS to pursue their work on adjusting their NQF in sport to the requirements of the EQF. In its July 2015 “**Report on existing international qualification standards of international sports federations**” and in its September 2016 “**Final report on a study on qualifications in sport**”, it had compiled the various requirements for the recognition of sports education and its inclusion in the respective NQFs.

On 22 November 2017, the **Council of Ministers**, in its “**Conclusions on the role of coaches / PE teachers in society**”, called on the MS to promote the recognition of coaching as a profession by creating an environment where qualification standards for coaches and the transparency of the qualifications defined by the MS and the sport associations are more comprehensively included in the NQFs. The EU sports ministers also called on the COM to continue ensuring the comparability of the coaching qualifications established by the MS and sport associations within the framework of the EQF.

DFB / DFL

Existing UEFA rules already ensure the comparability of educational diplomas in both semi-professional and professional football at association level on the territory covered by UEFA. DFB’s training rulebook (and hence also all training measures offered) has been recognised by DOSB and its framework guidelines. Thus, the classification of certificates by DOSB in the German NQF for Lifelong Learning is also appropriate for DFB.

Players' agents

BACKGROUND

Due to the development of a single European player market and the marked increase in players' remuneration in a number of sports, the activity of players' agents is increasing sharply. Ever more players (but also clubs) are seeking advice from players' agents when negotiating and concluding contracts. Players' agents are subject to little supervision and are subject to different legal provisions depending on the respective MS.

In June 2014, the FIFA Congress adopted the new **"FIFA regulations on working with intermediaries"** which entered into force on 1 April 2015. These new regulations abolish the existing licensing system and introduced a registration system for players' agents. National associations have to adopt national rules on intermediaries which at least meet the requirements of the "FIFA regulations on working with intermediaries" but can also bring in stricter rules.

DEVELOPMENTS

On 1 October 2010, **FIFA** introduced a new computer system (Transfer Matching System) which should allow stricter control of international player transfers and protect football better against money laundering and corruption. 5,600 clubs from 200 countries take part in the new system. International transfers can no longer take place without notification in the TMS. Violations are punished with point deductions or even transfer bans. There is a registration obligation for players' agents involved in international transfers. With its non-binding **"Resolution on the European dimension in sport"** (2 February 2012) the **EP** invited the COM to draw up and implement in cooperation with sports federations an EU-wide licensing system for players' agents, a registration system and a sanctioning scheme. On 6 May 2013, the Belgium-based Italian players' agent Daniel Striani filed an official complaint with the COM against the UEFA Financial Fair Play regulations (FFP) due to a possible infringement of EU competition law. He claimed that FFP constitutes an illegal anti-competition agreement which artificially restricts the transfer market and reduces the earning potential of players' agents. Alongside this, a complaint based on the same reasoning was lodged with the Court of First Instance in Brussels in June 2013. On 29 May 2015, the Court of First Instance in Brussels decided to submit a preliminary ruling to the ECJ. The ruling was rejected as inadmissible in an **ECJ** decision of 16 July 2015 (case **C-299/15**). The Brussels court, on 11 April 2019, declared itself incompetent to rule on the case, arguing further that the FFP rules did not hinder Mr Striani to exercise his profession and did only have an indirect impact on his activities in Belgium. As to the question of the legal admissibility of the UEFA-made FFP, competence would lie with Swiss courts.

In **France**, the legal provisions governing players' agents in the French sport code have been revised (June 2010). The aim of the new rules is to increase the transparency of financial flows in the activities of players' agents and to take greater account of ethical considerations in the exercise of the profession. For instance, for transfers of minor athletes, players' agents will no longer receive a commission.

STATUS AND PROSPECTS

FIFA's new registration system has in the meantime become widely established in practice. On 2 February 2016, the Frankfurt Higher Regional Court (Oberlandesgericht/Court of Appeal) confirmed in an interim injunction the legality of important elements of the regulations (prohibiting payments to intermediaries for transfer of minors, disclosure obligation, TPO). In other parts, the regulations were adjusted in response to the OLG Frankfurt decision, e.g. regarding the clause demanding submission to association regulations. Even though some individual national associations still operate on the basis of partially different registration requirements, the publications as a whole benefit the transparency of the market. In the 2017-18 season, clubs in the Bundesliga, Bundesliga 2 and League 3 paid around EUR 230 million to players' agents. English clubs in the Premier League spent some GBP 260 million on the services of players' agents over the same period. The **COM** published a final report in March 2018 entitled **"An update on change drivers and economic and legal consequences of player transfers"**. It refers to the continued strong growth of the transfer market and the remuneration paid to players' agents. The study calls for clearer rules for remuneration and a renewed revision of the FIFA Regulations on working with intermediaries, suggesting imposing a compensation ceiling of 3 percent of the agreed transfer fee. On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **"Integrated approach to Sport Policy: good governance, accessibility and integrity"** in which it once more calls for the establishment of a European transparency register for the remuneration of players' agents.

DFB / DFL

DFB and DFL are in favour of better supervision of the activity of players' agents. In particular, the transparency of payments between clubs, the intermediary and the player need to be improved as well as measures need to be taken to provide for an effective quality control of players' agents'. Against this background, DFB and DFL endeavour to increase the quality of offered intermediary services. DFB implemented the new FIFA guidelines in April 2015. According to article 3 of the DFB Regulations for Intermediaries, every club or player using the services of an intermediary must register him/her with the DFB after signing a professional player or transfer contract. In accordance with an amendment to its Licensing Regulations effected in December 2018, the DFL now requires all Bundesliga and Bundesliga 2 clubs to publish, by 31 May of any given year, certain key financial data on DFL's website. In doing so, DFL deliberately exceeds the UEFA Club Licensing Regulations that are primarily directed to clubs participating in the European club competitions.

Dual career in sport

BACKGROUND

In many MS, promotion of elite sport is assigned great importance. In this regard, the compatibility of sport and school education/vocational training is increasingly an obstacle to the development of young sportsmen and sportswomen. In particular, top performers and promising talents in the next generation have to combine a heavy educational and vocational work load with intensive training and competition phases.

A study by the COM on **“Training of young sportswomen and sportsmen in Europe”** (June 2008) came to the conclusion that, while many MS already have programmes for training athletes after their sport careers, only a few MS are in a position to ensure a dual career for leading young sportsmen and sportswomen. It finds that school education and the requirements of top sport can be successful in the MS, for instance through the creation of special school offers for talents in the next generation. Difficulties arise in the educational offer for athletes in the period after school. In particular in the case of a university education, the models available in the MS are often insufficiently flexible in order to come to terms with the time constraints on top sportsmen and sportswomen.

DEVELOPMENTS

On 23 January 2013, the COM presented its proposal for **“EU guidelines on dual careers of athletes”** which draws on the work of the former expert group on “education and training in sport” in the framework of the 1st work plan of EU sport ministers 2009 to 2014. In its final report the expert group came to the conclusion that the success of career-flanking forms of training in sport still depends on the good will and effort of individual persons in key positions. In early 2016, it published a **“Study on the minimum quality requirements for dual career services”**. The study concentrates on the compatibility of vocational education and training for elite athletes. The purpose of the study was to develop and categorise quality criteria at EU level which were presented in the form of a quality framework. It comprises 25 country reports with recommendations to the MS for future policy measures and with a view to targeted scientific flanking. The COM funded many projects with “dual career” as priority through the EU funding programme for sport.

In early 2016, the EP published a **“Background report on qualifications and dual careers in sport”**. The study gives an overview of projects to support a dual career which received financial assistance from the EU. On the basis of this evidence and analysis, the study makes a few recommendations and proposes a Europe-wide monitoring system to assess the effectiveness of guidelines for the dual career and also to develop quality certification for sport, academic institutions and companies.

In **Germany**, the measures taken included the creation of a national steering committee for the elite schools of sport and the drafting of a concept for an **“Agreement to promote performance-oriented elite school students in the integrated system of school education, sport training, and boarding school accommodation”**.

STATUS AND PROSPECTS

Compared to previous editions of the document, the **Council of Ministers’ “3rd Work Plan Sports 2017-2020”** (24 May 2017) has only little to say on issues of simultaneous vocational and athletic training. Under Estonian EU Presidency, a conference on this topic took place in September 2017.

DFB / DFL

DFB and DFL welcome the EU’s efforts to improve the dual career training environment in sport. In Germany, DFB in cooperation with local schools and clubs has since 2006 set up 39 elite football schools which can fall back on a network of schools, elite sports centres and clubs. All talents receive comprehensive assistance with the goal of promoting a parallel career in sport and at school. For instance, through additional sport training units, help with homework, out-of-class tutoring and flexible exam dates. A wide-ranging certification system ensures the quality of education and training in the elite schools. In addition, DFB jointly with DFL and VdV implements numerous **“FIT FOR JOB”** schooling events in the Bundesliga’s elite youth training centres as well as at DFB’s scouting tournaments and coach conventions. In the 2014-2015 season statutes have been changed in cooperation with DFL to oblige clubs to appoint full-time pedagogical staff in the elite sports centres. Main objective is an individual career planning and career monitoring for young elite players. In addition, female elite players are given access to the career advice offers of DOSB’s Olympic Support Centres. In the 2015-2016 season, DFB and DFL jointly with an independent partner launched a support project in the form of an audit/certification on the **“accommodation of junior players”** in all training centres. In the framework of quality assurance and process optimisation, the aim here is to define minimum standards for the accommodation and care of players in training centres.

INTERNAL MARKET AND CONSUMER PROTECTION POLICY

Territorial-exclusive licensing of media rights in sport

BACKGROUND

The COM's **"Single Market Strategy"** (6 June 2015) had aimed to improve consumers' cross-border access to copyrighted content. This was supposed to provide consumers with as much cross-border access to online content as possible in order to ensure greater choice and diversity of content. This project conflicted with various national copyright laws and the "principle of territoriality" that allowed rights holders to grant an exclusive right to only one licensee for a given territory (e.g. one or more MS). Especially in the allocation of media rights in sport (for example, for live broadcasts of sporting events) the practice in most MS is that rights are limited territorially for individual MS through the licensing of exclusive rights. That is necessary, because without a certain territorial exclusivity, the live and other transmission rights have absolutely no value for the broadcasting firms and cannot be marketed. At the level of European jurisprudence, the practice of territorial-exclusive licensing has not been queried, e.g. in ECJ judgments (cases **"Coditel I"** C-62/79 and **"Coditel II"** C-262/81) or by the COM (decision COMP IV/33.375 "PMI-DSV"). The Grand Chamber of the ECJ on 4 October 2011 ruled in a preliminary ruling submitted by the English High Court of Justice in the case **"QC Leisure"** C-429/08 (linked to the case **"Murphy"** C-403/08) that EU law allows sport organisers to grant exclusive and territorial licences for the use of media rights. However, sport organisers may not include clauses in licensing contracts which oblige the acquiring broadcasters to restrict absolutely the sale or distribution of decoder cards outside the country where the broadcast has its origin. The geographical limitation of exclusive transmission rights, prevention of cross-border access to licensed online content (e.g. "geo-blocking") and differentiated pricing in the MS continue to be possible.

DEVELOPMENTS

In its own-initiative report on an **"Integrated approach to Sport Policy: good governance, accessibility and integrity"** (2 February 2017), the EP expressed the view that the centralized, exclusive and territorially organised sale of television rights, together with a fair distribution of revenues, was an important pre-condition for the sustainable financing of sport. The COM, as part of its **"Digital Single Market Strategy"** (6 June 2015), has drafted several legislative proposals to improve cross-border access to online content:

- **Regulation to ensure the cross-border portability of online content services in the internal market** (9 December 2015)
- **Regulation on measures against geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment** (25 May 2016)
- **Regulation on the exercise of copyright and related rights in respect of certain on-line broadcasts by broadcasters and the retransmission of television and radio programmes** (14 September 2016)
- **Directive on copyright in the Digital Single Market** (14 September 2016)

The first three legislative proposals were aimed at restricting the territorial exclusivity of broadcasting rights. The fourth legislative proposal offered a legal possibility to enshrine sports broadcasters' right to commercialise audiovisual rights (neighbouring right) in EU law.

STATUS AND PROSPECTS

On 20 March 2018, the **"Regulation on the cross-border portability of online content services in the internal market"** entered into force. It provides that access to pay television services acquired legally in one MS can also apply cross-border during a temporary stay in another MS and be used on a range of mobile devices via the Internet (portability). On 3 December 2018, the **"Regulation on addressing geo-blocking and other forms of discrimination based on nationality, place of residence or place of establishment"** entered into force. Licences for sport transmission rights are not affected due to the exclusion of audiovisual licences and copyright. However, in early 2019, the COM commissioned a study on whether audiovisual content should be included in the scope of the regulation from 2020 onwards. This could result in making it mandatory to license sports broadcasting rights on the basis of EU-wide invitations to bid (as opposed to inviting bids in only one or several MS).

