EU interest in sport gets cautious welcome

Sport for all and elite sport differ widely in their responses to EU White Paper on sport

by Marcus Hoy

That the European Union lacks a clearly defined sports policy is not in doubt. Sport has never been included in its formal structures. However, a debate at Play the Game showed that the enthusiasm for EU’s recent White Paper on sport depends very much on whether you represent elite sport or sport for all.

Outlining the EU’s view on sport, Pedro Velázquez, Deputy Head of the EU’s Sports Unit, explained that in the past the EU’s policy on sport has been more reactive than innovative. However, as sport has enormous potential to contribute to EU policy goals such as social development and integration, the White Paper was one way to examine how the EU can give sport a higher priority in policymaking.

The White Paper will also better define the role of sport in the EU, improve knowledge of EU law, and keep sport visible in EU programmes.

The danger from civil law

Velázquez stressed that the white paper recognises that sport’s specific nature means it should be exempt from EU law in a number of key areas such as the acceptance of gender-segregation.

But according to UEFA’s Jonathan Hill, the EU’s recognition of the specific nature of sport does not go far enough. While Hill agreed that many areas of sport are now extremely commercialised, he reminded Play the Game that sport is still inherently different to other commercial activities and needs to be treated as such.

Hill applauded the White Paper’s recognition of the social role of teams, the importance of training policies to encourage young talent, and the positive aspects of the international transfer system.

However, he stated, many sporting bodies were hoping that it would do more to acknowledge that sport’s unique status requires its own specific rules. In its current form, Hill said, the White Paper appears to merely restate the Meca-Medina judgement which states that decisions made by sport’s disciplinary bodies can be questioned under European competition law.

The notion of sport’s governing bodies not having the final say in areas such as doping bans, he said, is worrying.

“Civil law is creeping into all areas of sport, not just its economic aspects, and this could undermine the ability of governing bodies to govern their own sport using their own rules,” Hill said.

Sport is global

Niels Nygaard, President of the Denmark’s National Olympic Committee and Sports Confederation (DIF) was concerned about what he called “creeping EU dominance over national sports bodies.”

He added that European policymakers should retain an awareness of the global nature of sport. The EU is only a small part of the global sports community, and it is important that the EU does not pass rules that prevent sports bodies working in a global capacity.

He also warned that the White Paper does not fully acknowledge the broad differences between sports. Different methods must be used when the EU negotiates and cooperates with various sporting bodies, he said, and any future regulations should not adopt one-size-fits-all approach.

Sport for all could benefit

Finally, Mogens Kirkeby, President of the International Sport and Culture Association (ISCA) spoke of the White Paper’s consequences for “sport for all” organisations.

Such focus, he said, is placed on the centres of financial and political power in sport. However, the vast majority of sporting activity takes place in the parallel “sport for all” sector. And it is this sector that is best equipped to achieve many of the societal aims of the EU white paper, such as combating obesity, furthering integration and encouraging development.

The “sport for all” sector should welcome the white paper, Kirkeby concluded. He expressed his hope that it will provide inspiration for government ministries, foundations and private companies to invest in the “sport for all” sector and encourage greater focus on society-centered sport.
A court for sport

by Marcus Hoy

Matthieu Reeb, Secretary General of the Court of Arbitration for Sport (CAS) provided Play the Game with a brief history of his organisation from its humble beginnings in the early 1980s when then-IOC President Juan Antonio Samaranch decided there was a need for a body to deal with disputes during the Olympic games.

A number of key legal decisions in the 1990s boosted the court’s legitimacy and helped it develop into a body, which today boasts homes in New York City and Sydney as well as Switzerland, and no less than 285 arbitrators.

While the majority of its cases concern professional football disputes and doping allegations, it also hears a wide variety of other cases, which remain generally affordable to plaintiffs as there is no requirement that parties must be represented by a lawyer.

When cases are heard, each party has the right to select a specialist arbitrator from a list of CAS members.

One major question mark is that two thirds of CAS’s budget comes from the Olympic movement which could lead to conflicts of interest. Reeb admitted that such a model was not ideal, but pointed out that without such support, access to justice would be restricted.

He explained that only 22 percent of the CAS’s budget comes directly from the IOC, while other contributions are received from bodies such as national Olympic associations. He added that the running and financing of CAS is controlled by an independent body, the “International Council of Arbitration for Sport” (ICAS).

Despite its rapid development, the jurisdiction of the court is ultimately restricted to parties willing to accept its decisions. When these include organizations such as the IOC and the IAAF, they do not include such powerful bodies as England’s Premier League, which has its own system of arbitration.

