

**STUDY INTO THE IDENTIFICATION OF THEMES
AND ISSUES
WHICH CAN BE DEALT WITH IN A SOCIAL DIALOGUE IN THE
EUROPEAN PROFESSIONAL CYCLING SECTOR**

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CHAPTER 1: INTRODUCTION

The White Paper on Sport states that in the light of a growing number of challenges to sport governance, social dialogue at European level can contribute to addressing common concerns of employers and athletes, including agreements on employment relations and working conditions in the sector in accordance with EC Treaty provisions. The Commission encourages and welcomes all efforts leading to the establishment of European Social Dialogue Committees in the sport sector.

In October 2007 AIGCP (Association Internationale des Groupes Cyclistes Professionnels), IPCT (International Professional Cycling Teams) and CPA (Cyclistes Professionnels Associés) announced that they had jointly requested the European Commission to establish a Social Dialogue Committee in the professional cycling sector in Europe. AIGCP, IPCT and CPA stated that they are convinced that this Social Dialogue, under the umbrella of the European Commission, will be a good tool to renew and modernise professional cycling and its governance.

The purpose of this study is to identify the “content” of a Social Dialogue in the European professional cycling sector, once a pertinent Committee will have been officially established under EU auspices, that is possible themes and issues which are suitable to be considered and discussed in a Social Dialogue, the formal framework for setting an agenda of topics being Article 136 et seq. of the EC Treaty.

This study will help social partner organisations and other stakeholders at international and national level to become aware of the possible options regarding themes and issues which can be dealt with between management and labour in a Social Dialogue at the European level. The study is expected to facilitate the start of negotiations once the official Social Dialogue Committee will be established in the European professional cycling sector. It will offer social partner organisations a helpful instrument for determining their thematic framework. A similar effect is mutatis mutandis to be expected with regard to Social Dialogue in professional cycling at the national level of EU member states and candidate countries.

Regarding the executing of this study, the following remarks should be made:

1. A relevant questionnaire was drafted and distributed amongst social partner organisations and governing bodies at the international and national level with the support of AIGCP, CPA and UCI (International Cycling Union).
2. An essential aspect to be researched in this context is to what extent the agenda and the way of dealing with themes and issues is determined by the fact that the broader framework of a Social Dialogue in European professional cycling in fact includes pertinent rules and regulations of the international cycling governing body UCI.
3. The practice in other industrial sectors having an official Social Dialogue Committee in operation, was studied in order to identify themes and issues which mutatis mutandis could be usefully introduced also in a Social Dialogue in European professional cycling (“best practices” / “lessons learned”).
4. In December 2008, a “riders’ meeting” was organised in Barcelona in cooperation with CPA to discuss the theme under consideration with representatives of their national member associations and individual professional cyclists.

In May/July 2009, regional workshops were planned to take place in Madrid, Berlin, Brussels, Paris and Rome for discussion of the theme under consideration with stakeholders.

The reports on the workshops are integrated in Chapter V of the present Report.

The study consists of the following substantial chapters:

- | | | |
|-------------|---|--|
| Chapter II | – | Social Dialogue: An International Overview |
| Chapter III | – | Best Practices / Lessons learned from Social Dialogue Committees in Other Industrial Sectors |
| Chapter IV | – | Social Dialogue: Background and Relevance to Sport |

Chapter V – An Agenda for a Social Dialogue in European Professional Cycling.

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CHAPTER 2: SOCIAL DIALOGUE – AN INTERNATIONAL OVERVIEW

2.1. Introduction

The concepts of ‘social dialogue’ and ‘collective bargaining’ may have many meanings.¹ As explained by Bamber and Sheldon, collective bargaining, in its (historically) early forms, has been used as a means for employees to negotiate pay and working conditions with employers from a stronger bargaining position compared to individual bargaining. When unions started to gain factual importance and legal recognition, and when collective bargaining agreements received legal status, collective bargaining became a key element of many industrial relations systems.² Collective bargaining and social dialogue, albeit closely related, are not synonymous concepts.

The ILO defines social dialogue as “to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy.”³ This definition implies a tripartite notion of dialogue, including the government beside both sides of the industry. A general concept of social dialogue can be described as all types of bipartite or tripartite negotiation, consultation or exchange of information involving representatives of employers and workers.

Collective bargaining has a more narrow meaning than social dialogue. Collective bargaining concerns negotiations or discussions between representatives of employers and workers with a view to conclude an agreement. In many countries, such an agreement resulting from collective bargaining, i.e. a collective bargaining agreement, is legally binding upon the employers and employees to which it applies. Nevertheless, the binding nature of the bargaining result should not be a condition to speak of collective bargaining.

2.2. The standards of the International Labour Organisation (ILO)

2.2.1. Introductory remarks

The international standards on social dialogue and collective bargaining are established and promoted by the International Labour Organisation. The main right under which this is promulgated, is the freedom of association. Already since the beginning of the ILO, the freedom of association has been considered as one of the core themes.

Article 41 of the original Constitution of the ILO⁴ set out a number of ‘methods and principles’ that were considered to be of ‘special and urgent importance’ for the attainment of the objectives of the newly-established organisation. They included ‘the right of association for all lawful purposes by the employed as well as by the employers.’

These imperatives also found recognition in the Declaration of Philadelphia of 1944, Article I(b) of which affirmed that ‘freedom of expression and of association are essential to sustained progress’, whilst Article III spelled out the ‘solemn obligation’ of the ILO to further among the nations of the world programmes that would achieve:

‘the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.’

The Declaration was annexed to the Constitution in 1946, at which time a new Preamble was adopted which also endorsed ‘recognition of the principle of freedom of association’ as one of the main methods by which social justice, and therefore ‘universal and lasting peace’, could be attained.

The essential element of dialogue of social partners, can be found in the ILO’s tripartite structure.

1 M. Sewerynski, ‘Social dialogue – economic interdependence and labour law’, in Reports to the 6th European Congress for Labour Law and Social Security, Warsaw, ISLLSS, 13-17 September 1999, 12.

2 G.J. Bamber and P. Sheldon, ‘Collective bargaining’, in R. Blanpain and C. Engels (eds.), Comparative Labour Law and Industrial Relations in Industrialised Market Economies, Kluwer Law International, The Hague, 2001, 550.

3 Definition by Infocus Programme on Social Dialogue: www.ilo.org

4 Article 427 of the Treaty of Versailles.

2.2.2. Tripartism

As is apparent from the Declaration of Philadelphia, one of the most distinctive features of the ILO is the tripartite structure of its key decision-making organs: The International Labour Conference and the Governing Body. The principle of tripartism is also reflected in the Committees of the Conference and of the Governing Body, and permeates everything the organisation does.

Tripartism means that besides a representation of the governments, there is also an equal representation of workers and employers organisations.

The *sine qua non* of meaningful tripartism is the existence of free and effective organisations of employers and of workers. That in turn is dependent upon respect, at both national and international level, for the principles of freedom of association. This helps explain the high priority that is accorded to this issue in the Constitution of the ILO, in the standard-setting activities of the Conference, in the work of the supervisory bodies, and in the promotional and technical activities of the International Labour Office.

Tripartism is at the very heart of the ILO's work. It builds dialogue and consensus. It sets the organization's goals and ways of achieving them. It brings together the actors capable of identifying problems in the world of work, and above all of finding possible solutions to them. It is vital to the ILO's major current priority - the "Decent Work Agenda". And it is perhaps one of the reasons why, uniquely, the ILO survived the collapse of the League of Nations and continued with renewed vigour into the post-war world of globalization and the United Nations.

2.2.3. Development of the ILO standards

The international standards of the ILO have been subject of debate since the early years of this organisation. Already in the 1920s there were a number of attempts to give effect to this logic through the adoption of a general Convention on freedom of association. However, these endeavours foundered in 1927 in the face of employer (and government) insistence that the right to form and join trade unions must carry with it a correlative right not to join. This proposition was not acceptable to the workers' group, 'and in these circumstances it was thought preferable not to proceed with the matter.'

The Conference returned to this issue in the period immediately after the Second World War. This had result. In 1948 and 1949 the ILO adopted the pivotal Conventions Nos. 87 and 98. These Conventions are still the two key conventions with regard to the freedom of association and collective bargaining. However, these instruments were not the first ILO standards to make reference to the principles of freedom of association.

The first instrument was the Right of Association (Agriculture) Convention, 1921 (No. 11), Article 1 of which states that: 'Each Member of the International Labour Organisation which ratifies this Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.'

In its time, this was an important affirmation of principle. It is clearly appropriate that agricultural workers should have the same rights of association as other workers. But the efficacy of the Convention was severely circumscribed by the fact that there was no adequate international protection for the rights of association of the industrial workers with whom it was meant to ensure parity. Put simply, if municipal law denied full freedom of association to industrial workers, it would be entirely consistent with the Convention also to deny such freedom to agricultural workers so long as they were not placed in a less advantageous position than their fellow workers in industry. Workers in agriculture are now entitled to the protections set out in Conventions Nos. 87 and 98 in the same way as any other workers. To that extent, Convention No. 11 may be said to be of little practical relevance. Nevertheless, effective recognition of the principle of freedom of association for agricultural workers does raise special problems. This was reflected in the adoption in 1975 of the Rural Workers

Organisations Convention (No. 141). It is also reflected in the fact that ratification of Convention No. 11 is still promoted, and that reporting is still required under Article 22 of the Constitution.

Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84) stipulates that ‘the rights of employers and employed alike to associate for all lawful purposes shall be guaranteed by appropriate measures’, whilst Article 3 seeks to protect the right of representative trade unions to conclude collective agreements with employers or employer organisations. The Convention endeavours to encourage the fair and expeditious settlement of both individual and collective disputes: preferably through conciliation machinery involving representatives of employers and workers, but also with the involvement of public officers if necessary (Articles 5, 6 and 7). There is formal endorsement of consultation with representatives of employers and workers ‘in the establishment and working of arrangements for the protection of workers and the application of labour legislation’ (Article 4), and in the establishment and operation of dispute-resolution mechanisms (Articles 6(2) and 7(2)).

Convention No. 84 was followed by the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98). As mentioned before, taken together, these two instruments have played, and continue to play, a central role in the international protection of freedom of association for trade union purposes. They have, moreover, been complemented by a number of later instruments dealing with more specific applications of the principles of freedom of association.

The Workers’ Representatives Convention 1971 (No. 135) (and accompanying Recommendation No. 143) is principally concerned with the protection of workers’ representatives against prejudicial treatment because of their status or activities as representatives or as union members (Article 1), and with the facilities with which they should be provided at the level of the enterprise to enable them to carry out their functions promptly and efficiently (Article 2).

The Rural Workers Organisations Convention 1975 (No. 141) (and accompanying Recommendation No. 149) restates the basic principles of freedom of association with specific reference to the position of rural workers (Article 3); and requires steps to be taken to facilitate the establishment and growth of voluntary, strong and independent organisations of rural workers (Article 4), and (Article 5(1)).

The Labour Relations (Public Service) Convention 1978 (No. 151) (and accompanying Recommendation No. 159) was adopted in response to what was perceived to be a gap in the guarantees provided by Convention No. 98 by reason of the fact that that instrument ‘does not deal with the position of public servants engaged in the administration of the State’ (Article 6). Convention No. 151 applies to all persons employed by public authorities ‘to the extent that more favourable provisions in other international labour Conventions are not applicable to them’ (Article 1(1)). In other words, Convention No. 151 provides to public servants essentially the same guarantees as are provided to other employees by Convention No. 98 – albeit subject to the recognition of the special character of the public service that is inherent in Articles 1(2) and 9.

The Collective Bargaining Convention, 1981 (No. 154) (and accompanying Recommendation No. 163) sets out a number of measures that should be adopted to promote collective bargaining so as more effectively to achieve the objectives set out in the Declaration of Philadelphia, in Article 4 of Convention No. 98 and in paragraph 1 of the Collective Agreements Recommendation, 1951 (No. 92).

Taken together, these Conventions constitute a comprehensive, albeit not exhaustive, code for the protection and promotion of freedom of association.

A number of other international labour standards make specific reference to the principles of freedom of association (for example Article 2 and the Appendix to the Merchant Shipping (Minimum Standards) Convention 1976 (No. 147)), whilst others may be said to complement them (for example the Tripartite Consultation (International Labour Standards) Convention 1976 (No. 144)).

2.2.4. The Declaration on Fundamental Principles and Rights at Work (1998)

In June 1998, the Conference adopted the Declaration on Fundamental Principles and Rights at Work. This commits all Member States to respect, promote and realize in good faith the principles set out in seven core human rights instruments. Those instruments include Conventions Nos. 87 and 98, together with the Forced Labour Convention 1930 (No. 29), Abolition of Forced Labour Convention 1957 (No. 105), Equal Remuneration Convention 1951 (No. 100), Discrimination (Employment and Occupation) Convention 1958 (No. 111) and Minimum Age Convention 1973 (No. 138).

The Declaration is not open to ratification, and does not have any binding effect in international law. Indeed, it seems clear that if the Declaration had incorporated any kind of complaints mechanism, it simply would not have been adopted. That said, the Declaration does incorporate a ‘follow-up’ procedure that in effect imposes reporting obligations upon all Member States irrespective of whether they have ratified the Conventions concerned. This is clearly less effective than a full-blooded supervisory process. Nevertheless it does seem to have provided some incentive for ratification of the core standards, as evidenced by the fact that Convention No. 87 has received 26 ratifications since the adoption of the Declaration, whilst Convention No. 98 has received 18.

The Office has also endeavoured to promote respect for, and the implementation of, the principles of freedom of association through a wide range of educational activities; publications; audio-visual materials, and the provision of technical co-operation. This last can include assistance in the preparation of labour legislation, training of labour inspectors etc. In principle, all such activities should themselves be consistent with the principles, and should be structured and implemented in such a way as to promote respect for them in the future. Other technical cooperation activities – such as the administration of public works projects on behalf of other international agencies, or individual donor countries – might also be expected to provide a vehicle for the promotion of the principles of freedom of association, and of international labour standards in general. Indeed this is an important part of the rationale for ILO involvement in such activities in the first place. Attractive as this logic may appear in the abstract, it has proved far from easy to put it into effect in practice.

2.2.5. Overview of standards

A comprehensive overview of standards of the ILO in the sphere of freedom of association, collective bargaining and industrial relations, learns the following.⁵

2.2.5.1. Fundamental Conventions on freedom of association and collective bargaining

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

2.2.5.2. Freedom of association (agriculture, non-metropolitan territories)

- Rural Workers' Organisations Convention, 1975 (No. 141)
- Rural Workers' Organisations Recommendation, 1975 (No. 149)
- Right of Association (Agriculture) Convention, 1921 (No. 11)
- Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)

2.2.5.3. Industrial relations

- Workers' Representatives Convention, 1971 (No. 135)
- Workers' Representatives Recommendation, 1971 (No. 143)
- Labour Relations (Public Service) Convention, 1978 (No. 151)
- Labour Relations (Public Service) Recommendation, 1978 (No. 159)
- Collective Bargaining Convention, 1981 (No. 154)

⁵ This overview is given by the ILO on its website (www.ilo.org).

- Collective Bargaining Recommendation, 1981 (No. 163)
- Collective Agreements Recommendation, 1951 (No. 91)
- Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)
- Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)
- Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94)
- Communications within the Undertaking Recommendation, 1967 (No. 129)
- Examination of Grievances Recommendation, 1967 (No. 130)

2.2.6. Conventions 87 and 98

As already indicated above, the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention 1949 (No. 98), are the two main references of the ILO in the standard setting and play a central role in the international protection of freedom of association for trade union purposes.

It has also been pointed out above that the Declaration on Fundamental Principles and Rights at Work, committing all Member States to respect, promote and realize in good faith the principles set out in seven core human rights instruments, includes references to Conventions Nos. 87 and 98.

Therefore, it is relevant to have a closer look at the provisions of both Conventions.

2.2.6.1. Convention 87

The substance of Convention No. 87 can be summarised by reference to eight basic propositions:

- (i) All workers and employers, without distinction whatsoever, have the right to establish, and subject only to the rules of the organisation concerned, join organisations of their own choosing without prior authorisation (Article 2).
‘Organisation’ for these purposes means any organisation of workers or employers for furthering and defending the interests of workers or of employers (Article 10).
- (ii) Workers’ and employers’ organisations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities, and to formulate their programmes (Article 3(1)). The public authorities must refrain from any interference that would restrict these rights, or impede their exercise (Article 3(2)).
- (iii) Workers’ and employers’ organisations must not be dissolved or suspended by administrative authority (Article 4).
- (iv) Workers’ and employers’ organisations have the right to form and to join federations and confederations (Article 5). Such federations and confederations are to have the right to affiliate to international organisations of workers and employers (Article 5), and also to enjoy the guarantees provided by Articles 2, 3 and 4 (Article 6).
- (v) The acquisition of legal personality by organisations, federations and confederations must not be made subject to conditions of such a character as to restrict the application of Articles 2, 3 and 4 (Article 7).
- (vi) In exercising their rights under the Convention workers, employers and their organisations are to respect the law of the land (Article 8(1)), which in turn must not be such as to impair, or be applied so as to impair, the guarantees provided by the Convention (Article 8(2)).
- (vii) According to Article 9 the extent to which the guarantees provided by the Convention are to apply to the armed forces and the police is to be determined by national laws or regulations. These are the only permissible derogations from the generality of the Convention.
- (viii) Ratifying States must take ‘all necessary and appropriate measures’ to ensure that employers and workers may freely exercise the right to organize (Article 11).

2.2.6.2. Convention 98

The substance of Convention No. 98 can be summarised by reference to six basic propositions:

- (i) Workers are to enjoy adequate protection against acts of anti-union discrimination at the time of hiring, during employment, and in relation to termination of employment (Article 1).
- (ii) Worker and employer organisations are to enjoy adequate protection against interference by other organizations. In particular, worker organisations are to be protected against employer domination (Article 2).
- (iii) Machinery appropriate to national conditions is to be established, where necessary, to ensure respect for the rights guaranteed by Articles 1 and 2 (Article 3).
- (iv) Article 4 directs that where necessary, measures appropriate to national conditions must be taken to encourage and to promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations 'with a view to the regulation of terms and conditions of employment by means of collective agreements.'
- (v) Article 5 confers upon ratifying States a discretion similar to that in Article 9 of Convention No. 87 in relation to the armed forces and the police.
- (vi) According to Article 6, the Convention 'does not deal with the position of public servants engaged in the administration of the State.' It also provides that the Convention is not to be construed as prejudicing the position of such workers in any way.

2.2.6.3. The right to strike

Neither Convention makes any express reference to the right to strike. However the supervisory bodies have consistently taken the view that it is an integral part of the free exercise of the trade union rights which are guaranteed by Conventions Nos. 87 and 98, and by the Constitution of the ILO. This view has come under increasingly critical scrutiny in recent years, especially in the Conference Committee on the Application of Conventions and Recommendations.

2.2.7. Ratifications of Convention 87

Given the importance of the two Conventions, it is appropriate to give an indication of the ratification rate of these Conventions by the member states. The number of ratifications can be found in annex of this contribution.

2.2.8. The Committee of Experts and Committee on Freedom of Association

The examination of periodic reports on Conventions Nos. 87 and 98 constitutes an important part of the work of the Committee of Experts on the Application of Conventions and Recommendations. In 2007, the Committee addressed 'observations' to 103 of the 147 States that had ratified Convention No. 87, plus direct requests to 55 States (including 30 that had also received an observation). It also addressed 'observations' to 99 of the 156 States that had ratified Convention No. 98, together with 18 'direct requests' (including to 11 countries that had also received an observation).

The Governing Body's Committee on Freedom of Association (CFA) was established in 1951, essentially to act as a filter mechanism for the Fact-Finding and Conciliation Commission on Freedom of Association (FFCC). After a relatively slow beginning, the number of cases submitted to the CFA increased steadily for a number of years. For example, between 1951 and 1960 a total of 230 complaints were lodged with the Office. For 1961 to 1970 the figure was 400, whilst between 1971 and 1980 it fell back slightly to 350. Between 1981 and 1990 the figure rose to a new peak of 570. Between 1991 and 2000 the total again fell back slightly, to 550. A further 548 complaints were lodged between January 2001 and November 2006. Overall, the Committee has examined more than 2400 alleged breaches of the principles of freedom of association. In doing so, it has almost entirely usurped the role of the FFCC. It has also established an elaborate jurisprudence, the key features of which are set out in the ILO' Digest of decisions.

It can be said that the Committee of Experts and the CFA relating to freedom of association can be said, in the context of their observations and decisions, to have a sort of “case law” on various matters, from which certain principles can be drawn.

2.3. The European Union

Social dialogue at European level originated with a series of talks, initiated in the 1980's under the driving force of Commission President Jacques Delors. These discussion rounds concerned informal meetings held at *Val Duchesse* and were soon labelled as ‘social dialogue’. The parties invited to participate in these talks were, from the employers' side, UNICE⁶, now known as BUSINESS EUROPE and CEEP⁷, and from trade union side, ETUC⁸. Later on, this cross-industry social dialogue was formalised and received a prominent role in the mechanisms of the EC Treaty.

2.3.1. The European social partners

Presently, various social partners can be identified on European level. The general cross-industry social partners⁹ are, from the employers' side, as BUSINESS EUROPE and CEEP and, from trade union side, ETUC. There are also cross-industry organisations which represent certain categories of workers or undertakings, such as UEAPME¹⁰, Eurocadres and CEC¹¹. Furthermore, there are many industry-level (sector) social partners.¹²

2.3.2. The question of representativeness

In order to be able to act as a social partner, either for the side of employers or for the side of the employees, one has to be representative. Representativity is related to the question which organisation is able or allowed to participate in negotiations and consultations and which organisation is capable of concluding a collective bargaining agreement. The issue of representativity of the social partners, however, is problematic at European level. It should be noted that within the context of European Community law, the issue of representativity comes up in different instances: with regard to the consultation on the basis of Article 138, 2 and 3 EC Treaty, with regard to the negotiations and subsequent conclusion of an agreement under Article 138, 4 EC Treaty, and finally with regard to the implementation of European collective agreements in Community legislation on the basis of Article 139, 2 EC Treaty.¹³

The main problem is that there is no legal rule at European level that defines the concept of representativity or that determines which organisation is representative and which is not. However, the European Commission has taken the initiative to draw up criteria of representativity. In subsequent communications,¹⁴ the Commission has laid down three main criteria of representativity (see further).

On the basis of these criteria, the Commission has drawn up a list of organisations which can be considered to be representative and which will be consulted by the Commission in accordance with EC Treaty-procedures. The list is assessed periodically.

6 Union of Industrial and Employers' Confederation of Europe (UNICE).

7 European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

8 European Trade Union Confederation (ETUC).

9 Cf. List of European social-partner organisations consulted under Article 138 of the Treaty, Annex 1 of Communication from the Commission, The European social dialogue, a force for innovation and change, COM(2002)34final of 26 June 2002, 32p.

10 European Association of Craft and Small and Medium-Sized Enterprises (UEAPME).

11 Confédération Européenne des Cadres (CEC).

12 E.g.: European Banking Federation (FBE), International Confederation of Temporary Work Business (CIETT-Europe), European Transport Workers' Federation(ETF), European Metalworkers' Federation (EMF).

13 E. Franssen, Legal aspects of the European social dialogue, Intersentia, Antwerp, 2002, 83.

14 COM(93)600 final of 14 December 1993; COM(98)322 of 20 May 1998.

The disadvantages of this approach – compared for example with a legislative and regulatory approach – are illustrated in the *UEAPME*-case of the European Court of First Instance in 1998.¹⁵ *UEAPME* requested the annulment of Directive 96/34 of 3 June 1996 which implements the European collective agreement on Parental Leave. *UEAPME*, an employers' organisation that represents the interests of small and medium-sized enterprises, argued that the final stage of the European social dialogue as provided in the EC Treaty, is basically a closed shop in which only the big players as UNICE, CEEP and ETUC have a role.¹⁶

UEAPME submitted the case before the Court of First Instance and claimed that the Court should annul the Parental Leave Directive.¹⁷ The Court of First Instance, however, argued that the provisions of – what was at that time – the Agreement on Social Policy, do not confer on any representative of management and labour, whatever the interests purportedly represented, a general right to take part in any negotiations entered into in accordance with Article 3(4) of this Agreement, which relates to the right of the social partners to intervene in the legislative process and take over the initiative of the Commission (§78). Nevertheless, the Court followed, the Commission must act in conformity with the principles governing its action in the field of social policy (§84-85). On regaining the right to take part in the conduct of the procedure, the Commission must, in particular, examine the representativity of the signatories to the agreement in question (§85). Also the Council, according to the Court, is required to verify whether the Commission has fulfilled its obligations under the Agreement (§87). The Court reasons that the principle of democracy on which the Union is founded, where the Parliament does not participate in the legal procedure, the participation of the people be otherwise assured, in this instance through the parties representative of management and labour who concluded the agreement (§89). On this basis, the Court concludes that, where that degree of representativity is lacking, the Commission and the Council must refuse to implement the agreement at Community level (§90).

Nevertheless, the Court came to the conclusion that the Commission and the Council did properly take the view that the collective representativity of the signatories to the framework agreement was sufficient (§110), a.o. on the grounds that the signatories were the three bodies listed by the Commission as general cross-industry organisations (§95), that the mandate of these signatories is a general mandate, to defend the interests of undertakings of whatever kind (§99), that about two-thirds of small and medium-sized enterprises are also affiliated to one of the organisations represented by UNICE (§103), and that the very wording of the framework agreement makes it clear that the small and medium-sized enterprises were not left out of the negotiations leading to its conclusion (§105).

The Court clearly did not solve the representativity issue. It rather marked the importance of the matter by allowing social partners to attack the legislative procedures under the EC Treaty in case representative organisations were mistakenly left out of the process. It further ruled out specific bargaining rights under the EC Treaty's Social Chapter. The current situation produces evident criticism. Betten rhetorically wonders if it does not go against democracy if the majority rule is not respected, while indicating that UNICE, CEEP and ETUC do not represent a majority of employers and workers in Europe.¹⁸ Blanpain argues that, in case the criteria of representativity are not clearly spelled out at Community level, the European Court of Justice should look at the relevant ILO Conventions.¹⁹

As will be shown below, the three criteria of representativity, as drafted by the European Commission, have been interpreted by the Commission to sector level dialogue.

15 Union Européenne de l'artisanat et des petites et moyennes entreprises (*UEAPME*) vs. Council of the European Union, Case T-135/96, Judgment of the Court of First Instance of 17 June 1998, European Court Reports 1998, II-2335.

16 L. Betten, 'The democratic deficit of participatory democracy in Community social policy', European Law Review, 1998, 31.

17 Persuant to article 173 of the EC Treaty; see on this point: E. Franssen and A.T.J.M. Jacobs, 'The question of representativity in the European social dialogue', C.M.L.R. 1998, 1302-1308.

18 L. Betten, 'The democratic deficit of participatory democracy in Community social policy', European Law Review, 1998, 32.

19 R. Blanpain, European labour law, Seventh Edition, Kluwer Law International, The Hague, 2000, 148.

2.3.3. Levels of social dialogue

Social dialogue and collective bargaining can take place at various levels: at cross-industry level, at sector level and at enterprise level. It can be noted that while social dialogue is recognised in the EC Treaty and by the Commission and identified as a key element of European social policy, there is few European regulation of the subject. In this context, some remarks can be made with regard to the different levels of social dialogue.

2.3.3.1. Cross-industry level

Since the *Val Duchesse* dialogue meetings, some form of cross-industry level social dialogue has existed on European level. With the Amsterdam Treaty, cross-industry level social dialogue has been institutionalised in the Social Chapter of the EC Treaty (inclusion of the Maastricht Agreement on Social Policy). Under article 138 of the EC Treaty, there is a procedure of obligatory two-stage consultation of the social partners by the Commission (see below).

In addition to the obligatory consultation procedure, the Commission systematically consults the cross-industry social partners on all important developments in the economic and the social policy fields. Many forms of consultation on Community policies take place in the *advisory committees*, set up by the Commission since the 1960's. These are tripartite fora whose role is to advise the Commission on the formulation of specific policies and assist it in their implementation.

2.3.3.2. Sector level

Social dialogue at sector level has existed on European level since a long time. Since the 1960's, the Commission set up various *sectoral committees*, either under the form of Joint Committees or as informal working groups. The sector-specific consultations are aimed at improving and harmonising working conditions and also, in some cases, improving the economic and competitive position of the sector concerned.²⁰ In an effort to a more harmonised and effective approach to the structures of sector dialogue, the Commission adopted a Decision on 20 May 1998, providing a framework for *Sectoral Dialogue Committees*.

According to the Decision of 20 May 1998, Sectoral Dialogue Committees are established in those sectors where the social partners make a joint request to take part in a dialogue at European level, and where the organisations representing both sides of industry fulfil the following criteria:

- relate to specific sectors or categories and be organised at European level;
- consist of organisations which are themselves an integral and recognised part of Member States' social partner structures and with the capacity to negotiate agreements, and which are representative of several Member States;
- have adequate structures to ensure their effective participation in the work of the Committees.

On this basis, the Commission has been able to create about 30 committees at the joint request of the social partners in various sectors. The committees have given rise to some 230 commitments of different types, such as opinions, common positions, declarations, guidelines, codes of conduct, charters and agreements.²¹

2.3.3.3. Enterprise level

According to the European Commission, 'European integration encourages companies to develop on a transnational scale. Reinforcing European or transnational dialogue among firms has become a fundamental challenge for tomorrow's Europe, particularly in regard to mobility, pensions and equivalence of qualifications'.²² Enterprise social dialogue and bargaining on European level can be

20 COM(98)322 of 20 May 1998, p7.

21 Numbers of 2002, cf. The sectoral dialogue in Europe, European Commission, Employment & Social Affairs, Office for Official Publications of the European Communities, Luxembourg, 2003, 10.

22 COM(2002)341final of 26 June 2002, p.11.

identified through European group works councils established in more than 700 transnational undertakings in Europe following the adoption of Directive 94/45/EC on European works councils.

2.4. The role of social partners in the legislative process under the Social Chapter

The social partners can play various roles in the making of European law, which take the form of consultation, intervention and initiative. However, not necessarily do results of social dialogue or collective bargaining be legally binding in their nature.

2.4.1. Consultation

While, in principle, the Commission has the power to initiate the legislative process under the EC Treaty, in making a proposal of legislation to the Council, the EC Treaty has provided for a specific role of the social partners in this process.

Under article 138 of the EC Treaty, there is a procedure of obligatory consultation of the social partners by the Commission. This consultation consists of two stages.

1. *First stage consultation:* Article 138, 2 of the EC Treaty provides that, before submitting proposals in the social policy field, the Commission shall consult management and labour on the *possible direction* of Community action.
2. *Second stage consultation:* According to article 138, 3 of the EC Treaty, if, after such (first stage) consultation, the Commission considers Community action advisable, it shall consult management and labour on the *content of the envisaged proposal*. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

According to the Commission²³ the two-stage consultation has a dual purpose:

- the opinions of the interested parties can be taken into account and the impact of any legislation assessed. The Commission can thus formulate policies appropriate, in their form and substance, to the problems dealt with and incorporate the aim of social modernisation and improving companies' competitiveness;
- the outcome may be independent social dialogue, multi-sectoral or sectoral, and ultimately, therefore, agreements which may subsequently be incorporated into Community law. This is a practical application of the principle of social subsidiarity. It is for the social players to make the first move to arrive at appropriate solutions coming within their area of responsibility; the Community institutions intervene, at the Commission's initiative, only where negotiations fail.

This compulsory consultation under Article 138 of the EC Treaty is additional to the consultations that take place within the context of advisory committees, which operate under the supervision of the European Commission.

2.4.2. Intervention

Article 138, 4 of the EC Treaty provides that, on the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article 139. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

This means that the social partners may intervene in the legislative process initiated by the European Commission by informing the latter that they wish to proceed on their own in regulating the subject by concluding a European-wide agreement (as provided under article 139 of the EC Treaty).

According to article 138, 4 of the EC Treaty, the duration of the procedure shall not exceed 9 months, unless the management and labour concerned and the Commission decide jointly to extend it.

²³ COM(2002)341final of 26 June 2002.

2.4.3. Initiative

The EC Treaty explicitly provides the possibility for the social partners to conclude a Community-wide agreement at any time and on their own free initiative.

Article 139, 1 EC Treaty stipulates that, should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

According to article 139, 2 of the EC Treaty, these European agreements can be implemented in two main ways:

- either in accordance with the procedures and practices specific to management and labour and the Member States or,
- in matters covered by Article 137, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission.

In the case where social partners would conclude a Community-wide agreement, either on the inter-industry level, or on the level of a given sector, the ultimate legal character of the instrument is partly dependent upon the will of the parties themselves. They can decide to conclude a binding agreement, but they also keep the freedom to structure the result of their bargaining in a common opinion, a recommendation or a code of practice. In the following paragraph, the European collective bargaining agreement will be discussed more closely.

2.5. European agreement

As explained above, employers' organisations and employees' organisations can conclude collective agreements on European level. In labour law, a collective agreement is often defined as an agreement between one or more employers or employers' organisations and one or more employees' organisations, concerning the terms and conditions of employment and the rights and the obligations of the contracting parties.

While Articles 138 and 139 of the EC Treaty have forced a break-through in European labour law and social policy, European Community law does not contain specific provisions with regard to European collective agreements. In the absence of such specific European legal rules, many questions remain as to which legal rules should apply in case a collective agreement is concluded at European level. In many cases, national law will be applicable to an agreement which is concluded at European level.

There is even scope for parties to determine which law will govern the European collective agreement. As indicated above, social dialogue and collective bargaining may also lead, according to the wish of the parties, to non-binding agreements, such as recommendations or codes of practice.

As explained above, according to Article 139, 2 EC Treaty, a European collective agreement may be implemented in two main ways:

(1) Implementation in Accordance with National Practice

This form does not imply any obligation on the Member States to apply the agreements directly or to work out rules for their transposition. Neither is there any obligation to amend national legislation in force to facilitate their implementation. This means that the European agreements will have to be implemented in the Member States through the collective bargaining system itself which is prevalent at (national) level in each country.

(2) Implementation by a Council Decision

The Council can, at the joint request of the signatory parties and on a proposal from the Commission, implement an agreement by a decision. The Council and the Commission can of course only act in matters for which they are competent on the basis of the EC Treaty.

This procedure of implementation, which normally goes through a Council Directive, has already been used for some inter-industry agreements, but also for a number of sectoral collective agreements.

2.6. Practical insight in the European social dialogue

2.6.1. Typology of European social dialogue outcomes

The Commission's Communication of 12 August 2004 on social dialogue proposed a typology of European social dialogue results with the aim of assisting understanding of the various social dialogue instruments and help the social partners to improve the transparency of the outcomes of their dialogue.

A revised version of the typology has been provided on the Commission's website.²⁴ It identifies five broad categories, some of which have sub-categories: agreements implemented in accordance with Article 139(2); process-oriented texts; joint opinions and tools; procedural texts; and follow-up reports. The social partners are encouraged to draw on this typology when drafting their.

The new generation texts, which the social partners seek to follow-up themselves, fall within the first two categories, namely autonomous agreements and process-oriented texts.

2.6.1.1. Agreements implemented in accordance with Article 139(2): minimum standards

The texts in this category establish minimum standards and entail the implementation of certain commitments by a given deadline. Article 139(2) EC makes it clear that two main types of agreement fall within this category, the main difference relating to the method of implementation foreseen.

2.6.1.1.1. Agreements implemented by Council decision

- Framework agreement on parental leave, 1995
- Framework agreement on part-time work, 1997
- Framework agreement on fixed-term work, 1999
- European agreement on the organisation of working time of seafarers, 1998
- European agreement on the organisation of working time of mobile workers in civil aviation, 2000
- European agreement on certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services, 2004

2.6.1.1.2. Autonomous agreements implemented by the procedures and practices specific to management and labour and the Member States

- Framework agreement on telework, 2002
- Framework agreement on work-related stress, 2004
- Agreement on the European licence for drivers carrying out a cross-border interoperability service, 2004

2.6.1.2. Agreements with other characteristics

Besides the traditional methods of concluding agreements between social partners, as provided in Article 139(2) EC, another category of instruments agreed upon exists. It concerns frameworks of action, guidelines and codes of conduct, as well as policy orientations.

This overview shows the wide variety of possible outcomes that the European social dialogue, understood in its broad sense, can produce. The instruments are defined by the Commission as follows:

Frameworks of action: Frameworks of action consist of the identification of certain policy priorities towards which the national social partners undertake to work. These priorities serve as benchmarks and the social partners report annually on the action taken to follow-up these texts.

²⁴ http://ec.europa.eu/employment_social/index_en.html

Guidelines and codes of conduct: Guidelines and codes of conduct make recommendations and/or provide guidelines to national affiliates concerning the establishment of standards or principles. In some cases these are intended to serve as principles or minimum European standards to be implemented at national or company level. In other cases they seek to promote higher standards than those provided for in existing legislation. This category also includes codes of conduct intended to promote the implementation in companies' supply chains of existing internationally agreed standards in the area of labour law established by international conventions. The content of some of these codes of conduct goes beyond the core ILO conventions.

Policy orientations: This sub-category refers to texts in which the social partners pursue a proactive approach to promoting certain policies among their members. The texts explain how these will be promoted (e.g. collection and exchange of good practice, awareness-raising activities) and how the social partners undertake to assess the follow-up given and its impact.

Joint opinions: This category includes the majority of social partner texts adopted over the years such as their joint opinions and joint statements, which are generally intended to provide input to the European institutions and/or national public authorities. These include texts which respond to a Community consultation (green and white papers, consultation documents, Communications), which adopt a joint position with regard to a given Community policy, which explicitly ask the Commission to adopt a particular stance, or which ask the Commission to undertake studies or other actions.

Declarations: This category refers to texts which are essentially declarations - usually directed at the social partners themselves - outlining future work and activities which the social partners intend to undertake (e.g. the organisation of seminars, roundtables, etc).

Tools: This category refers to the tools developed by the social partners, such as guides and manuals providing practical advice to employees and companies on subjects such as vocational training, health and safety and public procurement, often with the assistance of Community grants. These can make a very practical contribution at the grass-roots level, for example by helping to explain the implications of EU legislation on certain topics, or helping to exchange knowledge of good practice.

Hereafter, examples are given of each of these categories of instruments.

It should be pointed out that the European Commission also distinguishes so-called "**procedural texts**" and "**follow-up reports**". Procedural texts are defined as texts which seek to lay down the rules for the bipartite dialogue between the parties. This includes the cross-industry social partners' Agreement of 31 October 1991, which made proposals for the revision of the policy-making procedures in the EC Treaty in the social policy field. These proposals were incorporated virtually verbatim into the Treaty on European Union by the Intergovernmental Conference of 1991. This category also includes the social partner texts which determine the rules of procedure for the sectoral social dialogue committees. Follow-up reports refer to the follow-up reports produced jointly by the social partners, in which they report on the implementation and follow-up given to their new generation texts.

2.6.1.2.1. Frameworks of action

- Framework of actions on the lifelong development of competencies and qualifications, 2002 (cross-industry)
- Framework of actions on gender equality, 2005 (cross-industry)
- European agreement on the reduction of workers' exposure to the risk of work-related musculoskeletal disorders in agriculture, 2005

2.6.1.2.2. Guidelines and codes of conduct

1. Establishing new European standards or principles:
 - Agreement on promoting employment in the postal sector in Europe, 1998
 - European agreement on guidelines on telework in commerce, 2001
 - Code of conduct - Guidelines for European hairdressers, 2001

- Voluntary guidelines supporting age diversity in commerce, 2002
- European agreement on vocational training in agriculture, 2002
- Code of conduct on CSR in the European sugar industry, 2003
- Code of conduct and ethics for the private security sector, 2003
- Local & regional government joint statement on telework, 2004
- Statement on promoting employment and integration of disabled people in the commerce and distribution sector, 2004
- Guidelines for customer contact centres (telecommunications), 2004
- Joint statement on CSR-related aspects in the European banking sector, 2005

2. Promoting and enforcing existing internationally agreed standards:

- Code of conduct on child labour in the footwear sector, 1996
- Code of conduct for the European textile/clothing sector, 1997
- Agreement on Fundamental Rights and Principles at Work, in the commerce sector, 1999
- Code of conduct in the leather and tanning sector, 2000
- Code of conduct in the footwear sector, 2000
- Code of Conduct - A Charter for the social partners in the European woodworking industry, 2002

2.6.1.2.3. Policy orientations

- Joint recommendation on apprenticeship in the sugar sector, 1998
- Joint declaration on equal opportunities/diversity (electricity), 2003
- Orientations for reference in managing change and its social consequences, 2003 (cross-industry)
- Joint Statement on Corporate Social Responsibility in commerce, 2003
- Common recommendations of the European social partners for the cleaning industry, 2004
- Initiative for improving CSR in the hospitality sector, 2004
- Lessons learned on European Works Councils, 2005 (cross-industry)
- Joint statement of the postal sector on CSR, 2005

2.6.1.2.4. Joint opinions

- Joint declaration on the mid-term review of the Lisbon strategy, 2005 (cross-industry social partners)
- Position on training and continuing training (mines), 2003
- Joint declaration on the European harmonisation of legislation governing the private security sector, 2001
- Joint declaration on the objectives of the European directive on private agency work (temporary work sector), 2001
- Joint opinion of the European social partners in aviation, 2001

2.6.1.2.5. Declarations

- Joint declaration on the social partners of the cleaning industry and EU enlargement, 2000
- Joint statement and final report on the study on life-long learning in the electricity sector, 2003

2.6.1.2.6. Tools

- Selecting best value - A guide for organisations awarding contracts for cleaning services (cleaning industry)
- Training Kit of Basic Office Cleaning Techniques (cleaning industry)
- European Vocational Training Manual for Basic Guarding (private security)
- Brochure on tutoring in the construction industry, 2004

- Website of the postal sector social dialogue committee, 2003

2.6.2. The social dialogue survey

An interesting insight into the practice and position of social dialogue is provided by the social dialogue survey, conducted in 2007. This survey was posted on the European social dialogue website (www.ec.europa.eu/socialdialogue) during mid-2007, whereby social partners as well as other visitors of the site were invited to participate. A total number of 131 replies were received. The main objective of the survey was to test the level of knowledge, raise awareness and get feedback from the social partners and other interested stakeholders on their perception of European social dialogue. Most respondents identified themselves as representatives or members of social partner organisations. Participation was balanced between European and national social partners. The majority of respondents represented sectoral social partner organisations (72.5 %).

An interesting element of the survey is the question on what key topics European social dialogue should concentrate. Topics were asked to be ranked by the respondents. The results are as follows:

Working Conditions	247
Education and Training	241
Flexicurity	213
Health and Safety	173
Restructuring and Adaptation to Industrial Change	161
Social Protection	140
Mobility of Workers	122
Demographic Change	119
Equal Opportunities Non Discrimination	110
Corporate Social Responsibility	102
Minimum Wages	97
Capacity building	82
Other relevant Policies (Industry, Trade etc.)	81

This makes clear that both “bread and butter issues” (working conditions) as well as broad policy issues (flexicurity) stand in the centre of attention as far as European social dialogue is concerned.

It is probably no surprise that the differences between trade unions and employers groups stand out:

Trade Unions		Employers	
Working Conditions	75	Education and Training	149
Social Protection	53	Flexicurity	137
Education and Training	42	Working Conditions	120
Corporate Social Responsibility	39	Health and Safety	111
Restructuring and Adaptation to Industrial Change	35	Restructuring and Adaptation to Industrial Change	85
Health and Safety	34	Mobility of Workers	83
Flexicurity	31	Demographic Change	74
Equal Opportunities Non Discrimination	29	Equal Opportunities Non Discrimination	56
Minimum wages	24	Other relevant Policies (Industry, Trade etc.)	55
Capacity building	20	Capacity building	52
Demographic Change	19	Social Protection	51
Mobility of Workers	16	Corporate Social Responsibility	46
Other relevant Policies (Industry, Trade etc.)	11	Minimum Wages	40

2.7. ANNEX: ratifications of ILO Conventions 87 and 98

2.7.1. Convention 87

(Source: ILOLEX - 7. 4. 2008)		
Country	Ratification date	Status

Albania	03:06:1957	ratified
Algeria	19:10:1962	ratified
Angola	13:06:2001	ratified
Antigua and Barbuda	02:02:1983	ratified
Argentina	18:01:1960	ratified
Armenia	02:01:2006	ratified
Australia	28:02:1973	ratified
Austria	18:10:1950	ratified
Azerbaijan	19:05:1992	ratified
Bahamas	14:06:2001	ratified
Bangladesh	22:06:1972	ratified
Barbados	08:05:1967	ratified
Belarus	06:11:1956	ratified
Belgium	23:10:1951	ratified
Belize	15:12:1983	ratified
Benin	12:12:1960	ratified
Bolivia	04:01:1965	ratified
Bosnia and Herzegovina	02:06:1993	ratified
Botswana	22:12:1997	ratified
Bulgaria	08:06:1959	ratified
Burkina Faso	21:11:1960	ratified
Burundi	25:06:1993	ratified
Cambodia	23:08:1999	ratified
Cameroon	07:06:1960	ratified
Canada	23:03:1972	ratified
Cape Verde	01:02:1999	ratified
Central African Republic	27:10:1960	ratified
Chad	10:11:1960	ratified
Chile	01:02:1999	ratified
Colombia	16:11:1976	ratified
Comoros	23:10:1978	ratified
Congo	10:11:1960	ratified
Democratic Republic of the Congo	20:06:2001	ratified
Costa Rica	02:06:1960	ratified
Côte d'Ivoire	21:11:1960	ratified
Croatia	08:10:1991	ratified

Cuba	25:06:1952	ratified
Cyprus	24:05:1966	ratified
Czech Republic	01:01:1993	ratified
Denmark	13:06:1951	ratified
Djibouti	03:08:1978	ratified
Dominica	28:02:1983	ratified
Dominican Republic	05:12:1956	ratified
Ecuador	29:05:1967	ratified
Egypt	06:11:1957	ratified
El Salvador	06:09:2006	ratified
Equatorial Guinea	13:08:2001	ratified
Eritrea	22:02:2000	ratified
Estonia	22:03:1994	ratified
Ethiopia	04:06:1963	ratified
Fiji	17:04:2002	ratified
Finland	20:01:1950	ratified
France	28:06:1951	ratified
Gabon	14:10:1960	ratified
Gambia	04:09:2000	ratified
Georgia	03:08:1999	ratified
Germany	20:03:1957	ratified
Ghana	02:06:1965	ratified
Greece	30:03:1962	ratified
Grenada	25:10:1994	ratified
Guatemala	13:02:1952	ratified
Guinea	21:01:1959	ratified
Guyana	25:09:1967	ratified
Haiti	05:06:1979	ratified
Honduras	27:06:1956	ratified
Hungary	06:06:1957	ratified
Iceland	19:08:1950	ratified
Indonesia	09:06:1998	ratified
Ireland	04:06:1955	ratified
Israel	28:01:1957	ratified
Italy	13:05:1958	ratified
Jamaica	26:12:1962	ratified

Japan	14:06:1965	ratified
Kazakhstan	13:12:2000	ratified
Kiribati	03:02:2000	ratified
Kuwait	21:09:1961	ratified
Kyrgyzstan	31:03:1992	ratified
Latvia	27:01:1992	ratified
Lesotho	31:10:1966	ratified
Liberia	25:05:1962	ratified
Libyan Arab Jamahiriya	04:10:2000	ratified
Lithuania	26:09:1994	ratified
Luxembourg	03:03:1958	ratified
The former Yugoslav Republic of Macedonia	17:11:1991	ratified
Madagascar	01:11:1960	ratified
Malawi	19:11:1999	ratified
Mali	22:09:1960	ratified
Malta	04:01:1965	ratified
Mauritania	20:06:1961	ratified
Mauritius	01:04:2005	ratified
Mexico	01:04:1950	ratified
Republic of Moldova	12:08:1996	ratified
Mongolia	03:06:1969	ratified
Montenegro	03:06:2006	ratified
Mozambique	23:12:1996	ratified
Myanmar	04:03:1955	ratified
Namibia	03:01:1995	ratified
Netherlands	07:03:1950	ratified
Nicaragua	31:10:1967	ratified
Niger	27:02:1961	ratified
Nigeria	17:10:1960	ratified
Norway	04:07:1949	ratified
Pakistan	14:02:1951	ratified
Panama	03:06:1958	ratified
Papua New Guinea	02:06:2000	ratified
Paraguay	28:06:1962	ratified
Peru	02:03:1960	ratified

Philippines	29:12:1953	ratified
Poland	25:02:1957	ratified
Portugal	14:10:1977	ratified
Romania	28:05:1957	ratified
Russian Federation	10:08:1956	ratified
Rwanda	08:11:1988	ratified
Saint Kitts and Nevis	25:08:2000	ratified
Saint Lucia	14:05:1980	ratified
Saint Vincent and the Grenadines	09:11:2001	ratified
San Marino	19:12:1986	ratified
Sao Tome and Principe	17:06:1992	ratified
Senegal	04:11:1960	ratified
Serbia	24:11:2000	ratified
Seychelles	06:02:1978	ratified
Sierra Leone	15:06:1961	ratified
Slovakia	01:01:1993	ratified
Slovenia	29:05:1992	ratified
South Africa	19:02:1996	ratified
Spain	20:04:1977	ratified
Sri Lanka	15:09:1995	ratified
Suriname	15:06:1976	ratified
Swaziland	26:04:1978	ratified
Sweden	25:11:1949	ratified
Switzerland	25:03:1975	ratified
Syrian Arab Republic	26:07:1960	ratified
Tajikistan	26:11:1993	ratified
Tanzania United Republic of	18:04:2000	ratified
Togo	07:06:1960	ratified
Trinidad and Tobago	24:05:1963	ratified
Tunisia	18:06:1957	ratified
Turkey	12:07:1993	ratified
Turkmenistan	15:05:1997	ratified
Uganda	02:06:2005	ratified
Ukraine	14:09:1956	ratified
United Kingdom	27:06:1949	ratified
Uruguay	18:03:1954	ratified

Vanuatu	28:08:2006	ratified
Bolivarian Republic of Venezuela	20:09:1982	ratified
Yemen	29:07:1976	ratified
Zambia	02:09:1996	ratified
Zimbabwe	09:04:2003	ratified
Ratified: 148 Conditional ratification: 0 Declared applicable: 0 Denounced: 0		

2.7.2. Convention 98

Source: ILOLEX - 7. 4. 2008)	Ratification date	Status
Country	Ratification date	Status
Albania	03:06:1957	ratified
Algeria	19:10:1962	ratified
Angola	04:06:1976	ratified
Antigua and Barbuda	02:02:1983	ratified
Argentina	24:09:1956	ratified
Armenia	12:11:2003	ratified
Australia	28:02:1973	ratified
Austria	10:11:1951	ratified
Azerbaijan	19:05:1992	ratified
Bahamas	25:05:1976	ratified
Bangladesh	22:06:1972	ratified
Barbados	08:05:1967	ratified
Belarus	06:11:1956	ratified
Belgium	10:12:1953	ratified
Belize	15:12:1983	ratified
Benin	16:05:1968	ratified
Bolivia	15:11:1973	ratified
Bosnia and Herzegovina	02:06:1993	ratified
Botswana	22:12:1997	ratified
Brazil	18:11:1952	ratified
Bulgaria	08:06:1959	ratified
Burkina Faso	16:04:1962	ratified
Burundi	10:10:1997	ratified
Cambodia	23:08:1999	ratified

Cameroon	03:09:1962	ratified
Cape Verde	03:04:1979	ratified
Central African Republic	09:06:1964	ratified
Chad	08:06:1961	ratified
Chile	01:02:1999	ratified
Colombia	16:11:1976	ratified
Comoros	23:10:1978	ratified
Congo	26:11:1999	ratified
Democratic Republic of the Congo	16:06:1969	ratified
Costa Rica	02:06:1960	ratified
Côte d'Ivoire	05:05:1961	ratified
Croatia	08:10:1991	ratified
Cuba	29:04:1952	ratified
Cyprus	24:05:1966	ratified
Czech Republic	01:01:1993	ratified
Denmark	15:08:1955	ratified
Djibouti	03:08:1978	ratified
Dominica	28:02:1983	ratified
Dominican Republic	22:09:1953	ratified
Ecuador	28:05:1959	ratified
Egypt	03:07:1954	ratified
El Salvador	06:09:2006	ratified
Equatorial Guinea	13:08:2001	ratified
Eritrea	22:02:2000	ratified
Estonia	22:03:1994	ratified
Ethiopia	04:06:1963	ratified
Fiji	19:04:1974	ratified
Finland	22:12:1951	ratified
France	26:10:1951	ratified
Gabon	29:05:1961	ratified
Gambia	04:09:2000	ratified
Georgia	22:06:1993	ratified
Germany	08:06:1956	ratified
Ghana	02:07:1959	ratified
Greece	30:03:1962	ratified
Grenada	09:07:1979	ratified

Guatemala	13:02:1952	ratified
Guinea-Bissau	21:02:1977	ratified
Guinea	26:03:1959	ratified
Guyana	08:06:1966	ratified
Haiti	12:04:1957	ratified
Honduras	27:06:1956	ratified
Hungary	06:06:1957	ratified
Iceland	15:07:1952	ratified
Indonesia	15:07:1957	ratified
Iraq	27:11:1962	ratified
Ireland	04:06:1955	ratified
Israel	28:01:1957	ratified
Italy	13:05:1958	ratified
Jamaica	26:12:1962	ratified
Japan	20:10:1953	ratified
Jordan	12:12:1968	ratified
Kazakhstan	18:05:2001	ratified
Kenya	13:01:1964	ratified
Kiribati	03:02:2000	ratified
Kuwait	09:08:2007	ratified
Kyrgyzstan	31:03:1992	ratified
Latvia	27:01:1992	ratified
Lebanon	01:06:1977	ratified
Lesotho	31:10:1966	ratified
Liberia	25:05:1962	ratified
Libyan Arab Jamahiriya	20:06:1962	ratified
Lithuania	26:09:1994	ratified
Luxembourg	03:03:1958	ratified
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Madagascar	03:06:1998	ratified
Malawi	22:03:1965	ratified
Malaysia	05:06:1961	ratified
Mali	02:03:1964	ratified
Malta	04:01:1965	ratified
Mauritania	03:12:2001	ratified

Mauritius	02:12:1969	ratified
Republic of Moldova	12:08:1996	ratified
Mongolia	03:06:1969	ratified
Montenegro	03:06:2006	ratified
Morocco	20:05:1957	ratified
Mozambique	23:12:1996	ratified
Namibia	03:01:1995	ratified
Nepal	11:11:1996	ratified
Netherlands	22:12:1993	ratified
New Zealand	09:06:2003	ratified
Nicaragua	31:10:1967	ratified
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Nigeria	17:10:1960	ratified
Norway	17:02:1955	ratified
Pakistan	26:05:1952	ratified
Panama	16:05:1966	ratified
Papua New Guinea	01:05:1976	ratified
Paraguay	21:03:1966	ratified
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Seychelles	04:10:1999	ratified
Sierra Leone	13:06:1961	ratified
Singapore	25:10:1965	ratified
Slovakia	01:01:1993	ratified

Slovenia	29:05:1992	ratified
South Africa	19:02:1996	ratified
Spain	20:04:1977	ratified
Sri Lanka	13:12:1972	ratified
Sudan	18:06:1957	ratified
Suriname	05:06:1996	ratified
Swaziland	26:04:1978	ratified
Sweden	18:07:1950	ratified
Switzerland	17:08:1999	ratified
Syrian Arab Republic	07:06:1957	ratified
Tajikistan	26:11:1993	ratified
Tanzania, United Republic of	30:01:1962	ratified
Togo	08:11:1983	ratified
Trinidad and Tobago	24:05:1963	ratified
Tunisia	15:05:1957	ratified
Turkey	23:01:1952	ratified
Turkmenistan	15:05:1997	ratified
Uganda	04:06:1963	ratified
Ukraine	14:09:1956	ratified
United Kingdom	30:06:1950	ratified
Uruguay	18:03:1954	ratified
Uzbekistan	13:07:1992	ratified
Vanuatu	28:08:2006	ratified
Bolivarian Republic of Venezuela	19:12:1968	ratified
Yemen	14:04:1969	ratified
Zambia	02:09:1996	ratified
Zimbabwe	27:08:1998	ratified
Ratified: 158 Conditional ratification: 0 Declared applicable: 0 Denounced: 0		

CHAPTER 3: BEST PRACTICES / LESSONS LEARNED FROM SOCIAL DIALOGUE COMMITTEES IN OTHER INDUSTRIAL SECTORS

The practice in other industrial sectors having an official Social Dialogue Committee in operation, was studied in order to identify themes and issues which mutatis mutandis could be usefully introduced also in a Social dialogue in European professional cycling ("best practices"/"lessons learned")

In Article 137 paragraph 1 EC Treaty the following agenda items for a Social dialogue are mentioned:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Community territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

These items from paragraph 1 of article 137 EC Treaty are given substance during the Social Dialogue. The research looks at the way in which the 35 different sectors within the European Union have given substance to these items. This regards the following sectors:

Agriculture, audiovisual, banking, catering, chemical industry, civil aviation, cleaning industry, commerce, Construction, Electricity, extractive industry, footwear, furniture, gas, horeca, hospitals, inland waterways, Insurance, live performance, local and regional government, personal services, postal services, private security, railways, road transport, sea fisheries, sea transport, shipbuilding, steel, sugar, tanning and leather, telecommunications, temporary agency work, textile and clothing, and woodworking

The recent agendas, work programmes and minutes of the different sectors were examined first, with a view to finding any themes and subjects that may also be applicable to a European Social Dialogue in the professional cycling sector. The below summary provides an overall picture of the results:

- **Working conditions**
 - Health and safety
 - Fight against discrimination
 - Armed aggression and abusive behaviour
 - Vocational training
 - Lifelong learning
 - Working hours and multi tasking
 - Stress
 - Employment conditions
 - Working time
 - Mobility
 - Flexibility
 - Decent work
- **Information and consultation of the employees**

- Consultation and reconciliation of professionals
- **Integration of those excluded from the labour market**
- Lifelong learning
- Posting workers
- **Equality of men and woman with regard to labour market opportunities and treatment at work**
- Equality
- Fight against discrimination
- Promoting equality and diversity
- **Social security and protection of the employees**
- Working hours and multi tasking
- Employment conditions
- **Protection of employees on terminating the employment contract**
- Restructuring
- **Representation and collective defence of the collective interests of the employees and employers, including employee participation**
- Employment conditions
- **Employment conditions for subjects of third countries who are legally resident in a Community territory**
- **Financial contributions for enhancing employment and creating jobs**
- Vocational training

After examining the agendas, work programmes and minutes we extended the research to include joint opinions, joint declarations, joint positions, code of conducts and other forms of agreements reached during the Social Dialogue in the different sectors. These forms of agreements did not produce any new themes other than the aforementioned. The research shows that the themes are mainly broad and general, for instance health under ‘employment conditions’. They add nothing to the above. On the other hand it is apparent that certain themes are sector-related, for instance the theme ‘climate’ is highly specific to the Gas sector. This latter category of themes is thus not practicable for a Social Dialogue in the professional cycling sector.

