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## 01 Sport in the Reform Treaty

By Alexandre Mestre

Sports Lawyer at PLMJ, A.M.Pereira, Sáragga Leal, Oliveira Martins, Júdice e Associados

The adoption of the European Union (EU) Reform Treaty by the heads of state and government of the 27 EU member states last October 18 was an important step not only for the EU but also for the European sport, due to the fact that sport was integrated in the primary law of the EU.

With a similar wording of article III-282 of the aborted "European Constitution", the adopted amendments to article 149 EC stipulate that "[t]he Union shall contribute to the promotion of European sporting issues while taking into account of its specific nature, its structures based on voluntary activity and its social and educational function". The aim of the EU action will be to "develop 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 future Treaty of Lisbon makes sport part of the support, coordination or supplement competencies of the EU, along with, for example, education, vocational training and youth.

Euro-sceptics, who worry about loss of sovereignty, may find a certain degree of satisfaction in the allocation of this type of competence, as competences in the field of support,

coordination, and supplementing action imply that such action on the part of the EU necessarily follows prior national action. It also means that the EU must accept such national action and the choice of the type of action which the Member States may take.

In fact, those who are skeptical by nature may argue that the legal basis for EU action in the policy area of sport leaves quite a bit of room: room for improvement!

Sport is not recognized in an autonomous, specific or single Article within the Treaty; it has been included in the category of education, training, and youth.

Even though the Commission has stressed that there are five functions of sport which give it its specific nature, namely the social function, the educational function, the recreational function, the cultural function and the public health function, the new treaty fails to do them all justice. It only timidly refers to the first two: the social and the educational function.

Critics might add that the new wording does not contain a horizontal integration clause, which would have been a significant step forward in safeguarding the specificity of sport.

There is no doubt that it would be enormously helpful if the special characteristics of sport were taken into account in the application of other EU policies. In our opinion, recognising the horizontal nature of sport policy could be the basis not for a "sport exception" or "blanket immunity", but for a "sporting justification", namely safeguarding the uniqueness of sport. This would oblige European actors to take sport into account when framing other EU policies.

Finally, to take criticism one step further, the legislative and regulatory acts that the EU can adopt in the field of sport are only soft law.

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However, despite the above, there are considerable advantages to be gained for sport through the new Reform Treaty.



First and foremost, it must be emphasised that the Reform Treaty forms the basis for an end to the previous EU approach to sport, which was irregular, erratic, reactive and ad hoc. It refers to the "European sports dimension", which in itself demonstrates that the EU is concerned about building a European sports policy. Even though this is not the same as a European common sports policy, it could be the start of one.

If we consider the Commission White Paper on Sport and the Pierre de Coubertin programme that this institution intends to enact, there is no doubt that in the next future we will start an integrated, continuous and permanent intervention of the EU in sport, leaving behind the piece-meal approach of the past which to a large extent depended on the priorities or conveniences of each Council Presidency subject to rotation every six months.

The following advantages of the new legal framework can be discerned:

Sport has finally received a European identity, now that it has been included in the new Treaty; we can look forward to a new EU approach to sport, now that sport has become a tool in EU social, educational, training and youth policies;

It is finally possible to include a heading for sports in the EU budget;

Advocate-Generals and Judges at both the European Court of Justice and the Court of First Instance can finally derive some based guidance for their interpretation or application of EU



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Law in the field of sport (which is fundamental, mainly after the Meca Medina judgment...).

The insertion of sport in the new Reform Treaty may serve to preserve the European sports model, as opposed to the American model with its closed leagues, by providing that the openness and equity of sport competitions is extremely important. In fact, it can be said that the EU gave a "red card" to Americanisation, since the new Treaty provides a clear rejection of a free market model and contends that in the future development of sport, the special features of the European model need to be carefully taken into consideration. This mainly refers to the pyramid structure, with clubs at the foundation, regional and national federations (one of each discipline) in the middle, and the European federations at the top.

The Reform Treaty is an important step towards defending the EU system of promotion and relegation, vertical solidarity, the interdependence between the different levels, the emphasis on the socio-cultural significance of sport and the continual changes in the rankings. This European model is the opposite of the closed and hermetic leagues system, which is based on salary caps, minimised risk of financial loss arising from sporting failure, self-government and over-commercialisation; which is, in sum, an economic, capitalist free market model adapted to sport.

