



European Olympic Committee

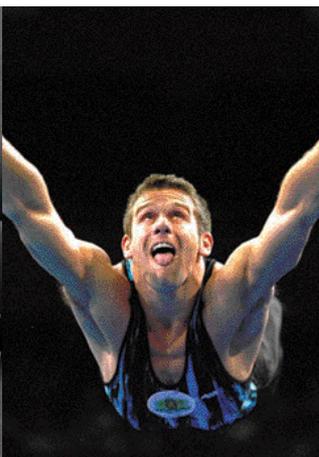


Fédération Internationale de l'Automobile

HERBERT SMITH

# “The Rules of the Game”

Europe's first conference on the Governance of Sport  
Brussels, 26 & 27 February 2001



Conference Report & Conclusions

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*"The Rules of the Game"*  
*Conference Report & Conclusions*

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# 1. Foreword by Dr Jacques Rogge , President of the International Olympic Committee

World sport is faced at the beginning of this new Millennium with a difficult challenge. It has to reconcile the traditional values of sports with growing commercial interests such as television and sponsorship.

Sports organisations can be the victims of their own success, if they do not keep pace with the political, economic and legal environment in which they act. This question has been particularly relevant in Europe, where the autonomy of sports and the governing role of sports organisations have increasingly been challenged by various stakeholders, court decisions or legislation. Sporting rules and procedures are challenged before courts or international institutions and several rulings and decisions have shaken up the sporting community.

Sports governing bodies are at the same time executive bodies, which are managing their sport, legislators in setting up "the rules of the game" but also judges whenever it comes to settling sporting disputes. These manifold dimensions of sports governance are quite unique if compared with other sectors.

The challenge for sport is to keep sports promotion at the core of sports governing bodies interest and at the same time defend the role of sports federations in running their sports.

The governance in sports conference organised in February 2001 by the FIA and the EOC is a first answer to these challenges. The statement of good governance which resulted from this conference is an answer to public authorities and stake holders in sport, guaranteeing that sports governing bodies which pledge to respect those principles are standing for certain fundamental standards in the running of their sport.

Because sports is based on ethics and fair competition, the governance of sport should fulfil the highest standards in terms of transparency, democracy and accountability.

We are confident that respecting these standards will be for the benefit of sport. They will also help to prevent outside intervention and will strengthen our organisations to the benefit of our stakeholders, mainly the clubs, athletes and sportsmen and women which must remain our "core business".



Dr Jacques Rogge  
President of the International Olympic Committee

## 2. Introduction

This paper contains a statement of good governance principles to be followed by sports governing bodies in the governance of their sport. Why should it be appropriate or necessary to apply such a statement of principles at this time?

It is clear that sport is attracting increasing attention from politicians, legislators and courts. This is natural and reflects a growing recognition of the importance of sport in its social, cultural and commercial dimensions. However this heightened profile also carries risks: calls for legislation or judicial intervention could also undermine the principles of flexible self-regulation which have generated this successful development.

Recently there have been welcome signs that politicians recognise the particular challenges faced by sports bodies. Most recently the European Council Declaration at Nice stressed its support for the independence of sports organisations and their right to organise themselves. However it also noted that such support was conditioned upon the sports bodies observing principles of democracy and transparency, solidarity across the sport and observance of a code of ethics.

The simple message is that sport is entitled to have its specificity recognised but it must earn that status. Otherwise legislators at both national and international level will come under increasing pressure to legislate and courts will apply laws treating sports bodies like any other commercial organisation.

It is undeniable that some sports at some levels now generate substantial revenues through broadcasting rights, sponsorship, ticket revenues and other sources. Nevertheless that remains a small part of sport and should not be allowed to detract from the fact that the main objective of responsible sporting bodies is to promote their sport generally and increase participation at all levels.

Applying this statement of principles carries three clear benefits:

- i. it will provide a useful "check list" for sporting bodies to ensure that they are behaving responsibly with respect to their members and to third parties with a legitimate interest in their activities;
- ii. it should go a long way to providing a solid defence to any litigation, serving to demonstrate that all actions and decisions are properly motivated and subject to appropriate checks and balances;
- iii. by demonstrating the virtues of self-regulation, it should assist in persuading legislators that there is no need to interfere further in the running of sports.

The committee responsible for drafting this statement of principles recognises that many different sports have very different structures. It is recognised that the principles can only be applied having regard to the specific format and procedures of each governing body, some of which may have public or statutory responsibilities that can extend beyond sport. The Statement of Principles has therefore been drawn up after broad consultation with sports governing bodies, regulators and a range of other parties. (Including hosting the conference "The Rules of the Game", held in Brussels on 26/27 February 2001). This code is not, therefore, a binding template but instead has focussed on key principles that should be capable of acceptance by all.

## 3. Statement of Good Governance Principles

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### *3.1. The role of the governing body*

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The main aims of sports governing bodies are to draw up rules for the sport, to develop and promote it, to widen its popularity and to represent the sport and those involved in it. Governing bodies will, in part, achieve this through good governance and by ensuring that the principles of democracy, independence, fairness, solidarity and transparency are respected.

Governing bodies acknowledge that they hold the power to govern their sport as trustees. The power to govern is fundamentally vested in their members and exercised by them directly or indirectly through a system of representation.

Governing bodies shall provide a clear statement of their role and the functions they perform to support their members and other groups with a legitimate interest in their activities.

### *3.2. Structure, responsibilities and accountability*

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Sports organisations and governing bodies at the local, national, pan-European and international level have roles and responsibilities which are similar to those of corporate boards, governments and the judiciary. All of these bodies share certain characteristics (for example, the need to achieve legitimacy through accountability to members and transparency). However, despite these common characteristics, good governance requires that there should be a separation between the roles of:

- i. making and amending of sporting rules as the primary legislative function,
- ii. making and reviewing executive decisions regarding the management of financial resources and organisation of sporting events, and
- iii. resolving disputes between members, sporting participants and other relevant third parties.

In addition, the relative positions, roles and responsibilities of all assemblies, committees, commissions and all other groups which make up the governing body shall be set out in writing and a clear chain of accountability and responsibility shall exist between each.

### *3.3. Membership and size of the governing body*

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The governing body shall publish

- The number and identity of the officers of the governing body.

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- Biographical information about each, including associations with other sports organisations and commercial interests in the sport.
  - The dates on which each member was elected or appointed to the governing body (including previous appointments if not continuous), dates of re-election or re-appointment and the date on which their current term will end.
  - Management rules setting out such matters as voting procedures, whether the chair has a casting vote and the delegation of powers to sub-committees.

In all cases decisions must be taken from an informed position which takes the diverse interests of different local, regional, national, amateur and professional groups into account. However a balance must be struck between taking decisions from a fully informed position and setting the membership of such bodies at a size which achieves an adequate level of organisational efficiency.

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### *3.4. Democracy, elections and appointments*

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The rules determining who shall be admitted or removed from the register of members of the governing body shall be clear. Members shall choose representatives to hold office within the governing body by democratic elections.

The process by which members of the governing body are elected shall be set out in writing and shall be communicated to all those entitled to vote. It is acknowledged that it is in the interests of good governance that the entry of new persons to the governing body should be facilitated and encouraged. For this reason, it is recognised that all key positions shall be subject to a fixed term of office. The relevant period shall be set out in writing.

Some examples of good practice in this regard include the following:

- The process by which elections are conducted should be fair and reflect the views of those allowed to vote. Block voting should be avoided.
- The process for nominating candidates should be clear and transparent. Candidates standing for election should be required to provide statements supporting their candidacy. For re-election this should also include an account of the contribution made to the governing body and sport.
- The governing body and executive of the sport should make all reasonable efforts to promote elections and maximise voting levels.
- After elections, voting levels and the votes cast for each candidate should be promptly and widely communicated.

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### *3.5. Transparency and Communication*

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How a governing body communicates with its members is a key indicator of the quality of its governance processes. Key aspects of communications include:

- a clear statement of the governing body's approach to governance and the articulation of its responsibilities to members;
- regular communication with members on policy decisions, elections and other matters (executive, legislative, judicial, commercial);
- two-way communication. Providing channels for communication of feedback from the membership.

The governing body shall regularly report formally to its membership about its activities, including a summary of the governing body's finances and financial activities.

More frequent reports targeted at the needs of specific groups of members may also be appropriate. The Internet could also be used to make information more widely available to members and interested parties.

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### *3.6. Decisions and appeals*

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Governing bodies will provide sufficient reasoning for all of their actions and decisions.