CHAPTER 4: SOCIAL DIALOGUE: BACKGROUND AND RELEVANCE TO SPORT

4.1. Labour Regulation in the Treaty System

Community rules relevant to employment can be based on a number of different legal bases. These include internal market competences but also the specific Chapter on Social Policy. In addition to legally binding rules, the Social Policy Chapter calls for dialogue between representatives of management and labour. Some of the resulting documents become legally binding, whilst others are voluntary in nature and depend upon further state or collective action.

4.1.1. Community legislative competence – internal market and residual

The Community has competence to act only where such competence is conferred by the Treaty.²⁵ It has broad-ranging powers to legislate in respect of measures for the attainment of common market objectives.²⁶ These were used in the absence of more specific powers in the field of social policy to create Community-wide rules with social implications. For example, internal market powers in Article 94 were used in the 1970s to adopt directives on collective redundancies²⁷ and the transfer of undertakings,²⁸ whilst a directive on equal treatment in social security was adopted on the basis of Article 308.²⁹ Often, harmonizing legislation involves the setting of minimum standards of protection that may be more stringent at Member State level.³⁰ However, the exercise of such powers can also result in exhaustive harmonization, the effective diminution of Member State competences to the extent that they are no longer capable of acting alone on a given issue.³¹ Minimum harmonization may in this sense be exhaustive because it precludes Member States from setting lower minimum standards.

4.1.2. Social policy legislative competence and internal market competence compared

The Treaty provides for some legislative powers based on the Chapter on Social Policy, considered in detail below. However, internal market powers could also conceivably be utilized in areas that overlap with the more specific provisions in the Treaty Chapter on Social Provisions.³² Such an area might be ‘the rights and interests of employed persons’, a field capable of harmonization expressly listed in Article 95(2) EC. Similar issues may also fall within the scope of Article 137 EC. General internal market powers can be used in circumstances where similar powers might not be available in relation to more specific legal bases. Where powers overlap, the European Court of Justice has accepted that a prohibition on harmonization in the context of a given competence does not exclude harmonization based on another distinct legal base. For example, the ECJ has in the past accepted that prohibitions on harmonizing legislation in relation to public health³³ do not preclude substantially similar harmonizing acts justified on internal market grounds.³⁴

The permissive stance of the ECJ is significant because prohibitions and limitations are present in the social Title of the Treaty, particularly the Article 137(5) exclusion of competence regarding ‘pay, the

25 Article 5(1) EC Treaty.

26 Articles 94, 95 and 308 EC Treaty.

27 Directive 75/129 OJ [1975] L48/29, adopted on the basis of what is now Article 94 EC.

28 Directive 77/187 OJ [1977] L61/126, also adopted on the basis of ex Article 100.

29 Directive 79/7 OJ [1979] L6/24, adopted on the basis of ex-Article 235. See further C. Barnard (2006), EC Employment Law 3rd ed. (Oxford: OUP) p 63 fn5.

30 See for example Case C-14/04 Dellas [2005] ECR I-10253 paragraphs 51-53 regarding working time.

31 Opinion 2/91 ILO Convention No.170 [1993] ECR I-1061. See for example in relation to the free movement of goods, Case 150/88 Parfumerie-Fabrik v Provide [1989] ECR 3891, paragraph 28. In the field of services and establishment, Directive 2005/36 provides for exhaustive harmonization of rules on professional qualifications for a number of professions.

32 Articles 136-145 EC Treaty.

33 Article 152(4)(c) EC Treaty.

34 See Case C-380/03 Germany v EP and Council [2006] ECR I-11573 paragraph 39, citing British American Tobacco (Investments) and Imperial Tobacco, [2002] ECR I-11453 paragraph 62; Arnold André, [2004] ECR I-11825 paragraph 32; Swedish Match, 2004] ECR I-11893 paragraph 31; and Alliance for Natural Health and Others, [2005] ECR I-6451 paragraph 30. See further C. Barnard, (2007) The Substantive Law of the EU: The Four Freedoms 2nd ed. (Oxford: OUP) pp.567-581.

right of association, the right to strike or the right to impose lock-outs'. In the 2007 *Laval* judgment, the Court observed that this lack of competence did not preclude the application of other Community rules to wage agreements or exclude in their entirely wages from the scope of Community competence.³⁵ In conclusion, where the field of action is limited within the provisions of the social chapter of the EC Treaty, the Community might nevertheless retain competence to act that is itself based on other provisions of the Treaty.

4.1.3. Outline of developments in Social Dialogue

The EC Treaty lists as express tasks promoting 'a high level of employment and social protection'.³⁶ Express provisions that enable the Community to act in the field of social policy can be found in Articles 136 to 145. These originated in the predecessor of Article 137, Article 118a, which was inserted into the EC Treaty by the Single European Act.³⁷ Article 118a(2) entitled the Council by qualified majority to adopt 'minimum requirements' to encourage 'improvements, especially in the working environment, as regards health and safety of workers'.³⁸ The predecessor of Article 139, Article 118b, provided that the Commission was to endeavour to develop a dialogue between management and labour at European level. Article 118a(2) required qualified majority rather than the unanimity required under the internal market-linked legal base for 'the rights and interests of employed persons',³⁹ and for this reason was often preferred by the Community legislature.⁴⁰ Further agreement came in the form of the Social Chapter, agreement between all but one EC Member State and annexed as a Protocol and Agreement to the Maastricht Treaty. This extended the scope of qualified majority voting and introduced new areas of competence for those Member States.⁴¹ These changes were incorporated into the EC Treaty by the Treaty of Amsterdam, and after minor subsequent amendments the Community competence is now enshrined in Articles 137-139 EC.

4.2. Present State of Articles 137-139 EC

The toolkit of the Community to achieve its social policy aims is diverse. It is primarily expected to involve open coordination:

‘...measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonization of the laws and regulations of the Member States’.⁴²

In practice, the most significant of these is the policy of encouraging dialogue between management and labour at the European level. This may lead to autonomous agreements implemented by the Social Partners, or to requests for Community legislation.

It is also possible for the Commission to initiate legislation, on the basis of a number of different legislative procedures⁴³ depending on the content of the measure, to enact directives setting out

‘minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.’⁴⁴

35 Case C-341/05 Laval, judgment of 18. December 2007, not yet reported, paragraphs 86-88.

36 Article 2 EC Treaty.

37 In greater detail, see C. Barnard (2006), EC Employment Law 3rd ed. (Oxford: OUP) pp.65-68.

38 Article 118a(1) EC Treaty.

39 Article 95(2), then Article 100a(2) EC Treaty.

40 Case C-84/94 UK v Council (Working Time) [1996] ECR I-5755.

41 See further C. Barnard (2006), EC Employment Law (Oxford: OUP) pp. 13-26 and 68-69.

42 Article 137(2)(a) EC Treaty.

43 Article 137(2), last paragraph: ‘The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this Article, where the Council shall act

unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this Article.’.

44 Article 137(2)(b) EC Treaty.

These are in some circumstances proposals originating from social dialogue between management and labour. In such cases, the European Parliament is not consulted, but the representative function is assumed to be carried out by the social partners.⁴⁵ In cases where the initiative is at first taken by the legislature, social partners must be consulted and are thereby able to influence the outcomes of those initiatives.

4.2.1. Powers of Harmonisation: Detail

The Council's power to harmonise laws is limited by a number of caveats. Firstly, the possibility of harmonization under the social chapter applies only to areas listed in Article 137(a)-(i). These are:

- (a) the improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions
- (c) social security and social protection of workers
- (d) protection of workers where their employment contract is terminated
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination [but not pay, the right of association, the right to strike or the right to impose lock-outs]
- (g) conditions of employment for third-country nationals legally residing in Community territory
- (g) the integration of persons excluded from the labour market, without prejudice [to the Community vocational training policy in] Article 150
- (i) equality between men and women with regard to labour market opportunities and treatment at work'

The Article 251 Co-decision procedure, and therefore qualified majority voting, is used where the harmonizing measure is based on (a), (b), (e), (h), or (i). Unanimity is required where a harmonizing measure involves (c), (d), (f), or (g).⁴⁶ As a consequence of the limits in Article 137(2)(b), legal bases in Article 137(1)(j) and (k), namely 'combating social exclusion' and 'the modernization of social protection systems [beyond rules applicable to workers]' may not entail harmonization on the basis based on Article 137(2)(b). As noted above, it may still be possible to utilize other Treaty provisions for those purposes so long as the utilization of the purported legal base can be justified on objective grounds as the most relevant to the main purpose of the instrument.⁴⁷

Article 137 also requires due regard to be given to the interests of small and medium-sized enterprises:

'Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.'

This in some cases enables Member States to deviate from provisions enacted on the basis of Article 137.⁴⁸

Member States are expressly entitled to delegate the achievement of the objectives of those directives to the social partners so long as they are 'in a position to guarantee the results imposed by that directive'.⁴⁹ In such cases, Member States remain ultimately responsible for the fulfillment of those objectives.⁵⁰

⁴⁵ Case T-135/96 UAPME v Council [1998] ECR II-2335. Smismans, S., 'The European social dialogue between constitutional and labour law' (2007) 32(3) European Law Review 341-364 at 346-349.

⁴⁶ Article 137(2) EC Treaty, last indent.

⁴⁷ See Case C-491/01 Ex parte BAT [2002] ECR I-11453 paragraph 94.

⁴⁸ Case C-189/91 Kirsammer-Hack v Sidal [1993] ECR I-6185 paragraph 33, based on the predecessor of Article 137(2)(b), Article 118(a)(2), second paragraph.

⁴⁹ Article 137(3) EC Treaty.

⁵⁰ See Case 143/83 Commission v Denmark [1985] ECR 427, paragraph 8 and Case C-187/98 Commission v Greece [1999] ECR I-7713 paragraph 47, concerning failed implementation of equal pay requirements in collective agreements.

4.2.2. Caveats to Social Policy-based Harmonisation

Due to the sensitive nature of the agreement between Member States on including social provisions within the Treaty, a number of additional, caveats are included: Provisions adopted on the basis of Article 137, including both harmonization and other measures:

- shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,
- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.⁵¹

There are also limits on the substance of what may be within the scope of Article 137:

‘The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.’⁵²

Its predecessor, Article 118, contained no such limits on the promotion of cooperation in the social field and as a consequence enabled the Commission to adopt a Commission Opinion on an equitable wage.⁵³

4.2.3. Social Dialogue as a catalyst

Article 138 mandates that the social partners must be consulted in an advisory capacity whenever issues listed in Article 137(1) are at stake in a Community measure, typically an approximating directive. This takes the form of dialogue between representatives of employers, employees, and the Commission and its initiation is compulsory where issues in Article 137(1) are involved. At first instance, the social partners must be consulted on the direction of legislation, namely its desirability.⁵⁴ Once legislation is proposed, they must again be consulted.⁵⁵ At this stage, the social partners may initiate negotiations on the content of the proposal.⁵⁶ Where they do not do so or the negotiation fails to produce a result, the Commission may draft a proposal for a directive. Where agreement is reached, it may at the option of the Social Partners be implemented autonomously by the Social Partners, or by a joint request to the Commission for the proposal of a Council decision. This may then be implemented by the Social Partners or the Member States. Dialogue facilitated under Article 139 may lead also to autonomous agreements that are implemented by the social partners themselves without recourse to legislation.

4.2.4. Autonomous negotiations

The Social Partners may conduct autonomous negotiations that are not directly triggered by a Commission legislative proposal. Where the substance of negotiations between Social Partners could come within the Article 137(1) list of fields of Community action, it is also possible for the partners to ask for a Council ‘decision’ enacting the substance of their agreement. This is also possible even where the negotiations were not initiated by a legislative proposal, so long as the content of the agreement comes within Community competence.⁵⁷ The Commission must examine the substance of the agreement in relation to the mandates of the Social Partners and other provisions of EC law, including the limits of Article 137(2).⁵⁸ The Commission considers that the term ‘decision’ refers more broadly to Regulations, Directives, and Decisions under Article 249, and that it will choose the most

51 Article 137(4) EC Treaty.

52 Article 137(5) EC Treaty.

53 Commission Opinion on an Equitable Wage, Com(93) 388 final, 1. September 1993.

54 Article 138(2) EC Treaty.

55 Article 138(3) EC Treaty.

56 Article 138(4) EC Treaty.

57 Communication from the Commission adapting and promoting the social dialogue at Community level Com(98) 322 final, 20. May 1998 at pp. 18-19. See also Smismans, S., ‘The European Social Dialogue Between Constitutional and Labour Law’ (2007) 32(3) European Law Review 341-364 at 343 and 352.

58 Case T-135/96 UEAPME [1998] ECR II-2335 paragraphs 76 and 85-90. The pending appeal, C-316/98 was removed from the register 2. February 1999.

appropriate measure.⁵⁹ The ultimate outcome is in practice a directive based on Article 137, which may either incorporate a framework agreement in the directive itself or by reference to the framework agreement.⁶⁰ Where there is no implementation by a Community measure, it appears that autonomous agreements will not have the character of Community law and therefore their legal status is dependent on their status in national law.⁶¹

4.2.5. Autonomous agreements beyond express legislative competences

Autonomous agreements may in principle extend beyond the express legislative grounds in Article 137, and as a consequence, may involve issues for which the Community has no legislative competence. In *Albany*, Advocate General Jacobs in the context of national agreements considered that collective agreements outside the scope of EC competition provisions could include provisions on wages.⁶² The EC Treaty has expressly excluded wages from the social chapter competence by Article 137(5). The conclusion is therefore that even though autonomous agreements that extend beyond the legislative competences of the Community will not be able to have the character of Community law, they may insulate the content of those agreements from other Community law provisions. The lack of competence does not preclude other provisions or Community law from affecting the validity or legitimacy of collective action.⁶³

The precise contours of the social partners' legitimate autonomy are not as yet sufficiently judicially tested. However, the Commission's role, particularly where autonomous agreements are the outcome of an initial legislative initiative, is to ensure adherence to the Treaty rules. The Commission has stressed that where an autonomous agreement is the product of an initial legislative proposal that is then devolved to Social Partners, it will resume the legislative process where it considers that the outcome does not achieve the desired Community objectives.⁶⁴

4.2.6. Obligations to Consult

The list of fields in which the social partners can be consulted is diverse, but also contains some significant limitations. When contemplating legislation, they must be consulted if the legislation is concerned with

'(a) improvement in particular of the working environment to protect workers' health and safety; (b) working conditions; (c) social security and social protection of workers; (d) protection of workers where their employment contract is terminated; (e) the information and consultation of workers; (f) representation and collective defence of the interests of workers and employers, including codetermination, [but does not apply to pay, the right of association, the right to strike or the right to impose lock-outs]; (g) conditions of employment for third-country nationals legally residing in Community territory; (h) the integration of persons excluded from the labour market, without prejudice to Article 150; (i) equality between men and women with regard to labour market opportunities and treatment at work; (j) the combating of social exclusion; (k) the modernisation of social protection systems without prejudice to [social security and social protection of workers].'⁶⁵

59 See Proposal for a Council Directive on the framework agreement on parental leave concluded by the social partners Com(96) 26 final, page 7.

60 See for example the Parental Leave Directive 96/34/EC. C Barnard, (2006) EC Employment Law 3rd ed. (Oxford: OUP) pp. 94-96.

61 See Case T-135/96 UEAPME [1998] ECR II-2335 paragraph 88, where the CFI considers that the Commission's involvement in scrutinising the products of dialogue that are to become legislative proposals "has the effect... of endowing an agreement concluded between management and labour with a Community foundation of a legislative character".

62 Case C-67/97 Albany, Advocate General Jacobs at point 179 considered that Article 81(1) "cannot have been intended to apply to collective agreements between management and labour on core subjects such as wages and other working conditions."

63 Case C-341/05 Laval paragraphs 86-88.

64 Commission Communication on 'Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue' Com 2004 557 final at 4.4.

65 Article 137(1) EC Treaty.

These are limits to the obligation to consult, but also to the possible scope of approximating action based on Article 137. As noted above, these limits do not preclude subsequent action based on other Treaty Articles.

4.3. The Actors and Products of Social Dialogue

4.3.1. Permanent institutions in European Social Dialogue

Two key permanent institutions facilitate European Social Dialogue. Cross-sector activities are linked to the Social Dialogue Committee, which meets several times a year and include the Tripartite Social Summit for Growth and Employment,⁶⁶ where representatives at the highest level meet at least once a year before the spring European Council to discuss broad policy issues.

Cross-sector social dialogue involves six key stakeholders in addition to European institutions: European Trade Union Confederation (ETUC), Confederation of European Business (BUSINESSEUROPE, formerly UNICE), European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP), European Association of Craft, Small and Medium Sized Enterprises (UEAPME), Eurocadres, and the European Confederation of Executives and Managerial Staff (CEC). Most Tripartite social dialogue is cross-industry, and thus key legislative initiatives such as directives in fields listed under Article 137(1) involve tripartite social dialogue.

Sectoral social dialogue committees,⁶⁷ which meet at least once year to discuss issues of mutual interest but which in practice formulate more specific proposals,⁶⁸ exist in over thirty sectors.⁶⁹ These range from the general, such as ‘local and regional government’, to the very specific, such as ‘footwear’. In some sectors, discussions in sectoral committees have resulted in binding instruments relevant to those sectors.⁷⁰ These are not, however, the typical outcome of sectoral social dialogue.

A third category of social dialogue, within firms and based primarily on the European Works Councils Directive, exists but will not be considered here in detail.⁷¹ This sub-sector dialogue is characterized by employees’ rights to information and consultation which arise from secondary legislation, but as yet not by social dialogue leading to collective agreements implemented by legal rules similar to those in sectoral or cross-sectoral social dialogue.

4.3.2. Representativeness criteria

Social dialogue is conducted between representatives of management and labour. This necessitates a degree of representativeness that may not be present in all sectors.

Not all industries have representation organized at European level. To this end, the supporting competence of the EC under Article 137 enables assistance in creating such European-level organizations.

Representativeness in particular sectors has been considered in studies funded by the Commission and conducted by external organizations.⁷² The Commission Decision establishing sectoral social dialogue

66 See Council Decision 2003/174/EC of 6 March 2003 establishing a Tripartite Social Summit for Growth and Employment.

67 See further Commission of the European Communities (2006) Recent Developments in the European Sectoral Social

Dialogue available at http://ec.europa.eu/employment_social/social_dialogue/docs/sectoral_sd_2006_en.pdf

And (2003) The Sectoral Social Dialogue in Europe

http://ec.europa.eu/employment_social/publications/2003/ke4702397_en.pdf

68 See Commission Decision 98/500/EC Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level.

69 See http://ec.europa.eu/employment_social/social_dialogue/sectoral_en.htm#table for a current list.

70 See for example working time agreements based on Directive 93/104, and in the transport sector, Council Directive 2005/47 on the Agreement of 27 January 2004 between the Community of European Railways and the European Transport Workers’ Federation OJ [2005] L195/15. See further Communication from the Commission adapting and promoting the social dialogue at Community level Com(98) 322 final p. 14.

71 See further the European Works Council Directive 94/45/EC as amended.

72 See http://ec.europa.eu/employment_social/social_dialogue/represent_en.htm.

committees⁷³ outlines criteria which organizations requesting social dialogue must meet in order to be considered social partners. Together, they must represent both sides of industry and

- ‘(a) they shall relate to specific sectors or categories and be organised at European level;
- (b) they shall consist of organisations which are themselves an integral and recognized part of Member States' social partner structures and have the capacity to negotiate agreements, and which are representative of several Member States;
- (c) they shall have adequate structures to ensure their effective participation in the work of the Committees.’⁷⁴

European football has been the subject of a representativity study limited to football players and potential employers' organisations conducted in 2005.⁷⁵

4.4. The Commission's Typology of Social Dialogue Agreements

In its 2004 Communication, the Commission proposed a typology of European social dialogue results. Its revised version⁷⁶ of this typology, summarized below, classifies European social dialogue results into five categories of outcomes: Agreements on minimum standards implemented in accordance with Article 139(2), Process-oriented texts, Joint opinions and tools for the exchange of information, Procedural texts, and follow-up reports. An online library of instruments that are the products of social dialogue is publicly accessible.⁷⁷

4.4.1. Minimum Standards Agreements

Agreements on minimum standards can be implemented either by Council decisions, which are then monitored by the Commission, or as autonomous agreements implemented by the Social Partners. Examples of agreements implemented by Council decisions include the 1995 framework agreement on parental leave, the 1997 framework agreement on part-time work and the 1999 framework agreement on fixed-term work. Autonomous agreements include the 2002 framework agreement on telework, the 2004 framework agreement on work-related stress, and the 2004 agreement on the European licence for drivers carrying out a cross-border interoperability service. Some legislative instruments call for a mix of implementation methods, such as the 1993 working time directive,⁷⁸ which provided for sectoral social partners to implement or adapt Community provisions. Minimum standards agreements typically include deadlines by which their objectives must be achieved.

4.4.2. Process-Oriented Texts

Process-oriented texts provide for frameworks of action where the social partners make recommendations. Three types fall into this category: frameworks of action, guidelines and codes of conduct, and policy orientations. Frameworks for action include the 2002 framework of actions on the lifelong development of competencies and qualifications, the 2005 framework of actions on gender equality, and the 2005 European agreement on the reduction of workers' exposure to the risk of work-related musculoskeletal disorders in agriculture. Guidelines and codes of conduct include the 1998 agreement on promoting employment in the postal sector in Europe, the 2001 code of conduct guidelines for European hairdressers, and the 2004 statement on promoting employment and integration of disabled people in the commerce and distribution sector. Policy orientations include the

73 Commission Decision 98/500/EC Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level.

74 Article 1 Commission Decision 98/500/EC: Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European.

75 See http://ec.europa.eu/employment_social/social_dialogue/docs/Represtudies/2005_rapport_football_pays_membres1.pdf (EU-25) and http://ec.europa.eu/employment_social/social_dialogue/docs/Represtudies/2005_rapport_football_pays_membres1.pdf (Bulgaria, Romania, Turkey).

76 Published online at http://ec.europa.eu/employment_social/social_dialogue/typology_en.htm.

77 Social partner texts can be accessed at http://ec.europa.eu/employment_social/dsw/dspMain.do?lang=en. In April 2008, over 500 texts were accessible.

78 Directive 93/104/EC.

1998 joint recommendation on apprenticeship in the sugar sector, the 2003 cross-industry orientations for reference in managing change and its social consequences, and the 2004 common recommendations of the European social partners for the cleaning industry.

4.4.3. Joint Opinions and Tools for the Exchange of Information

Joint opinions include social partner texts that are generally intended to provide input to European or national authorities. They include texts responding to Community consultation. The Commission's typology cites as examples the cross-industry 2005 Joint declaration on the mid-term review of the Lisbon strategy, the 2001 joint declaration on the European harmonization of legislation governing the private security sector, and the 2001 joint opinion of the European social partners in aviation.

Declarations, usually directed to the social partners themselves, include the 2000 joint declaration on the social partners of the cleaning industry and EU enlargement and the 2003 joint statement and final report on the study of life-long learning in the electricity sector. Tools developed by the social partners include guides and manuals providing practical advice to employees and companies, and are often assisted by Community grants. Examples include the 2003 website of the postal sector social dialogue committee and the 2004 brochure on tutoring in the construction industry.

4.4.4. Procedural Texts

Procedural texts seek to lay down rules for further bipartite dialogue between the parties. The Commission typology cites as an example the agreement of 31 October 1991, which made proposals for the revision of the policy-making procedures in the EC Treaty in the social policy field. The majority of the agreement was incorporated into the Treaty on European Union by the 1991 Intergovernmental Conference. Other examples include social partner texts which determine the rules of procedure for sectoral social dialogue committees.

4.4.5. Follow-Up Reports

Social partners often follow up their actions with jointly produced reports on the implementation of their texts. These include reports in 2003, 2004 and 2005 on the framework of actions for the lifelong development of competencies and qualifications, reports of 2004 and 2005 on social partner actions on employment in Member States, and reports in 2004, 2005 and 2006 on the code of conduct on corporate social responsibility in the sugar sector.

4.5. Legal Relationship between national and European initiatives in social policy

The relationship between legal instruments on the Community level and national rules, whatever their form, is governed by doctrines of Community law established by the European Court of Justice, in particular supremacy, direct effect and sympathetic interpretation. Community legal sources include Treaty provisions, secondary legislation under Article 249, and general principles of Community law that apply wherever a Community obligation is at stake. Some outcomes of the consultation of Social Partners take the form of such Community rules. Others, however, never become legally binding Community instruments, and a third category of implementing measures involves the delegation of responsibility from Member States to Social Partners which may indirectly be governed by Community-level norms. The position of autonomous agreements that do not become Community law is not yet fully settled in law. It is, however, clear that rights to take collective action do exist, and that the outcomes of collective bargaining agreements can in certain circumstances be shielded from the influence of certain EC rules such as those on competition and free movement.

4.5.1. Supremacy

Community law is supreme: it always takes precedence over national legal rules, whatever their form.⁷⁹ As a consequence, where there is conflict between a Community norm and a later national measure, the national provision must be disapplied.⁸⁰ However, whilst the European Court of Justice is entrusted exclusively with the jurisdiction to interpret Community law, its application is primarily the domain of national courts.⁸¹ As a consequence, while the content of a Community measure is for the ECJ to interpret, the final outcome and the application of that Community rule is decided by national courts. In the rare occasions where national courts misapply community law, their judgments retain binding force, *res judicata*, even though as a consequence of such a judgment, the state might be liable to pay damages for the domestic court's breach of Community law.⁸²

4.5.2. Direct effect

Not all Community norms are legally binding. Where a Community rule is clear, precise and unambiguous, it can be relied upon in legal proceedings before national authorities.⁸³ The Court is wary of according direct effect to provisions that expressly require further implementing measures even where the object of those further implementing measures might be clear, precise and unambiguous.⁸⁴ It has, however, done so in the past on the grounds that the obligation itself is clear and that the attainment of that obligation has been 'made easier by, but not made dependent on, the implementation of a programme of progressive measures'.⁸⁵ The criteria for direct effect are such that even though it appears highly unlikely that Treaty social policy objectives might themselves be given direct effect, it is not beyond the realm of possibility. There is little in the social policy chapter that could be considered to fulfill the requirements for direct effect since the aim of the relevant rules is to facilitate dialogue and further, detailed measures and its objectives are not sufficiently precise.

4.5.3. Private Parties and horizontal effects of the Treaty

Some Treaty articles have been considered by the European Court of Justice to give rights horizontal direct effect in proceedings between private parties.⁸⁶ Even if some provisions of Articles 137-139 were to be declared directly effective and could be relied upon against public authorities, the Court of Justice has in practice recognized the horizontal application of directly effective Treaty provisions only where the rule is a fundamental tenet of the internal market such as the principle of equality. A form of extended vertical direct effect has been recognised in instances where the party against which Community law is enforced is a collective organization or regulator.⁸⁷ As a consequence, it is conceivable that Treaty articles could potentially bind parties to labour regulation. However, direct effect is more limited in relations directives, discussed in detail below: whilst they may bind quasi-public bodies that perform state functions, they never bind private individuals.

4.5.4. Regulations

Regulations are stated in Article 249 to be 'binding in [their] entirety and directly applicable in all Member States.' In practice, this means that the provision is automatically part of the legal system of the Member States, and by virtue of the doctrine of supremacy it supersedes any conflicting domestic provisions.⁸⁸ The Commission considers that the 'Council decisions' referred to in Article 139(2) that result from a request by the Social Partners could in principle also be in the legal form of Regulations.

79 Case 11/70 Internationale Handelsgesellschaft. [1970] ECR 1125 paragraph 3.

80 Cases C-10/97 to C-22/97 IN.CO.GE. [1998] ECR I-6907 paragraphs 20-21.

81 Article 234 EC Treaty.

82 Case C-224/01 Köbler [2003] ECR I-10239.

83 Case 26/62 Van Gend en Loos [1963] ECR Eng. Sp. Ed. 3.

84 See Van Gend en Loos, where the Court noted that the obligation was '...not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law'.

85 Case 2/74 Reyners [1974] ECR 631 paragraph 26.

86 See for example in relation to equal treatment of workers, Case C-291/98 Angonese [2000] ECR I-4139.

87 See for example Case 36/74 Walrave [1974] ECR 1405 paragraph 17.

88 Case 39/72 Commission v Italy [1973] ECR 101.

It has not yet attempted to legislate in the field of social policy in this way, and its interpretation of this provision as enabling the choice of the legal form of a directive rather than the legal form of a Council decision has been successfully challenged.

4.5.5. Directives

Directives are in practice the legal form of those agreements that, although concluded initially by the Social Partners, are requested to be implemented in the form of a ‘Council decision’ under Article 139(2). They are also the form prescribed for harmonizing ‘minimum requirements’ legal rules based on Article 137(2)(b). Directives are subject to limitations based on a long line of case law decided by the European Court of Justice, in which it has consistently denied that they can have detrimental legal effects on private parties.⁸⁹ This limit on horizontal direct effect means that in practice, it is the Member States rather than private parties which must ensure the attainment of their objectives. However, in the absence of Member State transposition, or where that process does not attain the objectives, it may be possible for individuals to ask these to be taken into account in the interpretation of domestic law. There is an obligation for national courts to give effect to Community law as far as this is possible without recourse to a *contra legem* interpretation.⁹⁰

Directives can, however, be invoked against bodies that are carrying out state functions. In such circumstances, the body that exercises public law powers or carries out other activities analogous to state functions, will be liable and subject to the legally binding rules in a directive as if the body itself were the state. As the Court observed in *Vassallo*,

‘It has consistently been held that a directive may be relied on not only against State authorities, but also against organisations or bodies which are subject to the authority or control of the State or have special powers beyond those which result from the normal rules applicable to relations between individuals, such as local or regional authorities or other bodies which, irrespective of their legal form, have been given responsibility, by the public authorities and under their supervision, for providing a public service’⁹¹

The Court has also recognised, for example in *Vassallo*, that where a Directive makes reference to the objectives of a framework agreement but does not expressly incorporate them, it is possible to rely on the direct effect of a directive to require the attainment of objectives listed only in the framework agreements. As a consequence, where a directive incorporates a framework agreement by reference, the contents of the framework agreement may give rise to directly effective obligations.

4.5.6. Council Decisions

Council decisions are binding on those to whom they are addressed and are capable of direct effect.⁹² They do not produce legal effects for third parties. As noted above, the Commission’s preference has been for directives despite the form of words in Article 139(2) suggesting that the appropriate legal form is a decision.

4.5.7. Recommendations and Opinions

Recommendations and Opinions carry no legally binding force, but may be persuasive. Since they carry no legal force, it is unlikely that national courts can be required to interpret domestic law in the light of Community-level recommendations and opinions. They may, however, choose to do so within the confines of powers attributed to them by domestic law.

89 Case 152/84 *Marhsall v Southampton Area Health Authority* [1986] ECR 723.

90 See Cases C-397 to 403 *Pfeiffer* [2004] ECR I-8835.

91 Case C-180/04 *Vassallo* ECR [2006] I-7251 paragraph 26 , referring to Case 103/88 *Fratelli Costanzo* [1989] ECR 1839, paragraph 31; Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 19; and Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraph 24.

92 Article 249 EC Treaty, Case 9/70 *Grad* [1970] ECR 825.

4.5.8. General Principles of Community Law

General Principles of Community Law can be derived from international agreements⁹³ and conventions as well as the common traditions and constitutional rules of Member States. The Court has shown a willingness to recognize ‘the right to collective action, including the right to strike’ as a fundamental right that forms a general principle of Community law.⁹⁴ General principles must be taken into account whenever implementing or applying rules are derived from Community law, or within the scope of Community competence. National laws that fall within the scope of Community law must respect the general principles, and as a consequence can be interpreted in the light of general principles protected by Community law.⁹⁵ The ECJ Judgment in *Mangold* demonstrates that directives, whilst not in themselves horizontally directly effective, may in fact constitute expressions of general principles of Community law. As a consequence, substantially similar legal effects may be derived from the general principles as would have been derived from a directive had the body in question been performing a state function.⁹⁶

4.5.9. State Liability

States are also liable for damage caused by sufficiently serious breaches of Community law. Where a Member State fails to properly implement a directive,⁹⁷ or fails to ensure that those obligations which it has delegated to Social Partners on a national level are adequately implemented, it may be liable for damages in actions by private parties. It may also be called into account by the Commission,⁹⁸ or by other Member States⁹⁹ for failures to fulfill its obligations under Community law. A Member State is even liable for the incorrect application or interpretation of Community law by its own courts.¹⁰⁰ Failure to implement a directive is always a ‘sufficiently serious breach’ by a Member State for the purposes of state liability.¹⁰¹

4.5.10. Obligations of sympathetic interpretation

Courts in the Member States are obliged, as far as possible, to interpret national law in conformity with Community law.¹⁰² In practice this amounts to a strong presumption that domestic law is intended to give effect to Community objectives. Sympathetic interpretation can result in interpretative effects of provisions that might not in themselves have direct binding legal effects on the parties in question.

4.5.11. National Labour Law and Erga Omnes Effect

National labour laws across the EU vary considerably, and as a consequence the legal positions of national social partners may contrast starkly. Some Member States assign legal effects to collective agreements. Their implementation by social partners may in such cases become subject to Community rules. This will include the prospect of direct effect because in such circumstances, they may be exercising state powers that give rise to the direct effect of directives.

93 Case 11/70 Internationale Handelsgesellschaft [1970] ECR 1125 paragraph 4.

94 Case C-438/05 Viking, judgment of 11. December 2007, not yet reported, paragraph 44.

95 Case C-246/06, Velasco Navarro, Judgment of 17. January 2008, not yet reported, paragraphs 31-34.

96 Case C-144/04 *Mangold v Helm* paragraphs 74-77.

97 Joined Cases C-6/90 and C-9/90 Francovich and Others [1991] ECR I-5357, at paragraph 39. For the conditions of state liability, see Case C-91/92 Faccini Dori [1994] ECR I-3325, paragraph 27.

98 Article 226 EC Treaty.

99 Article 227 EC Treaty. In practice, actions by Member States are extremely rare.

100 Case C-224/01 Köbler [2003] ECR I-10239.

101 Case C-178 to 179 and 188-190/94 *Dillenkoffer v. Germany* [1996] ECR I-4845 paragraphs 21-23.

102 For a recent reiteration of the principles, see Joined Cases C-397/01 to C-403/01 Pfeiffer and Others [2004] ECR I-8835, paragraphs 113-119 and Case C-105/03 Pupino [2005] ECR I-5285, paragraphs 44 and 47, and Adeneler Case C-212/04 [2006] ECR I-6057 paragraphs 119-124.

4.5.12. Legal Effects of Autonomous Agreements

There is as yet no legal authority for the proposition that autonomous agreements which are not given effects by a Council decision could give rise to legal rights based on Community, rather than national, law. The Declaration on Article 118b(2) [now 139(2)] attached to the Amsterdam Treaty suggests that the Member States view autonomous agreements as giving rise to no such rights:

‘The High Contracting Parties declare that the first of the arrangements for application of the agreements between management and labour at Community level - referred to in Article 118b(2) of the Treaty establishing the European Community - will consist in developing, by collective bargaining according to the rules of each Member State, the content of the agreements, *and that consequently this arrangement implies no obligation on the Member States to apply the agreements directly or to work out rules for their transposition, nor any obligation to amend national legislation in force to facilitate their implementation.*’

Although it has been argued that such voluntary European collective agreements can have effect without transposition, and that in this way they might entail direct effect derived from a fundamental right to collective bargaining,¹⁰³ this approach is not grounded in binding authority or widely accepted in the academic community.¹⁰⁴ Whilst in *Viking* the ECJ has recognized certain aspects of collective bargaining as a fundamental right,¹⁰⁵ the proposition that this should lead to direct effect of European-level collective bargaining agreements is fraught with difficulties, not least the constitutionality¹⁰⁶ of according legal effects to agreements which, if the product of a Community legislative initiative, would be beyond its competences in the social field.

This is not so say that autonomous agreements can have no legal effects at all. They may have legal affects based on the status of domestic agreements at national law, or a combination of an agreement at European level and national law which gives effect to such agreements. As the *Albany* case illustrates, the content and legal effects at national law of such autonomous agreements might be of assistance in determining whether obligations and rights under the autonomous agreements are subject to other areas of Community law.¹⁰⁷ In such cases a balancing exercise between Community social policy aims, especially of promoting regulation through social dialogue, and between other Community aims, is carried out on the basis of determining whether one is ‘inherent’ in the pursuit of another, primary goal. As a consequence, in *Albany* the Court found that ‘certain restrictions of competition are inherent in collective agreements between organizations representing employers and workers’,¹⁰⁸ as a consequence of which collective bargains were not in themselves restrictions of competition contrary to Article 81(1) EC.

4.6. Social Dialogue in Sport

Litigation within the sports sector often arises out of disputes involving the tri-partite relationship between employees (athletes), employers (clubs) and those who regulate their activities (the governing bodies). Disputes may centre on specific grievances involving labour relations but they often reveal wider concerns relating to questions of representation and governance. Disputes involving the operation of the international transfer system for players and the use of mandatory release clauses for players highlight these tensions.

103 O. Dienert, (2003) ‘Modes of Implementing European Collective Agreements and Their Impact on Collective Autonomy’ (2003) 32 Industrial Law Journal cited in S. Smismans, (2007) ‘The European social dialogue between constitutional and labour law’ (2007) 32(3) European Law Review 341-364 at 359-363.

104 Smismans, S., ‘The European social dialogue between constitutional and labour law’ (2007) 32(3) European Law Review 341-364 at pp. 359-363.

105 Case C-438/05 *Viking*, judgment of 11. December 2007, not yet reported, paragraph 44 *Viking*, which recognised ‘the right to collective action, including the right to strike’ as fundamental rights-derived general principles of Community law.

106 Smismans, S., ‘The European social dialogue between constitutional and labour law’ (2007) 32(3) European Law Review 341-364 at pp. 360-363.

107 Case C-67/96 *Albany International* [1999] ECR I-5751.

108 Case C-67/96 *Albany International* [1999] ECR I-5751 paragraph 59.

In Bosman, the European Court of Justice was asked to consider the employment conditions of professional footballers with regard to the operation of the international transfer system and the limitations placed on non-nationals being fielded in club football.¹⁰⁹ Following the Court's judgment, FIFA amended the international transfer system in October 1997.¹¹⁰ In December 2001 the Commission launched a formal investigation into the operation of this revised system objecting to certain provisions which amounted to a potential breach of Article 81 of the EC Treaty. The Commission issued FIFA with a deadline of October 31st 2000 to submit formal proposals to amend the international transfer system. Debates within the football community concerning the submission of a revised system revealed weaknesses within the existing governance framework, with FIFA, UEFA and FIFPro all adopting divergent views. The eventual 2001 transfer system agreement between UEFA, FIFA and the Commissioners in charge of Competition, Education and Culture and Employment and Social Affairs, did not dispel concerns that dialogue within the sports sector was in need of reform. In the *Charleroi/Oulmers* case, the ECJ was due to hear a challenge to FIFA's mandatory player release rule and the structure of the international match calendar brought by Belgian football club Charleroi and the G14 grouping of leading clubs.¹¹¹ In this case Charleroi player Abdelmajid Oulmers returned injured from international duty in 2004. According to the FIFA regulations, Charleroi was not entitled to compensation. The decision of G14 to join the litigation highlights the concerns of some employers with respect to the use of their employees without the opportunity for representation within the decision making structures of the governing body. The case before the ECJ is due to be withdrawn following the discussions between the stakeholders involved.¹¹² As part of these discussions, a Memorandum of Understanding was signed between the newly-formed European Club Association (ECA), representing the interests of clubs at European level and UEFA, the governing body of European football.¹¹³

4.7. Encouraging Dialogue Within Sport

Encouraging dialogue within the sports sector has been promoted by the European Union since 1991. In that year the European Sports Forum met for the first time and brought together representatives of the sports movement with those from Member States' Governments. The Forum continued to meet until 2003. The Member States have also recognised the value of dialogue with the sports movement. In 1997 the Heads of State and Government released the Amsterdam Declaration on Sport which called 'on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue'.¹¹⁴ In the 1999 Helsinki Report the Commission recognised that

'there is a need for a new partnership between the European institutions, the Member States and the sports organisations, all moving in the same direction, in order to encourage the promotion of sport in European society, while respecting sporting values, the autonomy of sporting organisations and the treaty, especially the principle of subsidiarity'.¹¹⁵

The report claimed that

'[t]his new approach involves preserving the traditional values of sport, while at the same time assimilating a changing economic and legal environment....[t]his overall vision assumes greater consultation between the various protagonists (sport movement, Member States and European Community) at each level. It should lead to the clarification, at each level, of the legal framework for sports operators'.¹¹⁶

109 Case 415/93 Union Royale Belge Sociétés de Football Association and others v Bosman, [1995] ECR ECR I-4921

110 FIFA Regulations for the Status and Transfer of Players, October, 1997.

111 Case C-243/06, Charleroi/Oulmers, OJ C 212, 2 September 2006.

112 At time of writing the case remains on the Court register.

113 UEFA (2008), Media Release: 'New era in football begins with the formation of the European Club Association', 21/01/08, No.007.

114 Declaration 29 to the Treaty of Amsterdam.

115 Commission of the European Communities (1999), Report from the Commission to the European Council with a view to safeguarding sports structures and maintaining the social significance of sport within the Community framework: The Helsinki Report on Sport, COM(1999) 644, p.10.

116 Ibid p.7.

At the Nice European Council of December 2000, a ‘Declaration on the Specific Characteristics of Sport and its Social Function in Europe, of which Account Should be Taken in Implementing Common Policies’ was released. In the seventh paragraph, on the role of sports federations, the Declaration read

‘[t]he European Council stresses its support for the independence of sports organisations and their right to organise themselves through appropriate associative structures. 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’.

The focus on a ‘democratic and transparent method of operation’ was also highlighted in the Independent European Sport Review, a UK Presidency initiative which sought ‘to produce a report, independent of the Football Authorities, but commissioned by UEFA, on how the European football authorities, EU institutions and member states can best implement the Nice Declaration on European and national level’. The Report’s substantive findings recommend a considerable widening of the governing bodies territory of autonomy. The Report stressed that as a corollary to this ‘both UEFA and its national associations must ensure that they are sufficiently representative and democratic and that they also respect appropriate governance standards’.¹¹⁷

The discussion on sport at the 2004 intergovernmental conference led the Commission to reconsider its dialogue with the sports movement and in 2005 it launched a consultation process, ‘The EU & Sport: matching expectations’.¹¹⁸ A second consultation took place in June 2006 entitled ‘The Role of Sport in Europe’. At this conference, the workshop on ‘the Organisation of Sport’ concluded, *inter alia*, that ‘[i]n the field of governance, the importance of social dialogue should be stressed’.¹¹⁹ These, and other high level meetings held between the Commission and the European sport federations throughout 2004, 2005 and 2006, informed the Commission’s White Paper package released in July 2007.¹²⁰ In the White Paper the Commission recognises that the commercialisation of sport has attracted new stakeholders and this ‘is posing new questions as regards governance, democracy and representation of interest within the sport movement’.¹²¹ The Commission suggests that it can play a role in helping to develop a common set of principles for good governance in sport such as transparency, democracy, accountability and representation of stakeholders.¹²² In the White Paper, the Commission argues that governance issues in sport should fall within a territory of autonomy and that most challenges can be addressed through self-regulation which must however be ‘respectful of good governance principles’.¹²³

One such governance standard identified in the White Paper was the use of social dialogue in the sports sector which ‘can contribute to addressing common concerns of employers and athletes, including agreements on employment relations and working conditions in the sector in accordance with EC Treaty provisions’.¹²⁴ The White Paper added that

‘a European social dialogue in the sport sector or in its sub-sectors (e.g. football) is an instrument which allow social partners to contribute to the shaping of employment relations and working conditions in an active and participative way. In this area, such a social dialogue could also lead to the establishment of commonly agreed codes of

117 Arnaut, J. (2006), Independent European Sport Review, accessed at www.independentfootballreview.com/doc/Full_Report_EN.pdf p.48.

118 ‘The EU & Sport: matching expectations’: Consultation Conference with the European Sport Movement, 14-15 June 2005.

119 Report from Workshop 3: The Organisation of Sport in Europe. By Mr Mathieu Fonteneau, Comité National Olympique et Sportif Français (CNOSF), Brussels Bureau.

120 Commission of the European Communities (2007), White Paper on Sport, COM(2007) 391 final.

121 Ibid section 4.

122 Ibid section 4.

123 Ibid section 4.

124 Ibid section 5.3.

conduct or charters, which could address issues related to training, working conditions or the protection of young people'.¹²⁵

Consequently, the White Paper recommended the establishment of European Social Dialogue Committees in the sports sector.¹²⁶

The role of the EU within sport will become constitutionalised once the Lisbon Treaty enters into force. Under the title of 'Education, Vocational Training, Youth and Sport', Article 149(1) of the Treaty reads, '[t]he Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function'. Article 149(2) includes reference to Union action being 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 young sportsmen and sportswomen'. Within areas of 'supporting, coordinating or complementary action', the Lisbon Treaty prohibits the harmonisation of the laws and regulations of Member States on that legal basis.

4.8. Social Dialogue in Sport

Following the eventual 2001 transfer system agreement between UEFA, FIFA and the Commissioners in charge of Competition, Education and Culture and Employment and Social Affairs, the Commissioners invited FIFA and UEFA to encourage clubs to start or pursue social dialogue with representative bodies of football players as a means of finding common solutions on matters pertaining to the employment relationship between clubs and players. The Commission funded a number of projects exploring the viability of social dialogue between representatives of clubs and players.

Before a social dialogue committee can be established, the social partners must satisfy participation criteria established by the European Commission. The Université Catholique de Louvain study on the representativeness of the social partner organisations in the professional football players sector found that in 8 countries out of 28 (29%) professional footballers are not represented by any organisation. Within the countries which do have such organisations, in Belgium, Germany and the Netherlands (11%) there are several organisations, which as the report highlights, implies competition between them. With regard to the capacity for collective negotiation of these existing organisations, out of the 23 organisations reviewed in the study, only 2 have not been accorded this authority by their members. In terms of the coverage rate of the representative organisations, (the rate of affiliation of the professional footballers), in the 18 (+1) countries which have one or several organisations, the affiliation rate of professional footballers is less than 50% in 4 countries (22%), between 50% and 80% in 6 countries (23%) and equal to or greater than 80% in 8 countries (45%). The affiliation rate for professional footballers within the 28 countries is 52% (estimate).¹²⁷ The T.M.C Aser Institute project on promoting the social dialogue in European professional football (candidate EU member states) found that in some new EU states football players are not issued with a contract of employment, and their treatment as self-employed persons in national law has impeded the development of collective bargaining bodies.¹²⁸ The only representative organisation for professional football players is the Fédération Internationale des Associations de Footballeurs Professionnels (FIFPro) which was established in the mid 1960's in order to coordinate the activities of national players' associations and represent players' interests.

In terms of club representation, the Louvain study found that in 8 countries out of 28 (29%) the professional clubs are not included within any specific authority. Amongst the countries which have such organisations, in 6 countries (21%), there are several organisations, although as the report notes,

125 Ibid section 5.3.

126 Ibid recommendation 53, section 5.3.

127 Université Catholique de Louvain (2006), Study on the representativeness of the social partner organisations in the professional football players sector, project No. VC/2004/0547, p22, accessed at http://ec.europa.eu/employment_social/social_dialogue/docs/Represtudies/2005_rapport_football_pays_membres1.pdf. Hereafter referred to as the 'Louvain study'.

128 TMC Aser Institute (2004), Promoting social dialogue in European professional football (candidate EU member states), November.

they do not compete since their jurisdiction varies. In terms of the capacity for collective bargaining of existing organisations, out of the 25 organisations reviewed, 13 (52%) have this capacity. In terms of the coverage rate of the professional clubs by the organisations, out of the 17 (+3) countries which have one or several organisations, the coverage rate of these organisations is less than 40% in 3 countries (18%), between 40% and 99% in 1 country (6%) and equal to 100% in 13 countries (76%). The total coverage rate of professional clubs within the 28 countries is 33%.¹²⁹ On the employers' side, the Association of European Union Premier Professional Leagues (EPFL) is potentially a representative employers' body. The EPFL is a grouping of major European leagues formed in 1998 to represent the interests of clubs throughout Europe. Of the 28 countries studied in the Louvain study, the EPFL was present in 14 countries (50%).¹³⁰ The study also found that of nine countries in which collective agreements were concluded, in seven these were done so by the organisation affiliated to the EPFL.¹³¹ In total, the study found that the EPFL represents 14 of the 18 organisations of existing professional clubs (78%) in the 28 countries studied.¹³²

4.9. Recent Developments in Football Governance

In January 2008 a Memorandum of Understanding was signed between the newly-formed European Club Association (ECA) and UEFA.¹³³ The ECA comprises 103 clubs drawn from all of UEFA's 53 member associations and is described by UEFA as 'an independent autonomous body representing the European clubs'.¹³⁴ Membership of the ECA will be based on a national association allocation depending on association ranking positions. UEFA considers the ECA as 'the sole body representing the interests of clubs at European level'.¹³⁵ The establishment of the ECA forms part of a package of measures designed to resolve the dispute between the G14 and UEFA / FIFA over mandatory player release rules and the fixing of the international match calendar. FIFA rules provide for the mandatory release of players for national association representative matches.¹³⁶ The FIFA regulations do not provide for clubs who are required to release a player to receive financial compensation. The Association calling up a player is expected to bear the costs of travel actually incurred by the player as a result of the call-up. The club for which the player concerned is registered is responsible for his insurance cover against illness and accident during the entire period of his release. This cover must also extend to any injuries sustained by the player during the international match for which he was released.¹³⁷ Clubs refusing to comply with the mandatory release clause can be subject to a points or game forfeiture.¹³⁸

A challenge to these provisions was due to be heard before the European Court of Justice.¹³⁹ The referring court in the case asked the ECJ to consider whether

'the obligations on clubs and football players having employment contracts with those clubs imposed by the provisions of FIFA's statutes and regulations providing for the obligatory release of players to national federations without compensation and the unilateral and binding determination of the coordinated international match calendar constitute unlawful restrictions of competition or abuses of a dominant position or obstacles to the exercise of the fundamental freedoms conferred by the EC Treaty and are they therefore contrary to Articles 81 and 82 of the Treaty or to any other provision of Community law, particularly Articles 39 and 49 of the Treaty?'

129 The Louvain Study (2006), p.23.

130 The Louvain Study (2006), p.29.

131 The Louvain Study (2006), p.29.

132 The Louvain Study (2006), p.30.

133 UEFA (2008), Media Release: 'New era in football begins with the formation of the European Club Association', 21/01/08, No.007.

134 Ibid p.1.

135 Ibid p.1.

136 Annex 1, Article 1, FIFA Regulations for the Status and Transfer of Players, July 2005.

137 Annex 1, Article 2, FIFA Regulations for the Status and Transfer of Players, July 2005.

138 Annex 1, Article 6, FIFA Regulations for the Status and Transfer of Players, July 2005.

139 Case C-243/06, Charleroi/Oulmers, OJ C 212, 2 September 2006.

A party to the action was G14, an economic interest group comprising 18 of the leading European clubs. The G14 explained that

‘professional clubs have no direct representation on the bodies that make the rules and, not surprisingly, these regulations favour federations over clubs. The Charleroi/Oulmers case is an example of how a lack of representation can lead to rules which favour one party over another. G14 believes that these rules, which are imposed on all clubs without their consent, are unfair, undemocratic and must change’.¹⁴⁰

Meeting at FIFA headquarters in Zurich in January 2008, representatives of FIFA, UEFA and clubs agreed ‘on the intention to regulate their future relationship with a number of actions’ including the establishment of the ECA, the dissolution of G14, the withdrawal of the Charleroi ECJ case and the payment of financial contributions for player participation in European Championships and World Cups.¹⁴¹ FIFA President Joseph Blatter explained that the agreement took ‘care of the legitimate aspirations and requests of clubs to access the decision-making levels of international football’.¹⁴² Initially the ECA Board is composed of 11 members, plus four representatives appointed by the Executive Board to the UEFA Professional Football Strategy Council. The Professional Football Strategy Council was established in June 2007 and includes amongst its membership representatives of the EPFL, representatives of the European Club Forum whose members represent the interests of the clubs participating in the UEFA competitions, and representatives of FIFPro (Division Europe) who represent professional players in Europe. UEFA describe the Council as a body to identify ‘solutions to improve collaboration between the various stakeholders of European football; dealing with problems pertaining to the social dialogue in European professional football matters’.¹⁴³

Finally, in July 2008 a Sectoral Social Dialogue Committee became operational in European professional football, in which EPFL and FIFPro participate as partner organisations and ECA is active as an additional component to EPFL.

Recent developments in football governance demonstrate that stakeholder dialogue and representation are becoming established governance standards within the football sector. This has been the product of efforts by the EU institutions to encourage dialogue, pressure exerted through the courts by clubs seeking greater representation, and a willingness by UEFA to adapt existing governance structures to accommodate the views of stakeholders. In this connection, the establishment of a formal Social Dialogue Committee for professional football is an imminent prospect.¹⁴⁴

4.10. “Building the Social Dialogue in the Sport Sector”

In 2003, the European project «Building the Social Dialogue in the Sport Sector» - BSDSS project - consisted of preparing the establishment of a sport social dialogue committee. The partners of this project were led by EASE (employers) in cooperation with EURO-MEI (employees). Following the BSDSS project (2003=2004) the RBT (“Reinforce the representativeness of the social partners in the sport sector: Row the BoaT”) project (2007-2008) was the next step in the work towards the establishment of a sports social dialogue committee. UNI-Europa/EURO-MEI (employees) and EASE (European Association of Sport Employers) have recognised each other as the European social partners for the sport sector at the occasion of the RBT project’s final conference on 7 and 8 February 2008 in Papendal, Arnhem, the Netherlands. This mutual recognition marked the start of a new phase in the development of European sectoral social dialogue for the sport sector. In line with the point 53 of the Action Plan “Pierre de Coubertin” to the White Paper on Sport (July 2007), the European Commission continued to support the joint work of EASE and EURO-MEI to develop social dialogue by financing the “Content and Contact project” (CC-project - VS/2008/0194).(2008-2009).

140 Accessed at www.g14.com.

141 UEFA Media Release (2008), ‘Victory for football as a whole’, 15/01/2008, No.4, p1.

142 Ibid p. 1.

143 ‘UEFA committees unveiled’, 19/07/07 accessed at <http://www.uefa.com/uefa/keytopics/kind=64/newsid=561477.html>

144 The establishment of such a committee scheduled for March 2008 was delayed.

CHAPTER 5: AGENDA FOR A SOCIAL DIALOGUE IN EUROPEAN PROFESSIONAL CYCLING

5.1. Introduction

The concept of social dialogue and collective bargaining can have multiple meanings. The purpose of this part of the report is to identify the themes and issues relevant to discussion within a social dialogue in the professional cycling sector.

Before providing an overview of the possible content of a social dialogue between cycling's social partners, it is necessary to illustrate the negotiation contours between the social partners; what type of negotiations may they hold mutually? Considering the nature of this study, it is important to know the conditions under which the social partners may conclude agreements that are binding at a national level. Issues such as enforcement of the agreements and the social partners' discretionary powers need to be assessed in this respect.

The specificity of the cycling sector needs to be considered when identifying themes and issues. Various elements hold significance. First, the cycling sector is universally governed by UCI, an association issuing various sets of regulations. Joint Agreements on the working conditions of riders hired by Professional Continental Teams and UCI ProTeams contain subjects closely connected to social issues and that may therefore be included in a social dialogue.

Further, the existence of cycling's collective bargaining agreements at the individual Member State level will be assessed. The contents of national collective bargaining agreements will serve as an illustration of possible themes and issues that are also relevant on an EU basis.

In addition to these codified sources, there will also be an inventory of themes and issues important in cycling, that may not be connected directly to an existing set of rules, regulations or agreements.

In conclusion, a schematic overview considers the possible content of a social dialogue within the European professional cycling sector.

5.2. Agreements

Within a sectoral social dialogue committee, social partners may conduct a dialogue on any topic they deem relevant on social and economic aspects related to their sector, and on the method of organisation and operation of their mutual relationships and collective activities.