On 6 June 2019, the **"Directive laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions"** entered into force. Sport broadcasts are exempted from the extension of the country of origin principle applicable to cross-border online services (e.g. livestreams) and other "ancillary" time-deferred services. Radio broadcasts of sport events are not exempted. Also on 6 June 2019, the **"Directive on Copyright and Related Rights in the Digital Single Market"** entered into force. Although 392 MEPs voted in favour of an ancillary copyright for sports broadcasters, such a ruling was not included in the directive (due to resistance by the MS and the COM). In **Germany**, both directives are envisaged to be transposed into national law from September 2019.

On 12 December 2018, the ECJ rejected in case **T-873/16** a complaint lodged by the pay-TV operator Canal+ against a statement of objections of the COM (23 July 2015) and a subsequent commitment by Paramount (15 April 2016), in which the COM had pointed out that contractual clauses which prohibit a licensee from cross-border "passive sales" of pay-TV services are incompatible with EU competition law.

DFB / DFL

The DFB and the DFL deeply regret that the EU has not included a neighbouring right for sports event organisers in the EU Copyright Directive in order to support in particular the fight against Internet piracy on a sound legal basis. A further restriction on territorial-exclusive licensing of live sports broadcasting rights, e.g. by extending the scope of the "Geo-blocking Regulation", is to be vigorously rejected. The consequence would be pan-European licences and an oligopoly of broadcasters and big international media groups as licensees. That would be likely to raise prices for consumers and reduce the marketing revenues of sport organisers – not the least with a negative impact on the promotion of amateur sport and development of the next generation of sports people, which are highly dependent on revenues from the marketing of media rights of professional sport.

Enforcement of property rights in sport

BACKGROUND

Due to technological development of the Internet and smartphones, the commercial exploitation of media rights linked to professional sport faces new challenges. All forms of Internet piracy belong to the more common illegal misappropriations, in particular live streaming activities in the Internet and social media, as well as the unauthorised use of (live-) data for commercial purposes of third parties (e.g. online betting operators). This practice causes great financial damage to producers and right holders in sport.

DEVELOPMENTS

On 7 March 2013, ECJ decided in case **“TV-Catchup” C-607/11** that live-streaming by an Internet service of broadcasts by another broadcaster is a “communication to the public” and hence constitutes an infringement of the provisions of the EU copyright directive. In the **“C-More Entertainment” case (C-279/13)**, the ECJ found that an MS may put in place national provisions which go further than the rights laid down in the EU copyright directive (2001/29/EC) and which make it possible not only to regard public accessibility of audiovisual content but also linear “broadcasting” of live transmissions in the Internet as copyright-relevant “communication to the public”. In its 27 March 2014 ruling in the case **“UCP Telekabel” C-314/12**, the ECJ decided that, in the event of copyright infringements, Internet service providers can be held responsible for the actions of operators of illegal Internet sites who have illegally made available content to the public of another broadcasting company to the public via the network of the Internet service provider as an intermediary. In the case **“Svensson” C-466/12** the ECJ held on 13 February 2014 that placing hyperlinks on an Internet page which redirect to freely available protected works on another Internet page does not constitute a communication to the public of works protected by copyright. In the **“GS Media” case (C-160/15)**, the ECJ clarified that hyperlinks to protected works which are freely accessible on a website, without the permission of the copyright holder, can constitute a copyright-relevant “communication to the public” under certain circumstances and require the permission of the right holder.

STATUS AND PROSPECTS

In September 2015, the **COM** carried out a **“Public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing”** whose results fed into the communication **“Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe”** (25 May 2016). It found that right holders have reservations about the liability privileges for intermediaries/Internet service providers under the requirements of the “Electronic Commerce Directive” (2000/31/EC). The COM’s years long intention to amend the **“EU directive on the enforcement of intellectual property rights 2004/48/EC** will most likely not be taken up in the new mandate as of 2019.

On 21 June 2018 and under the auspices of the COM, several advertisers and rights holders signed a **declaration of intent entitled “Online Advertising and Intellectual Property Rights”** aimed at making it more difficult to fund illegal streaming sites through advertising.

On 2 February 2017, in a non-binding initiative report on an **“Integrated Approach to Sport Policy: good governance, accessibility and integrity”**, the **EP** showed concern about the increasing violations of sports federations’ intellectual property rights, especially with regard to unauthorized live broadcasts of sporting events.

On 6 June 2019, the **“Directive on Copyright and Related Rights in the Digital Single Market”** came into force. It stipulates that large online platforms will in future have to acquire licenses for the public display of user-generated content and compensate the authors appropriately. However, the directive reduces the liability of small and medium-size online platforms for copyright infringements. This makes the fight against illegal streaming sites even more difficult, because it is small and medium-sized online platforms where Internet piracy “happens”.

In recognition of the importance of sport organisers and their role in financing sports activities, the **COM** has committed itself, in its new term of office, to examining the challenges faced by sport event operators in the digital environment and in relation to illegal online transmissions of sport programmes. The **EP** aims to adopt its own initiative report on the subject in early 2020.

DFB / DFL

In the context of the planned revision of the European legislative framework for copyright, DFB and DFL are campaigning for stronger protection of sport against any unauthorised commercial exploitation of audiovisual content, official live data and counterfeiting of licensed sport wear. Legal underpinning of a property right of sport organisers could better prevent dangers for the commercialisation of sport events through illegal Internet activities. In addition, for effective enforcement of the economic rights of sport organisers, there needs to be a stronger liability of Internet service providers (Access and Host Providers) which goes beyond their current legal obligations. DFB and DFL therefore call for implementation into German law of article 8 paragraph 3 of the EU copyright directive (2001/29/EC) and article 11 of the enforcement directive (2004/48/EC) respectively. In addition, effective notification and action procedures should be obligatory for host and upstream providers in order to allow illegal live streams to be disabled effectively with as little delay as possible. Bearing in mind the very limited timeframe in which illegal livestreams of football matches organised by DFB and DFL are available, an appropriate instrument for rapid notice and take-down of such activities is indispensable.

Free-to-air television transmission of major sporting events

BACKGROUND

Given consistent growth in public interest, the presence of sport broadcasts on television has risen constantly in recent years. For several years now, the sale of television rights has overtaken the sale of tickets as the main source of income in professional sport. Major sport events such as the Olympic Games, the FIFA Football World Cup or the UEFA European Football Championship are no longer conceivable without revenues from television money. In this regard, the increasing interest of pay television companies in securing exclusive broadcasting rights for particular sporting events runs counter to the interest of the general public in having free access to transmissions of major sporting events.

Article 14 of the amended **“Directive on audiovisual media services” (2010/13/EU)** of 10 March 2010 confirms the right of the MS to determine major sporting events which can be freely broadcast (more than 90% of all events listed on national lists are sport events). A majority of MS have already made use of their right to notify to the COM a national list of major sport events which it must be possible to receive. The MS must also ensure that every broadcaster in the EU has fair, reasonable and non-discriminatory access to results, which are of great public interest and which are being broadcast exclusively by another broadcaster for the purpose of short news extracts (Article 15). Press publishers currently increasingly want to incorporate audiovisual content of sport events as moving images in their Internet service offer with a reference to news reporting and without acquiring the corresponding licences.

DEVELOPMENTS

Lastly, in its resolution dated 25 June 2007, the **COM** authorised Germany's the national legal implementation (§ 4 Rundfunkstaatsvertrag) of allowing the following major sporting events to be freely broadcast, by way of exception:

- Summer and Winter Olympic Games
- In the case of European and World football championships, all games with German participation as well as the opening game, semi-finals and final regardless of whether or not Germany is participating
- Semi-finals and final of the German Football Association's club cup
- Home and away games of the German national football team
- Finals of European football club competitions (Champions League, UEFA League) in which German clubs are participating

The **“Study on sports organisers' rights in the EU”** published by the COM on 25 April 2014 recommended a clarification of the content of the right to make short reports.

On 17 February 2011, the **European General Court (EGC)** ruled against FIFA and UEFA in two judgments that the MS have wide discretion in drawing up the list of events of major importance to society eligible to be broadcast free-to-air on television (94% of all events of particular importance for society included on national lists are sport events). In accordance with article 14 of the **“Directive on audiovisual media services” (2010/13/EC)** and that both the British and Belgian lists, which specify freely receivable transmission (“free-to-air”) of all games in football world and European championships, do not infringe EU law. On 27 April 2011, **FIFA and UEFA** have lodged an appeal (cases **C-204/11 P**, **C-205/11 P** und **C-201/11 P**) for a remedy limited to legal questions (similar to a review with the ECJ). In its definitive ruling of 18 July 2013, ECJ confirmed the EGC's decisions and rejected the legal defence of FIFA and UEFA. Accordingly, the COM's authorisation of the Belgian and British lists was legal. Hence, MS can determine for themselves that all games in world and European football championships have to be transmitted on free-to-air television. On 21 October 2015, the ECJ decided in its ruling in the **“New Media Online GmbH”** case (**C-374/14**) that moving images which are accessible on the website of a newspaper as a rule constitute transmissions within the meaning of broadcasting law. A newspaper must therefore apply for authorisation as a broadcast organisation for distributing such content and acquire corresponding licences.

STATUS AND PROSPECTS

In its non-binding **“Resolution on the European dimension of sport”** (2 February 2012), the **EP** spoke in favour of major sporting events being accessible to as many citizens as possible and of all necessary measures being taken so that such events are not transmitted exclusively via pay television.

On 25 May 2016, the **COM** proposed a **“Directive amending directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities”** which entered into force on 4 February 2018. There is nothing in the Directive about any new regulations with regard to the national lists, nor with regard to short news extracts and/or news reporting.

DFB / DFL

DFB and DFL provide comprehensive broadcasting on their games. A legal obligation on transmission must not lead to inappropriate disadvantages for organisers of sport events and should be limited to news reporting only (in contrast to reporting for entertainment purposes). Major sport events require a fair return on the organisational and investment effort in the competition. Such events cannot be held without the corresponding financing. Therefore, the legislator should give sport organisers a comprehensive protection of their property rights, e.g. as a neighbouring right sui generis, in order to encourage the necessary investments in major sport events also in the future.

Advertising for alcoholic beverages

BACKGROUND

Producers of alcoholic beverages act as sponsors of amateur and professional sport events. However, in most MS there are restrictions on television advertising for alcoholic beverages. In some MS, television advertising for alcohol is banned by law at certain times of the day, in other countries state bodies and alcohol manufacturers have agreed voluntary self-restraints.

For example, in France commercials for alcoholic beverages are banned completely. This ban has also been confirmed by the ECJ. Following the ECJ rulings in cases “**France vs. Commission**” C-262/02 and “**Bacardi**” C-429/02 issued on 13 July 2004, MS can under certain conditions place restrictions on advertising for alcohol during television broadcasts. While an advertising ban breached the principle of freedom to provide services enshrined in the EC treaty, it was necessary due to compelling public interest reasons (“protection of public health”).

In EU legislation, there are currently no statutory restrictions on television advertising for alcoholic beverages. However, most MS have a national action plan for prevention of alcohol abuse. The “**Directive on audiovisual media services**” (2010/13/EU) proscribes any advertising for alcoholic drinks directly targeting minors.

DEVELOPMENTS

The COM intended, inter alia, to draw up a code of conduct for advertising involving alcoholic drinks. In September 2009, it published a “**Progress report on implementation of the EU alcohol strategy**” and invited the MS to intensify their efforts. On 7 May 2012, it presented a “**Report on application of the audiovisual media services directive**” in which it refers to considerable progress through voluntary self-regulation measures by companies advertising alcohol online.

In a non-binding “**Resolution on an EU strategy for children’s rights**” passed on 16 January 2008, the EP called for introduction of more stringent advertising rules for alcoholic beverages and sponsorship of sporting events in the form of advertising bans. According to the EP, alcohol advertising should be banned between 06.00 and 21.00 hours. The COM does not have to follow the EP vote. In some MS, advertising bans and self-restraints have been extended in recent years.

The **German government** has spoken out against the introduction of advertising bans.

STATUS AND PROSPECTS

The COM still rejects a general ban on advertising for alcoholic drinks. Voluntary agreements already in existence provide that there should be no advertising for alcoholic drinks in media with an audience share of more than 30% of minors. The announced “**EU alcohol strategy 2016-2022**” of the COM has not been decided yet. The COM is currently examining whether the EU Alcohol and Health Forum is indeed the fitting body to deal with the stakeholders involved. In September 2019, the COM submitted a “**Report on the EU Health Policy**”, referring to the recent WHO status report (2019) that states that – despite some improvements – the number of alcohol abuse-related deaths remains high (290,000 fatalities in 2016).

On 4 December 2018, the “**Directive amending directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities**” entered into force. The new article 9 paragraph 3 of the directive provides that the MS should support the development of self- and co-regulatory codes of conduct in order to effectively restrict the influence of audiovisual commercial communication (advertising) relating to alcoholic drinks on children and young people and to promote responsible marketing of alcoholic drinks.