Governing bodies shall ensure that a procedure exists for resolving differences. Such procedures might include access to internal or external appeals or access to arbitration (whether ad hoc or through a recognised body such as the Court of Arbitration for Sport in Lausanne) or a combination of such procedures. In all cases procedures should be fair, transparent, accessible and efficient. In addition, no person sitting in any decision-making capacity on an arbitration or appeal board or panel should have any interest in the outcome of any dispute.

In addition to providing for access to such procedures, governing bodies will do nothing to prevent any party from seeking any remedy that they might have under national or international law.

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### *3.7. Conflicts of interest*

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Governing bodies occasionally become involved in commercial aspects of sport. However, the wider interests of sport may not always coincide with specific commercial objectives.

Therefore, it is acknowledged that there should be a clear demarcation between the

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governing body's governance function and any commercial activities. It is acknowledged that this demarcation may be achieved by the allocation of the various roles to different committees or bodies.

In such a case each committee or body should have clearly defined responsibilities and reporting lines. The committee or body with commercial responsibilities shall, where appropriate, consider the possibility of open tenders for any commercial contracts and any contracts. Such contracts should be no longer in duration and no more exclusive or restrictive than is demonstrably essential.

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### *3.8. Solidarity*

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The concept of solidarity is key to the development of sport. Sports governing bodies recognise that fair and effective distribution of financial revenues from the sale of commercially valuable rights related to sport events encourages the development of talent and contributes to balanced and attractive competitions.

In the light of increasing commercialisation and the resulting regulatory and political review of the structures and organisation of sports, a clear policy for the redistribution of income is essential. Sports governing bodies therefore acknowledge the following general principles as guidelines for redistribution of revenue:

- redistribution must be based on principles of solidarity (between all levels of the sport);
- redistribution policies must pursue aims that are objective and justifiable;
- effective communication through all levels of a sport is essential;
- administration of redistribution mechanisms must be transparent, accountable and objective.

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### *3.9. Recognition of other interests*

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In addition to the accountability to its members that is described above, governing bodies shall identify other interest groups which are likely to be affected by its decisions and actions. The interests of these groups shall be taken into account so far as possible.

In addition sports governing bodies shall recognise and pursue the aims of cultural and social cohesion through their sports. In particular, any discrimination based on any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited<sup>1</sup>.

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<sup>1</sup>Article 21(1), Charter of Fundamental Rights of the European Union, Official Journal of the European Communities 7 (OJ 2000/C 364/01, 18.12.2000)

## 4. The Programme

Monday, 26 February 2001

Morning

11.30

Arrival of Participants

Opening of Accreditation Desk

Session 1

14.30 – 16.00

**Conference Opening**

By Alan Donnelly, Chairman,  
Governance in Sport Working Group

Keynote Speakers:

Dr Jacques Rogge, President, European Olympic Committee  
Max Mosley, President, Fédération Internationale de l'Automobile

Presentations:

Stephen Kinsella, Herbert Smith:

*EU and Sport, Legal framework and recent developments*

Dr Matthew Gaved, Governance Consultant:

*Corporate governance today and its relevance to sport*

16.00 – 16.30

Coffee Break

Session 2

16.30 – 17.30

**Speech by Commissioner Mario Monti**, Member of the  
European Commission, responsible for competition policy  
(followed by questions & answers)

Evening

19.00 – 20.00

Cocktail Party sponsored by PricewaterhouseCoopers

20.00

Conference Dinner

Tuesday, 27 February 2001

08.30

Coffee

Session 3

09.00 – 10.20

**Who makes the Rules?**

Speakers:

Jaime Andreu, Head of Sport Unit,  
DG Education & Culture, European Commission  
David Ward, Director General, FIA Brussels Office  
René Fasel, President,  
International Ice Hockey Federation, IOC Member

10.20 – 10.40

Coffee Break

Session 4

10.40 – 12.00

**The Business of Sport and Solidarity**

Speakers:

Johann Olav Koss, Chairman Olympic Aid and IOC Member  
Tom Hoehn, Partner PricewaterhouseCoopers London/Brussels  
J-F Pons, Deputy Director General,  
DG Competition, European Commission

12.00 – 12.30

Coffee Break

Session 5

12.30 – 13.30

**Principles of Good Governance – an approach**

Speakers:

Ari Vatanen Member of the European Parliament  
Max Mosley, President, Fédération Internationale de l'Automobile  
Dr Matthew Gaved, Governance Consultant

13.30 – 15.00

Lunch

15.00

Conference closes

## 5. Key speeches

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### 5.1. *Mario Monti, European Commissioner for Competition ‘Competition and Sport - The Rules of the Game’*

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Ladies and gentlemen,

As a sports fan of long duration, it is with great pleasure that I am here today to explain to you the competition rules-of-the-game for sport.

I find myself in the position of referee and I would like to explain the ground rules and how are they applied - stressing what you can do to play a fair game and what fouls will certainly lead to a red card. Let me first explain what is for me the "playing ground".

This cannot be other than the rule of law. Any discussions, initiatives or ideas on governance in sport must be built on this basic premise: sport is subject to the rule of law. This is the starting point of the Commission and it is – or it must be - the same for all sporting authorities. How we play in the field may change from time to time or from one place to another, law is subject to evolution and change. However, the playing field does not change. I am afraid that certain players had not realised in the past how basic and fundamental this principle is.

There is no doubt that sport, in its economic aspect, is subject to Community law. The Treaty does not expressly exclude this activity and the Court of Justice has ruled on several occasions that sport is subject to Community law insofar as it constitutes an economic activity, but recognising at the same time certain special characteristics of the sector.

The Commission is convinced that sport performs a very important social, integrating and cultural function. The Commission completely subscribes to and endorses the declaration on the specificity of sport adopted by the European Council in Nice. This explicit recognition of sports specificities finds some limits in the EU Treaty, as the Heads of Governments also made clear in Nice. I will try to outline to you now how we interpret the EU competition rules in this context.

#### **The application of competition rules to the sports sector**

There are three areas of EC competition rules: anti-trust, mergers and state aids. The sports sector is mainly concerned with anti-trust rules, which are based on Articles 81 and 82 of the Treaty. Competition rules are there to make sure that there is a level playing field for everyone in the market.

Article 81 prohibits restrictive agreements between undertakings or decisions by associations of undertakings that may appreciably affect trade between Member States. Article 82 prohibits any abuse by one or more undertakings of a dominant position that may affect trade between Member States. Agreements between professional clubs and, in certain circumstances, professional athletes, may be caught by these rules. The same applies to agreements, decisions or practices of national associations and international federations.

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The competition rules of the Treaty apply only to the economic activities generated by sporting activity. Sometimes it is very difficult to separate these two levels of activity. For that reason, applying competition rules to this sector is a complex task.

### **How can this be done?**

First of all, the Commission recognises that there exists a difference between the way competition works in sport and in other economic sectors. In the sports sector, the aim of the game is not to eliminate the weaker competitors. **A contest is required** between a number of teams or participants. The interdependence **between competing adversaries** and the need to maintain a balance between them are features specific to sport.

Another particular feature of the sport sector is *the need to preserve uncertainty as to results and a degree of equality in sporting competitions, in order to attract the spectators' interest.*

Secondly, the Commission is not, in general, concerned with genuine 'sporting rules'. Rules, without which a sport could not exist, (that is, **rules inherent to a sport, or necessary for its organisation, or for the organisation of competitions**) **should not, in principle, be subject to the application of EC competition rules.** Sporting rules applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition.

This approach is in line with a recent judgement (Deliège case). Here, the Court confirmed that selection rules applied by a federation to authorise the participation of professional or semi-professional athletes in an international sports competition inevitably limit the number of participants. Such a limitation does not in itself restrict the freedom to provide services, if it derives from an inherent need in the organisation of the event in question.

In the same way, rules which are strictly necessary to maintain a reasonable degree of uncertainty as to results, for example, rules preventing clubs with a common owner from competing in the same tournament are likely to fall outside Article 81.

Furthermore, arrangements that provide for a redistribution of financial resources to - for example - amateur levels of sport may be justified, if they are necessary to **preserve sport's essential social and cultural benefits** .

The Commission also recognises the need to promote the training of young players as a legitimate aim. In certain sports, the training of young players may be jeopardised by the absence of **rules aimed at ensuring that smaller clubs are rewarded for their investment in training.** If they are proportionate to the objectives pursued, **such rules are likely either to fall outside Article 81(1) or to be exempted** under Article 81(3).