Dialogue outcomes may vary depending on the reason they were held. The distinction in the various forms of joint documents, created by Pochet¹⁴⁵, helps in streamlining and categorising the results of social dialogue. Pochet categorises the varying designations of the documents, such as common positions, declarations, resolutions, proposals, guidelines, recommendations, codes of conduct, social labels, etc. under the main heading of "joint documents". He distinguishes "reciprocal commitments" between the social partners and "common positions" intended for the public authorities.

The reciprocal commitments may be separated into "tools", "declarations", "agreements", "recommendations" and "rules of procedure". They are all addressed to the social partners themselves but the degree of constraint differs. These typologies regulate and govern the relations between the social partners in the sectoral social dialogue committee.

The differences are stated in more detail below.

Agreements: This category responds to agreements initiated between the European social partners (pursuant to Article 139), intended for national organisations and with a follow-up and procedure determining precise implementation mechanisms and deadlines. Agreements may or may not be converted into directives.

Recommendations: This category comprises texts whose provisions are drawn up by the European social partners, intended for national organisations and for which a follow-up and evaluation procedure

¹⁴⁵ Dufresne, A., De Gryse, C. and Pochet, P. (eds) 2006, *The European Sectoral Social Dialogue. Actors, Developments and Challenges*, PIE-Peter Lang, Brussels.

is laid down at a national and European level. There is deemed to be follow-up if the text of the joint document sets out (reasonably precise) procedures for national implementation and for a European-level evaluation of this follow-up at a given point in time. This is therefore a procedural definition. Follow-up as defined here should not be confused with implementation, which relates to substantive aspects.

Declarations: This category corresponds to “declarations of intent” drawn up by the European social partners, intended for national organisations or for themselves, and where no explicit follow-up procedures are set out in the text or where the procedure is vague.

Tools (for training and action): This category comprises various sub-categories: studies (only studies carried out jointly by the social partners and not by European and/or national consultants); handbooks; glossaries or databases.

Rules of procedure: These are recognition agreements between the social partners.

Common positions: This category corresponds to texts addressed to the European institutions. These texts may be produced under very different circumstances. Sometimes the prime purpose of a common position is very obvious, but in other cases it may be vague due to being watered down by the numerous matters covered.

For the purpose of this part of the study, the focus will be on the “Agreements” as we intend to analyse the content of a social dialogue in the professional cycling sector.

Article 139 EC Treaty states in the first paragraph that should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

However, the nature of these agreements may differ as regards the method of implementation at the national level of the member states and, as a consequence of this, to their enforcement. The EC Treaty provides three options where such an agreement may be implemented at the national level.

First, article 139 paragraph 2 states that agreements concluded at Community level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States, or in matters covered by article 137, by the joint request of the signatory parties, by a Council Decision on a proposal from the Commission. The first option, procedures and practices familiar to the Member States, means in practice that an agreement at the EU level will drip down to the national one through implementation of the Europe-wide agreement in a national collective bargaining agreement. The argument is that the likelihood of this form of implementation being used appears negligible. First, the incentives to pursue this option are small as *all* collective contracts would have to contain the same clauses to guarantee universal coverage. Second, the laws of only a few states (such as Belgium and the Netherlands) contain provisions to extend agreements *erga omnes*, which could be used to apply bilateral agreements of the social partners to all employers and employees. This statement is even more relevant, considering the recent accession of ten new Member States in 2004, whose very different industrial relations traditions increase the diversity of the traditions still further¹⁴⁶. To this one can add the 2007 accession of Bulgaria and Romania.

Similarly to the process mentioned above, the social partners are able to negotiate on any topic they deem necessary. But the social partners’ power resides especially in the fact that the results of their negotiations may be converted into a directive. This conversion is only possible if the negotiation result contains elements that may be placed under article 137 of the Treaty.

Article 137 sub 1 lists the following issues: improvement of the working environment and conditions to protect workers’ health and safety; information and consultation of workers; equality between men and women with regard to labour market opportunities and treatment at work; and the integration of persons excluded from the labour market. These are the elements that can be transposed into a directive and passed by the Council on the basis of qualified majority voting.

Article 137 sub 3 includes other issues that can be part of agreements but that need unanimous voting by the Council: social security and social protection of workers; protection of workers when their

146 Branch, A. (2005), The Evolution of the European Social Dialogue towards Greater Autonomy: Challenges and Potential Benefits, The International Journal of Comparative Labour Law and Industrial Relations, No.21, pp.321-346.

employment contract is terminated; representation and collective defence of the interests of workers and employers, including co-determination; conditions of employment for third-country nationals legally residing within Community territory, as well as financial contributions for the promotion of employment and job creation. Four issues are explicitly excluded from the range of negotiation issues: provisions concerning payment; the right to strike and the right to impose lock-outs. A quick look at these provisions shows that the range of potential matters that could form the basis for converting an agreement into mandatory laws is very extensive and that the powers granted to the social partners confers on them a status similar to that of legislators.

Several elements need to be considered before the Council reaches agreement on drafting a directive. A condition for reaching agreement on the directive's content is that both social partners in the social dialogue committee must make the request to the Council jointly. As mentioned above, the content must emerge out of the mandate laid down in article 137. The social partners must take into consideration that their agreements must be in line with the EC Treaty's content, and that they must fall within the competence of the Commission and the Council. This is the legality aspect of the agreement.

The social partners will seek to formulate their agreement as far as possible in the wording of a directive, to facilitate the Council declaring the content of the agreement to be binding. The Council will most probably not amend the agreement's content.

The question that arises, and that has led to many debates, is whether the social partners have too much power in this respect and whether, as a consequence, democratic legitimacy is lacking in possible agreements that turn out to have an *erga omnes* effect.

On one hand, it has been stated that the social partners bargain in the shadow of the law. This is the case when the social partners are consulted on the basis of Article 138 and decide to take over negotiations from the Commission. On the other, when the social partners negotiate about topics derived from article 137 on their own initiative, opinions on the role of the Commission as the "Guardian of the Treaty" and the Council as the legislator are divided on the influence of these institutions on the negotiation result of the social partners.

The Commission's obligation is to evaluate the representativeness of the social partners, their mandate, and the legitimacy of the agreement. According to Goerke and Piazolo in 1998¹⁴⁷ the dominating legal interpretation of the, then, Social Chapter is that the Commission is not granted discretion. This is in their opinion also the case of the Economic and Social Council, because the procedure set out in Article 4 (now Article 137 EC Treaty) is not designed to seek the Commission's approval for a collective agreement, but rather to use the Community's legislative machinery to endow agreements with the legal standing that they otherwise would not have. Goerke and Piazolo¹⁴⁸ also state that there is no textual evidence contained in the Social Chapter that indicates that the Commission can assess the agreement in terms of the criteria listed in its communication of 1998.¹⁴⁹ The first draft of Article 4 of the Social Chapter also contained the following clause: "...where management and labour so desire, the Commission *may* submit proposals to transpose the agreement referred to in paragraph 1 into Community legislation." Because this optional clause (*may*) was replaced by a more restrictive clause (*shall*) in Article 4 Section 2, one could gather that a limitation of the Commission's discretion was intended. According to Goerke and Piazolo it is the general legal opinion that there is no doubt about the Council's discretion because the general division of power between Commission and Council implies that the Council is not bound by the Commission's proposal and is therefore not constrained by the social partners' agreement. On the other hand, the fact that neither the Social Chapter nor the Amsterdam Treaty stipulated rules for a case where an agreement by the social partners has been rejected, implies that the Commission and the Council do not have the power of discretion.

147 Goerke, Laszlo & Piazolo, Kathrin, 1998. Decision making under the EU's Social Chapter, International Review of Law and Economics, Elsevier, vol. 18(2), pages 217-237.

148 Idem

149 COM (1998) 322 final of 20 May 1998, Communication from the Commission "Adapting and promoting the Social Dialogue at Community level"; Article 1 of the Commission Decision of 20 May 1998 (98/500/EC) on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level, OJ L 225, 12.8.1998, p. 27.

As regards amendments to the agreements by the social partners, Goerke and Piazolo mention that the Commission would not have the right to amend the agreement because it would then no longer represent the social partners' understanding. The Council would also be bound to the agreement of the social partners. The Commission claims that, just as at national level, the Council is not allowed to amend such agreements. Their amendment would be contrary to the principle of subsidiarity. The Council does have the right to reject a proposal, in their view.

Keller and Sörries¹⁵⁰ state, next to Goerke and Piazolo, that according to the Commission the Council should not enjoy substantial rights of change and that it (the Commission) threatens to withdraw a proposal if the Council tries to change the agreement of the social partners. On the basis of Article 211(1) of the Treaty Britz and Schmidt¹⁵¹ believe that the Commission has a duty to judge whether an agreement is compatible with Community law, and that it therefore has the right to reject an agreement to be forwarded to the Council. As regards the Council, Britz and Schmidt comment that the Council alone bears political, as well as legal, responsibility for Community law. It must therefore be free to decide whether it wishes to grant the joint request of management and labour for the implementation of an agreement. Britz and Schmidt also argue that it seems the powers of amendment are not available; it would undermine the right of autonomous negotiation granted to management and labour under Article 139. Franssen¹⁵² shares this view and adds that the proposal's status would change if the Council could amend it; it would then be a Commission proposal that would be "sent back" after amendment. The oddity would then be that the Commission would be forced to re-consult the social partners under article 137.

It can be concluded that the rights of the Commission and the Council are limited when it comes to amending the negotiated agreements between management and labour at the EU level. Rejection of an agreement by the Commission can only be based on a marginal test of the agreement's legitimacy. It also seems unlikely that the Council would reject a proposal from the social partners. This underlines the important role attributed to the social partners. Barnard¹⁵³ offers four explanations and justifications for the social partners' involvement which she distils from Community documentation for the emergence of the social partners as key players in social policy. She addresses the issue of subsidiarity: the social partners are part of the interaction between the Community and the Member States in the social arena; effectiveness; legitimacy and democracy. The issue of legitimacy is closely connected to an important aspect of the social dialogue, namely representativity.

After this elaboration it is possible to extract three types of negotiations and frameworks for Social Dialogue:

1. Social Dialogue about any issue relevant to the sector in which the Social Dialogue Committee operates (article 139 negotiations) within the framework of social economic and organisational aspects;
2. Social Dialogue on issues deriving from article 137 sub 1;
3. Social Dialogue on issues deriving from article 137 sub 3.

The outcome of the negotiations leads to agreements with a differing method of enforcement or status. Agreements related to 1 may be enforced at a national level after their transposition into national collective agreements or through practices familiar to the social partners in the individual member states. Agreements under 1 and 2 may be transposed into a directive and have a direct effect on the addressees of the directive's content.

5.3. Professional cycling sector

5.3.1. Social partner organisations at a European level

150 Keller and Sörries, Old wine in new bottles?, Journal of European Social Policy, 1999;9, 111-125.

151 G.Britz and M.Schmidt, The Institutionalised Participation of Management and Labour in the Legislative Activity of the European Community: A Challenge to the Principle of Democracy under Community Law, (2000) 6/1 European Law Journal, 45-71.

152 Franssen, E., Legal Aspects of the European Social Dialogue, Intersentia, Antwerpen, 2002.

153 Barnard, Catherine, The Social Partners and the Governance Agenda, European Law Journal, Vol. 8, pp. 80-101, 2002.

Le CPA au sein du Cyclisme Professionnel International.

Préambule.

Le cyclisme professionnel est régi au niveau mondial, européen et national par les règlements de l'UCI (Union Cycliste Internationale) www.uci.ch.

Les acteurs.

Coureurs. (Employés)

Les coureurs signent des contrats à caractère dépendant (salarié) ou indépendant. Ces contrats doivent s'ajuster au contrat type UCI et leur durée ne peut être inférieure à 1 an.

Tout coureur professionnel possesseur d'une licence UCI est automatiquement membre du **CPA** indépendamment de sa nationalité et de la nationalité de l'équipe avec qui il signe un contrat.

Coureurs Continentaux

Ces coureurs signent des contrats rémunérés ou non. Leur Fédération de tutelle est la Fédération Nationale qui leur délivre la licence.

Ils sont représentés par leurs Associations Nationales et, au besoin, par le CPA.

Equipes. (Employeurs)

Elles ont le statut d'entreprises. Certaines équipes (ProTour) emploient jusqu'à 55 / 60 salariés (coureurs + staff).

Les équipes sont regroupées sous l'égide de l'AIGCP (Association Internationale des Groupes Cyclistes Professionnels).

Elles se divisent en 2 groupes:

- **ProTour.**
- En 2008, 18 équipes, gérant des budgets s'échelonnant entre 5 et 12/14 000 000 Euros. L'effectif moyen de chaque Team est de 28 coureurs soit un peloton de 490 athlètes environ. Réglementairement, l'effectif ne peut être inférieur à 25 athlètes.
- L'objectif du ProTour est de faire disputer, par les meilleures équipes incorporant les meilleurs coureurs, un calendrier spécifique d'épreuves classées parmi les plus importantes et médiatiques du calendrier mondial.

Continentaux Professionnels

- En 2008, 25 équipes sont enregistrées à l'UCI. L'effectif moyen est de 16 coureurs par Team, le minimum réglementaire étant de 14. Cette catégorie représente 429 coureurs environ. Les budgets s'échelonnent entre 800 000 et 3 000 000 Euros par équipe.

Nota: Par rapport à la saison 2007, l'effectif global 2008 de **1019** coureurs professionnels recensés au 25-01-08 est en baisse de 10% environ.

Répartition des équipes par continents. (Listes jointes)

Europe - C E	ProTour	18
	Cont. PROS	21
Hors C E .	4	1 Suisse – 2 USA – 1 Venezuela

Organisateurs.

Ce sont les entités qui organisent régulièrement une ou plusieurs compétitions inscrites au calendrier international réservé aux coureurs professionnels.

Elles se regroupent sous la dénomination **AIOCC**.

Nota: Le CPA, l'AIGCP et l'AIOCC sont reconnus comme des interlocuteurs à part entière par l'UCI. Ils ont chacun leurs représentants dans les différentes commissions, groupes de travail et organes de décisions de l'UCI.

Le CPA.

Le CPA est une association internationale constituée selon les arts. 60 et suivants du Code civil suisse. Son siège est à Aigle CH 1860.

But. Statuts joints.

Le CPA intègre:

- D'une part, tous les cyclistes professionnels sous contrat avec une équipe,
- D'autre part, les associations nationales de cyclistes développant une activité de soutien aux coureurs de leur nationalité.

Ces associations nationales sont au nombre de huit:

- A C P Espagne – ACCPI Italie – APCP Portugal – APSC Suisse – CCP BDR Allemagne – U N C P France – Sporta Belgique – VVBW Hollande.

En 2008, environ 80 % des cyclistes professionnels sont des citoyens de la C E.

Les Assemblées Générales et comités directeurs du CPA se tiennent, à tour de rôle, dans l'un des pays d'appartenance des associations nationales

Conseil des coureurs.

Ce Conseil des coureurs est composé de 15 coureurs en activité qui sont en contact permanent avec le Président. Ils lui rapportent les problèmes, de sécurité et d'organisation, observés dans les compétitions auxquelles ils participent et proposent des solutions qui sont transmises à l'UCI.

Le délégué du Conseil des coureurs siège au C D du CPA et, avec le Président du CPA, au C D du CUPT qui est l'organe régissant le ProTour.

Accord Paritaire CPA / AIGCP.

En 2002, un accord paritaire (Copie jointe) a été signé entre le CPA et l'AIGCP et incorporé dans les règlements de l'UCI.

Depuis sa signature, il est obligatoirement applicable par toutes les équipes à qui l'UCI délivre une licence, qu'elles soient membres ou non de l'AIGCP.

Périodiquement il est renégocié et reconduit entre les deux parties.

Cet accord paritaire contemple les chapitres suivants:

- Domaine d'application – Force obligatoire – Contentieux – Conditions de travail – Durée et fin de contrat – Rémunérations minimums – Assurances et prestations sociales –

Fonds de Solidarité

Le fonds de solidarité, mis sur pied en 2002, en collaboration avec l'UCI, a pour but d'octroyer, à l'arrêt de la carrière, une indemnité linéaire de **12 500 €** à chaque coureur remplissant les conditions fixées par le règlement du Fonds.

Ce Fonds est alimenté par un % prélevé sur l'ensemble des prix mis en jeu par les organisateurs sur chaque compétition auxquelles participent les coureurs professionnels.

La gestion de ce Fonds est conjointement partagée entre l'UCI et le CPA.

5.3.2. Themes and Issues

What follows is an overview of themes and issues of interest to the professional cycling sector and which may be included in, and be suitable for, a social dialogue at the EU level. Various sources for identifying these themes and issues will be used.

Firstly, the standard collective bargaining agreement between CPA and AIGCP, under the auspices of UCI will be presented.

Secondly, there will be a synopsis of themes and issues deriving from national collective bargaining agreements. Other issues of concern to the European professional cycling sector will be discussed in relation to their suitability for a social dialogue.

Describing these themes will include a referral to which of the types of agreements or negotiations is related to the specific theme.

5.3.2.1. UCI Joint Agreements

The Joint Agreements (Accord Paritaire) are concluded between CPA and AIGCP, approved by UCI and incorporated in their Regulations.

The agreement establishes the standards governing the working conditions of riders employed by UCI ProTeams and Professional Continental Teams. UCI ProTeams are officially described as “high level” professional cycling teams.

The agreement does not apply to the (third) category of Continental Teams.

The agreement is applicable to riders employed by teams that participate in international road races.

The national member organizations of ACE in the European Union are: ACP (Spain), ACCPI (Italy), APCP (Portugal), BDR (Germany), UNCP (France) and SPORTA (Belgium).

According to its Statutes the CPA’s objectives are *inter alia*: to safeguard the interests of professional cyclists, who have a contract with a UCI ProTeam or Professional Continental Team, on an international level; to safeguard the interests of cyclists under contract with a Continental Team; ensure that the riders are represented within UCI.

Every professional rider in the possession of an UCI licence is automatically a member of CPA independently from his nationality or the nationality of the team with which he signs a contract.

Teams have company status. The teams are unified under the auspices of AIGCP. In 2008 there were 18 Pro Teams .

There were 25 Professional Continental Teams. In 2008, in total there were about 1000 professionals riders of these categories; 80% of them were EU citizens.

The organizers of international professional competitions are unified in AIOCC (Association Internationale des Courses Cyclistes).

CPA, AIGCP and AIOCC are fully recognized as discussion partners by UCI. They each have their representatives in commissions, working groups and decision-making bodies of UCI.

The full text of the Joint Agreements reads as follows:

JOINT AGREEMENTS¹⁵⁴

on the working conditions of riders hired by Professional Continental Teams and UCI ProTeams for the years of registration 2006 to 2008. **The agreement has been renewed for the year 2009.**
(texte modifié au 15.6.08).

¹⁵⁴ See Annexes for the full text of the official French version.

Signatories:

- Cyclistes Professionnels Associés [Associated Professional Riders], hereinafter referred to as CPA,
- Association Internationale des Groupes Cyclistes Professionnels [International Association of Professional Cycling Groups], hereinafter referred to as AIGCP,

Chapter I: GENERAL PROVISIONS
SCOPE

Art. 1

This agreement establishes the standards governing the working conditions of rider employed by a team registered or intending to register with the International Cycling Union (known by the French acronym UCI) as a UCI ProTeam or a Professional Continental Team under Chapter XV or XVI of Part II of the UCI Cycling Regulations.

It shall be binding for each team in its capacity as employer, in the person of its paying agent (hereinafter referred to as the team), and each rider employed by the team (hereinafter referred to as the rider).

It shall not apply to riders employed by a team but who do not participate in international road races. However, a single participation by such a rider in an international road race during the year of registration shall suffice to make this agreement applicable to him during the whole year.

The stipulations of this agreement shall be added to those of the UCI regulations. In the event of inconsistency, the UCI regulations shall apply.

Art. 2

This agreement shall apply for the years of registration 2006 to 2008, without prejudice to Article 10.

The signatories undertake to renegotiate in good faith for the subsequent years, or if no changes are requested, to extend this agreement at its expiry for a further period to be defined.

COMPULSORY FORCE

Art. 3

Any derogation from the provisions of this agreement to the detriment of the rider shall be null and void. Any and all advantages or agreements that can favour the rider beyond the provisions of the present agreement shall remain valid.

DISPUTES

Art. 4

Any and all disputes between the signatories about this agreement shall, at the request of one of the parties, be submitted to the arbitration board of the UCI ProTour council following the procedures provided for in articles 12. 3. 008 and following of the cycling sport Regulations of the UCI.

A dispute between a team and a rider over their work relationship shall be submitted to the authority designated by the competence clause provided in the contract, provided it is compliant with the UCI regulations. Insofar as the measure or the solution of the dispute depends on the interpretation of this agreement, the authority to which the dispute is submitted may request an imperative opinion from the arbitration board of the UCI ProTour council according to such a procedure as fixed by the president of the UCI ProTour council.

Chapter II: WORKING CONDITIONS
HIRING

Art. 5

Hiring shall take place by means of an individual contract concluded by and between the rider and the team.

The contract shall be drawn up in writing by means of a form corresponding to the sample contract agreed by and between the signatories and approved by the UCI as an insertion in its regulations as a standard contract.

Contracts shall be drawn up in at least 3 copies:

1 for the team;

1 for the rider;

1 for the auditor approved by the UCI.

The contract shall be typed. Each page shall be numbered and shall indicate the total number of pages in the contract. The rider and the paying agent shall sign each page of the contract.

Clauses of the contract on a page which has not been signed by the rider may not be invoked against him; the rider may take advantage of them.

TERM AND END OF THE CONTRACT

Art. 6

Contract shall be for a specified period ending on 31 December.

Contracts coming into force before 1 July of the registration year shall be valid at least until 31 December of the same year. For a new professional, the contract shall be valid until at least 31 December of the following registration year.

Contracts coming into force after 30 June shall be valid at least until 31 December of the following registration year and, in the case of a new professional, until 31 December of the year after that.

Art. 7

1. The status of new professional is given to any rider who joins a UCI ProTeam or Professional Continental Team for the first time no later than during his twenty-second year.

For the application of this article the date of joining shall be the date on which the rider's contract comes into force.

The age of the rider is determined by the difference between the year of his hiring and the year of his birth.

2. The status of new professional ends:

a. If the contract comes into force before 1 July: on 31 December of the subsequent registration year;

b. If the contract comes into force after 30 June: on 31 December of the second subsequent registration year.

During this period the rider shall retain the status of new professional even if:

a. The rider reaches the age of 23 during this period;

b. The contract is terminated early and the rider changes team.

3. If, at the time that the new professional's contract comes into force, the remaining term of the contract between the paying agent and the principle partner or contracts between the paying agent and the two principal partners is less than duration of the contract as determined under the first paragraph of point 2 above but equal to at least one year, the duration of the new professional's contract may be limited to the remaining duration of the contract with the principal partner or the longer of the contracts with the two principal partners.

If, on expiry of the contract between the paying agent and the principle partner or the contracts between the paying agent and the two principle partners, the team continues its activities or the paying agent continues its activities in another team, he must reemploy the rider at that rider's request for at least one year and under conditions which may not be less favourable to the rider.

Art. 8

The contract of employment shall not provide a trial period.

Art. 9

Before 31 October prior to the end of the contract, if the contract has not already been renewed, each party shall inform the other in writing of their intentions as regards any renewal of the contract. A copy of this document shall be sent to Cyclistes Professionnels Associés (CPA).

REMUNERATION, BONUSES AND PRIZES

Art. 10

The rider shall be entitled to a fixed remuneration, the annual minimum gross amount of which shall be fixed as follows:

Professional

Continental Teams	New professional	Other rider
2009	€ 23,000.-	€ 27,500.-
UCI ProTeams	New Professional	Other rider
2009	€ 26,700.-	€ 33,000.-

(texte modifié au 15.6.08).

The remuneration of the **following** years will be negotiated by the parties and will be subject to an amendment to this agreement. In the event that no agreement can be found, the amounts of **2009** will remain in force.

In particular situations and in the interest of the development of cycling, the UCI ProTour Council may decide exemptions on the joint proposal of the signatories of this agreement.

Art. 11

The fixed remuneration shall be paid in cash, in the currency stipulated in the contract.

The payment must be made by transfer on the rider's bank account as indicated in the contract. Only the proof of the execution of the bank transfer shall be accepted as proof of payment.

The fixed remuneration shall be paid to the rider in equal monthly payments, remitted at the latest on the last day of each month.

In the event of late payment of his remuneration or any benefit due, the rider has the automatic right without any formality, to the following increases and interest:

- 1) For a delay of 11 to 30 days: an additional 5% of the sum due
- 2) An additional 10% of the sum due for each subsequent month or part month of delay
- 3) From the beginning of the sixth month of delay, interest chargeable at 2% per month on the sum due including any additional sums

In the following cases the additional sums shall not be due and the interest for late payment shall be reduced to 8% per year from the due date:

- if the rider has not claimed the monies due before the competent body or drawn on the bank guarantee no later than 3 months from the due date;

- if the competent body, or the UCI ProTour Council should the competent body fail to rule, determines that the non-payment is the result of a serious dispute.

Art. 12

The team and the rider may agree, in addition to the fixed salary, the payment of bonuses and other benefits that depend on the rider's individual results and performance or the results and performance of the team.

Art. 13

The prizes are the sums of money remitted by the organisers of cycling races. The prizes shall be remitted by the organisers to the national federation of the country of the race or to a collecting organisation appointed by this national federation and approved by the UCI ProTour council.

Art. 14

All bonuses, compensation, prizes or other benefits in cash or in kind shall be over and above the fixed salary and shall not be imputed on said salary nor taken into consideration for its calculation.

Art. 15

A detailed pay slip shall be remitted to the rider at the time of each payment.

CONDITIONS OF WORK AND OF REST

Art. 16

The annual number of competition days and their planning are the team's responsibility, taking into account the UCI regulations.

The planning must take into account the recovery periods needed for the rider to enjoy the necessary rest for his physical balance.

Art. 17

The rider shall be entitled to minimum of 35 vacation days per year.

The holiday periods shall be taken, in agreement with the teams, depending on the competitions and the training sessions.

Under no circumstances shall the holiday period be substituted by economic compensation.

Art. 18

The rider shall be entitled to attend the annual general meeting and the meetings convened by the CPA and its member organisations.

The team shall exercise no pressure or constraint on the rider to dissuade him from attending.

These meetings shall under no circumstances interfere with the sporting activity of the rider.

Art. 19

The rider shall be entitled to continue and to improve his cultural education.

The team shall not object to the continuation of studies, provided they do not interfere with the sporting activity scheduled in the planning.

Art. 20

The team and the rider shall take all the necessary measures to avoid, under any and all circumstances, risks for rider's health according to the UCI regulations.

COMPENSATION OF SALARY, INSURANCE AND SOCIAL BENEFITS**Art. 21**

A rider prevented temporarily from carrying out his activity for no fault of his own, owing to illness, injury or accident, shall be entitled to his full (100%) remuneration during a period of 3 months and 50% of his remuneration during another period of three months without the amount to be paid being less than the minimum salary stipulated in article 10.

This entitlement shall come to an end at the end of his disablement or of the contract. It is renewed for a fresh disability having another cause than the previous one.

The entitlement to the salary shall be borne by the team, after deduction of insurance benefits for loss of income to which the rider may be entitled for this risk. Where applicable, the rider shall do everything necessary with a view to recourse against responsible third parties.

Industrial disablement shall be duly established. The team may require the rider to undergo a physical examination administered either by a doctor designated by mutual agreement or by a medical officer accredited according to the applicable social security system or, in the absence thereof, a doctor designated by the president of the UCI committee on sport safety and conditions at the request of the first party to take action.

Art. 22

1. The team shall make sure that the rider is protected by social insurance.
2. The team shall make sure that it is in compliance with social security legislation applicable to it in its capacity as an employer, so that the rider will be entitled to the benefits granted by law to full-time workers.
3. In the case where the rider is not covered by the legal social security system, the team must take out, at its expense, the following insurance cover:
 1. an insurance policy covering the costs of health care (doctor, medicines, etc.) for the rider, for a sum of € 100'000 per year and per rider.
 2. an insurance policy providing for the payment of a pension, annuity or capital at the earliest possible date after his career as a professional rider ceases, whose premium shall represent at least 12% of the gross annual salary, limited to three times the minimum amount provided for in article 10.

If, in these cases, the insurance policy is of a type that must be taken out by the rider himself, the team will make sure that the rider contracts this insurance, and will pay the premiums.

4. The Team shall pay half the contributions of the insurance referred to under three hereabove:
 1. if the rider has been able to join, for example under an optional insurance scheme, a legal social security scheme other than the scheme under which the team is subject
 2. if the rider's affiliation to such other legal social security scheme is mandatory.
5. The team must provide proof of the cover referred to in this article by producing the necessary certificates in the file required for the audit referred to in articles 2.15.068 and 2.16.014 of the Regulations.

Art. 23

Independently from the benefits referred to in Article 22, the team must take out, at its expense:

1. Life insurance, by virtue of which a sum of € 100'000 will be paid to the beneficiaries named by the rider in the policy.

Risks relating to sports or sports activities that are not connected to the preparation, maintenance or recovery of the rider's physical condition, such as: aerial sports, mechanical sports (involving a motor vehicle, whether or not ground-based), ice sports, contact sports, potholing, rafting, rock-climbing, deep-sea diving, as a participant, instructor, official or in any function other than that of spectator can be excluded from the cover.

2. Insurance cover by virtue of which a sum of up to € 250'000 will be paid to the rider in the case of total and permanent disability due to an accident (24-hour a day insurance); permanent disability resulting from illness or ailments caused by the practice of cycling does not have to be insured by this policy.

Risks relating to sports or sports activities that are not connected to the preparation, maintenance or recovery of the rider's physical condition, such as: aerial sports, mechanical sports (involving a motor vehicle, whether or not ground-based), ice sports, contact sports, potholing, rafting, rock-climbing, deep-sea diving, as a participant, instructor, official or in any function other than that of spectator can be excluded from the cover.

3. Hospitalization and repatriation insurance.

This insurance must cover:

- a) all the costs not covered by the social security relating to the rider's hospitalization, for a sum of € 100'000 per incident and per individual;
- b) all the costs of repatriation for medical reasons or due to death, in connection with professional travel.

Art. 24

The team must attach to each contract a list, in accordance with the enclosed sample, of the legal or contractual insurance benefits that the rider will be entitled to, and of those he will not be entitled to.

The team shall be responsible for paying the benefits that it may have wrongly listed as the rider's entitlement.

Art. 25

The team must be able to provide proof, at any time, of the insurance cover referred to in articles 22 and 23 for the rider-employee and, at the simple request of the employed riders, the UCI or the auditor, to the auditor accredited by the UCI.

Art. 26

The lack of insurance or of cover is the responsibility of the party whose duty it is to contract it. The AIGCP, the CPA and the UCI are exempt from any liability. The UCI's power to request evidence is simply a right, which does not imply any obligation or responsibility.

For the AIGCP

For the CPA

APPENDIX 1 LIST OF INSURANCES

The team certifies that the rider,

Last Name:First Name:Date of birth:

will benefit, as a result of his job, from the following insurances or benefits (for riders who do not have a legal social security system, the team states that it was given a proof of the following insurances or benefits):

(each box have to be filled in with "yes" or "no" depending on the case)

Insured risks / benefits*	In accordance with the legislation (indicate the country)	In accordance with a contractual insurance**
1. accident at work		
2. professional sickness		
3. health care (doctor, medicine)		
4. hospitalization		
5. compensation for industrial disability		
6. family allowance payments		
7. unemployment		
8. pension plan		
9. reversionary annuity		
10. orphan annuity		
11. health care insurance (art. 22.3.1) (only for the rider who does not have a legal social security system)		
12. contingency insurance (art. 22.3.2) (only for the rider who does not have a legal social security system)		
13. decease insurance (art. 23.1)		
14. disability insurance (art. 23.2)		
15. hospitalization insurance (art. 23.3 a)		
17. others		
16. repatriation insurance (art. 23.3 b)		

* The scope of the coverage depends on the legal social security system in use in the different countries. Therefore some risks may not be insured. Refer to the joint agreement and to the UCI Regulations for the minimum coverage.

** For insurances subscribed by the team, provide a copy of insurance policies and general conditions. For contractual insurances subscribed by the rider himself, the team has to obtain from the rider a proof signed by the insurance company, according to the attached model. This certificate has to be presented to the local auditor.

Date: _____ Signature of the paying agent: _____

APPENDIX 2

CERTIFICATE OF INSURANCE FOR A PROFESSIONAL RIDER

The insurance company undersigned certifies that the rider,

Last Name:First Name:Date of birth:

is insured to the company from January 1st and for the whole year 200.. for the following risks and benefits (to the minimum)*:

			N° of the insurance policy
1. Reimbursement of expenses for health care per year	Expenses concerning doctor and medicine for the rider for an amount of € 100'000	In accordance with joint agreement art. 22.3.1	
2. Pension plan	Conditions/ minimum coverage: • Payment in capital or annuity form • Payable at the earliest at the end of the professional cycle career • Annual contribution representing at least 12% of the annual gross salary or fees, limited to 3 times the minimum amount	In accordance with joint agr. art. 22.3.2	
3. Decease insurance	In case of death of the rider, payment of € 100'000 to the interested parties named by the rider. Some risky activities may be excluded (see joint agreement)	In accordance with joint agr. art. 23.1	
4. Disability insurance	In case of total and permanent disability of the rider due to an accident (round the clock), payment of € 250'000 to the rider.	In accordance with joint agr. art. 23.2	
5. Reimbursement of hospitalization expenses	Hospitalization expenses for an amount of € 100'000 per disaster	In accordance with joint agr. art. 23.3 a)	
6. Reimbursement of repatriation expenses	Repatriation expenses of the rider for medical reasons or in case of decease during professional trips	In accordance with joint agr. art. 23.3 b)	

This certificate is delivered in order to allow the rider to prove to his team and to the authorities of control of the professional cycling that he fulfils the registration conditions fixed by the UCI Regulations for the season 200... These Regulations refer for minimal insurance coverage to the Joint Agreement concerning the working conditions of the riders. This certificate will not be used for any other purposes.

Comments / observations of the insurance company:

Place and date of creation of the certificate:

Stamp and signature of the insurance company:

Contact person:

Exact address:

Tel. number:

* Cross out the risks / benefits not covered by the insurance company.

5.3.2.1.1. Anti-Doping¹⁵⁵

Doping is a key concern in sport in general and in professional sport in particular, as it undermines transparency and fair competition. Policies to prevent and combat doping should include avoiding excessively busy sports calendars that put pressure on the athletes. See also under the agenda item: "International match calendars".

Quite apart from that, the legal position of sportspersons vis-à-vis the national and international sports governing bodies (in cycling: UCI), in particular strict liability and privacy aspects in connection with out-of-competition controls at domestic whereabouts are a matter of concern for sportspersons and their clubs, in particular in professional sport

¹⁵⁵ See Janwillem Soek: The Strict Liability Principle and the Human Rights of Athletes in Doping Cases, T.M.C. Asser Press, The Hague 2006; see also in particular on out-of-competition controls: Janwillem Soek: The Athlete's Right to Respect for his Private Life and his Home, in The International Sports Law Journal (ISLJ), 2008/3-4, pp. 3-13.

(employees/employers relationship). The proposition might be argued that the disciplinary law concerning doping violations must be considered as pseudo-criminal law, that Article 6 of the European Convention on Human Rights ("no punishment without guilt") is applicable to disciplinary doping law, and that the application of the strict liability principle is contrary to Article 6 and should therefore be replaced by the "Anscheinsbeweis".

An elite sportsperson under contract may only practise his profession, i.e. participate in competitions, if he has a licence from the international and/or national sports association/federation. The licence is only granted if the athlete declares irrevocably that he or she will undergo any anti-doping test according to the provisions in the sports regulations, so also out-of-competition doping controls "conducted anytime, anywhere, and without notice". Obtaining a licence in fact is not voluntary; on the contrary, without a licence the athlete cannot practise his profession and as an employer cannot be expected to employ an athlete who cannot practise his or her profession, the days of the sportsperson as a professional are numbered. When applying for a licence, the athlete faces a dilemma. Relinquishing his right to privacy, gives him the right to work; choosing the principle of right to privacy means relinquishing his right to work.

Doping may be considered "the scourge of the sport", but still sports governing bodies should give human rights their due place in the statutes and regulations.

In the FIFA/FIFPro Memorandum of Understanding of 2 November 2006 the two organisations propose to address as a special issue of global importance "The fight against doping and defence of the principle of 'individual case management' in doping matters".

INTERNATIONAL CYCLING UNION

Riders' commitment to a new cycling

The Puerto affair highlighted the serious problem of doping in cycling. This, like all other doping cases, greatly harms my sport and me personally.

The uncertainty surrounding the identity of riders and other people who could be involved in the Puerto affair is also very harmful and will continue to be until the case is closed.

Currently, there is a climate of suspicion. It is undermining the credibility of my sport and is eroding the trust of the public, authorities, organisers and my colleagues.

For these reasons, I want to make a contribution to putting the situation right and making cycling clean by signing the statement below, to demonstrate that I fully adhere to the principles defended by the International Cycling Union (UCI).

"I do solemnly declare, to my team, my colleagues, the UCI, the cycling movement and the public that I am not involved in the Puerto affair nor in any other doping case and that I will not commit any infringement to the UCI anti-doping rules. As proof of my commitment, I accept, if it should happen that I violate the rules and am granted a standard sanction of a two-year suspension or more, in the Puerto affair or in any other anti-doping proceedings, to pay the UCI, in addition to the standard sanctions, an amount equal to my annual salary for 2008 as a contribution to the fight against doping.

At the same time, I declare to the Spanish Law, that my DNA is at its disposal, so that it can be compared with the blood samples seized in the Puerto affair. I appeal to the Spanish Law to organise this test as soon as possible or allow the UCI to organise it.

Finally, I accept the UCI's wish to make my statement public".

Done in..... on 2008

Surname and first name:

Signature:

INTERNATIONAL CYCLING UNION

Press release: Michael Rasmussen's return to competition: the UCI's position

23.07.2009

The Danish rider Michael Rasmussen has expressed his intention to return to international level competition at the end of his two-year suspension, which concludes on 25 July.

Mr Rasmussen signed the "Riders' commitment to a new cycling", in which he pledged to make a contribution to the anti-doping campaign equal to his annual salary in the event that he was given a suspension of two years or more as a result of a doping violation.

Despite being handed a two-year suspension by the Court of Arbitration for Sport (CAS), Mr Rasmussen has not paid this sum. The UCI therefore takes the view that he should not resume competition. Nevertheless, in the case of Mr Vinokourov, who contested his pledge, the CAS decided that any rider who had signed the "Riders' commitment to a new cycling" should be permitted to return to competition pending a decision by the CAS on riders' obligations to honour their signed commitments.

As Mr Rasmussen has also appealed to the CAS to contest his pledge, the UCI has decided not to oppose Mr Rasmussen's return to competition, pending the CAS's judgment.

Nonetheless, the UCI strongly rejects the attitude displayed by Messrs Vinokourov and Rasmussen; despite committing serious violations of the anti-doping rules they have rejected any form of reparation by refusing to contribute to the costs of anti-doping procedures.

UCI Press Services

5.3.2.1.2. Headphones

INTERNATIONAL CYCLING UNION

Press release: UCI Management Committee accepts the lifting of radio ban for the Vittel-Colmar stage

16.07.2009

To put an end to the controversy which is compromising the running of the Tour de France, the International Cycling Union (UCI) Management Committee has decided not to repeat the experiment of a stage without radio communication on Friday 17th July.

The UCI Management Committee, it should be remembered, had given its approval, at the request of the organisers, to ban radios during two stages of the French race (14th and 17th July) as a trial and with a view to evaluating such a measure.

This proposition was discussed and supported by representatives of the riders (CPA), teams (AIGCP) and organisers (AIOCC) who met in Geneva on June 3rd and decided to submit the proposition to the UCI Management Committee.

The UCI pursues the debate on the appropriateness of using radios during racing and will continue to consult all those involved in cycling as far as their use is concerned.

UCI Press Services

5.4. National Collective Bargaining Agreements

A second source for identifying themes and issues that may be included in a European Social Dialogue in the professional cycling sector is collective bargaining agreements concluded at a national level. Issues at stake at the national level might also be important at an “umbrella” level.

Only in three Member States there is a collective bargaining agreement, thus a social dialogue leading to contractual and enforceable relations between the parties: France, Portugal and Spain, that is three out of six CPA national member associations.

BELGIUM

As far as the Social Dialogue at national level is concerned, in the national parity-based committee the riders are represented by ACV-SPORTA and the employers by the KBWB.

Belgian legislation makes the special provision that in social security matters the KBWB should be considered as the employer. This means that all riders with a Belgian license receive their wages through the KBWB which is in charge of salary payments.

From the point of view of employment law, it is of course the team that remains the responsible entity.

At the national level, Belgian professional cycling is subject to the international parity-based agreement (UCI standard contracts) where the Pro Tour and Pro Continental teams are concerned.

As yet, no specific collective bargaining agreement exists for professional cyclists. The only aspect that is regulated is that annually, a certain minimum wage is fixed. For the ordinary continental teams registered with the Federation the minimum wage is annually fixed in the parity-based committee (currently: 17,010 €). For Pro Tour and Pro Continental teams the minimum wage laid down in the international agreement applies.

The following important recommendations are made in the framework of a European Social Dialogue:

- a uniform system for the payment of prize money: one single paying institution
- stricter regulations for the teams' license applications:
 - prevent teams from shopping around; teams applying for foreign licenses in countries with which they have no links whatsoever; social security and taxes are usually not properly dealt with giving rise to all kinds of problems.
 - earlier licensing decisions: UCI now does not decide until the end of December - riders on teams that are not given a license are by that time no longer able to sign a professional contract elsewhere.

Report on “Promoting the EU Social Dialogue in the professional cycling sector”

Regional workshop: Brussels, 12 May 2009

Present:

Roberto Branco Martins: Asser International Sports Law Centre NL / Frank Hendricks KU Leuven/ Marinus Vromans Van den Eynde Legal / John van den Akker Vereniging van Beroepsfietsers (VVBW) and also present on behalf of the Dutch Cycling association/ Heinrich Wollny European Commission DG Employment & Social Affairs / Marc van Boterdael Belgian Cycling Association (KBWB) / Stijn Boeykens SportaVSB

The meeting starts with welcoming the participants to this round table session. Unfortunately mr. Geert Coeman cancelled his presence on the last moment. Mr. Coeman represents all the commercial cycling teams in the IPCT and had confirmed his presence. However, the remaining participants are all experienced professionals that are active in all the layers of stakeholders in Belgian cycling: the federation / the cyclist union / sports law and academia.

Structure of Belgian and Dutch cycling

The participants focus directly on the industrial relations within their respective cycling sector. The structure of the Belgian and Dutch cycling sector is more developed than the majority of other countries. In Belgium there is a collective bargaining agreement (CBA) in force in cycling. In fact the CBA in Belgium is characterized as a tripartite agreement. The riders are represented by the Sporta-VSB, the riders' association. The counterpart are the teams, these are gathered in a special committee within the Cycling Association. The negotiations take place "within the shadow" of the association as the association organizes this "paritair" comité and acknowledges the outcome of the bargaining of the parties. Hence, the cycling association becomes jointly responsible for respecting the social status of the riders. In Belgium there are 4 professional teams working with employment contracts. One team, the professional continental team Topsport Vlaanderen, works with other types of contracts or another type of contractual link between team and riders. This team works with riders that are employed by the Flemish government, they have a direct contract with Flanders.

In the Netherlands the riders are represented by the VVBW and the teams have no direct umbrella organization defending their collective interest on labour issues. In the Netherlands the teams work with employment contracts and there are three professional teams competing at the world stage and smaller teams where the riders are linked by contracts not directly being employment contracts. The regular structure for cycling teams is that there is a cycling foundation to serve as the basis for a team and there is a limited company next to the team, run by a main sponsor, that enters into contractual relations. A characteristic for Dutch cycling is that the riders may benefit from a specifically designed pension fund where there is a tax advantage if the rider receives the amount of money that he collected during his career, after the end of his active riding career. However, despite the existence of the VVBW and a long tradition in cycling, the necessity for a CBA in Dutch cycling only came to the surface relatively recent. The reason was an emblematic court case between a rider Thorwald Veneberg and the main Dutch professional cycling team, Rabobank. Veneberg had been riding for Rabobank for six years, every year on a fixed term contract with the duration of 1 year. After the 6th year Rabobank informed the rider that they were not going to offer him a new contract. Veneberg filed a claim against Rabobank stating that in essence he had a contract for indefinite time due to the applicability of the Dutch "Wet Flexibiliteit en Zekerheid". This law factually implements the EU directive 1999/70 on fixed term contracts for the Netherlands. One of the characteristics of this law is that after the use of three fixed term contracts for the same employee the employment relation for a fixed term automatically converts into a contract of indefinite time. The intention of the law is to protect the rights of fixed term workers as regards of other workers. For Rabobank the consequence would be that it had two options: to continue to employ the rider and start a time-consuming and uncertain process to dismiss him according to general Dutch employment law; or to dismiss the rider and to pay him a serious amount of damages. On the other hand, if a rider sees his contract convert from a fixed term contract to a contract of indefinite time he has a month to give notice and leave one employer for another, which leaves the team with uncertainty as regards the composition of the team. For these reasons the parties are now negotiating the contents of a specific cycling CBA. The VVBW has received support from the side of the Dutch football players' union because they are more experienced as regards this issue. The content of the discussion focuses around the abolishment of the abovementioned flex-law but also on issues as insurance and social security for riders, holidays, working calendar.

International developments and Social Dialogue

The discussion centers around the recent international developments and the possibility to conclude a European CBA. At this moment in time, according to the participants, it might be difficult to create a purely employment law focused CBA along the lines of the European Social Dialogue. The teams are not well organized, their organization is fragmented as the AIGCP focuses more on employment issues but is not very well organized and the IPCT has more commercial goals that it seeks to fulfill.

However, there exists already a set of rules that has been agreed upon by the relevant stakeholders in international cycling and that has been laid down in a standard UCI agreement. Important elements

that are inserted in this agreement is the existence of a minimum wage amount and the mandatory insurance for riders. Therefore, the participants are ready to state that in fact there exists a CBA in cycling, but not on an official level. This leads to an uncertainty as regards the implementation of the agreement on the national level, as the status of the agreement is that of a mere private agreement. It depends on the place where the employer of the rider is established what employment law is applicable to the riders' contract. This obviously leads to problems when riders are part of teams based in one country but factually carry out work throughout the whole world and they live in, again, another country than the country of establishment of their employer. A solution to this aspect is welcomed by the participants but its attainability is questioned. The perspective of the European Commission as regards the European Social Dialogue in football is reflected in order to illustrate how a successful SD in sports functions and was established.

Comparison to other sectors in sport (football)

In professional football there is currently a Sectoral Social Dialogue committee in operation. The committee is composed of the representatives of workers FIFPRO and the representative of the employers EPFL, the organization of the European Leagues. UEFA has been accepted as the chairperson of the SD in football but it has no official votes whatsoever and the opinion of UEFA does not need to be recognized, it is an associate party. The European Club Association (ECA) has the status of an "hybrid" social partner. The participation of this grouping of more than 100 clubs with a presence in every European (not only EU) state guarantees that implementation of a negotiation result may be disseminated throughout the whole of Europe and to those countries where the EPFL does not have a representative. The ECA in itself does not meet the criteria for being a social partner, therefore they may only be active in the SD as an additional component to the EPFL.

The main social partners are allowed to make agreements and these agreements may be implemented through national structures, may it be a collective bargaining agreement on the national level or ultimately through the issuing of a directive deriving from the result of the bargaining between the social partners. However, only a handful of directives on an EU level have resulted out of the European Social Dialogue. In addition to this, not every EU Member State has a collective bargaining structure in force on its national territory. Therefore the participation of UEFA in the Social Dialogue in football has as a major advantage that the UEFA structures may be used to implement the result of the bargaining between the social partners.

Issues to take into consideration in relation to SD in Cycling

Just as in the football sector, there are a multitude of organizations active in international cycling. This raises the questions on who needs to be a part of a Social Dialogue in cycling. The basics of the EU Social Dialogue cannot be changed, it is still addressed to representatives of employers and workers. However, due to the scattered organization of mainly the employers in cycling, a "classical" social dialogue seems difficult to realize. The gaps may be filled by the UCI, as the world governing body it may act as UEFA in football: striving to implement the SD result in international cycling through its association regulations in countries where no social structures exist (yet). Perhaps through the system of issuing licenses to participate in cycling events. However, one needs to be careful that the factual situation, that of the UCI standard contract, does not change as one of the reasons for introducing a SD in cycling is the creation of harmony and legal certainty. There is no governing body in cycling specifically for Europe.

Another possible participant in a EU SD should be ASO or more general the event organizers. Through their participation as an associated party it may be guaranteed that also the event organizers acknowledge their role in cycling and their social responsibility.

The issues that could be part of a SD on an EU level are the issues that are mentioned in the Belgian CBA and topics such as licensing systems, transfer or registration windows, clear guidelines on payments and prize money, social security issues, insurances and a pan-EU pension fund system.

Conclusion

All the participants have expressed the benefits deriving from a potential European Social Dialogue. The position and the role of the current stakeholders in cycling must however be respected and a potential role of these stakeholders within an EU SD must be analyzed. The same is applicable to the current international agreement that exists within the structures of the UCI. If this is a de facto collective bargaining agreement one should assess in what manner this CBA is enforced on the national level of the member states. Perhaps the outcome of the current study leads to a renewed thinking and to a constructive approach on the right level.

FRANCE

In France the collective bargaining agreement (Accord collectif des coureurs cyclistes professionnels) is concluded between UNCP and the Association des Groupes Cyclistes Professionnels (AGCP) in the Commission Paritaire du Cyclisme Professionnel.

In the collective bargaining agreement, issues and themes are:

ACCORD COLLECTIF DES COUREURS CYCLISTES PROFESSIONNELS

PREAMBULE

L'efficacité de l'accord collectif de travail dépend de sa capacité à améliorer le bon fonctionnement des groupes cyclistes professionnels en conciliant les impératifs économiques et les aspirations sociales de leurs salariés.

Pour tendre vers cet objectif, l'accord collectif de travail doit donc naturellement prendre en compte les spécificités du sport cycliste professionnel et de ses contingences économiques afin de proposer un cadre conventionnel approprié.

C'est dans cet esprit que les représentants des coureurs cyclistes professionnels et de leurs employeurs ont souhaité concevoir le présent accord collectif.

Ils souhaitent ainsi apporter des réponses adaptées aux besoins spécifiques recensés dans le cadre de leur activité.

La réalisation de cet objectif commun contribuera ainsi à préserver et à améliorer le bon fonctionnement du cyclisme professionnel français et notamment sa reconnaissance sur le plan international.

Les représentants des coureurs souhaitaient depuis plusieurs années initier un tel accord collectif et avaient, à cet effet, proposé un premier projet. Ils se félicitent donc du présent accord et de l'esprit qui anime les parties à la négociation.

Il était dès lors important de décliner dans ce préambule les principes directeurs que les parties doivent prendre en considération dans leurs négociations.

- Tout d'abord, la profession de cycliste est probablement l'une des plus anciennes dans le secteur du sport. A ce titre, il existait avant même la conclusion du présent accord un ensemble de règles d'origines et de valeurs variables que les parties ne pouvaient ignorer dans la conduite de leurs négociations.

Ces règles sont notamment issues des usages propres à la profession de coureur cycliste, de l'accord paritaire négocié au niveau international, de la réglementation tant de l'Union Cycliste Internationale que de la Fédération Française de Cyclisme et du contrat type du coureur cycliste professionnel. Il était donc nécessaire d'appréhender la valeur et le positionnement de ces règles dans la hiérarchie des normes afin que le présent accord puisse ou non y déroger ou encore les y intégrer.

Le fait que l'accord collectif soit présenté dans sa version définitive à la Ligue du Cyclisme Professionnel Français pour qu'elle puisse, si elle le souhaite, y apposer sa signature, a une grande signification. Cet acte démontre la volonté des parties de prendre en compte tout au long de leurs négociations la réglementation fédérale et de la Ligue du Cyclisme Professionnel Français, en tant que structure dédiée à la gestion du cyclisme professionnel.

Les parties ont entendu inscrire leurs négociations dans le cadre d'un « accord sectoriel » au sens du chapitre XII de la convention collective nationale du sport, ce qui implique, le respect de ces dispositions et des possibilités de dérogation.

Les partenaires sont d'accord pour prendre en compte les dispositions de la loi n° 2004-1366 du 15 décembre 2004 qui leur donne la possibilité de mettre en œuvre un dispositif de rémunération de l'image collective de l'équipe, dans la mesure où serait mis en place le principe d'une cotisation formation, le financement d'une mutuelle complémentaire et d'une assurance perte de licence.

- Il est par ailleurs évident que le coureur cycliste n'est pas un salarié comme les autres. C'est un sportif professionnel dont la relation de travail s'inscrit dans le cadre atypique du contrat à durée déterminée d'usage. Mais aussi et surtout, le coureur cycliste professionnel se distingue des autres sportifs par ses conditions de travail qui lui sont propres.

Son rythme de travail, ses congés et ses repos sont organisés en fonction du calendrier des compétitions. Il est ainsi amené, durant la période des compétitions, à se déplacer régulièrement durant plusieurs jours avec son groupe cycliste, en France comme à l'étranger, selon un horaire qu'il est difficile d'appréhender. A contrario, le coureur est presque sédentaire durant la période d'entraînement et jouit alors d'une réelle autonomie pour mener à bien sa préparation.

Il en résulte une nécessaire prise en compte de ces paramètres au niveau de la définition du temps de travail, de l'organisation des rythmes de travail, de la prise des congés et des repos.

- Le cyclisme, lorsqu'il est pratiqué par des professionnels, implique une condition physique irréprochable. La protection de la santé et de la sécurité du coureur, tant au niveau de la prévention des risques que du traitement des accidents est donc d'une importance capitale. Il en est ainsi des mesures visant à améliorer le suivi médical, les relations avec les services de santé du travail et la prévention et la lutte contre le dopage.

- La brièveté de la carrière du coureur cycliste professionnel doit également être prise en compte. L'intensité de sa carrière et le fait qu'il soit exclusivement salarié de son groupe cycliste ne lui permet pas toujours de préparer sa reconversion professionnelle. Il peut en résulter des situations d'échec social. Il est donc nécessaire, par des moyens appropriés et compatibles avec les impératifs sportifs, de favoriser la reconversion des coureurs.

D'une manière générale, les parties ont entendu placer la santé, l'éthique et la morale sportive au premier rang de leurs actions.

Enfin, il est important que le présent accord ne soit pas figé dans sa rédaction initiale et ce, afin de préserver son efficacité. Il faudra donc l'adapter et l'améliorer en fonction des évolutions de la profession, du contexte socio-économique ou encore du cadre législatif, réglementaire et conventionnel à venir.

I. CHAPITRE I - DISPOSITIONS GENERALES

Article 1: Champ d'application / définitions

Le présent accord règle les rapports entre les groupes cyclistes professionnels au sens de la réglementation F.F.C / L.C.P.F d'une part et leurs salariés coureurs cyclistes professionnels d'autre part.

Le "groupe cycliste" se définit comme la structure de gestion de l'équipe cycliste.

Le "coureur cycliste professionnel" se définit comme le salarié qui fait du cyclisme sa profession exclusive.

Article 2: Les parties signataires ou ayant adhéré ultérieurement

Les signataires de la présente convention sont:

du côté employeur:

l'association "AC 2000" regroupant la majorité des groupes cyclistes professionnels du côté salarié:

L'Union Nationale des Cyclistes Professionnels, syndicat professionnel des coureurs cyclistes français adhérent de la F.N.A.S.S (Fédération Nationale des Associations et Syndicats de Sportifs) dont la représentativité a été, dans le secteur du sport, admise en application des critères définis à l'article L 133-2 du Code du Travail, le 5 juillet 2000 par décision du Ministre chargé du travail.

Article 3: Adhésion au présent accord

Conformément à l'article L. 132-9 du Code du travail, toute organisation syndicale représentative de coureurs cyclistes professionnels ainsi que toute organisation syndicale ou association ou groupement de groupes cyclistes professionnels, ou des groupes cyclistes professionnels pris individuellement, peuvent adhérer au présent accord à la condition que ce soit en totalité et sans réserve.

Article 4: Durée

Le présent accord a été signé à ROSNY SOUS BOIS le 29 septembre 2006 pour une durée indéterminée.

Article 5: Forme juridique de l'accord / entrée en vigueur

Le présent accord a vocation à devenir un accord sectoriel de la convention collective nationale du sport, en application de son chapitre relatif au sport professionnel.

A cet effet, la publicité et le dépôt légal de l'accord ainsi que la procédure d'intégration dans le chapitre 12 de la convention collective nationale du sport seront effectués de manière commune par les parties dans le délai d'un mois à compter de sa signature.

Indépendamment de la réalisation de cet objectif, il est d'application immédiate dans son champ d'application défini à l'article 1 ci-dessus, sous réserve de l'accomplissement des formalités prévues à l'article L. 132-10 du Code du travail.

Article 6: Economie du texte

Le présent accord négocié entre les parties constitue un tout indivisible qui ne peut faire l'objet d'une dénonciation partielle.

Toutes dispositions du présent accord, ses avenants et annexes sont impératives. Il ne peut y être dérogé que dans un sens plus favorable pour le coureur par accord d'entreprise conclu au sein des groupes cyclistes .

Article 7: Suivi de l'application de l'accord collectif

Après un an d'application de l'accord collectif à compter de son entrée en vigueur, les parties conviennent de se revoir afin de dresser un premier bilan de son application.

