

2018

# COMMON POSITION PAPER

OF THE MEMBERS OF THE  
EUROPEAN ELITE  
ATHLETES ASSOCIATION

# ATHLETES AS WORKERS

1

A number of sports federations, leagues and even some national laws require that certain sportspeople are classified as "amateurs" or "non-professional". In this regard, they are being deprived of their rights as workers, despite earning significant income.

EU Athletes recognizes the important role that elite amateur athletes play within certain indigenous sports. Amateurism can enhance the social and cultural fabric of communities and this should be protected and supported. We recognise the benefits that player associations bring to these sports through their support services, whilst still staying true to the amateur ethos.

However, "amateurism" must not be forced upon sportspeople against their will, especially if they are involved in an economic activity. Such athletes are excluded from social security provisions, employment protection (including basic labour contracts) and collectively bargained regulations. It is particularly essential to review the status of female elite athletes, to ensure that they enjoy the same employment rights as other workers (especially with regards to pregnancy, maternity rights and protection from gender-based violence) and equality with their male counterparts when it comes to appropriate remuneration and conditions of training and competition.

All athletes, especially young players, have the right to be paid the national minimum wage for the hours they work. The transferability of

- **Where sport is an economic activity, athletes must be recognized as workers and their labour rights respected.**
- **Standards of occupational health and safety must be respected in athletes' workplace and take into account the unique risks of the sport career.**
- **Sport organizations and Member States must effectively protect athletes from any kind of discrimination, mistreatment or harassment in the workplace.**

social security provisions, in particular pensions, between different European countries needs to be addressed to promote and realise the concept of a single employment market for sport within the Member States.

The sport career is short and high-risk. In many countries, social legislation does not take this adequately into account. EU Athletes stands for the protection of athletes' health and safety through safe sporting workplaces, which promote and protect their physical, mental and social well-being. The unique risks associated with sport do not justify a departure from these principles. Instead, such risks justify a greater Duty of Care of sports organizations towards athletes.

# ATHLETE RIGHTS ARE HUMAN RIGHTS

- Athletes have the same fundamental rights as other people, citizens and workers.
- Sport organizations need to adopt a proactive approach to human rights, compliant with the United Nations Guiding Principles on Business and Human Rights.
- National, European and International institutions need to make sure that athletes' rights are protected and respected in regards to their involvement in sport.

Today, the rights of too many professional and elite level athletes all across Europe are still restricted and abused, just because they participate in sport. Yet, the Olympic movement and sport organizations continue to argue for exemptions and derogations from laws and regulations. Many sports simply ignore that laws apply to them and abuse their dominant position vis-a-vis athletes, by imposing illegal, discriminatory or unfair conditions.

EU Athletes opposes attempts of the sport movement to use Article 165 of the TFUE and the "specificity of sport" to argue for an exemption from different laws. As stated in section 4.1 of the White Paper for sport, "Sport activity is subject to the application of EU law". What is more, any application of the concept of the "specificity of sport" that has not been upheld by a decision of the European Court of Justice can only be legal if it is approved by the athletes' representatives, through social dialogue. The "specificity of sport" may be applied to address certain special sporting requirements but cannot be used in a way that allows monopoly and cartel sport organizations to avoid their obligations under European and national law, especially when it comes to respecting athletes' rights.

Importantly, Member States have a responsibility to protect the rights of every person under their jurisdiction – also when the potential infringement comes from private entities, such

as sport organizations. EU Members States must assure that the rights of the athletes are protected and respected through their involvement in sport.

Athletes have the same fundamental rights as every other person, citizen and worker. These rights are guaranteed by the national and European laws, as well as internationally recognized human rights conventions and standards.

These rights, in the sporting environment, include particularly the access to sport (based on merit, equal opportunities and free of any kind of discrimination), protection from sexual, physical and emotional abuse – especially for children but also for adults, the labour rights (such as the right to work, fair working conditions and the revenue sharing, right to organize and collectively bargain), personal rights (including the freedom of opinion and expression, rights to protection of personal data and IPR) and legal rights (guaranteeing due process, equality and legality before law and effective remedy).

The Olympic movement and international federations, WADA and CAS, need to work proactively and in cooperation with European and international institutions, as well as the athlete unions and associations, to make sure that their regulations and actions respect the human rights of athletes and provide an effective remedy in case of any infringements.