### **How does the Commission contribute to better clarity of the applicable legal framework?**

In applying the general guidelines that I have just outlined, the Commission's practice has been to wave play-on to activities that fall outside the scope of community competition rules and to show the red card when the rules of the competition game have not been respected.

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How important has the Commission's activity been for the sport? One just needs to go through this conference's agenda to realise that many – if not most - of these issues were or actually are the subject matter of certain notorious Commission's investigations under the EC competition rules.

Sometimes, the Commission is accused for its piecemeal approach based on highly specific individual cases. I would like to refer again to the set of principles you are invited to discuss in this conference. If these principles provide a solid framework of rules, doesn't this underline the coherence and continuity of the Commission's intervention?

Moreover, the Commission sets out its priorities and deals only with issues of major importance for the sector. Let me provide you some examples of the Commission's pending investigations to demonstrate the variety but also the coherence of its action in the field. Here are some areas that will undoubtedly be very interesting for you.

### **(1) The question of a single federation per sport**

Traditionally, a single federation exists to **regulate the affairs of a sport**. In addition, sporting federations are often also active in the **market for the organisation of sporting events**, either by laying down rules for their members, or by organising events directly themselves. While the existence of a single federation overseeing both the regulatory and organisational aspects of a sport is common in Europe, however, other scenarios exist or can be envisaged.

Where regulation and organisation being vested in a single body leads to significant commercial conflicts of interest, the Commission will look carefully at whether another scenario should be required.

In the FIA case, for example, FIA has agreed to divest itself of its commercial interests in Formula One. In the future, FIA's interest in Formula One will be limited to that of sport's regulator. This is why the Commission believes that an agreement under which FIA disposes of its commercial rights for 100 years is acceptable. A short period, for example, would continue the conflict of interest to which the Commission objects.

Some may ask why the Commission should accept a sale of FIA's interest in Formula One to Mr Ecclestone's companies. Such a question betrays a misunderstanding both of the Commission's remit and, indeed, of its objections to the way motor sport were being regulated. It is not our role to determine who owns what part of the motor sport business, but rather to ensure that the regulatory and commercial arrangements comply with the competition rules. The combination of FIA divesting its commercial interests in Formula One, and FIA strengthening its rules to ensure that all potential motor sports organisers and participants are treated equally seems sufficient in principle to meet the competition objections raised. Interested parties will have an opportunity to make known their views on the revised arrangements over the next few weeks, once the Commission publishes a Notice in the Official Journal.

### **(2) The rules relating to the ownership of sporting clubs**

To the extent that they are proportionate to the objectives pursued, such **rules will, in principle, fall outside the scope of EC competition rules**.

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We are examining a notification by *UEFA* of its rules forbidding clubs with the same owner from competing in the same competition. The aim of the rule, which is to ensure integrity of *UEFA* competitions by maintaining a degree of independence between clubs, appears legitimate. The Commission has taken the preliminary view that the competition rules do not apply. Nevertheless, we need to consider whether other, less restrictive, means of achieving those aims could be implemented instead.

### **(3) Restrictions arising from player transfer rules**

The Commission considers that it is possible to have a transfer system that meets the needs of football while respecting the basic principle of free movement of workers and the competition rules. Abolishing the present system in its entirety would not be the best solution. For that reason, the Commission has been discussing with FIFA, UEFA and FIFPro in order to find a solution compatible with the Treaty. There is not as yet a final agreement about the changes to be made to the present FIFA rules on transfers, but I hope this will happen in the next few days. The Commission has urged all organisations acting in the football world to agree to a common workable solution in the interest of sport itself. We already reached an agreement in principle on numerous issues and we are finalising the outstanding problems, keeping in mind that national laws apply.

### **(4) Rules restricting activities of professional sport participants or player's agents/sporting intermediaries**

Rules regulating the activities of professional athletes or organisers and promoters of sport events should, if legitimate, not go beyond what is strictly necessary.

In the Formula One case, for instance, the Commission expressed its concerns in relation to the regulatory framework of FIA. As motor sport activities are particularly dangerous, the federation needs to ensure both athletes and viewers that all necessary safety measures are strictly respected. After the Commission's intervention, FIA established an objective, transparent and non-discriminatory system in order to control and approve motor sport participants and events.

Moreover, rules regulating the activities of players' agents or other sporting intermediaries should, if legitimate, not go beyond what is strictly necessary.

### **(5) Restrictions resulting from the conclusion of sponsorship contracts**

**Sponsorship arrangements** should be organised in an objective and transparent manner. In particular, **exclusive rights** should only be granted according to **objective selection criteria**.

### **(6) Broadcasting of sports events**

As we all know, the selling of broadcasting rights is one of the most important sources of revenues for organisers of sports events.

**TV rights for sport events are highly important for TV channels**. Sport programmes are the driving force not only for the development of pay-TV services, but also for free-to-air TV broadcasters, because they can help to increase advertising revenues.

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**The Commission is particularly concerned about the impact on the structure of the TV market, which carries with it the risk of development of oligopolistic market structures.**

In the Formula One case, the Commission's concern was that FIA used its regulatory power to determine the owner and the manager of valuable broadcasting rights. This created a strong monopoly in relation to these rights. FIA accepted the Commission's view that such commercial issues should be dealt with by negotiating with all interested parties rather than by imposing rules.

There are two particular issues related to the marketing of broadcasting rights: the **collective selling and purchasing** of broadcasting rights and the **exclusivity** granted in respect of those rights.

This issue of the **collective selling** or central marketing of broadcasting rights to sport events is raised in several pending cases. The proceedings concerning the collective selling of the commercial rights for the UEFA Champions League and the central marketing of national competitions by the German football association DFB will provide the Commission with an opportunity to set out case law on this issue.

**The Commission will only intervene with regard to the collective selling of TV rights by international or national associations or leagues when there is an effect on trade between Member States. Such effects are likely to occur, for example, when rights are sub-licensed in other Member States.**

The restrictive effects of collective selling agreements (namely, that they amount to a price fixing mechanism, limit the availability of the rights of sport events and strengthen the market position of the most important broadcasters) limit both competition between broadcasters and consumer choice. The effect on competition has to be evaluated in its economic and legal context, taking into account, for example, the feasibility of participants selling rights individually.

Whether collective selling agreements fall within Article 81(1), we have to see whether they can be exempted under Article 81(3).

In this context, factors such as the possible link between the collective selling of rights and financial solidarity between clubs or between professional and amateur sport, as long as they are quantifiable and objectively defined, could be taken into consideration with all other relevant factors.

However, the possibility for **less restrictive models for collective selling** also has to be examined. I also recall that some national competition authorities have already reached their own conclusions on the question of collective selling of football rights. Most of these authorities encourage the individual sale of such rights. This is the case in the Netherlands in Italy and in the United Kingdom.

I will turn now to **collective purchasing arrangements**. Whether **collective buying** is restrictive of competition will depend in particular on the market power of the parties. **Collective buying arrangements will normally not pose any competition problems when a group of operators join forces, which individually would not have the resources to acquire the rights.**

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The granting of broadcasting rights for sporting events on an exclusive basis is an established commercial practice. **Exclusive contracts for a sporting event or for one season in a given championship do not normally pose any competition problem.** However, **exclusivity of a long duration and for a wide range of rights is unacceptable because it is likely to lead to market foreclosure.**

Nevertheless, in some cases a longer duration of exclusive arrangements can prove to be justified, particularly when an operator wishes to enter a new market with an innovative service or to introduce a new technology.

When exclusivity is likely to lead to the foreclosure of access to the TV market, community or national legislation may seek to protect the public interest and to ensure the right for the largest number of viewers to have access to certain programmes.

For example the "Television Without Frontiers" Directive allows Member States to list certain events, which are of major importance for that country, and which must be broadcast on free-to-air-TV. Another example from Italy illustrates a different approach. There, a law has been adopted limiting to 60% of the total, the amount of pay-TV rights for Italian football matches that could be held by the same operator. In other cases, competition law can require broadcasters to share their rights with third parties through sub-licensing.

#### **Is there any room for self-regulation?**

The actors - sporting organisations, clubs and athletes – can certainly contribute to improve the legal security in this sector. How? Having a good knowledge of the rules and playing a fair game in respecting them.

With this in mind, I welcome the initiatives of sporting organisations like this of today that allow better information to flow in the sporting world about the rules they have to comply with to be in conformity with community law.