DFB / DFL

DFB and DFL are aware of their social responsibility and support national action programmes to prevent alcohol abuse. For instance, DFB has for many years worked successfully with the BZgA and runs prevention campaigns with the motto “Giving children strength” with the priority of alcohol prevention. DFB also supports the joint campaign of DOSB and BZgA “Enjoy sport alcohol-free”. In line with DFB’s statutes, alcohol advertising is banned in the entire youth football area. Likewise, the DFL Licensing Regulations, in Article 16 para 4 of Annex IV, feature a restriction on the advertising of certain alcoholic beverages. Since 2009 the European Leagues and DFL are members of the EU Alcohol Forum and work together with the COM and other stakeholders to implement effective concepts for prevention of alcohol abuse. Nevertheless, a total ban on alcohol sponsorship in sport would have far-reaching negative consequences for the financing of amateur sport.

Free movement of sportsmen and – women from EU member states

BACKGROUND

The **ECJ**-ruling in the “**Bosman**” case **C-415/93** (15 December 1995) had far-reaching consequences for football. The ruling finds that professional football players in the EU should be able to move to another club when their contracts come to an end without payment of a transfer fee, and that player quotas for EU citizens based on nationality infringe the free movement of workers guaranteed by the EC treaty. According to the ECJ, professional footballers are regarded as employed workers and can have recourse to free movement of workers.

UEFA introduced the “**home-grown players**” rule with the 2006-2007 season. This quota is independent of the nationality of the player but is based on how long a player has spent training in a MS. Teams which take part in UEFA club competitions are obliged during a season to field at least six players among the twenty-five named players in the squad who have been “locally trained”. “Locally trained” covers all players aged between 15 and 21, who were eligible to play in the same club or another club on the territory of the relevant national football federation for three entire seasons.

DEVELOPMENTS

On 28 May 2008, the **COM** declared the UEFA rule to be proportionate and compatible with the rules on free movement. In the “**Bernard**” case **C-325/08** (16 March 2010), ECJ ruled that a national rule infringes free movement of workers by obliging a professional player to conclude his first professional contract with the club that has trained him.

On 18 January 2011, the COM also published the **communication “Developing the European dimension in sport”** and a **working paper on sport and free movement** which was based on the results of the **study on equal treatment of non-nationals in individual sport competitions** (6 January 2011). The working paper offers an overview of the effects of EU free movement rules of professional and amateur sport. According to the COM, any direct discrimination based on nationality in both professional and amateur sport is illegal. Any rules leading to indirect discrimination or which, even if applied without regard to nationality, restrict the freedom of movement for sportspeople who wish to pursue their activity in another MS, may only be considered compatible with EU law if they are necessary and proportionate. The following sport objectives are examples of justification that can be advanced for limiting measures by sport organisations: training of next-generation players, maintenance of a competitive balance and openness of result. On 28 August 2013, the COM published a “**Study on the assessment of UEFA’s home-grown players rule**”. It concluded that the positive effects of the rule for equality of competition in European matches and for the training of locally based young players have been marginal to date. The authors therefore recommend that the home-grown rule should continue to be applied for a further three years so that more data can be collected. After that, a new study should ascertain whether the continued application of the rule is acceptable or whether it should be superseded by another rule due to its indirect discriminatory effect.

In its non-binding “**Resolution on the European dimension of sport**” (2 February 2012), the **EP** once more expressed its support for the UEFA rule on home-grown players. It could constitute a model for other professional leagues to emulate since it helps to promote local training of young players and hence to improve equality of opportunity in matches. In its “**Own-initiative report on education, training and Europe 2020**” (11 September 2012), the EU underlined in particular that the training of young players at local level makes an essential contribution to the sustainable development and role of sport in society. Clubs should be encouraged to invest more in educating and training young players internally.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** published a legally non-binding own-initiative report on an “**Integrated approach to Sport Policy: good governance, accessibility and integrity**”, which considered that a renewed assessment of the rules to promote local players was needed in order to increase the chances for talented young players to play in their club’s first team, thus improving equal opportunities in Europe.

The **ECJ** ruled on 13 June 2019 in case **C-22/18** that a national sports federation may only exclude amateur athletes who are not nationals of the MS in which they reside from participating in a national Championship if such exclusion is justified by objective considerations and proportionate in relation to its purpose.

DFB / DFL

DFB introduced the “home-grown players” rule in all of its regulations in the 2006-2007 season. Similar regulations are found in DFL’s Licensing Rules for players. DFB and DFL both support rules which give legal certainty and make it possible to take greater account of players trained nationally in club teams.

Non-discrimination of athletes from non-EU countries

BACKGROUND

Under **ECJ** jurisprudence, professional and amateur athletes from non-EU countries (third countries) should be treated as EU citizens under certain conditions (see cases “**Kolpak**” **C-438/00**, “**Simutenkov**” **C-265/03** and “**Kahveci**” **C-162/08**). This means that existing player quotas may not be applied for these athletes (non-EU foreign athletes).

The following criteria must be met: (1) the athletes must have a valid residence and work permit for the MS in question and (2) the home country of the athlete must have concluded an association agreement with the EU which confirms the equal treatment of citizens from third countries with a valid work permit. The individual MS are responsible for issuing residence and work permits.

Depending on the athlete’s home country, the following distinctions are made:

- the home country has no association or partnership agreement with the EU (e.g. Argentina, Brazil, other Latin American countries)
- the home country does have an association or partnership agreement with the EU which comprises a non-discrimination article on working conditions (e.g. Russia, Turkey, Africa-Caribbean-Pacific (ACP) countries)
- the home country has an association or partnership agreement with the EU which does not comprise a non-discrimination article on working conditions (a few Asian countries).

Players in the first or third category are subject to quotas for non-EU athletes, which are issued by federations. Limited quotas for these countries do not infringe EU law.

Players from the second category with a valid work and residence permit should not be discriminated against as compared with nationals of the host MS. Player quotas are not applicable for these athletes.

DEVELOPMENTS

The **COM** in its “**Communication on Developing the European dimension in sport**” (18 January 2011) invited sports organisations to voice their interests in upcoming negotiations on renewal of association agreements.

The **EP** invited the COM in non-binding “**Resolution on the European dimension in sport**” (2 February 2012) to oblige sport clubs to comply with immigration legislation when recruiting young people from third countries in order to ensure that sportsmen and -women are treated well until they return to their home country.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** published a legally non-binding own-initiative report on an “**Integrated approach to Sport Policy: good governance, accessibility and integrity**”, stressing that sport contributes to strengthening dialogue and solidarity with third countries. On 28 June 2019, the EU and MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) concluded a comprehensive free trade and association agreement providing for a non-discrimination clause concerning working conditions.

DFB / DFL

DFB and DFL are in favour of a reformulation of the non-discrimination article in the upcoming negotiations on the various association agreements in order to take account of sport interests.

Fight against ticket touting

BACKGROUND

In recent years, many consumers have complained about certain practices of online marketplaces that provide tickets to popular cultural and sporting events on the secondary market. Admission tickets can be sold or traded largely anonymously via online marketplaces and often do not even entitle buyers to actually access the respective event, because they are personalised or fake. As a rule, after opening the ticket sale of a popular cultural or sports event, a large part of the available tickets is bought by private or commercial secondary market dealers, who go on to re-sell them online at overpriced rates – mark-ups of 250 percent and more are not uncommon.

For example, on the secondary market for Bundesliga match tickets in the 2016/17 season, 105,000 tickets were traded at an estimated market volume of approximately EUR 100 million for unauthorized resale, which brings the average secondary market ticket price up to EUR 186. Countermeasures taken by the cultural and sports organizers affected to protect consumers (for example, civil law measures such as the assertion of injunctive relief, ticket restrictions, penalties, etc.) mostly remain ineffective on the basis of applicable law. Existing loopholes in German law help make the resale of tickets a profitable business model for dubious online marketplaces.

DEVELOPMENTS

On 11 April 2018, the **COM** announced in its communication “**A New Deal for consumers**” that it would address the legal framework of consumer protection rights at EU level. The main objectives of the so-called “new deal for consumers” included:

- Modernisation of existing rules and closing of loopholes
- Provision of better remedies for consumers
- Effective enforcement and stronger cooperation between consumer protection authorities
- Equal treatment of consumers in the single market
- Identify future challenges in consumer protection policy

On 11 April 2018, the **COM** put forward a proposal for a “**Directive on Better Enforcement and Modernization of EU Consumer Protection Rules**”, which provides for the amendment and adaptation of three existing EU directives. The new directive is envisaged to modernize three different EU directives and adapt these to current consumer protection interests in order to continue to ensure a high level of consumer protection across the EU.

The new rules were designed, on the one hand, to provide for harmonisation and toughening of penalties imposed on breaches of consumer protection rules (e.g. higher fines for corporations). On the other hand, individual remedies and higher transparency requirements for the operators of online search engines and online marketplaces were to improve consumers' opportunities to lodge complaints. The distribution platforms of online retailers on the secondary ticket market are also considered “online marketplace” in this sense.

STATUS AND PROSPECTS

On 17 April 2019, the **EP** adopted the “**Directive to better enforce and modernise EU consumer protection rules**” at its first reading. The current text of the Directive states that online marketplaces will in future have to inform consumers whether the third party offering the goods, services, or digital content (sellers on the platform) is a commercial entrepreneur or a non-entrepreneur. Companies are prohibited from reselling to consumers cultural and sporting event tickets they have purchased using software such as bots. In addition, in transposing the Directive into national law, MS may also tighten rules for the secondary ticket market in order to protect the legitimate interests of consumers and to ensure broad access for all to cultural and sporting events.

The new Directive cannot enter into force before final approval by the **Council of Ministers**. It is currently expected that said approval will be given in autumn 2019. From the entry into force of the Directive, Germany will have two years to transpose the European provisions into German law (expected autumn 2021).

DFB / DFL

DOSB, DFB and DFL are in favour of a strict transposition into German law which, ideally, would even go beyond the EU rules. In particular, legislators should take the opportunity to tighten the information obligations for online resale platform operators. For example, specifying the face value price and the exact seat position should be made mandatory. Likewise, the identity of the ticket seller should also be disclosed to the consumer at his request and if there is a legitimate interest. Stricter legal provisions can ensure that all social groups continue to have access to particularly attractive cultural and sporting events.

EXTERNAL RELATIONS AND DEVELOPMENT POLICY

Sport in foreign policy and development aid

BACKGROUND

Sport plays an important role as an instrument of EU external relations and development policy and makes a contribution to solidarity with less developed countries. This takes place either in the form of concrete sport-related projects, flanking measures in the framework of aid programmes or as a means of dialogue or diplomacy in international relations. Through concrete measures, sport has a great potential for promoting education and training, improving health, establishing an intercultural dialogue as well as passing on values and promoting peaceful behaviour. According to article 165 (3) TFEU, EU and MS should foster cooperation with third countries and the competent international organisations in the field of education and sport. In a memorandum of understanding issued in July 2006, the **COM** and **FIFA** agreed to make football a development factor through enhanced exchange of information and joint projects in Africa, the Caribbean and the Pacific (ACP countries, see **Non-discrimination of athletes from third countries**). Moreover, the EU intended to address sport-related issues such as international player transfers, exploitation of minor sports persons, anti-doping, money laundering in sport as well as security at major international sporting events in its political dialogue and cooperation with partner countries.

DEVELOPMENTS

Since the **“White Paper on Sport”** (11 July 2011), the **COM** has intended to integrate sport-related aspects progressively in programmes and instruments of the EU’s external and development policy (cooperation with EEA countries, accession candidates and in the framework of the EU’s neighbourhood policy). In this regard, the priority for the COM has been to strengthen cooperation with European states which are not members of the EU as well as with the Council of Europe. Cooperation with the Council of Europe has been extended in particular with respect to combating match-fixing in sport. Nevertheless, apart from this, there have been no concrete proposals in recent years for a further development of the external and development dimension of sport. At the end of 2015, **EU Commissioner with competence for sport, Tibor Navracsics**, created two high-level expert groups on the themes of amateur sport and sport diplomacy. In June 2016, the expert group on “sport diplomacy” submitted to the COM a legally non-binding report with recommendations for strengthening the importance of sport as a “soft power” in the areas of EU external policy, EU human rights policy and promotion of European values. The EU should develop an organisational structure for a common EU sport diplomacy and take sport into account in all areas linked to development of an external policy strategy for the EU.