Une réunion de la commission paritaire sera spécialement prévue à cet effet dans les 6 mois suivant la date anniversaire de l'entrée en vigueur de l'accord. Il en sera de même les années suivantes dans les mêmes conditions.

A cette occasion, les organisations signataires ou ayant adhéré s'efforceront de rassembler les éléments nécessaires à cette mission, notamment par sondage auprès des adhérents.

Article 8: Dénonciation

Le présent accord pourra être dénoncé par l'une des organisations signataires ou ayant adhéré et ce, par lettre recommandée adressée aux autres organisations signataires ou ayant adhéré au présent accord.

L'organisation qui dénonce adresse simultanément une copie de cette lettre recommandée à la L.C.P.F. ainsi qu'à la commission compétente au sein de la Convention collective nationale du sport.

La dénonciation prendra effet à l'expiration d'un préavis de 3 mois.

- Si la dénonciation émane de l'ensemble des organisations signataires ou y ayant adhéré, l'accord continuera à produire effet au terme de ce préavis durant une période d'un an ou jusqu'à la signature de l'accord destiné à lui être substitué. En effet, dans les 3 mois suivant l'expiration du préavis, une nouvelle négociation doit s'engager entre les parties à la demande de l'une d'entre elles.

Si, à l'expiration des délais mentionnés ci-dessus, les négociations n'ont pas abouti, les coureurs cyclistes professionnels continueront à bénéficier des avantages qu'ils ont acquis à titre individuel en application de l'accord.

- Si la dénonciation n'émane que d'une partie des signataires employeurs ou salariés de l'accord ou ayant adhéré, le présent accord continue à exister et à produire ses effets dans les relations de travail au sein des Groupes cyclistes qui ne sont pas concernés par la dénonciation.

Article 9: Révision

Chaque organisation signataire ou ayant adhéré peut demander la révision de tout ou partie du présent accord selon les modalités suivantes:

- Toute demande de révision devra être adressée par lettre recommandée avec accusé de réception à chacune des autres organisations signataires ou adhérentes et comporter, sous peine d'irrecevabilité, outre l'indication des dispositions dont la révision est demandée, des propositions de remplacement. Tout accord de révision sera présenté matériellement de manière à faire apparaître les articles éventuellement modifiés. Dès sa signature suivie des procédures légales de dépôt prévues à l'article L 132-10 du Code du Travail, le texte de l'accord de révision se substitue à l'ancien.
- Le plus rapidement possible et au plus tard dans un délai de 3 mois suivant la réception de cette lettre, les organisations devront ouvrir une négociation en vue de la rédaction d'un nouveau texte.
- Les dispositions de l'accord dont la révision est demandée resteront en vigueur jusqu'à la conclusion d'un nouvel accord ou, à défaut, seront maintenues.
- Les dispositions de l'avenant portant révision, se substitueront de plein droit à celles de l'accord qu'elles modifient et sont opposables à l'ensemble des employeurs et des salariés liés par l'accord, soit à la date qui en aura été expressément convenue, soit, à défaut, à partir du jour qui suivra son dépôt auprès du service compétent.

Article 10: Traitement des avantages

Le présent accord ne peut en aucun cas être la cause d'une réduction d'avantages individuels acquis antérieurement à son entrée en vigueur.

Les primes et gratifications à caractère exceptionnel et non répétitives, figurant comme telles sur le bulletin de paye, versées antérieurement à la signature du présent accord, ne seront pas considérées comme des avantages acquis au sens du premier alinéa ci-dessus.

Les avantages reconnus par le présent accord ne peuvent en aucun cas s'interpréter comme s'ajoutant aux avantages déjà accordés pour le même objet dans certains groupes cyclistes professionnels.

Article 11: Perte de la qualité de groupe cycliste professionnel

Lorsqu'un employeur perd la qualité de groupe cycliste professionnel, le présent accord continue, en vertu du dernier alinéa de l'article L 132-8 du Code du Travail, à produire effet pour les contrats conclus avant la perte de la qualité de groupe cycliste professionnel jusqu'à ce qu'un accord d'adaptation soit conclu au sein du groupe cycliste et, au plus tard, jusqu'à l'expiration d'une période d'un an à compter de la mise en cause du présent accord.

Article 12: Liberté d'opinion - Droit syndical

Les parties entendent réaffirmer leur attachement aux principes du droit syndical et à la liberté d'opinion par référence aux dispositions contenues dans les articles L. 412-2 et suivants du Code du travail ainsi que dans le Chapitre de la Convention Collective Nationale du Sport traitant de ces thèmes.

Article 13: Représentation des coureurs au sein du Groupe cycliste

Les coureurs cyclistes professionnels étant embauchés dans le cadre de contrats de travail à durée déterminée d'usage, les parties ont entendu tenir compte de cette spécificité en adaptant la durée de leur mandat de représentant du personnel et ce, afin d'éviter les vacances de postes. Par conséquent la durée des mandats de délégué du personnel et de représentant au comité d'entreprise d'un coureur est de 2 ans.

En ce qui concerne le seuil de déclenchement des élections des délégués du personnel, il est rappelé que, conformément à l'article 3.3.1 de la convention collective nationale du sport, de telles élections doivent être organisées dès lors que le seuil de 7 salariés est atteint pendant 12 mois, consécutifs ou non au cours des trois années précédentes.

Article 14: Négociation collective au sein du Groupe cycliste

La négociation des accords collectifs concernant les coureurs cyclistes est engagée du côté du groupe cycliste, par son représentant légal.

Du côté salariés, deux voies sont possibles:

- Ou bien participent à ces négociations les délégations de chacune des organisations syndicales représentatives de droit, ou ayant apporté la preuve de leur représentativité au sens de l'article L 133-2 du Code du Travail.

L'accord n'entre en vigueur que s'il est signé par une ou des organisations ayant obtenu plus de la moitié des suffrages exprimés au 1er tour des élections du comité d'entreprise ou à défaut des délégués du personnel, apprécié en fonction du résultat des élections du collège réservé aux coureurs.

- Ou bien, à défaut pour l'une au moins de ces organisations d'avoir valablement procédé à la désignation d'un délégué syndical conformément aux articles L 412-11 du Code de Travail, l'accord est négocié au sein du comité d'entreprise (à défaut avec les délégués du personnel). L'institution arrête sa position à la majorité de ses membres élus titulaires. L'accord n'entre en vigueur qu'après approbation par la commission paritaire prévue à l'article 15 ci-dessous. La commission exerce son pouvoir en opportunité. Elle prend ses décisions dans le délai d'un mois à compter de sa saisine par la partie la plus diligente.

Article 15: Commission paritaire

Article 15-1: Composition

La Commission paritaire est composée de représentants des organisations d'employeurs et de coureurs qui en sont signataires ou qui ont adhéré par la suite au présent accord en totalité et sans réserve.

Par principe, le nombre de sièges est fixé à 2 par organisation syndicale.

Chaque organisation syndicale compose sa délégation comme elle l'entend. Dans tous les cas, les parties s'engagent à limiter les absences aux cas de force majeure et en tout état de cause s'engagent à éviter la multiplication des interlocuteurs.

Article 15-2: Compétences

La Commission paritaire a compétence pour:

Discuter de toute proposition de modification ou d'aménagement de la convention résultant notamment d'une demande de révision ou de dénonciation et conclure le cas échéant les accords nécessaires;

“Agréer” les accords d'entreprise conclus au sein des groupes cyclistes en application de l'article ci-dessus et interpréter un accord collectif d'entreprise conclu au sein d'un groupe cyclistes si les parties à celui-ci le demandent;

Interpréter les dispositions de l'accord collectif;

Tenter de concilier les parties en cas de conflits individuels ou collectifs.

Article 15-3: Fonctionnement général

Article 15-3-1: Présidence / Secrétariat / Siège / Correspondances

La Commission désigne en son sein un Président choisi alternativement chaque année parmi les représentants des employeurs et des salariés. La présidence jusqu'à la fin de la première saison sportive d'existence de l'accord est assurée par un représentant des coureurs.

Il est par ailleurs désigné un Président suppléant qui remplace le Président titulaire en cas d'empêchement de ce dernier.

Le Président assure également le secrétariat et la communication de tous documents entre les membres de la commission.

La Présidence de la commission paritaire ayant vocation à changer tous les ans, son secrétariat est fixé pour des raisons de commodités au siège de la L.C.P.F.

Les procès-verbaux, les décisions, les avis, les protocoles d'accord et de manière générale tout document établi en application des missions de la commission paritaire sont consignés dans un registre spécial prévu à cet effet, en fonction du type de mission dont il s'agit.

Toute correspondance est à adresser à “Commission paritaire de l'accord collectif des cyclistes professionnels - Monsieur le président”

Article 15-3-2: Convocation et ordre du jour

L'ordre du jour est fixé par le président et communiqué à toutes les organisations au plus tard 8 jours avant la date de la réunion. Le président est tenu d'inscrire à l'ordre du jour toute question ou sujet qui

lui aura été soumis par écrit par l'une des organisations signataires ou ayant adhéré, au plus tard 15 jours avant la date de la réunion.

La Commission se réunit au minimum 1 fois par an avant le 15 juin dans le cadre minimum de la procédure de suivi de l'application de l'accord collectif prévu à l'article 7. Lors de cette réunion seront notamment traités les salaires minima.

Article 15-3-3: Mode de communication interne

Sauf en ce qui concerne les règles particulières prévoyant un autre mode de communication, notamment en matière de révision et de dénonciation, la communication par message électronique sera dans la mesure du possible privilégiée.

Article 15-4: Règles applicables en cas de modification et d'aménagement de l'accord

Outre les règles applicables en matière de révision et de dénonciation, les parties organiseront si nécessaire leurs négociations dans le cadre d'un accord de méthode.

Article 15-5: Règles applicables en matière d'interprétation

Tout coureur ou groupe cycliste peut saisir la Commission afin de lui demander un avis d'interprétation sur une ou plusieurs dispositions du présent accord, ses avenants ou ses annexes.

Cette demande est adressée par lettre recommandée au Président de la commission paritaire.

Ce dernier juge si nécessaire ou non de réunir une commission spécialement à cet effet. En tout état de cause, il doit transmettre aux membres de la commission copie de la demande.

La commission rend ensuite un avis pris à la majorité de ses membres présents ou représentés.

Le collège des employeurs et le collège des coureurs doivent disposer d'un nombre égal de voix et ce, peu important le nombre de sièges dont ils bénéficient par ailleurs. Pour garantir cette égalité, chaque collège dispose d'un nombre de voix égal au produit du nombre de membres présents ou représentés du collège employeur par le nombre de membres présents ou représentés du collège salarié. Chaque membre dispose ensuite d'un nombre de voix égal au nombre de membres présents ou représentés du collège auquel il n'appartient pas.

En cas de partage des voix ne permettant pas d'exprimer un avis, les membres de la commission auront la possibilité de désigner d'un commun accord une personne extérieure choisie sur la liste des conseillers du C.N.O.S.F, qui s'il l'accepte, rendra un avis d'interprétation qui sera ensuite communiqué au coureur ou au groupe cycliste ayant fait la demande.

Article 15-6: Règles applicables en matière de conciliation

La commission peut-être saisie à la demande d'un coureur ou d'un groupe cycliste, en vue d'exercer une mission de conciliation suite à un litige individuel ou collectif. Elle peut l'être également par demande conjointe du coureur et du groupe cycliste.

Cette demande est adressée par lettre recommandée au Président de la commission paritaire et comprend un exposé des demandes et des pièces qui sont présentées à l'appui.

La Commission se réunit alors dans le délai de 1 mois et convoque les parties à cet effet 15 jours à l'avance par lettre recommandée avec accusé de réception mentionnant la date, l'heure et le lieu de l'audience.

La partie mise en cause dispose d'un délai de 8 jours pour signifier son désaccord en vue de cette conciliation, faute de quoi elle est réputée en avoir accepté le principe.

La commission peut dans ce cas n'être composée, au choix du président, que d'un représentant de la partie patronale et d'un représentant de la partie salariée. En cas de conflit d'intérêt d'un ou plusieurs membres de la commission, un membre ou plusieurs membres indépendants peuvent le cas échéant être nommés.

La séance ne peut valablement avoir lieu qu'en présence:

- des membres de la commission dans sa composition restreinte ou complète;
- du coureur;
- du représentant légal du groupe cycliste dûment mandaté à cet effet.

Le coureur ou le groupe cycliste peut se faire assister par un avocat ou un délégué syndical de son choix.

En cas de conciliation, un protocole d'accord est signé, lequel a force exécutoire en vertu de l'article 2044 du Code civil. Il est également signé par les membres de la commission paritaire.
L'impossibilité de concilier est consignée dans un procès-verbal signé du coureur, du groupe cycliste et des membres de la commission paritaire.

Article 15-7: Remboursements des frais exposés

Chacune des organisations prendra en charge les frais de ses membres occasionnés par la participation aux réunions de la commission.

Article 15-8: Assistance technique

Chacune des organisations pourra se faire assister de personnes qualifiées en fonction des besoins et à la demande de l'une ou l'autre des parties.

Article 16: Règlement intérieur

Le règlement intérieur est obligatoire au sein de chaque groupe cycliste dont l'effectif atteint au moins 20 salariés.

Il a exclusivement pour objet de fixer des règles dans les thèmes visés à l'article L. 122-34 du Code du travail.

Les règles contraires au droit applicable et aux libertés fondamentales sont prohibées. Le règlement intérieur ne peut notamment prévoir de sanctions pécuniaires. Il ne peut davantage contenir de dispositions restreignant la liberté des coureurs concernant l'exploitation de leur image individuelle, au delà de ce qui justifie l'intérêt du groupe cycliste; à cet égard le règlement intérieur doit respecter les dispositions des articles relatifs au droit à l'image du présent accord.

CHAPITRE 2: CONTRAT DE TRAVAIL

Article 17: Qualité du coureur à l'embauche: distinction entre coureur cycliste "professionnel" et coureur cycliste "néo-professionnel".

Le coureur cycliste peut être embauché en qualité de "coureur cycliste professionnel" ou en qualité de "coureur cycliste néo-professionnel".

Le coureur cycliste "néo-professionnel" se distingue du coureur cycliste professionnel par certains critères définis par l'U.C.I et notamment l'âge, la durée du contrat de travail et la rémunération.

Néanmoins, tout comme le professionnel, le néo-professionnel fait du cyclisme sa profession exclusive et il est soumis aux mêmes obligations vis à vis de son groupe cycliste employeur.

Dans ces conditions et à défaut de stipulations contraires, toutes les dispositions du présent accord s'appliquent indifféremment au coureur professionnel et au coureur néo-professionnel.

Article 18: Nature du contrat de travail

L'emploi de coureur cycliste constitue un emploi pour lequel il est d'usage constant de ne pas recourir au contrat de travail à durée indéterminée en raison de la nature de l'activité exercée au sein d'un groupe cycliste professionnel et de son caractère par nature temporaire.

Cette activité s'inscrit donc dans le champ d'application des articles L 122-1-3ème et suivants et D 121-2 du Code du Travail.

Article 19: Objet du contrat de travail

Le contrat de travail du coureur cycliste a pour objet principal de mettre à la disposition de son groupe cycliste, contre rémunération, son potentiel physique et ses acquis techniques, de les améliorer, en vue de préparer et de réaliser une performance sportive dans le cadre ou non d'une compétition.

Des prestations annexes complémentaires à cette activité principale peuvent également rentrer dans le cadre de l'objet du contrat de travail.

Article 20: Conclusion du contrat de travail

Le contrat de travail doit être établi au minimum en 5 exemplaires:

- 1 pour l'équipe
- 1 pour le coureur

- 1 pour la FFC / L.C.P.F
 - 1 pour la C.A.C.G (Commission d'aide et de contrôle de gestion)
 - 1 pour le commissaire aux comptes agréé par l'UCI (sauf pour les équipes Continentales UCI)
- Le modèle utilisé doit inclure à minima le contenu du contrat-type figurant en annexe 1 du présent accord.

Le contrat doit être dactylographié. Chaque page doit être numérotée et indiquer le nombre total de pages du contrat. Chaque partie doit signer la dernière page du contrat en y portant la mention manuscrite "lu et approuvé" et doit au minimum parapher les autres pages du contrat.

Article 21: Durée du contrat de travail

Tout contrat doit avoir une durée déterminée qui se termine le 31 décembre.

Afin d'assurer une plus grande stabilité dans les relations de travail, les partenaires sociaux ont souhaité qu'un contrat de travail ne puisse pas avoir une durée supérieure à l'engagement du partenaire principal du groupe cycliste.

Le tableau ci-dessous récapitule la durée des contrats de travail en fonction de leur date d'entrée en vigueur et de la catégorie du coureur, à l'exception des équipes continentales UCI.

	Entrée en vigueur du contrat	Durée minimum (1)	Durée maximum
COUREUR PROFESSIONNEL	Avant le 1er juillet de l'année N	31 décembre de l'année N	Durée de l'engagement du partenaire principal du groupe cycliste, le terme du contrat de travail devant être un 31 décembre
	Après le 30 juin de l'année N	31 décembre de l'année N + 1	
COUREUR NEO-PROFESSIONNEL	Avant le 1er juillet de l'année N	31 décembre de l'année N + 1	
	Après le 30 juin de l'année N	31 décembre de l'année N + 2	

(1) Sans que cette durée puisse être supérieure à la durée de l'engagement du partenaire principal du groupe cycliste.

Pour les Equipes continentales UCI, la durée minimum du contrat est, dans tous les cas, de 12 mois. La durée du contrat peut aller au-delà de l'engagement du partenaire principal et devra dans ce cas prendre fin le 31 décembre suivant la date anniversaire de l'entrée en vigueur de ce contrat.

Article 22: Clause de renouvellement automatique

Les parties ont la faculté d'insérer dans le contrat de travail une clause par laquelle le contrat sera renouvelé automatiquement pour une ou plusieurs saisons sportives supplémentaires.

Pour être valable, cette clause doit mentionner:

le nombre de saisons visé par le renouvellement;

le terme précis du contrat ainsi renouvelé;

les conditions dans lesquelles le coureur et son groupe cycliste peuvent dénoncer cette clause à savoir la forme de cette dénonciation qui ne peut intervenir que par lettre remise en mains propres contre décharge ou par lettre recommandée avec accusé de réception et la date jusqu'à laquelle peut intervenir cette dénonciation.

Ce renouvellement qui doit prendre fin également un 31 décembre, ne peut avoir un terme supérieur à la durée de l'engagement du partenaire principal.

Article 23: Période d'essai

Quelle que soit leur date de signature, les contrats des coureurs cyclistes ne peuvent pas comporter de période d'essai.

Article 24: Clause de prévenance

Conformément aux usages et indépendamment de toute clause de renouvellement contractuelle, le groupe cycliste ou le coureur qui n'a pas l'intention de renouveler à son terme le contrat, devra en informer par écrit l'autre partie au plus tard le 1er octobre précédent le terme de ce contrat. Cette information pourra se faire soit par lettre remise en mains propres contre décharge soit par lettre recommandée avec accusé de réception.

Article 25: Exécution du contrat de travail

Conformément aux dispositions du Code du Travail, la partie envers laquelle l'engagement n'a pas été exécuté a le choix, ou de forcer l'autre à l'exécution de la convention lorsqu'elle est possible, ou de demander la résolution avec dommages et intérêts.

Toutefois et indépendamment des droits des parties de poursuivre en justice la résolution, le litige peut être porté devant la commission paritaire prévue à l'article 15 du présent accord collectif.

De plus, aucune disposition prévue par un règlement spécifique des instances dirigeantes sportives internationales ou nationales ne saurait restreindre les droits de recours des coureurs devant la juridiction légalement compétente.

Article 26: Fin du contrat de travail

Il est rappelé que le contrat de travail du coureur cycliste professionnel est conclu pour une durée déterminée qui doit en principe aller jusqu'à son terme. Aussi, la rupture anticipée du contrat de travail, c'est à dire avant son terme, doit constituer une exception.

Article 26-1: Fin normale du contrat de travail à l'arrivée de son terme

Au terme du contrat de travail, le coureur est libre de conclure un contrat de travail avec un autre groupe cycliste.

En aucun cas l'ancien employeur ne peut restreindre cette liberté en exigeant notamment le versement d'une indemnité.

Toute clause contractuelle portant atteinte à ce principe est réputée nulle et non écrite.

Article 26-2: Rupture anticipée du contrat de travail

Article 26-2-1: Cas de ruptures prévues par le Code du Travail

- a) Rupture du contrat par accord des parties

Un contrat peut être rompu en cours d'exécution et à tout moment avec l'accord des deux parties.

- b) Rupture du contrat pour faute grave

Elle résulte d'un fait ou d'un ensemble de faits qui constituent une violation des obligations découlant du contrat de travail d'une importance telle qu'elle rend immédiatement impossible le maintien des relations contractuelles.

Dans le cas d'une rupture à l'initiative du groupe cycliste, la procédure disciplinaire devra être respectée conformément au Code du Travail. La notification de la rupture devant se faire par lettre recommandée avec accusé de réception.

Dans le cas d'une rupture à l'initiative du coureur, la prise d'acte de la rupture devra être réalisée par lettre recommandée avec accusé de réception.

En tout état de cause, la faute grave doit être appréciée en fonction des spécificités de l'activité du cyclisme professionnel.

- c) Rupture du contrat pour cas de force majeure

La force majeure est constituée et autorise la résiliation immédiate du contrat lorsque le fait invoqué est imprévisible, irrésistible, insurmontable et extérieur aux parties.

La rupture du contrat de travail doit être notifiée par lettre recommandée avec accusé de réception.

- d) Rupture du contrat à l'initiative du coureur lorsqu'il justifie d'une embauche en contrat à durée indéterminée par un autre employeur

La rupture du contrat de travail doit être notifiée au groupe cycliste par lettre recommandée avec accusé de réception ou par lettre remise en mains propres contre décharge.

Dans cette hypothèse, et sauf accord des parties, le coureur est tenu de respecter une période de préavis tel qu'il résulte des dispositions légales en vigueur.

Article 26-2-2: Clauses de résiliation unilatérale anticipée

Les clauses de résiliation unilatérales anticipées sont interdites.

Article 26-2-3: Information suite à la rupture du contrat

La FFC / L.C.P.F. doit être destinataire d'une copie du document justifiant la rupture du contrat de travail et ce dans les conditions suivantes:

S'il s'agit d'une rupture pour faute grave, pour force majeure, pour prendre un contrat à durée indéterminée, l'auteur de la rupture (c'est à dire le coureur ou le groupe cycliste) doit communiquer copie du courrier à la FFC / L.C.P.F. dans les 48 heures de son envoi.

S'il s'agit d'une rupture d'un commun accord, cette obligation incombe au groupe cycliste qui doit communiquer copie du protocole d'accord à la FFC / L.C.P.F. dans les 48 heures de sa signature.

Article 26-2-4: Autorisation pour contracter avec un autre groupe cycliste

Indépendamment de la procédure d'information mentionnée à l'article précédent, tout coureur souhaitant contracter avec un autre groupe cycliste avant le terme du contrat qui vient d'être rompu doit en demander l'autorisation selon la procédure prévue par les règlements U.C.I.

Article 26-2-5: Conséquence de l'inaptitude physique sur le contrat de travail

En cas d'inaptitude physique définitive constatée par le médecin du travail ne permettant plus au coureur d'exercer son métier et après la procédure prévue par le Code du travail pour rechercher un reclassement, le groupe cycliste ne pourra pas s'opposer à la rupture du contrat de travail si elle est sollicitée par le coureur.

Dans ce cas, il sera procédé à une rupture amiable du contrat de travail.

En cas d'opposition du groupe cycliste, ce dernier devra assurer le paiement normal de la rémunération, sous déduction le cas échéant des indemnités que le coureur pourrait percevoir des organismes de sécurité sociale.

CHAPITRE 3: REMUNERATIONS

Article 27: Structure de la rémunération et salaires minima

La rémunération du coureur comprend un salaire mensuel fixe, dont le montant respecte les niveaux minima prévus en annexe 2 du présent accord. Cette annexe relative aux salaires prend en considération la catégorie du coureur (professionnel ou néo-professionnel) et la catégorie de son groupe cycliste professionnel.

La rémunération du coureur peut également comprendre au-delà du salaire minimum, des primes liées aux résultats sportifs individuels et (ou) collectifs.

Toute prime, indemnité ou autre avantage en nature s'entendent au-dessus du salaire mensuel fixe et ne peuvent être imputés sur celui-ci ni être pris en considération pour son calcul. Les conditions d'attribution de ces primes, indemnités ou avantages en nature doivent être expressément définies dans le contrat de travail.

Enfin, la rémunération du coureur cycliste peut comprendre une part liée à l'exploitation de l'image collective de l'équipe et dont les modalités de calcul sont définies en annexe 3 au présent accord collectif.

Une fiche de paye conforme aux dispositions du Code du travail devra être remise au coureur lors de chaque paiement.

Article 28: Obligations relatives aux rémunérations:

La rémunération fixe doit être payée dans la monnaie stipulée dans le contrat.

Le paiement doit se faire par virement au compte bancaire du coureur indiqué dans le contrat. Seule la preuve de l'exécution du virement bancaire fait preuve de paiement. La rémunération est payée au coureur en 12 mensualités égales, versées au plus tard le dernier jour ouvrable de chaque mois.

Les primes sous forme de salaire liées aux résultats sportifs obtenus par le groupe cycliste doivent être versées au plus tard à la fin de la saison sportive concernée.

En cas de retard dans le paiement de sa rémunération ou de tout avantage dû, le coureur a droit, aux majorations et intérêts suivants:

retard de 11 à 30 jours: majoration de 5% de la somme due
majoration de 10% de la somme due pour chacun des 5 mois ou fraction de mois de retard supplémentaire
à partir du début du sixième mois de retard, un intérêt de 2% par mois sur la somme et les majorations dues.

Dans les cas suivants, les majorations ne sont pas dues et l'intérêt de retard est réduit à 8% par an à partir de l'échéance:

si au plus tard 3 mois après cette échéance, le coureur n'a pas réclamé les arriérés devant l'instance compétente où n'a pas fait appel à la garantie bancaire.

si l'instance compétente décide que le non paiement résulte d'une contestation sérieuse.

Conformément aux dispositions du Code du travail, toute réclamation concernant les salaires, indemnités ou primes qui seraient dus à un coureur doit être formulée par ce dernier, dans un délai de cinq ans à compter du jour où le règlement aurait dû être effectué.

CHAPITRE 4: DUREE DU TRAVAIL ET REPOS

Article 29: Définition du temps de travail

Compte tenu de la spécificité de l'activité du coureur cycliste, la définition de son temps de travail prend en compte deux types de situation.

Tout d'abord, lorsque le travail du coureur est commandé par le groupe cycliste, ce qui comprend notamment les temps consacrés:

- aux compétitions proprement dites,
- aux entraînements collectifs notamment sous forme de stages,
- aux entraînements individuels sur route ou non, en la présence ou non du directeur sportif, selon les directives de ce dernier ou en application du programme de travail établi en accord avec le coureur,
- aux repas post et pré compétition pris en commun à la demande du groupe cycliste,
- à la participation à des actions promotionnelles et/ ou commerciales à la demande du groupe cycliste dans la mesure où ces actions sont prévues dans le contrat de travail,
- aux séances avec les médecins, kinésithérapeutes, diététiciens et auxiliaires médicaux du groupe cycliste dans le cadre de l'entretien et du contrôle de l'état de santé.

Ensuite, lorsque le coureur prend lui même l'initiative de s'entraîner sur route ou non, de se préparer physiquement, ou encore de solliciter l'intervention du personnel médical et para médical du groupe cycliste, mais uniquement dans la mesure où ces séances participent aux objectifs de préparation fixés par le groupe cycliste.

Article 30: Organisation du temps de travail

L'organisation du temps de travail du coureur cycliste dépend de paramètres qui sont propres à son activité.

Durant les périodes de compétitions, le coureur est amené à se déplacer régulièrement avec son groupe cycliste, en France comme à l'étranger. Dans ces situations, il est difficile d'appréhender préalablement ces temps de travail dans la mesure où ils dépendent, notamment, des contraintes spécifiques de l'organisateur de la compétition, de la compétition elle-même, du rythme de la course ou encore de l'état de forme du coureur.

Le reste du temps, c'est à dire durant la période d'entraînement, le coureur jouit alors d'une réelle autonomie pour organiser et mener à bien la préparation qui lui a été demandée ou non par son groupe cycliste.

Pour ces raisons et en application des dispositions de l'article L. 212-15-3 III du Code du travail, est ouverte la possibilité de recourir à des conventions de forfait en jours pour les salariés non cadres, selon les modalités ci-dessous et moyennant l'accord écrit du coureur.

Article 31: Détermination du nombre de jours à travailler

Compte tenu du nombre estimé de jours travaillés, les parties conviennent de fixer le forfait à 218 jours travaillés par saison sportive complète.

Ce nombre a été déterminé de manière à préserver la santé et la sécurité du coureur.

Article 32: Jours de repos

La différence entre les 218 jours à travailler et le nombre de jours ouvrés au cours de chaque saison est compensée par l'octroi de jours de repos.

La prise de ces jours de repos sera effectuée de manière à concilier au mieux les impératifs sportifs et les désiderata du coureur.

Si le nombre de jours travaillés dépasse les 218 jours, ce qui doit demeurer exceptionnel, le coureur bénéficiera:

soit d'un nombre de jours de repos égal à ce dépassement dans la mesure où le contrat se poursuit au moins une saison. Ces jours de repos reportés devant être pris dans les trois premiers mois de la saison suivante.

soit d'une indemnité équivalente au nombre de jours non pris dans la mesure où le contrat prend fin ou que le groupe cycliste cesse son activité.

Dans tous les cas, le coureur ne pourra bénéficier du report ou du versement d'une indemnité équivalente que si, par le fait du groupe cycliste, il a été mis dans l'impossibilité de prendre ses jours de repos.

Chaque journée ou demi-journée d'absence non assimilée à du temps de travail effectif s'impute proportionnellement sur le nombre global de jours travaillés dans l'année.

Article 33: Durées maximales du travail et repos

Il est précisé que, compte tenu de l'organisation retenue, les coureurs ne sont pas soumis aux dispositions des articles L.212-1 et L.212-7 alinéa 2 du Code du Travail et ne sont donc pas soumis, notamment, au régime des heures supplémentaires.

En revanche, est applicable le principe du repos quotidien de 11 heures consécutives. Toutefois, afin de répondre aux besoins spécifiques des compétitions qui sont caractérisées par l'éloignement entre les différents lieux de travail d'une journée sur l'autre, le repos quotidien pourra être ramené à 9 heures.

Cette dérogation est strictement limitée aux compétitions.

Article 34: Modalités de décompte et de contrôle des journées de travail

Le dernier jour de chaque mois, chaque coureur devra remettre à la direction du groupe cycliste un relevé déclaratif du nombre de journées ou de demi-journées travaillées au cours du mois écoulé, selon le formulaire mis à disposition par le groupe cycliste.

Est considérée comme une journée de travail toute période se situant en partie avant midi et en partie après midi et dont l'amplitude est, sur la journée, supérieure à 5 heures.

Est considérée comme une demi-journée de travail toute période dont l'amplitude est, sur la journée, inférieure ou égale à 5 heures.

Le récapitulatif des journées de travail est ensuite validé par le groupe cycliste. Un exemplaire est remis au coureur contre décharge.

Le Comité d'entreprise ou à défaut les délégués du personnel seront tenus informés des conséquences pratiques de la mise en oeuvre de ce décompte de la durée du travail en nombre de jours sur l'année.

Pour ce faire, ils seront associés à la direction du groupe cycliste pour examiner notamment l'impact de ce régime sur l'organisation du travail, l'amplitude des horaires et la charge de travail des coureurs en vue d'établir un compte rendu qui sera présenté une fois par an aux représentants du personnel.

CHAPITRE 5: CONGES PAYES

Article 35: Durée des congés

Compte tenu du niveau d'investissement et de préparation que nécessite la pratique du cyclisme professionnel, il est impératif de protéger la santé et la vie personnelle et familiale du coureur en garantissant des temps de récupération et de congés suffisants.

C'est la raison pour laquelle la durée du congé annuel défini aux articles L 223-1 et suivants du Code du Travail est fixée à 3 jours ouvrables par mois de travail effectif, sans que la durée du congé exigible puisse excéder 36 jours ouvrables.

Les périodes de congés sont à distinguer du repos hebdomadaire.

Article 36: Période de prise des congés payés et indemnisation

Article 36-1: Congé principal

L'appartenance des coureurs à une même équipe peut impliquer un rythme commun notamment dans la participation aux compétitions et dans les périodes de repos.

Par ailleurs, le calendrier des compétitions concentre la majeure partie des courses sur une période comprise entre le mois de février et le mois d'octobre, ce qui ne permet pas nécessairement d'accorder le congé principal sur la période légale du 1er mai au 31 octobre.

C'est pourquoi la période de prise du congé principal est fixée entre le 1er mai et le 30 avril.

Le congé principal est de 3 semaines consécutives minimum, devant être prises durant la période mentionnée ci-dessus.

Article 36-2: Solde des congés

Les jours restant dus peuvent être attribués en une ou plusieurs fois. Conformément à l'article L. 223-8 4ème alinéa du Code du travail, aucun congé supplémentaire dit de "fractionnement" ne sera accordé au titre de ces jours de congés.

Article 36-3: Indemnisation

Il est admis qu'un coureur n'ayant pas encore acquis suffisamment de jours de congés puisse les prendre par anticipation.

Le remplacement du congé par une indemnité compensatrice est interdit sauf cas prévus par la Loi.

L'indemnité de congés payés est calculée conformément aux dispositions du code du travail.

Article 37: Modalités de prise des congés - Délai de prévenance et information

La date retenue pour le congé principal doit être arrêtée et portée à la connaissance du coureur par le groupe cycliste au plus tard 3 mois avant le début de ces congés.

Les trois semaines restantes sont à la disposition du coureur qui doit en faire la demande, pour qu'elle soit recevable, au plus tard 1 mois avant le début de chaque période de congé sollicitée. Cette demande ne peut en principe être refusée par l'employeur sauf raisons professionnelles dûment motivées et justifiant le report du congé. Dans ce cas et pour être recevable le refus doit être notifié au coureur au plus tard 15 jours avant le début de ces congés.

Dans tous les cas, le groupe cycliste est tenu de respecter les dates de congés ainsi fixées et ne peut les modifier dans le délai d'un mois avant la date de début du congé, sauf s'il justifie de circonstances exceptionnelles.

Les dates des congés payés pris doivent figurer sur le bulletins de paye de la période correspondante.

CHAPITRE 6: DEPLACEMENTS

Le présent chapitre a pour objet de traiter des conditions et de l'incidence des déplacements du coureur dans le cadre de son activité professionnelle pour se rendre notamment sur le lieu des stages, des entraînements ou encore des compétitions.

N'est pas considéré comme un déplacement au sens du présent chapitre la période de course ou d'entraînement proprement dite et durant laquelle le coureur est sur le vélo.

Article 38: Qualification Juridique

Il est rappelé que conformément à l'article L. 212-4 du Code du travail, le temps de déplacement du domicile du coureur au lieu d'exécution de son travail, quel qu'il soit, ne peut en aucun cas être considéré comme du temps de travail effectif.

Il est par ailleurs constant que le coureur cycliste n'a pas un lieu "habituel" de travail du fait du caractère itinérant de son activité qui l'amène à se déplacer dans différents lieux, en France comme à l'étranger.

En conséquence, il n'y a pas lieu de distinguer les déplacements du domicile au lieu d'exécution du travail, selon que ces déplacements dépassent, ou non, le temps normal de trajet entre le domicile du coureur et le lieu "habituel" de son travail. Ceci exclut donc le principe de l'octroi d'une contrepartie financière ou sous forme de repos.

Enfin, il est précisé qu'en principe, tout dommage dont est victime le coureur, notamment lorsqu'il est à l'hôtel à l'occasion d'une compétition, est considéré par les organismes de sécurité sociale comme un accident de mission, pris en charge au titre de la législation sur les accidents du travail.

Article 39: Dispositions applicables à tout déplacement

Article 39-1: Organisation matérielle du déplacement et moyens de transport

Le moyen de transport utilisé pour se rendre sur le lieu d'exécution du travail est en principe arrêté par le groupe cycliste au moyen d'une convocation transmise au coureur et fixant les modalités pratiques du déplacement (date, heure, lieu du rendez-vous, moyen de transport usité, consignes particulières etc...).

Le groupe cycliste devra privilégier le moyen de transport le mieux adapté et le plus confortable compte tenu de la distance du déplacement.

Le groupe cycliste devra privilégier le moyen de transport le mieux adapté et le plus confortable compte tenu de la distance du déplacement.

Le coureur est tenu de respecter la convocation et en particulier le moyen de transport retenu.

Le coureur pourra, en accord avec la direction du groupe cycliste, utiliser d'autres moyens de transports et pourra, dans ce cas, prétendre au remboursement des frais qu'il a engagés, mais dans la limite du coût du déplacement correspondant au mode de transport qui avait été retenu par le groupe cycliste.

Les frais de déplacements individuels du coureur de son domicile (ou tout autre lieu motivé par ses obligations professionnelles) au lieu de compétition, ou de convocation de l'employeur, sont à la charge du groupe cycliste.

Article 39-2: Déplacement en véhicule particulier

Si le coureur utilise, en accord avec le groupe cycliste, son véhicule personnel pour les besoins de l'activité, les frais occasionnés seront à la charge du groupe cycliste.

Le remboursement de ces frais kilométriques se fera conformément à un barème collectif établi par le groupe cycliste par référence:

soit à la prise en compte notamment de l'amortissement du véhicule, des frais de garage, de réparations et d'entretien, de la consommation d'essence et d'huile et des frais d'assurance (y compris surtaxe éventuelle pour une assurance affaire);

soit au barème administratif en vigueur.

Le coureur doit être obligatoirement en possession d'un permis de conduire en cours de validité et doit informer le groupe cycliste de toute suspension temporaire ou définitive. Cette obligation est également applicable lorsqu'il s'agit d'un véhicule mis à disposition par le groupe cycliste tel qu'il résulte de l'article ci-dessous.

Le coureur doit porter à la connaissance du groupe cycliste sa police d'assurance qui comportera obligatoirement une clause garantissant le groupe cycliste contre le recours de la compagnie d'assurance ou des tiers et doit justifier du paiement des primes.

Article 39-3: Déplacement en véhicule mis à disposition par le groupe cycliste

Le groupe cycliste mettant un véhicule à disposition d'un coureur devra veiller à ce que celui-ci soit assuré conformément à l'usage auquel il est destiné.

De son côté le coureur devra veiller à utiliser le véhicule conformément aux instructions qui lui sont données par le groupe cycliste.

Article 39-4: Hébergement

Le groupe cycliste devra s'assurer que les conditions d'hébergement des coureurs pendant les compétitions sportives, lors de stages de préparation et d'entraînement ou tout autre déplacement professionnel garantissent des conditions correspondant aux exigences spécifiques de l'activité, notamment chambre de bon confort, salle de bain indépendante, etc....

Le respect des dispositions ci-dessus n'est toutefois pas de la responsabilité du groupe cycliste lorsque l'hébergement est mis à disposition par l'organisateur d'une course.

Article 39-5: Bagages personnels du coureur

Le groupe cycliste assume les frais de transport des bagages personnels des coureurs et peut fixer à cet effet des limites en terme de poids ou de volume.

Lorsque le déplacement est organisé par ses soins, le groupe cycliste est responsable du transport de ces bagages sous réserves de la responsabilité des tiers et en particulier du transporteur.

En aucun cas le groupe cycliste n'est responsable du contenu des bagages personnels du coureur.

Article 39-6: Elections

Afin de permettre au coureur en déplacement de voter par procuration ou par correspondance lors des élections françaises pendant lesquelles ces modes de vote sont autorisés, le groupe cycliste doit lui fournir en temps utile, l'attestation réglementaire, visée si nécessaire par les autorités compétentes et justifiant sa situation.

Article 40: Dispositions spécifiques aux déplacements en dehors du territoire métropolitain

Article 40-1: Information du coureur

Préalablement à tout déplacement, le groupe cycliste informera le coureur de la date retenue dans un délai raisonnable permettant à ce dernier de s'organiser en conséquence. Ce délai pourra toutefois être réduit en cas d'urgence.

Article 40-2: Formalités administratives

Les démarches nécessaires à l'accomplissement des formalités administratives imposées par un déplacement à l'étranger seront accomplies avec l'assistance du groupe cycliste et pendant le temps de travail.

La vérification de l'aptitude médicale ainsi que les vaccinations requises seront effectuées dans les mêmes conditions.

Les frais occasionnés par ces différentes formalités seront à la charge du groupe cycliste.

Article 40-3: Régimes de sécurité sociale

En cas de déplacement à l'étranger, le salarié sera considéré comme détaché au sens de la sécurité sociale. Il restera donc affilié au régime de protection de la sécurité sociale française en ce qui concerne notamment les garanties relatives à la retraite, à la garantie des risques invalidité, décès, accident du travail, maladie, accident et perte d'emploi.

Le groupe cycliste devra donc effectuer les démarches nécessaires auprès des organismes de sécurité sociale concernés.

Lorsque les conditions de déplacements sont telles que le coureur ne reste pas couvert pendant la totalité de ceux-ci par le régime de sécurité sociale français et par les différents régimes complémentaires et de prévoyance dont il bénéficierait en France, les dispositions seront prises pour qu'il continue de bénéficier de garanties équivalentes.

Article 40-4: Droit applicable

Durant un séjour à l'étranger, le coureur reste soumis à l'application du contrat de travail qui le lie au groupe cycliste.

Le coureur doit toutefois respecter les dispositions impératives des lois et règlements du pays d'accueil dont les lois de police.

Article 40-5: Rupture du contrat de travail durant le déplacement

En cas de rupture du contrat de travail ou de mise à pied conservatoire, le groupe cycliste devra assurer le rapatriement du coureur.

Article 40-6: Maladie, accident, décès, évènements familiaux

Le groupe cycliste devra garantir le coureur contre les risques spécifiques pouvant survenir au cours d'un déplacement à l'étranger, en souscrivant une police d'assurance spécifique. Ces garanties sont prévues au Chapitre 7 du présent accord collectif.

En outre, et cas d'événement familial imprévu concernant un proche du coureur ou de son conjoint, ascendant ou descendant, collatéral ou autre parent et nécessitant impérativement un retour du coureur,

le groupe cycliste ne pourra s'opposer au congé du coureur et prendra à sa charge les frais de transport par le moyen le plus rapide.

Les congés applicables sont dans ce cas ceux prévus à l'article L. 226-1 du Code du travail.

CHAPITRE 7: PROTECTION SOCIALE

Le présent chapitre a pour objet de traiter du régime de protection sociale complémentaire, dont la vocation est d'améliorer en tout ou partie les garanties sociales des coureurs résultant des régimes de base obligatoires.

La mise en place d'un régime de protection sociale complémentaire a été mis au rang des priorités par les partenaires sociaux, en tenant compte d'une part, de la nécessité de renforcer les garanties sociales déjà existantes et d'autre part, des effets induits par la mise en œuvre de la rémunération liée à l'exploitation de l'image collective de l'équipe.

Tout coureur entrant dans le champ d'application du présent accord collectif bénéficie des garanties visées ci-dessous.

Article 42: Champ d'application et nature du régime

Le régime de protection sociale complémentaire tel qu'institué par l'annexe 4 s'applique à tous les coureurs cyclistes professionnels au sens du présent accord collectif, sans condition d'ancienneté.

Ce régime est à adhésion collective obligatoire et en conséquence, aucun coureur ne peut s'y soustraire. De la même manière, tous les groupes cyclistes sont tenus de s'y conformer.

Article 43: Nature des garanties:

Article 43-1: Incapacité temporaire de travail

En cas d'arrêt de travail résultant de la maladie ou d'un accident d'origine professionnelle ou non, le coureur bénéficie, à compter du premier jour d'arrêt de travail, du maintien de tout ou partie de sa rémunération mensuelle, y compris, le cas échéant, la rémunération liée à l'exploitation de l'image collective de l'équipe, selon les conditions mentionnées en annexe 4.

Ce maintien de la rémunération est assuré soit directement par le groupe cycliste, soit par un opérateur externe sous la forme d'indemnités complémentaires.

En aucun cas la mise en œuvre de ces garanties ne peut aboutir pour le coureur à percevoir une somme supérieure à sa rémunération nette.

Article 43-2: Autres garanties

D'autres garanties collectives de prévoyance sont instituées pour garantir les risques suivants:
décès: versement d'un capital et d'une rente éducation,
invalidité: versement d'un capital,
assistance rapatriement et hospitalisation,
frais médicaux,
garantie "perte de licence".

Article 44: Financement du régime et assiette

Le financement des garanties souscrites sera assuré selon les modalités prévues à l'annexe 4.

La cotisation à la charge du coureur sera précomptée sur son salaire et le groupe cycliste en assurera directement le versement à l'organisme externe.

CHAPITRE 8: FORMATION PROFESSIONNELLE ET RECONVERSION PREAMBULE

La brièveté et l'intensité de la carrière ne permet pas toujours au coureur cycliste de préparer son avenir professionnel post sportif, c'est à dire sa reconversion.

La formation professionnelle durant la carrière sportive doit donc constituer un moyen permettant de préparer cette reconversion.

L'objectif du présent chapitre est précisément de mettre en oeuvre un dispositif spécifique de formation professionnelle répondant à cet objectif, à la fois approprié et compatible avec les impératifs sportifs des groupes cyclistes.

La suppression du 1% CDD, tel qu'il résulte de la loi n° 2004-1366 du 15 décembre 2004 ne nécessite pas la mise en œuvre d'une nouvelle cotisation d'origine conventionnelle mais plutôt une optimisation des fonds assortie d'un droit renforcé du coureur à la formation professionnelle, dans le cadre du droit individuel à la formation (D.I.F.).

A cet effet, la formation professionnelle du coureur cycliste doit se concevoir comme un droit individuel (et collectif) devant répondre à ses aspirations sociales notamment en matière de reconversion.

Cet objectif ne doit toutefois pas occulter la nécessité pour le coureur de se former pour améliorer ses compétences en vue d'exercer au mieux sa profession de coureur cycliste.

Ce second aspect ne fait toutefois pas l'objet de dispositions spécifiques développées dans le présent chapitre.

Article 45: Objet du DIF

Le droit individuel à la formation est destiné à permettre aux coureurs qui remplissent les conditions requises de bénéficier d'actions de formation professionnelles qui seront réalisées en partie durant leur temps travail et conformément aux actions prioritaires de formation en vue de la reconversion et aux modalités de mise en œuvre telles que prévues ci-dessous.

Article 46: Droit des coureurs

Tout coureur titulaire d'un contrat de travail à durée déterminée à temps complet, acquiert annuellement un D.I.F. de 40 heures.

Les droits acquis annuellement peuvent être cumulés sur une durée de 6 ans. Au terme de cette durée et à défaut de son utilisation en tout ou partie, le droit individuel à la formation reste plafonné à 240 heures.

Article 47: Transférabilité du D.I.F

Le droit au D.I.F est transféré d'un groupe cycliste à l'autre au terme du contrat de travail, sauf en cas de rupture pour faute grave à l'initiative du groupe cycliste.

Le groupe cycliste quitté doit informer le coureur des droits dont il dispose et le coureur doit, à son tour, informer son nouveau groupe cycliste.

En outre, chaque coureur est informé par écrit annuellement du total des droits acquis au titre du dispositif du D.I.F.

Article 48: Mise en œuvre du dispositif prioritaire de préparation à la reconversion dans le cadre du Droit individuel à la formation (DIF)

Article 48-1: Le bilan de compétence préalable

Pour pouvoir bénéficier du présent dispositif de préparation à la reconversion, le coureur doit se livrer à un bilan de compétence préalable dont la finalité est de pouvoir déterminer consensuellement un objectif professionnel de reconversion, en vue de bâtir puis de suivre un parcours de formation adapté.

Cette première étape est un préalable nécessaire pour assurer la meilleure optimisation du dispositif. Tout coureur professionnel ou néo-professionnel peut, de droit, bénéficier d'un tel bilan de compétence à compter de sa 1ère saison complète.

Il devra en faire la demande par écrit à son groupe cycliste 1 mois minimum avant le début de la période durant laquelle il pourra être réalisé et telle que fixée ci-dessous.

Pour des raisons évidentes liées au calendrier sportif, le bilan de compétence sera obligatoirement effectué dans la période comprise entre le 15 septembre et le 15 décembre.

Ce bilan de compétence doit être réalisé par un organisme prestataire habilité et dans les conditions prévues aux articles R. 900-1 du Code du travail et désigné par la commission paritaire du présent accord collectif. Il doit notamment faire l'objet d'une convention préalable tripartite signée entre le coureur, le groupe cycliste et l'organisme prestataire.

Dans tous les cas, le bilan de compétence ne peut être réalisé sans l'accord du coureur et demeure confidentiel.

En fonction de l'objectif professionnel de reconversion ainsi déterminé, l'organisme prestataire proposera au coureur un parcours de formation adapté, à suivre tout au long de la carrière ou, le cas échéant regroupé sur une durée plus courte avec des objectifs intermédiaires. Le parcours de formation, déterminé compte tenu des caractéristiques propres du coureur, tient également compte de la durée potentielle de sa carrière.

Les résultats du bilan de compétence feront l'objet de conclusions écrites confidentielles communiquées au coureur, ce dernier pouvant naturellement formuler ses observations éventuelles. Ce bilan de compétence est financé dans le cadre du plan de formation du groupe cycliste et n'est donc pas imputé sur le D.I.F.

Article 48-2: Mise en œuvre du parcours de formation dans le cadre du D.I.F

Article 48-2-1: Principes d'élaboration du programme de formation

Le programme de formation doit être élaboré en respectant les principes mentionnés ci-dessous.

Coût des actions de formation

Des fourchettes de tarif / ou module de formation seront arrêtés annuellement par la commission paritaire avec l'organisme prestataire, compte tenu de l'analyse qui sera faite et des formations suivies l'année précédente.

Choix des organismes formateur

En vue de favoriser des prestations qualitatives, les organismes de formation devront répondre à un cahier des charges qui sera élaboré par la commission paritaire.

Compatibilité avec les impératifs sportifs

Le programme retenu doit toujours prendre en compte les impératifs liés à la pratique sportive professionnelle et ne doit en aucun cas perturber la bonne préparation du coureur.

A cet effet, les actions de formation devront être programmées aux périodes ne donnant pas lieu à des compétitions.

Si elles sont suivies annuellement, les actions de formation doivent, sauf accord du groupe cycliste, correspondre au maximum à 40 heures de formation par an, c'est à dire au D.I.F acquis annuellement. Elles pourront également être décalées dans le temps en dehors de périodes de compétition, de manière à prévoir des périodes intensives de formation, notamment en fin de carrière, en capitalisant le D.I.F.

Article 48-2-2: Modalités de la demande

Le droit individuel à la formation s'exerce sur l'initiative du coureur et en accord avec son groupe cycliste.

Si le coureur souhaite mettre en œuvre le programme de formation, il devra en faire la demande à son groupe cycliste par écrit en lui transmettant un projet de convention réalisé avec l'organisme prestataire.

Sauf dans le cas où le programme de formation n'est pas conforme aux exigences mentionnées ci-dessus, le groupe cycliste ne pourra le refuser qu'une seule année, par écrit, dans le délai d'un mois suivant la demande et en exprimant le motif du refus. Si le programme n'est pas conforme, il sera demandé de le modifier en conséquence.

Le fait pour le coureur de ne pas avoir réalisé le bilan de compétence préalable peut constituer un motif de refus du D.I.F.

Le programme de formation retenu et les modalités de suivi seront formalisés dans convention signée entre le coureur, l'organisme gestionnaire et le groupe cycliste.

Article 49: Accompagnement du coureur dans le suivi du parcours de formation

Un organisme prestataire désigné par la commission paritaire sera chargé de veiller au suivi du parcours de formation. A cet effet, l'organisme prestataire remettra au coureur, s'il le souhaite, un "passeport formation" lui permettant d'identifier et de faire certifier ses connaissances, ses compétences et ses aptitudes professionnelles acquises notamment dans le cadre du présent dispositif.

Un entretien sera réalisé annuellement par l'organisme prestataire avec le coureur, pour dresser un bilan de la formation de l'année en cours et (ou) pour revoir, le cas échéant, les objectifs professionnels initialement fixés ainsi que le parcours correspondant.

Dans ce cas, toute modification doit être transmise dans les mêmes conditions que pour le bilan de compétence initial et la convention mentionnée à l'article précédent modifiée par voie d'avenant.

Si un nouveau bilan de compétence s'avère nécessaire, il ne peut intervenir moins de 5 ans après le précédent bilan de compétence.

Le fait pour un coureur de ne pas se présenter, sauf motif légitime, à une cession de formation pourra entraîner l'arrêt du présent dispositif.

Article 50: Désignation de l'organisme prestataire

Un ou plusieurs organismes prestataires seront désignés par la commission paritaire pour réaliser les bilans de compétence, dont notamment, la définition du programme de formation et le suivi individuel du coureur.

A cet effet, une convention précisant les modalités complètes d'intervention de l'organisme sera signée.

Chaque année, chaque organisme prestataire devra fournir un bilan détaillé du dispositif tout en respectant le principe de confidentialité.

Article 51: Financement - Organisme paritaire collecteur agréé (OPCA)

Les frais de formation correspondants aux droits ouverts sont à la charge du groupe cycliste et sont imputables sur la participation au développement de la formation professionnelle continue.

Les actions du présent dispositif de préparation à la reconversion seront financées en priorité par la contribution au titre de la formation par alternance / DIF et sur une partie du plan de formation des groupes cyclistes et dans la limite des fonds disponibles.

Un OPCa sera désigné pour collecter la contribution due au titre de la formation par alternance / DIF (0,5%).

En principe, la gestion de la contribution des employeurs destinée au plan de formation (0,9%) peut se faire sans qu'il soit besoin de verser la contribution à un OPCa.

Néanmoins, afin de faciliter la gestion des fonds et afin d'introduire un principe de mutualisation entre les différents groupes cyclistes (permettant ainsi de rétablir une égalité entre ces derniers dans le financement des actions de formation), une partie de cette contribution, fixée à 0,5 % sera versée sur un compte groupe à l'OPCA qui sera désigné.

Cette contribution obligatoire se limite aux salaires brut des coureurs, à l'exclusion de tout autre personnel. A cet effet, à l'occasion du versement de la contribution, il sera précisé par chaque groupe cycliste la base des salaires bruts des coureurs ayant servi au calcul des contributions.

Le solde sera versé par le Groupe cycliste à un OPCa désigné par la CCN Sport pour le financement de la branche.

Ce versement, au titre du plan de formation, libère le groupe cycliste de son obligation de contribution.

Le budget plan de formation qui sera ainsi géré par l'OPCA dans le cadre du compte groupe sera affecté au financement du dispositif de reconversion. Une convention de partenariat sera à cet effet signée avec l'OPCA désigné.

Pendant la durée des formations, le coureur bénéficie de la législation de la sécurité sociale relative à la protection en matière d'accidents du travail et de maladies professionnelles.

Article 52: DIF non prioritaire

Un coureur peut ne pas adhérer au dispositif de reconversion et pourra dans ce cas demander à bénéficier d'une formation dans les conditions posées par le Code du travail.

Article 53: Priorité de la formation professionnelle dans le cadre du plan de formation

N'est ici visé que la part du plan de formation non affectée au dispositif de reconversion.

S'agissant de leur ordre de priorité, celui-ci relève des groupes cyclistes selon les besoins (adaptation au poste, évolution des emplois, droit individuel à la formation...).

Afin de contribuer plus efficacement à l'emploi, les parties signataires considèrent qu'il convient de promouvoir l'adaptation, le développement et le perfectionnement permanent des connaissances, par des formations sur:

la réinsertion ou la reconversion à l'intérieur ou à l'extérieur de l'entreprise,
la qualité,
la connaissance de l'entreprise et de son environnement,
l'environnement
hygiène et sécurité
prévention et lutte contre le dopage.

Article 54: Comité paritaire de pilotage

La commission paritaire du présent accord collectif aura en charge de piloter l'ensemble du dispositif, de le faire évoluer, d'en contrôler l'efficacité et d'opérer le cas échéant les rapprochements nécessaires avec les instances fédérales en matière de formation.

Article 55: Durée et entrée en vigueur

Le présent dispositif est conclu à titre expérimental pour une durée de 3 années. Il sera éventuellement renouvelé compte tenu des résultats enregistrés. Il entrera en vigueur à compter du 1er janvier 2007.

CHAPITRE 9: HYGIENE ET SECURITE, MÉDECINE DU TRAVAIL

Article 56: Principes généraux en matière d'hygiène et sécurité

Les groupes cyclistes doivent mettre en œuvre tous les moyens permettant de promouvoir et de maintenir le coureur dans les conditions physiques et mentales que requiert l'exercice du cyclisme à titre professionnel.

Ceci vaut aussi bien pour les installations fixes et mobiles, l'assistance médicale, la mise à disposition et l'entretien du matériel, la mise à disposition d'équipements de protection individuels, l'entretien et le développement des capacités physiques.

Cette obligation générale de sécurité s'impose pour prévenir tout risque d'accident durant toutes les situations de travail, compétitions ou entraînements.

En ce qui concerne plus spécifiquement les équipements de protection individuels et en particulier le casque, ceux-ci doivent être fournis et entretenus par le groupe cycliste.

De son côté, le coureur doit se conformer aux prescriptions d'utilisation de ces équipements de protection individuelle et d'une manière plus générale, aux conditions liées à l'utilisation du matériel, au déroulement d'un entraînement (respect du Code de la route) et des conditions de sécurité liées au déroulement d'une course.