Sport authorities – as any other authority - need to adapt to their new environment. Wrong attitudes and practices fuelled many of the conflicts between the sport world and the Commission in the past. Modern rules of governance are necessary to change the out dated attitudes and modify the old customs.

I would like to stress that self-regulation or governance has an important role to play. The primary objective of such initiatives should be to create the appropriate framework for the development of sport associations and disciplines. Such a solid and legitimate regulatory framework would normally reduce the reasons for intervention by the authorities.

In this context, I welcome the willingness of sporting organisations to accept to modify their rules to meet the concerns of the European Commission and to avoid complaints. In this respect I have to mention the good example given recently by FIA. I hope that I can soon mention FIFA and UEFA as another good example.

It is my belief that, from the moment sporting federations accept the rule of law and realise the limits the law imposes on their practices, it is a question of time to find the appropriate solution – however complicated the issues maybe. The Commission has

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proved more than once its flexibility and its willingness to work for the good of sport in Europe.

### **Conclusion**

The sporting world needs to have a clearer legal framework to develop its sporting but also its economic activities. The Commission is doing its best to clarify the scope of application of the EC competition rules in the particular context of each sport and taking into account the particular character of the sector.

Ladies and gentlemen, these are the rules of the game from my perspective. Please play fair, and do your best to avoid red cards.

Thank you for your attention.

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## 5.2. *Dr Jacques Rogge, President of the European Olympic Committee 'Governance in Sports: a challenge for the future'*

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Ladies and Gentleman,

### **Introduction: the importance of governance in sport**

The year 2001 is indeed a very crucial year for sports in general, and for the Olympic movement in particular. It is also important for sports in Europe.

The sports community has faced many different challenges in the recent past. The outstanding hosting of the Olympic Games in Sydney and the European football championship on our continent were certainly highlights of the past year.

Those achievements have been made possible because behind them, there are athletes, clubs and federations supporting the athletes, NOC's who are preparing the teams for the OG, the business community financially supporting them, the audio-visual industry which brings sports events to the spectator, public authorities which are supporting the development of sport. This network covers the broad range of grass roots to high level sports and explains the extraordinary development of sports in the last three decades.

From the IOC perspective, Sydney symbolises the reform process of the IOC after one of the most difficult period in its existence. Similarly, European and International sports organisations have been challenged on a field where they are less at ease, namely before public authorities or courts.

In Europe, the development of sports has shown the limits of existing sports regulations and statutes with economic operators or others being interested at taking over the commercially interesting aspects of sports at expense of the cohesion of the sports movement. One has only to follow recent developments in football and basketball to understand that the role of governing bodies is increasingly challenged. But also stakeholders in sports are showing the limits of structures that were designed at a time where sport had another dimension. In Europe, one sports man (JM Bosman) succeeded in defeating one of the worlds most powerful federation and its regulations, paving the way for others to challenge structures or regulations which are no more in tune with their time.

The idea of organising this conference has been inspired by those new realities faced by sports governing bodies in the recent past. The fact that we are gathering here today and will exchange views on proposals forwarded by the experts of the steering committee of this conference is in itself already a sign that sports has started to think about its future shape. The recent IOC reforms as well as similar experiences in the business community have conducted the preparatory work of this conference.

In my capacity as President of the EOC, I am particularly honoured to welcome you to Brussels for this conference we are organising with the "Fédération internationale de l'Automobile" and "Herbert Smith".

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## **The manifold dimensions of sports governing bodies activities**

Sports organisations can be the victim of their success, if they do not keep pace with the political, economical and legal environment in which they act. This question has been especially relevant in Europe, where the autonomy of sports and the governing role of sports organisations have increasingly been challenged by various stakeholders, court decisions or legislation. Sporting rules and procedures are challenged before courts or international institutions and *several rulings and decisions have shaken up the sporting community*.

Sports governing bodies are at the same time executive bodies, which are managing their sport, legislators in setting up "the rules of the game" but also judges whenever it comes to settling sporting disputes. This manifold dimensions of sports governance are quite unique if compared with other sectors.

A concrete example to illustrate the recent challenges faced by sports governing bodies is offered by the confrontation with the EU legislation.

The European Olympic Committees have recognised early that the emergence of the European Union would affect sports and its governing organisations. The achievement of the internal market in Europe has led to real changes in the European economy, and sports organisations have been affected by that evolution.

Sports unlike many other sectors of the economic activity, cannot only be reduced to its economic and commercial dimensions, even if important. The organisation of sports is based upon clubs, which are gathered in federations. Those federations are mostly organised at European and international level; sports governing bodies are responsible for a whole range of issues, and commercial issues are only one aspects of the governing bodies' activities. The application of legislation of an economic nature to sports is causing problems if it does not consider the broad range of interest involved in sports.

### **The EOC's action**

The European Olympic Committees are responsible for the 48 NOC' of the European continent. As for any sports organisations, NOC's have been affected by developments related to the role of sports in society and the commercial dimension of sports. The EOC have been particularly active on the EU scene, since they were the first sports organisation to recognise that EU activities were affecting sports. There is however no merit to be the first to acknowledge new developments, unless you act in order to protect the interest of your members. The EOC took the initiative in the early nineties to follow EU initiatives through setting up a liaison office. The subsequent activities initiated by the EOC have resulted in avoiding major confrontation with the EU, but have also convinced EU institutions and governments of the merits of a dialogue with the sports community.

Even if EU Treaties and corresponding legislation are not the only challenge faced by sports, they are however an example of the new obstacles faced by sports, be it on national or international level.

### **Sports and EU : an exemplary challenge to sports governance**

We have to go back to 1987 to offer a comprehensive overview on the relations between

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sports and the European Union. At that time the Single European Act was adopted by the European Community. This was the first major revision of the Treaty of Rome. Because the EOC monitored EU affairs since 1990, they were not surprised by the Bosman ruling. Despite its negative impact on football, the Bosman ruling offered also an opportunity for sports to rethink their strategy towards EU institutions and to convince European decision makers that sport is important for citizens and represents some relevance in economic and social terms.

It is universally acknowledged that sport produces important benefits for society, including forging identity, bringing people together, providing entertainment and enjoyment and improving health and fitness. It is estimated that around 120 million EU citizens (around 1 in 3 people) are a member of one or more of the 700,000 sports clubs across the EU. Furthermore, the organisation and commercial development of sport is an important sector of the economy, which some estimates accounts for some 3% of the EU's GDP, providing a major source of employment (up to 2% of total employment are created by sports activities and industry in the broad sense, 1% directly by sports activities – according to a study commissioned by the European Commission).

Which sports action would the EOC like the EU to conduct?

European Union policy and action on sport should focus on preserving and enhancing these benefits, particularly where action by the Union at European level can add value to actions taken, whether at national or international level, by sports associations, national governments and other bodies. In the meantime, European Union action on sport should not interfere unnecessarily or disproportionately with the organisation and development of sport.

Sport in Europe has benefited from national diversity. Recognising that and the important principle of subsidiarity, any EU action should focus on creating the conditions which help sport to thrive rather than regulating the fundamentals of sport. In short, the application of European Treaty rules such as those on competition and free movement should not be applied indiscriminately so as to prejudice the achievement of the many benefits which sport offers to society.

#### **What have the EOC done: a political approach ?**

The EOC have defended these views by asking for a legally binding provision for sports in the EU Treaty. A first step forward was reached when a declaration on sports was introduced in the EU Treaty in Amsterdam in 1997. The EU has for the first time recognised the social significance of sports and has asked EU institutions to consult the sport community whenever taking initiatives affecting sport.

It soon became clear that this declaration, which is of a political nature and has no legal value, did not offer an appropriate tool to promote sports or to take its specificity into account when applying EU legislation. Increasing cases involving sports were dealt by the competition or internal market department, with an important difference compared with previous experiences: these cases were also questioning the organisation of sport and the role of federations.

The EOC created with the IOC and International Federations a high level group in order

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to convince Heads of governments to take measures. They succeeded in convincing the EU's highest institution, namely the European Council, to consider the protection of sports organisation as a priority. **The European Council of Vienna in December 1998** asked the Commission to prepare a report on safeguarding the structures of sport in the EU.

The Commission, after a consultation with sports bodies, presented the so called "Helsinki report" to the **European Council of Helsinki in December 1999**, with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework on the protection of the structures of sports.

The efforts of the EOC were further recognised at the **European Council of Feira in June 2000**, which requested that the Commission and the Council take account of the specific characteristics of sport in Europe and its social function in managing common policies.

