



UEFA's position on Article 165 of the Lisbon Treaty



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This document outlines UEFA's interpretation of Article 165 of the Treaty on the Functioning of the European Union (TFEU), which entered into force on 1 December 2009. It also forms part of the broader debate concerning the way in which European Union (EU) law is applied to the activities of sports federations and prepares the ground for a new approach which takes into account the specificity of sport in a more concrete and practical manner.

Under the TFEU, the EU has a supporting competence in the field of sport, meaning that its activities are limited to coordinating, where necessary, sports-related initiatives undertaken at Member States level. The EU may also adopt incentive measures, however, Article 165 expressly excludes any harmonising legislation. The new Article is clearly, therefore, not intended to prejudice the legitimate autonomy and discretionary decision making power of sports federations.

However, where EU law does come into play and where it impacts on the activities of sports bodies, Article 165 now requires that the specific nature of sport must be recognised. In other words, while sport is not "above the law", there is now a provision in the Treaty itself recognising that sport cannot simply be treated as another "business", without reference to its specific characteristics (**the 'specificity of sport'**).

Following the structure of Article 165, UEFA will comment on its content in greater detail and set out some recommendations explaining how it could be implemented in practice, while respecting the key values on which sport in Europe is founded.

These values, shared by most sports in Europe, constitute a true model, an expression of European citizenship, culture and tradition. The European sports model, based on a single federation for each sport, is characterised by a democratic, territorial and pyramid-shaped structure. It is deeply rooted in community life and the voluntary sector and is based on sporting and financial solidarity mechanisms, such as the principle of promotion and relegation; open competitions with a balance between clubs and national teams, and a symbiotic relationship between elite and amateur sport. Through this model, UEFA not only governs football at European level but also promotes, more broadly, the general interests of football throughout the continent.

Provided it is applied in a way that harmoniously reconciles the pursuit of these objectives and principles with the requirements of EU law, Article 165 of the TFEU could be beneficial for European sport.

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

***Union action shall be aimed at (...) developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.***

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

Article 165 of the Treaty on the Functioning of the European Union

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## **1. "Taking account of the specific nature of sport and the structures of sport based on voluntary activity and its social and educational function"**

### **1.1. Developing the social, cultural and educational values of sport, and its public health function**

Sporting activities are extremely important for European citizens and bring numerous benefits to the whole of society, in particular, due to the structures of the European sports model.

Participating in sport is beneficial for the physical and mental health of both children and adults. Football particularly promotes fundamental educational and cultural values, such as team spirit, self-control and respect for others. In this way, sport contributes to cohesion, integration and participation in society. Its positive educational qualities are important not only for the development of individuals but also for the development of citizens. The statutory *raison d'être* of sports federations is fundamental in this respect, as it consists of promoting the practice of their particular sport and the values that they represent.

(i) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to reaffirm their support for the European sports model, to encourage the practice of sport and to promote its social and educational values.

## 1.2. Clarifying the legal treatment of sport under Community law

Although the specific characteristics of sport and its organisational structure have been recognised at European level on various occasions, the EU institutions have yet to establish a legal framework that takes into account this specificity and which guarantees the autonomy of sports federations. The absence of a clear legal framework and the resultant “case-by-case” approach has a destabilizing effect on sport, creating a sense of ambiguity and legal uncertainty.

More than ever, and as requested by the European Parliament<sup>1</sup>, it is now important to define an appropriate legal framework to protect the social, cultural and educational functions of sport, as well as their underlying structures.

(ii) UEFA invites the European Commission to clarify the application of the *acquis communautaire* to sport, for example, by building on the preparatory work of the White Paper on Sport by setting out guidelines in a way that will address the problems created by on-going legal uncertainty and create a more stable environment for sport.

## 1.3. Protecting the legitimate exercise of regulatory power by the sports federations

The specific nature of sport refers to the particular and essential aspects of sport that distinguish it from any other economic sector.

To take into account and safeguard the different aspects of the specificity of sport, the EU institutions must treat sports federations with particular care. Prudence is justified by the specific tasks that civil society has entrusted to these federations for more than a century. The federations do not embody individual interests but are, on the contrary, constituted precisely in order to bring together and represent the overall interests of stakeholders in their respective sports, in a spirit of cooperation and progress. While it is not suggested that there should be some kind of “general exemption” for sport, a more balanced and nuanced approach is needed to take into account the particular role that sports federations perform.

(iii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to recognise that sports federations have a wider public interest role and that EU law should be applied in a way that does not prejudice their ability to discharge their legitimate and statutory functions, including rule-making and application of sporting sanctions.