Article 57: Prévention et lutte contre le dopage

Les groupes cyclistes doivent assurer un système d'information et de prévention auprès des coureurs sur les dangers liés à toute pratique de dopage notamment dans le cadre d'actions supplémentaires dans le cadre de la formation professionnelle continue.

Dans tous les cas, coureurs et groupes cyclistes doivent respecter les dispositions légales et réglementaires relatives à la lutte contre le dopage et en particulier doivent se soumettre aux différents contrôles auxquels ils pourraient être régulièrement convoqués.

L'employeur pourra mettre fin au présent contrat, sans préavis ni indemnité, en cas de faute grave du coureur pour lequel il est établi des faits de dopage avérés et dont il est prouvé qu'il est responsable.

De plus, le présent accord contribue et continuera à contribuer, par la création de règles adaptées et respectueuses de la santé et de la sécurité du coureur, à lutter contre le dopage.

Article 58: Médecine du travail

Il est rappelé que, conformément au Code de la Santé Publique, la visite médicale de non contre-indication à la pratique sportive ne peut en aucun cas constituer la visite médicale d'embauche au titre de la signature d'un contrat de travail.

Aussi, tout groupe cycliste est tenu de soumettre tout nouveau coureur embauché à une visite médicale d'embauche afin de juger de son aptitude à la pratique du cyclisme.

Il en est de même en ce qui concerne les visites périodiques ainsi que les visites de reprise après un arrêt de travail pour cause de maladie ou d'accident.

L'ensemble des examens prévus au titre de la Médecine du Travail ont lieu à l'initiative du groupe cycliste qui engage sa responsabilité tant civile que pénale en cas de non respect de ces obligations. Le coureur ne peut se soustraire à ces obligations sans s'exposer à des sanctions disciplinaires.

Les partenaires sociaux constatent que le rôle de la médecine du travail dans le sport en général et dans le cyclisme en particulier se limite bien souvent à une démarche purement administrative. En effet, l'aptitude médicale d'un coureur cycliste professionnel dépend de paramètres spécifiques pour lesquels les services de santé du travail sont bien souvent démunis. Dans ces conditions, les partenaires sociaux se fixent comme objectif de réfléchir à l'avenir sur les possibilités et l'opportunité de créer un service de Santé du Travail spécialisé en matière sportive en général ou dans la discipline du cyclisme en particulier.

CHAPITRE 10: SELECTION EN EQUIPE NATIONALE

Article 59

En cas de sélection nationale, le coureur participera aux épreuves et au programme de préparation décidés par sa fédération nationale.

Dans ce cas, le coureur s'engage à informer le groupe cycliste de sa sélection, et, dès qu'il en aura connaissance, des épreuves et stages pour lesquels il serait convoqué par sa fédération nationale, conformément aux règlements de celle-ci.

En vertu de l'article 17 de la loi n° 84-610 du 16 juillet 1984, la F.F.C a compétence exclusive pour donner au coureur toute instruction utile dans le cadre et pour la durée de la sélection. Toutefois, cette compétence s'exerce uniquement sur le plan sportif et ne crée en rien un contrat de travail entre la fédération et le coureur.

Le coureur est, durant cette période, en situation de mise à disposition auprès de la fédération. Son contrat de travail avec le Groupe cycliste n'est donc pas suspendu et le Groupe cycliste demeure le seul et unique employeur du coureur.

Les modalités pratiques, juridiques et financières de la mise à disposition du coureur seront définies ultérieurement.

CHAPITRE 11: CONTROLE DE L'APPLICATION DU PRESENT ACCORD COLLECTIF

Article 60

Le présent accord collectif crée des normes collectives impératives qui doivent être respectées tant par les groupes cyclistes que par les coureurs. Le fait de ne pas pouvoir y déroger par accord d'entreprise participe à la volonté d'appliquer, à tous, une même règle dans le soucis permanent de préserver l'équité dans les compétitions sportives.

En principe, le non respect de ces règles conventionnelles relève de la seule compétence des juridictions civiles.

Si ce principe ne peut-être remis en cause, il n'en demeure pas moins qu'un certain nombre de ces règles, parce qu'elles ont ou peuvent avoir un impact sur l'équité sportive dans les compétitions, rentrent tout naturellement dans le domaine de compétence de L.C.P.F.

En effet, la F.F.C / L.C.P.F a notamment comme mission, tel que cela résulte de la loi n°84-610 du 16 juillet 1984, d'organiser la pratique du cyclisme et donc de veiller au bon déroulement des compétitions. Elle peut ainsi sanctionner les comportements portant ou pouvant porter atteinte à l'équité sportive dans les compétitions en mettant en œuvre son pouvoir disciplinaire tel que défini par le décret n° 2004-22 du 7 janvier 2004.

C'est pourquoi les partenaires sociaux ont souhaité que les manquements aux règles du présent accord collectif puissent être sanctionnés dès lors qu'ils sont susceptibles d'avoir des répercussions sur l'équité dans les compétitions.

A cet effet, ce contrôle sera assuré par une commission dont le fonctionnement général, la composition, la mission (étendue du contrôle), les sanctions, les procédures seront définies dans le cadre d'un accord conclu entre les partenaires sociaux et la L.C.P.F.

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P.
Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000
arc MADIOT Vincent LAVENU

Pour la L.C.P.F.

**ANNEXE 1
CONTRAT DE TRAVAIL TYPE**

**FEDERATION FRANCAISE DE CYCLISME
Ligue du Cyclisme Professionnel Français**

**CONTRAT DE TRAVAIL
DE COURREUR CYCLISTE PROFESSIONNEL**

Entre les soussignés:

1°/
(Dénomination et siège du groupement – association, EURSL, SAOS, SASP)

N° d'employeur:
(immatriculation URSSAF)

N° d'affiliation à la FFC:
Représenté par M
Ayant qualité pour agir en son nom
ci-après dénommé “le groupe cycliste”

d'une part,

et

2°/
(Nom et prénoms du coureur)

né le à
résidant à
..... (adresse complète)

Code UCI

Numéro de Sécurité Sociale
ci-après dénommé “le coureur”

d'autre part,

IL EST RAPPELE A TITRE INFORMATIF QUE:

1/ (nom de l'employeur), emploie une équipe de cyclistes professionnels qui, au sein du Groupe cycliste professionnel
(nom du groupe), et sous la direction de M (directeur sportif),
participe aux épreuves cyclistes nationales et internationales;

2/ Le(s) partenaire(s) principal(aux) du groupe est(sont):

1°/

2°/

(dénomination et siège – 2 au maximum)

3/ Les deux parties soussignées reconnaissent que le présent contrat est régi par la loi française, par la CCN sport et par l'accord collectif des coureurs cyclistes professionnels dès que ceux-ci seront entrés en vigueur.

Elles sont soumises par ailleurs aux statuts et règlements de l'UCI, à l'accord paritaire AIGCP / CPA validé par le CUPT/UCI, ainsi qu'aux règlements de la FFC/LCPF dont elles déclarent avoir pris connaissance.

4/ Les parties s'engagent à respecter et/ou à faire respecter le suivi médical imposé par l'UCI et la FFC/LCPF.

CECI ETANT RAPPELE, IL EST CONVENU QUE:

Article 1: ENGAGEMENT ET FONCTIONS - MOTIF DU CONTRAT

Le groupe cycliste engage le coureur à compter du en qualité de coureur professionnel ou néo-professionnel sur route, sur piste, en cyclo-cross, en VTT...

La participation du coureur aux épreuves relevant d'autres spécialités sera convenue entre les parties, au cas par cas.

Le présent contrat ne prendra effet que si le coureur:

est titulaire de la licence de coureur cycliste Elite 1;

passee une visite médicale d'embauche devant la Médecine du Travail confirmant son aptitude à exercer la profession de coureur cycliste.

Article 2: DUREE DU CONTRAT - RENOUVELLEMENT

Le présent contrat est conclu conformément aux articles L 122-1-1 3° et D 121-2 du Code du Travail, l'usage constant dans le domaine du cyclisme professionnel étant de ne pas recourir au contrat de travail à durée indéterminée pour l'emploi de coureur cycliste.

Il est conclu à temps complet pour une durée déterminée du jusqu'au

Chaque partie doit notifier par écrit à l'autre partie sa décision de ne pas renouveler le contrat au plus tard le 1er octobre précédent son terme.

Article 3: REMUNERATION ET TEMPS DE TRAVAIL

Article 3-1: REMUNERATION

En contrepartie de son activité à temps complet, le coureur percevra:

Soit une rémunération annuelle brute de base de €, qui ne saurait être inférieure au minimum conventionnel applicable.

Soit, pour la durée du présent contrat, une rémunération brute de base de €

La rémunération du coureur peut également comprendre, au-delà, de cette rémunération minimum, des primes liées aux résultats sportifs individuels et (ou) collectifs.

L'ensemble de cette rémunération inclut, le cas échéant, la part de rémunération versée au titre de l'exploitation de l'image collective de l'équipe tel qu'il résulte des dispositions de l'article L. 785-2 du Code du travail et ce, dans les proportions fixées par l'accord collectif des cyclistes professionnels. Cette part de rémunération n'est pas considérée comme du salaire.

En contrepartie du travail effectué par le coureur, le groupe cycliste paiera mensuellement par douzième le montant net de la rémunération par versements effectués au plus tard le dernier jour ouvrable de chaque mois. Chacun de ces versements mensuels donnera lieu à la remise d'un bulletin de paie, établi conformément aux dispositions du Code du Travail.

La rémunération prévue ci-dessus sera versée par virement sur le compte bancaire n°..... de Monsieur..... auprès de la banque (nom de la banque)..... à l'adresse suivante (siège où est le compte).....

Le défaut de paiement à l'échéance entraînera de plein droit l'application, à la charge du groupe cycliste, des majorations de retard prévues conventionnellement.

Article 3-2: TEMPS DE TRAVAIL

L'article L. 212-15-3 III du Code du travail prévoit la possibilité de mettre en œuvre, par voie d'accord collectif étendu ou par voie d'accord d'entreprise, des conventions de forfait en jours pour les salariés non cadres dont la durée du travail ne peut être prédéterminée et qui disposent d'une réelle autonomie dans l'organisation de leur emploi du temps pour l'exercice des responsabilités qui leurs sont confiées. Cette possibilité est prévue tant par l'accord d'entreprise en vigueur au sein du groupe cycliste que par l'accord collectif des cyclistes professionnels.

Le coureur reconnaît, compte tenu des caractéristiques de son emploi, que ses horaires de travail ne peuvent être prédéterminés.

Par conséquent, la gestion de son temps de travail sera effectuée en nombre de jours, ce nombre étant actuellement fixé par les accords susvisés à 218 jours.

Aussi, il est expressément convenu que la rémunération versée au coureur et prévue ci-dessus est forfaitaire et rémunère l'exercice de la mission qui lui est confiée, sans qu'il puisse être opéré de relations entre le montant de cette rémunération et un horaire effectif de travail.

Article 4: CONGES PAYES

Le coureur bénéficiera des droits à congés conformément aux dispositions légales et conventionnelles en vigueur.

Article 5: AUTRES OBLIGATIONS DU GROUPE CYCLISTE

Le Groupe cycliste s'engage à permettre au coureur d'exercer son métier dans les meilleures conditions. Il lui fournira le matériel et l'équipement vestimentaire requis. Il fera en sorte qu'il puisse participer, soit en équipe, soit individuellement, à un nombre suffisant d'événements cyclistes entrant dans l'objet du présent contrat.

Le Groupe cycliste prendra toute disposition pour que soit effective, pendant toute la durée du présent contrat, la couverture sociale imposée par les lois et règlements en vigueur.

Article 6: OBLIGATIONS DU COUREUR

6-1. Le coureur est tenu de faire preuve d'un comportement loyal à l'égard de son groupe cycliste, de représenter dignement celui-ci en toute circonstance dans les épreuves où il a été engagé en application du présent contrat.

Il est placé sous l'autorité de son directeur sportif, aux convocations duquel il doit répondre et aux instructions duquel il doit se conformer.

Il est tenu d'utiliser exclusivement les matériels et équipements mis à sa disposition par l'employeur et doit les restituer à celui-ci à l'expiration du présent contrat.

Pendant toute la durée du présent contrat, il lui est interdit de travailler pour un autre groupe cycliste et d'utiliser son image pour des partenaires autres que ceux appartenant au groupe cycliste, sauf accord de celui-ci, ou dans les cas prévus par les règlements de l'UCI et ses fédérations affiliées.

Sauf dispositions contraires conclues entre les parties, le coureur reconnaît à son groupe cycliste et aux marques désignées par celui-ci, le droit de faire toute communication ou publicité sur ses noms, image et succès, sous réserve du respect de ses droits et libertés fondamentales. Sous réserve du respect de ces conditions, le coureur ne pourra réclamer une quelconque indemnité à l'occasion de ladite communication. Dans le cas où le coureur ou le groupe cycliste envisageraient de se prêter à une publicité commerciale pour le compte d'une autre marque, ils devraient au préalable en définir contractuellement les modalités spécifiques.

6-2. Le coureur ne peut prendre part à titre individuel à toute épreuve (route, piste, cyclo-cross, exhibition, ...) qu'après avoir été engagé par son directeur sportif ou après avoir reçu son assentiment écrit.

6-3. En cas de sélection nationale, le coureur participera aux épreuves et au programme de préparation décidés par sa fédération nationale.

Dans ce cas, le coureur s'engage à informer le groupe cycliste de sa sélection, et, dès qu'il en aura connaissance, des épreuves et stages pour lesquels il serait convoqué par sa fédération nationale, conformément aux règlements de celle-ci.

En vertu de l'article 17 de la loi n° 84-610 du 16 juillet 1984, la fédération nationale a compétence exclusive pour donner au coureur toute instruction utile dans le cadre et pour la durée de la sélection.

Les signataires du présent contrat reconnaissent cette compétence qui s'exerce uniquement sur le plan sportif.

Le présent contrat n'est pas suspendu dans les cas visés aux articles 6-2 et 6-3 ci-dessus.

Article 7: FRAIS PROFESSIONNELS

Les frais professionnels engagés par le coureur agissant sous la direction de son employeur dans le cadre du présent contrat de travail lui seront remboursés selon les modalités conventionnelles applicables.

Lorsque le coureur utilise son véhicule pour ses déplacements professionnels, il s'engage à contracter une assurance correspondant à l'utilisation dudit véhicule.

Article 8: RETRAITE COMPLEMENTAIRE ET PREVOYANCE

Le coureur sera affilié, pour la retraite complémentaire à ... (Nom et adresse de la ou des caisses).

Le coureur bénéficiera également du régime collectif de prévoyance en application des dispositions conventionnelles applicables, souscrit auprès de (nom et adresse de l'organisme).

En liaison avec la FFC / Ligue du Cyclisme Professionnel Français, le groupe cycliste veillera à ce que le coureur soit informé de toutes assurances qui auraient été ou pourraient être contractées à son bénéfice en complément des précédentes ou de celles qui sont liées à la souscription de sa licence.

Article 9: FIN DU CONTRAT

Article 9-1: FIN NORMALE

A l'expiration du présent contrat, le coureur est entièrement libre de souscrire un nouveau contrat avec un tiers, sans préjudice de l'application des dispositions réglementaires de l'UCI.

Article 9-2: RUPTURE ANTICIPEE

Une rupture anticipée ne pourra intervenir que dans les cas prévus par le Code du travail, les textes conventionnels en vigueur et la réglementation UCI.

En particulier, l'employeur pourra mettre fin au présent contrat, sans préavis ni indemnité, en cas de faute grave du coureur pour lequel il est établi des faits de dopage avérés et dont il est prouvé qu'il est responsable.

Article 10: CONTRE-LETTRES

Sera réputée nulle et non écrite toute clause convenue entre les parties qui serait contraire aux dispositions conventionnelles, aux statuts et règlements de l'UCI et du Code du Travail et en vertu de laquelle les droits du coureur seraient restreints.

En tout état de cause, les co-contractants déclarent n'avoir conclu aucun autre contrat en rapport avec les prestations du coureur au profit du groupe cycliste.

Article 11: AGENT SPORTIF

Soit: Il est précisé que le coureur / le groupe cycliste (1) possède comme mandataire Monsieur/ Madame/ La société -----, agent sportif détenteur de la licence d'agent sportif FFC, et qu'il s'est engagé à rémunérer l'agent conformément aux dispositions législatives et réglementaires en vigueur. Le montant total des honoraires versés à l'agent sportif est de euros calculé ainsi qu'il suit

Soit: Les deux parties reconnaissent qu'aucun agent sportif n'est intervenu lors de la négociation du présent contrat. (2)

A choisir, coureur ou employeur.

Les parties doivent choisir une des deux solutions énumérées.

En cas de fraude ou de dissimulation, les personnes s'étant soustraites à cette obligation d'identification de l'agent sportif prévue aux articles 21 et 22 du règlement relatifs aux agents sportifs de la FFC auront à répondre de leurs actes devant l'instance compétente de la FFC.

Le présent contrat de travail a été établi en 5 exemplaires originaux: un exemplaire remis au coureur, un exemplaire pour le groupe cycliste, un exemplaire pour le commissaire aux comptes désignés par l'UCI, un exemplaire pour la Commission d'Aide et de Contrôle de Gestion et un exemplaire remis directement à la FFC/LCPF.

Fait à, le

Parapher chaque page et signer la dernière en faisant précéder de la mention manuscrite “lu et approuvé”.

Le coureur
M.....

Pour le Groupe cycliste,
M.....

L'agent du coureur
M.....

L'agent du groupe cycliste
M.....

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P
Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000
Marc MADIOT Vincent LAVENU

Pour la L.C.P.F

ANNEXE 2 SALAIRS MINIMA

CONTINENTALES PRO (salaire exprimé en montant annuel)	
NEO-PRO	AUTRES
24.000 euros	28.000 euros

PRO TOUR <i>(salaire exprimé en montant annuel)</i>	
NEO-PRO	AUTRES
27.000 euros	33.500 euros

CONTINENTALES (salaire exprimé en montant mensuel pour tout coureur)	
Année 2007	1.350 euros
Année 2008	1.417,50 euros
Année 2009	1.488 euros

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P

Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000

Marc MADIOT Vincent LAVENU

Pour la L.C.P.F

ANEXE N° 3
RELATIVE A LA REMUNERATION CORRESPONDANT A
L'EXPLOITATION DE L'IMAGE COLLECTIVE DE L'EQUIPE

Article 1: Economie du texte

Les dispositions qui suivent sont prises en application de l'article L 785-1 du Code du Travail, issu de la loi n° 2004-1366 du 15 décembre 2004 portant diverses dispositions relatives au sport professionnel. Cet article permet, par la voie de la négociation collective, de mettre en œuvre un dispositif de rémunération correspondant à la part de commercialisation de l'image collective de l'équipe et qui n'entre pas dans l'assiette du régime général de la sécurité sociale car n'étant pas du salaire.

Ce dispositif s'inscrit parfaitement dans le cadre de l'activité du cyclisme professionnel tant il est constant que l'image de l'équipe est un élément important, pour ne pas dire essentiel, dans l'origine des revenus commerciaux des groupes cyclistes.

Conscients de l'intérêt de ce dispositif, tant pour les coureurs que pour les groupes cyclistes, les partenaires sociaux ont donc fait le choix de le mettre en œuvre, tout en prenant en compte notamment les éléments suivants:

les groupes cyclistes ne peuvent pas tous bénéficier de ce dispositif au moment de sa mise en œuvre, du fait des différents statuts existants (association et société sportive),

les sommes versées aux coureurs au titre de l'exploitation de l'image collective de l'équipe sortent du champ de la protection du régime général de la sécurité sociale.

Article 2: Champ d'application

Conformément à l'article L 785-1 du Code du Travail, sont concernés par le présent dispositif les seuls groupes cyclistes sous forme de sociétés sportives telles que mentionnées à l'article 11 de la loi n° 84-610 du 16 juillet 1984.

Sont donc exclus du présent dispositif les groupes cyclistes sous forme d'associations sportives.

Sont potentiellement concernés tous les coureurs cyclistes professionnels, sous réserve des conditions liées au montant de leur rémunération brute totale telle que mentionnée à l'article 3 ci-dessous.

Article 3: Détermination de la part de rémunération versée au titre de la commercialisation de l'image collective de l'équipe

Compte tenu de la place prépondérante que tient la commercialisation de l'image collective de l'équipe dans les revenus commerciaux du groupe cycliste, la part de la rémunération qui sera versée à chaque coureur à ce titre sera égale à 30 % de la rémunération brute totale du coureur.

Toutefois, ce dispositif ne pourra s'appliquer qu'aux rémunérations brutes totales dont le montant est supérieur à 2 plafonds servant au calcul des cotisations de sécurité sociale appréciées soit mensuellement, soit annuellement (en cas de régularisation à opérer).

Article 4: Mise en œuvre du dispositif

Le contrat de travail du coureur cycliste doit impérativement mentionner la prise en compte de la rémunération versée au titre de l'exploitation de l'image collective.

Sur le bulletin de paie doivent apparaître distinctement le salaire et la rémunération versée au titre de l'image collective.

En ce qui concerne les contrats de travail en cours d'exécution, la mise en œuvre de ce dispositif nécessite l'accord du coureur par voie d'avenant à son contrat de travail.

Article 5: Sort social de la rémunération versée au titre de la commercialisation de l'image collective de l'équipe

Il est rappelé que cette somme, hormis la CSG et la CRDS, ne supporte aucune charge sociale, salariale ou patronale au titre du régime général de la sécurité sociale.

Cette situation résulte tant du texte même de l'article L 785-1 du Code du Travail que de la position administrative en vigueur au moment de la signature du présent accord collectif.

Si le traitement social devait subir une modification, les partenaires sociaux s'engagent à prendre en considération cette modification, dans la mesure où elle aurait une répercussion économique sur le

dispositif en place. A cet effet, ils s'engagent à renégocier les dispositions de la présente annexe dans le délai de 2 mois à compter de la survenance de ladite modification.
Dans tous les cas, ce thème sera abordé à l'occasion de la réunion annuelle de la commission paritaire prévue à l'article 15-3-2 du présent accord collectif.

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P

Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000

Marc MADIOT Vincent LAVENU

Pour la L.C.P.F

**ANNEXE 4
GARANTIES COLLECTIVES DE PREVOYANCE**

La présente annexe a pour objet de définir les garanties collectives de prévoyance en application du Chapitre 7 du présent accord collectif.

Elle intègre les garanties instituées par l'accord paritaire international en matière d'incapacité, d'invalidité et de décès et met en œuvre de nouvelles garanties.

Article 1: Détail des garanties

Dans les conditions et selon les modalités définies ci-après sont garanties les risques décès, invalidité, assistance rapatriement et hospitalisation, frais médicaux, perte de licence.

Article 1-1: Incapacité temporaire totale de travail

Définition du risque

L'incapacité temporaire totale de travail est la situation dans laquelle se trouve le coureur qui ne peut plus exercer son activité de cycliste professionnel pour des raisons médicalement constatées dues à une maladie ou un accident qu'ils soient l'un et l'autre d'origine professionnelle ou non.

Point de départ de la garantie

Les indemnités complémentaires sont servies à compter du 90ème jour d'arrêt de travail, c'est à dire à l'issue de la période durant laquelle le groupe cycliste assure lui-même la garantie de la rémunération nette.

Cette garantie est assurée au coureur en cas de changement de groupe cycliste.

Conditions d'ouverture et de maintien de la garantie

Cette garantie est subordonnée au bénéfice du versement des indemnités journalières de Sécurité Sociale (IJSS) et à la justification par le coureur de l'arrêt de travail dès que possible et sauf cas de force majeure, au plus tard 4 jours après la survenance du dommage, par la production d'un certificat médical.

Montant de la garantie

Les indemnités complémentaires versées complètent les IJSS jusqu'à concurrence de 80% de la rémunération mensuelle brute dans la limite de 6 plafonds mensuels de sécurité sociale (PMSS).

Cette garantie s'entend déduction faite des IJSS et ne peut en aucun cas se cumuler avec une prestation d'invalidité.

Rémunération de référence

La rémunération prise en compte pour le calcul des prestations est la moyenne annuelle comprenant le salaire, les primes, les avantages en nature et, le cas échéant, la rémunération versée au titre de l'exploitation de l'image collective de l'équipe.

Terme de la garantie

Le versement des indemnités complémentaires cesse:
au terme de l'arrêt de travail prescrit ou à la date de la reprise;
à la date de reconnaissance d'un état d'invalidité;

au plus tard au 1095ème jour d'arrêt de travail sauf en cas d'accident de travail ou de maladie professionnelle d'une durée plus longue.

Contrôle médical

Le droit aux prestations résultant des garanties mentionnées est subordonné à la présentation par le coureur d'un certificat médical dans les conditions prévues au 4° ci-dessus .

Le groupe cycliste ou l'organisme externe se réservent le droit de missionner un médecin indépendant pour effectuer un contrôle médical portant sur la réalité de l'état de santé du coureur et dont les résultats peuvent remettre en cause le bénéfice des prestations.

Article 1-2: Décès

Sont garantis au titre du décès résultant d'une maladie ou d'un accident que l'un ou l'autre soit d'origine professionnelle ou non, le versement d'un capital et d'une rente éducation.

Le décès est établi par acte officiel transmis à la direction du groupe cycliste.

Le capital alloué en cas de décès du coureur à ses ayants droit est fixé à un montant forfaitaire de 100.000 €.

La rente d'éducation versée en cas de décès du coureur est fixée à un montant forfaitaire mensuel égal à 20% de 1 PMSS par enfant à charge, versée jusqu'au 20ème anniversaire de l'enfant.

Article 1-3: Invalidité

L'invalidité garantie est la situation dans laquelle se trouve le coureur qui fait l'objet et justifie d'un classement par la sécurité sociale en invalidité de 2ème et 3ème catégorie, résultant d'un accident ou d'une maladie d'origine professionnelle ou non.

Le coureur bénéficie dans ce cas d'un capital de 250.000 euros.

Article 1-4: Assistance rapatriement et hospitalisation

Sont garantis les frais d'hospitalisation résultant de l'accident ou de la maladie survenus durant le travail et ce, pour un montant plafonné de 100.000 euros par sinistre.

Sont également garantis les frais de rapatriement pour cause médicale ou à l'occasion des missions ou voyages professionnels effectués dans le monde entier à l'exclusion de la France métropolitaine.

Article 1-5: Frais médicaux

La garantie "frais médicaux" a pour objectif de couvrir l'indemnisation des frais engagés à l'occasion de la protection ou du rétablissement de la santé du coureur.

Le détail des garanties devant être souscrites figure dans le tableau inséré au terme du présent annexe.

Article 1-6: Garantie perte de licence

La garantie perte de licence se définit comme l'impossibilité définitive pour le coureur d'exercer l'activité de coureur cycliste professionnel.

Cet état d'incapacité doit, pour ouvrir droit à la garantie, être constaté par un collège composé du médecin du groupe cycliste et du médecin de l'organisme externe.

Dans ce cas, un capital est versé au coureur ainsi qu'il suit en fonction de l'âge auquel est reconnu l'état d'incapacité:

De 15 à 24 ans: 22.867,35 euros

De 25 à 28 ans: 18.293,88 euros

De 29 à 30 ans: 15.244,90 euros

A 31 ans: 11.433,67 euros

A 32 ans: 9.146,94 euros

A 33 ans: 6.097,96 euros

A 34 ans: 4.573,47 euros

A 35 ans et plus: 3048,98 euros.

Article 2: Financement du régime

Les garanties instituées par le présent régime sont financées de la manière suivante:

Garantie	Part patronale	Part salariale
Incapacité temporaire	50%	50%
Décès	100%	0%
Rente éducation	50%	50%
Invalidité	100%	0%
Assistance	100%	0%
Frais médicaux	100%	0%
Perte de licence	50%	50%

Pour ce qui concerne l'incapacité temporaire, la cotisation est calculée sur la base de la rémunération brute limitée à 6 PMSS, ce pourcentage pouvant varier selon la tranche de rémunération dont il s'agit. L'évolution du taux de cotisation sera gérée de manière à assurer l'équilibre du régime. En outre, il sera demandé à l'organisme externe de s'engager durant les trois premières années de vie du régime, à ne pas augmenter les taux de cotisation.

Article 3: Désignation de l'organisme externe

Un organisme externe sera désigné pour l'ensemble des garanties visées dans le présent annexe et assurera la collecte des cotisations.

Tous les groupes cyclistes concernés par le champ d'application du présent accord collectif seront tenus d'adhérer à l'organisme ainsi désigné.

Aussi, lorsque le groupe cycliste adhérait à un autre organisme avant l'entrée en vigueur du présent annexe, notamment au niveau des garanties résultant de l'accord AIGCP/CPA, il devra adhérer à l'organisme désigné avant le 31 décembre 2006.

L'organisme externe désigné devra par ailleurs établir une notice à destination des coureurs. La remise de ces notices aux coureurs relève toutefois de la seule responsabilité du groupe cycliste, au moment de l'embauche et à chaque fois que son contenu pourra évoluer.

L'organisme assureur désigné doit également fournir chaque année à la commission paritaire le bilan des opérations pour l'exercice écoulé.

Article 4: Reprise des garanties encours

Conformément aux dispositions de la loi 89-1009 du 31 décembre 1989, les garanties en cours résultant de sinistres antérieurs sont reprises par l'organisme assureur désigné.

Article 5: Suivi du régime

En application de l'article L.912-1 du Code de la sécurité sociale, les conditions et les modalités de la mutualisation des risques seront réexaminés au plus tard 5 ans après la prise d'effet du présent annexe. Le suivi du régime sera assuré chaque année par la Commission paritaire, sur présentation par l'organisme externe du bilan des opérations pour l'exercice écoulé.

La commission paritaire prendra toute mesure afin d'adapter le cas échéant les garanties ou le financement du régime en fonction du résultat.

Dans l'hypothèse où le contrat de prévoyance serait résilié, à l'initiative de l'organisme assureur, notamment du fait d'une dégradation des résultats techniques, d'une proposition refusée d'augmentation des cotisations, de dégradation des garanties, et où aucun nouveau contrat de prévoyance ne serait conclu aux conditions du présent accord, celui-ci serait caduc. La caducité de l'accord prendrait effet à la date de fin d'effet du contrat de prévoyance.

La commission paritaire se réunira dès la connaissance d'un risque de caducité, afin d'examiner les solutions de substitution éventuelles.

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P

Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000

Marc MADIOT Vincent LAVENU

Pour la L.C.P.F**ANNEXE 5
Organisme paritaire collecteur agréé (OPCA)**

Est désigné organisme paritaire collecteur agréé l'AGEFOS PME en application des dispositions du chapitre 8 du présent accord collectif.

Fait à ROSNY SOUS BOIS le 29 septembre 2006

Pour l'U.N.C.P

Jean-Claude DUCASSE Jean-Claude CUCHERAT

Pour l'AC 2000

Marc MADIOT Vincent LAVENU

Pour la L.C.P.F**Report on “Promoting the EU Social Dialogue in the professional cycling sector”****Regional workshop: Paris, 29 May 2009 (postponed)**

23 October 2009: meeting with Ives Bonn动员, General Secretary of AIGCP

Structure and Objectives AIGCP

The AIGCP consists of 30 cycling teams. Of the 18 Pro Tour teams there are 13 teams member of AIGCP. The AIGCP has a global reach, also some non European teams are a member. The connected teams have given AIGCP a mandate to represent them in all their issues on an international level vis-à-vis the other stakeholders in cycling, such as the UCI, CPA, ASO and others. Mr. Bonn动员 became secretary general of the AIGCP in 1991 and he has witnessed the evolution of the sport. In these times the UCI has grown from a small organisation to an institution with many professionals. Also the doping problem came to the surface with an immense output for the sport. The opening of the EU borders have established that the teams became true international collectives and the the labour market in cycling is perhaps the most international labour market not only in sport but of many sectors. The organizers of the events have also established themselves, but despite of the emancipation of many stakeholders mr. Bonn动员 still sees the UCI as a focal point. The UCI is a very important stakeholder and through their structures they have influence on all matters related to the sport.

The goals are to gather as many teams as possible and to represent the interests of the members. The AIGCP does not have a financial goal but a more general goal to support the evolution of cycling. Participation in issues related to social aspects and social dialogue are part of the AIGCP objectives. Other (future) topics are issues such as tv rights income, sponsorship acquisition, safety aspects.

A near future goal is to strengthen the organisation. In the past there has been some difficulty to run the AIGCP and to reach its objectives. This was related to problems connected to

misunderstandings on the level of individuals. These problems are now solved and the AIGCP has received the recognition from various stakeholders to continue to represent the teams.

Mr. Bonnamour recognizes that there are many issues at an international level that need to be addressed or better addressed. The fact that national employment laws of the members states of the EU differ and that the organization of cycling on the national level is structured and based on varying concepts leads to uncertainties and to an unfair playing field. From the side of the teams a clear example is the fact that some countries do not use employment contracts to employ their riders. The riders are self-employed in for example Germany. In other countries there exist employment countries but the social security and tax regulations lead to inconsistencies. A debate in France that was initiated by the stakeholders is the problems that are created by applying general employment law to cycling. The sector is too specific to apply issues that are transposed directly from general employment law. A specific type of regulation, harmonious on the umbrella needs to be introduced. At this moment there is a form of an Accord Paritaire (AP), embedded within the structure of the UCI, but this leads to practical operational problems. The AP gives minimum harmonization but there is no check if the outcome of the AP leads to uniformity as regards the members of the UCI. There are too many loose ends as is proven by the fact that there is an unfair competition due to the expenses teams need to make in order to meet their national criteria. A starting point for international issues should be a common understanding that all riders performing on a certain level should be regarded as professionals with an employment contract that qualifies them as workers.

Other stakeholders

the AIGCP is in contact with the CPA, a current topic of the CPA is the use of earphones during the races. This is an example of an employment related matter that is very specific for cycling. Mr. Bonnamour is of the opinion that the contact with the CPA may be intensified, especially in a joint effort to create employment uniformity on the level of the EU. He believes that both organizations can use a strengthening. As far as the UCI is concerned the relation is very good. The UCI has brought the social partners around the table in their internal structures, this is appreciated by the AIGCP. He believes that the UCI will also benefit from a better relation between CPA and AIGCP because the UCI has not influenced the talks between the two organizations up until now.

The European Commission is also an important stakeholder. The AIGCP has been in Brussels once before and there have been approaches to enter into the structures of the EU when it comes to social dialogue. However, there have been boundaries for these first steps to be really successful. Now the structures of the participating organizations have changed and if the envisaged social partners become stronger they can make a new attempt. The direction of the AIGCP is now more clear.

Themes

Teams and issues that are relevant for discussions on the level of the EU, for starters, are obvious if one follows cycling from within. There is a need for coherency and a fair competition. Uniform standard rules that have passed the test of the EU laws are wished for by all the stakeholders. Furthermore the whereabouts discussion is relevant from an employment law perspective, up until what extend may doping regulations intrude in private life and work relations? The reaction towards the issue of “social dumping” also lead to a direction towards social discussions; it is unwanted that teams are able to be based in one country and represent another country just for circumventing strict labour regulations and laws. Other aspects are a pension fund for riders, the participation of teams and riders in the

division of media and sponsoring income, the standards for event organizers, social protection, the transposition of the Accord Paritaire into EU proof regulation, ethical codes, etc.

Utrecht, The Netherlands, 23 October 2009: meeting with Yvon Sanquer, French Professional Cycling League

The French cycling league is the only entity responsible for professional cycling in France. The system in France is modelled as an interventionist system: the delegation of powers to regulate the various sectors of sport is based on a basic Act that attributes the right to organize a sports discipline to the relevant sports association or federation. This Act also leaves open the possibility to appoint powers to the league to organize professional sport. The league in French cycling is responsible for many issues. The only matters not directly organized by the league are the French national cycling team and doping issues. The relationship with the association is very good and they reside in the same building. The league has its own structures for arbitration, while appeals fall within the competence of the association. This is a typically French system which is quite different from that for team sports in other countries. Football and rugby are similarly organized in France.

The French league brings together many different stakeholders: the medics, the event organizers, the riders and the teams. Part of the output of the league is that it facilitates social dialogue within French cycling. A collective bargaining agreement has been concluded between the AC2000 (teams) and the UNCP (riders). The UNCP was established in 1957 and was the first trade union for sportsmen in France. A novelty as compared to other countries is that the outcome of the collective bargaining, the actual agreement, is monitored by a specific committee that was set up especially for this purpose: the DNCG Pro. This committee consists of professionals such as a lawyer, an accountant and experts from cycling practice. It acts as a guarantee that the results from the social dialogue are being respected.

Mr. Sanquer agrees that there are many issues that need to be tackled in the European cycling industry and that much still needs to be done. For example, the current implementation of the *Accord Paritaire* within the UCI structure could serve as a blue print for social dialogue discussions at EU level. In order to safeguard the results and the objectives of a cycling social dialogue, it could be investigated whether a European organization along the lines of DNGC Pro could be established. The structures for dialogue within the EC do guarantee that the social partners can meet on a frequent basis. Mr. Sanquer supports the idea of a social dialogue in cycling whereby the European cycling leagues (in addition to the French league there is also an Italian league) could act as the social partner on behalf of the associations and AIGCP as the social partner on behalf of the teams. The French system could be taken as an example that could have many benefits for Europe.

Utrecht, The Netherlands, 25 August 2009: meeting with Martial Gayant, directeur sportif, Française des Jeux

French cycling team structure and composition

Cycling teams in France are all structured along the same lines, because they have to be established according to the “*loi 1901*”. Team owners have to register the team with the public authority of the municipality in which the team is situated. This is the typical method for establishing an association, be they sports associations or otherwise. This form of association constitutes the basis for all the teams and provides a direct link to the adherence to cycling

regulations, as the associations are also registered with the French national cycling union and the UCI. This association, the “traditional cycling team”, is the holder of the UCI license. The volunteers who work for the team are also connected to the association.

The professional part of the team, i.e. the entity that is the employer of all paid staff and riders, is a company with a commercial interest and the official partner of the sponsors in the form of what is known as a “*société de gestion*”. This company is the actual employer and carries out the activities that lead to participation in races.

Française des Jeux (FdJ) can be characterized as a training and development team focusing on talents. For years now the French government has supported this team and it is therefore one of the teams that has a “tradition” in cycling. Other teams have a more commercial approach.

FdJ employs some 23 cyclists, who all have an employment contract. The contract is subject to scrutiny by the French League and conforms to UCI standards. The total staff of FdJ consists of 50 people, which is in accordance with the maximum allowed due to fiscal restrictions. The contracts of the riders are subject to institutionalized negotiations between stakeholders in French cycling and include issues such as minimum wages related to the budget of the different team categories, and riders’ pensions and social security.

French Cycling: structure and stakeholders

There is a truly participatory democracy in French cycling. In the regulation of cycling, many stakeholders play a role. These stakeholders are represented through collective organizations such as the French cycling teams’ league, the riders, the medical staff and the event organizers. All these organizations are gathered together under the umbrella of the French Cycling Union. The difference between the Union and the League is that the latter employs paid workers, who are in that sense professionals. In the League, the focus is on professional cycling, whereas the Union takes a far broader perspective on the regulation of cycling.

The League currently consists of nine teams. Four of these are Pro Tour teams, another four are Continental teams and there is one Continental Pro team. The Pro Tour teams are more closely linked to the UCI due to their international ties, while the other teams are more closely connected to the French Cycling Union. The League defends the interests of all teams in riders’ issues, general cycling regulations, contacts with the organizers and the sale of broadcasting and other media rights.

The collective of event organizers play an important role besides the other stakeholders. They have a say (obviously) in the amount of the premiums and in the number of participants in events and the number of events themselves, as well as in the logistics of the events.

Therefore their participation is important.

It took some time to organize the structure of cycling in France in this way, but now it may be said that the League is truly independent and that all parties are collaborating on the basis of equality.

Riders and contracts

The riders have a regular employment contract based on general employment law. In the collective negotiations mentioned above, specific cycling issues are included and UCI regulations on minimum wages are respected. Through the platform of the French cycling stakeholders a standard contract can be negotiated respecting all relevant topics.

Themes and issues

The use of fixed-term contracts in cycling is of fundamental value. This must be respected for now and in the future because no rider can stay employed for longer than his cycling career

lasts.

Not only the status of the rider should be part of the discussion on social aspects. A team after all consists of many people who together make up its staff and in France it is customary that this staff also has an employment contract. JdF staff work seven days a week and travel around the world. It is almost impossible for them to adhere to all the strict rules. Just imagine the lorry drivers' workload when they move from one country to another on a very tight schedule. For this reason, it is necessary to employ two drivers to guarantee continuity. If this had to be done according to French law, the team would have a serious disadvantage in relation to other teams to which less strict controls and laws apply.

Also the day-to-day paperwork and administrative duties are a burden. Of course, it is necessary to go through all the paperwork, but the process could be made more efficient; this is also part of the working environment and, in France, part of the stakeholders' discussions. As regards employment contracts, JdF has to respect social security and the stability of contracts. However, a balance needs to be found between social issues and the characteristics of the industry. The team depends on sponsors and if these sponsors are, unlike the team itself, commercial parties, then it is almost impossible for teams to guarantee continuity. A disadvantage of the French system is that it is perhaps overregulated and in this respect European unity is welcomed. For example, in France, teams can only employ certified masseurs, whereas in other countries anyone can be employed under any contract whatsoever.

On European Unity

As mentioned before, European Unity in cycling contracts is welcomed. The initiative for such unity should come from the traditional cycling nations, such as Italy, France, Belgium, Spain and the Netherlands. Where contracts are concerned, these are the countries that still matter the most despite the efforts of the UCI to promote cycling in all parts of the world. Before cycling seriously expands to other continents an EU uniform basis would be welcome, so that global implementation could follow.

Uniformity in the area of contracts could also serve the purpose of creating financial unity. Now, if the Tour de France were to disappear, the entire cycling structure in France would collapse. The Tour is every rider's dream.

There is a need for legal certainty and we should strive to achieve this. Any help from the EU is welcome and all parties in cycling should be supportive of that.

Utrecht, The Netherlands, 25 August 2009: meeting with Dominique Arnould, director sportif, AG2R

On general issues, Mr. Arnould agrees with Mr. Gayant. He adds information concerning his own team. The team employs 29 riders and a total of staff amounting to 50 people. The team has a separate section that deals with talented riders. Out of the last group, 1 or 2 riders make it to the AG2R team every year.

The team is a mainly French team, not only as to its structure, but also where its composition in terms of riders' nationality is concerned: there is one Japanese rider, one Swiss rider and two Russian riders, while the rest of the riders are French.

The riders have one-year contracts, although some ride on two-year contracts. This is the consequence of the link with income from sponsorship deals and the ensuing impossibility of creating stability in contracts.

As far as themes and issues for social bargaining are concerned, Mr. Arnould states that there is need of a fair and level playing field in Europe. In France, these matters are thoroughly regulated whereby all stakeholders are included. However, the strict rules that are supported

by these stakeholders and which are a result of consensus in the French Union cycling platform, lead to practical restrictions for French teams in competing with foreign teams. The French labour laws demand more guarantees and equal treatment of riders. The danger is that, for example, rich teams that have money to spend due to the sudden interest of wealthy (individual) sponsors are able to buy talent away from French teams. As a consequence such teams, that lack a tradition and often have poor prospects for continuity, only offer money and no extra conditions. At first glance, riders seem to be better off for making more money, but their working conditions are less well protected as compared to the arrangements in place in France.

Social bargaining should take this into account and should at the same time guarantee the continued use of fixed-term contracts in cycling.

GERMANY

In Germany the riders are self-employed. CPA is not only the international association for employed riders, but also for the self-employed riders. Therefore a collective bargaining agreement does not exist in Germany. In 2004 UCI had asked Prof.Dr Rolf Birk (Trier) for a legal opinion on the legal status of professional cyclist according to German law, whether they are employed or self-employed.¹⁵⁶

UCI has model contracts for the different kinds of teams (Pro Tour, Professional Continental and Continental teams) which have to be used by the teams.

Report on “Promoting the EU Social Dialogue in the professional cycling sector”

Regional workshop: Berlin 6 May 2009

Present:

Roberto Branco Martins: Asser International Sports Law Centre NL / Richard Parrish: Edge Hill University Olmskirk UK / Jochen Hahn Trainer and sports director Team Milram / Udo Sprenger Vice President German Cycling association (BDR) / Marlies van Gerwen Team Milram Director / Henk Erik Meier Professor Sport Institute University of Münster

The meeting starts with welcoming the participants to this round table session. The participants are all experienced professionals that are active in all the layers of stakeholders in German cycling: teams / the federation / the cyclist union / sports law and academia. Two introductions were given, one by Roberto Branco Martins and the other by Richard Parrish.

Structure of German cycling

The participants stress the difference between the German cycling sector in relation to big cycling nations such as Spain, Netherlands and Belgium. In Germany there does not exist a cycling tradition. Cycling became very popular in a short time due to good results of German riders. However, Germany has been affected severely by the doping crisis. Due to the bad publicity around the sport the cycling sector has collapsed and there is now only a small market with commercial value.

There is one commercial /professional team in Germany. This is Milram. Milram is the sponsors' name, the foundation of the team is a company called Velocity GmBH. The team was created in 2006 under an Italian license and was transposed to a German license and structure in 2008. Milram has around 30 professional riders and a staff of 9 physiotherapists and 7 mechanics and the management and directors of the team, 4 persons. Other teams compete on a lower level and are not to be considered professional.

156 See annexes for the full text of the English version.

The riders in Germany are not organized as a collective. There are around 30 riders that would qualify as a professional. The majority of these riders are self-employed. They compete on behalf of their team and as an individual in individual races. The self-employed riders have a contractual link with the team, this is also the case for Milram. This link is not considered to be an employment contract because the rider is free to also participate in other competitions where he can win prize money. The contract between the team and the rider contains various elements. The team provides materials and equipment and technical and medical staff, a number of riders however have their own staff. In the case of Milram the rider is obliged to ride for the team for 80 days a year and is not allowed to join another commercial team. The races for the team have the priority over individual races and Milram has a veto right as regards the races in which the rider participates. The riders have to take care of their own social security issues and pension plan. The largest share, almost all, of the income of the rider comes forth out of the contract with the team and only a very small amount is earned by the riders through their participation in individual races. Another element is that although there is no employment contract linking the rider to the team it is still possible for the team to hold the rider and create stability within the team structure. The bond is a contractual one and if the player is in breach of an internal regulation of the team than he is liable for damages.

The German cycling union (BDR) has a specific department dealing with riders issues. The vice-president of the association, mr. Udo Sprenger, is responsible for these riders issues. He is also the spokesperson on behalf of German cyclists within the CPA.

Important stakeholders, according to the participants are also the event organizers. These organizations are responsible for an influx of money in the sport and need therefore to be taken seriously. On the other hand, there should also be a more reciprocal understanding as regards the position of the riders and the teams.

Status of Professional

The discussion centers around the status of the German rider. According to European jurisprudence it does not matter what kind of definition you give to a contractual relationship between a rider and a team. If the prerequisites for an employment relation are met it has as a consequence that the rider is regarded as an employee. The main conditions are being remunerated for providing services under the authority of another party that is responsible for the remuneration. This is the case in cycling in Germany and it leads to a discrepancy with other countries in the EU where under the same conditions riders have the status of a worker and may profit from the rights connected to their status. The counter argument for the use of these types of contracts is that without self-employed riders there would simply not be any form of professional cycling in Germany.

Themes and issues in German cycling

Obviously one of the issues in German cycling is the parallel existence of self-employed riders in teams that are regarded as professionals and riders that have an unclear legal status and are not regarded as professionals. This is in contrast to bigger cycling nations such as Belgium, France, Spain, The Netherlands, Italy. In Germany the only rules that are directly applicable to the relation between rider and team are the international UCI regulations. Problems arise when, such as in the Milram case, a team moves from one country to another or performs under another license than a license out of the country of origin of the team. Milram has had to completely change all the contracts with the riders when they moved from Italy to Germany.

Milram also stresses that the riders would like to benefit from a specific pension fund scheme. In the Netherlands such a system is in force, a tailor made cycling pension fund. This could be an issue for an international unifying initiative.

A synchronized system of payment of riders is also an issue of importance. The teams have taken steps to organize this but due to the big difference in teams this initiative has not found a solid platform for further development. In essence the big differences between the teams also leads to issues of a conflicting nature and related to employment law.

Stakeholders in industrial relations

In Germany there is a clear lack of industrial relations and / or an industrial tradition in cycling. There are few professional riders performing under self-employed contracts with a team. There is only one team that is considered to be professional.

From an international perspective the participants stressed the fragmentation in the sector. There are two organizations representing teams. The IPCT has more commercial aims and is only formed by the Pro Tour teams. The fact that the Pro Tour will change in the near future has taken away the foundation for the IPCT.

The continental teams and other teams are gathered in the AIGCP. Some teams are member of both organizations. The big constraint with the representation of the teams is that there are just too many differences between the teams. The structures and the issues differ too much to create harmony and common goals.

The event organizers are an important stakeholder according to the participants. The event organizers should also be made aware of the issues surrounding riders and teams and they should have a more social approach towards the sport. The involvement of the organizers, such as ASO, in a pan EU discussion may lead to the acknowledgement of the role of the organizers and it could create responsibility from the side of the organizers for the workplace of the riders and to a uniform system of payments to riders.

A positive issue is the role of the UCI and their efforts as regards the Pro Tour Council. All the stakeholders were involved in this council but the participants were not supportive of the far majority of votes for the UCI within this Council. The council is, amongst others, responsible for the collective agreement in international cycling. These are the only regulations applicable to German riders. These regulations could serve as the initial blueprint for a pan EU collective agreement in accordance with employment laws.

The participants hope that if an EU social dialogue comes off the ground that it will also serve to boost the commercial aspect of cycling. This is especially important for Germany and the continuity of German cycling.

ITALY

Report on “Promoting the EU Social Dialogue in the professional cycling sector”

Regional workshop: Rome 29 May 2009 (*postponed* / Milan, 10 September 2009)

Present:

Roberto Branco Martins: Asser International Sports Law Centre NL / Federico Scaglia – ACCPI (Riders' union) / Claudio Corti – director of the Barloworld cycling team / Board member of the AIGCP / former president of the *Lega Gruppi* (put forward by this organization as its representative due to his experience and knowledge of English) / Angelo Lavarda - secretary general of the (FCI) Italian Cycling Federation's *Consiglio Ciclismo Professionistico*

The structure and regulation of Italian cycling

Mr. Lavarda starts by explaining the basic elements of the regulation of cycling and more specifically of professional cycling in Italy. The general 1991 Sports Act applies to all professional sports. The Act delegates the power to organize sport first to the Olympic Committee (CONI) and then to its member associations. The Act also lists the basic requirements for the contents of employment contracts between athletes and their employers in sport.

The 1991 Act thus authorizes the FCI to organize the sport. Until 8 years ago, matters related to professional cycling were part of the FCI's general tasks. Around the year 2000, however, a special cycling committee was established that brought together all the collective organizations in Italian cycling: teams, riders, team managers and event organizers. This committee is known as the *consiglio ciclismo professionistico*. It ensures the sound regulation of cycling and acts as a platform for collective bargaining between the main stakeholders in cycling.

The committee has only recently become totally independent of the FCI. For this, the association's statutes had to be amended in order to grant autonomy to the committee.

The structure of the committee is as follows: it has a president, a vice president and 4 board members, one of each organization.

Riders' organization

The ACCPI was the first athletes' union in Italy. It was established in 1946 and might therefore even be the first athletes' union in the world. Its main mission is to represent and protect the interests of the collective of riders. It is also instrumental in dividing income from prize money amongst the riders. The ACCPI has also been actively involved in the creation of a pension fund for Italian cyclists, a unique instrument which exists only in a select number of countries. The organization and regulation of the pension fund takes place within the *consiglio ciclismo professionistico*.

Lega Gruppi

The *lega gruppi* was established in 1979 and therefore celebrates its 30th anniversary this year. The goals of the organization are, amongst others (see statutes), to promote the independence of the teams, to promote organized cycling in Italy and to strive towards regular positive exposure of the sport in the media. The *lega gruppi* currently has 6 member teams, 2 of which are pro tour teams (Lampre and Liquigas), 2 pro continental teams and another 2 continental teams. There are quota in place for the teams, considering that pro tour teams must have a minimum of 25 riders and pro continental teams a minimum of 16 riders. There is no minimum for continental teams as long as 50% of the team consists of riders of the nationality of the country of origin of the team.

Issues

One issue is that the Italian organizations all believe that there is a discrepancy between the intention on an international level to harmonize regulations on the relationship between teams and riders and reality. The UCI has taken the initiative for a standard contract containing minimum requirements, but these requirements are not nearly detailed enough. This lack of detail is caused by the fact that the UCI cannot impose regulations on the level of the member associations. In practice, it is much harder for Italian teams to implement the UCI's minimum standards than it is in other countries.

One example is the matter of taxes. If the UCI states that riders can be either employees or independent service providers then it sets a standard. In accordance with these rules, riders in Italy are employees, and therefore fall within the scope of a severe taxation system, whereas in other countries these taxes may be avoided by offering to riders a *prima facie* better employment proposal, but less worker protection. This leads to unfair competition and to less protection for riders.

As a consequence, teams may be tempted to establish themselves in countries where no strict rules and regulations apply. By way of an example, the ACCP points to Art. 22 of the UCI *Accord Paritaire* dealing with insurance. The basic insurance level may be the same in all

countries, but the method applied for reaching this level may differ. In some countries insurance is covered by the individual rider, in other countries it is taken care of by the employer as part of the total salary costs and in yet other countries specific funds have been established. This leads to unfair competition.

In the view of the Italian representatives in cycling, there is therefore a strong need to create harmony on the basis of a system that may be implemented throughout the entire EU cycling sector for starters. At this point in time the EU is still the world's 'powerhouse' in cycling given the fact that the main tours take place in EU countries. However, the UCI tends towards globalization and is actively promoting cycling in other parts of the world as well. This may lead to further issues when the expansion of cycling takes place in an unbalanced way and causes a shift in sponsorship attention due to which major cycling nations may collapse.

Another issue that is on the agenda in Italy is the regulation of agents. There are specific regulations in place for agents derived from initiatives in the *consiglio ciclismo professionistico*. Like many other sources of international regulation, this type of regulation also reflects on the situation in Italy.

According to the ACCPI, the EU level constitutes the ideal platform to start these negotiations. However, the apparent social partners AIGCP and CPA need to strengthen their organization and their internal communication before they can really serve the needs of their members. Communication with the ACCPI could also be much improved.

One further issue is the certification of team directors, medics and masseurs. These all need to be certified in Italy before they are allowed to practice. This is not the case in many other countries which leads to an unlevel playing field as the Italian teams have to spend more money on hiring these professionals than teams in other countries need to. One solution could be to implement a uniform course for *directeur sportifs* in all countries including a system of permanent education.

Lat but not least, there is the issue of event organizers. The participants believe that nowadays it is obvious that event organizers are important stakeholders and that they, to a certain extent, need to be part of the platform of stakeholders in cycling.

Schiedam, The Netherlands, 17 August 2009: meeting with Mario Chiesa, Team Director of Liquigas

Mr. Chiesa talks about his team, Liquigas. Liquigas consists of 27 professional riders and 30 staff. All persons connected with the team have fixed-term contracts, with the exception of the masseurs who work under a service agreement. The contracts of the riders have to be in line with the conditions laid down in the national regulations related to professionals in sport.

Italy has a specific Act in place dealing with these issues. The fixed-term contracts are in force from 1 January to 31 December. Three months before the expiry of the contract the team has to inform the rider whether it plans to renew the fixed-term contract for another year. If the team fails to inform the rider in time, the contract is automatically renewed for another year. The only requirement as regards the duration of contracts (e.g. 1 year or more) is set for what are known as newly-professional contracts. In order to protect young riders who sign their first professional contract, contracts with such riders must have a minimum duration of 2 years.

The international dimension of many teams often causes problems. Liquigas is 100% Italian, is based in Italy, is managed by Italians and is entirely subject to Italian law as regards the framework for the organization of its internal activity. This leads to discrepancies in some cases, as described below.

The standard contract for Italian riders in Italian teams (i.e. 100% Italian teams) is negotiated by the social partners in Italian cycling, ACCPI and *Lega Gruppi Professionistici*. The standard elements of the contract are influenced by UCI standards, such as minimum wage, but also by typically Italian arrangements, such as a thorough social security regime. Mr. Chiesa explains that if a rider earns a certain amount, out of this amount he has to pay an amount to ENPALS (the special social security scheme for athletes and artists), an amount to a specific pension fund, an amount to an unemployment fund and an amount to a fund for professional injuries. Problems or discrepancies occur when Italian riders are employed by foreign teams or teams with scattered establishment (e.g. where the team is legally established in one country and fiscally established in another country) or where riders are employed through the most favourable regime for the employer.

Mr. Chiesa argues that this may lead to an unlevel playing field, but explains the situation by comparing professional cycling to professional football. For example, *Internazionale di Milano* is a football club with a tremendous history; sponsors are eager to invest in the team and get a clear return on investment. Clubs are also able to create revenues out of ticketing and establish a steady base of income in this way. The situation in cycling is clearly different. There is no tradition related to teams in cycling. The tradition is rather connected to the championships: Tours and one day classics. In addition to this, income from media rights is mainly distributed amongst the competition organizers. Finally, cycling is a free-to-watch sport: spectators along the route do not pay entrance fees. This means that the teams are completely dependent on sponsorship income. If the sponsor decides to pull out at the end of the season, this may mean the end of the team. This leads to uncertainty and also to an understanding that teams and riders sometimes need to be creative and settle for less well organized conditions or discrepancies from team to team. Chiesa stresses that all parties involved in cycling are aware of this and are also all passionate about the sport, because otherwise it would be hard to understand why they put up with this. All team members have to have a commitment towards creating a successful season as a group; there is not much room for individualism.