In those contacts, the EOC and IOC promoted the idea of a legal basis for sports in the EU Treaty. Indeed, the EU decided to revise the Treaty by the end of 2000, which offered the possibility for sport to be considered in this revision. The aims of such a provision are twofold: recognising the specificity of sport in the application of EU legislation of policies to sports and secondly, to promote sporting aspects in existing EU competence. The EOC recommended to take Article 151 on culture as a reference. Sport and culture, while distinct phenomena, clearly share some common features in terms of their social significance, recreational value and national diversity.

A declaration was finally adopted at the **European Council of Nice**, with a view to safeguarding current sports structures and maintaining the social function of sport within the European Union. While this declaration only has a political value, it is however important as it recognises the role of sports federations: "*...While taking account of developments in the world of sport, federations must continue to be the key feature of a form of organisation providing a guarantee of sporting cohesion and participatory democracy... ,,*

The EU's Head of States are however linking the recognition of the autonomy of sport bodies to the fulfilment of some prerequisites: "*... It recognises that, with due regard for national and Community legislation and on the basis of a democratic and transparent method of operation, it is the task of sporting organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable and the make-up of national teams, in the way which they think best reflects their objectives ... .*"

Our partners and ourselves are convinced that this conference can bring a response from the sporting community to the European Council if we can agree on good governance principles for sports. Of course sports governing bodies would contribute to the drafting of those good governance principles and commit themselves to respect them, on an entirely voluntary base.

The Nice declaration hopefully represents a further step toward a full recognition of sports in the EU Treaty. A new revision of the Treaty will be agreed in 2004.

### **The benefits of this EOC approach**

The political recognition of the specificity of sports would be of no use if it were not to

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be implemented. The EOC have therefore repeatedly asked EU institutions to take in to account the special characteristics of sports when applying EU rules to sport.

There is no doubt that EU competition rules have dramatically influenced sports in the past five years. After the Bosman ruling, fears were great among the sporting community that a strict application of EU competition rules on sports would jeopardise the current structures of sports in Europe. Sports organisations did not contest that EU rules were applied to sport. At stake was that sport could not be considered under EU competition rules as any economic activity. Sports competitors need strong opponents in order to organise a good competition and have no interest in excluding competitors from the market as would be the case in other sectors.

Secondly, sports governing bodies are needed to organise solidarity within one sport. Solidarity may include the redistribution of financial resources from participants to a competition but it may also signify redistribution for development purposes to the grass-roots of the sport. The IOC revenues provided by the broadcasting agreements and the sponsoring programme allow the IOC to support the organisation of the Olympic Games, to redistribute funds to IF's and NOC's and also to fund programmes through Olympic solidarity, and all this by ensuring that the games are broadcast on free television. The universality of the Games must remain, even if avoiding pay TV causes a loss of 600 millions USD to the IOC.

The European Commission, and this a major achievement for the EOC, has increasingly recognised its willingness to consider those aspects in recent contributions by Mr Monti. The Commission is basing this recognition on the special characteristics of sports and on the fact that genuine sporting rules are not restricting competition if applied in objective, transparent and non discriminatory manner. Finally, the Commission pledges to apply competition rules in a way which preserve the sport's essential social and cultural benefits.

The positive settlement just recently reached by the FIA with the Commission, if confirmed, are signs that solution can be found between sports federations and the Commission without jeopardising the organisation of that sport.

The EOC have furthermore supported those federations engaged in the Lehtonen and Delière case and provided governments with arguments supporting the recognition of the role of sports federations. The ECJ recognised that the selection rules applied by the federation to authorise the participation of professional athletes in international competition do not constitute a restriction of freedom to provide services as they are justified by sporting reasons.

This recognition by the ECJ was a very practical step in recognising the specificity of sport and will help the sporting community in its quest for legal stability with regards to EU legislation.

### **Sports governance: the IOC experience**

The sporting and commercial successes of the Olympic games prevented the International Committee in adapting its structures. The problems related to Salt Lake City as well the doping issue represented the greatest danger for the cohesion and the future of the Olympic movement.

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While the IOC took difficult decisions in expelling some of its members, it also decided to create the IOC 2000 Commission. This commission was mandated to prepare and to propose reform to the IOC's structure, rules, and procedures. Key reforms were adopted on the composition, structure and organisation of the IOC, its role and the designation of the host of the Olympic Games.

The decision to create the World Doping Agency might be used as an example of good governance. An independent body is now responsible for doping testing, which was in the past IOC funded. Making WADA a performing and respected institution in the fight against doping will certainly be a key issue for the IOC and the Ifs for the future.

### **Sports governance : a challenge and a opportunity for sports**

As demonstrated earlier, governments or public authorities are linking the recognition of the role of sports governing bodies to the way they operate. The issue of governance and the contend sports bodies are ready to give to it are essential for the future relations between sports, its stakeholders and public authorities.

Governance is about clarification between the "rules of the games" and the economic and commercial dimension related to the management of a sport. Because sports is based on ethics and fair competition, the governance of sport should fulfil the highest standards in terms of transparency, democracy and accountability.

The exercise that we are trying to initiate with you is not binding, but offers many opportunities. It firstly gives us the opportunity to reflect on the development of our sports and the challenges we all are facing. If we can agree on certain basic principles of good governance, this will help sport bodies in responding to the increasing attention from the political, judicial and legislative world.

Finally, basic principle of good governance will give sports bodies a point of reference to ensure they are governing their sport responsibly towards their members. It should also help in basing all actions or decisions on adequate motivation open to control and discussion.

Of course, in doing so we acknowledge the diversity of sports and their differing traditions. Therefore, our proposals are based on some key common feature of sports governing bodies such as their role in sports organisation, their structure and their responsibility, democracy, transparency, solidarity.

We are also confident that in bringing our own proposals to public authorities, we will prevent readjustments imposed on us by outside intervention; at the same time, I am also convinced that improving democracy, transparency and solidarity will strengthen our organisations to the benefits of its stakeholders, mainly the clubs, athletes and sportsman which must remain our "core business".

Thank you for your attention.

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### 5.3. *Max Mosley, President of the FIA*

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Ladies and Gentlemen,

I think it might be helpful at this point, to go back to the basics and a fundamental question which tends to get overlooked: what is the purpose of a sports governing body?

When they started, most sports bodies were simply groups of people with a common interest who came together to agree on rules. And that is very fundamental, the whole structure of a sports federation is that of a small government which, within the limits of what it is trying to do, mainly makes rules and becomes, for that particular area of activity, almost like a sovereign country.

Why do we come together to agree rules? Because you can't have sport without rules. Unless you have common rules, sport doesn't work. If you have a particular activity which is being carried out in a number of places in a similar way, the activity only really becomes successful when each group comes together to agree on a common set of rules. We have seen that in the history of numerous sports over and over again.

Having come together to agree on the rules, then it becomes a question of enforcing them. And that again is a role for the governing body - provided it is recognised as the governing body. Clearly it is able to enforce the rules by the simple expedient of telling someone who does not observe the rules that they can no longer participate in the sport.

Sports bodies try to ensure that sport is sporting in the sense of being fair and properly run. And some sports, if not all sports, in one way or another also have to be run safely, because some are dangerous. But even the supposedly non-dangerous sports can become dangerous if done in a certain way.

There are two other small points to add: the first is that as far as international sports federations are concerned, they are world bodies, not EU bodies. International sport is not just an EU issue. In one sense you can look on the EU as being a single country. There are some very important areas, like the United States, like the EU, but they are not the world.

When we talk about standards of fairness and transparency in governance, one must also bear in mind that those standards are not the same in all countries or in all parts of the world. And when you are running an international federation you always have to have this in mind.

A further small point - still on the EU - there are I think as Stephen Kinsella said - perhaps some 70 sport related complaints before the Commission at the moment. In the long term, the last thing I would have thought that the Commission would want, is to become a sporting governing body itself. Having to refer to it every time there are some big questions about what should or should not be done in a particular sport. So, even the Commission itself perhaps has an interest in trying to find a compromise with sport and with world sport in general.