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<sup>1</sup> European Parliament (2007), Resolution on the future of professional football in Europe (Belet report), paragraph 7; European Parliament (2008) Resolution on the White Paper on Sport (Mavrommatis report), paragraph 4.

#### **1.4. Recognising the advantages and expertise of sports arbitration bodies**

The resolution of sporting disputes is a matter best dealt with by specialist arbitration bodies, such as the Court of Arbitration for Sport (CAS). Composed of independent experts familiar with the specific nature of sport, such bodies represent a consensual, effective alternative to civil courts, which are less familiar with the technical nuances of sport and in which lengthy procedures are unsuitable for the rhythm of sporting competitions.

The promotion of arbitration, on a voluntary basis, as a means of settling disputes in sport is not an attempt to deny the jurisdiction of civil courts but simply represents the most appropriate way of resolving such cases in an effective and efficient manner.

(iv) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to endorse and promote the use of sporting tribunals, such as CAS, as a means to resolve disputes in the area of sport.

## **2. “Promoting fairness and openness in sporting competitions”**

### **2.1. Maintaining the fundamental principles of promotion and relegation and accessibility of competitions**

As guardians of their respective disciplines, sports federations ensure that competitions are open and accessible. The longstanding principle of sporting merit, such as promotion and relegation and accessibility of competitions help to achieve this aim. Thanks to this system, any club can cultivate the hope of playing at the highest level on the basis of its sporting performances. This is contrary to the “closed league” system, where financial performance (rather than sporting performance) tends to be the factor determining participation. Key features of the European sports model, the principles of promotion and relegation and accessibility of competitions are also necessary for the fair and cohesive staging of exciting competitions.

(v) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member states to reaffirm their support for the principles of promotion and relegation and accessibility of competitions.

### **2.2. Supporting UEFA's Financial Fair Play measures**

These days, increased economic pressure and a tendency towards “short-termism” can result in instability and threaten the health and future of sport. Consequently, robust licensing systems for clubs are needed for all team sports and should be supplemented, where necessary, by measures aimed at improving the financial fairness of competitions. It is the responsibility of the federations concerned to encourage clubs to adopt a culture of planning and sensible investment.

UEFA's Financial Fair Play initiative was launched with these considerations in mind. The new rules – which will enter into force in 2012/13 – are based on the principle that clubs should compete on the basis of their own financial resources i.e. meaning that they live within their means and do not spend more than they earn. By adopting this principle, UEFA is helping to improve financial fairness in European competitions, as well as the long-term stability and sustainability of club football.

(vi) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to pledge their full support for Financial Fair Play, which represents a timely, legitimate and necessary initiative by UEFA.

### **2.3. Encouraging the centralised and territorial sale of audiovisual rights for sports competitions**

The sale of audiovisual media rights is a major source of income for European sport. In most Member States, the federation or league sells the rights centrally in order to maximise efficiency and provide the necessary financial solidarity.

By sharing revenues generated between the participating teams and by directing a proportion of it to the “grass roots”, the governing bodies are able to promote fairness in competitions, train referees and coaches, combat doping, racism and violence, fund social projects and, more broadly, contribute to the sustainable development of their sport. Additionally, just as the organisation of sport is deeply rooted at local level, broadcasting of competitions follows the principle of territoriality, with respect for the cultural diversity of the EU member states.

Several decisions of the European Commission, as well as the European Parliament have recognised the benefits and legitimacy of the current system<sup>2</sup>. At the same time, however, there are threats to the established system of territorial licensing which need to be addressed.

(vii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to express their full support for the system of the centralised, exclusive and territorial sale of audiovisual rights for sports competitions.

### **2.4. Protecting the sustainable funding of grassroots sports and the integrity of competitions from dangers resulting from the liberalisation of the online betting market**

The proliferation of the online betting market increases the risk of illegal practices, such as match-fixing, and also threatens the funding of sport. Appropriate regulatory mechanisms must be devised in order to counter these problems.

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<sup>2</sup> European Commission decisions of 23 July 2003, *Joint selling of the commercial rights of the UEFA Champions League*; 19 January 2005, *Joint selling of the media rights to the German Bundesliga*; and 22 March 2006, *Joint selling of the media rights to the FA Premier League*.

The sporting competitions on which bets are placed are the result of an intellectual, financial and human investment by the competition organiser, and so the latter should also participate in any financial profits generated by the commercial exploitation of competitions by third parties. Protecting sports competitions from any unauthorised commercial exploitation would also enable organisers to determine which aspects of the event may be the legitimate subject of betting and thus reduce the risk of match-fixing and fraud. Sports betting operators should be required to pay fair compensation to competition organisers, some of which may be used to help finance the fight against match-fixing and some of which could also be re-distributed to amateur sport.