In its non-binding **“Resolution on the European dimension of sport”** (2 February 2012), the **EP** called on the COM and the MS to work together with third countries on issues such as international player transfers, exploitation of minors, match-fixing, piracy and illegal betting, and to strengthen international cooperation to promote sport in developing countries. Furthermore, the COM and the MS should work jointly with third countries worldwide for compliance with the Olympic rules and provisions. The COM and the European External Action Service should also deploy efforts worldwide to ensure that any sport can be played by women and men without restriction.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** published a legally non-binding own-initiative report entitled **“Integrated approach to Sport Policy: good governance, accessibility and integrity”**, stating that sport contributes to strengthening dialogue and solidarity with third countries, promoting the protection of fundamental human rights and basic freedoms worldwide and in support of EU foreign policy. In January 2018, the **COM** published a report **“Sport diplomacy: identifying good practices”** that presented various case studies highlighting the potential of sport to make an important contribution to cooperation between the EU and third countries in many different policy areas.

The **“3rd Work Plan Sport 2017-2020”** of the EU Sports Ministers (24 May 2017) provides for measures in the field of sports diplomacy; however, these have not been implemented yet.

DFB / DFL

DFB supports the Federal Government and the DOSB in their commitment to help emerging and developing countries. DFB-seconded experts are working all over the world, building bridges through sport and contributing to achieving the UN sustainability goals. The aim is to develop effective basic structures by way of consulting, qualification and exchange. This includes measures within the framework of “International Sports Promotion” with the Federal Ministry of Foreign Affairs (Auswärtiges Amt - AA), e.g. to promote grassroots, school and competitive football, as well as „Sport for Development“ with the Federal Ministry for Economic Cooperation and Development (BMZ) which focuses on promoting education, health, inclusion, diversity, and violence prevention. Since 1986, the DFB has also been involved with its foundation work to improve the living conditions of children in Mexico, Sri Lanka and Eastern Europe.

EDUCATION AND HEALTH

European strategy against overweight and obesity

BACKGROUND

Poor diet and lack of physical exercise are among the most important causes of avoidable death in Europe and are responsible in Europe for six of the seven most important risk factors for many serious illnesses, for instance heart disease, type-2 diabetes, high blood pressure, stroke and some cancers. Insufficient physical exercise combined with an unbalanced diet has made obesity a serious problem for the health of the population. In most MS, more than half of the adult population (51.6%) is overweight or obese (Eurostat 2014). In addition, it is estimated that 22 million children in the EU are overweight, and that this figure is increasing by 400,000 each year. In Germany 37 million adults and 2 million children and young people are fat. Poor diet and lack of physical exercise are among the most important causes of avoidable death in Europe. According to estimates, illnesses associated with obesity account for around 7% of total health costs.

DEVELOPMENTS

In March 2013, the **COM** published a **“Report on physical education and sport at school in Europe”** which came to the conclusion that there are large differences between the MS regarding the minimum number of sport lessons per week. Specifically, in primary schools, there are often no teachers trained to teach sport. Nine MS planned to introduce additional sport lessons in the curriculum. On 24 February 2014, the COM presented a new **“EU action plan on childhood obesity 2014-2020”** setting out guidelines for the promotion of best practices to reduce childhood obesity to be implemented by the MS. Broadly, health should be promoted more strongly in kindergartens, in schools and in the framework of physical activity. Further, the MS and the COM should work to ensure that children are less exposed to advertising for high-salt, high-sugar and high-fat foods.

The non-binding **“Own-initiative report on education, training and Europe 2020”** (11 September 2012) of the EP once more underlined the educational importance of sport and called on the MS to invest more in sport and in particular to promote sport at school. In its report **“Integrated approach to Sport Policy: good governance, accessibility and integrity”** (2 February 2017), the EP stressed that promoting physical activity at schools is an ideal starting point to teach children life skills, positive attitudes and values, knowledge and understanding while, at the same time, transmitting the message that lifelong sport and physical activity are fun.

In addition, on 20 June 2014 the **Council of Ministers** adopted **“Conclusions on nutrition and physical activity”** in which they expressly supported the COM's proposals in the “EU action plan on childhood obesity 2014-2020”.

STATUS AND PROSPECTS

On 4 December 2018 the **“Directive amending directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities”** entered into force. Article 9 paragraph 2 of the directive provides that the MS should support the development of self- and co-regulatory codes of conduct in order to effectively restrict the influence of audiovisual commercial communication (advertising) relating to excessively salty, fatty and sugary foods and beverages on children and young people and to promote responsible marketing of alcoholic drinks.

On 30 April 2019, the European Department of the **World Health Organization (WHO)** published a **“Study on the prevalence of obesity in primary school children in 21 European countries”**, which concludes that, despite previous prevention efforts, many areas of Europe continue to face increasing child obesity rates. “Severe” obesity (body mass index greater than 35) has an immediate negative impact on the long-term development of the cardiovascular system and metabolism. It affects 400,000 of the approximately 13.7 million children (approx. 3 percent) between the ages of six and nine who live in the 21 participating states of the study. Severely obese children have a much higher risk of suffering heart or metabolic conditions later in life problems than children who are “only” overweight.

DFB / DFL

DFB makes an important contribution to health enhancement in Germany by organising and sustainably managing competitions for all age classes. To develop high quality and scientifically substantiated service offers, DFB cooperates in this area with project partners from government healthcare bodies such as the BZgA. Examples of projects are the action “Enjoy alcoholfree sport”, the information, service and experience offer “Make children strong”. DFB's offers are directed towards adult players of both sexes and towards older people. Preventive measures and how to deal with injuries are given equal consideration. In June 2016, a joint brochure by BZgA and DFB was presented. Under the motto “Kick with us – stay fit”, tips for age-appropriate forms of healthy football playing.

DFL and the DFL-Foundation flank the 36 professional clubs in the Bundesliga and Bundesliga 2 by creating service offers designed to pass on general values focusing on a healthy lifestyle and sufficient movement. The initiatives target children who are often brought up in marginal urban districts and who often engage in too little physical activity. In this way, addressed are young people who are disengaged from education, socially weak or otherwise disadvantaged. Projects are centred on motivating sport activity or enabling versatile learning through movement. Examples of projects include “Football meets culture”, “Class in sport”, “fit for future”, “step kicks!”, the pending project “Healthy and active” or the DFL Summer Camp.

EU Physical Activity Guidelines

BACKGROUND

In November 2006, during the Finnish EU Council presidency, EU sports ministers invited the COM to draw up EU guidelines on physical activity. To that end, the COM nominated an expert group with 22 independent specialists from 14 different MS to provide substantive support for the COM's "sport and health" working group in preparing the EU guidelines. The COM has also worked closely with the World Health Organisation (WHO) and the European network for the promotion of health-enhancing physical activity (HEPA Europe) in Rome.

The purpose of the EU guidelines on physical activity is to develop new, cross-disciplinary political projects (sport, health, education, transport and urban planning, work environment and services for older citizens) to encourage the population to move more, to address the worrying increase in obesity (see **European strategy against overweight and obesity**) and to speak directly to political decision-makers in the MS. The EU guidelines propose 41 action measures for how to proactively counter, at different levels, the increasing lack of physical activity in society and the associated negative health consequences. Above all, amateur sport at local and national level should be promoted more strongly.

DEVELOPMENTS

The **COM** adopted the final draft of the "**EU Physical Activity Guidelines**" in September 2008. At the informal meeting of EU sports ministers in Biarritz (28 November 2008) the "**EU Physical Activity Guidelines**" were confirmed. A "**Study on preparation of new EU initiatives in the area of health-enhancing physical activity**" being prepared for the COM proposes a reduction of the guidelines to 27 individual measures so that the MS are in a better position to ensure even implementation of the measures in their national sport policies.

On 26 November 2013, the **Council of Ministers** adopted official "**Recommendations on promoting health-enhancing physical activity**", thereby making use of this policy instrument in accordance with article 165 paragraph 4 TFEU for the first time. In addition, it wants the new expert group on "health-enhancing physical activity" to draw up non-binding recommendations for improving movement possibilities in schools and a coordination of national implementation of the "EU guidelines on health-enhancing physical activity". In 2015, the expert group on "health-enhancing physical activity" drew up legally non-binding "Recommendations to encourage physical education in schools" in a report to the Council of Ministers. In the report, it is proposed that physical exercise and sporting activity should be promoted from a very early age. The MS should work towards at least 5 hours a week being allotted to sport instruction. To this end, cooperation between schools, sport clubs and other private organisations should be strengthened.

In **Germany** in August 2016, "**National recommendations for physical activity and its promotion**" were published, in cooperation with, and co-funded by, the Federal Ministry of Health.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report "**Integrated approach to Sport Policy: good governance, accessibility and integrity**" in which it comes out in favour of promotion of physical activity for all Europeans, in particular through further support of the "**European Week of Sport**".

DFB / DFL

DFB and its member associations already make an important contribution to health enhancement in Germany by organising and sustainably managing football competitions. For DFB, a healthy upbringing through and for sport starts at a very early age. To strengthen sport education, DFB's school department implements various programmes to promote sport at school. Through the DFB-JUNIOR-COACH training course in schools, young people with an interest in football are enabled to organise a football group in the school and/or a junior team in the club. More than 20,000 teachers have received a specific football training in the framework of the measure. Furthermore, DFB supports cooperative ventures between schools and clubs in terms of content and material with the aim of creating additional football offers outside the educational context. In the years ahead, DFB and its member associations will give priority to offering direct assistance for volunteers in clubs in the framework of the "Future Strategy Amateur Football". A further priority is to identify child and youth trainers. Moreover, the "Future Strategy Amateur Football" supports modern and flexible match offers for adults and elderly players of both sexes in order to support lifelong sporting activity. DFB's new "Future Strategy Amateur Football" aims inter alia to use low-threshold qualification offers to enhance the social skills of trainers active in the club in their interactions with children and thus to maintain the latter's enjoyment of physical activity. Alongside this, programmes for child-focused football in the club are implemented, e.g. the Fair Play Liga concept. The Kids Clubs networked by DFL and required to offer cross-disciplinary activities (currently 32 Clubs with around 120,000 children from 3 to 12 years old) hold a shared Kids Clubs Summer Camp on a different priority theme each year.

JUSTICE AND SECURITY ISSUES

Fight against Racism and other forms of discrimination in football

BACKGROUND

Despite anti-discrimination laws, people still fall victim to discrimination and racism based on nationality, origin, religion, social class, gender, sexual orientation or age at sporting events. Especially European football has been used as a stage for racism. At the same time the particularly strong integration function of sport is recognised and has been already used in many MS as an instrument for social integration and inclusion of the relevant population groups.

DEVELOPMENTS

Already in its **“Resolution on the white paper on sport”** dated 8 May 2008, the EP invited sport organisations and the MS to take the strictest measures to combat racism and discrimination in sport. In its non-binding **“Resolution on the European dimension in sport”** (2 February 2012), the EP called on the MS to create a legal basis for banning violent and discriminating fans from stadiums in a coordinated approach with the sport federations. The MS should also establish a European register of stadium bans.

On 28 November 2008, the **Council of Ministers** adopted a **“Framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law”** in order to approximate MS legislation in this area more closely, and to ensure that serious forms of racism and xenophobia can be prosecuted as a crime in all MS.

On 9 July 2009, the **UEFA Executive Committee** approved new guidelines to help referees to deal with serious racist incidents in stadiums. If fans of a team in the stadium target racist insults on a player, the referee can act in accordance with a progressive plan which culminates in suspension of a match as the last measure.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **“Integrated approach to Sport Policy: good governance, accessibility and integrity”** in which it condemns all forms of discrimination in sport and calls for better prevention measures against discriminatory behaviour of any type. In addition, the importance of sport for the integration of refugees, migrants and asylum seekers is underlined. It is precisely amateur sport that has an important function for preventing and combating radicalisation.

DFB / DFL

The „elimination of discrimination, in particular with regard to social or ethnic origin or a claimed ‚race‘ (...)“ is an objective enshrined in the DFB statutes. It fully supports European initiatives against racism and discrimination. Its clubs and member associations are supported in implementing the recommendations for action against right-wing extremism in sport, a goal that is also prominent at the annually organised networking events for the clubs of the 3rd League and the 5 regional leagues. A publicly recognizable signal of football against discrimination is the „Julius Hirsch Prize“, first awarded in 2005, which commemorates the German national player of Jewish faith murdered in Auschwitz in 1943. Each year, the prize recognizes initiatives and individuals who are exemplary in their commitment to non-discrimination in and around football. On 1 January 2014, DFL called a funding programme into existence. The “Pool for the promotion of innovative football and fan culture” (PFIFF) makes a total of EUR 500,000 available each season to promote in particular activities for tolerance and strengthening the commitment to civil society. For example, DFL supports the Centre for Democratic Culture (ZdK/EXIT-Deutschland), which has made a name for itself among former members of extreme-right organisations and structures. In addition, DFL regularly holds specialised “REX” days (strategies against Right-wing extremism and discrimination in football) for fan and security personnel, event managers and fan projects for qualification and awareness-raising.