But coming back to this question of corporate governance and sport bodies. I would not want to suggest that sport cannot learn from corporate governance, but there are very significant differences between a commercial corporation and a sporting body, particularly

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an international sporting body. If I may quickly go through some of these:

- First of all: if you take a corporation. What is it there for? It's not there to find common rules or a common interest. It's there to make a profit. That is its sole purpose in life. There is no sports federation anywhere in the world whose purpose it is to make a profit. It may incidentally make money, but it's not there to make money.
- The directors of a corporation are paid to make a profit. That is what they are there for. If they don't do it, they get fired. This is not the case in a sports federation.
- Share-holders and non-executive directors can be involved in all sorts of different companies in all sorts of different areas. Generally speaking that is not true for people running a sports federation.
- A corporation has little or no rule-making function. It simply makes a product or provides a service. Its only rules are its own internal articles of association.
- It relies entirely on the ordinary legal system and it competes with other corporations in the same business.

Now, when you look at the sports federations, first of all, as we've already said, it exists to further a common interest:

- The participants, the overwhelming majority of participants, are not motivated by profit. You might get a very few sportsmen at the very top of the major sports federations who make a great deal of money. But usually participants are motivated by a competitive instinct in their particular sport. In motor racing you would very seldom find - no matter how much money is involved in Formula One - you would not find a participant who could tell you how much he had made as a result of finishing in a certain place in a certain race.
- The office holders in most major sporting federations tend to be unpaid. They do it because they have been involved in a sport themselves in some way and they want to continue to make some contribution to it. This again is in complete contrast to people involved in major corporations.
- And, in the case of a sports body, generally the sport is the major interest of its members. That's why they do it. They are completely fascinated by the sport they participate in.
- The body then makes its own rules. It is - as I said before - more like a government, independently making its rules, completely different to a corporation.
- The sporting body has its own rule-enforcement system and its own judiciary to settle disputes. That's an essential part of sport. That doesn't exist in a corporation.
- And of course a sporting body doesn't compete with other sporting bodies in the

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same sport, except in certain very rare exceptions. One could argue that this was the case because people did not get a grip of the situation earlier on in the life of that sport.

If we say that a sporting federation is closer to a government than a corporate structure, then certain questions arise.

The first one is: who should vote? If you imagine a sporting body that is completely self-reliant, which effects no-one outside the sport and is only of concern to its own participants, then arguably, no-one else should have any say in it at all.

If on the other hand you take a huge world federation with a large number of participants and spectators, who amongst them, if any, should be allowed to vote? Who for example should determine the rules of, in our case, the rules of the Formula One World Championship? Should it just be the participants or should it also be the people who watch the sport? And if so, by what mechanism?

One thing is certain, the broader you spread the base and the greater the number of people involved in the decision-making, the harder it is for any competition authority or external legal authority to claim the right to tell you what to do. Because you are democratic. And in the end these external legal bodies, who would tell sporting bodies what to do, they are only justified in doing so because they are democratic. The competition authority in the EU, for example, has authority because it's given its powers by those who are democratically elected. If within a sport you have a broad-based democracy, who is to say which form of democracy is better.

Ultimately we must answer the question of whether it is all right to supervise yourself if you are democratic. Then again we must answer another question: what do we mean by democratic? How broad should the base be from which the decision-makers are elected.

Ultimately this question of self-governance and democracy is the question which has to be asked although I doubt if we will reach the answer today we need to know to what degree a sports body should be self-regulating and therefore the degree to which it should not be interfered with from the outside. I would suggest that the answer to this question is linked to how broad its democratic base is.

Now, it could also be argued that - provided everyone who is concerned with the sport has a say in their sport's decision-making through a democratic process - a competition authority shouldn't be involved at all. Because everyone who has an interest in a given sport should be involved in the decision-making process within that sport. No one outside would be effected. But of course that pre-supposes that the sporting body doesn't itself act as a money-making enterprise. This is an interesting question and one which has to be resolved because most sporting bodies are also money-making enterprises. Only a minority are in the position of the FIA which has separated its commercial role from its rule making role and is happy to be a pure regulator.

So where does this lead us? In conclusion I think we as sporting bodies should agree on certain principles of sporting governance. Sporting governance implies a democratic structure of all levels. That in itself implies transparency and I would also say accountability because if you have a true democracy, you are almost by definition accountable. A

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sporting body should have to avoid conflicts of interests. You cannot be in a position where on the one side you are regulating, but on the other side you are potentially having a commercial advantage from your regulation. Finally, no one should be in a position to personally make money from exercising a sporting authority.

So, in conclusion my message is that I feel, and many people involved with sporting bodies feel, we are probably only at the beginning of this discussion. That there are very fundamental questions we must answer.

To take an extreme example: you cannot have a situation in which every time there is a problem in a sport, or two different people disagree, that they then go to the relevant competition authority, be it in the EU or anywhere else, to seek to get the issue resolved. Because all that happens is, the competition authority becomes a sort of super sports governing body. Clearly that is not their role and I don't think they or anyone else would want that to happen.

The second thing is that we have to decide - at some stage - how to reconcile in certain sporting bodies the right on one side to be in a sense a monopolistic money-maker, but on the other side the wish, to run your sport to the exclusion of anyone else. Because that is in conflict with basic principles of competition law. I don't think we have yet analysed these problems and issues in the way that we should and perhaps the reason for this is that these issues don't arise in the context of conventional corporate governance. They are questions which are unique to sport.

I hope you don't feel that my statement has unnecessarily raised more questions than answers, but I think in a way, one has to do this. There are difficult issues we must discuss and I think sooner or later we must confront them. I personally believe that it's better if we do this sooner rather than later. This will not help not only ourselves but also the competition authorities in various parts of the world.

Thank you very much.

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## 5.4. *Stephen Kinsella, Herbert Smith* *'EU and Sport: Legal Framework and Recent Developments'*

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### Introduction

- In the last ten years there has been a huge increase in the level of regulatory intervention into the sport sector.
- The two principal strands of law used to power this increased intervention have been (i) competition law (Articles 81 and 82 EC Treaty) and (ii) the law of free movement of workers (Article 39 EC Treaty as defined in the Bosman judgment regarding player transfers) and services (Article 49 EC Treaty impacting on areas such as lotteries, advertising, TV without frontiers, and mutual recognition of titles and diplomas)

### Competition law

- Competition law is designed to regulate "economic power". Until relatively recently the sport sector has not been economically powerful enough to merit strong regulatory intervention.
- Competition law is very important for governing bodies' relationships with the competitors within its sport. When a governing body exercises its authority (because that authority is based on agreements between it and participants) it can potentially restrict competition and its actions can therefore be prohibited by Article 81 EC Treaty. In addition, sporting bodies have authority over how the sport in question will operate. This may place them in a "dominant position" within the meaning of Article 82 EC Treaty and therefore give them a special duty not to "abuse" their position.
- However, competition law only applies to sport inasmuch as it constitutes an "economic activity". Some aspects of sport are almost certainly regarded as primarily economic (e.g. sale of broadcasting rights). Likewise, some aspects of a governing body's work are universally accepted as "sporting" (e.g. sanctioning a competitor during a sporting competition for breaking sporting rules). However, many activities are both sporting and economic. In those cases it is unclear whether competition law applies or not.

### Free movement

- The controversial Bosman ruling recognised that the activities of professional and semi-professional footballers are "economic activities" when they are in employment and providing a remunerated service. Article 39 EC Treaty guarantees the freedom of workers to circulate around inside the EU. The rule that prevented footballers whose contracts had expired from moving to a club in another Member State (unless the latter club pays a transfer fee) was found to contravene that Article. One of the reasons was that the Court found the measures imposed to be too restrictive of the rights of players.

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## The consequences of the increased use of competition law and the Bosman ruling-

- This body of law has led to a situation when no-one is entirely sure how (or even if) competition law or free movement law applies to a situation or not. The European Commission is now dealing with around 70 cases related to sport. It is therefore possible that further legal problems are on the way.
- There are some steps that can be taken by governing bodies to minimise the risks. If governing bodies act in a demonstrably *democratic and transparent manner* in all of their dealings with their members, the likelihood of encountering regulatory difficulties can be reduced. For example, it will be easier for a governing body to demonstrate that any dominant position is not being "abused" if all members participate in all decisions. Similarly, the *Bosman* ruling might have been avoided if the players had been able to have the rules changed internally through democratic means rather than resorting to litigation.

## Towards a recognition of "specificity"

- Because of the uncertain legal position, there have been calls for a clear definition of what law applies and when. In particular there have been calls for a recognition of the "specificity" of sport. The European Institutions have (gradually) conceded that a difference in approach is often merited. The recent Nice declaration calls upon the Community to take into account the "specific characteristics of sport in implementing common policies".
- In the Nice declaration, paragraph 7 states:  

"It [the European Council] recognises that, with due regard for national and Community legislation and on the basis of a democratic and transparent method of operation, it is the task of sporting organisations to organise and promote their particular sports..."
- This appears to be a clear indication that governing bodies may largely be left to manage and regulate their internal affairs provided that they operate within certain basic parameters of democracy and transparency.