# GOOD GOVERNANCE IN SPORT

- Good governance in sport requires effective oversight by the law. Any autonomy of sport organizations can only exist within the limits of the law and with respect to fundamental human rights.
- Sport organizations must work proactively to address their governance issues and incompatibilities with the European law, in cooperation with player associations.
- European and national social dialogue with the active involvement of player associations must be recognized and promoted as essential component of good governance.

The increased emphasis on good governance in sport is positive and we support moves to improve sports governance. Europe is in a unique position to act as a force for good in ensuring that sports organizations fulfil their obligation to provide a sporting environment that is well governed, free of corruption, manipulation and cheating and that protects, respects and guarantees the fundamental rights of athletes. Monitoring, compliance and effective remedy are all essential components of good governance in sport.

Given that the majority of sports organisations are monopolies or cartels, there is always a danger of them exploiting their dominant market position, particularly when it comes to athletes' rights as workers.

EU Athletes welcomes the 2017 Decision in Case AT.40208 by the European Commission imposing limits on the monopoly powers of the International Skating Union and limiting the application of the "specificity of sport". Such rulings set an important precedent on the need for sport organizations to comply with European and national laws.

It should be noted that forced arbitration through the Court of Arbitration for Sport (CAS), often used by sport governing bodies and anti-doping organizations to prevent general courts from tackling sport disputes, may not comply with European laws and undermines European athletes' fundamental rights, particularly with regards to competition law. The governance of CAS continues to present problems for athletes due to the lack of independence from the IOC and sports federations. CAS's inability to fully protect European athletes' rights is an issue that needs to be addressed.

New challenges related to the governance of sport could be discussed and solved through the social dialogue between athletes and employers. European Collective Bargaining Agreements are an important goal for player associations. Sport organizations cannot unilaterally impose rules and regulations and need to engage with athletes when creating rules that affects them. The European Commission, especially the Sports Unit, should promote social dialogue in the sport sector as a key principle for European sports policy and good governance in professional and elite sport.

# ECONOMIC DIMENSION OF SPORT

- Athletes are entitled to a part in equitable distribution of revenue they help generate.
- Athletes' control over their intellectual property rights and data is an important issue that needs to be recognized and respected by sport organizations.
- Sport organizations cannot abuse their position by restricting athletes' commercial rights and freedoms.

High-level sport can generate substantial revenues and as an economic activity, is subject to the application of EU Law. The economic value of professional sport is built upon the work and performances of athletes and they need to be remunerated fairly. But in addition to that, athletes are entitled to a share of resources they help generate. Situation where many sport organizations not only don't pay for the labour of athletes participating, but also don't redistribute the wealth they helped create directly back to them, is unacceptable.

It should be noted that athletes, individually and collectively, can also generate important resources through the commercial exploitation of their image. They remain the unique holders of the rights to all the attributes of their personality and any characteristic element of their person. Any exploitation of athlete's image must be preceded by athlete's consent and bring them a financial compensation. Regulations such as Olympic rule 40, which forces athletes to give

away their image rights in order to participate in Olympics Games and without any compensation, are of questionable legality and must be reviewed.

The use and transfer of athletes' personal data collected in the course of their professional activity, including medical records, needs to comply with the law. Such data cannot be used, transferred or marketed without the explicit consent of the athlete. Finally the athlete, like any citizen under the data protection regulations, has the right to access data held on them and to correct any mistakes as well as the right for their data to be deleted.

The economic rights of athletes, particularly their commercial freedom and the right to work, is sometimes restricted by their national and international federations, who claim the monopoly in the organization of sport competitions. Athletes must have a #ChanteToCompete and an opportunity to participate in commercial events if they so choose. The so-called "European model of sport" cannot be a justification for restricting athletes' rights as citizens and workers, such as the freedom of movement and protection against the abuse of a dominant position of an employer.

Commercial interests of federations and leagues mean that athletes can get caught in a position of conflict between their employers and their national team, which can be detrimental for the players and the sport itself. Athletes' freedom of choice should always be respected.