Matthieu Reeb, Secretary General of the Court of Arbitration for Sport (CAS)

Most disagreements are settled in arbitration behind closed doors

by Michael Herborn

Arbitration is becoming an increasingly common method of settling cases in the sporting world, London lawyer, Jonathan Ellis, told Play the Game delegates. In fact, arbitration, rather than litigation, is now becoming the norm bringing with it both benefits and dangers.

Ellis, who counts among his clients the English Football Association and the Horseracing Regulatory Authority, outlined one of the major gaps in the current Court of Arbitration for Sport (CAS) system. The Court of Arbitration for Sport can only intervene when it has jurisdiction, and to have jurisdiction, parties must be signatories to the Court or agree to its involvement.

For instance, The Court of Arbitration for Sport was unable to intervene in the challenge by WADA against the Pakistani Cricket Board’s decision not to ban bowlers Shoaib Akhtar and Mohammed Sami for doping offences. While the International Cricket Council was a signatory to the Court of Arbitration of Sport, the Pakistani Cricket Board was not, meaning there was no jurisdiction to intervene.

Arbitration is fast

The finality of outcome is seen as one of the major advantages of arbitration, Ellis explained. The decision made is final, legal and binding. National courts of law will defer to decisions made by arbitration, and will only prevent the confirmation of an arbitration judgement if there have been procedural irregularities in the course of the arbitration.

As such, it is a much faster way of having cases settled than by going to a court of law. Additionally, being able to select a mutually acceptable expert in the field to arbitrate, both parties to the arbitration can have confidence in the expertise of the person adjudicating, whereas in a court of law, parties are unable to decide who will be the judge.

Cloak of privacy

What arbitration also offers above all is privacy. There is no obligation to publicise the details of an arbitration judgement, making arbitration chambers less open alternatives to a courts of law. This means that parties can keep sensitive information quiet, preventing it from falling into the hands of competitors or other interested parties.

This brings with it dangers though, especially with regards to transparency, as Ellis explained. “One significant issue from arbitration is that anyone can attend court cases, but the cloak of privacy exists with arbitration. This has potential press freedom implications.”

It is often argued by sports organisations, that they are losing their autonomy because of the increasing interference of courts. However, with the increasing use of arbitration and gaps in the jurisdiction of the Court of Arbitration for Sport, arbitration may become a method by which their autonomy is preserved.
Caught between a crime and a hard tackle

Who should decide if you go to court or just get a red card for causing harm to another athlete?

by Michael Herborn

In many sports, it is an accepted risk that when you step onto the playing field, you risk suffering an injury caused by your opponent. However, when those injuries are sustained outside the rules of the game, who should decide if a criminal offence has been committed: sports bodies or courts? Ben Livings, a law lecturer at Sunderland University in the United Kingdom, believes that allowing sports bodies to decide whether a harsh tackle was a criminal offence or not means delegating a whole swathe of complex legal decisions. Setting guidelines for criminal prosecution is the responsibility of judges and politicians he argues, not sports bodies.

"Sport is an exception: by participating, you are deemed to have consented to the possibility of harm," explains Livings.

"Therefore, in a ‘properly conducted’ or ‘legitimate’ sport, the violent infliction of injury is not a criminal offence."

It is this consent that gives sport a special character in the eyes of the law. This exception helps to preserve the integrity of sport, recognising the right of athletes to play the game hard but fair, whilst respecting the rights of an opponent who consents to pain, as long as it is within the rules of the game.

As it is, a distinction between pain suffered on the sporting field and on the high street does already exist within English law, says Livings, with ‘consent to pain’ separating violence on the sports field from violence on the high street.

Although the matter is by no means limited to England, the distinction highlights where the boundaries lie in society between treating sport as an autonomous entity with its own system of rules and disciplinary procedures and life off the sports field. While a victim of a high street assault certainly would not have given permission to their assailant, an athlete is regarded as impliedly doing so.

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Too much power to sport bodies

There are dangers in such a situation however. If too much leeway is afforded to sports bodies to determine what is and what is not ‘legitimate’ sport, then it is they who become the arbiters of criminal sanctions, not courts of law. The decision of whether a criminal prosecution should occur should be left to judges, police and courts of law, argues Livings.

Whether sport bodies are even competent or recognised bodies when it comes to these situations is another matter.

As Livings pointed out, what constitutes legitimate sport is distinct from what constitutes sporting matches authorised by sports governing bodies. For instance, is a group of friends having a kickabout in a local park illegitimately engaged in sport just because the Football Association has not sanctioned the match?

And if sports bodies are not authorised to determine whether to impose criminal sanctions on players having a kickabout in a local park, allowing them to determine when a criminal case is justified in an officially sanctioned match would create a two-tier system with different rules of accountability.

While sport may have a distinct place within society, this does not mean that athletes are above the law if they cause physical harms to others. Exceptions exist that recognise the special nature of sport, but that does not mean that criminal courts should stay out of sport, just that different rules apply.