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Stephen Weatherill

# European Sports Law

Collected Papers

Second Edition



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## Series Information

Books in the *ASSER International Sports Law Series* chart and comment upon the legal and policy developments in European and international sports law. The books contain materials on interstate organisations and the international sports governing bodies, and will serve as comprehensive and relevant reference tools for all those involved in the area on a professional basis.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre is the co-founder and coordinator of the Hague International Sports Law Academy (HISLA), the purpose of which is the organisation of academic conferences and workshops of international excellence which are held in various parts of the world. Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

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## Foreword to the Second Edition

The 2009 Treaty of Lisbon corrected the apparent constitutional anomaly inherent in EU sports law which saw the EU play a significant role in shaping how sport is regulated in Europe without Treaty guidance informing how that should take place. For the first time in its history, the EU is now constitutionally competent to promote European sporting issues, ‘while taking account of the specific nature of sport’. As competences go, Article 165 is rather soft but as this book so skilfully explores, its significance lies in the recognition that European law exerts a considerable influence on sporting practices and that this influence should be respectful of, but not subservient to, the specific nature of sport. Fine words, but how can EU law respect the autonomy and specificity of sport whilst ensuring that sport, as with all other economic activities, operates within the limits of the law? This question has generated much literature, none finer than the work presented by Prof. Stephen Weatherill in this updated and expanded collection of his works.

Since he first began writing in this area in the ‘distant 1980s’, Weatherill’s message has been consistent, persuasive and above all influential. His work reveals not only a deep appreciation of the peculiarities, and commercial realities, of modern sport but also a masterful dismantling of the widespread perception that European law is so beset with rigidities as to render its application to sport unworkable. Indeed, quite the reverse. Weatherill’s work, captured so brilliantly in this book, has educated a generation of sports professionals, lawyers and academics on how the EU’s legal order has offered sport sympathetic treatment, although as Weatherill highlights, not always in an entirely consistent way. Yet Weatherill also reminds us that sport is not so special as to expect, or merit, removal from legal scrutiny. Sport is not, and should not be, above the law. Again, fine words, but how to deliver this sympathetic treatment within the limits of the law? Weatherill’s treatment of the *Meca-Medina* doping litigation displays the author’s prescience. Less than satisfied with the reasoning of the Court of First Instance (now General Court) to dismiss the claim brought by two swimmers, Weatherill presented an alternative vision of how to reconcile sporting practices with EU law, a vision subsequently followed by the Court of Justice. Legal criticism is empty if one cannot present a coherent alternative.

The *Meca-Medina* case, and Weatherill’s writing generally, reminds sports bodies that their claim of autonomy is conditioned on the presentation of strong arguments, the acceptance of good governance and coherent engagement with the

various justificatory regimes located within the EU's legal framework. In other words, the realms of sport and EU law overlap but within that space the peculiarities of sport can find comfortable accommodation. As is revealed in his later work, this message remains even more germane following the entry into force of Article 165. In short, Prof. Weatherill has provided sports bodies with an intellectually robust and legally credible strategy for engaging with European law rather than their traditional approach of denying, disputing and ignoring the influence of Brussels and Luxembourg. Accessing legal advice of this quality is beyond the financial means of most sports bodies. Buying this book is not a second best option.

It is a tribute to Prof. Weatherill that his work in this area is of such importance that a collected edition of his papers is considered necessary. It is therefore remarkable, and hugely welcome, that this honour should now extend into a second edition. I congratulate Steve and the T.M.C. Asser Press for continuing to lead the development of this fascinating field of enquiry. I would also like to echo the words of appreciation extended to Prof. Robert Siekmann by Jean-Louis Dupont in the foreword to the first edition of this book. Professor Siekmann is himself a remarkable pioneer of this discipline whose contribution, now his time at the Asser International Sports Law Centre has drawn to a close, should be acknowledged.

Ormskirk, Summer 2013

Richard Parrish

# Foreword to the First Edition

I am deeply honoured and very pleased to have been invited by Dr Robert Siekmann, the Director of the ASSER International Sports Law Centre in The Hague, The Netherlands, to contribute this Foreword to Professor Stephen Weatherill's collection of writings on European Union law and sport.<sup>1</sup>

We have one important thing in common: we are both, in our respective ways, humble pioneers in this evolving field of law. He is a distinguished academic and I am an enthusiastic practitioner. As such, we are, in a sense, in a symbiotic relationship. In practising before the European Court of Justice as a sports lawyer, I am always pleased to draw on his insights and ideas in testing my arguments; and he, of course, draws on the actual decisions of the Court itself, to provide a coherent and critical legal analysis of how sport is being regulated at the European level and a European sports law policy is emerging, despite the fact that the present Treaty does not – at least as yet – contain any so-called 'sport article'. For this reason – and indeed many others – I very much welcome the opportunity that this book offers me and others with an interest in sports law of being able to have access in one place to his scholarship, insight and learned writings, which I am pleased to acknowledge have contributed to my knowledge and understanding of the development of European Union law in the field of sport. As a lawyer practising in the civil law tradition, I would remind readers of the fact that the opinions of textbook writers and academics, such as Stephen Weatherill, are one of the sources of the law – and an important one at that!

I would also like to congratulate Robert Siekmann, who is also a pioneer in the field of international sports law, having set up and continuing to lead with distinction the International Sports Law Centre at the prestigious T.M.C. Asser Institute in The Hague, for having had the constructive idea for this book and organising its publication through Philip van Tongeren, Publisher of T.M.C. Asser Press. And, last, but by no means least, I would like to salute and warmly congratulate Stephen Weatherill for providing us with such interesting, thought-provoking and compelling reading.