# MATCH FIXING

- Athlete associations and player unions must be involved in cooperation against match-fixing at national, European and international level.
- The fight against match-fixing needs to be holistic and take into account different elements that can increase the risk for corruption, such as poor governance and problem gambling.
- Player-led face-to-face education should be recognized as best practice and supported by sport organizations and public institutions.

The integrity of sport competitions is a key priority of EU Athletes. Since 2010 we have been involved in several transnational projects and developed the PROtect Integrity campaign in partnership with private betting operators and co-funded by the EU. EU Athletes is also working with FIFPro to implement Red Button, a player-led whistle-blowing system, so that athletes in Europe have a safe, confidential and trusted way to report anything suspicious.

Progress will require co-operation, strong leadership and integrity from sport, athletes, government, betting industry and police. Addressing match-fixing requires the active involvement of athletes and their associations.

EU Athletes supports the role that Council of Europe, both directly and through the Macolin Convention, plays in the fight against match-fixing. Emerging best practice is for the player associations to be centrally involved in the formulation of anti-corruption measures from

the outset, through National Platforms, to ensure the appropriateness, effectiveness and proportionality of those measures. Working with player associations will help promote the acceptance of and active education about rules and regulations.

It is important to note that data collection and information sharing for the purpose of the fight against match-fixing must comply with the European regulation on data protection (GDPR).

The link between poor governance and late or non-payment of salaries and increase in the susceptibility to match-fixing and other scandals has been established. It is vital that any anti-corruption initiatives have a holistic focus, rather than simplistically focusing solely on the on-field participants.

The importance of education, awareness raising and protection for athletes cannot be underestimated. Education for athletes about sports betting integrity is an essential component of protecting sport from match-fixing. Properly prepared and delivered education programme can radically reduce the vulnerability of the sport and its participants to corruption. Problem gambling is worth a special mention, as athlete vulnerability caused by problem gambling and addictions can be a key driver of the willingness to commit corrupt acts in sport. Further study and preventative and rehabilitative measures are urged in this key area.

# ANTI DOPING

Recent doping scandals and cases of injustice have shown that the current global anti-doping system is failing to fulfil its role of protecting athletes from doping. EU Athletes gathers over 25,000 professional and elite level athletes who are all subject to WADA Code, even if they have been systematically excluded from its creation and review.

Today, athletes are obliged to give away a big part of their privacy to comply with the WADA Code and particularly whereabouts requirements and Out of Competition (OOC) testing. At the same time, the efficiency of testing programmes in catching cheats is very low, with the World and European average under 1%. There is an urgent need for a reform of the anti-doping system to make sure that it is fit for its purpose.

EU Athletes and its members are committed to doping-free sport and would support a fair and effective performance-enhancing drug testing regime that recognizes, respects and protects athletes' rights as people, workers and European citizens. Anti-doping rules must comply with the national and European law, particularly regarding the human rights and data protection rules. In case of professional athletes where there is a clear economic element, anti-doping rules must be negotiated directly with employee social partner organizations through social dialogue or collective bargaining process.

Anti-doping efforts must focus on those intentionally taking prohibited substances with performance-enhancing purpose and each case should be considered individually when it comes to the sanction. Athletes charged with a doping offence must have an effective access to justice and due process.

Recreational drugs are a special case that needs

- **The anti-doping system must be fair, proportionate and efficient whilst respecting the rights of athletes as well as their health and well-being.**
- **Independent player unions and athlete associations must be included actively in international anti-doping governance, alongside sport organizations and governments, and on partnership terms.**
- **In professional sports, anti-doping rules should be recognised as a part of social dialogue and Collective Bargaining Agreements.**

to be brought outside of WADA Code and be treated through rehabilitation and treatment rather than just bans. More emphasis needs to be placed on anti-doping education and the rehabilitation of sports persons guilty of an anti-doping rule offence.

All the elements of anti-doping must be backed by scientific research, starting with the prohibited substances list, prevalence of doping in different sports, efficiency of education programmes and testing programmes. Particularly, intrusive measures such as OOC testing and developments such as biological passports or additions to the prohibited list must be thoroughly researched and open to peer review for independent assessment.

Anti-doping organizations must aim for higher governance standards and avoid any potential conflicts of interests that may be detrimental for their work. WADA suffers from a lack of independence and perceived domination by the Olympic movement.