## Conclusion

- On three levels, therefore, (i.e. from the perspectives of competition, free movement and the Nice declaration) there are indications that, provided that the structure of the governing body is democratic and transparent, there may be a much-reduced need for regulatory intervention from outside.
- If some general principles of "good governance" can be agreed then governing bodies will have available some best practice guidelines for democratic and transparent governance, against which they can measure their own practices.

## 6. List of Participants

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### 6.1. *Speakers*

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European Commission, DG Competition	Mr Mario Monti, Member of the European Commission
European Commission, DG Competition	Mr Jean-Francois Pons, Deputy Director General
European Commission, DG Education and Culture	Mr Jaime Andreu, Head of the Sport Unit
European Parliament	Mr Ari Vatanen MEP
European Olympic Committees (EOC)	Mr Jacques Rogge, President
Fédération Internationale de l'Automobile (FIA)	Mr Max Mosley, President
Governance in Sport	Mr Alan Donnelly, Chairman
International Ice Hockey Federation (IIHF)	Mr René Fasel, President
Governance Consultant	Dr Matthew Gaved
PricewaterhouseCoopers	Mr Tom Hoehn, Partner Brussels/London
Herbert Smith	Mr Stephen Kinsella, Partner
Olympic Aid	Mr Johann Olav Koss, Chairman
Fédération Internationale de l'Automobile (FIA)	Mr David Ward, Director General, Brussels Office

### 6.2. *European Union*

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Council of Europe	Mr Mesut Özyavuz, Administrator
European Commission, DG Education and Culture	Mr Yves Le Lostecque, Administrator of the Sport Unit
European Parliament	Mrs Arlene McCarthy MEP
European Parliament	Mr Chris Heaton-Harris MEP

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European Parliament	Mrs Elizabeth Lynne MEP
European Parliament	Dr Barbara O'Toole MEP, Coordinator
European Parliament	Mr Roy Perry MEP
European Parliament	Mrs Marieke Sanders-ten Holte MEP
European Parliament	Mrs Joyce Haarbrink, Assistant to Marieke Sanders-ten Holte MEP
European Parliament	Mrs Nicola Smith, Assistant to Chris Heaton-Harris MEP

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### *6.3. Governmental Representatives*

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State Agency for Youth and Sports - Bulgaria	Mr Simon Spasov, President
State Agency for Youth and Sports - Bulgaria	Mr Nikolay Gatzen, Director
State Agency for Youth and Sports - Bulgaria	Mrs Albena Andonova, Director International Relationships
Ministry of Education and Sports - Croatia	Prof Juraj Turner, Senior Advisor for Sport
Ministry of Education and Sports - Croatia	Prof Ivo Mirosevic, Head of Department for Sport
I.N.S.E.P.	Mr Christophe Debove, Chef du Département de la Formation
Ministry of Culture - Greece	Mr Ioannis Fotopoulos, Legal Advisor
Ministry of Culture - Greece	Ms Katerina Tzika, EU and International Relations Department
Ministry of Culture - Greece	Prof Athanasios Kriemadis
Ministry of Culture - Greece	Mr Georges Kopidakis, Chef du Bureau de la Formation du Personnel
Ministry of Youth and Sports - Hungary	Mr Ferenc Dénes, Deputy State Secretary
Ministry of Youth and Sports - Hungary	Dr Róbert Lupócz, Deputy Director, Dept. of Legal Affairs
Latvian Sports Department, Ministry of Education & Science	Mr Edgars Dupats, Assistant Director on Legal Issues

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Ministère de l'Education Nationale, de la Formation Professionnelle et des Sports (L)	Mr Christian Diederich, Inspecteur Principal
Ministry of Health, Welfare and Sport (NL)	Mr Arnoud Sterk, International Sport Affairs Officer
EDO State Minsitry of Youth and Sport - Nigeria	Mr Joseph Momodu
EDO State Minsitry of Youth and Sport - Nigeria	Dr Adeniyi Oluwole
EDO State Minsitry of Youth and Sport - Nigeria	Mr Nnaemeka Paul Omokachie
EU representation of Norway	Mr Fridtjof Lund
State Sports Administration - Poland	Mrs Ewa Suska, Director
State Sports Administration - Poland	Mrs Irmina Rozkiewicz, Expert
Ministry of Youth and Sport of Romania	Mr Cristian Rizea, Head of the Minister's Office
Consejo Superior de Deportes - Spain	Mr Miguel Utray, Head of International Relations
Consejo Superior de Deportes - Spain	Mr Ramón Barba
Diputacion Foral de Gipuzkoa	Mr Julian Gomez, Jefe de Programas del Servicio de Deportes
Diputacion Foral de Gipuzkoa	Mr Jose Ignacio Olaizola Sanudo, Director General de Juventud y Deportes
Ministry of Industry, Employment and Communications - Sweden	Mr Thomas Karlsson, Special Adviser
Ministry of Industry, Employment and Communications - Sweden	Ms Karin Mattsson, Chairman, Sports-working Party

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## *6.4. Non-Governmental Representatives*

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International Olympic Committee	Mr Howard Stupp, Director of Legal Affairs
EOC Liaison Office	Mr Christophe De Kepper, Head EU Office EOC
EOC Liaison Office	Ms Sophie Doremus
EOC Liaison Office	Ms Monika Klein
Court of Arbitration for Sport	Mr Matthieu Reeb, Secretary General
Österreichische Bundes-Sportorganisation (BSO)	Dr Gernot Wainig, Vice-President

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Comité Olympique et Interfédéral Belge	Mr Guido de Bondt, Secretary General
Comité Olympique et Interfédéral Belge	Mr Thierry Zintz, Administrateur
National Olympic Committee for Germany	Mr Bernd Roeder, Director
Czech Olympic Committee	Mr Milan Jirasek, President
National Olympic Committee and Sports Confederation of Denmark	Mr Hans Christian Hansen, Honorary Treasurer
National Olympic Committee and Sports Confederation of Denmark	Mr Morten Bangsgaard Special Adviser
Spanish Olympic Committee	Mr Julio González Ronco, Legal Adviser
Catalan Sport	Mr Ignasi Donate, President
Finnish Sports Federation	Ms Terhi Heinilä, Manager for International Relations
Finnish Sports Federation	Mrs Kerstin Ekman, Director
Hungarian Sport Federation	Prof. Dr. László Nádori, President
Olympic Council of Ireland	Mr Patrick J. Hickey, President, IOC Member, Vice-President EOC, Chairman of EU working group
Olympic Council of Ireland	Mr Louis Kilcoine, 1st Vice-President
The Irish Sports Council	Mr Matthew Kennedy, Programme Executive
Comité Olympique et Sportif Luxembourgeois	Mr Marc Theisen, President
Malta Olympic Committee	Mr Justice Lino Farrugia Sacco, President
Malta Olympic Committee	Mr Joseph Cassar, Secretary General
Netherlands Olympic Committee * Netherlands Sports Confederation	Mr Theo Fledderus, General Manager
Netherlands Olympic Committee * Netherlands Sports Confederation	Ms E. Terpstra, Member of the Board, EOC Executive Committee

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Netherlands Olympic Committee * Netherlands Sports Confederation	Mr Ger Wegene,r Manager International Affairs
Norwegian Olympic Committee and Confederation of Sports	Mr Kjell O. Kran, President
Norwegian Olympic Committee and Confederation of Sports	Mrs Kirsten Wille, International Officer
Confederacao do Desporto de Portugal	Prof. Dr. Carlos Cardoso
Comité Olímpico de Portugal	Mr José Vicente Moura, President
NOC of Slovenia	Mr Janez Kocijancic, President
Association Olympic Suisse	Mr Marco Blatter, Directeur Exécutif
Swedish Sports Confederation	Mr Lennart Karlberg, General Secretary
Swedish Sports Confederation	Mr Christer Pallin, Head of Legal Department
Swedish Supreme Sports Tribunal	Mr Krister Malmsten, Vice President
National Olympic Committee of Turkey	Mr Taner Senseven, Media and PR Director
Confederation of British Sport	Mr Alan G. Grosset, Vice-Chairman
Confederation of British Sport	Mr Nigel Hook, Head of Technical Service-CCPR
Sport England	Mr Barry Chivers, Head of Management Audit Services
Sport England	Ms Sheila Morrow, Head of Governing Body Services
UK Sport	Ms Liz Nicholl, Director of Performance Srevices
Sportscotland	Mr Jon Doig, Senior Development Officer
Sportscotland	Mr Colin Pearson Senior Development Officer
The Central Council of Physical Recreation / ENGSO	Mr Malcolm Denton, Chief Executive
Yugoslav Olympic Committee	Mr Dragan Kicanovic, President
Yugoslav Olympic Committee	Mr Predrag Manojlovic, Secretary General