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<sup>1</sup> The first edition was realised with the cooperation of the International Olympic Committee and FIFPro.

This book will, I am sure, quickly establish itself as a leading work on European law and sport and become a *vademecum* for all those involved in a variety of ways and functions, as administrators, managers, researchers, academics, marketers, broadcasters, advisers and practitioners, in the exciting field of international sport and the ever unfolding challenges that the interface between European Union law and sport provides in daily life, especially now that sport is big business accounting for 2 per cent of the combined gross national product of the enlarged European Union of 27 Member States.

Belgium, March 2007

Maître Jean-Louis Dupont



# Contents

<b>1</b>	<b>Introduction</b> . . . . .	<b>1</b>
	Stephen Weatherill	
<b>2</b>	<b>Discrimination on Grounds of Nationality in Sport</b> . . . . .	<b>21</b>
	Stephen Weatherill	
<b>3</b>	<b>European Football Law</b> . . . . .	<b>63</b>
	Stephen Weatherill	
<b>4</b>	<b>Annotation [<i>Bosman Case</i>]</b> . . . . .	<b>101</b>
	Stephen Weatherill	
<b>5</b>	<b>0033149875354: Fining the Organisers of the 1998 Football World Cup</b> . . . . .	<b>135</b>
	Stephen Weatherill	
<b>6</b>	<b>Sports Under EC Competition Law and US Antitrust Law</b> . . . . .	<b>149</b>
	Stephen Weatherill	
<b>7</b>	<b>The Helsinki Report on Sport</b> . . . . .	<b>163</b>
	Stephen Weatherill	
<b>8</b>	<b>Resisting the Pressures of ‘Americanization’: The Influence of European Community Law on the ‘European Sport Model’</b> . . .	<b>177</b>
	Stephen Weatherill	
<b>9</b>	<b>‘Fair Play Please!’: Recent Developments in the Application of EC Law to Sport</b> . . . . .	<b>201</b>
	Stephen Weatherill	
<b>10</b>	<b>Sport as Culture in EC Law</b> . . . . .	<b>245</b>
	Stephen Weatherill	

<b>11</b>	<b>Anti-Doping Rules and EC Law</b> . . . . .	283
	Stephen Weatherill	
<b>12</b>	<b>Is the Pyramid Compatible with EC Law?</b> . . . . .	295
	Stephen Weatherill	
<b>13</b>	<b>The Sale of Rights to Broadcast Sporting Events Under EC Law</b> . . . . .	311
	Stephen Weatherill	
<b>14</b>	<b>Anti-doping Revisited: The Demise of the Rule of ‘Purely Sporting Interest’?</b> . . . . .	379
	Stephen Weatherill	
<b>15</b>	<b>On Overlapping Legal Orders: What is the ‘Purely Sporting’ Rule?</b> . . . . .	401
	Stephen Weatherill	
<b>16</b>	<b>The White Paper on Sport as an Exercise in ‘Better Regulation’</b> . . . . .	425
	Stephen Weatherill	
<b>17</b>	<b>The Influence of EU Law on Sports Governance</b> . . . . .	443
	Stephen Weatherill	
<b>18</b>	<b>Article 82 EC and Sporting ‘Conflict of Interest’: The Judgment in <i>MOTOE</i></b> . . . . .	471
	Stephen Weatherill	
<b>19</b>	<b>The <i>Olivier Bernard</i> Case: How, if at all, to Fix Compensation for Training Young Players?</b> . . . . .	485
	Stephen Weatherill	
<b>20</b>	<b>Bosman Changed Everything: The Rise of EC Sports Law</b> . . . . .	497
	Stephen Weatherill	
<b>21</b>	<b>EU Sports Law: The Effect of the Lisbon Treaty</b> . . . . .	507
	Stephen Weatherill	
<b>22</b>	<b>Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law?</b> . . . . .	527
	Stephen Weatherill	

<b>23</b>	<b>Is There Such a Thing as EU Sports Law? . . . . .</b>	<b>543</b>
	Stephen Weatherill	
<b>24</b>	<b>Engaging with the EU in Order to Minimise Its Impact: Sport and the Negotiation of the Treaty of Lisbon. . . . .</b>	<b>555</b>
	Stephen Weatherill	

# Abbreviations and Acronyms

AG	Advocate General
BAF	British Athletics
CMLR	Common Market Law Reports
CMLRev.	Common Market Law Review
CAS	Court for Arbitration for Sport
CFI	Chamber of the Court of First Instance of the Court of Justice of the European Communities
CFO	Comité Français d'Organisation de la Coupe du Monde de Football
DG	Directorate-General
ECLR	European Competition Law Review
ELRev.	European Law Review
ETS	European Treaty Series
EBU	European Broadcasting Union
ECHR	European Convention on Human Rights
ECJ	Court of Justice of the European Communities
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EP	European Parliament
ESF	European Social Fund
EU	European Union
FFF	Fédération Française de Football
FIA	Fédération Internationale d'Automobile
FIBA	International Basketball Federation
FIFA	International Association Football Federation
FIFPro	Fédération Internationale de Footballeurs Professioneis
FINA	Fédération Internationale de Natation
Fn.	Footnote
IAAF	International Association of Athletics Federations
IIHF	International Ice Hockey Federation

IOC	International Olympic Committee
IRB	International Rugby Board
ITC	Television Independent Television Commission
J	Judge
MEP	Member of the European Parliament
OJ	Official Journal
RPC	Restrictive Practices Court (UK)
S	Section
SEA	Single European Act
UCI	Union Cycliste Internationale
UEFA	Union of European Football Associations
WADA	World Anti-Doping Agency
WLR	The Weekly Law Reports