DFB and DFL are also promoting supporter projects run independently from the respective clubs. These also support the mostly teenage fans in their commitment against discrimination or racism. At currently 59 locations, they provide socio-educational work in a football environment. They receive funding in equal shares by the DFB and the public sector; in cities hosting a Bundesliga or Bundesliga 2 club, the cost-share agreement is between the DFL and the public sector. In the 2017/2018 season, DFB and DFL jointly invested around EUR 6.6 million in supporter projects. As part of the annual licensing and approval procedure, the youth academies run by clubs affiliated to the DFL and the DFB are obliged to demonstrate that they have organised action days and information campaigns against racism and discrimination covering all age groups.

Security at international football games

BACKGROUND

Violent football fans are not a problem exclusively for individual MS. The list of security-relevant incidents often – though not always – relates to what happens in and around football stadiums. Even if the MS are responsible for prevention and prosecution of violence, racism and xenophobia, a European approach also seems necessary due to many open questions related to cross-border issues at international matches. Following the tragedy in the Heysel stadium during the European Champions' Cup match in 1985 during which 39 people lost their lives, the Council of Europe adopted a "Convention on spectator violence and misbehaviour at sports events and in particular at football matches" with a view to improving international cooperation between police forces, football clubs and associations.

DEVELOPMENTS

The **Council of Ministers** agreed on stronger safety cooperation between the MS for the first time on 25 April 2002 (2002/348/JI). In summer 2006, the **Austrian government** submitted an initiative to the Council of Ministers whose objective was to further improve the exchange of information between police services (automation and extension). On 14 October 2016, the Council of Ministers approved an updated "**Handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved**".

On 3 July 2016, the **Council of Europe** adopted a revised "**Convention on an integrated safety, security and service approach at football matches and other sports events**". Under this Convention, authorities of the signatory states, inter alia public and private actors (e.g. municipal authorities, police, football clubs, football associations and fan organisations) are invited to cooperate on the preparation and holding of football matches, and to ensure that stadium infrastructure complies with national and international standards and legal provisions. In addition, measures are envisaged to prevent and punish violence and misbehaviour, e.g. stadium bans, initiation of criminal proceedings in the country of the crime or in the perpetrator's home country as well as freedom to travel to football matches. In addition, the signatory states undertake to strengthen international police work and to put in place National Football Information Points (NFIP) hosted by police authorities. The new Convention supersedes the 1985 Convention and has so far been ratified by 15 states.

STATUS AND PROSPECTS

The **Council of Europe** Convention has so far been signed by 23 member states and ratified by nine of them. It entered into force on 1 November 2017. **Germany** has yet to sign the convention.

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report "**Integrated approach to Sport Policy: good governance, accessibility and integrity**" in which it welcomes the new Council of Europe Convention and calls on the MS to sign and ratify this Convention without delay.

DFB / DFL

Alongside close cooperation with clubs and regional and provincial associations, DFB and DFL are involved in a regular and intensive exchange with all relevant network partners in order to further widen and improve cooperation in the field of prevention and security in German football, including beyond stadiums. DFB cooperates closely with the federal police, provincial police, the German central information point for sport actions (ZIS), BMI and BKA, and expanded the network of fan projects and independent fan representatives. In its Committee on Prevention, Security and Football Culture, DFB continuously examines prevention and security issues and adjusts measures regularly to reflect the latest developments. For international matches and tournaments abroad, an internal security concept developed by DFB and coordinated with the security authorities is applied. Thus, DFB's own stewards are often used, ticket sales are personalised and communication takes place via standardised channels. In 2013, DFL introduced the compulsory establishment of local fan dialogues in Bundesliga and Bundesliga 2 clubs. These club fan dialogues are currently further developed. In the framework of regional conferences, prepared communication plans devoted to cooperation between all security officials are increasingly being considered in match-day interaction between security services and police forces. In the German federal state of Baden-Württemberg, innovative approaches have been adopted over the past two seasons, e.g. in the shape of local stadium alliances. These contribute to reducing police man hours by involving all stakeholders in the match day preparations and deciding on a jointly approved risk assessment.

SOCIAL AND SOCIETAL POLICY

Voluntary activity

BACKGROUND

Around 60% of all EU citizens engage regularly in a sport. A majority of sport is enjoyed in the form of amateur sport and characterised by voluntary structures, and its importance for society is expressly recognised under EU law in article 165 TFEU. The COM believes that membership of a team imparts principles such as fairness, playing by the rules, respect for others, solidarity and discipline. The degree of voluntary activity varies strongly from one MS to the next. Altogether, around 94 million EU citizens have been involved in some form of voluntary activity over 15 years. Most people in the EU engage in sport (35 million) – primarily in football. According to the German sport development report 2009-2010, also 8.8 million Germans engage in sport as volunteers. On average, each volunteer devotes 20.1 hours a month to this activity. This work effort corresponds to an annual value creation of around 6.7 billion euros in Germany alone. Given the stagnating number of volunteers in most MS, amateur sport in the EU faces new challenges. In particular, young people are turning their backs on traditional team and club sports and are opting increasingly for individual sports. This has resulted in the decline in the volunteer base in amateur sport clubs. A survey by Eurostat with the title “European Youth” (Flash Eurobarometer 408, April 2015) showed that 40% of all voluntary activity is exercised in sport. Just 7% of all voluntary activity in the EU has a cross-border dimension.

DEVELOPMENTS

On 17 February 2012, the **COM** published its “**Study on grassroots sport funding**”, commissioned in March 2009, which found that voluntary activity makes a significant contribution to the financing of amateur sport. Across the EU, volunteers in sport do the work of around 1.4 million full-time employees. This is equivalent to a financial amount of 28.4 billion euros. In its “**Communication on developing the European dimension of sport**” (18 January 2011) and “**Communication on EU policies and volunteering**” (20 September 2011), the COM calls for the skills and knowledge acquired through volunteering to be taken more strongly into account in national implementation of the European Qualification Framework (EQF).

In December 2012, the **Council of Ministers’** former expert group on “sustainable financing of sport” published a “**Study on strengthening financial redistribution in sport**” in which it quantified the value of services provided by voluntary helpers in sport in the EU at a total of 28.3 million euros (data for 2008). In its mid-term report (December 2015), the expert group on “human resource management in sport” proposed that knowledge acquired in the framework of a voluntary activity in sport should also be recognised more strongly as a further education measure in the professional context.

In **Germany**, tax-free trainer indemnities have been increased from 500 to 720 euros and liability rules for voluntary helpers have been eased through the “**Law on strengthening voluntary work**” with effect from 1 January 2013.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report “**Integrated approach to Sport Policy: good governance, accessibility and integrity**”. It underlines the importance of voluntary activity as a fundamental precondition for grass-root sport, supports measures to promote the mobility of volunteers within the EU and recommends that the MS introduce tax incentives for volunteers. The **EU Sports Ministers’ “3rd Work Plan Sport 2017-2020”** (24 May 2017) was the first of its kind to not include any reference to voluntary work.

DFB / DFL

In 2018, DFB adopted a new “Future Strategy Amateur Football”. To secure the future of club football, a package of measures in the areas of communication, game development and club service was started which is addressed above all to voluntary organisers and trainers in clubs and supports their work in a targeted way. The MS and the COM have to make a more concrete contribution to creating secure and sustainable framework conditions for citizens engaged in voluntary activity. The existing EU sport funding programme should give one priority to allocating mainstreamed EU funding in the area of voluntary activity. This also includes the financing of suitable sports facilities.

Social inclusion, integration and gender equality

BACKGROUND

In connection with the general anti-discrimination debate at EU level, cases of discrimination in sport have moved into the focus. At the heart of the EU's efforts is development of measures for better ensuring social inclusion through sport of groups at risk of discrimination. In concrete terms this means inter alia access to sport facilities for disabled people, integration of migrants or equality between women and men in the decision-making structures and management positions of sport associations. The value of sport is recognised as a means for facilitating social inclusion of disadvantaged persons. Sport – in particular football – makes an important contribution in this respect, since its specificities mean that it is capable of bringing together highly diverse groups in society irrespective of their social origin. On the issue of equality for women in sport, what is particularly needed is an improvement in the access of women – e.g. migrants – to sporting activity and the under-representation of women in positions within institutionalised sport (associations, clubs).

DEVELOPMENTS

In this connection, the **COM** adopted a **“Communication on the strategy for equality of women and men 2010-2015”** (21 September 2010). In its communication **“Developing the European dimension of sport”** (18 January 2011), the COM clarified that it wants to promote systematic consideration for equality issues in sport-related activities, in line with the **“Strategy for equality between women and men 2010-2015”**. In addition, in July 2012 the Olympic movement called for stronger efforts to encourage better representation of women in sport. In the **“Annual report on equality between women and men 2014”**, the COM has proposed a “gender budgeting” in sport and pointed out that EU programmes for the realisation of gender equality are also available for sport. The **COM** published a **“Study on gender-based violence in sport”** in November 2016, which provides an overview of the political and legal framework in the field of prevention and punishment of gender-based violence in sport in the various MS. Promoting and improving women's access to decision-making bodies in sport is also part of the **“EU Gender Equality Strategy 2016-19”**.

In February 2016, the expert group on good governance in sport organisations put in place by the **Council of Ministers** presented legally non-binding **“Recommendations for gender equality in sport”** in which it proposed that the MS take concrete measures for the preparation of a national catalogue of measures. This should include concrete policy measures to promote gender equality in sport associations' decision-making bodies with a view to promoting equality in the area of the trainer pool in order to combat gender-based violence and to reduce the spread of gender-based stereotypes in sport reporting by the media.

The **EP** invited the COM to take greater account of the educational and integrative function of amateur sport, in particular with respect to underrepresented groups (women, elderly people, disabled) (14 September 2010). In its non-binding **“Resolution on the European dimension of sport”** (2 February 2012), it asked the COM, the MS and sport federations to enable sporting activity by people with a disability, in particular by making free sport facilities available.

STATUS AND PROSPECTS

The **EU Sports Ministers' “3rd Work Plan Sport 2017-2020”** (24 May 2017) refers to the promotion of gender equality as one of its priorities.

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **“Integrated approach to Sport Policy: good governance, accessibility and integrity”** in which it underlines that all sport facilities should be open to people with disabilities and welcomes initiatives which promote equality between the sexes in sport's decision-making bodies.

DFB / DFL

DFB is committed to promoting diversity and opposing any form of discrimination. One of the key points of the DFB's activities is directly assisting clubs and member associations with developing integration and diversity concepts. When integrating refugees, the DFB works closely with the Federal Government, especially with regard to educational and vocational offers. As part of the refugee initiative of the DFB and its Egidius Braun Foundation, more than 3,500 clubs have received support since 2015. The DFB aims to further develop gender equality through the intensive promotion of women's and girls' football and other diversity-oriented measures. The “Leadership Programme for Women in Football” aims to help women obtain leadership positions in voluntary work. DFB is committed to promoting projects in the area of anti-discrimination and gender equality through funds from the EU Sports Funding Programme (Erasmus+).

DFL and its foundation are using football as an inspiration for projects such as “Learning Venue Stadium”, “Football Meets Culture”, “Midnight Sports” or “Welcome to Football” (aimed at refugees) to give young people social and language skills as well as impart social values, thus enabling them to better integrate into German society. Organised under the motto of “Show Prejudice the Red Card” and accompanied by a tv campaign featuring well-known professionals, the third Integration Day 2018 sent a clear signal for a fair social coexistence and against discrimination and exclusion. Under the title “Football for Diversity and against Homophobia”, the DFL Foundation has since 2016 offered awareness training to all 36 professional clubs in order to sensitize club staff to create a non-discriminatory environment. People with disabilities are now able to enjoy barrier-free access with virtually unlimited mobility in and to the stadiums of the Bundesliga, Bundesliga 2 and Third League (Bundesliga travel guide “Barrier-Free into the Stadium”).

Protection of minors

BACKGROUND

In individual cases, young sports people from third countries outside the EU are exploited. Those exploited are primarily young persons who are unable to earn a living from sport as intended and who therefore often slide into illegality.

There are also reports of abusive practices by a few players' agents which have led to exploitation of minors. Under the provisions of the **"Directive on the protection of young people at work" (1994/33/EC)** the MS can provide that children who are at least 13 years old may be employed with respect to their involvement in sporting activities only under the conditions laid down by the labour laws of the MS. However, there are not yet any uniform minimum requirements for employment relationships in the sport sector at EU level. The **"FIFA rules on status and transfer of players"** in the version in force since 1 October 2009 provide that a player can only be part of an international transfer if he is at least 18 years old. A committee put in place by FIFA verifies every international transfer involving a minor player which is authorised on the basis of one of the exceptions specified in the rules (relocation of parents unrelated to football, player's residence is close to a border). This committee also checks each registration of a minor player who is not a citizen of the country in which he first wanted to be registered, and gives its approval if satisfied. In addition, changes have been made to the way training compensation is calculated in cases of international transfers for players who change a club before reaching their majority, inter alia to prevent young talent being taken early.