(viii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to promote the common recognition in all EU Member states of sports federations' right to be compensated by betting operators who use sporting competitions to run their own commercial operations and to assist the federations in their fight to preserve the integrity of sport. The legislation that recently entered into force in France may provide a pertinent example in this respect<sup>3</sup>.

## **2.5. Promoting the training of talented youngsters**

### **2.5.1. Encouraging training at the local level**

The future of European sport is dependent on an ambitious and inclusive training policy common to all EU Member States. Federations play a crucial role in this process, as they are responsible for promoting the practice of their sport among young people.

A commitment to training cannot be taken for granted. To the contrary, many clubs (whether elite or not) rely mainly on the transfer market to build their squads, to the detriment of local players.

UEFA's rule on locally trained players - supported and approved by both the European Parliament<sup>4</sup> and the European Commission<sup>5</sup> - is an example of good practice in this area. Nevertheless, the efforts of sports federations to encourage the local training of players should go further still and would benefit from meaningful political and legal support.

(ix) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to support initiatives taken by sports federations to encourage the training of players and to recognise the legal validity of such measures.

<sup>3</sup> Law No. 2010-476 of 12 May 2010 *on the opening of the online gambling sector to competition and regulation*.

<sup>4</sup> European Parliament (2007), Resolution on the future of professional football in Europe (Belet report), paragraph 34; European Parliament (2008) Resolution on the White Paper on Sport (Mavrommartis report), paragraph 36.

<sup>5</sup> Comme. CE, communiqué IP/08/807

### **2.5.2. Preserving European clubs' capacity to train**

The substantial investment efforts made by clubs to train players will only continue and increase if the clubs concerned are properly compensated for their efforts.

For this reason, in their respective regulations, sports federations include rules concerning contractual stability and/or financial compensation to be paid when players leave a club at the end of their training period. The legitimacy of this principle was recently acknowledged by the European Court of Justice. UEFA welcomes the Olivier Bernard judgment<sup>6</sup>, in particular, the recognition that it is necessary to train many young players to form one professional, and expects the European public authorities to adopt a similar stance in the future.

(x) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to underline the importance of training compensation insofar as it constitutes a mechanism for the effective protection of training academies and a fair return on investments.

## **3. “Protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen”**

### **3.1. Stable education paths for young athletes**

International transfers can be dangerous for young athletes. Sporting failure, family disruption and social marginalisation are some of the consequences that can result when young athletes leave home too early.

In most cases, this trend benefits neither the sport nor the players themselves. Sports federations must ensure that young athletes can begin their careers surrounded by their friends and families, in stable and secure conditions. Experience shows that the rate of sporting success is far higher among players who remain in their family environment until adulthood.

(xi) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to stress the need to limit the international transfers of minors (under-18s). The personal and professional development of future professional players is at stake.

### **3.2. Concerted action aimed at effectively combating abuses linked to the activities of sports agents and intermediaries**

A growing number of intermediaries are involved in negotiating contracts between players and clubs. There have been frequent abuses and it is therefore necessary to

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<sup>6</sup> ECJ, 16 March 2010, *Olympique Lyonnais v Olivier Bernard and Newcastle United FC*, case C-325/08.

improve the current regime in order to provide better protection, particularly for minors.

Although sports federations remain capable of regulating the conditions under which sports agents operate, in conformity with the national legislation of each member state, their powers to impose sanctions are limited. Effective controls and the application of sanctions can only be guaranteed through concerted action by the federations and public authorities, so that effective sanctions can be imposed against intermediaries who break the rules.

(xii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to support the measures taken by the football bodies to try to deal with the activities of agents and intermediaries.

### **3.3. Encouraging widespread use of "dual training"**

In view of the short and uncertain nature of a sporting career, it is essential to provide athletes with an academic education in order to guarantee their long-term financial autonomy and contribution to society. Dual training is specifically aimed at enabling them to receive school or university education alongside their sports training, so they are able to take up an alternative profession, regardless of whether they manage to pursue a long-term sporting career.

UEFA fully supports this initiative and recommends that it be developed. However, even though it is a serious priority, dual training remains poorly organised in Europe.

(xiii) UEFA urges the European Commission, the European Parliament, the Council of the EU and the Member States to support sports federations' efforts to define quality standards for the dual training of athletes.