Mr. Chiesa goes on to comment on the Veenenberg case. He believes that in cycling it is impossible that fixed-term contracts are turned into contacts for an indefinite period of time. This would conflict with the structure of cycling and the dependency on sponsor participation. Also, a rider's sporting career only lasts for a number of years and it would be illogical to have riders connected to the team for many years after they were successful.

As regards issues in cycling that could potentially be improved, Mr. Chiesa mentions the role of the organizers of competitions. There are many rules that need to be taken into consideration from an organizational perspective. The travelling from stage to stage could perhaps be better streamlined. But then again, Mr. Chiesa is also of the opinion that this is a fact of life in cycling and that it is difficult to change this. In any case, competition organizers should be more aware of aspects related to social and labour issues between riders and teams.

As regards the situation in Italy, Chiesa stresses the role of the *Lega Gruppi*. This League of teams defends the interests of the teams in issues with competition organizers. The *Lega Gruppi* is also the counterpart of the social partner in cycling representing workers (i.e. riders) in Italy, the ACCPI.

Mr. Chiesa is of the opinion that uniformity in professional cycling should be promoted. He believes that uniformity will be quite difficult to achieve, but efforts to reach it should be made. In order to create a level playing field uniformity is important. At this stage, there are teams that make use of rider contracts, such as the 100% Italian teams, and that consequently have to spend a large amount on social security and other extras that can be classified as employers' costs. In other countries, the riders are considered as professionals rendering

services who are responsible for paying for their own social security. The Italian system could be introduced as a basis for a broader pan-European system, as it takes into account both the protection of riders (in terms of social security / unemployment / pensions / risk and health insurance) and the necessary flexibility of teams in view of the nature of the professional sport.

NETHERLANDS

Recently, the three professional cycling teams in the Netherlands (Rabobank, Skil-Shimano and Vacansoleil) have jointly taken the initiative to regulate certain matters in consultation with the VVBW that relate to employment contracts between riders and teams and the regulations and legislation associated with this. The aim is to regulate these matters by means of a collective bargaining agreement.

The difference between UCI regulations and national legislation has been mentioned as a matter for discussion in a Dutch Social Dialogue. This is also a relevant point in the framework of a European Social Dialogue; it is after all to be expected that many countries will have certain aspects in common where the national legislation is concerned. One example: draft UCI rules for the situation that the parties are no longer under any mutual obligation after the expiry of a contract, but the question is whether this is compatible with national legislation (in the Netherlands the 'Flex Act' regulates the consequences of serving several consecutive contracts; or is cycling too specific for this?).

PORUGAL

APCP participates in a commission of the Portuguese cycling federation to establish the rules for Portuguese Continental teams (minimum salary, minimum bank guarantee, etc.).

In the collective bargaining agreement, issues and themes are:

Regulamentos para Equipas Continentais Regulamento a ter efeito a partir de 2009 e anos seguintes.

§ Condições Gerais

Identificação

- Art. 2.17.001 Uma Equipa Continental é uma equipa de corredores de estrada reconhecidos e certificados pela UVP/FPC da nacionalidade da maioria dos seus corredores para participar em provas de estrada do calendário internacional, de acordo com o disposto nos artigos 2.1.005 e registados na UCI.
É composto por um grupo de corredores registados na UCI como parte da equipa, o representante da equipa, os patrocinadores e todas as pessoas contratadas pelo representante da equipa e / ou patrocinador da equipa de modo a agilizar as actividades da equipa numa base continua (director, director desportivo, treinador, etc...)
- Art. 2.17.002 O(s) principal(ais) patrocinador(es) e o representante da equipa deve comprometer-se com a equipa continental para uma época desportiva do respectivo calendário.
- Art. 2.17.003 A designação da equipa deve ser a da empresa ou da marca da equipa do principal patrocinador ou de um dos dois principais patrocinadores.
- Art. 2.17.004 Uma equipa continental inclui somente corredores profissionais, das categorias elite e/ou Sub23. Deve ter entre 10 e 16 corredores.
No entanto, uma equipa continental tem o direito de juntar até 4 corredores especializados em disciplinas de endurance (ciclo-cross, BTT: cross-country, pista: prova por pontos, scratch, perseguição, madison) desde que os corredores em questão

	estejam entre os 150 melhores da classificação individual da UCI da especialidade da disciplina no ano anterior à data de registo da equipa na UVP/FPC.
Art. 2.17.005	A maioria dos corredores deve ter idade inferior a 28 anos (idade a considerar no ano de registo da equipa continental). É proibida a inscrição de corredores Sub23 de 1º ano na equipa continental. Os corredores pertencentes à Equipa Continental terão obrigatoriamente que participar e terminar pelo menos três provas até à Volta a Portugal, caso contrário a equipa terá que pagar uma coima de 500 €, salvo em caso de lesão comprovada pelo atleta.
Art. 2.17.006	A nacionalidade das equipas continentais é determinada pela nacionalidade da maioria dos corredores.

Período de Transferências

Art. 2.17.007	Durante a época, nenhum corredor registado na UCI numa equipa de estrada para a corrente época pode juntar-se outra equipa continental UCI fora do período de 1 a 25 de Junho.
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Estagiários

Art. 2.17.008	No período entre 1 de Setembro e o fim do ano, as equipas continentais podem contratar dois corredores sub23 como estagiários, nas condições seguintes:
	– O corredor não pode ter corrido em nenhuma Equipa UCI de estrada
	– A equipa continental deve notificar a UCI e a UVP/FPC antes do dia 1 de Agosto
	– Tais corredores devem obter a autorização da sua federação e só podem estar associados a uma única equipa UCI durante este período.

Estatuto legal e financeiro

Art. 2.17.009	As equipas continentais UCI têm estatuto de profissional.
Art. 2.17.010	O representante da equipa deve representar a equipa em todos os aspectos relacionados com os regulamentos da UCI. O representante da equipa pode ser quem tem poderes para contratar pessoal. Ele assina os contratos com os corredores da equipa e outros empregados.
Art. 2.17.011	Qualquer pessoa, empresa, fundação, associação ou outra entidade que se torne no representante da equipa ou principal patrocinador de uma equipa continental pela primeira vez deve, o mais tardar até à data do registo da equipa como continental, submeter à UVP/FPC os seguintes documentos: – Para indivíduos: prova de residência – Para empresas e outros organizadores: – Constituição ou artigos da associação – Prova Oficial de existência legal da empresa/organização ou cópia do cartão de RNPC (Registo Nacional de Pessoas Colectivas) – Lista de directores ou administradores – Contas anuais (balanço de receitas e despesas do último ano em documento legal). Mais ainda, o representante da equipa e o principal patrocinador devem informar a UVP/FPC sem demora de alguma alteração de domicílio ou registo de escritório, redução de capital, alteração de algum documento oficial ou identidade (fusões, aquisições) pedidos de ou implementação de algum acordo ou alguma medida respeitante aos credores.

§ Requisitos impostos pela UVP/FPC às equipas

Registo

Art. 2.17.012	O requerimento para o estatuto de Equipa Continental deve ser feito junto da UVP/FPC desde que a nacionalidade da maioria dos corredores seja portuguesa de acordo com os procedimentos a seguir descritos (registo).
Art. 2.17.013	A UVP/FPC registará até um máximo de 10 equipas continentais por ano.
Art. 2.17.014	Até ao dia 30 de Setembro deverá ser enviado à UVP/FPC, a intenção de registo como Equipa Continental.

	<p>Após esta data a UVP/FPC enviará às equipas que enviaram a intenção de registo, o Manual de Registo de Equipas Continentais.</p>
Art. 2.17.015	<p>A equipa deve submeter à UVP/FPC os seguintes documentos até ao dia 7 de Dezembro:</p> <ol style="list-style-type: none"> 1. Original das cópias dos contratos assinados com os corredores (3 originais); 2. Original das cópias dos contratos/acordos assinados com todos os membros da equipa (3 originais);¹⁵⁷ 3. Original da Garantia bancária, de acordo com o artigo 2.17.017 e seguintes; 4. Orçamento detalhado de acordo com o modelo apresentado no Manual de Registo de Equipas Continentais 5. Cópia da apólice de seguros de acordo com o artigo 2.17.032, para os corredores e empregados da equipa; 6. Cópia dos contratos de patrocínio ou, em caso de não haver contratos, documentos que provem rendimentos para a equipa 7. Boletim de filiação da equipa na UVP/FPC e Croqui de equipamento da equipa 8. Boletins de Filiação de todos os membros da equipa 9. Formulários de registo da equipa na UCI 10. Documentos comprovativos de registo na Segurança Social ou de pedido de registo na Segurança Social.
Art. 2.17.016	<p>Até ao dia 10 de Dezembro a UVP/FPC submeterá à UCI os dossiers de pedidos de registo das Equipas que estiverem conformes os requisitos para inscrição de Equipas Continentais, nomeadamente o orçamento adequado à equipa em questão.</p> <p>Até ao dia 25 de Novembro, a UVP/FPC ou a Equipa Continental efectuará o pagamento da taxa de registo junto da UCI.</p>
	<p>Garantia Bancária</p>
Art. 2.17.017	<p>Em cada ano de registo, a equipa continental deve apresentar uma garantia bancária de “primeira interpelação” a favor da UVP/FPC, de acordo com o modelo apresentado no artigo 2.17.029.</p>
Art. 2.17.018	<p>O objectivo da garantia é o seguinte:</p> <ol style="list-style-type: none"> 1. Liquidar os débitos ocorridos durante o ano de registo, de acordo com os procedimentos abaixo indicados, efectuados pelos patrocinadores e pelo representante da equipa primeiramente com os corredores e depois com outros licenciados da equipa continental UCI (treinadores, mecânicos, etc.) para a operação da equipa continental UCI e para cobrar o pagamento de qualquer multas aplicadas como resultado dos regulamentos da UCI. 2. Para liquidar o pagamento das despesas, indemnizações, multas e sanções ou sentenças impostas segundo ou como resultado da aplicação dos regulamentos da UCI ou da responsabilidade da federação nacional ou associado com a sua aplicação. <p>Para aplicação das condições da garantia bancária são considerados como membros das Equipas Continentais as empresas através da qual os detentores das licenças que exerçam a sua actividade para funcionamento da equipa continental UCI.</p>
Art. 2.17.019	<p>O montante mínimo total da garantia bancária corresponde ao valor mais alto de:</p> <ul style="list-style-type: none"> – 15% do total pago aos corredores e staff (dependentes e independentes) – o montante mínimo de €20.000 (vinte mil euros) – a ser indexado ao país de acordo com a tabela UCI.
Art. 2.17.020	<p>Se o montante da garantia segundo o artigo 2.17.017 for inferior ao montante indicado no artigo 2.17.019, deve ser constituída uma garantia complementar e enviada à UVP/FPC antes da inscrição da equipa continental UCI ou a formação solicitando esse estatuto.</p>

¹⁵⁷ Director Desportivo, Corredores, Médico (com Contrato ou Acordo) e obrigatoriamente inscrito na OMP, 2 paramédicos e 2 mecânicos.

- Art. 2.17.021 Se o total dos benefícios contratados aumentar, após a constituição da garantia, o montante da garantia bancária deve ser aumentada proporcionalmente. As equipas continentais UCI devem informar imediatamente a UVP/FPC desse aumento, precisando os motivos e o montante em questão. Devem igualmente enviar sem demora os documentos relativos ao aumento, ou seja a garantia bancária complementar.
- Art. 2.17.022 Esta garantia bancária deve ser válida desde o início da época, e ter a duração completa de 15 meses.
- Art. 2.17.023 Solicitar pagamento da garantia bancária
A federação deverá solicitar a garantia bancária a favor do credor de acordo com o artigo 2.0.17.018 parágrafo 2, excepto quando não houver claramente razões para a reclamação. A equipa continental UCI deve ser notificada da reclamação do credor e do pedido da garantia.
A federação pode estabelecer uma indemnização adequada para qualquer pedido de garantia.
- Art. 2.17.024 O pagamento actual ao credor não deve ter lugar antes de um mês após o pedido da garantia. Se entretanto, a equipa continental UCI apresentar uma objecção justificável ao pagamento do valor do credor, a federação deve levantar o valor em questão e colocar numa conta especial e deve distribuí-lo de acordo com qualquer acordo estabelecido entre as partes ou de acordo com alguma decisão legal executória.
- Art. 2.17.025 Se o credor não apresentar a sua reclamação contra o representante da equipa perante a entidade designada no seu contrato ou a entidade que ele pensa ser a competente numa outra base nos três meses após a data do seu pedido de pagamento da garantia, o representante da equipa pode solicitar junto da federação que os fundos bloqueados sejam libertados a seu favor.
Os fundos serão libertados se o credor não apresentar o seu pedido com um mês de antecedência para a Federação, ou se apresentar prova de tais procedimentos nos quinze dias seguintes. Se a entidade se declarar não competente o credor deve voltar a submeter a sua reclamação após um mês de ser apresentada a decisão. Na falta deste o representante da equipa deve apelar à federação para que os fundos sejam desbloqueados a seu favor. Os fundos serão libertados caso o credor não reintroduza o seu pedido no mês após o envio, pela UVP/FPC do despacho de notificação e não chegue à UVP/FPC a prova de introdução do seu pedido na quinzena seguinte.
- Art. 2.17.026 Se o débito submetido exceder a soma igual a 10% dos benefícios anuais contratados, somente um montante anual correspondente a 10% dos benefícios anuais contratados podem ser pagos em primeira instância, garantindo que todas as condições de pagamento serão completas. O saldo conhecido de débito pode ser pago da garantia global, na medida em que esta última não seja esgotada antes do final da sua validade. No caso de haver vários credores, o saldo disponível da garantia será repartido proporcionalmente entre todos.
- Art. 2.17.027 A equipa continental UCI cuja garantia seja esgotada será automaticamente suspensa se a garantia não for inteiramente reconstituída no prazo de um mês.
- Art. 2.17.028 O credor deve apresentar o seu pedido de apelo à garantia bancária junto da federação o mais tardar nos 30 dias antecedentes à data da sua expiração. Deve juntar ao seu pedido os documentos justificativos.
Na falta dos mesmos, a UVP/FPC não é obrigada a pagar a garantia.
- Art. 2.17.029 Modelo da garantia bancária
A presente garantia bancária é emitida nos termos do art. 2.17.017 dos Regulamentos de Ciclismo da União Ciclista Internacional e visa garantir, nos limites estabelecidos por esses regulamentos, o pagamento das somas devidas pela Equipa Continental [nome] (representante da equipa: [nome do representante da equipa]) aos corredores e outros credores referidos no 2º parágrafo do artigo 2.17.017 do mesmo Regulamento, bem como o pagamento de despesas, indemnizações, multas e sanções ou sentenças aplicadas segundo ou consequentes dos regulamentos da UCI.
O montante da presente garantia é limitado a [valor] euros

O Banco,

- Nome exacto
- Endereço completo para onde o pedido de pagamento da garantia deve ser enviado
- Números de Telefone e fax do departamento do banco responsável pelos pagamentos das garantias
- Endereço electrónico compromete-se a pagar, à sua primeira interpelação e nos quinze dias seguintes à recepção desse pedido, à UVP – FEDERAÇÃO PORTUGUESA DE CICLISMO, qualquer montante em euros até à importância de X euros e até ao esgotamento da presente garantia.

Os pagamentos acima referidos serão efectuados à data da recepção de uma simples solicitação, ignorando qualquer objecção ou reserva seja ela qual for. A solicitação não carece de justificação.

A presente garantia mantém-se em vigor até ao [último dia do 15º mês seguinte ao fim da época em questão]

Todo e qualquer pedido de pagamento da presente garantia deverá chegar ao banco, o mais tardar até [último dia do 15º mês da época em questão].

Art. 2.17.030

Contrato

A pertença de um corredor a uma equipa continental UCI obriga à assinatura de um contrato de trabalho segundo o contrato-tipo.

O Contrato deve ser redigido em três exemplares, em língua comprehensível para o corredor e federação. Em caso de necessidade, deve ser acompanhado de uma tradução.

O contrato deve reger-se pelos seguintes pontos:

- Duração: duração determinada no final da época do calendário em questão;
- Seguros: a cobertura de seguros de acordo com o estipulado no artigo 2.17.031 deve garantir e especificado em detalhe;
- Salário/despesas: estabelecer o salário a receber, que não pode ser inferior a 1000 € por mês
- Condições de pagamento: todos os pagamentos do corredor devem ser efectuados por transferência bancária, para a conta bancária indicada pelo corredor. Deve ser estabelecida prova de execução de transferência bancária, única prova de pagamento válida;
- Estatuto: estatuto profissional do corredor
- Fim do contrato

MINUTA DE CONTRATO: CONTRATO DE PRESTAÇÃO DE SERVIÇOS DESPORTIVOS

Entre:

(Designação da Associação ou Sociedade Desportiva que contrata do ciclista), com o NIPC....., com sede na, neste acto representada por, portador do BI n.º, do NIF, na qualidade de Representante da Equipa, adiante designada PRIMEIRA CONTRAENTE,

E

(Nome do Ciclista), portador do BI n.º, emitido por, em, do NIF, residente, adiante designado SEGUNDO CONTRAENTE,

É de boa-fé e livre vontade celebrado o presente Contrato de Prestação de Serviços Desportivos, o qual se regerá pelas cláusulas seguintes:

**PRIMEIRA
(OBJECTO)**

O SEGUNDO CONTRAENTE compromete-se a participar em provas desportivas, na qualidade de corredor de ciclismo de estrada, em representação da PRIMEIRA CONTRAENTE.

**SEGUNDA
(PAGAMENTO DO SERVIÇO)**

1. O SEGUNDO CONTRAENTE receberá, pelos serviços prestados nos termos da cláusula anterior, e durante a vigência do presente contrato, a quantia mensal de €..... (extenso) (este valor não poderá ser inferior a €1.000).
2. A quantia referida no número anterior, ou outro valor devido ao SEGUNDO CONTRAENTE pela PRIMEIRA CONTRAENTE, deverá ser pago por transferência bancária para a conta com o NIB....., em nome do SEGUNDO CONTRAENTE, sendo que somente o comprovativo de transferência será aceite como prova de pagamento.
3. O SEGUNDO CONTRAENTE celebrará contrato de seguro de acidentes de trabalho para trabalhadores independentes.

**TERCEIRA
(PRÉMIOS)**

O SEGUNDO CONTRAENTE, a título de prémio pelos resultados desportivos obtidos em representação da PRIMEIRA CONTRAENTE, tem direito a receber o seguinte:

(Descrever prémios e condições da sua atribuição)

(Eliminar a cláusula, se não for aplicável ao contrato celebrado)

**QUARTA
(EQUIPAMENTO DESPORTIVO)**

O material e o equipamento desportivo necessários ao exercício conveniente da prestação do serviço desportivo serão adquiridos pelo SEGUNDO CONTRAENTE, pelo que lhe pertencem na totalidade.

**QUINTA
(PROVAS DESPORTIVAS)**

1. A PRIMEIRA CONTRAENTE compromete-se a garantir ao SEGUNDO CONTRAENTE a participação num número mínimo de provas, durante a época desportiva.
2. O SEGUNDO CONTRAENTE obriga-se igualmente a participar e contribuir com o melhor desempenho possível, sempre que a PRIMEIRA CONTRAENTE lhe solicitar para, em sua representação, tomar parte numa prova de ciclismo de estrada.

**SEXTA
(PODER DISCIPLINAR)**

A PRIMEIRA CONTRAENTE não poderá exercer qualquer poder disciplinar sobre o SEGUNDO CONTRAENTE.

**SÉTIMA
(EXCLUSIVIDADE)**

1. Durante a vigência do presente contrato, salvo acordo em contrário, o SEGUNDO CONTRAENTE não participará nem colaborará com outra Equipa desportiva.
2. Durante a vigência do presente contrato, mediante acordo da PRIMEIRA CONTRAENTE, o SEGUNDO CONTRAENTE poderá participar, numa equipa mista, em provas de estrada, salvo se a PRIMEIRA CONTRAENTE também participar nessa competição.
3. Durante a vigência do presente contrato, o SEGUNDO CONTRAENTE poderá participar, a título individual, em provas desportivas, não necessitando, para o efeito, do acordo da PRIMEIRA CONTRAENTE.
4. O acordo referido no n.º2 considera-se tacitamente concedido se, num prazo de 10 dias, a PRIMEIRA CONTRAENTE não se pronunciar a respeito do pedido apresentado pelo SEGUNDO CONTRAENTE.
5. Durante a vigência do presente contrato, o SEGUNDO CONTRAENTE obriga-se a não participar ou colaborar em actividades publicitárias respeitantes a outras entidades que não A PRIMEIRA CONTRAENTE e os seus patrocinadores.

**OITAVA
(CONFIDENCIALIDADE)**

1. O SEGUNDO CONTRAENTE obriga-se a não revelar a terceiros, mesmo após a cessação, por qualquer forma, do presente contrato, as informações de que tenha tido conhecimento ou que lhe tenham sido transmitidas a título reservado ou confidencial e que se refiram à actividade da PRIMEIRA CONTRAENTE.
2. A violação do compromisso referido no número anterior constitui o SEGUNDO CONTRAENTE na obrigação de indemnizar a PRIMEIRA CONTRAENTE, nos termos gerais de direito, sem prejuízo do procedimento criminal a que haja eventualmente lugar.

NONA
(DADOS PESSOAIS)

O SEGUNDO CONTRAENTE autoriza o tratamento dos seus dados pessoais pela PRIMEIRA CONTRAENTE, de forma a possibilitar o cumprimento dos seus deveres, bem como o exercício dos seus direitos, ao abrigo do presente contrato.

DÉCIMA
(VIGÊNCIA)

O presente contrato tem início em e termo em

DÉCIMA PRIMEIRA
(CESSAÇÃO)

1. O presente contrato pode cessar por:
 - a) Caducidade;
 - b) Revogação, por acordo dos CONTRAENTES;
 - c) Denúncia por qualquer um dos CONTRAENTES;
 - d) Resolução por incumprimento do contrato.
2. No caso previsto na alínea c), do número anterior, a denúncia pode ser efectuada a todo o tempo, ficando, porém, o CONTRAENTE que denunciar o contrato obrigado a indemnizar o outro pelos danos causados.

DÉCIMA SEGUNDA
(CONDIÇÃO RESOLUTIVA)

1. O presente contrato é celebrado sob condição de a PRIMEIRA CONTRAENTE se registar como Equipa Continental da UCI.
2. A não verificação do pressuposto referido no número anterior, concede ao SEGUNDO CONTRAENTE o direito de resolver imediatamente o presente contrato.

DÉCIMA TERCEIRA
(REGISTO DO CONTRATO)

1. A PRIMEIRA CONTRAENTE obriga-se a enviar 3 originais do presente contrato à UVP-FPC, para que esta o registe junto da UCI.
2. O SEGUNDO CONTRAENTE tem o direito de verificar junto da UVP-FPC se o dever referido no número anterior foi cumprido pela PRIMEIRA CONTRAENTE.

DÉCIMA QUARTA
(LEI APPLICÁVEL)

Em tudo o que não estiver expressamente regulado no presente contrato, será observado o disposto na legislação aplicável, nomeadamente no Código Civil e nos Regulamentos da UCI e da UVP-FPC.

(Localidade),....., de, de

Feito em triplicado, ficando cada um dos contraente com um exemplar.

— — —
A PRIMEIRA CONTRAENTE O SEGUNDO CONTRAENTE

MINUTA DE CONTRATO: CONTRATO DE TRABALHO DESPORTIVO

Entre:

(Designação da Associação ou Sociedade Desportiva que contrata do ciclista), com

o NIPC....., com sede na, neste acto representada por , portador do BI n.º, do NIF....., na qualidade de Representante da Equipa, adiante designada PRIMEIRA CONTRAENTE, E
(Nome do Ciclista), portador do BI n.º, emitido por....., em....., do NIF....., residente....., adiante designado SEGUNDO CONTRAENTE, É de boa-fé e livre vontade celebrado o presente Contrato de Trabalho Desportivo, o qual se regerá pelas cláusulas seguintes:

PRIMEIRA (OBJECTO)

1. A PRIMEIRA CONTRAENTE contrata o SEGUNDO CONTRAENTE para exercer, sob a sua autoridade e direcção, as funções de corredor de ciclismo de estrada.
2. A participação do SEGUNDO CONTRAENTE em outro tipo de provas, em representação da PRIMEIRA CONTRAENTE, poderá verificar-se mediante acordo entre as partes.

SEGUNDA (RETRIBUIÇÃO)

4. O SEGUNDO CONTRAENTE receberá uma remuneração mensal ilíquida equivalente a €..... (extenso) (este valor não poderá ser inferior a €1.000).
5. A retribuição, ou outro valor devido ao SEGUNDO CONTRAENTE pela PRIMEIRA CONTRAENTE, deve ser pago por transferência bancária para a conta com o NIB....., em nome do SEGUNDO CONTRAENTE, sendo que somente o comprovativo de transferência será aceite como prova de pagamento.
6. Se, em virtude de processo disciplinar intentado pela UCI ou pela UVP/FPC, ou outra autoridade desportiva legalmente competente para o efeito, for aplicada ao SEGUNDO CONTRAENTE a sanção de suspensão da prática desportiva superior a 1 mês, aquele perde direito à retribuição durante os meses de suspensão.
7. O SEGUNDO CONTRAENTE encontra-se abrangido pelo seguro de acidentes de trabalho contratado com a Companhia de Seguros....., sob a apólice n.º

TERCEIRA (PRÉMIOS)

O SEGUNDO CONTRAENTE, a título de prémio pelos resultados desportivos obtidos em representação da PRIMEIRA CONTRAENTE, tem direito a receber o seguinte:
(Descrever prémios e condições da sua atribuição)
(Eliminar a cláusula, se não for aplicável ao contrato celebrado)

QUARTA (EQUIPAMENTO DESPORTIVO)

A PRIMEIRA CONTRAENTE obriga-se a fornecer ao SEGUNDO CONTRAENTE o material e equipamento desportivo necessários ao exercício conveniente da sua actividade.

QUINTA (PROVAS DESPORTIVAS)

3. A PRIMEIRA CONTRAENTE compromete-se a garantir ao SEGUNDO CONTRAENTE a participação num número mínimo de provas, durante a época desportiva.
4. O SEGUNDO CONTRAENTE obriga-se igualmente a participar e contribuir com o melhor desempenho possível, sempre que a PRIMEIRA CONTRAENTE lhe solicitar para, em sua representação, tomar parte numa prova de ciclismo de estrada.

SEXTA (SELECÇÃO NACIONAL)

1. A PRIMEIRA CONTRAENTE obriga-se a permitir ao SEGUNDO CONTRAENTE, pelo tempo necessário, a participação em programas, treinos ou provas ao serviço da Selecção Nacional.

2. A PRIMEIRA CONTRAENTE acorda em que, durante o período em que o SEGUNDO CONTRAENTE estiver ao serviço da Seleção Nacional, a UVP-FPC dê àquele instruções de natureza desportiva.

SÉTIMA (EXCLUSIVIDADE)

6. Durante a vigência do presente contrato, o SEGUNDO CONTRAENTE obriga-se a não participar nem colaborar com outra Equipa desportiva, quer seja ou não concorrente directa da PRIMEIRA CONTRAENTE.
7. Durante a vigência do presente contrato, mediante acordo da PRIMEIRA CONTRAENTE, o SEGUNDO CONTRAENTE poderá participar, numa equipa mista, em provas de estrada, salvo se a PRIMEIRA CONTRAENTE também participar nessa competição.
8. Durante a vigência do presente contrato, com o acordo da PRIMEIRA CONTRAENTE, o SEGUNDO CONTRAENTE poderá participar, a título individual, em provas desportivas.
9. O acordo referido nos dois números anteriores considera-se tacitamente concedido se, num prazo de 10 dias, a PRIMEIRA CONTRAENTE não se pronunciar a respeito do pedido apresentado pelo SEGUNDO CONTRAENTE.
10. Durante a vigência do presente contrato, o SEGUNDO CONTRAENTE obriga-se a não participar ou colaborar em actividades publicitárias respeitantes a outras entidades que não A PRIMEIRA CONTRAENTE e os seus patrocinadores.

OITAVA (CONFIDENCIALIDADE)

1. O SEGUNDO CONTRAENTE obriga-se a não revelar a terceiros, mesmo após a cessação, por qualquer forma, do presente contrato, as informações de que tenha tido conhecimento ou que lhe tenham sido transmitidas a título reservado ou confidencial e que se refiram à actividade da PRIMEIRA CONTRAENTE.
2. A violação do compromisso referido no número anterior constitui o SEGUNDO CONTRAENTE na obrigação de indemnizar a PRIMEIRA CONTRAENTE, nos termos gerais de direito, sem prejuízo do procedimento criminal a que haja eventualmente lugar.

NONA (DADOS PESSOAIS)

O SEGUNDO CONTRAENTE autoriza o tratamento dos seus dados pessoais pela PRIMEIRA CONTRAENTE, de forma a possibilitar o cumprimento dos seus deveres, bem como o exercício dos seus direitos, ao abrigo do presente contrato de trabalho.

DÉCIMA (VIGÊNCIA)

1. O presente contrato tem início em e termo em..... (v. limites superiores e inferiores no artigo 8º, da Lei n.º28/98, de 26 de Julho).
2. Salvo declaração em contrário de um dos CONTRAENTES, o presente contrato renovar-se-á, na data do seu termo, pelo prazo de um ano.
3. A declaração a que se refere o número anterior deverá ser enviada ao outro CONTRAENTE, pelo menos, 15 dias antes do termo do presente contrato.

Ou

DÉCIMA (VIGÊNCIA)

1. O presente contrato tem início em e termo em..... (v. limites superiores e inferiores no artigo 8º, da Lei n.º28/98, de 26 de Julho).
2. O presente contrato não se renova automaticamente na data do seu termo.
3. Dois meses antes do termo do contrato, se o mesmo ainda não tiver sido renovado, cada CONTRAENTE informa por escrito o outro sobre as suas intenções no respeitante à prorrogação do contrato, devendo cada CONTRAENTE enviar cópia desse documento à UVP-FPC.

DÉCIMA PRIMEIRA (PERÍODO EXPERIMENTAL)

Durante os primeiros 30 dias de execução do presente contrato, qualquer dos CONTRAENTES poderá denunciá-lo, sem aviso prévio ou invocação de justa causa, não havendo lugar ao pagamento de qualquer indemnização.

DÉCIMA SEGUNDA (CESSAÇÃO)

3. O presente contrato pode cessar por:
 - a) Caducidade;
 - b) Revogação, por acordo dos CONTRAENTES;
 - c) Despedimento com justa causa promovido pela PRIMEIRA CONTRAENTE;
 - d) Rescisão com justa causa por iniciativa do SEGUNDO CONTRAENTE;
 - e) Denúncia por qualquer dos CONTRAENTES durante o período experimental;
 - f) Despedimento colectivo;
 - g) Abandono do trabalho.
4. Nos casos previstos nas alíneas c) e d) do número anterior, a parte que der causa à cessação ou que a haja promovido indevidamente incorre em responsabilidade civil pelos danos causados em virtude do incumprimento do contrato, não podendo a indemnização exceder o valor das retribuições que ao SEGUNDO CONTRAENTE seriam devidas se o presente contrato tivesse cessado no seu termo.
5. Para efeitos do disposto na alínea c) do número anterior, considera-se que a PRIMEIRA CONTRAENTE tem justa causa para despedir o SEGUNDO CONTRAENTE, designadamente, quando: (i) O SEGUNDO CONTRAENTE for suspenso da prática desportiva pela UCI, a UVP-FPC, ou outra autoridade desportiva legalmente competente para efeito; (ii) O SEGUNDO CONTRAENTE se recusar a participar em provas de ciclismo, apesar das várias convocatórias por parte da PRIMEIRA CONTRAENTE.
6. Para efeitos do disposto na alínea d), do n.º1, considera-se que o SEGUNDO CONTRAENTE tem justa causa para rescindir o contrato quando, designadamente, a PRIMEIRA CONTRAENTE não autorizar o SEGUNDO CONTRAENTE, apesar dos vários pedidos deste, a participar em competições, num período continuado superior a 6 semanas ou em períodos intercalados de 7 dias cada. (solicitar esclarecimentos sobre este mecanismo à UVP-FPC)
7. Cada um dos CONTRAENTES poderá pôr termo presente contrato, sem pré-aviso nem indemnização, em caso de incapacidade permanente do SEGUNDO CONTRAENTE para exercer a sua actividade.

DÉCIMA TERCEIRA (LIBERDADE DEPOIS DA CESSAÇÃO DO CONTRATO)

No termo do presente contrato, o SEGUNDO CONTRAENTE é completamente livre para celebrar contrato com outra Equipa.

DÉCIMA QUARTA (CONDIÇÃO RESOLUTIVA)

3. O presente contrato é celebrado sob condição de a PRIMEIRA CONTRAENTE se registar como Equipa Continental da UCI.
4. A não verificação do pressuposto referido no número anterior, concede ao SEGUNDO CONTRAENTE o direito de resolver imediatamente o presente contrato.

DÉCIMA QUINTA (REGISTO DO CONTRATO)

3. A PRIMEIRA CONTRAENTE obriga-se a enviar um original do presente contrato à UVP-FPC, para que esta o registe junto da UCI.
4. O SEGUNDO CONTRAENTE tem o direito de verificar junto da UVP-FPC se o dever referido no número anterior foi cumprido pela PRIMEIRA CONTRAENTE.

DÉCIMA SEXTA (LEI APPLICÁVEL)

Em tudo o que não estiver expressamente regulado no presente contrato, será observado o disposto na legislação aplicável, nomeadamente na Lei n.º28/98, de 26 de Julho, no Código do Trabalho e nos Regulamentos da UCI e da UVP-FPC.

(Localidade),....., de

Feito em triplicado, ficando cada um dos contraente com um exemplar.

A PRIMEIRA CONTRAENTE

O SEGUNDO CONTRAENTE

Art. 2.17.031 EUsmtrau Etuqruiap Taé Ccnoinctain ental deve ser composta por:

- Director
- Responsável da Equipa
- Director Financeiro
- Director Desportivo¹⁵⁸
- Médico¹⁵⁹
- 2 Paramédicos
- 2 Mecânicos

Art. 2.17.032 SOe sgeugruor o contra os seguintes riscos é obrigatório, sem limite de valor ou restrição geográfica (ilimitada em todo o mundo) para todos os eventos decorrendo da actividade da equipa (em corrida, treino, viagem, promoção, etc...):

1. Responsabilidade Civil (do corredor / agentes)
2. Acidentes pessoais (custos de tratamento até recuperação)
3. Doença: custos de tratamento e hospitalização no estrangeiro
4. Repatriamento: (cobertura ilimitada)

Art. 2.17.033 AA ceommispsaānōh adma elnicteon Mçaé dpiocro parte da UVP/FPC implica a submissão por parte do corredor aos seguintes exames:

- Exame médico:
- o Antecedentes pessoais.
 - Já alguma vez perdeu consciência em pleno exercício físico?
 - Já alguma vez dificuldade em respirar?
 - O facto de correr provoca-lhe dificuldade em respirar?
 - Já alguma vez teve o género de dificuldade em respirar, tosse ou respiração asmática enquanto praticava um desporto?
 - Já foi alguma vez tratado/hospitalizado por questões de asma?
 - Já alguma vez teve convulsões?
 - Já alguma vez lhe disseram que tinha epilepsia?
 - Já alguma vez abandonou a prática desportiva por razões de saúde?
 - Já alguma vez lhe disseram que tinha tensão arterial alta?
 - Já alguma vez lhe disseram que tinha a taxa de colesterol alta?
 - Sente algum tipo de distúrbio respiratório durante e após o exercício físico?
 - Já alguma vez sentiu vertigens durante ou após o exercício físico?
 - Já alguma vez sentiu, ou tem, batimentos cardíacos rápidos ou irregulares?
 - Sente-se mais rapidamente cansado que os seus amigos ou companheiros de equipa durante o exercício físico?
 - Já alguma vez lhe disseram que teve um ataque cardíaco?
 - Já alguma vez lhe disseram que tinha arritmia cardíaca?
 - Já teve alguma vez problemas cardíacos?
 - No decurso do último mês teve uma grave infecção viral (por exemplo: miocardite ou mononucleose)?
 - Já lhe disseram que sofreu de reumatismo articular agudo?

¹⁵⁸ Correspondente ao Treinador de Nível III

¹⁵⁹ O Médico, deverá estar obrigatoriamente inscrito na OMP

- Sofre de alergias?
 - Toma medicamentos neste momento?
 - Toma regularmente medicamentos no decurso dos últimos dois anos?
 - o Antecedentes familiares:
 - Um membro da sua família, com menos de 50 anos:
 - Morreu de morte súbita ou inesperadamente?
 - Tratado por perda de consciência recorrente?
 - Teve um ataque inexplicado?
 - Se afogou de maneira inexplicável no decorrer de um banho?
 - Se teve um acidente de viatura inexplicável?
 - Se teve um transplante de coração?
 - Se tem um pacemaker ou desfibrilador implantado?
 - Se foi tratado por questões de arritmia?
 - Se foi submetido a uma operação cirúrgica ao coração?
 - Se morreu de morte súbita ao nascer na sua família?
 - Já algum membro da vossa família sofreu de síndrome de Marfan?
 - o Exame clínico completo:
 - Geral: morfologia; peso, tamanho
 - Exame cardio-vascular
 - Pulso radial e femoral
 - Análise de sintomas clínicos de Síndrome Marfan
 - Auscultação Cardíaca:
 - o Determinação da frequência e do ritmo
 - o Averiguação de um sopro sistólico ou diastólico
 - o Averiguação de um click sistólico
 - Pressão sanguínea
 - Exame pulmonar com pesquisa de sinais clínicos de asma
 - Exame do aparelho locomotivo
 - Exame neurológico com pesquisa de distúrbios visuais
 - Outros aparelhos: exame completo
 - o Exame Paraclínico:
 - Electrocardiograma (ECG) a 12 variações – em repouso
 - o Exame Biológico:
 - Análise de sangue que compreende:
 - Hemograma completo
 - Reticulocitos
 - Ferritina
 - γ-GT
 - ALAT (GPT)
 - ASAT (GOT)
 - Creatinina
 - Urina II
 - Glicémia
 - Colesterol + HDL
 - Proteína C-reactiva ou Velocidade de sedimentação
 - Proteínas Total ou Albumina
- Art. 2.17.034 No seguimento do exame médico, recomendamos vivamente que qualquer corredor:
- cuja história pessoal seja positiva, ou
 - cuja história familiar indicar risco de uma doença cardíaca, ou
 - cujo exame clínico cardiovascular seja positivo, ou
 - cujo electrocardiograma seja positivo
- Se submeta a um exame complementar por cardiologista antes de começar a praticar ciclismo.

SPAIN

In the Spanish Cycling Federation there is the Council of Professional Cycling which is composed of representatives of teams, federation of organizations (?) and cyclists.

Today there is a sponsor crisis for both the organizers and teams. This global crisis also directly affects the riders.

For that reason a dialogue should exist, but not just between the teams and riders. There must be a dialogue between all parties of the sector to address the major problem of this crisis.

In the collective bargaining agreement , issues and themes are:

PROFESSIONAL CYCLING COLLECTIVE AGREEMENT¹⁶⁰

CHAPTER I General provisions

Article 1. Scope of functions

This Agreement establishes and regulates the rules that govern the working conditions of professional cyclists in teams belonging to the Royal Spanish Cyclists' Federation, and to those that because of their registered office or centre of operations may be assimilated by the current legislation to a work centre in Spain, as well as relations that are established in accordance with Royal Decree 1006/1985 of 26 June.

It is understood for all purposes that the team shall mean the entity, sponsor, team, company, sports group etc. that a formation or list of professional cyclists belongs to, whose main or secondary purpose is taking part in professional cycling races organised by the Royal Spanish Cyclists' Federation (RFEC) and the RFEC's Professional Cycling Council, International Cycling Union (UCI), Professional Cycling Teams' Association (ECP), or an organisation that may replace them in the future (Professional Cycling League, etc.).

Article 2. Personal scope

This Collective Agreement shall apply to professional cyclists of any cycling discipline that, by virtue of a normal, established relationship, voluntarily dedicate themselves to cycling on behalf of and within the scope of the organisation and management of a team in exchange for pay, as well as those of other cyclists whose relationship with any entity is included in the scope of application of Royal Decree 1006/1985 of 26 June, which governs the special employment relationship of professional cyclists, with the exclusions set out in Article 1 of the above mentioned Royal Decree.

Article 3. Territorial scope

This Collective Agreement shall apply to all established employment relationships, in accordance with the previous articles, within the national territory, as well as those outside the national territory and that are within the operational or personal sphere.

Article 4. Time scope

This Collective Agreement, regardless of its date of publication in the "Official State Bulletin", shall come into force on 1 January 2006 and shall end, unless it is extended, on 31 December 2008.

Article 5. Personal guarantee

Personal conditions shall be respected that, considered as a whole and as an annual total are more beneficial than those established in this agreement. They shall remain strictly "ad personam" and until

¹⁶⁰ See Annexes for the full original text of the Spanish version.

future payments are made. The conditions that are established in This Agreement shall be considered to be the minimum ones.

Article 6. Termination and extension.

This Collective Agreement shall be tacitly extended for successive annual periods, if it has not been terminated by either party two months prior to its end date or that of any of its extensions. A copy of this termination shall be sent to the General Labour Office for the formalities described in article 2 of Royal Decree 1040/1981 of 22 May.

Article 7. Joint Committee.

During the validity of this Agreement, a Joint Committee shall be set up that shall also have its office at the Professional Cycling Teams' Association (hereinafter, ECP) and the Professional Cyclists' Association (hereinafter, ACP) who currently hold the Presidency of this Commission, without prejudice to the validity of the meeting, regardless of where it is held.

Apart from the exception in Article 18 of this Collective Agreement, it shall be made up of four representatives who shall appoint half of the bargaining parties in this Agreement, with the representative nominated to this effect by each one of the parties acting as President on a quarterly and alternate basis and the party that is not holding the Presidency acting as Secretary. The representatives may be nominated specifically for each meeting.

The Committee shall meet as many times as may be necessary at the request of any of the parties summoned by post or by e-mail to settle any doubts, discrepancies or conflicts that may arise as a result of the application of this Agreement. The agreements shall be made by a majority of a minimum of three votes in favour. The minutes shall be drawn up for each meeting and the agreements made therein shall be binding for both parties. If the specified majority is not achieved, the arbitration procedure established in Article 38 of this Agreement shall be followed.

The functions of the Joint Committee shall be:

- a) Interpretation of the application of the clauses in this agreement. The Joint Committee shall intervene or resolve any query that affects the interpretation of the rules set out in this Collective Agreement and shall intervene in a mandatory fashion prior to the administrative and legal routes backing collective disputes that may arise between the parties, including the cyclists, to which end the Joint Committee shall raise the corresponding minutes.

Procedure for acting: Each party shall draw up questions for the other party that may arise and that result in this Committee being involved.

Within a maximum period of seven days from the date of this letter, they shall agree on the day and time that the Committee has to meet in order to issue the corresponding reply. The meeting shall take place within a maximum period of one month from when the query is sent to the other party.

The agreements shall be notified to the interested parties by means of a copy of the minutes of the meeting.

If there is no agreement, the question may be submitted for arbitration in accordance with the provision in Article 38 of this Agreement.

- b) Ensuring that the agreement is fulfilled.
- c) Those expressly set out in the wording of this Agreement.
- d) Any other activities that lead towards greater practical effectiveness of what has been agreed and to maintaining good relations between the parties.
- e) In exceptional cases they are attributed with disciplinary functions, considering and measuring the current legality at all times, as well as the study and individual review of working conditions.
- f) The Joint Committee is authorised to demand that the parties have documentary proof that they have fulfilled their obligations arising from this Collective Agreement, if there are signs or sufficient proof that any of their clauses have not been fulfilled.

This Committee may use the occasional or permanent services of advisers for any matters within their field of competence. These advisers shall be elected and nominated freely with the agreement of the Joint Committee.

CHAPTER II **Work and rest conditions**

Article 8. Working day.

The professional cyclist's working day shall include the effective provision of services in official competitions, in training, at gatherings, in physical and technical preparation and in any activity that falls under the direct orders of the team or the representative nominated by it, including the team's advertising and promotional activities.

The working day shall not, under any circumstances, exceed the limits of the legally established actual working limit. Time set out in Article 9.3 of Royal Decree 1006/1985 shall not be included in the calculation of the working hours, nor shall those dedicated to physical recovery, massage, sauna, etc. after each working day and individual training.

Article 9. Rest and holidays.

For the purposes of the provision in Article 10, sections 1 and 2 of Royal Decree 1006/1985 and given the specificities of the competition and schedule for this sport, the following agreements have been set out:

- a) Weekly rest days shall be deemed to be the days in which the racing cyclist does not take part in official competitions or when he is not fulfilling what is set out in Article 8 of this Agreement. The schedule for the season prepared by the Director and the racing cyclist shall be considered to be the best possible arrangement for the rest referred to in the above mentioned Article 10, sections 1 and 2 of Royal Decree 1006/1985.
- b) There shall be thirty five calendar days of holidays. The holidays shall be taken at a time of the year when there is no official competition, by mutual agreement between the racing cyclist and the team's sports Director. Unless there is a written agreement to the contrary, the said holidays must take place in the calendar year that they were earned, specifically between 1 November and 31 December of each calendar year. The holidays that have not been taken in the calendar year shall be lost, unless if it has been agreed that they can be delayed for extraordinary reasons due to services being rendered. Under no circumstances shall there be any financial compensation for holidays not taken.
- c) 1, 5 and 6 of January and 23, 24, 25, 26, 30 and 31 December of each year shall not be considered to be working days, except in the case of cycling specialities where there is an official competition or travel is required to take part in them. At the ACP's Annual Meeting, two days in the last two months shall be declared not to be working days and these shall be notified to the teams one month in advance. These two days must not coincide with official road competitions held in Europe.
- d) During their holidays the professional cyclist shall receive the amount corresponding to a monthly salary.

As for other rest periods and special leave, they shall be subject to the provision on this matter in the Workers' Statute and the other labour regulations with a general application, provided they are not incompatible with the special nature of the employment relationship of professional sportspeople.

As for other rest periods and special permission, these shall comply with the Statute of Workers' Rights and other labour regulations with a general application, provided they are not incompatible with the special nature of the employment relationship of the professional sportsmen.

CHAPTER III **Work contract, methods, trial periods**

Article 10. Work contract.

The work contracts that are signed by the professional cyclists and the teams must comply with the recommendations in Article 3 of Royal Decree 1006/1985 of 26 June. They shall be drafted in as many copies as may be required by the current labour and federation's legislation.

Both parties agree, to all intents and purposes, to a contract template, which is attached in Annex 1 of this Agreement.

The contracts signed between the racing cyclists and newly created teams must, while they are in force, have a joint guarantee from the sponsor or main sponsors for obligations arising from the said contracts. This guarantee is obligatory for the first two years these teams are in operation. After this period, if there are contingencies that can be proved, the deadline for paying the above mentioned deposit shall be extended for a period of three more years. If there is a divergence, the decision shall comply with what is decided by the Joint Committee as set out in article seven of this Agreement. The Joint Committee may also, for a period of one year, demand this deposit from Teams that are not included in the previous paragraphs that, repeatedly and for a period of more than three consecutive months or six alternate months have not, in an irrefutably serious, repeated and proven fashion, fulfilled their obligations under this Collective Agreement, especially with regards to the payment of salaries. This breach shall initially give rise to a warning from the Joint Committee, and if this does not bear results, the Joint Committee shall be authorised to draw on the above mentioned guarantee.

Article 11. Trial period.

There shall not be any trial period.

Article 12. Length of the contract.

The contracts shall be valid for at least one year, beginning on 1 January and ending on 31 December of each calendar year. Express or tacit extensions shall also last a minimum of one year. The exception to this minimum period are contracts governed by the next article and relationships included in paragraph two, number 2 of Article 1 of the Royal Decree 1006/1985, as well as contracts to perform a number of sporting events.

Article 13. Hiring at the start of the season.

Contracts that are signed after the start of the official competition season and for the current season must be valid for a minimum period, except as provided for in the following article, being the time that remains until 31 December of the same year.

Article 14. Hiring new professionals.

New professional cyclists shall be considered to be racing cyclists whose contract first came into force with a Team, at the latest in the season in which they shall reach twenty-two. \

The length of the contract for new professional cyclists shall be:

- a) If the contract began before 1 July, up to 31 December of the following year.
- b) If the contract began after 30 June, it shall last the rest of the year and two further years.

New professional cyclists shall maintain this classification, including:

- a) If they reached twenty-three during the course of the contract that granted them this classification.
- b) If the contract is terminated before it comes to an end and the Racing Cyclist signs a contract with another Team.

If, when the contract of a new professional comes into force, the sponsorship contract or contracts of the main or two main team sponsors is shorter than the length anticipated in this article for the new professionals' contract, but is at least equal to one year, the length of the new professional's contract may be limited to the period remaining on the longest contract for the two main sponsors.

If, after the contract has expired, the Team continues its activities, or the financial manager continues his activity in another team, they shall be obliged, if requested to do so by the new professional, to hire him for a minimum period of one year, and according to the same minimum conditions as those for new professionals.

Article 15. Extensions.

1. The contract shall automatically be extended for a period of one year if the professional cyclist still has not taken part in an official competition, if one takes place and despite irrefutably and expressly requesting to do so, for a period equal to or in excess of three months, unless if there is a medical or negative reason for this. The said extension shall be obligatory for the entity doing the hiring and optional for the racing cyclist.

2. The team shall be obliged to notify the professional cyclist, by reliable means, before 31 October prior to the expiry of the contract, of their intention not to use his services.
3. The racing cyclist must notify of their intention not to renew the contract with their current sporting team within the same time period.
4. If there is a failure to comply with the two previous points, the party that is responsible for this breach shall be obliged to indemnify the other the following amounts:
 - The salary for the days the notice was not given, if the notice is given before 15 November.
 - Double the salary corresponding to the days of notice that were not given, if the notice is given between 15 November and 1 December.
 - Triple the salary corresponding to the notice not given, if the notice is given in December.

CHAPTER IV

Disciplinary system

Article 16. Infringements and penalties.

Any failure committed by the racing cyclist shall be classified according to minor, serious or very serious importance, significance and negligence.

The maximum sanctions that can be imposed in each case, according to the severity of the infringement committed, shall be as follows:

1. For minor infringements: Verbal or written warning, suspension from work and pay for one to five days.
2. For serious infringements: Suspension from work and pay for six to fifteen days.
3. For very serious infringements: Suspension from work and pay for sixteen to sixty days or dismissal.

No other sanction or indemnity resulting from any of the behaviour governed by this article may be agreed in the contract or in an individual agreement.

- A) Minor infringements shall be considered to be:
 - a) General lack of care for the team's equipment and personal belongings.
 - b) Not advising the team of changes of address or relevant personal information.
 - c) The failure of between one and three days in their obligations as a sportsperson, without due authorisation or just cause.
 - d) Not maintaining a decent and sporting attitude in all work activities, training, at gatherings, in interviews, on trips etc. directly or indirectly involving the team, as well as good manners, respect and correct treatment of the rest of their professional colleagues, trainers, managers, teams, sponsors, the media and official staff in the competitions.
 - e) Not taking part in advertising or promotional or media activities, which they have duly arranged and that relate to the team or shops, if these are within the scope of the employment relationship governed by this Agreement.
 - f) Conversations with colleagues in the team or staff belonging to it in the presence of the general public.
 - g) Failure to comply with the team's managerial instructions.
- B) Serious faults shall be considered to be:
 - a) Pretending to be ill or to have had an accident which has a repercussion on the employment relationship, or not attending the activities scheduled by the Team that have been duly notified.
 - b) Serious failure to obey the sports directors or those in charge of the team.
 - c) Major carelessness in care for the equipment and items supplied by the team.
 - d) Discussions with the team colleagues or staff in the presence of the public and which are leaked to it.
 - e) Not maintaining a strong sporting spirit and correctness at all times, fighting for the purity of the competition.
 - f) Not notifying the team's medical services of incidents that occur to the racing cyclist's physical condition and that may have a serious repercussion on his output, and any medical or pharmaceutical treatment being followed, as well as the name of the

- physician who has prescribed it, with a view to including this information in each racing cyclist's medical file to ensure each cyclist's health is maintained.
- g) Not using sportswear and accessories supplied by the team for work-related activities.
 - h) Repeated absences from work of more than three days and less than fifteen days without a justified reason.
 - i) Making declarations that threaten the truth, dignity, good name and image of professional colleagues, technical staff, directives, teams, sponsors and brands related to the team, methods of communication and official staff in the competitions.
 - j) Not presenting for tests and/or medical check-ups organised by the team's medical staff and in the establishments indicated by it, whenever these are notified sufficiently in advance and are performed in a considered and measured fashion in terms of frequency and type.
 - k) Minor infringements that are repeated after the worker has been notified in writing.
- C) Very serious infringements shall be considered to be:
- a) Losing equipment, implements, tools, apparatus, installations, buildings, goods and documents belonging to the team, rendering them useless or damaging them.
 - b) The theft, robbery or misappropriation of the team's property.
 - c) Bad behaviour, either physical or verbal, a severe failure to respect and show consideration to colleagues and team managers.
 - d) A voluntary and continued reduction in professional output by the racing cyclist.
 - e) Very serious lack of discipline or disobedience.
 - f) Infringement of contractual good faith. To this end, the infringement of contractual good faith is considered to be not notifying the team before signing the work contract, having a disciplinary proceeding open at the national or international federation for the use of banned substances which may lead to penalties. Equally an infringement of contractual good faith shall be considered to be a failure to notify the team before signing the work contract of facts that occurred prior to the signing of the contract that may lead to the said disciplinary proceedings being opened, and that are known by the racing cyclist.
 - g) A repeated absence at work without just cause that exceeds fifteen days.
 - h) The use of banned substances, if there is no doctor's prescription from the sport's teams medical services or in an exceptional case and in this case with prior notification to the team's medical services, from the Social Security health department, and which is not given to treat or reduce any type of physical or psychological ailment, sent to the team, considering and measuring the penalty according to the severity of the banned substance used. To apply the penalty of dismissal for this reason the infringement must be voluntary, serious and blameworthy.
 - i) Not defending the sporting and advertising interests of the team, being responsible for unjustified withdrawals and expulsions from races without just cause.
 - j) Not taking part in all the trials planned for the team, except with the authorisation of the sports director or person in charge of the team or due to a just cause, as well as taking part in unscheduled trials without the authorisation of the sports group, sports director or staff in charge.
 - k) A repeated similar and serious infringement, if warning has been given on this. Likewise, the work contracts may expire for the reasons and with the effects set out in the current legislation without prejudice to those indicated in Article 30 of this Agreement.

CHAPTER V

Economic conditions

Article 17. Salary provisions.

The salary provisions that constitute payment for the professional cyclist include: monthly salary, supplementary payments and contract sheet or bonus.

Article 18. Minimum guaranteed income.

During the period of this Agreement, professional cyclists in the Road Cycling category shall have a minimum gross guaranteed income, for all items totalling an annual sum of:

2005:

	New professionals	Others
Uci Pro Tour Teams	24,000 Euros	30,000 Euros
Other Professional Teams	21,500 Euros	27,000 Euros

These amounts shall be reviewed by the Joint Committee for 2007 and 2008 to be adapted to the minimum required by the International Cycling Union under the Joint Agreement in place between the CPA (Associated Professional Cyclists) and the AIGCP (International Association of Professional Cycling Teams).

These gross minimums shall include the monthly salary, supplementary payments and the contract sheet or bonus.

In the event of a tacit extension to this collective agreement, the minimums shall be updated in accordance with the increase in the RPI for the corresponding period.

In general terms, remaining cycling disciplines other than road cycling shall be governed by the current labour legislation, which cannot be applied to this Collective Agreement.

It shall be expressly agreed that within the first six months of this Collective Agreement a Negotiating Committee shall be set up, made up of six members that shall maintain the legitimacy legally reserved for collective negotiation within the scope of this Agreement, to negotiate the salaries for the professional cyclists that do not belong to the road cycling discipline. The decisions shall be adopted by a vote in favour from the majority of them.

These disciplines shall be regulated according to this Agreement by means of the relevant Annexes.

Article 19. Contract bonus or sheet.

The contract bonus or sheet is the amount stipulated by common agreement between the team and the professional cyclist as a result of having signed the work contract. The amount, if applicable, shall be included therein.

Its payment must appear in the cyclist's payslip separately to the ordinary salary under the heading "contract bonus". If it is not itemised, it shall be deemed not to have been paid.

Article 20. Monthly salary.

Monthly salary is the amount that the professional cyclist receives whether or not he takes part in official competitions and however many he may take part in. It must absolutely be mentioned in the work contract. Each cyclist shall receive twelve monthly payments for each year of their contract. The minimum amount to be received, as a monthly salary, for each professional cyclist, shall be the amount resulting from dividing the minimum guaranteed receipts by 14.

These salaries shall always be paid by bank transfer to the account nominated by the professional cyclist or, if applicable, by any other legally accepted means that allows the payment to be checked irrefutably within the first three working days of the month following the receipt of the salaries.

Article 21. Supplementary payments.

The professional cyclists shall have the right to receive, in addition to the twelve monthly payments, two supplementary payments, each for the agreed monthly amount. If no decision is made on these they shall be paid in March and September.

All the items that are paid may, by agreement between the cyclist and the team, be paid on a pro rata basis as a maximum of fourteen payments.