In short, what the Reform Treaty intends to stress is that the advent of new forms of competition which do not comply with the principles of internal equilibrium of solidarity could endanger sport in the EU.

In addition, considering the history of the European integration, soft law has often proved the starting point for binding legal

documents. At present, sport may benefit from support actions, resolutions, recommendations, declarations, action programmes, Presidency conclusions, codes of conduct, joint communications, gentleman's agreements, declarations of principles, pilot projects and guidelines: an impressive list of instruments, which might well form the prelude to eventual mandatory rules.

**The new mission of the EU concerning sport, the Open Method of Coordination which was created in Lisbon, could be an important tool for policy linkage and allow the EU, although respecting the principle of subsidiarity, not only to stimulate or facilitate policies, behaviours and responsibilities of all the Member States, but also to promote a valuable interchange of good or best practices.**

With the new legal context, the EU and the Member States face plenty of challenges, as many strategic guidelines still need to be addressed. Regarding institutional aspects, new bodies could be created in the Council, the European Commission and the European Parliament. Due consideration must be given to the creation of an European Observatory for Sports and of a liaison committee with the task of institutionalising the relationship between EU and the different international sport organisations, namely IOC, FIFA, UEFA and ENGSO.

Let us recall the words of Robert Schuman: European construction based only on economic aspects is condemned to failure...It therefore seems right to claim that the socio-cultural and integration qualities of sport should be given a higher priority, now that it is beyond doubt that sport can promote integration within and beyond the borders of Europe!



## 02 Relations between sports federations and professional leagues in European football - Discussing the Spanish model

By Robert Progracz and Miguel Ma Garcia Caba

*Legal Department of the Liga Nacional de Fútbol Profesional*

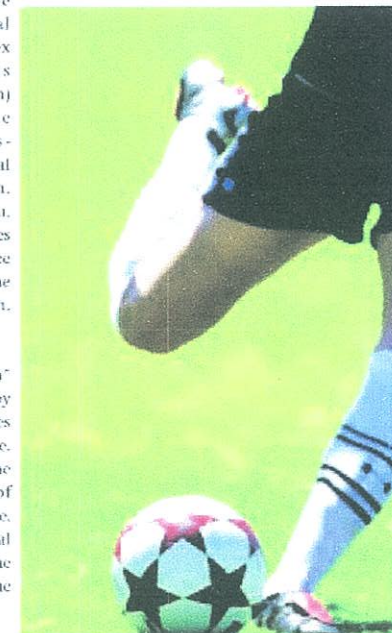
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*[...] The question is obvious - are the professional leagues legally subordinated to the sportive federations?*

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Nowadays the professional football organization in Europe constitutes a different reality that needs a special juridical treatment by comparison to sports organized by federative entities. In spite of this, the juridical order of such relevant sector of the social, cultural and economic life in Europe, as professional football, gives rooms to serious difficulties and to many disputes, both in the international and national areas. In the majority of the European countries the legal frame of relations that derive from the organization of the professional competition is deliberately complex and ambiguous and needs coordination (not subordination) between the leagues and the federations regarding various issues: sports calendar, licenses, commercial exploitation of the competition, refereeing, traiters, players' liberation, ascent and descent regime, etc. - issues that are left to be decided by the free will of the parties involved. This is the case of many countries, like Spain, Portugal, Germany, and England.

None of the less, this "utopian" juridical frame of coordination by which the above mentioned entities freely agree on any issue, is vulnerable, in more than one occasion, when the federative entities, especially of supranational nature, want to impose, in a debatable manner from the legal point of and totally opposite to some determined juridical customs, as is the



case of Spain, the principle of subordination of the professional leagues to the sportive federations, ex article 18 from the HFA Statutes or ex memorandum of understanding of ULEFA of 2005. The question is obvious - are the professional leagues legally subordinated to the sportive federations? The answer, at least from the point of view of Spanish Law, is NO. We understand that this legal solution could be applicable to the rest of the European countries, as it would guarantee a greater juridical security for the professional leagues, as they would not be left in subordination to the respective federative entity, fact which would benefit a better organization of the professional competition.

In Spanish Law, the Sports Law (Law 10/1990 of October the 15th) establishes that the organization of