### **3.4. Improving coordination of the fight against doping**

Doping-related practices contravene the values of sport and expose athletes to serious health dangers. Increasing the number of controls, making them more effective and developing the preventive aspect of the fight against doping are the three strategies that UEFA has focused on in recent years. These must be supplemented by more forceful, better coordinated, efforts to combat doping at both national and European levels.

(xiv) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to recognise that sports federations have overall responsibility for the fight against doping, to support their efforts through all appropriate means and to define joint positions on doping vis-à-vis the Council of Europe, UNESCO and WADA.

#### **4. “Fostering cooperation with third countries and the competent international organisations”**

##### **4.1. Stepping up the fight against violence in stadiums, discriminations and hooliganism**

Acts of violence and discriminatory behaviour often occur at the periphery of sports competitions. These problems cannot be tolerated and tarnish the image of sport and discourage spectators away from stadiums.

On their own, supporter awareness campaigns run by sports federations and sporting sanctions are not enough to address these problems. Insofar as this is a public order issue, national public authorities have supplemented these initiatives with preventive activities and targeted coercive measures. This is a complex task because of the international nature of certain matches and the differences that exist between the relevant provisions and practices related to the maintenance of order, safety and security in the different EU Member States. More cooperation between the different stakeholders in the fight against violence and discrimination of all kinds is necessary.

Legal proceedings must be better coordinated and the EU can facilitate this process, in particular, working together with the Council of Europe.

(xv) UEFA invites the European Commission, the Council of the EU and the Member states to strengthen and organise national initiatives to promote the fight against racism and violence in sport, and to work together systematically, with other international bodies, such as the Council of Europe, to secure these objectives.

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## UEFA's position on Article 165 of the Lisbon Treaty

### Roadmap

#### 1. *“Taking account of the specific nature of sport and the structures of sport based on voluntary activity and its social and educational function”*

##### 1.1 Developing the social, cultural and educational values of sport, and its public health function

(i) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to reaffirm their support for the European model of sport, to encourage the practice of sport and to promote its social and educational values.

##### 1.2 Clarifying the legal treatment of sport under Community law

(ii) UEFA invites the European Commission to clarify the application of the *acquis communautaire* to sport, for example, by building on the preparatory work of the White Paper on Sport by setting out guidelines in a way that will address the problems created by on-going legal uncertainty and create a more stable environment for sport.

##### 1.3 Protecting the legitimate exercise of regulatory power by the sports federation

(iii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to recognise that sports federations have a wider public interest role and that EU law should be applied in a way that does not prejudice their ability to discharge their legitimate and statutory functions, including rule-making and application of sporting sanctions.

##### 1.4 Recognising the advantages and expertise of sports arbitration bodies

(iv) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to endorse sporting tribunals, such as CAS, as a means to resolve disputes in the area of sport.

## **2. “Promoting fairness and openness in sporting competitions”**

### **2.1 Maintaining the fundamental principle of promotion and relegation**

(v) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member states to reaffirm their support for the principles of promotion and relegation and accessibility of competitions.

### **2.2 Supporting UEFA's Financial Fair Play measures**

(vi) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to pledge their full support for Financial Fair Play, which represents a timely, legitimate and necessary initiative by UEFA.

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### **2.5 Promoting the training of talented youngsters**

#### **2.5.1 Encouraging training at the local level**

(ix) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to support initiatives taken by sports federations to encourage the training of players and to recognise the legal validity of such measures.

#### **2.5.2 Preserving European clubs' capacity to train**

(x) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to underline the importance of training compensation insofar as it constitutes a mechanism for the effective protection of training academies and a fair return on investments.

**3. “Protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen”**

**3.1 Stable education paths for young athletes**

(xi) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to stress the need to limit the international transfers of minors (under-18s). The personal and professional development of future professional players is at stake.

**3.2 Concerted action aimed at effectively combating abuses linked to the activities of sports agents and intermediaries**

(xii) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to support the measures taken by the football bodies to try to deal with the activities of agents and intermediaries.

**3.3 Encouraging widespread use of "dual training"**

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**3.4 Improving coordination of the fight against doping**

(xiv) UEFA invites the European Commission, the European Parliament, the Council of the EU and the Member States to recognise that sports federations have overall responsibility for the fight against doping, to support their efforts through all appropriate means and to define joint positions on doping vis-à-vis the Council of Europe, UNESCO and WADA.

**4. “Fostering cooperation with third countries and the competent international organisations”**

**3.5 Stepping up the fight against violence in stadiums, discriminations and hooliganism**

(xv) UEFA invites the European Commission, the Council of the EU and the Member states to strengthen and organise national initiatives to promote the fight against racism and violence in sport, and to work together systematically, with other international bodies, such as the Council of Europe, to secure these objectives.

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