Article 22. Special bonuses.

Any payment other than that described in the previous articles may be agreed between the team and the racing cyclists. The quantity and payment dates shall be established between the team and their staff or with the racing cyclists individually.

Article 23. Other forms of payment.

The teams and the racing cyclists may agree any other form of payment other than that described in the previous articles, if the amount is not less than the minimum amounts established in this Agreement.

Article 24. Bonuses.

The bonuses are those amounts included in the Regulations for the cycling races paid by the organisers themselves for all the classifications obtained by the cyclists and which shall not, under any circumstances, be added to the minimum payments guaranteed by this Agreement.

Article 25.

The bonuses mentioned in the previous article shall be paid by the respective cycling race organisations directly to the Professional Cyclists' Association (ACP).

Article 26. Receipt of salaries.

The entities that belong to this Agreement must make the agreed payments, in the official salary receipts, according to the model approved by the current labour legislation, delivering a signed copy to the professional cyclist.

CHAPTER VI **Financial conditions in special situations**

Article 27. Payments during temporary incapacity to work.

The professional cyclist that during the validity of the contract is temporarily unable to work for a professional reason or due to an ordinary illness shall, from the first day, have the right to receive 100% of the payments agreed in the contract for all payment items, compensated by or absorbing welfare benefits if applicable, and maintaining this situation until discharged or until the contractual relationship ends.

Article 28. Indemnity for death or an injury resulting in disability.

1. The indemnities set out in Royal Decree 1006/1985, Article 13, paragraph d) that may relate to the professional cyclist or his beneficiaries, are fixed at 100,000 Euros in the case of death of the racing cyclist. This sum shall be increased to 250,000 Euros in the case of Absolute Permanent Disability or Major Incapacity following an accident (24/24 hours) or a professional illness. All this without prejudice to the Social Security payments they may be entitled to.
This cover excludes risks arising from risky sporting practices that have no direct relationship with the preparation, maintenance or recovery of the cyclists' physical condition (for example, speleology, motor sports, climbing, rafting, bungee jumping, aerial sports, diving, combat sports, snow and ice sports, etc.), except for those deriving from risky activities that are scheduled and executed on behalf of the employer.
2. For the purposes of this article, direct results of the provision of cycling services shall be considered to be those that happen during travel, winter preparation, at gatherings, staff presentations, training and in short, any in which the cyclist is under the orders of the team or someone representing it.
3. The risk that is indemnified herein may be taken on by the employer through any insurance company in the form of an appropriate insurance policy.
4. The right of the insurance company or the employer to claim directly as per paragraph 1 of this article shall be maintained including if the resolution declares that the racing cyclist that has been affected by the absolute permanent invalidity or major invalidity is pronounced once the employment relationship has ended due to expiry of the agreed period, if the incapacity or invalidity occurs during the contract validity period.

Article 29. Copyright to images.

Is the amount received by the racing cyclist for the transfer of copyright to the images used for advertising purposes, whose specific conditions are stipulated in an individual agreement.

CHAPTER VII

Health and safety in the workplace

Article 30. Health of the professional cyclists

- I. The equipment covered by this Agreement shall comply with the provisions contained in the applicable Law 31/1995 of 8 November regarding the Prevention of Occupational Risks and its implementing regulations, answering to the specificities of professional cycling indicated as significant by common agreement between the ACP and ECP.
- II. In fulfilling their duty of care, the team must guarantee the health and safety of the professional cyclists. To this end, the team shall, within the framework of their responsibilities, prevent occupational risks by adopting as many measures as may be necessary to protect the health and safety of the professional cyclists in terms of evaluating the risks, information, consultation, participation and training of the professional cyclists, actions to be taken in the event of an emergency and serious and imminent risk and health supervision.
- III. The functions entrusted by Law 31/1995 of 8 November on the Prevention of Occupational Risks and its implementing regulations for the Prevention Officers, shall be executed by the ACP in those teams that do not have these designated Officers.

Article 31. Medical Examinations.

- I. The medical examinations that are carried out must be specific and adapted to the health risks and injuries that can occur as a result when cycling and must always take place according to the terms set out in the regulations on the prevention of occupational risks.
- II. Cyclists, who as a result of their personal characteristics, or because they have suffered a work accident or any other type of injury or illness are more vulnerable to the practice of cycling shall be entitled to have their health conditions being monitored in a special way.

CHAPTER VII **Other agreements, rights and liberties**

Article 32. “Criterium” in aid of the ACP.

During the validity period of this agreement, the teams shall take part in a cycling competition organised by the ACP whose profits are aimed at the above mentioned Professional Cyclists' Association. This competition shall be held on any day of the year if and when there is a minimum of 24 hours difference between when the criterium is held and any other foreign international race in the ProTour category or an official AECC race. Both races must be held in the same city and by common agreement between the ACP, LA ECP and the organiser affiliated to the AECC. The ACP shall send each team a list of six racing cyclists, from which the team shall choose four to take part in the competition. The Team shall notify the ACP and the cyclists taking part of their nomination fifteen days before it is held. If one of those who are chosen retires, they shall be replaced by one of the other two cyclists on the list. The ACP shall coordinate the transfers and accommodation directly with the racing cyclists and shall pay all the related expenses.

The ACP shall take out civil liability insurance for death, accident or injury that prevents the racing cyclist's normal participation in future competitions. The sports groups and where applicable, the racing cyclists, shall be the beneficiaries of the insurance.

The team must authorise the cyclist that wishes to take part in a criterium to do so, except in the case of the ACP one.

Article 33. Freedom of expression.

The professional cyclists shall be free to manifest their thoughts on any issue and, in particular, on matters pertaining to the profession, without more limitations than those set out in law and respecting the good name and image of colleagues in the profession, technical staff, directives, teams, sponsors and brands related to the teams, communication media and official staff in the competitions.

Article 34. Trade union rights.

The professional cyclists shall have the right to develop the trade union activity recognised by the current legislation in this matter within the teams they belong to. To this end, they may choose staff

members to represent them to the team to deal with matters related to their work regime and conditions, setting up a trade union in each team.

CHAPTER VIII **Other provisions**

Article 35. Personnel.

- UCI Pro Tour Teams: there shall not be less than 25 or more than 30 racing cyclists. Under no circumstances may the number of racing cyclists that sign a first contract as professional cyclists exceed 35 per cent of the total number.
- Continental Professional Teams: the minimum number of racing cyclists shall not be less than 14. Under no circumstances may the number of racing cyclists who sign a first contract as professional cyclists exceed 35 per cent of the total number.
- Continental Teams: the minimum number of racing cyclists shall not be less than 8 or more than 16 (the maximum number may be exceeded, subject to prior agreement from the RFEC, when the Team adds racing cyclists from other cycling disciplines along the edge of the route. All the racing cyclists in the Continental Teams shall belong to the elite and sub-23 categories.

The Joint Committee is, in exceptional circumstances, granted powers to amend this article, according to the circumstances at the time and in particular to establish the requirements and guarantees that must be fulfilled for new teams, and when the national or international regulations are modified in ways that affect the composition of the staff.

Article 36. Equipment.

The equipment and the clothing required to carry out the activities covered by this Agreement and that according to the uses and customs is provided to the teams must be used, without exception or excuse, by all the racing cyclists, both in competitions and training, official events and related advertising activities. This equipment shall be replaced by the team if it breaks or is damaged due to reasonable wear and tear. The racing cyclists shall be entrusted with them and must return everything to the team at the end of each season and/or when the contract ends. The team may hold the last monthly salary as a guarantee against the obligation described herewith.

Article 37. Official documents.

The teams shall make as many documents as may be indicated in the current legislation available to the trade union officers or, failing this, those of the ACP, according to the conditions and forms determined by it.

Article 38. Additional law.

Everything that is not covered by this Agreement and current labour legislation on relations between professional cyclists and the teams, shall be dictated by the uses and customs of professional cycling and by the technical regulations of the Royal Spanish Cycling Federation, the RFEC Professional Cycling Council and the International Cycling Union and organisations that may replace them in the future.

Article 39. Arbitration Clause.

If there is no agreement from the Joint Committee, the parties, expressly renouncing any other jurisdiction that may relate to them, agree to submit all collective disputes (questions relating to the fulfilment, execution or interpretation of this Collective Agreement) to neutral arbitration, with the judge that the parties nominate from the list of judges approved by the joint committee being responsible for the procedural management of this arbitration.

Likewise, the parties expressly state their undertaking to fulfil all the terms of the arbitration award that is issued.

The individual disputes may also be submitted to the arbitration described herein when both parties agree on the procedure to be followed and if permitted to do so by the current legislation.

In both cases, the party that proposes the arbitration shall reliably inform the other party, who must reply within a maximum period of seven working days if they agree to the arbitration.

Both parties shall, from the time of acceptance, have five working days to elect the judge from amongst the list of judges approved by the Joint Committee. If there is a discrepancy in the election, a draw shall take place in the presence of the two parties from amongst the judges on the list.

Once the judge is elected, the parties shall have three working days to send the judge their thoughts on the case and the documentation they deem to be relevant.

The judge shall dictate the report in accordance with the law within a maximum period of fifteen working days from his nomination.

Article 40. Extension of the Collective Agreement

This Agreement shall remain in force as a whole until a new Collective Agreement agreed by both parties comes into force.

Madrid, 18 April 2006

Professional Cyclists' Association

Professional Cycling Teams

José Rodríguez García

José Luis Aznar Unzu

ANNEXE I

Professional Racing Cyclist's Contract

Between:

On one side, Mr as of the employer, tax code number , according to the corresponding Register or with sufficient powers to do so, operating in the number of the above mentioned employer.

On the other, Mr, racing cyclist, born on, a national, living at, with a national identity document number, hereinafter "THE RACING CYCLIST"

SET FORTH

That THE EMPLOYER dedicates himself to train and maintain a professional cycling team whose activity is taking part in road cycling races;

That THE RACING CYCLIST wishes to take part in the professional cycling races forming part of the team created by the employer.

That the two parties have knowledge of and are subject to the Collective Agreement for professional cycling activity, to the Spanish labour legislation, to the Statutes and Regulations of the Royal Spanish Cycling Federation and to those of the International Cycling Union, for all matters that do not contradict the Spanish Legal System.

They therefore formalise the special conditions of the special employment relationship of the professional sports person that exists between both parties based on the following

CLAUSES:

1. Hiring.

THE EMPLOYER hires the professional RACING CYCLIST as an employee, who accepts as a road cyclist form of cyclist.

The road cyclist's participation in other methods or specialist areas shall be agreed between the parties on a case-by-case basis.

2. Duration.

This contract shall last for a fixed term of seasons, beginning on and ending on

Before 31 October prior to the expiry of the contract, and if it has not been renewed, each one of the parties must notify the other in writing of their intention to renew the contract. A copy of this letter shall also be sent to the Professional Cyclists' Association (ACP).

3. Remuneration.

THE RACING CYCLIST shall be entitled to an annual gross salary of Euros.

The above mentioned amount shall be broken down as follows:

Gross annual salary	Euros (gross)
Contract sheet or premium	Euros (gross)
Copyright to image.....	Euros (gross)
Other items.....	Euros (gross)

4. Payment of remunerations.

1. THE EMPLOYER shall pay the amounts mentioned in point 3, unless agreed to the contrary, in equal monthly amounts, at the latest on the first three working days of the month after it is due.
2. The remunerations shall be paid in cash, in Euros, by bank transfer, to the current account nominated by the RACING CYCLIST or, failing this, by any method accepted in law that allows the payment to be irrefutably verified.
3. If there is no justified reason and in the absence of voluntary payment of the remuneration by the EMPLOYER, without the RACING CYCLIST needing to make an express complaint, the latter shall have the right to the following increases and interest:
 - a) Payments delayed by between 1 day and five months: increase of 10% in the sum due.
 - b) From the start of the sixth month of delay, interest of 2% a month on the sum due plus interest due.

In the following cases, the increases mentioned in the previous point shall not be applied, and the surcharge interest shall be reduced by 10% from the sum due:

- a) If, in the three months following the late payment of the remunerations, the RACING CYCLIST has not claimed the debt from the body with jurisdiction in this area, or has not called upon the bank guarantee deposited by the EMPLOYER at the International Cycling Union.
- b) If the body with jurisdiction in this area, or failing this, the Professional Cycling Council, decides that the non-payment is justified.

4. Bonuses and prizes.

THE RACING CYCLIST shall be entitled to the following Bonuses:

None

1)

2)

3)

(delete as applicable)

5. Various Obligations.

The employer shall notify the International Cycling Union of any other contract which includes services that the cyclist must carry out for the employer.

In on

The Racing Cyclist
(Signature)

The Employer
(Stamp and signature)

Report on “Promoting the Social Dialogue in the professional cycling sector”

Regional workshop: Madrid, 26 March 2009

Present:

Roberto Branco Martins: Asser International Sports Law Centre NL / Richard Parrish: Edge Hill University Olmskirk UK / Alfredo Garzon: Garrigues Sports & Entertainment / Daniel Malbranque: SG CPA / Carmen Ramos: SG Real Federación Espanola de Ciclismo (RFEC) / Leticia Alvarez Maderiaga: Fundación Ciclista Euskadi (Euskatel) / José Rodriguez: PWC / Philippe Govaert: Barrilero & Associados / Miguel Cardenal: Universidad de Madrid.

The meeting starts with welcoming the participants to this round table session. The participants are all experienced (legal) professionals in all the layers of stakeholders in Spanish cycling: teams / the federation / the cyclist union / sports law experts and academies. Two introductions were given, one by Roberto Branco Martins and the other by Richard Parrish.

Structure of Spanish Professional Cycling

After the introduction the participants describe the structure and regulation of Spanish professional cycling. Within the RFEC there is a specific committee (Consejo de ciclismo profesional) that deals specifically with professional cycling. In this committee the relevant stakeholders are gathered: the teams, the riders, the event / match organizers and the federation. The parties within this committee are responsible for the negotiation of two collective contracts that regulate professional cycling issues: the collective bargaining agreement between teams and cyclists and the agreement between the teams and the event / match organizers.

Themes and Issues

One of the objectives of this meeting is to identify themes and issues that may be discussed between the social partners within a SD in cycling. As the meeting is in Spain, the participants agree that the CBA's in Spain offer a wide range of themes and issues that may be transposed to the EU level. The CBA in Spanish cycling is included as an annex to this report.

Representativeness of the cyclists union

The discussion within the meeting focuses around the issue of the cyclists union. One participant states that there are some problems related to the functioning of the union. It is not possible to compare the union to other unions in the "normal" sectors of employment. There are no elections and cyclists themselves are sometimes reluctant to represent the interests of the collective as cycling is a very individual sport.

On the other hand, in cycling it is easier to organize the cyclists as they are, in the majority of cases the only workers with an employment contract in a team, whereas in, for example football there are many other types of (non-athlete) workers surrounding a team.

To promote the participation of the cyclists in traditional social partner structures every team could appoint one worker to act as the spokesperson and the liaison with employment issues. However, doubts arise when workers are needed to be forced to act as a representative of its team.

A question is raised about the status of the cyclist union. After the opening remarks, may the union be characterized as a union (sindicato) or not? The answer given by various participants is in essence straightforward: the union is recognized by the relevant national labour authorities, just as other athlete workers' unions in football and basketball. The difference with the Spanish footballers union is that the footballers are liaised to the national umbrella workers' union.

One representative points out that workers' unions in sport are specific as regards other unions in "normal" sectors of the industry. Workers' unions in sport are less political and more pragmatic.

The cycling teams

The structure of top cycling team Euskatel is explained. Euskatel is a foundation "fundacion ciclista" the cyclists are the majority of the employees and they are directly employed by the team. The foundation deals with many issues such as the development of talent. The chairman of Euskatel team is also the chairman of the Spanish cycling teams association. Euskatel (Euskadi) receives support from Basque municipalities.

The structure of the teams is in general complex as it consists of various layers. There is the core of a grouping which is the team, linked to the federation by means of federative ties. The team also entails a company, the company is normally the employer of the workers. In many cases the sponsor plays a very important role as the financial contribution of the sponsor in average amounts to 94% of the total team income. This enormous interdependency creates problems when the marketing objectives of the sponsors are satisfied and they decide to leave the cycling sport, it is therefore very difficult to guarantee continuity in professional cycling.

The cyclists in the teams in Spain have a special labour contract, it is a specialis to the general sporting labour contract that finds its origin in the countries' sport act. The cycling contract is specific due to the applicability of the terms and conditions grounded on the collective bargaining agreement in cycling.

“Social Dumping”

An element of the cycling world that makes it specific to most of other (sport) sectors is that it is truly an international sector in all its layers. The teams may represent nationalities and countries but the riders may be in the majority from different nationalities. In addition to this, the cycling teams are, as we have seen above, layered in their structure. The team itself, which is continuous is a foundation. The actual employer of the riders may be a company based in another country than the country of origin of the team. The riders perform their work in different countries year round.

A consequence of the above is that teams may choose for countries to situate the company that employs their riders. The rider is employed according to the conditions that are applicable in that country. Examples are given by the participants, these are of Spanish teams or groups with mainly Spanish riders but with companies based in Portugal and Andorra. Also the contract of services for cyclists in Germany is discussed, this is in fact an employment contract, but due to the advantages for the employers, contracts of services are being used to employ riders.

In Spain there is a method of assessing the social conditions (including insurances) of Spanish riders that are still living in Spain, it is their country of domicile. If the rider resides in Spain he is still a member of the RFEC and this means that the rider may be controlled. A warning to the employer of the rider may be given by the RFEC if the contract of the rider is not in conformity with basic employment rights (the "Contador" model). According to the participants such a system should be introduced EU-wide.

Structure of SD in the EU

The participants discuss the possibility of implementing the Spanish SD model on a EU level. In fact it is a model that resembles the current SD model in EU professional football: all stakeholders are involved, the federation is involved as the chairman in the SD Professional Football. It would be ideal to implement this system in EU cycling however the participants are in doubt about the position of the UCI in this respect. The UCI should be better informed and made aware about the possibilities that the SD offers and their role therein. The UCI could, for example, use the SD as a source for implementing or combining a licensing system for cycling teams. Only the participation of the UCI and a changed perspective at this organization could serve as a basis for success for the SD and an implementation of employment issues at the national level that are EU SD "proof", mirrored to a possible EU cycling SD. Interesting is that,

in contrast to football, the EU branch of the UCI is not strong, so initiatives to join the process towards the EU SD should come from the UCI or be delegated to a EU branch of the UCI.

Stakeholders in a EU SD

The structure and relations between the stakeholders in professional cycling is complex. This makes the identification of potential social partners a challenging task.

It seems as if professional cycling is in a transition phase, new stakeholders have influenced the traditional form of governance and regulation of professional cycling conform the EU Model of Sport. The enhanced position of these new stakeholders however, is applicable to multiple stakeholders (WADA, UCI, Event organizers, cycling teams, cyclists, sponsors) that have different driving forces for their activity. The constant process (including disputes) related to the contrasting activity of the stakeholders has created an environment in which the stakeholders, up until now, have neglected to ascertain a stable, transparent and reasonable organization of the industrial relations in their professional sector.

The participants discuss the various stakeholders in professional cycling in relation to their role in a SD. The soda' partners are in principle the designated actors in a SD. In cycling the riders are organized in the CPA.

From the side of the teams there is the AIGCP in which all the teams are agglomerated. However, this organization does not seem to be relevantly informed about the SD, so this underlying project should inform and create more awareness amongst the teams.

The UCI is the international umbrella association. It lacks an "EU branch" and is internally limitedly equipped and unable to carry out intensive activity in this field of, in its vision, minor importance in relation to other current issues. The members of the UCI that are familiar with industrial relations in their own countries could take the initiative steps to create awareness about the SD, according to the participants. This implies, however, that the associations assume a role within a SD in cycling.

The meeting also focuses on the role of the event organizers. The event organizers are undoubtedly a serious stakeholder, they own and organize the major cycling events (Tour, Vuelta). Their participation however, in negotiations that focus on labour relations is not apparent. The issues in which the event organizers are a stakeholder are more commercial issues.

The meeting also stresses the role of the sponsors, they are responsible for the far majority of income generated by the professional cycling sector.

The discussion then moves to the issue of a possible method of functioning of a SD Committee in cycling. It could include commercial as well as social issues, negotiated between the relevant parties. A comparison with the US model of a league is given, but then including the EU stakeholders mentioned above. The EU SD in football is also mentioned as an example where multiple stakeholders, besides the social partners, also participate in a forum.

Meeting in Brussels

The participants support the idea of organizing a meeting in Brussels with the national Federations of a number of EU countries and the European Commission. They believe that this should generate a positive effect in relation to the objectives of the project. The federations could also use this action to work on creating stability and a better structure for cycling in general. The federations are the natural actors to create awareness amongst the stakeholders.

5.5. Conclusion

The following conclusions can be drawn on the basis of the above as regards the type of agreement and its content.

5.5.1. Type of agreement

As the agreement deriving from a social dialogue committee in cycling needs to be implemented in the national member states' cycling structures, it is important to guarantee uniform implementation, including an efficient method of enforcement.

The most suitable type of agreement meeting these standards is transformation of the agreement between the social partners into a directive. The directive is implemented in national jurisdictions of the member states and has the status of a formal act. Enforcement of these acts is guaranteed through legal procedures common to all Member States. Difficulties of enforcement arising from discrepancies between employment law and association rules is avoided.

Only issues falling under article 137 sub 1 and or 3 EC Treaty may be transposed into a directive. On all other issues related to the professional cycling sector, an agreement may be reached between the social partners, but transposition into a directive is not possible.

5.5.2. Content of the agreement

All issues related to the European professional cycling sector may be discussed within a social dialogue committee. The issues described above are listed under Article 139 EC Treaty. The issues that may be transposed into a directive on the initiative of the social partners, via the Commission to the Council and that require qualified majority voting within the Council, are listed under 137 sub 1 EC Treaty. The third distinction is the issues needing unanimous voting by the Council before they can be implemented in a directive.

The elements marked with an asterisk (*) below are the issues that may be characterised as having an influence on the conclusion and termination of contracts. The fact that these elements may be included in a social dialogue is also due to the fact that a proper analysis, taking social and employment aspects into consideration, needs to be undertaken to guarantee the free movement of workers.

	139	137 sub 1	137 sub 3
Bonuses			
Disciplinary system		■	
Doping			■
Ear phones			■
Freedom of expression			■
Health and safety; medical treatment			■
Hiring			■
Image rights		■	
Insurance			■
Leave			■
Licenses			■
National team selection			
Pension			■
Prizes			
Professional expenses			■
Retraining			■
Road safety			■

Salary		
Social benefits		■
Work and rest conditions		■
Sports agents		■
Term and end of the contract		■
Transport		■
Trial period		■

These aspects form the core of a possible agreement at the EU level. Several matters need to be taken into consideration before an actual agreement comes into practice.

All the issues above have a clear basis in employment law or are closely related to it. However, in the course of time the cycling sector has created a characterisation of certain elements as the “specificity of sport”, leading to possible exemptions from the applicable formal laws on the basis of cycling’s social and cultural elements. The specificity of sport is heavily promoted by the sports governing bodies and forms the basis for these organisations’ power to govern the sport. To unite the specificity of sport with employment law and guarantee an efficient coherence between regulations of the governing bodies and the prevailing agreement between the social partner, an informal dialogue may take place between the social partners and the governing bodies and relevant stakeholders before the actual social dialogue takes place. There the regulations of the governing bodies may serve as a blueprint for a formal social dialogue.

A possible threat to conclusion of the agreement is the fact that the relevant social partners fail to agree on the creation of a social dialogue committee. At the moment it appears that PCA and AIGCP/IPCT are the designated social partners in cycling.

A possible threat is the Council’s role. Many elements may be discussed within the European Social Dialogue, but only confirmation of the agreement by the Council leads to a uniform and enforceable agreement. Unanimity is necessary in the case of article 137 sub 3 EC Treaty. As illustrated above, it seems that the powers of the Commission and the Council are limited when it comes to modification or withdrawal of the agreement of the social partners. This aspect is only mentioned in literature and has not been tested in practice. Where the Council is presented with confirmation of the agreement of the social partners in cycling, a theoretical discussion will be confirmed in practice.

5.6. Reflections – The concept of EU Social Dialogue in EU professional cycling

5.6.1. Structure and European Dimension

After analyzing the EU cycling sector, it emerged that cycling, more than any other sport in the EU, has a truly European labour market. The employers are, on the highest level, mainly EU teams, the majority of riders are from the EU and the working place of the riders consists of the entire EU for training as well as for competitions and events.

The centre of international professional cycling is still the EU, more specifically Western Europe. The sport enjoys a relatively stable position in France, Germany, Spain, Italy, the Netherlands and Belgium. In other countries the popularity of the sport fluctuates, at least on a professional level. Good examples in this respect are Germany and the UK. German riders have been very successful in the recent past but interest in the sport has diminished due to doping scandals. The UK is currently very successful in the sport, which directly affects its overall popularity. In addition to the EU dimension, interest in the sport is growing in the US, a development directly connected to successes achieved by US riders and teams in the last

decade. From a historical perspective, the popularity of cycling is closely linked to the historical events, the “classics” and the major competitions, namely the Tour de France, Giro d’Italia and Vuelta in Spain. One-day competitions such as the world championships and the Olympic Games guarantee a full annual calendar.

The organization of cycling on the level of EU Member States is directly linked to the way in which sports are regulated in a given country in overall terms. A clear distinction can be made between countries with an interventionist system, where the sport itself “receives” a delegated mandate to organize itself, and a non-interventionist system, where sport is considered to be a sector like all other economic industries.

The structure of a team is a fascinating concept and differs per country. A cycling team often has a basis in a foundation or not-for-profit structure. This is the continuous element of a team. All the commercial aspects, including the status of the actual employer of the rider, are gathered into a company structure. The teams must meet basic requirements in order to participate in international competitions. The professional international sector is divided into Pro Tour teams (highest), Continental Pro Teams and Continental teams, of which the latter is mostly a pool for talented young riders to make a step to the next professional level.

The teams all suffer from a sporting peculiarity which is stronger in cycling than in other sports that have “teams with traditions”. All of the teams are very closely linked to a main (naming) sponsor, the existence of the team is completely dependent on the sponsor and there is no continuity if the sponsor decides to leave the sport. Currently, one can add to this uncertainty the fact that, for example, a doping sanction imposed on one of the riders constitutes a just cause for a sponsor to terminate its contract with the entire team. This aspect has a direct effect, and a severe impact, on employment relations in professional cycling. Due to this aspect, employment contracts in cycling may only be fixed-term ones.

5.6.2. Stakeholders in EU cycling

Due to the many interests in cycling, the organizational degree of stakeholders is clearly defined. The basic pillar of the sport is the Union Cycliste Internationale (UCI). In contrast to other sports, the UCI regulates the sport using a very centralized approach. In other sports, it seems that national federations have more influence on the specific sport discipline. The influence of the UCI stresses the true international dimension of the sport.

The national federations in “typical” cycling countries are strong. In addition to national-level federations, some countries have a league that is responsible for the organization of the professional aspect of the sport. These league organizations are strongest in France and Italy and are to a large extent independent of the national federation. The relationship between the two organizations, league and association, appears to be positive.

The majority of professional teams are members of the AIGCP. This organization has a not-for-profit status and defends the interests of the teams against those of other stakeholders in cycling. The AIGCP is recognized by the UCI and is part of the UCI’s Accord Paritaire. It is therefore competent to deal with employment and social issues.

The other grouping representing teams is the IPCT. This is a group consisting of the top cycling teams. The objective of the IPCT lies more in the commercial aspects of the sport. The teams in IPCT have also concluded an ethics code concerning doping.

The riders are internationally gathered in the CPA. The CPA claims to have around 860 members. The CPA is committed to defending the interests of the riders and, in practice, the issues at stake are all employment-related. The members of the CPA are national cycling workers’ unions.

Other stakeholders are the event organizers. A peculiarity in cycling, in relation to many other team sports, is that the main races are organized by external (commercial) event organizers and not by the federations. The organizers generate a large amount of income through the selling of media rights and sponsorships. They also have a responsibility as regards the logistics of the races, which is an extremely complex task given the international aspects of races. The actions of the event organizers have a direct impact on the relations between the riders and the teams.

5.6.3. Themes and Issues

An Accord Paritaire exists in international cycling that was agreed upon within the structures of the UCI. Every issue discussed and noted in the Accord Paritaire can be part of a European Social Dialogue within the structures of the European Union. In addition, the issues that are at stake at the present time in professional cycling are listed in the overview referred to earlier in the report. However, a couple of reasons for having a social dialogue on the level of the European Union may be reproduced here in order to stress their importance. One issue is the fact that the basic principles agreed in the Accord Paritaire within the UCI do not lead to a level playing field in the professional cycling sector of the EU. The Accord Paritaire is not specifically focused on the EU and therefore goes beyond what is possible on the basis of employment law on the level of Member States. The minimum standards listed in the Accord Paritaire are implemented in the member federations of the UCI. The Accord Paritaire does not, however, take into consideration how the standards are implemented. This is therefore not the task of the UCI. The stakeholders in the sector, more specifically CPA and AIGCP and their members and the Leagues, are very much in favour of a system that takes into consideration the national relevant regulations concerning employment legislation, social security and tax legislation. It should be able to create a harmonious basis by, for example, ensuring that the cyclist is recognized as an employee with an employment contract in every country. The protection of the worker would thus be guaranteed by making the employer responsible for the social security of the rider and for his safety. If all employers in the EU would to a large extent be treated similarly, the result would be fairer competition, also in the rider market. This would also allow the unwanted effects of “social dumping” to continue to exist in cycling. It is now possible for teams to get a licence to participate in competitions, have their associations (often a not-for-profit foundation) in a particular country and employ the majority of riders from one specific country. The seat of the company that exploits the commercial aspects of the teams and has the status of employer of the riders, however, is in a country where the conditions, financial and otherwise, for employers to hire/employ riders are the most favourable. This leads to discrepancies among riders and to a lack of social protection, among other things, in this dangerous professional activity.

With EU uniformity, the sector could also start putting the creation of a pan-EU pension fund into force. The use of multiple fixed-term contracts is also a very important topic. Currently, only France has a clear system in force where the use of consecutive multiple fixed-term contracts is allowed under a general, objective justification connected to the practice (“usage”) in a certain sector. In other countries, the teams run an immense risk that after several consecutive fixed-term contracts riders may claim a contract of indefinite time. It is common sense that in many cases this is impossible in cycling due to the nature of the activity and due to the strict connection of the team’s income with a sponsor that only commits itself to the team on a fixed-term basis. This peculiarity and the associated insecurity for teams as well as for riders requires combined action on the level of the EU and for checks and balances within EU law on the use of fixed-term contracts and the protection of workers.

Last but not least, the cycling sector has many other peculiarities that require specific treatment. In no other sport has doping had such an immense impact. Currently, there is little social partner participation in the discussion concerning the balance between the need for a clean sport and the protection of workers' rights. The doping issue itself is probably better covered by an external objective authority. The "whereabouts" discussion, however, is an issue that should be discussed, in addition to the discussion with other stakeholders, within a social dialogue. Idiosyncratic for cycling is also the extreme amount of travelling, the relatively long duration of events (working hours), the use of earphones during a competition and so on.

5.6.4. Sectoral Social Dialogue Committee

There is a willingness among the main stakeholders to assess the avenue of the European Social Dialogue as a possible solution for typical cycling (labour) problems. If the Accord Paritaire could be a starting point for discussions between the two envisaged Social Partners, CPA and AIGCP, then true harmonization could take place on the level of the EU. Also, by using social dialogue, it can be guaranteed that the results of the negotiations will be in line with EU law because the negotiations will take place under "the shadow of EU law".

Professional football served in many cases as an example for professional cycling. On the level of the EU, the AIGCP and the CPA could be the social partners and the UCI could be invited as an observer or as the chair for the social dialogue talks. Before a Cycling Sectoral Social Dialogue Committee takes decisions on specific issues, other stakeholders may be invited for discussions and de facto negotiations. One can think of, as one of many examples, the participation of the event organizers and the UCI when a topic like doping is at issue. A derived topic is the whereabouts discussion and this could lead to the implementations of a code of ethics on the level of the social partners that respects EU laws and national labour laws.

A very interesting fact is the existence of the DNGC Pro in France. This is a group of selected experts that safeguard the implementation and the operation of the collective agreements between riders and teams. The social partners have the freedom to appoint such a grouping within their sectoral social dialogue. This would be an objective platform that guarantees the enforcement of the agreements. This would tackle a commonly heard comment that the result of social dialogue is only implemented on a national level on a very slow basis.

The project stresses the willingness of the parties involved and shows that a lot of work is in the pipeline on the national levels. An example in this regard is the current negotiation of a collective bargaining agreement in Dutch cycling in order to try to circumvent the problem of using multiple fixed-term contracts. A sectoral social dialogue fits within the evolution of the sector and would lead, in addition to stability on the level of labour law and employment contracts, to a more serious approach to the sector by the outside world, including a better image for potential sponsors that, and this has not changed over the years, continue to be the main source of income, and therefore guarantee the existence of this noble sport.

ANNEXES

ACCORD PARITAIRE

sur les conditions de travail des coureurs engagés par des Equipes Continentales Professionnelles et des UCI ProTeams pour les années d'enregistrement 2006 à 2008. L'accord a été reconduit pour 2009.
(texte modifié au 15.06.08).

Parties signataires:

- Cyclistes Professionnels Associés, Association Internationale, désignée ci-dessous CPA,
- Association Internationale des Groupes Cyclistes Professionnels désignée ci-dessous AIGCP,

Chapitre premier: DISPOSITIONS GÉNÉRALES

DOMAINE D'APPLICATION

Art. 1

Le présent accord établit les normes régissant les conditions de travail des coureurs cyclistes employés par une équipe enregistrée ou ayant l'intention de se faire enregistrer auprès de l'Union Cycliste Internationale comme UCI ProTeam ou équipe continentale professionnelle suivant le chapitre XV ou XVI du livre II du Règlement du sport cycliste de l'UCI.

Il lie chaque équipe en sa qualité d'employeur, en la personne de son responsable financier (ci-après: l'équipe) et chaque coureur employé par l'équipe (ci-après: le coureur).

Il ne s'applique pas aux coureurs qui sont employés par une équipe mais qui ne participent pas aux courses internationales sur route.

Toutefois il suffit qu'un tel coureur participe une seule fois à une course internationale sur route pendant l'année d'enregistrement pour lui rendre applicable le présent accord pendant toute cette année.

Les stipulations du présent accord s'ajoutent à celles du règlement de l'UCI. En cas d'incompatibilité, le règlement de l'UCI sera appliqué.

Art. 2

Le présent accord s'applique pour les années d'enregistrement 2006 à 2008, sans préjudice de l'article 10.

Les parties signataires s'engagent à le renégocier de bonne foi pour les années suivantes ou si aucun changement n'est requis à prolonger le présent accord à l'expiration de son terme pour une durée postérieure à définir.

FORCE OBLIGATOIRE

Art. 3

Toute dérogation aux dispositions du présent accord au détriment du coureur est nulle. Reste valable tout avantage ou convention pouvant favoriser le coureur au-delà de ce qui est prévu par le présent accord.

CONTENTIEUX

Art. 4

Tout conflit entre les parties signataires au sujet du présent accord sera soumis à la demande de l'une des parties au collège arbitral du conseil de l'UCI ProTour (CUPT) suivant la procédure prévue aux articles 12.3.008 et suivants du Règlement du sport cycliste de l'UCI.

Un litige entre une équipe et un coureur au sujet de leur relation de travail sera soumis à l'instance désignée par la clause de compétence prévue au contrat, pour autant qu'elle soit conforme au règlement de l'UCI. Dans la mesure où la solution du litige dépend de l'interprétation,

l’instance à laquelle le litige est soumis pourra demander un avis impératif au collège arbitral du conseil de l’UCI ProTour suivant la procédure qui sera fixée par le président du conseil de l’UCI ProTour.

Chapitre deuxième: CONDITIONS DE TRAVAIL

ENGAGEMENT

Art. 5

L’engagement a lieu au moyen d’un contrat individuel conclu entre le coureur et l’équipe. Le contrat devra être établi par écrit au moyen d’un formulaire correspondant au modèle de contrat convenu entre les parties signataires et approuvé par l’UCI sous forme d’insertion dans son règlement comme contrat-type.

Le contrat doit être établi au minimum en 3 exemplaires:

1 pour l’équipe;

1 pour le coureur;

1 pour le commissaire aux comptes agréé par l’UCI.

Le contrat doit être dactylographié. Chaque page doit être numérotée et indiquer le nombre de pages total du contrat. Le coureur et le responsable financier doivent signer chaque page du contrat.

Les clauses du contrat figurant sur une page qui n’est pas signée par le coureur ne peuvent être invoquées contre lui; le coureur peut s’en prévaloir.

DURÉE ET FIN DU CONTRAT

Art. 6

Le contrat doit avoir une durée déterminée qui se termine le 31 décembre.

Le contrat entrant en vigueur avant le 1er juillet de l’année d’enregistrement sera valable au moins jusqu’au 31 décembre de la même année. S’il s’agit d’un néo-professionnel le contrat est valable au moins jusqu’au 31 décembre de l’année d’enregistrement suivante.

Le contrat entrant en vigueur après le 30 juin sera valable au moins jusqu’au 31 décembre de l’année d’enregistrement suivante et, dans le cas d’un néo-professionnel, jusqu’au 31 décembre de l’année d’après.

Art. 7

1. Le statut de néo-professionnel est octroyé à tout coureur engagé pour la première fois par un UCI ProTeam ou une équipe continentale professionnelle au plus tard au cours de sa vingt-deuxième année.

Pour l’application de cet article, la date d’engagement est celle de l’entrée en vigueur du contrat.

L’âge du coureur est déterminé par la différence entre l’année de son engagement et l’année de sa naissance.

2. Le statut de néo-professionnel prend fin:

a) si le contrat est entré en vigueur avant le 1er juillet: au 31 décembre de l’année d’enregistrement suivante.

b) si le contrat est entré en vigueur après le 30 juin: au 31 décembre de la deuxième année d’enregistrement suivante.

Pendant la durée mentionnée ci-dessus, le coureur garde son statut de néo-professionnel et ce, même:

a) si le coureur atteint l’âge de 23 ans au cours de cette période;

b) si le contrat prend fin avant son terme et le coureur change d’équipe.

3. Si au moment de l’entrée en vigueur du contrat du néo-professionnel, la durée restante du contrat entre le responsable financier et le partenaire principal ou des contrats entre le responsable financier et les deux partenaires principaux est inférieure à la durée du contrat de néo-professionnel résultant de l’application du premier alinéa du point 2 ci-dessus mais est au moins égale à un an, la durée du contrat de néo-professionnel peut être limitée à la durée restante du contrat avec le partenaire principal ou du plus long des contrats avec les deux partenaires principaux.

Si après l'expiration du contrat entre le responsable financier et le partenaire principal ou des contrats entre le responsable financier et les deux partenaires principaux l'équipe continue ses activités ou le responsable financier continue ses activités dans une autre équipe, il doit réengager le coureur, à la demande de celui-ci, pour au moins un an et à des conditions qui ne peuvent être moins favorables pour le coureur.

Art. 8

Le contrat de travail ne peut pas prévoir de période d'essai.

Art. 9

Avant le 31 octobre précédent la fin du contrat, et si celui-ci n'a pas encore été renouvelé, chaque partie informera, par écrit, l'autre partie de ses intentions quant au renouvellement éventuel du contrat. Une copie de cet écrit sera envoyée au CPA.

RÉMUNÉRATION, PRIMES ET PRIX

Art. 10

Le coureur a droit à une rémunération fixe dont le montant annuel brut minimum est fixé comme suit:

Equipes continentales

professionnelles	Néo-pro Autre
2009 € 23,000.-	€ 27,500.-
UCI ProTeams	Néo-pro Autre
2009 € 26,700.-	€ 33,000.-

Les rémunérations des années **suivantes** seront négociées par les parties et feront l'objet d'un amendement au présent accord. Si aucun accord n'est trouvé, les montants de **2009** resteront en vigueur.

Dans des situations particulières et dans l'intérêt du développement du cyclisme, le conseil de l'UCI ProTour peut décider des dérogations sur proposition conjointe des parties signataires du présent accord.

(texte modifié au 15.06.08).

Art. 11

La rémunération fixe doit être payée en argent, dans la monnaie stipulée dans le contrat.

Le paiement doit se faire par virement sur le compte bancaire du coureur indiqué dans le contrat. Seule la preuve de l'exécution du virement bancaire fait preuve du paiement.

La rémunération est payée au coureur en mensualités égales, versées au plus tard le dernier jour ouvrable de chaque mois.

En cas de retard dans le paiement de sa rémunération ou de tout avantage dû, le coureur a droit, de plein droit et sans mise en demeure, aux majorations et intérêts suivants:

- 1) retard de 11 à 30 jours: majoration de 5% de la somme due
- 2) majoration de 10% de la somme due pour chacun des 5 mois ou fraction de mois de retard supplémentaire
- 3) à partir du début du sixième mois de retard, un intérêt de 2% par mois sur la somme et les majorations dues

Dans les cas suivants, les majorations ne sont pas dues et l'intérêt de retard est réduit à 8% par an à partir de l'échéance:

- si au plus tard 3 mois après cette échéance, le coureur n'a pas réclamé les arriérés devant l'instance compétente ou n'a pas fait appel à la garantie bancaire;
- si l'instance compétente ou, à défaut, le conseil de l'UCI ProTour décide que le non-paiement résulte d'une contestation sérieuse.

Art. 12

L'équipe et le coureur peuvent prévoir, en plus du salaire fixe, le paiement de primes ou autres avantages qui dépendent des résultats et prestations individuels du coureur ou des résultats et prestations de l'équipe.

Art. 13

Les prix sont les sommes d'argent versées par les organisateurs des courses cyclistes. Les prix seront versés par les organisateurs à la fédération nationale du pays de la course ou à un organisme collecteur désigné par cette fédération nationale et agréé par le conseil de l'UCI ProTour.

Art. 14

Toute prime, indemnité, prix ou autre avantage en numéraire et tout avantage en nature s'entendent au-dessus du salaire fixe et ne peuvent être imputés sur celui-ci ni être pris en considération pour son calcul.

Art. 15

Une fiche de rémunération détaillée devra être remise au coureur lors de chaque paiement.

CONDITIONS DE TRAVAIL ET REPOS

Art. 16

Le nombre de jours de compétition annuel et leur planification sont de la responsabilité de l'équipe en tenant compte du règlement UCI.

La planification doit prendre en compte les périodes nécessaires de récupération pour que le coureur jouisse de la quantité de repos nécessaire à son équilibre physique.

Art. 17

Le coureur a droit à un minimum de 35 jours de vacances par année.

Les périodes de vacances sont prises, en accord avec l'équipe, en fonction des compétitions à disputer et des stages d'entraînement.

En aucun cas la période de vacances pourra être substituée par une compensation économique.

Art. 18

Le coureur a le droit de participer à l'assemblée annuelle et aux réunions convoquées par le CPA et ses organisations membres.

L'équipe ne peut exercer aucune pression ou contrainte sur le coureur pour le dissuader d'y assister. Ces réunions ne pourront, en aucun cas, interférer avec l'activité sportive du coureur.

Art. 19

Le coureur a le droit de continuer et de perfectionner sa formation culturelle.

L'équipe ne s'opposera pas à la poursuite d'études pour autant qu'elles n'entravent pas l'activité sportive prévue dans la planification.

Art. 20

L'équipe et le coureur doivent prendre toutes les dispositions nécessaires pour éviter en toute circonstance les risques pour la santé du coureur suivant les règlements de l'UCI.

COMPENSATION DU SALAIRE, ASSURANCES ET PRESTATIONS SOCIALES

Art. 21

Le coureur empêché temporairement d'exercer son activité cycliste sans qu'il y ait faute de sa part, suite à maladie, blessure ou accident, a droit à 100% de sa rémunération pendant une période de 3 mois et 50% de sa rémunération pendant une autre période de trois mois sans que le montant à payer puisse être inférieur au salaire minimum stipulé à l'article 10.

Ce droit prend fin à la fin de l'incapacité ou du contrat. Il se renouvelle pour une nouvelle incapacité ayant une autre cause que la précédente.

Le droit au salaire est à la charge de l'équipe, après déduction des prestations d'assurances de perte de revenus dont le coureur pourrait bénéficier pour ce risque. Le cas échéant, le coureur fera le nécessaire pour permettre les recours contre les tiers responsables.

L'incapacité de travail devra être dûment établie. L'équipe peut exiger que le coureur se soumette à un examen, soit par un médecin désigné de commun accord, soit par un médecin du travail reconnu suivant le régime de sécurité sociale applicable, soit, à défaut, par un médecin désigné par le président de la Commission sécurité et conditions du sport de l'UCI à la demande de la partie la plus diligente.

Art. 22

1. L'équipe doit veiller à ce que le coureur bénéficie d'une couverture en matière d'assurances sociales.
 2. L'équipe doit veiller à être en règle avec la législation en matière de sécurité sociale qui lui est applicable en sa qualité d'employeur, de façon à ce que le coureur puisse bénéficier des prestations accordées par la loi aux travailleurs à temps plein.
 3. Dans le cas où le coureur ne serait pas bénéficiaire du système de sécurité sociale légal, l'équipe doit contracter et prendre en charge les assurances suivantes:
 1. Une assurance couvrant les frais des soins de santé (médecin, médicaments, etc.) pour le coureur pour un montant de € 100 000.– par an et par coureur.
 2. Une assurance prévoyant le paiement d'une pension, rente ou capital au plus tôt à l'arrêt de la carrière de cycliste professionnel, et dont la prime représentera au moins 12% du salaire brut annuel, limité à trois fois le montant minimum prévu à l'article 10.
- Si dans ces cas l'assurance est de telle sorte qu'elle doit être souscrite par le coureur lui-même, l'équipe veillera à ce que le coureur contracte ces assurances et prendra les primes à sa charge.
4. L'équipe prend à sa charge la moitié des cotisations des assurances visées au point trois:
 1. si le coureur a pu s'affilier, par exemple comme assuré libre, à un autre système légal de sécurité sociale que celui auquel est soumis l'équipe.
 2. Si l'affiliation du coureur à cet autre système légal est obligatoire.
 5. Il appartient à l'équipe de prouver la couverture visée dans cet article en produisant les attestations nécessaires dans le dossier requis pour l'audit visé à aux articles 2.15.068 et 2.16.014 du Règlement.

Art. 23

Indépendamment des prestations visées à l'article 22, l'équipe doit contracter à sa charge:

1. Une assurance-décès en vertu de laquelle un montant de € 100 000.– sera versé aux ayants droit désignés par le coureur dans la police.
Peuvent être exclus de la garantie les risques liés aux sports ou activités sportives à risques sans rapport avec la préparation, le maintien ou la récupération de la condition physique de cycliste, tels que: sports aériens, sports mécaniques (dont véhicule à moteur, terrestre ou non), sports de glace, sports de combat, spéléologie, rafting, escalade sportive, plongée sous marine, en tant que participant, instructeur, officiel ou toute fonction autre que celle de spectateur.
2. Une assurance en vertu de laquelle un montant jusqu'à € 250 000.– sera versé au coureur en cas d'invalidité absolue et permanente due à un accident (24 h sur 24); l'invalidité permanente résultant de maladies ou d'affections causées par la pratique du cyclisme ne doit pas être assurée par cette police.
Peuvent être exclus de la garantie les risques liés aux sports ou activités sportives à risques sans rapport avec la préparation, le maintien ou la récupération de la condition physique de cycliste, tels que: sports aériens, sports mécaniques (dont véhicule à moteur, terrestre ou non), sports de glace, sports de combat, spéléologie, rafting, escalade sportive, plongée sous-marine, en tant que participant, instructeur, officiel ou toute fonction autre que celle de spectateur.
3. Une assurance d'hospitalisation et rapatriement.
Cette assurance doit couvrir:
 - a) l'ensemble des frais non couverts par la sécurité sociale liés à l'hospitalisation du coureur pour un montant de € 100 000.– par sinistre et par individu;
 - b) la totalité des frais de rapatriement pour des raisons médicales ou à cause de décès, en relation avec les déplacements professionnels.

Art. 24

L'équipe doit annexer à chaque contrat une liste, suivant le modèle en annexe, des prestations d'assurance, légales ou contractuelles, dont le coureur bénéficiera et celles dont il ne bénéficiera pas. L'équipe sera responsable des prestations qu'elle aura indiquées de manière erronée sur ladite liste comme un droit du coureur.

Art. 25

L'équipe doit pouvoir, à tout moment, apporter la preuve des couvertures d'assurance visées aux articles 22 et 23 sur simple demande des coureurs qu'elle emploie, de l'UCI ou du commissaire aux comptes, envers le commissaire aux comptes agréé par l'UCI.

Art. 26

Le manque d'assurance ou de couverture est de la responsabilité de la partie ayant l'obligation de la contracter. L'AIGCP, le CPA et l'UCI sont exonérées de toute responsabilité. Le pouvoir de l'UCI de demander des preuves est une simple faculté, n'entraînant aucune obligation ou responsabilité.

* * * * *

Pour l' AIGCP Pour le CPA

ANNEXE 1
LISTE DES ASSURANCES

L'équipe confirme que le coureur,

Nom:Prénom:Date de naissance:

bénéficiera, du fait de son emploi, des assurances ou prestations suivantes (pour les coureurs ne bénéficiant pas d'un système de sécurité sociale légale, l'équipe déclare que le coureur lui a remis une attestation certifiant qu'il bénéficie des assurances ou prestations suivantes):

(chaque case doit être remplie avec «oui» ou «non» suivant le cas)

Risques / prestations assurés* en vertu de la législation en vertu d'une assurance (indiquer le pays) contractuelle**

1. accident de travail
2. maladie professionnelle
3. soins de santé (médecin, médicaments)
4. hospitalisation
5. indemnité d'incapacité de travail
6. allocations familiales
7. chômage
8. pension de vieillesse
9. pension de survie
10. rentes d'orphelin
11. assurance soins de santé (art. 22.3.) (uniquement pour le coureur qui n'est pas au bénéfice d'un système de sécurité sociale légale)
12. assurance de prévoyance (art. 22.3.2) (uniquement pour le coureur qui n'est pas au bénéfice d'un système de sécurité sociale légale)
13. assurance-décès (art. 23.1)
14. assurance-invalidité (art. 23.2)
15. assurance d'hospitalisation (art. 23.3 a)
16. assurance de rapatriement (art. 23.3 b)
17. autres

* L'étendue de la couverture dépend du système légal de sécurité sociale en vigueur dans les différents pays. Certains risques peuvent donc ne pas être assurés. Se référer à l'accord paritaire et au règlement UCI pour la couverture minimum.

** Pour les assurances souscrites par l'équipe, fournir une copie des polices et des conditions générales d'assurance. Pour les assurances contractuelles souscrites par le coureur lui-même, l'équipe

doit obtenir du coureur une attestation signée par la compagnie d'assurances, selon modèle annexé.
Cette attestation doit être présentée au réviseur.

Date: Signature du responsable financier:

ANNEXE 2
ATTESTATION D'ASSURANCE POUR UN COUREUR CYCLISTE
PROFESSIONNEL

La compagnie d'assurance soussignée atteste que le coureur,

Nom: Prénom: Date de naissance:,

est assuré auprès d'elle au 1er janvier et pour toute l'année 200... pour les risques et prestations suivants (au minimum) *:

No de la police d'assurance

1. Remboursement Frais de médecin et médicaments pour Selon accord paritaire des frais de santé le coureur pour un montant art. 22.3.1 de € 100 000 par année
 2. Pension de vieillesse Conditions/couverture minimum: Selon accord paritaire
 - Versement sous forme de capital ou de rente art. 22.3.2
 - Payable au plus tôt à la fin de la carrière cycliste professionnelle
 - Contribution annuelle représentant au moins 12% du salaire ou des honoraires bruts annuels, limitée à 3 fois le montant minimum
 3. Assurance décès En cas de décès du coureur, versement d'un Selon accord paritaire capital de € 100 000 aux ayants droits art. 23.1 désignés par le coureur. Certaines activités à risque peuvent être exclues (voir accord paritaire)
 4. Assurance invalidité En cas d'invalidité absolue et permanente Selon accord paritaire du coureur due à un accident (24 h sur 24), art. 23.2 versement d'un capital de € 250 000 au coureur.
 5. Remboursement Frais d'hospitalisation du coureur pour Selon accord paritaire des frais un montant de € 100 000 par sinistre art. 23.3 a) d'hospitalisation
 6. Remboursement Frais de rapatriement du coureur pour Selon accord paritaire des frais des raisons médicales ou à cause de décès art. 23.3 b) de rapatriement durant des déplacements professionnels
- Cette attestation est délivrée afin de permettre au coureur de prouver à son équipe et aux instances de contrôle du cyclisme professionnel qu'il remplit les conditions d'enregistrement pour la saison 200.. fixées par le Règlement UCI. Ledit règlement se réfère pour les couvertures minimales d'assurance à l'accord paritaire sur les conditions de travail des coureurs professionnels. Elle ne pourra être utilisée pour d'autres buts.

Commentaires / observations de la compagnie d'assurances:

Lieu et date d'établissement de l'attestation:

Timbre et signature de la compagnie d'assurances:

Personne de contact:

Adresse exacte:

No de tél.:

* Biffer les risques / prestations non couvertes par la compagnie d'assurance.

CONVENIO COLECTIVO PARA LA ACTIVIDAD DEL CICLISMO PROFESIONAL

CAPÍTULO I
Disposiciones generales

Artículo 1. Ámbito funcional.

El presente Convenio establece y regula las normas por las que han de regirse las condiciones de trabajo de los ciclistas profesionales que presten sus servicios en los equipos afiliados a la Real Federación Española de Ciclismo, y a aquellos que por razón de su sede social u operativa puedan ser asimilados por la legislación vigente a un centro de trabajo en España, así como aquellas relaciones que se establezcan de acuerdo con el Real Decreto 1006/1985, de 26 de junio.

Se entenderá a todos los efectos por equipo toda aquella entidad, sponsor, team, sociedad, grupo deportivo, etc. de la que dependa una formación o plantilla de ciclistas profesionales que tenga por objeto primordial o secundario la participación en pruebas ciclistas para profesionales cuya organización dependa de la Real Federación Española de Ciclismo (RFEC) y Consejo de Ciclismo Profesional de la RFEC, Unión Ciclista Internacional (UCI), Asociación de Equipos de Ciclismo Profesional (ECP), u organismo que en el futuro les sustituya (Liga de Ciclismo Profesional, etc.).

Artículo 2. Ámbito personal.

El presente Convenio Colectivo será de aplicación a los ciclistas profesionales en cualquier disciplina ciclista que, en virtud de una relación establecida con carácter regular, se dediquen voluntariamente a la práctica del ciclismo por cuenta y dentro del ámbito de organización y dirección de un equipo a cambio de una retribución, así como a aquellos otros ciclistas cuya relación con cualquier entidad quede incluida dentro del ámbito de aplicación del Real Decreto 1006/1985, de 26 de junio, por el que se regula la relación laboral especial de los deportistas profesionales, con las exclusiones previstas en el artículo 1.^º del citado del Real Decreto.

Artículo 3. Ámbito territorial.

El presente Convenio Colectivo será de aplicación a todas aquellas relaciones laborales establecidas, de conformidad con los artículos precedentes, dentro del territorio nacional, como así mismo aquellas que se presten fuera del territorio nacional y se encuentren comprendidas dentro del ámbito funcional o personal.

Artículo 4. Ámbito temporal.

El presente Convenio Colectivo, independientemente de la fecha de su publicación en el «Boletín Oficial del Estado», comenzará su vigencia el día 1 de enero de 2006, finalizando, salvo prórroga del mismo, el día 31 de diciembre de 2008.

Artículo 5. Garantía personal.

Se respetarán las condiciones personales que, consideradas en su conjunto y en cómputo anual, fuesen más beneficiosas que las que se establecen en este Convenio, manteniéndose estrictamente «ad personam» y hasta futuras compensaciones. Las condiciones que se fijan en el Presente Convenio se considerarán mínimas.

Artículo 6. Denuncia y prórroga.

El presente Convenio Colectivo quedará prorrogado tácitamente por sucesivos períodos anuales, si no ha sido denunciado por cualquiera de las partes, con una antelación de dos meses a la fecha de su finalización o de cualquiera de sus prórrogas. De dicha denuncia se remitirá copia a la Dirección General de Trabajo, para el trámite previsto en el artículo 2.^º del Real Decreto 1040/1981, de 22 de mayo.

Artículo 7. Comisión paritaria.

Durante la vigencia del presente Convenio se constituye una Comisión paritaria que tendrá su domicilio indistintamente en la sede de la Asociación de Equipos de Ciclismo Profesional (en adelante, ECP), y la Asociación de Ciclistas Profesionales (en adelante, ACP), según a quien corresponde, en ese momento, la Presidencia de esta Comisión, sin perjuicio de que pueda tener validez la reunión, cualquiera que sea el lugar donde se celebre.

Salvo la excepción contemplada en el artículo 18 del presente Convenio Colectivo, estará compuesta por cuatro representantes que designarán por mitad las partes negociadoras del presente Convenio, actuando como Presidente semestralmente y alternativamente, el representante designado al efecto por cada una de las partes, y como Secretario el que sea designado por la parte que no ostente la Presidencia. Los representantes podrán ser designados específicamente para cada reunión.

La Comisión se reunirá cuantas veces sean necesarias a instancias de cualquiera de las partes convocada por correo o por correo electrónico para solventar cuantas dudas, discrepancias o conflictos pudieran producirse como consecuencia de la aplicación de este Convenio. Los acuerdos se tomarán

por mayoría de tres votos a favor como mínimo. De cada reunión se levantará la oportuna acta, siendo los acuerdos que en ella se alcancen vinculantes para ambas partes. Cuando no pudiera obtenerse la mayoría especificada, se seguirá el procedimiento arbitral establecido en el artículo 38 del presente Convenio.