Within the EU and the European Economic Area (EEA), a player can be transferred from the age of 16 years if the following conditions are met, inter alia, which the club must substantiate: (1) The club provides appropriate football training in line with the highest national standards, (2) the new club also organises school and/or vocational education and/or training and (3) the club ensures that the player is looked after as well as possible (optimal living situation with a host family or in club accommodation).

On 9 March 2009, the **Professional Football Strategy Council** issued a joint statement of UEFA, European Leagues, ECA and FIFPro against transfer of under-18s in the EU and EEA. In its 14 September 2010 **"Position paper on article 165 of the Lisbon Treaty"**, UEFA renewed this call. In its 16 March 2010 judgement in the **"Bernard"** case **C-325/08, ECJ** found that a statutory obligation to conclude the first professional contract with the training club infringes free movement of workers in accordance with article 45 TFEU (see **Free movement of sportsmen and -women from EU member states**).

DEVELOPMENTS

On 1 October 2010, **FIFA** introduced a computer system (Transfer Matching System - TMS) (see **Players' agents**). International transfers of minor players and cross-border activity of players' advisers can be monitored using TMS.

The **COM** still shares ECJ's view that a ban on transfers of under-18 players infringes free movement of workers. But, together with the MS, it would like to monitor more strongly the issue of entry visas for minor sportspeople from third countries outside the EU. On 8 February 2013, it published the results of the **"Study on the legal and economic aspects of transfers of players"**. Its authors recommend that the COM introduces fines for non-payment of training indemnities and solidarity contributions and increases the training indemnity to 8% of the transfer sum in order to support young talent and protect minors, as well as an improvement of protection of minors in the framework of the social dialogue.

The **EP** has expressed the view in its non-binding **"Resolution on the European dimension of sport"** (2 February 2012) that international transfers for young talent can be dangerous due to early separation from the family and that the protection of minors should therefore be strengthened in international transfer cases. On 21 July 2016, the expert group on good governance in sport organisations put in place by the **Council of Ministers** presented a legally non-binding report with **"Recommendations to protect young athletes and safeguard children's rights in sport"**. Sport associations were invited to draw up strategies and rules for better protection of minors and to prepare appropriate further training and preventive measures for those leading young people. They should also draw up guidelines for how to deal with cases of abuse.

STATUS AND PROSPECTS

According to the **EU Sport Ministers' "3rd Work Plan 2017-2020"** (24 May 2017), the "Recommendations on the protection of young athletes and ensuring children's rights in sport" as well as the (legally non-binding) "Council conclusions on the protection of the physical and mental integrity of minors in grassroots and elite sport" are planned to be revised by the end of 2019.

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **"Integrated approach to Sport Policy: good governance, accessibility and integrity"** in which it calls for human trafficking – in particular trafficking of children – and economic pressure on minors in sport should be combated with greater resolve.

DFB / DFL

DFB and DFL welcome FIFA's new transfer rules for better protection of minors and the COM proposal to review practice for visa grants in the MS. In addition, in light of the specificity of sport, the Strategy Council's proposals for professional football should be discussed thoroughly. As part of the licensing and approval procedure and in accordance with UEFA's Child Safeguarding policy, the youth academies run by the clubs affiliated to the DFL and the DFB will, from 2020 onwards, be required to annually prove they have implemented appropriate measures to protect the well-being of young players and to ensure that all club activities take place in a safe environment. This includes a public commitment by the respective club to child protection, the publication of internal and external contact points, and drawing up an intervention plan.

Social dialogue in football

BACKGROUND

Given the increasing commercialisation and professionalisation, the challenges on social partners in the sport sector are also growing. In the meantime, more than 800,000 people in the EU (including the sport article industry and the leisure sector) are active across the sport sector as their main employment.

“Social dialogue” is understood to be all types of negotiations, consultations or exchange of information between or among government representatives, employer representatives and worker representatives on issues of shared interest in the area of economic and social policy. On 12 August 2004, the COM published a **“Communication on enhancing the contribution of European social dialogue”** in order to identify how to prepare the European social model for the challenges of the 21st century. In football, the professional football leagues and the players’ union FIFPro recognise each other as social partners.

DEVELOPMENTS

In its **“White paper on sport”** (11 July 2007) the COM took the view that social dialogue at European level can make a contribution to meeting the shared concerns of employers and athletes, including negotiation of agreements on employment and working conditions in the sport sector. It published a **“Working paper on the functioning and potential of a European sector-specific social dialogue”** in which it proposed creating greater synergies between the 40 different social dialogue committees that already exist. The COM’s plans to establish a social dialogue also for other sports than football have not yet been realised. The situation has not been helped by the large differences between the different sports and sub-sectors (amateur sport, sports article industry, professional sport) or by the absence of recognised social partners for the entire sport at European level.

On 19 April 2012, in the framework of a meeting of the **Committee for social dialogue in professional football** in Brussels, an agreement between employers and trade unions on minimum requirements for labour contracts of professional footballers was signed. It is intended that it will be introduced in all 53 UEFA member associations. On 17 September 2015, **FIFPro** filed a complaint with the COM’s Competition Directorate General against the current FIFA transfer system. FIFPro claims that FIFA is abusing a monopoly position in football for regulation of the transfer system to the detriment of professional footballers (article 102 TFEU). The COM has not yet decided whether to launch an official complaint procedure or to reject the complaint.

In its non-binding **“Resolution on the European dimension of sport”** (2 February 2012), the EP reiterated the COM’s position and believed that social dialogue in sport should be better supported by the EU. In its own-initiative report **“Integrated approach to Sport Policy: good governance, accessibility and integrity”** (2 February 2017) the EP welcomed the COM’s efforts to promote the Social Dialogue in sport.

STATUS AND PROSPECTS

On 6 November 2017, **FIFA** and **FIFPro** announced in a joint press release that FIFPro had withdrawn its September 2015 complaint against the FIFA transfer system. FIFA and FIFPro also announced that they had signed a comprehensive co-operation agreement for a period of six years. In addition, they said that an agreement had been reached between FIFA, FIFPro, ECA and the newly-established World Leagues Forum (WLF) to establish a **Football Stakeholders Committee**.

Chaired by **UEFA**, the **“Social Dialogue Committee for Professional Football”** continues to work towards the implementation of the April 2012 agreement between employers and players’ unions. These include, amongst other items, minimum standards for players’ contracts, a general voluntary agreement between the social partners and other stakeholders, and the development of a ‘standard European working contract for professional footballers’ or, alternatively, a general collective agreement. Aspects of health protection are also envisaged to be incorporated in the future work of the Committee and a new action plan.

DFB / DFL

DFB and DFL welcome the establishment of social dialogue in football at EU level under the moderation of UEFA, which it believes can help to ensure balanced consideration of the different interests of employers and employees in football.

ENVIRONMENTAL POLICY

Ban of microplastic on artificial turf pitches

BACKGROUND

The **EP** adopted on 13 September 2018 a “**Report on a European Strategy for Plastics in the Circular Economy**”, calling upon the **COM** to enact an EU-wide ban on microplastic particles in cosmetics, personal care products, detergents and cleaning agents by 2020. The **European Chemicals Agency (ECHA)** was also requested to assess and prepare, if appropriate, a ban on micro-plastics which are intentionally added to other products, taking into account whether viable alternatives are available.

DEVELOPMENTS

On 11 January 2019, **ECHA** published a so-called **self-restriction proposal** under the REACH Regulation, according to which the practise of “placing on the market or using” microplastic particles in products “releasing” microplastic particles “deliberately” into the environment, shall be banned EU-wide. Deliberately added microplastic particles are used in numerous products, e.g. in certain cosmetics and personal care products, detergents and cleaning agents, paints, oil and gas industry products, and as an auxiliary substance in sandblasting. In a revised edition of its proposal dated 20 March 2019, ECHA made it clear that, in its opinion, such ban also covers **granulate fillings for artificial turf pitches**. According to ECHA, the filling material used for synthetic turf (granules of scrap tires or synthetic elastomeric materials) falls under the definition of “deliberately added” microplastics.

STATUS AND PROSPECTS

ECHA launched a public consultation for all stakeholders in March 2019 that ended on 20 September 2019. The hearing was used to collect data in order to enable decision-makers to better balance environmental risks with socio-economic impacts. The ECHA committees involved will submit a final restriction proposal to the **COM** by mid-2020. At the request of the Netherlands, ECHA also proposed limiting the critical value of polycyclic aromatic hydrocarbons (PAHs) in the granules used on synthetic turf to 20 mg/kg.

The **COM**, together with the **MS**, must decide whether to fully accept these proposed restrictions and adapt the annex to the REACH Regulation or make changes. With regard to the ban on the marketing and use of plastic granules, a decision cannot be expected before mid-2020. A decision on the PAH limits could be made as early as in early 2020. In this comitology procedure, the EP's only option is reprimanding procedural errors. It is not involved in the final decision-making process as such.

DFB / DFL

DFB and DFL assume social responsibility for the preservation and sustainable use of natural resources. They therefore work together to ensure that sports facilities are operated as environmentally friendly as possible. Together with DOSB, DFB submitted a joint statement to the ECHA consultation process in May 2019, pointing out that a ban on the placing on the market and use of plastic granules in synthetic turf playing fields would be disproportionate. Should ECHA come to a different conclusion, DFB and DFL advocate long transitional periods (at least six years) for the conversion of the filling material. In a second contribution to the consultation in September 2019, DFB together with the German Association of Towns and Municipalities asked for grandfathering of existing artificial turf pitches and long transitional periods which would take into account the average lifespan of an artificial turf playing surface (12 to 15 years).

TAX POLICY

VAT directive and direct taxation

BACKGROUND

In the area of indirect taxation, the provisions of the **EU VAT directive 2006/112/EC** are intended to ensure that the different VAT rules of individual MS do not distort competition or hinder the free movement of goods and services. Basically all services provided as such against payment by a taxpayer on the territory of a MS are liable for VAT. At the same time, the VAT directive provides that certain services closely linked to sport provided by non-profit institutions (e.g. entry fees) are exempted from VAT or gives the relevant service providers a choice. Furthermore, in certain cases, reduced VAT tax rates can be applied. They are not set by the EU but by the individual MS and allow prior deduction of tax, e.g. entry fees for sporting events and use of sports facilities against payment. According to **ECJ** in the case **“Kennemer Golf & Country Club” C-174/00** (21 March 2002), e.g. membership fees for sport clubs are liable for VAT. On the contrary, membership fees paid by clubs to their associations can be exempted from VAT when the association has non-profit status (case **“Canterbury Hockey Club” C-253/07**, 16 October 2008). Economic activities which do not meet these criteria (e.g. marketing advice, procurement of sponsors) are liable for VAT.

In the area of direct taxation, the ECJ decided in the legal case **“Stauffer” C-386/04** (14 September 2006) and in the case **“Persche” C-318/07** (27 January 2009) that an exception from corporation tax for institutions serving the common good granted in one MS (domestically) must also be granted to comparable facilities from other MS (abroad). In its judgement, ECJ confirmed that cross-border donations to non-profit organisations located not in the country of the giver but in another MS are eligible for tax exemption. There is currently an absence of clear rules concerning withholding taxes (deducted at source). Withholding tax – like income tax – is collected internationally on the remuneration of paid sportsmen or sportswomen and clubs if they play abroad. In **Germany**, this tax is regulated through § 50 of the income tax law (EStG). If a foreign team plays in Germany, the players' pay for that game should essentially be subject to German withholding tax. The reverse also applies for German players' pay when they play games abroad. In a letter dated 20 March 2008 (coordinated Länder decree, BStBl. I 2008, page 538), Germany agreed not to tax the revenues of foreign-based players, clubs and associations taking part in European club competitions, subject to reciprocity.

DEVELOPMENTS

On 19 December 2013, **ECJ** ruled in case **“West Dorset Golf” C-495/12** that the tax exemption for sport related activities within the meaning of article 132 paragraph 1 (m) of the VAT directive also encompasses turnovers with services which consist in the grant, by a membership-based, non-profit-making body which operates a sport facility, of the right to use this sport facility (against payment) to visiting non-members of that body.

On 6 December 2011, the **COM** published the **“Communication on the future of VAT”** which sets out the broad lines of a future VAT system. The COM also called on the MS to make use of the existing options for reducing the VAT burden on organisations working on a non-profit status and for the common good. It was established in a **“Study on VAT in the public sector and exemptions in the public interest”** published on 10 January 2013 that there are differences in many MS in the VAT payable on sport services provided by non-profit clubs and private/commercial clubs. On 15 October 2013, the COM published another consultation paper **“Review of existing VAT legislation on public bodies and exemptions in the public interest”** in which the COM put forward a range of options for a re-organisation of existing tax exemptions for activities in the public interest.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **“Integrated approach to Sport Policy: good governance, accessibility and integrity”** in which it recommends that the MS introduce VAT exemptions in amateur sport. On 26 October 2017, the **ECJ** decided in the **“English Bridge Union” C-90/16 case** that the card game of Bridge is not considered as “sport” within the meaning of the EU VAT directive and that therefore the English Bridge Association is not entitled to invoke the VAT exemptions in EU law applicable to sport.