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## 6.5. Sports Federations

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Federacao Portuguesa Atletismo	Mr Fernando Tenreiro
Fédération Internationale de l'Automobile (FIA)	Mr Sébastien Bernard, Head of Legal Affairs
Fédération Internationale de l'Automobile (FIA)	Mr Gregory Lepesqueux
Fédération Internationale de l'Automobile (FIA)	Ms Gaby Roosen, Conference Administrator
Fédération Internationale de l'Automobile (FIA)	Mr Richard Woods, Director of Campaigns and Communication
Royal Automobile Club de Belgique	Mr Yves Bacquelaine, Président C.S.N
Royal Automobile Club de Belgique	Mr Paul Kumpen, President C.S.N
Cyprus Automobile Association	Mr Christos C. Kyriakides, General Manager
The Autoclub of the Czech Republic	Mr Radovan Novak, Secretary General - Sport
Deutscher Motor Sport Bund e.V.	Mr Rupert Mayer, Members Executive Committee
Deutscher Motor Sport Bund e.V.	Mr Bernd Renneisen, Members Executive Committee
Automobile and Touring Club of Greece (ELPA)	Mr Vassilis Despotopoulos, President
Commissione Sportiva Automobilistica Italiana	Mr Erasmo Saliti, Secretary to CSAI
Auto Moto Sojuz na Makedonija (AMSM)	Mr Dimitar Minovski, General Secretary
Federacao Portuguesa Automobilismo e Karting	Mr Antonio Vasconcelos Tavares, Chairman of the Board
The Automobile Association of Uganda (AAU)	Mr Roger Ddungu, President
The Royal Automobile Club Motor Sports Association	Mr T A Lankshear, General Secretary
The International Badminton Federation	Mr Neil Cameron, Chief Executive
International Baseball Federation	Mr Gaston Panaye, Vice President Europe
International Basketball Federation (FIBA)	Mr Yvan Mainini, President of the Standing Conference for Europe
International Basketball Federation (FIBA)	Mr Gian Luigi Porelli, President of the Commission for Legal Matters & Eligibility

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International Basketball Federation (FIBA)	Dr Dirk-Reiner Martens, Legal Adviser
Euroleague Basketball	Mr Josep M. Solsona Sancho, Legal Advisor
European Canoe Association (ECA)	Mr Albert John Woods, President
World Boxing Council (WBC)	Mr Bob Logist, Secretary General Finance & Planning Committee
Union Cycliste Internationale	Mr Dieter Schellenberg, Directeur Général
International Equestrian Federation (FEI)	Mr Michael Stone, Assistant Secretary General
Fédération Internationale de Football Association (FIFA)	Mr Gianpaolo Monteneri, Head of Players' Status
Union des Associations Européennes de Football (UEFA)	Mrs L. Hiljemark
Union des Associations Européennes de Football (UEFA)	Mr T. Tindemans
The Football Association	Mr Nicholas Coward, Company Secretary
The Royal and Ancient Golf Club of St Andrews	Mr Jeremy Caplan, Member of General Committee
Professional Golfers' Associations of Europe (PGA)	Mr Lawrence Thornton, General Secretary
European Handball Federation	Mr Tor Lian, Vice-President
European Handball Federation	Mr Michael Wiederer, Secretary General
International Hockey Federation	Mr Hans G.J. Bertels, Executive Director
International Ice Hockey Federation (IIHF)	Mr Frederick Meredith, Chairman Legal Committee
Fédération Internationale des Lutttes Associées (FILA)	Mr Michel Dusson, Secrétaire Général
Fédération Internationale de Motocyclisme	Mr. Francesco Zerbi, President
Fédération Internationale de Motocyclisme	Mr. Guy Maitre, Directeur Général
Fédération Internationale de Motocyclisme	Mr C.J.B. de Bourbon
Panathlon International	Mr Vic de Donder, Membre du Conseil Central
Union Internationale de Pentathlon Moderne (UIPM)	Mr Klaus Schormann, President

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International Rugby Board (IRB)	Mr Darren Bailey, Legal Counsel
International Softball Federation	Mr Don E. Porter, President
European Squash Federation	Mr Philip J.M. Van Der Ven, President
Confederation Mondiale des Activités Subaquatiques (CMAS)	Mr Pierre Dernier, Secrétaire Général
International Sailing Federation (ISAF)	Mr Arve Sundheim, Secretary General
European Table Tennis Union (ETTU)	Mr Alan Ransome, Vice-President
International Tennis Federation (ITF)	Mr Francesco Ricci Bitti, President
European Tennis Association (ETA)	Mr Olli Mäenpää, Director, Marketing & Events
European Triathlon Union	Mrs Erika König-Zenz, Secretary General

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## 6.6. *Legal*

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Association belge pour l'économie, le droit et l'éthique du sport	Mr Luc Silance, Lawyer
Freshfields Bruckhaus Deringer	Mr Rod Carlton, Partner
Herbert Smith	Mr Ken Daly
Herbert Smith	Mr Mike Kingston
Reuters, Legal Department	Mrs Dorothy Whyte, Senior Legal Counsel
Townleys Solicitors	Mr Max Duthie

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## 6.7. *Consultants*

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Atlantic Sports Management and Training	Mr Morgan Buckley, Managing Director
APCO Europe	Mr Richard Bullard, Head of Research & Intelligence
Government Policy Consultants (GPC)	Mr Toon Digneffe, Consultant

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LAGARDERE	Mr Jean-Louis Piette, Senior Vice President for European Affairs
Northern Recreation Consultants	Dr Joe Lennon
PricewaterhouseCoopers	Mr David Lancefield, Manager International Affairs

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## 6.8. Commercial

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Federation of the European Sporting Goods Industry (FESI)	Mr Alberto Bichi, Secretary General
Formula1.com	Mrs Nicole Morris, Chief Executive
International Sportsworld Communicators Ltd (ISC)	Mr David Richards, Chairman
International Sportsworld Communicators Ltd (ISC)	Mr William Morrison, Managing Director
World Federation Sporting Goods Industry	Mr Andre Gorgemans, Secretary General

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## 6.9. Academic

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Asser International Sports Law Project	Mr Hans G. Breitschaft, General Advisor
Centre International d'Etude du Sport (CIES)	Mr Jean-Philippe Dubey, Collaborateur Scientifique
College of Europe	Mr Jose Mutiozábal, Student
ENSSCHE	Prof. Dr. Karsten Froberg, President
Imperial College Management School	Mr Stefan Szymanski
International Sports Law Centre, Anglia Polytechnic University	Mr Andrew G. Caiger, Advocate
Swiss Graduate School of Public Administration	Prof Dr Jean-Loup Chappelet
T.M.C. ASSER Institut, International Sports Law Project	Dr Robert C.R. Siekmann, General Coordinator
UNIL, Faculte de droit, CEDIDAC	Mr Jérôme Jaquier. Lic. iur., Doctorant

## 7. The Governance in Sport Working Group

### **Alan Donnelly**

Former Member of the European Parliament and former leader of the European Parliamentary Labour Party.

### **Dr Matthew Gaved**

Governance consultant. Previously Publisher and Editor of 'Governance' newsletter. PhD on Corporate Governance (London School of Economics).

### **Tom Hoehn**

Partner PricewaterhouseCoopers and Visiting Fellow Imperial College Management School, London. Author and consultant on Economics of Sport.

### **Christophe De Kepper**

Legal adviser, Head of EU Liaison office of EOC and national sports organisations. Member of the EU committees of EOC and ENGSO (European sports confederation).

### **Stephen Kinsella**

Managing Partner of Herbert Smith Brussels, specialist in EC and UK competition law and Media and Sports law.

### **David Ward**

Director General, European Bureau, Fédération Internationale de l'Automobile (FIA).

### **Governance in Sport Working Group**

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