Serán funciones de la Comisión paritaria las siguientes:

- a) Interpretación de la aplicación de las cláusulas de este acuerdo.

La Comisión Paritaria intervendrá o resolverá cualquier consulta que afecte a la interpretación de las normas establecidas en este Convenio Colectivo, e intervendrá de manera preceptiva y previa a las vías administrativa y judicial en la sustanciación de los conflictos Colectivos que se puedan plantear entre las partes, incluyendo a los ciclistas, a cuyo efecto la Comisión Paritaria levantará la correspondiente acta.

Procedimiento de actuación: Cada parte formulará a la otra las consultas que se puedan plantear y que den lugar a la intervención de esta Comisión.

El plazo máximo de siete días a partir de la fecha de esta comunicación, se pondrán de acuerdo en el día y hora en que la Comisión habrá de reunirse para evacuar la correspondiente respuesta. La reunión se celebrará en un plazo máximo de un mes desde que se trasladó la consulta a la otra parte.

Los acuerdos, serán comunicados a los interesados mediante copia del acta de la reunión.

En el caso en que no haya acuerdo se podrá someter la cuestión a arbitraje, de acuerdo con lo dispuesto en el artículo 38 del presente Convenio.

- b) Vigilancia del cumplimiento de lo pactado.
- c) Las que expresamente le atribuya el texto de este Convenio.
- d) Cuantas otras actividades que tiendan a la mayor eficacia práctica de lo pactado y al mantenimiento de las buenas relaciones entre las partes.
- e) Se le atribuyen, para casos excepcionales, funciones disciplinarias, debiendo ponderar y mesurar en todo momento la legalidad vigente, así como el estudio y revisión individual de las condiciones de trabajo.
- f) Se faculta a la Comisión Paritaria a exigir a las partes la acreditación documental del cumplimiento de las obligaciones derivadas del presente Convenio Colectivo, cuando existan indicios o pruebas suficientes del incumplimiento de alguna de sus cláusulas.

Esta Comisión podrá utilizar los servicios ocasionales o permanentes de asesores en cuantas materias sean de su competencia. Estos asesores serán elegidos y designados libremente por acuerdo de la Comisión Paritaria.

CAPÍTULO II

Condiciones de trabajo y descanso

Artículo 8. Jornada.

La jornada del ciclista profesional comprenderá la prestación efectiva de sus servicios en competición oficial, en entrenamientos, en concentraciones, en preparación física y técnica y en cualquier actividad en que se encuentre bajo las órdenes directas del equipo o del representante designado por éste, incluidas las actividades publicitarias y promocionales del equipo.

La jornada laboral en ningún caso superará los límites de trabajo efectivo legalmente establecidos. No se computarán a efectos de jornada los tiempos previstos en el artículo 9.3 del Real Decreto 1006/1985, ni los dedicados a la recuperación física, masaje, sauna, etcétera, después de cada jornada de trabajo y entrenamientos individuales.

Artículo 9. Descansos y vacaciones.

A efectos de lo dispuesto en el artículo 10, apartados 1 y 2, del Real Decreto 1006/1985, y dadas las peculiaridades de competición y calendario de este deporte, se establecen los siguientes acuerdos:

- a) A efectos de descanso semanal se computan los días en que el corredor no participe en competición oficial o no esté cumpliendo con lo previsto en el artículo 8.^º de este Convenio. Se considera que la planificación de la temporada preparada entre Director y corredor recoge la mejor acomodación posible del descanso previsto en el citado artículo 10, apartados 1 y 2, del Real Decreto 1006/1985.

- b) Las vacaciones serán de treinta y cinco días naturales. Las vacaciones se disfrutarán siempre fuera de la época del año en que exista competición oficial, determinándose por mutuo acuerdo entre el corredor y el Director deportivo del equipo. Salvo pacto por escrito en contrario dichas vacaciones se deberán disfrutar dentro del año natural en que se hayan devengado, en concreto, entre el 1 de noviembre y el 31 de diciembre de cada año natural. Las vacaciones que no hayan sido disfrutadas dentro del año natural se perderán, salvo que se hubiera acordado su retraso por motivos extraordinarios de la prestación de servicios. En ningún caso, podrá sustituirse el período vacacional por compensación económica.
- c) Se declaran inhábiles a efectos laborales los días 1, 5 y 6 de enero y 23, 24, 25, 26, 30 y 31 de diciembre, de cada año, salvo en aquellas especialidades ciclistas en que exista competición oficial o se realicen desplazamientos para participar en ellas. Con motivo de la Asamblea anual de la ACP, se declaran inhábiles dos días dentro de los dos últimos meses, que serán comunicados con un mes de antelación a los equipos. Estos dos días no pueden coincidir con competiciones oficiales de carretera celebradas en territorio europeo.
- d) El ciclista profesional percibirá durante el período de vacaciones el importe correspondiente al sueldo mensual.

En cuanto a otros descansos y permisos especiales se estará a lo dispuesto en esta materia en el Estatuto de los Trabajadores y las demás normas laborales de general aplicación, en cuanto no sean incompatibles con la naturaleza especial de la relación laboral de los deportistas profesionales.

CAPÍTULO III **Contrato de trabajo, modalidades, período de prueba**

Artículo 10. Contrato de trabajo.

Los contratos de trabajo que suscriban los ciclistas profesionales y los equipos deberán ajustarse a las prescripciones que se determinan en el artículo 3.^º del Real Decreto 1006/1985, de 26 de junio. Se formalizarán en cuantos ejemplares requiera la legislación laboral y federativa vigente.

A los efectos oportunos, ambas partes acuerdan un modelo de contrato, el cual figura en el anexo I de este Convenio.

Los contratos suscritos entre los corredores y equipos de nueva creación deberán contener, durante la vigencia de los mismos, una caución solidaria del patrocinador o patrocinadores principales por las obligaciones dimanantes de los citados contratos. Esta caución será obligatoria durante los dos primeros años del funcionamiento de estos equipos.

Transcurrido este período, en el caso de que existan contingencias constatables, el plazo de suscripción de la mencionada caución se prolongará por un período de tres años más. En caso de divergencia, la decisión se atendrá a lo que en todo momento decida la Comisión Paritaria fijada en el artículo séptimo del presente Convenio.

La Comisión Paritaria igualmente podrá exigir esta caución, por plazo de un año, a aquellos Equipos no incluidos en los párrafos precedentes que, con reiteración y durante un período superior a tres meses consecutivos o seis meses alternos hayan incumplido de manera grave, reiterada y comprobada fehacientemente sus obligaciones dimanadas del presente Convenio Colectivo, especialmente en lo relativo al retraso en el pago de las nóminas. Este incumplimiento será inicialmente motivo de un apercibimiento por parte de la Comisión Paritaria, y de no surtir efecto este, habilitará a la Comisión Paritaria a exigir la citada caución.

Artículo 11. Período de prueba.

No podrá establecerse período de prueba alguno.

Artículo 12. Duración del contrato.

Los contratos serán siempre de duración mínima anual, comenzando a regir el 1 de enero y finalizando el 31 de diciembre de cada año natural.

Las prórrogas, expresas o tácitas, tendrán igualmente la duración mínima de un año. Se exceptúan de dicha duración mínima los contratos regulados en el Artículo siguiente y las relaciones contempladas en el párrafo segundo del número 2 del Artículo 1.^º del Real Decreto 1006/1985, así como la contratación para la realización de un número de actuaciones deportivas.

Artículo 13. Contratación iniciada la temporada.

Cuando se celebren contratos una vez iniciada la temporada de competición oficial y para la temporada en curso, éstos deberán tener como duración mínima, salvo lo previsto en el Artículo siguiente, el tiempo que reste hasta el 31 de diciembre del mismo año.

Artículo 14. Contratación de neoprofesionales.

Tendrán la condición de ciclistas neoprofesionales los corredores cuyo contrato entre en vigor por primera vez con un Equipo, como muy tarde durante la temporada en la que cumpla veintidós años de edad La duración del contrato para los ciclistas neoprofesionales será de:

- a) Si el contrato entró en vigor antes del 1 de julio, hasta el 31 de diciembre del siguiente año.
- b) Si el contrato entró en vigor después del 30 de junio, su vigencia será por lo que resta de año y dos años más.

Los ciclistas neoprofesionales mantendrán esta calificación, incluso:

- a) Si cumpliera la edad de veintitrés años a lo largo de la duración del contrato que le otorgó dicha calificación.
- b) Si el contrato es resuelto antes de su término, y el Corredor suscribe contrato con otro Equipo.

Si en el momento de la entrada en vigor del contrato de un neoprofesional, el contrato o contratos de patrocinio del principal o de los dos principales patrocinadores del equipo fuera inferior a la duración prevista en este

Artículo para el contrato del neoprofesional, pero al menos igual a un año, la duración del contrato con el neoprofesional puede limitarse a la duración restante del contrato de más larga duración de los correspondientes a los dos principales patrocinadores.

Si tras la expiración del contrato el Equipo continuara sus actividades, o su responsable financiero continuara su actividad en otro equipo, vendrán obligados, a petición del neoprofesional, a contratarle por periodo mínimo de un año, y en condiciones mínimas iguales a las previstas para los neoprofesionales.

Artículo 15. Prórrogas.

1. Quedará automáticamente prorrogado el contrato por período de un año en el supuesto de que el ciclista profesional permanezca sin participar en competición oficial, si la hay y a pesar de su petición fehaciente y expresa, durante un período igual o superior a tres meses, salvo situación de baja médica o negativa del corredor. Dicha prórroga será de carácter obligatorio para la entidad contratante y potestativa para el corredor.
2. El equipo estará obligado a comunicar al ciclista profesional, de forma fehaciente, con anterioridad al 31 de octubre anterior al vencimiento del contrato, la intención de no contar con sus servicios.
3. El corredor deberá comunicar su intención de no renovar el contrato con su grupo deportivo actual en el mismo plazo de tiempo.
4. En caso de incumplimiento de lo estipulado en los dos puntos precedentes, cualquiera de las partes que sea causante del incumplimiento vendrá obligada a indemnizar a la otra en las siguientes cantidades:
 - Los días de salario de la falta de preaviso, si el preaviso se comunica antes del 15 de noviembre.
 - El doble del salario correspondiente a los días de preaviso incumplido, si el preaviso se comunica entre el 15 de noviembre y el 1 de diciembre.
 - El triple de salario correspondiente al preaviso incumplido, si el preaviso se comunica durante el mes de diciembre.

CAPÍTULO IV

Régimen disciplinario

Artículo 16. Faltas y sanciones.

Toda falta cometida por el corredor ciclista se calificará atendiendo a la importancia, trascendencia e intencionalidad en leve, grave o muy grave.

Las sanciones máximas que podrán imponerse en cada caso, en atención a la gravedad de la falta cometida, serán las siguientes:

1. Por faltas leves: Amonestación verbal o por escrito, suspensión de empleo y sueldo de uno a cinco días.
2. Por faltas graves: Suspensión de empleo y sueldo de seis a quince días.
3. Por faltas muy graves: Suspensión de empleo y sueldo de dieciséis a sesenta días o despido.

No podrá pactarse en el contrato ni mediante pacto individual ninguna otra sanción o indemnización que tuviera como hecho causante cualquiera de las conductas reguladas en este Artículo.

A) Se considerarán faltas leves:

- a) Descuidos en la conservación general del material y efectos del equipo.
- b) No comunicar al equipo los cambios de domicilio o datos personales relevantes.
- c) Faltar de uno a tres días a las obligaciones como deportista, sin la debida autorización o causa justificada.
- d) No mantener una actitud decorosa y deportiva en todas las actividades laborales, entrenamientos, concentraciones, entrevistas, viajes, etc. que impliquen directa o indirectamente al equipo, así como la corrección, respeto y buen trato con el resto de compañeros de profesión, técnicos, directivos, equipos, patrocinadores, medios de comunicación y personal oficial de las competiciones.
- e) No acudir a aquellos actos publicitarios o promocionales o con medios de comunicación, a los que se haya debidamente citado, relacionados con el equipo o casas comerciales, siempre y cuando se encuentre dentro del ámbito de la relación laboral regulada por este Convenio.
- f) Las discusiones con los compañeros del equipo o personal del mismo en presencia de público.
- g) No cumplir con las instrucciones administrativas del equipo.

B) Serán consideradas faltas graves:

- a) La simulación de enfermedad o accidente que repercuta en su rendimiento laboral, o la inasistencia del Corredor a las actividades programadas por el Equipo y debidamente comunicadas.
- b) La desobediencia grave a los Directores deportivos o responsables del equipo.
- c) Descuido importante en la conservación del material y efectos suministrados por el equipo.
- d) Discusiones con los compañeros de equipo o personal del mismo en presencia de público y que trascienda a éste.
- e) No mantener en todo momento un alto espíritu y corrección deportiva, luchando por la pureza de la competición.
- f) No comunicar a los servicios médicos del equipo cuantas incidencias se produzcan en el estado físico del corredor y que puedan tener una repercusión en su rendimiento laboral de forma grave, y cualquier tratamiento médico o farmacológico seguido, así como la identificación del médico que lo ha prescrito, con el fin de incorporar dicha información al dossier médico de cada corredor para ayudar al correcto mantenimiento de la salud de cada ciclista.
- g) No utilizar las prendas y complementos suministradas por el equipo, en las actividades relacionadas con el objeto de la relación laboral.
- h) La ausencia reiterada del trabajo sin causa justificada, superior a tres días e inferior a quince días.
- i) Hacer declaraciones atentatorias a la verdad, dignidad, buen nombre e imagen de compañeros de profesión, técnicos, directivos, equipos, patrocinadores y marcas relacionadas con el equipo, medios de comunicación y personal oficial de las competiciones.
- j) No someterse a las pruebas y/o reconocimientos médicos que indique el servicio médico del equipo y en los establecimientos que éste señale, siempre y cuando sean comunicados con suficiente antelación y sean realizadas con ponderación y medida en su frecuencia y tipología.
- k) La reincidencia en faltas leves, siempre que haya mediado comunicación escrita al trabajador.

C) Serán consideradas faltas muy graves:

- a) Hacer desaparecer, inutilizar o causar desperfectos en materiales, útiles, herramientas, aparatos, instalaciones, edificios, enseres y documentos del equipo.
- b) El robo, hurto o malversación cometidas en bienes de equipo.
- c) Malos tratos de obra o palabra, falta grave al respeto y consideración de compañeros y responsables de equipo.
- d) La disminución voluntaria y continuada en el rendimiento profesional del corredor.
- e) La indisciplina o desobediencia muy grave.
- f) La trasgresión de la buena fe contractual. A estos efectos, se considera trasgresión de la buena fe contractual no comunicar al equipo antes de la firma del contrato de trabajo, la existencia de un procedimiento disciplinario abierto en sede federativa, nacional o internacional, por el uso de sustancias prohibidas que de lugar a una sanción deportiva. Igualmente se considerará trasgresión de la buena fe contractual la falta de comunicación al equipo, antes de la firma del contrato de trabajo, de hechos acaecidos con anterioridad a la fecha de firma del contrato, que sean susceptibles de apertura de dichos procedimientos disciplinarios, y que sean conocidos por el corredor.
- g) La ausencia reiterada del trabajo sin causa justificada, superior a quince días.
- h) Apoyarse en el uso de sustancias prohibidas, siempre y cuando no exista prescripción facultativa por parte de los servicios médicos del grupo deportivo o en caso excepcional y en este caso con obligación previa de comunicación a los servicios médicos del equipo, del régimen sanitario de la Seguridad Social y no tenga como causa la curación o disminución de cualquier tipo de dolencia física o psíquica, comunicada al equipo, debiéndose ponderar y mesurar la sanción en función de la importancia de la sustancia prohibida utilizada. Para la aplicación de sanción de despido por esta causa la falta deberá ser voluntaria, grave y culpable.
- i) No defender los intereses deportivos y publicitarios de su equipo, provocando retiradas injustificadas y expulsiones de carrera sin causa que las justifique.
- j) No participar en todas las pruebas programadas por el equipo, salvo autorización del director deportivo o responsable de equipo o justa causa, así como participar en las no programadas sin la autorización del grupo deportivo, director deportivo o personal responsable.
- k) La reincidencia en falta grave, de la misma naturaleza, siempre que haya existido apercibimiento de la misma. Asimismo, los contratos de trabajo se podrán extinguir por las causas y con los efectos contemplados en la legislación vigente, sin perjuicio de los señalados en el Artículo 30 del presente Convenio.

CAPÍTULO V

Condiciones económicas

Artículo 17. Conceptos salariales.

Los conceptos salariales que constituyen la retribución de un ciclista profesional son: sueldo mensual, pagas extraordinarias y ficha o prima de contratación.

Artículo 18. Percepciones mínimas garantizadas.

Los ciclistas profesionales, en la categoría de Ciclismo en Ruta (carretera), durante los años de vigencia del presente Convenio, tendrán unas percepciones brutas mínimas garantizadas, en conjunto por todos los conceptos y en cómputo anual de:

Año 2006:

	Neoprofesionales	Otros
Equipos Uci Pro Tour.	24.000 euros	30.000 euros
Otros Equipos Profesionales.	21.500 euros	27.000 euros

Estas cuantías serán revisadas por la Comisión Paritaria para los años 2007 y 2008, para adaptarlas a los mínimos exigidos por la Unión Ciclista Internacional, en virtud del Acuerdo Paritario en vigor en cada momento entre la CPA (Asociación Internacional de Corredores) y la AIGCP (Asociación Internacional de Equipos Ciclistas).

Estos mínimos brutos incluirán sueldo mensual, pagas extraordinarias y ficha o prima de contratación.

En caso de prorroga tácita del presente convenio colectivo, los mínimos se actualizarán según el incremento del IPC del periodo correspondiente.

Con carácter general, para el resto de disciplinas ciclistas distintas al ciclismo en ruta (carretera), se estará a lo establecido por la normativa laboral vigente, en aquello que no pueda ser aplicable este Convenio Colectivo.

Se acuerda expresamente que, dentro de los seis primeros meses de vigencia del presente Convenio Colectivo se instará la creación de una Comisión Negociadora, compuesta por seis miembros que guarden la legitimación legalmente prevista para la negociación colectiva en el ámbito del presente Convenio, para negociar las remuneraciones que deberán corresponder a ciclistas profesionales que no pertenezcan a la disciplina del ciclismo en ruta. Las decisiones deberán adoptarse con el voto favorable de la mayoría de ellos.

La regulación de dichas disciplinas serán en su caso incorporadas al presente Convenio mediante los oportunos Anexos.

Artículo 19. Prima de contratación o ficha.

La prima de contratación o ficha es la cantidad estipulada de común acuerdo entre el equipo y ciclista profesional, por el hecho de suscribir contrato de trabajo. Su cuantía, en caso de que exista, deberá constar por escrito en el mismo.

Su abono deberá figurar en la nómina del corredor de forma independiente al salario ordinario, bajo el concepto «prima de contratación»; de no figurar de forma diferenciada se tendrá por no abonada.

Artículo 20. Sueldo mensual.

Sueldo mensual es la cantidad que percibe el ciclista profesional con independencia de que participe o no en competiciones oficiales y el número de las mismas. Figurará con carácter inexcusable en el contrato de trabajo. Cada corredor percibirá, por cada año de su contrato, doce sueldos mensuales. La cantidad mínima a percibir, en concepto de sueldo mensual, por cada ciclista profesional, será la cantidad resultante de dividir las percepciones mínimas garantizadas por 14.

El pago de estos salarios se efectuará, siempre mediante transferencia bancaria a la cuenta designada por el ciclista profesional o, en su caso, por cualquier otro medio admitido en derecho que permita la comprobación fehaciente del pago, dentro de los tres primeros días hábiles del mes siguiente al del devengo de los salarios.

Artículo 21. Pagas extraordinarias.

Los ciclistas profesionales tendrán derecho a percibir, además de las doce mensualidades, dos pagas extraordinarias, por importe cada una de ellas del sueldo mensual pactado. A falta de determinación, dichas pagas extraordinarias serán satisfechas durante los meses de marzo y septiembre.

Por acuerdo entre corredor y equipo, todos los conceptos retribuidos, en lo referido a su abono, podrán ser prorrateados en un máximo de catorce pagos.

Artículo 22. Primas especiales.

Se podrá pactar entre equipo y corredores cualquier otra retribución económica distinta de la señalada en los Artículos anteriores, cuya cuantía y condiciones de vencimiento se establecerán entre equipo y su plantilla o con los corredores afectados de forma individual.

Artículo 23. Otras formas de retribución.

Los equipos y corredores podrán pactar cualquier otra forma de retribución distinta de la señalada en los Artículos anteriores, siempre que no suponga cuantía inferior a los mínimos establecidos en el presente Convenio.

Artículo 24. Premios.

Los premios son aquellas cantidades contempladas en los Reglamentos de las pruebas ciclistas que satisfacen los organizadores de las mismas por todas las clasificaciones obtenidas por los ciclistas, y que en ningún caso serán computables a los efectos de las percepciones mínimas garantizadas en este Convenio.

Artículo 25.

Los premios mencionados en Artículo anterior los satisfarán las respectivas organizaciones de pruebas ciclistas directamente a la Asociación de Ciclistas Profesionales (ACP).

Artículo 26. Recibo de salarios.

Las entidades afectas al presente Convenio deberán realizar el pago de las retribuciones pactadas, en los recibos oficiales de salarios, según modelo aprobado por la vigente legislación laboral, haciendo entrega de una copia firmada al ciclista profesional.

CAPÍTULO VI **Condiciones económicas en situaciones especiales**

Artículo 27. Retribuciones durante incapacidad laboral transitoria.

El ciclista profesional que durante la vigencia del contrato sufriera baja por incapacidad laboral transitoria, por causa profesional o enfermedad común, tendrá derecho a percibir desde el primer día el 100 por 100 de las retribuciones pactadas en contrato por la totalidad de conceptos retributivos, compensándose y absorbiéndose las prestaciones sociales si las hubiera, y manteniendo esta situación hasta su alta o finalización de la relación contractual.

Artículo 28. Indemnización por muerte o lesión invalidante.

1. Las indemnizaciones previstas en el Real Decreto 1006/1985, artículo 13, párrafo d), que puedan corresponder al ciclista profesional o a sus herederos, se fijan en 100.000 euros en caso de fallecimiento del corredor; dicho importe se incrementará a 250.000 euros en caso de Incapacidad Permanente Absoluta o Gran Invalidad a consecuencia de un accidente (24 horas sobre 24) o de una enfermedad profesional. Todo ello sin perjuicio de las prestaciones de Seguridad Social a que se tuviera derecho.

Quedarán excluidos de dicha cobertura los riesgos derivados de prácticas deportivas de riesgo que no guarden relación directa con la preparación, mantenimiento o recuperación de la condición física de los ciclistas (a título de ejemplo, espeleología, deportes de vehículos a motor, escalada, rafting, puenting, deportes aéreos, submarinismo, deportes de combate, deportes sobre nieve o hielo, etc.), salvo los derivados de aquellas actividades de riesgo que sean programadas y ejecutadas por cuenta del empleador.

2. A los efectos de este Artículo serán considerados como sucesos directos de la prestación de servicios del ciclismo aquellos que se produzcan con ocasión de desplazamientos, preparación invernal, concentraciones, presentación de plantillas, entrenamientos y, en definitiva, todos aquellos en los que el ciclista se encuentre bajo las órdenes del equipo o representante del mismo.
3. El riesgo aquí indemnizado podrá ser contratado por el empleador a través de cualquier compañía aseguradora mediante la oportuna póliza de seguro.
4. El derecho al cobro previsto en el párrafo 1 de este Artículo por parte de la compañía de seguros o el empleador directo se mantendrá incluso para el caso de que la resolución que declare al corredor afecto de incapacidad permanente absoluta o gran invalidez sea dictada una vez extinguida la relación laboral por expiración del tiempo convenido, siempre que el hecho causante de la incapacidad o invalidez se haya producido dentro del período de vigencia del contrato.

Artículo 29. Derechos de imagen.

Es la cantidad que percibe el corredor por la cesión de sus derechos de imagen con fines publicitarios, cuyas condiciones particulares se estipularán en pacto individual.

CAPÍTULO VII **Seguridad y Salud en el trabajo**

Artículo 30. Salud de los ciclistas profesionales.

- I. Los equipos afectados por este Convenio cumplirán las disposiciones contenidas en la vigente Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales y su normativa de

- desarrollo, atendiendo a las especificidades del ciclismo profesional señaladas como significativas de común acuerdo entre la ACP y la ECP.
- II. En cumplimiento del deber de protección, el equipo deberá garantizar la seguridad y la salud de los ciclistas profesionales. A estos efectos, en el marco de sus responsabilidades, el equipo realizará la prevención de los riesgos laborales mediante la adopción de cuantas medidas sean necesarias para la protección de la seguridad y la salud de los ciclistas profesionales en materia de evaluación de riesgos, información, consulta, participación y formación de los ciclistas profesionales, actuación en caso de emergencia y de riesgo grave e inminente y vigilancia de la salud.
 - III. Las funciones encomendadas por la Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales y su normativa de desarrollo a los Delegados de Prevención, serán realizadas por la ACP en aquellos equipos en los que no dispongan estos de Delegados designados.

Artículo 31. Reconocimientos Médicos.

- I. Los reconocimientos médicos que se efectúen deberán ser específicos, adecuándose a los riesgos y a las lesiones a la salud que puedan producirse como consecuencia de la práctica del ciclismo y deberán realizarse siempre de acuerdo con lo previsto en la normativa de prevención de riesgos laborales.
- II. Aquellos ciclistas, que por sus características personales, o por haber sufrido algún accidente de trabajo o cualquier otro tipo de lesión o enfermedad tengan mayor vulnerabilidad a la práctica del ciclismo tendrán derecho a que sus condiciones de salud sean vigiladas de modo particular.

CAPÍTULO VII

Otros acuerdos, derechos y libertades

Artículo 32. «Criterium» a beneficio de la ACP.

Durante la vigencia del presente Convenio, los equipos participarán en una competición ciclista organizada por la ACP y cuyos beneficios se destinarán a la citada Asociación de Ciclistas Profesionales. Esta competición se celebrará en cualquier fecha del año siempre y cuando exista un mínimo de 24 horas de diferencia entre la celebración del criterium y cualquier carrera internacional extranjera de la categoría ProTour o de una carrera oficial de la AEOC, salvo que ambas pruebas se celebren en la misma ciudad y de común acuerdo entre la ACP, La ECP y el organizador afiliado a la AEOC. La ACP enviará a cada Equipo una lista de seis corredores, de los cuales el Equipo elegirá cuatro para participar en la competición. El Equipo comunicará a la ACP y a los ciclistas participantes su designación quince días antes de su celebración. En caso de baja de uno de los elegidos será sustituido por uno de los otros dos ciclistas incluidos en la lista. La ACP coordinará los traslados y el alojamiento directamente con los corredores y correrá con todos los gastos que pudieran derivarse de los mismos.

La ACP, contratará, teniendo como beneficiarios a los grupos deportivos y, en su caso, a los corredores, seguros de responsabilidad civil por muerte, accidente o lesión, que impida la regular participación del corredor en futuras competiciones.

El equipo deberá autorizar la participación del ciclista que desee participar en un criterium, excepto en el de la ACP.

Artículo 33. Libertad de expresión.

Los ciclistas profesionales tendrán derecho a manifestar libremente su pensamiento sobre cualquier materia y, en especial, sobre los temas relacionados con su profesión, sin más limitaciones que las derivadas de la Ley y el respeto al buen nombre e imagen de compañeros de profesión, técnicos, directivos, equipos, patrocinadores y marcas relacionadas con los equipos, medios de comunicación y personal oficial de las competiciones.

Artículo 34. Derechos sindicales.

Los ciclistas profesionales tendrán derecho a desarrollar, en el seno de los equipos a que pertenezcan, la actividad sindical reconocida por la legislación vigente en la materia. A estos efectos, podrán elegir a los componentes de la plantilla que les representen ante el equipo para tratar las materias

relacionadas con su régimen laboral y condiciones en que se desarrolla, pudiendo constituir sección sindical en cada equipo.

CAPÍTULO VIII **Otras disposiciones**

Artículo 35. Composición de plantillas.

Equipos UCI Pro Tour: el número mínimo de corredores no será inferior a 25 ni superior a 30. En ningún caso el número de corredores que firmen un primer contrato como ciclistas profesionales puede superar el 35 por ciento del total de la plantilla.

Equipos Continentales Profesionales: el número mínimo de corredores no será inferior a 14. En ningún caso el número de corredores que firmen un primer contrato como ciclistas profesionales puede superar el 35 por ciento del total de la plantilla

Equipos Continentales: El número mínimo de corredores no será inferior a 8 ni superior a 16 (el número máximo podrá excederse, previo acuerdo de la RFEC, cuando el Equipo añada corredores de otras disciplinas ciclistas al margen de la de ruta. Todos los corredores de los Equipos Continentales pertenecerán a las categorías élite y sub-23.

Se atribuye a la Comisión paritaria, excepcionalmente, facultades para la modificación del presente Artículo, en función de las circunstancias del momento y muy especialmente para establecer los requisitos y garantías necesarios a cumplir para los equipos de nueva aparición. y cuando el reglamento federativo nacional o internacional sea modificado en términos que afecten a la composición de las plantillas.

Artículo 36. Material.

El material y la indumentaria necesaria para la práctica de las actividades contempladas en este Convenio y que según los usos y costumbres es facilitado por los equipos es de uso obligatorio, sin excepción ni excusa, para los corredores, tanto en competición como en entrenamientos, actos oficiales y actividades publicitarias inherentes. Este material será repuesto por el equipo, caso de avería o deterioro debidos a un uso razonable, recibiéndolo los corredores en depósito, debiendo reintegrarlo al equipo en su totalidad al final de cada temporada y/o en caso de extinción del contrato, pudiendo ser retenido por el equipo el último salario mensual de la anualidad en garantía de la obligación aquí recogida.

Artículo 37. Documentos oficiales.

Los equipos tendrán a disposición de los delegados sindicales o, en su defecto, de la ACP, cuantos documentos indique la legislación vigente, en las condiciones y formas que ésta determine.

Artículo 38. Derecho supletorio.

En todo lo no recogido en el presente Convenio y en la legislación laboral vigente, sobre las relaciones entre los ciclistas profesionales y los equipos, se estará a las normas dictadas por los usos y costumbres del ciclismo profesional y por la normativa técnica de la Real Federación Española de Ciclismo, del Consejo de Ciclismo Profesional de la RFEC y de la Unión Ciclista Internacional u organismos que les puedan sustituir en el futuro.

Artículo 39. Cláusula Arbitral.

En defecto de acuerdo de la Comisión Paritaria, las partes, con renuncia expresa a cualquier otro fuero que pudiera corresponderles, acuerdan someter todos los conflictos colectivos (cuestiones que se deriven del cumplimiento, ejecución o interpretación de este Convenio Colectivo) a arbitraje de equidad, correspondiendo exclusivamente al árbitro que las partes nombren, dentro de la lista de árbitros aprobada por la comisión paritaria, la dirección procesal del arbitraje entre estas.

Asimismo, las partes hacen constar expresamente su compromiso de cumplir en todos su términos el laudo arbitral que se dicte.

Los conflictos individuales también podrán someterse al arbitraje aquí previsto cuando ambas partes estén de acuerdo en el procedimiento a seguir y así lo permita la legislación vigente.

En ambos casos, la parte que proponga el arbitraje se lo propondrá de manera fehaciente a la otra parte, que deberá contestar en el plazo máximo de siete días hábiles si acepta el arbitraje. Ambas partes dispondrán a partir del momento de la aceptación de cinco días hábiles para elegir el árbitro de entre la lista de árbitros aprobada por la Comisión Paritaria. En caso de discrepancia en la elección se realizará un sorteo en presencia de las dos partes entre todos los árbitros de la lista. Una vez elegido el árbitro, las partes disponen de tres días hábiles para hacer llegar al árbitro sus consideraciones sobre el caso y la documentación que estimen pertinente. El árbitro dictará el laudo conforme a la Ley en el plazo máximo de quince días hábiles desde su designación.

Artículo 40. Prórroga del Convenio Colectivo.

Este Convenio permanecerá vigente en su integridad hasta que adquiera vigencia un nuevo Convenio Colectivo pactado por ambas partes.

ANEXO I

Contrato de corredor ciclista profesional

Reunidos:

De una parte, don como del empleador, con CIF número según consta en el Registro correspondiente o por poder suficiente, obrando en nombre del citado empleador.
De otra parte, don, corredor ciclista, nacido el denacionalidad domiciliado en con documento nacional de identidad número en adelante «EL CORREDOR»

EXPONEN:

Que EL EMPLEADOR se dedica a formar y mantener un equipo ciclista profesional cuya actividad es la participación en carreras ciclistas de carretera;

Que EL CORREDOR desea participar en las carreras ciclistas profesionales formando parte del equipo creado por el empleador.

Que las dos partes tienen conocimiento y se someten al Convenio Colectivo para la actividad del ciclismo profesional, a la legislación laboral española, a los Estatutos y Reglamentos de la Real Federación Española de Ciclismo y a los de la Unión Ciclista Internacional, en todo aquello que no sea contrario al Ordenamiento Jurídico Español. Por todo ello, formalizan las condiciones particulares de la relación laboral del carácter especial de deportista profesional existente entre ambas partes en base a las siguientes

CLÁUSULAS

1. Contratación.

EL EMPLEADOR contrata AL CORREDOR profesional como empleado, que acepta, en calidad de ciclista de la modalidad de ciclismo en ruta.

La participación del corredor en otras modalidades o especialidades será convenida entre las partes caso a caso.

2. Duración.

El presente contrato tendrá una duración determinada de, temporadas, iniciando su vigencia el día de de, y finalizando el día de de Antes del 31 de octubre anterior al vencimiento del contrato, y en el caso de que no se haya aún procedido a su renovación, cada una de las partes deberá informar por escrito a la otra sobre su intención en cuanto a la eventual renovación del contrato. Una copia de dicho escrito será igualmente remitida a la Asociación de Ciclistas Profesionales (ACP).

3. Remuneraciones.

EL CORREDOR tiene derecho a un salario bruto anual de euros.

La referida cantidad se distribuirá en los siguientes conceptos:

Sueldo anual bruto euros brutos
Ficha o prima de contratación euros brutos
Derechos de Imagen euros brutos
Otros conceptos euros brutos

4. Pago de las remuneraciones

1. EL EMPLEADOR abonará las cantidades citadas en el punto 3, salvo pacto en contrario, en mensualidades vencidas de igual importe, a más tardar, en los tres primeros días laborables del mes siguiente al del devengo.

2. Las remuneraciones serán abonadas en metálico, en euros, por transferencia bancaria a la cuenta corriente designada por el CORREDOR o, en su defecto, por cualquier medio admitido en derecho que permita la comprobación fehaciente del pago.

3. Siempre que no exista una causa justificada, y en defecto de pago voluntario de las remuneraciones por el EMPLEADOR, sin que sea necesaria su reclamación expresa por el CORREDOR, este tendrá derecho a los incrementos e intereses siguientes:

- a) Retrasos en el pago entre 1 día y cinco meses en el pago: incremento del 10 % de la suma adeudada.
- b) A partir del comienzo del sexto mes de retraso, un interés del 2% mensual sobre la suma adeudada más los intereses devengados.

En los casos siguientes, los incrementos citados en el punto anterior no serán de aplicación, y los intereses de recargo se reducirán al 10 % de la suma adeudada:

- a) Si en los tres meses siguientes al retraso en el pago de las remuneraciones, el CORREDOR no ha reclamado la deuda ante la instancia competente, o no ha solicitado la ejecución de la garantía bancaria depositada por el EMPLEADOR ante la Unión Ciclista Internacional.
- b) Si la instancia competente, o en su defecto, el Consejo de Ciclismo Profesional, resuelve que el impago obedece a razones justificadas.

4. Primas y Premios.

El CORREDOR tendrá derecho a las siguientes Primas:

Ninguna

- 1)
- 2)
- 3)

(tachar lo que proceda).

5. Obligaciones diversas.

El empleador informará a la Unión Ciclista Internacional de cualquier otro contrato en el que se contemplen prestaciones que el ciclista deba realizar en beneficio del empleador.

En a de de

El Corredor

(Firma)

El Empleador

(Sello y firma)

The Legal Status of Professional Racing Cyclists in German Law: Employee or Self Employed?

Legal Expertise by Prof. Dr. Dres. h.c. Rolf Birk (Trier)

by Order of Union Cycliste Internationale (UCI)

I. Introductory remarks

The professional exercise of cycling, especially as a rider in individual or team races, is without doubt paid work. The legal classification in the respective national legal system yet creates serious difficulties, inasmuch as national law does not provide explicit regulations. This has occurred in Italy with the law of 23 March 1981 (Legge 23 marzo 1981, n. 91) concerning the legal relations of professional sport. However, such a legal regulation is an exception. In most of the other countries there do not exist special legal rules for the employment of professional athletes. The legal status of a professional athlete then has to be decided following the general rules of the respective national legal system. In particular this is valid for a professional racing cyclist under German law. The classification of the professional racing cyclist either as an employee (Arbeitnehmer, lavoro subordinato) or as a self employed (Selbstständiger, lavoro autonomo) can be considered. The possible classification as self employed furthermore requires clarification as to whether he can be considered as economically independent or if he can be regarded as employee-like (arbeitnehmerähnliche Person), equating him with an employee for diverse questions and issues.

Neither there are explicit decisions by German courts concerning professional cycling; they have given their opinion about some issues of professional football and did classify professional football players of the first league (Erste Bundesliga) as employees, but those decisions cannot automatically be applied to race cycling because unlike football it is not a mere team sport but a composition of individual and team sport.

On the other hand the lack of legal regulation to clarify the classification of professional athletes as employees or as self employed does not allow the parties of a contract that regulates the professional exercise of a particular sport to regulate the matter themselves instead of the legislator. According to the general opinion of the case law and literature in German law this classification rather has to be done following general unwritten mandatory rules. The freedom of contract that otherwise exists in German private and labour law does not refer to the question of whether the parties of a contract can evade the application of labour law on the treaty on the basis of their own decisions; what they call their contractual relations in detail is irrelevant. Consequently, the application of labour law or of the law of self employed persons does not depend on the will of the parties. Therefore, the question whether the contractual relations concern an employment contract (Arbeitsvertrag) or a free contract of services (Dienstvertrag) or a contract for work and labour (Werkvertrag) has to be decided according to objective criteria. Further it does not depend on the fact that a professional cyclist does not want to be an employee if the job can only be carried out as an employee.

The federal labour court (Bundesarbeitsgericht — BAG) explained about this matter:

“Der Status des Beschäftigten richtet sich nicht nach den subjektiven Vorstellungen der Vertragspartner, sondern danach, wie die Vertragsbeziehungen nach ihrem objektiven Geschäftsinhalt einzuordnen ist. Der wirkliche Geschäftsinhalt ist den ausdrücklich getroffenen Vereinbarungen und der praktischen Durchführung des Vertrages zu entnehmen.”¹⁶¹ (12.9.1996 - EZA § 611 BGB Arbeitnehmerbegriff Nr. 1).

The international legal opinion (Verkehrsanschauung) that is based on the perception of the UCI and the involved associations tends to assume that the contractual relation between a professional cyclist and his racing team is a employment relationship. For this I refer to no. 2.16.040, now no. 2.15.111 UCI Cycling regulations and the “Standard contract between a rider and a trade team” (UCI Cycling regulations no. 2.16.056, now no. 2.15.139), the Joint Agreement from 1 October 2004 between CPA (Cyclistes Professionnels Associés) and AIGCP (Association Internationale des Groupes Cyclistes Professionnels). Those rules of the association/federation basically act on the assumption that there is a employment relationship between the professional rider and his team. Certainly this perception obtains legal effect only on international and national law of the federations, whereas this respectively has to be compatible with national law.

II. The classification of employee and self employed persons according to German case law

¹⁶¹ The jobholder's (Beschäftigter) status is not based on subjective views of the parties of the contract but on the classification of the contractual relations according to their objective content of transaction. The real content of transaction has to be gathered from the explicitly made agreements and the practical execution of the contract.

The classification of the professional cyclist as either an employee or as a self employed person depends crucially on the term of employee because as a general rule in our area the one who is not an employee is self employed. The case law of the labour courts is authoritative for the determination of the concept of an employee because a legal definition of employee is missing. Case law surely does not provide a handy, convenient method to determine who can be regarded as an employee. But it has developed a series of principles that offer a solution to the problem in most of the cases.

There are no binding requirements in European Community law for national, thus not either for German law. The European Court of Justice in the context of the interpretation of Art. 39 EC Treaty (former Art. 48), which guarantees the freedom of movement for employees defined the employee as follows: A person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration must be considered to be a worker (ECJ, 12.5.1998, C-85/96). Therefore it appears important to take into consideration this definition of an employee that has been developed for primary and secondary Community law. Thus the subordinate position of the individual is central.

Also according to permanent case law of the BAG an employment relationship (Arbeitsverhältnis) differs from the legal status of self employment in the level of personal subordination of somebody obliged to services (cf. BAG, decision of 9.6.1993 - EzA § 611 BGB, Arbeitnehmerbegriff Nr. 51). This must be the guideline to differentiating an employee from one who is self-employed. However, it certainly is not yet the solution itself.

At the moment there is no standardised, practicable definition of an employee that outlines it with predictable criteria. It is indeed possible that the same job can be carried out on the basis of an employment relationship (Arbeitsverhältnis) as well as on the basis of a free contract for services (Dienstvertrag) or contracts for work (Werkvertrag), some activities on the basis of an employment relationship. From the kind and organisation of a job one can for instance deduce the existence of an employment relationship (BAG, 26.5.1999 - EzA § 611 BGB Arbeitnehmerbegriff Nr. 75); the BAG in this context considers that it can be seen as an indication for free employment conditions (freies Berufsverhältnis) being in fact employment relationships (Arbeitsverhältnis) when the same job under the same circumstances can be carried out sometimes as an associate (freier Mitarbeiter) and sometimes as an employee (27.3.1991 — EzA § 611 BGB Arbeitnehmerbegriff Nr. 38). Considered on an international level this happens with professional cycling because while some specific contracts may regard the cyclist as an employee, other contracts, as e.g. the contracts of the team "Gerolsteiner" and "T-Mobile" in Germany, may not (cf. also the model contract of the Fédération française de cycliste "contrat de coureur cycliste professionnel", reprinted in: Paillisser, Le droit social du sport, 1988, p. 163-165).

The federal labour court (Bundesarbeitsgericht — BAG) (cf. e.g. 18.11.1999 - EzA § 1 KSchG Nr. 52) outlines the significant criteria of the existence of an employment contract as follows: An employee is a co-worker (Mitarbeiter) who provides his service within the framework of a certain work system (Arbeitsorganisation) organised by a third person. The person is not self employed and therefore subordinate (persönlich abhängig) if he does not organise his job and determine his working hours (Arbeitszeit) in a largely free fashion. The integration in the technical employment system appears in the fact that the jobholder (Beschäftigter) is subject to the employer's prerogatives. This management prerogatives (Weisungsrecht) may concern the job's matter, realisation, term, duration and lieu. The kind of job may involve a high degree of creative freedom, initiative, and technical independence and yet the individual remains integrated into the employment system. But this integration possibly may become less important, if the jobholder frequently works away from the job site (cf. BAG - EzA § 611 BGB Arbeitnehmerbegriff Nr. 75).

Central meaning is attributed to the criteria of personal' subordination (persönliche Abhängigkeit) according to the case law of the federal labour court (cf. 16.7.1997 - EzA § 5 ArbGG 1979 Nr. 24); economic subordination (wirtschaftliche Abhängigkeit) is not required. That on its own would not suffice either; in that case the respective contractual partner (Vertragspartner) may yet be an employee-like person. For the rest subordination is not questioned by the fact, that the respective contractual partner does not carry out the activity exclusively but next to it carries out another activity as main profession (Hauptberuf) or avocation (Nebenberuf) (BAG, Urt. v. 8.10.1975 - AP Nr. 18 zu §

611 BGB Abhängigkeit).

According to case law the integration in the employment system organised by a third person, whether for instance that person by virtue of a work schedule (Dienstplan) may have the legal possibility to dispose of the jobholder, is crucial for the existence of subordination (cf. BAG Urt. v. 6.9.1993 - EzA § 611 BGB Arbeitnehmerbegriff Nr. 51).

Furthermore the technical subjection to instructions (fachliche Weisungsgebundenheit) represents an important indication that an employment relationship (Arbeitsverhältnis) does exist (BAG, 9.3.1977 - AP Nr. 21 zu § 611 BGB Abhängigkeit).

In the end the respective criteria do not determine whether there is an employment relationship, but rather a general appraisal of all the relevant aspects in a general view for or against the employment relationship, even if a high degree of creative freedom, initiative, and technical independence characterise the job (cf. BAG, 9.6.1993 - EzA § 611 BGE Arbeitnehmerbegriff Nr. 51).

III. The concrete analysis and evaluation of the contract used by the team “Gerolsteiner”

Only the concrete analysis and evaluation of the form of a contract used by the team “Gerolsteiner” can give an answer to the question of the classification of professional racing cyclist as employee, self employed or employee-like. The team “T-Mobile” uses a similar form.

According to the parties of the contract it describes, as the title indicates already (it is: “Vertrag eines selbstständigen Straßenradprofis”, Contract of an independent professional rider), a contract between a self employed individual rider and the team “Gerolsteiner”, i.e. not an employment contract. Yet, if the professional rider is not self employed but an employee according to the described rules, the description of the contract that the parties made does not prevent the contractual relation from being qualified as an employment relationship and the professional rider therefore as employee.

The contractual relation is *limited in time* (no. IX 1 of the conditions of contract) and is subjected to *German law* because of explicit agreement. It has to be examined below whether the composition/formation of the contract predominantly argues for its conclusion as an employment contract or as a contract about the employment of a self employed individual. The limitation of the duration of contract itself does not argue against an employment contract; fixed-term contracts are permitted on a big scale according to the Teilzeit- und Befristungsgesetz from 2000. It is also permitted to choose German law in order to conclude a contract of obligations (Schuldvertrag), this also applies for an employment contract according to Art. 27, 30 I EGBGB.

Applying German law the question remains whether the type of contract used by the team “Gerolsteiner” constitutes an employment contract or a contract about the employment of a self employed individual as the parties assume because of the form of the contract. For this purpose it is decisive in terms of German case law whether the rider exercises his job subordinate to another.

The contractually described activity itself, which consists of two main obligations - namely concerning the publicity/advertisement and the exercise of race cycling in a team, does not represent the typical job of an employee. But it could be such as long as it has to be carried out in a narrow organisational framework, specified by the team that does not concede him essentially own options. The activity itself is reflected in the participation in the race and in advertising presence regardless of any race for one year.

Being bound by instructions of the team respectively the team leader/team manager constitutes the essential element of the rider’s personal subordination. According to the structure the Jahreseinsatzplan (II 1 c, time schedule for one year) concerns a summary of anticipated instructions and directives. The rider can meet his obligation to fulfil the Jahreseinsatzplan (time schedule for one year) only if he adheres to it; the obligation to carry the sponsor’s publicity by the team cuts the rider’s timing fine. Both obligations together create a personal, predominantly organisationally arranged but also technical subordination of the rider from the responsible body of the team that exceeds the obligations of an independent contract for services (selbstständiger Dienstvertrag) or contract for work and labour (Werkvertrag).

The rider may not use his own equipment for instance a racing cycle (III 1). This even applies to

wearing certain leisure wear at public performances/presence of the team (III 2).

The riders form a group in which they do not only depend on each other to a large extent but also from their contractual party, the Holczer Radsport Marketing GmbH.

The fact that the rider can fulfil the obligations of his contract only in person does not turn him automatically into an employee; the rule of interpretation of § 613 BGB, which determines that in case of doubt the service has to be carried out by the person obliged to the service, also applies to free contracts of services (freier Dienstvertrag) (BAG, 26.5.1999 - EzA § 611 BGB Arbeitnehmerbegriff Nr. 75).

A solely decisive indication for the assumption of an employment contract cannot be gathered from the composition of the remuneration. The payment of the yearly salary (IV 1 and 2) in monthly instalments draws near the payment of a salary in a employment relationship but on itself it is not sufficient in order to assert an employment relationship. Each consideration in return of a contract of obligations can be given by instalments if the parties agreed on that.

The fact that there is no entitlement to holidays certainly argues against an employment contract; however, in contrast to the Accord Paritaire of the CPA and the AIGCP (cf. its art. 17), the UCI model contract (cf. no. 2.15.139) does not do it either. In terms of associational law the contract of the team "Gerolsteiner" breaches this agreement. But this question shall not be further examined here.

Furthermore, the contract does not contain a specific rule in case of sickness of the rider and herewith implicitly confers the risk involved to the rider. It is stated only in no. IV 3, 3rd paragraph that the amount of payment is not influenced if the rider cannot be appointed for health reasons and if the Jahreseinsatzplan (time schedule for one year) had been changed respectively.

The regulation of termination of the contractual relation (cf. IX) neither argues for the assumption of the employment relationship nor for the existence of a free contract for services or a contract for work and labour. A fixed-term contractual relationship can always be terminated for an important reason. The exemplary concretion of the important reason in the contract is admissible in an employment contract as well as in a free contract of services.

The fact that the rider outside his contractual obligations that links him to the team is free to participate in certain racer on his own responsibility (II 2) is irrelevant for the classification of the contractual activity as an employee's job. In those cases he may most likely carry out his job on the basis of a free contract of services. Both jobs can be carried out next to each other, indifferent from which is the main activity and which is the additional business.

The comprehensive view of the contract leads to the following result: Because of the rider's strong personal subordination to the team "Gerolsteiner", in this respect there is no employment relationship; the rider is an employee, namely a salaried employee or white collar worker. It is not essential how much the rider as member of the team earns because the employee's economical subordination to the employer is no decisive criterion for the term of employee ~BAG, 16.7. 1997 - EzA § 5 ArbGG 1979 Nr. 24). Economical subordination can however constitute the status of an employee-like person if the personal subordination is missing.

Some features that will be examined here next to personal subordination, as remuneration, entitlement to holidays or continued payment of wages during illness of employee, may to a greater extent point at the status of a self employed because they have not been regulated in the contract at all like e. g. the holidays question and the continuation of payments to sick workers or because they argue nor for nor against one of the two types of contract like the regulation of remuneration. The contractual relation is predominantly influenced by the personal subordination of the rider from the Holczer Radsport Marketing GmbH, the responsible body of the team "Gerolsteiner".

Overall result: The contract that has been concluded between the Holczer Radsport Marketing GmbH and the riders of the team "Geroisteiner" is an employment contract. The possibly different classification according to social law and tax law is irrelevant.

IV. The rider of the team "Gerolsteiner": An employee-like person?

He who, contrary to the opinion held here, assumes that the contract concluded by the Holczer

Radsport Marketing GmbH is not an employment contract (Arbeitsvertrag), cannot automatically arrive at the conclusion that the team's rider is to be considered as a self employed person. Further analysis is rather required to determine if the rider is not to be classified as an employee-like person. Only when this question is answered negatively, can it be stated, that there is a contractual relationship to a self employed person (cf. generally to the legal concept of the employee-like person *Neuvians*, Die Arbeitnehmerähnliche Person, 2002; *Wachter*, Wesensmerkmale der arbeitnehmerähnlichen Person, 1980 as well as *Wank*, Arbeitnehmer und Selbständige, 1988, S. 235 ff.).

For reasons of completeness the question if in the case of supposed lacking subordination a rider can be allocated to the legal concept of the employee-like person, is to be considered here.

As the German legislation expressively states in some statutes (cf. § 5 par. 1 p. 2 ArbGG, § 2 S. 2 BUrlG, § 12 a TVG, das Heimarbeitsgesetz, § 1 par. 2 no. 1 BeschäftigungsschutzG, § 92 a HGB) that a worker is an employee-like person if the person is economically subordinate to the contractual partner, if he lacks economic autonomy, and if he is in need of social protection (sozial schutzbedürftig) in the same way as an employee (cf. BAG, 16.7.1997 - EzA § 5 ArbGG Nr. 24).

Case law takes economic subordination and lack of autonomy for granted if the jobholder essentially acts for only one principal (Auftraggeber) and the remuneration paid constitutes his means of existence (BAG AP Nr. 6, 7 zu § 611 BGB Abhängigkeit); but this does not exclude at the outset an activity for several principals. The main economic focus has to lie with one of the principals though (BAG AP Nr. 9 zu § 5 ArbGG 1979). In addition the federal labour court requires (AP Nr. 8, 1.4 zu § 611 BGB Abhängigkeit) a certain length of time and regularity to employment to consider a jobholder as employee-like person; it regarded a minimum length of time of five months as sufficient (BAG DB 1979, 1709).

If the contractual status is considered in the light of the case law, it can be held eminently that the riders of the team "Gerolsteiner" can be characterised as economically subordinate on the Holczer Radsport Marketing GmbH.

But are these riders in need of social protection in the same way as an employee? According to the general opinion there has to exist a certain degree of economic subordination. According to the federal labour court it depends on the fact that there does exist a commitment to a contract (vertragliche Bindung) comparable to an employment relationship and that the jobholder essentially i.e. predominantly lives on the revenue he gets from the contract. For most of the riders belonging to the team this might well be so, provided that this is confirmed by effective investigations. If they do confirm this necessary assumption, the riders' social need of protection could be affirmed and their status as employee-like persons assumed; certainly the expertise of *Rumo*, p. 8, goes too far explaining: "Le cycliste professionnel fait clairement partie de cette sous-catégorie de travailleur indépendant"¹⁶². It is not easier and clearer to attribute a rider to the category of employee-like persons as it is to classify him as an employee or as an economically independent self employed person.

V. Summary

1. It results from the investigation/appraisal that the elements as provided by employment law prevail in case of the contract concluded between the Holczer Radsport Marketing GmbH and the respective riders of the team "Gerolsteiner". Therefore according to German law it is about a employment contract (Arbeitsvertrag). This classification cannot be modified by the intention of the parties.
2. If, contrary to the opinion held here, the rider's subordination to the other contractual partner is not considered to be sufficient the rider - if economically dependent and in the need of social protection - might be classified as employee-like person. This question cannot be definitely answered on the basis of the data at hand since specific details concerning the riders' income are missing.

¹⁶² The professional cyclist definitely belongs to the sub-category of the employed persons

Recensement Coureurs Proteams 2008				
			Coureurs	
Code	Equipe	Pays	Confirmés	Néos
MRM	TEAM MILRAM	---	24	3
QST	QUICK STEP	BEL	25	2
SIL	SILENCE-Lotto	BEL	26	3
CSC	TEAM CSC	DEN	28	0
GCE	CAISSE D'EPARGNE	ESP	26	0
EUS	EUSKALTEL - EUSKADI	ESP	24	2
SDV	SAUNIER DUVAL-SCOTT	ESP	23	3
ALM	AG2R-LA MONDIALE	FRA	26	4
BTL	BOUYGUES TELECOM	FRA	28	1
COF	COFIDIS	FRA	28	2
C.A	CREDIT AGRICOLE	FRA	27	1
FDJ	FRANÇAISE DES JEUX	FRA	21	6
GST	GEROLSTEINER	GER	21	2
THR	HIGH ROAD	GER	26	3
LAM	LAMPRE	ITA	20	0
LIQ	LIQUIGAS	ITA	27	2
AST	ASTANA	LUX	29	0
RAB	RABOBANK	NED	24	3
			453	37

Néos = Coureurs de moins 23 ans.

Confirmés = Coureurs de + 23 ans.

Equipes Continentales Professionnelles 2008				
			Coureurs	
Code	Equipe	Pays	Confirmés	Néos
ELK	ELK HAUS - SIMPLON	AUT	13	3
VBG	TEAM VOLKSBANK	AUT	11	3
LAN	LANDBOUWKREDIET - TONISSTEINER	BEL	16	1
TSV	TOPSPORT VLAANDEREN	BEL	17	5
PSK	PSK WHIRLPOOL - AUTHOR	CZE	11	5
ACA	ANDALUCIA - CAJASUR	ESP	16	0
SPI	EXTREMADURA-GRUPO GALLARDO	ESP	14	0
GNM	GRUPO NICOLAS MATEOS-MURCIA	ESP	14	0
KGZ	KARPIN GALICIA	ESP	14	2
MIT	MITSUBISHI-JARTAZI	EST	18	1
AGR	AGRITUBEL	FRA	17	1
BAR	BARLOWORLD	GBR	18	2
FLM	CERAMICA FLAMINIA BOSSINI DOCCE	IRL	16	0
CSF	CSF GROUP NAVIGARE	IRL	15	1
LPR	LPR BRAKES	IRL	20	0
ASA	ACQUA SAPONE - CAFFE MOKAMBO	ITA	17	2
TCS	TINKOFF CREDIT SYSTEMS	ITA	17	1
GAP	PRETI MANGIMI	LUX	14	0
SKS	SKIL-SHIMANO	NED	20	2
SLB	BENFICA	POR	16	0
NGC	NGC MEDICAL - OTC INDUTRIA PORTE	SUI	14	1
COS	CYCLE COLLSTROP	SWE	14	0
BMC	BMC RACING TEAM	USA	16	0
TSL	SLIPSTREAM CHIPOTLE PRESENTED BY H30	USA	25	0
SDA	SERRAMENTI PVC DIQUIGIOVANNI-ANDRONI GIOCATTOLI	VEN	16	0
			399	30

Néos = moins de 23 ans.

Confirmés = + de 23 ans