DFB / DFL

DFB and DFL are in favour of a uniform and Europe-wide exemption of team sports from withholding taxes (deducted at source) and maintenance of a funding of sport through VAT exemptions. Together with DOSB, in March 2014 DFB took part in the consultation on a “Review of existing VAT legislation on public bodies and tax exemptions in the public interest” and argued in favour of maintaining the existing EU VAT rules to the benefit of non-profit sport because in this way the legislator expressly recognises the particular importance to society and the function of sport clubs oriented on the public interest.

FINANCING OF SPORT

EU funding for sport projects

BACKGROUND

Since 1 January 2014, the EU for the first time has its own EU sport funding programme based on article 165 paragraph 4 TFEU through the **“Regulation establishing ‘Erasmus’: the Union programme for education, training, youth and sport”** ([EU] 1288/2013). In accordance with article 18 paragraph 1 in conjunction with paragraph 2 (e) of regulation (EU) 1288/2013, sport-related projects can be financially supported by a total of EUR 265.94 million between 2014 and 2020. The programme’s financial resources will serve primarily to promote amateur sport. The following EU programmes are essentially eligible for supporting sport-related projects: Education, training, youth and sport (programme “Erasmus+”), Health (“Health and growth” programme 2014-2020), Environment (“LIFE+”), Cohesion Fund, Agricultural policy (“European Agricultural Fund for Rural Development [EAFRD]”), Employment and social affairs (“European Social Fund [ESF]”, programme “employment and social innovation”) and Regional policy (“European Regional Development Fund [ERDF]”).

The **EU sport funding programme** has a duration of 7 years, according to the time span of the current multi-annual financial framework (MFF) (for the time being: 2014 to 2020). The aim is that the funds made available by the EU should increase over the years (2020: around EUR 69 million). The decision on which projects can be funded is taken by the COM. The projects funded are managed by the **Education, Audiovisual and Culture Executive Agency (EACEA)**. Eligible are all sport-related projects in the form of large cross-border collaborative partnerships, small cross-border collaborative partnerships and not-for-profit European sport events. The exact requirements and conditions for an award are set out in the “Erasmus+ programme guide” which is updated annually by EACEA. The individual funding priorities can be re-defined for the upcoming tendering period in an annual work programme.

DEVELOPMENTS

On 16 March 2009, after the entry into force of the Lisbon Treaty the **COM** proposed **“Preparatory actions in the field of sport”** which were intended to contribute to implementation of article 165 TFEU through promotion of individual projects, conferences and studies. On 23 November 2011, the COM published the proposal for a **“Regulation establishing ‘Erasmus for all’. The Union programme for education, training, youth and sport”** in which it mentions a separate funding chapter for sport for the first time. Yet the proposal for a **“Regulation on specific provisions concerning the European Regional Development Fund”** (6 October 2011) contained no reference to sport. On 19 October 2016, the COM published a **“Study on the contribution of sport to regional development through the Structural Funds”** for which 200 project examples and 33 concrete case studies for sport-related funding from the resources of the EU Regional Development Fund were examined. Sport infrastructure has also been supported to a certain extent. However, promoting sport via the EU structural funds is and remains the exception rather than the rule.

STATUS AND PROSPECTS

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report on an **“Integrated approach to Sport Policy: good governance, accessibility and integrity”**, and called on the COM to increase funding for sport through Erasmus+, with particular emphasis on grassroots sport.

On 30 May 2018 and in the context of the new MFF for the years 2021 to 2027, the **COM** proposed a new **“Regulation on the establishment of ERASMUS (education and training, youth and sport)”**, which envisages sport funding amounting to EUR 550 million. The demands made by the COM to double EU funding for sport were supported by the EP. The final decision on the financial envelope of the MFF is expected in early 2020.

DFB / DFL

DFB and DFL welcome the first EU sport funding programme. In order for the funding to reach amateur sport across the board, the eligibility criteria should be structured in a way that smaller projects with fewer cross-border partners can also benefit from it, in particular with a view to supporting social integration and volunteering in sport. The EU should allow for additional funding through regional and structural funds in order to provide grassroots sport with modern and sustainable sport facilities.

Collective selling of media rights

BACKGROUND

An overwhelming number of large European football leagues (apart from Spain) sell their media rights collectively in order to secure a balanced distribution of revenues among all professional clubs. The COM examined the collective selling of television rights for sporting events in the light of EU competition rules for the first time in 2000. In its eight decisions since, it has concluded that collective selling essentially constitutes an infringement of antitrust provisions but can be excluded from the ban on non-competitive behaviour (article 101 para. 3 TFEU) on an exceptional basis.

The COM allows collective selling of football media rights if appropriate adjustments are made regarding the award procedure and the extent of the rights. Collective selling of media rights is regarded as compatible with competition law if the following conditions are met, inter alia:

- Previous discrimination-free and transparent award of media rights
- Sharing-out in different rights packages for individual types of use
- No exclusive rights for live transmissions for a single bidder
- Possibilities for clubs to market particular rights individually if rights cannot be used
- Time limit on the award period

The list of possible restrictions on collective selling is not exhaustive and can be adjusted on a case-by-case basis.

DEVELOPMENTS

On 25 April 2014, the **COM** published a **“Study on sports organisers’ rights in the EU”** it had commissioned. The objective of the EU-wide study was to draw up a comparative legal analysis of national provisions relating to intellectual property rights of sport organisers, to competition and copyright aspects of marketing and audiovisual rights (collective selling) and to national legislation on games of chance and online gambling, in particular with regard to the financial participation of sport organisers in the revenues betting operators generate by using the respective sport event for commercial purposes. The study’s authors called for the COM to draw up **“Guidelines for harmonised application of competition law in connection with central marketing of television rights”**, in particular regarding the length of the tendering period and the competition-restricting effects of platform-neutral tender procedures.

In its **“Resolution on the white paper on sport”** (8 May 2008) the EP spoke in favour of a general exemption for collective selling of media rights from EC competition law and recommended that the MS should introduce and maintain collective selling systems with appropriate solidarity mechanisms. In its non-binding **“Resolution on the European dimension of sport”** (2 February 2012), the EP emphasised the fundamental importance of commercialisation of transmission rights for sport on a central, exclusive and territorial basis, and invited the COM and the MS to protect the intellectual property rights of sport content.

In December 2012, the Council’s former expert group on “sustainable financing of sport” published a **“Study on strengthening the solidarity mechanisms within sport”** which found that 5 billion euros is generated in the EU through the sale of sport media rights, of which 500 million euros is redistributed directly to amateur sport (2008 figures). Given the financial importance of these resources and to strengthen solidarity between amateur and professional sport, the study recommended better protection of sport organisers’ commercial rights by the EU and the MS. The possibility for self-financing of sport should be better supported by the EU, in particular through maintenance of central marketing of television rights.

On 30 April 2015, **Spain**, the last MS with individual marketing of sport transmission rights, issued a decree granting sport organisers an exclusive commercial right to audiovisual content and collective selling of sport transmission rights together with solidarity mechanisms. In **Germany**, the annual report 2016 of the advisory Monopoly Commission critically questioned the collective selling of sport transmission rights for reasons linked to competition policy and competition law. At the same time, it came out in favour of the grant of exclusive rights to sport organisers from the angle of competition policy. In particular it asked for a general clarification on who is the owner of sport transmission rights by the national legislator.

STATUS AND PROSPECTS

The **EP** adopted on 2 February 2017 a legally non-binding own-initiative report on an **“Integrated approach to Sport Policy: good governance, accessibility and integrity”**, in which it expressed the view that the centralized sale of television rights with a fair distribution of revenue is an important requisite for the sustainable financing of sport at all levels and for the creation of comparable conditions across the EU.

DFB / DFL

DFB and DFL welcome the explicit position of the COM in favour of strengthening collective selling of media rights. Sport’s revenues from media rights form the financial basis for promotion of amateur sport and young talent. Application of competition law must not remove the basis for solidarity in the financing of sport.

Legal protection for sport event organisers

BACKGROUND

The organisation of sport competitions involves operations which are of considerable economic and intellectual value. Given the increasing importance of the Internet for the use of media contents, preliminary services for sport events are increasingly used free of charge by unauthorised third parties for their own commercial purposes. For instance, firms offering Internet bets can use match permutations and match timetables freely, but do in return not make any material contribution to the financing of professional and amateur sport through targeted levies, taxes or other financial consideration. Due to the absence of relevant EU provisions, **ECJ** ruled in its judgements of 9 November 2004 in the cases “**Fixtures Marketing Ltd**” **C-46/02**, **C-338/02** and **C-444/02** with reference to the EU database directive (article 7) that the production of match calendars is not currently protected under EU law. Creation of a property right of sport organisers is essentially a legislative competence of the MS. The Federal Ministry for Justice in **Germany** did not support a property right for sport organisers in the last legislature period.

DEVELOPMENTS

In its non-binding “**Resolution on the European dimension of sport**” (2 February 2012), the **EP** emphasised the fundamental importance of the commercialisation of audiovisual rights of sport competitions. The EP reiterated its opinion that sport bets are a form of commercial use of competitions. For that reason, the EP calls on the COM and the MS to protect the property rights of organisers in their sport competitions against any unauthorised use, illegal providers and the suspicion of result manipulation and match-fixing.

In its judgement in the joint cases “**QC Leisure**” **C-429/08** and “**Murphy**” **C-403/08** the **ECJ** ruled that sport organisers do not possess copyright or a neighbouring right for their live-broadcasts according to current EU legislation (4 October 2011). In its judgement in “**Dataco**” **C-604/10** on 1 March 2012 ECJ stated that a fixture list can be protected by the database directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author. In its ruling on case “**Sportradar**” **C-173/11** (18 October 2012), ECJ decided that making a copyright-protected data base available on a server in and downloading data on a computer in another MS constitutes a reuse operation contrary to copyright law.

On 25 April 2014, the **COM** published a “**Study on sports organisers’ rights in the EU**” it had commissioned. The objective of the EU-wide study was to draw up a comparative legal analysis of national provisions relating to intellectual property rights of sport organisers, to competition and copyright aspects of marketing and transmission rights (collective selling) and to national legislation on games of chance, in particular with regard to the financial participation of sports organisers. The study’s authors call on the COM not to introduce a sport organiser right at EU level in the immediate future. They find that sports organisers are adequately protected by a combination of in-house rules, contractual agreements and neighbouring rights of the broadcasting companies for their recorded material.

In June 2010, **France** opened up its market for sport bets under state control. Alongside maintenance of the state lottery monopoly, the new French law on Internet gambling provides for organisers of sport events to have a right to a fair return (see **Games of chance and sport bets**). Private operators offering Internet sport bets must agree an appropriate remuneration with the organiser of relevant sport competitions. Attempts by betting operators to have French courts declare the legally enshrined property rights of sport organisers unlawful have not been successful. In **Germany**, the Federal High Court has established that a sport organiser currently has no special legal basis under German law to assert claims against commercial use of his event in the Internet. The annual report 2016 of the advisory Monopoly Commission has come out in favour of the grant of absolute rights to sport organisers. It asked for a general clarification of the law on property rights from the angle of competition policy. The German Federal Ministry of Justice is not willing to support a neighbouring right for sport.

STATUS AND PROSPECTS

On 19 April 2019, the “**Directive on copyright in the Digital Single Market**” entered into force. During the legislative process, a total of 392 MEPs voted on 12 September 2018 in favour for introducing a ‘sports organiser right’ that would grant sport operators the exclusive rights under article 2 and article 3 paragraph 2 of the EU copyright directive (2001/29/EC), i.e. reproduction right, right of communication to the public. In the final negotiations between the Council of Ministers, EP and COM (trilogue), this proposal was finally rejected, although 9 MS have already included such a provision into their national legal system or have been forced to do so by jurisprudence (France, Italy, Spain, Hungary, Poland, Great Britain, Bulgaria, Greece, Romania).

The text of the directive contains only a **legally non-binding declaration**, with the **COM** committing itself to examining more closely the “challenges faced by sports organisers in the digital environment, in particular with regard to the unauthorised and illegal online distribution of sports broadcasts”. By way of an own-initiative report (to be submitted in early 2020), the **EP** intends to remind the COM of its pledge to implement this commitment.

DFB / DFL

DFB and DFL campaign at national and European level for the creation of a concrete neighbouring right sui generis for sport organisers, which creates framework conditions in line with competition law and which covers the protection of all organisational and financial operations necessary for the organisation of a sport competition.