Finally, WADA, NADOs and all the anti-doping organizations should fulfil basic requirements on transparency and accountability, including proper reporting on their anti-doping activities. Because athletes are obliged to make sacrifices to comply with the anti-doping system, it is essential to have the data available to assess the efficacy and proportionality of current anti-doping regimes.

# DUAL CAREER, PERSONAL DEVELOPMENT AND WELL-BEING

- **Dual career initiatives must take a holistic approach, including personal development and well-being.**
- **Player associations' Player Development Managers should be recognized, promoted and supported as best practice for dual career in professional and elite sports.**
- **Greater priority needs to be given to mental and emotional health and well-being of elite players.**

Personal development, well-being and dual career opportunities should be a recognised priority of European sports policy with the publication of the EU Guidelines and the World Player Development and Well-being Standard. The premise of these policies is that all athletes should be able to participate in environments that promote long term personal growth and well-being, in addition to sporting excellence.

EU Athletes is supportive of better working and training environments that maximise personal development opportunities for players, alongside the pursuit of a high performance sports careers. We believe that there will be long-term consequences for sports and our society if we do not properly support our high performance athletes on and off the field of play.

Since the publication of EU Guidelines on Dual Careers it is acknowledged that dual career support for athletes is not just about university education. Dual career now encompasses a more holistic approach, which at its core supports

the personal development of the athlete off the field of play. At its best, dual career, personal development and well-being programmes will allow the player to gain qualifications, develop interests and skills outside of their sport, and explore their identity outside of the game. Good programmes should promote athletes' emotional well-being and resilience.

Dual career, personal development and well-being programmes are now in place across several professional and elite amateur sports and can include the following dimensions: Education, life skills, media skills, careers advice, financial planning, transition support, emotional well-being, inclusion and integrity.

The role of the Player Development Manager (PDM) is to promote the personal development and well-being of players through empowering them to take ownership of their own development both on and off the sporting field. EU Athletes believes in elevating and enhancing the role of the Player Development Manager. This can be done through exchange of knowledge and best practices. There is a strong case for the development of a European industry-wide qualification for PDMs with agreed continuous professional development.

Elite athletes can suffer from the same mental health issues as everyone else, such as anxiety and depression. Whilst athletes will often have world class provision for their physical health, support for mental health and well-being is too often lacking. Sport, Member States and the mental health sector should be encouraged to work together with the player associations to promote improved mental health support, treatment and education.

# SOLIDARITY, PARTNERSHIPS AND COOPERATION

Athletes, just like every other citizen and worker in Europe, have the right to organize and collectively bargain, so they can be represented in matters that affect them by the people of their own choosing. Player unions and athlete associations are the independent voice of their member athletes.

Athlete commissions or committees are different from sports trade unions. As internal bodies, they tend to be funded by sport organizations themselves and often have no separate staff or budget. Their remit tends to be limited to sports-specific issues. Whilst it may be helpful for some of the Olympic sports to set up their own athletes' bodies, they will always be limited in their ability to effectively represent athletes, especially in disputes with federations. Furthermore, they are not able to reach Collective Bargaining Agreements or engage in social dialogue.

Many examples have shown, that where the player unions are strong and the federations, leagues and clubs actively engage with these organizations, the sport is thriving, to the benefit of all the stakeholders involved.

EU Athletes supports organizing efforts among professional and elite level athletes and establishing independent and democratic player

- **EU Athletes strongly supports and actively encourages professional and elite athletes to exercise their fundamental right to organise and collectively bargain.**
- **EU Athletes works in cooperation with FIFPro Europe and other European player federations to actively promote and protect athletes' rights in Europe.**
- **EU Athletes supports World Players Association on international issues which affect all athletes.**

unions and athlete associations in different sports across Europe.

In the spirit of solidarity and cooperation within sport trade union movement, where there is European player union established in a particular sport, EU Athletes aims to cooperate and support their work as appropriate in order to advance the common goals and the players voice. EU Athletes has a long history of working collectively with FIFPro in Europe which we value and look to develop with other European player associations.

EU Athletes is also involved in the global player movement through World Players Association, an organization gathering more than 80 000 athletes, who are members of more than 100 player unions worldwide. There is a strong need for an effective international voice for player associations to negotiate with international sports bodies such as WADA and the IOC.