Competitive balance and financial stability

BACKGROUND

In recent years, the competitive and financial balance in national and European professional leagues has shifted perceptibly in favour of rich clubs. Distortions of competition between the large professional football leagues are also increasing. Players' wages in the five largest European leagues have increased very rapidly in recent years as compared with turnover. The debt levels of clubs and expenditure on players' wages vary widely from country to country. Professional leagues in some countries have a better chance to appoint well paid professionals than other leagues thanks to lower tax rates and social security contributions. For the first time with the 2005-06 season, UEFA introduced a licensing system with financial, sport, legal, personnel/organisational and infrastructure rules for UEFA club games. These rules were modified in the 2008-09 season.

DEVELOPMENTS

On 24 March 2009, the **UEFA Executive Committee** decided the creation of a club financial control committee at UEFA level, in order to ensure uniform application of the existing licensing system. The new **"Rules for club licensing and financial fair play"** (24 June 2010) provide that clubs which want to take part in UEFA club matches must not spend more than they receive in revenues. Thus, since the 2014-2015 season on, a deficit accumulated over the two previous seasons of maximum 45 million euros can only be paid off by private investors. Since the 2017-2018 season, the deficit that can be paid off by private investors may not total more than 30 million euros accumulated over the three previous seasons. This is intended to enable long-term investments in infrastructure and promotion of young talent, among other things. Clubs which infringe the rules run the risk of punishments which can go as far as exclusion from UEFA club competitions.

In its non-binding **"Resolution on the European dimension of sport"** (2 December 2012), the **EP** supported the UEFA rule and recommended it as a successful example of measures for maintenance of balanced competition in sport for emulation by other sports. It is the task of associations to ensure that clubs pursue a reasonable planning and investment culture. All MS were invited to put in place stricter provisions for financial control of clubs and additional systems for monitoring transparency. The data in the FIFA transfer matching system should be coordinated with other systems for combating corruption.

Together with UEFA, the **COM** issued a "common position" on the financial fair play rules in UEFA club matches stating that the UEFA rules recognised as being non-binding are not in contradiction with the objectives of EU state aid policy (21 March 2012). On 6 May 2013, the Belgian player agent Striani lodged an official complaint with the COM against the UEFA financial fair play rules claiming a possible infringement of EU competition law. The rule that a club may not spend more than it generates in revenues should be regarded as an agreement between companies that breached the ban on cartels in article 101 TFEU because it artificially restricts the transfer market and hence reduces the earning possibilities of players' agents.

STATUS AND PROSPECTS

The **Council of Ministers** had planned, as part of the **"2nd Work Plan Sport 2014- 2017"**, to have the expert group on the **"Economic Importance of Sport"** draft a new set of **"Guidelines on the sustainable financing of sport"** by the end of 2016; however, this measure was not implemented. The **"3rd Work Plan Sport 2017-2020"** (24 May 2017) does not envisage any initiatives in the area of sustainable sport financing.

The **EP** adopted on 2 February 2017 a legally non-binding own-initiative report on an **"Overall approach to sport policy: good governance, accessibility and integrity"**, expressly welcoming UEFA's FFP as a good-practice-example of self-regulation and praising it for contributing to greater economic rationality and higher financial management standards in competitive sport while promoting the sustainable development of sport in Europe.

The EU competition complaint filed by the player agent Daniele Striani against the FFP on 6 May 2013 was rejected by the COM and the **ECJ**. A Brussels court finally declared itself incompetent on 11 April 2019. The FFP rules, it said, did not prevent Mr Striani from continuing to pursue his profession and thus had only indirect effects on his activities in Belgium. As to the lawfulness of the UEFA rules, the Swiss courts were competent to administer justice (see **players' agents**).

DFB / DFL

DFB and DFL welcome the UEFA club licensing rules and are in favour of the introduction of licensing systems with a correspondingly high standard also in the national professional leagues of the MS. Uniform financial control contributes to the financial stability and attractiveness of football competitions and increases their competitive balance. The DFL is convinced that the reform of the club licensing regulations and ensuing obligation to publish certain key financial data will raise the level of transparency and credibility of leagues and clubs in society.

State aid for sport

BACKGROUND

In accordance with article 107 TFEU, the Lisbon Treaty specifies a general ban on state aid. The purpose of this is to ensure that state intervention to the benefit of individual economic sectors does not restrain competition and trade in the EU's internal market. In the sport sector, it is essentially infrastructure or activities of individual sport clubs at local level that are financed through state aid. State aid can be provided in the form of direct grants, preferential loans, tax breaks or training subsidies. If state aid is provided to amateur clubs, this does not usually constitute an infringement of EU state aid rules, since competition and intra-Community trade in the EU's internal market are insufficiently restricted due to the minor local significance of such aid. If training of athletes falls within the competence of the state, the provisions on state aid are not applicable (e.g. vocational training in the army or police). State support for training young athletes is also generally compatible with EU law, if it meets the criteria set out in the **general block exemption regulation (GBE)** or the **"de minimis" block exemption regulation no. 1998/2006** (15 December 2006) (state aid which does not exceed 200,000 euros over a period of three years). Professional sport clubs are often organised as "undertakings" and are engaged in commercial activities.

DEVELOPMENTS

In its **"Communication on developing the European dimension of sport"** (18 January 2011), the **COM** announced that it wanted to monitor application of state aid rules in sport more closely. Together with **UEFA**, the COM issued a "common position" on the financial fair play rules in UEFA club matches stating that the UEFA rules recognised as being non-binding are not in contradiction with the objectives of EU state aid policy (21 March 2012). On 21 May 2014 the **COM** adopted the test of a **new general block exemption regulation (GBER)** in the framework of modernising state aid rules which entered into force on 1 July 2014 and which will be applicable until 31 December 2020. The GBER's scope also covers state aid for sport and multifunctional recreational infrastructures (article 1 k). For the first time, the GBER introduces notification thresholds for such infrastructure measures. Up to the ceiling, state aid for the construction, operation and renovation of sport and multifunctional recreational infrastructures can be awarded by the MS without prior notification to the COM. The notification thresholds for state aid for construction and renovation of sport facilities are EUR 15 million per project and relate to projects with a total volume of up to EUR 50 million. Similarly, state aid for the operation of a sport facility of up to EUR 2 million a year and per project will in future no longer have to be notified. All state aid that exceeds these amounts will continue to require authorisation (article 4). Article 55 GBER regulates in detail the state aid requirements for construction, operation and renovation of "multifunctional sport arenas". State aid for the construction or renovation of such infrastructures will in future no longer have to be notified in advance to the COM if the following conditions are met: state-supported sport facilities must not benefit just one user or professional sport. On 17 May 2017, the COM approved an amendment to the GBER, increasing the exempted volume of subsidies. Since then, individual investment subsidies for sports infrastructures and multi-functional recreational infrastructures up to a maximum of EUR 30 million, total costs over EUR 100 million per project or operating grants for sports infrastructures up to a maximum of EUR 2 million per infrastructure and year (unchanged) have been considered to be in principle compatible with EU state aid law.

On 9 June 2016, the **EGC** in its capacity as instance of appeal in the state aid procedure confirmed in the case **"Dt. Alpenverein" T-162/13** that public financial support to the German Alpenverein (DAV) for the erection of climbing halls was compatible with EU state aid rules. The MS may grant state aid to promote sport clubs which are of general interest and non-profit if this aid meets a series of conditions set out in advance.

STATUS AND PROSPECTS

On 4 July 2016, the **COM** published its decision in the state aid procedure against seven Spanish professional football clubs asked the concerned clubs to repay the various amounts of state aid granted by the Spanish. On 26 February 2019, the **ECJ** ruled in cases **T-679/16** and **T-865/16** that Athletic de Bilbao would have to repay tax benefits received until 2016, but that FC Barcelona would be relieved of repayment obligations. In case **T-766/16**, the ECJ also annulled the COM's decisions against the Spanish professional football club Hércules CF (20 March 2019) and in case **T-791/16** against Real Madrid (22 May 2019).

On 2 February 2017, the **EP** adopted a legally non-binding own-initiative report **"Integrated approach to Sport Policy: good governance, accessibility and integrity"** in which it invites the COM to draw up "Guidelines on the application of state aid rules in sport".

DFB / DFL

DFB and DFL welcome the new provisions for state aid in the area of sport. Stable state support for amateur sport takes into account sport's particular significance for society and guarantees discrimination-free access to sport services for all citizens. Public support for and/or reduced burdens on professional clubs can also be a good idea and in the general interest given the social and societal importance of a particular professional club for people in its region.

Games of chance and online sport bets

BACKGROUND

The implementation, organisation and financing of sport in Germany are a matter for autonomous sport organisations. A large portion of elite sport is dependent on state promotion in the form of taxation (approx. EUR 170 million for 2018). Amateur sport is supported primarily with funds from the state gambling monopoly (approx. 370 million euros a year). In addition to Germany, many other MS also promote sport with revenues from their state monopoly in games of chance. In recent years, online gambling (sport bets, poker, online casinos, etc.) has shown the highest growth rates. In the EU, gross gaming revenue in 2017 from online gambling amounted to approximately EUR 19.6 billion and is expected to grow to EUR 24.7 billion by 2020. Online gambling accounts for 20.3 percent of the total EU market, of which sports betting takes 40.3 percent and casino games 32.1 percent, respectively. Meanwhile, 26 MS have at least partially opened and re-regulated their online gambling markets (except Ireland and Slovenia).

In line with **ECJ** jurisprudence, national state monopolies for games of chance have to be justified by the need to preserve public order, inasmuch as they must serve to limit betting activities in a “consistent and systematic manner”. The MS are free to set the objectives of their own national policy in the areas of games of chance. Nevertheless, any limitations they impose must be proportionate (cases **“Gambelli”** case **C-243/01** and **“Placanica”** **C-338/04**). The **German Federal Constitutional Court** (28 March 2006) regards a state monopoly in sports betting to be compatible with the German constitution only if it is consistently aligned on the objective of combating the dangers of addiction.

DEVELOPMENTS

In its **“White paper on sport”** (11 July 2007), the **COM** called on the MS to develop a sustainable financing model for the support of sport organisations. With the **“Green paper on online gambling in the internal market”** (24 March 2011), it initiated a public debate at EU level. The **“Study on sports organisers’ rights in the EU”** published on 25 April 2014 called on the COM to draw up **“Guidelines for sports sponsorship by online gambling operators”**. The COM has refrained from initiating infringement proceedings against Germany for the implementation of the State Treaty on Gaming.

In a non-binding own-initiative report **“Online gambling in the internal market”** (10 September 2013), the **EP** has once more underlined its opinion that sport bets are a form of the commercial use of sport events and that exclusive exploitation rights should be granted to sport organisers.

On 12 June 2014, the **ECJ** in case **“Digibet/Westdeutsche Lotterie”** **C-156/13** decided that a sub-federal law on games of chance (i.e. the former ‘Law on games of chance’ in the German federal state of Schleswig-Holstein) in a federal country does not infringe the freedom to provide services as long as the provisions are in line with the relevant jurisprudence of the ECJ. In its ruling in the case **“Ince”** **C-336/14** (4 February 2016), the Court decided that, both under the old state treaty on gambling GlüStV (2008) and also under the new state treaty GlüÄndStV (2012), soliciting bets in Germany from organisers without a German license but with an authorisation from another EU MS to organise games of chance cannot currently be prosecuted under criminal law due to the present unclear legal situation. As long as no concession has been granted in Germany, GlüÄndStV also violates EU freedom to provide services in accordance with article 56 TFEU. According to the ECJ, in Germany de facto a state monopoly in gambling continued to exist which is incompatible with European law, because there has not yet been a grant of a valid concession to private providers.

On 1 July 2012, the amended state treaty on gambling (GlüÄndStV) came into force in **Germany**. It allows a limited opening of the market for sport bets with the grant of 20 concessions for private gambling service providers and a tax of 5 percent on the turnover. The grant of concessions was stopped provisionally by the Administrative Tribunal in Wiesbaden on 18 September 2014 and definitively by the Higher Administrative Court in Kassel on 16 October 2015. In 2018, a few organisers of online sport bets voluntarily paid EUR 383.8 million of taxes to the Federal state, suggesting a turnover of EUR 7.6 billion on the German market for online sport bets.

STATUS AND PROSPECTS

In **Germany**, the Conference of the Federal States’ Prime Ministers (MPK) decided on 21 March 2019 to lift the numerical limit on concessions and to extend the experimentation clause. Schleswig-Holstein will be allowed to offer online casino games until 30 June 2021. As of 1 January 2020, licenses are to be awarded to private online sports betting providers for the remaining term of the GlüÄndStV (until 30 June 2021). At the same time, the federal states already want to start discussions on a new state treaty replacing the GlüStV.

DFB / DFL

In the framework of the discussions on the future of the German State Treaty on games of chance, DFB, DFL and DOSB have spoken in favour of maintaining the monopoly for the state lottery and to open the market for sport bets in the Internet under strict regulation and control of the state. In recognition of its organiser status, sport should in future benefit from a legally enshrined share in the revenues realised in online sports betting (sports betting levy).



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