

# European Sports Federations: A Critical Review of the Options for Incorporation

TOM BURNS

*Most sports men and women would regard competition at the European and international level as one of the high points of a sporting career. In order to organise competitions at European level it is usually a pre-requisite to create a European association to organise the sport. From the earliest days of international sporting competitions in the nineteenth century to the present time, the strategic choices to be made when creating an international sport association have remained constant. These are: where to locate the association, geographically, and what legal form the international association should adopt? These basic questions have to be addressed, not only by those wishing to create new, international sports associations, but also by existing international associations. With regard to existing international sports associations, some of these may have to review their existing structures and locations as a result of expanding national memberships or the increasing commercial and legal pressures on the sports that they govern and represent. This article suggests that there is a strong case to be made for new and existing European sports associations to consider establishing some form of legal presence in Brussels, the administrative and political centre of the European Union. This is because, amongst other things, Brussels is the location where European sporting bodies might be better able to influence the regulatory and political decisions that may affect their various sports. This article then proceeds to consider what form that presence could take. Various options are examined and due attention is given to the special legal structures made available to international not-for-profit sports associations under Belgian law. What is of particular interest in this connection is the new Belgian Law of 2 May 2002 on not-for-profit associations, which came into force in July 2003. It is suggested that this new law provides two improved legal structures that could be valuable to those wishing to create new European sporting associations and to those existing associations who may be reviewing their existing structures to be more effective promoters of their sports.*

---

Tom Burns is Professor of Law, Department of Law, Aberdeen Business School, Robert Gordon University.

Entertainment Law, Vol.2, No.2, Summer 2003, pp.1-19  
PUBLISHED BY FRANK CASS, LONDON

## Introduction

There are many European sports associations that regulate a range of sports and manage a range of international competitions. These associations are to be found in different locations across Europe and they exist in a variety of sizes and structures.<sup>1</sup> This is a result of a number of factors, including the absence of any political authority willing to interfere with the regulatory autonomy of these sports associations when they determine their own rules for international competitions and their criteria for membership (amongst other things). Consequently, there has not been pressure on European sports associations to congregate around any particular political centre to promote, represent and in some cases defend the interests of their various sports. In more recent times, this situation of regulatory autonomy for international sport has started to change. The European Community, as it grows and develops, is increasingly extending its reach into the economic, social and cultural aspects of life in Europe and this is having an impact on sport. Perhaps inevitably, sporting bodies have to consider how to deal with this regulatory challenge. Their responses may range from monitoring, at a distance, events in Brussels and Luxembourg from their present locations across Europe, to considering the options for moving closer to the decision-making centre of the European Community and exerting some direct influence over the policy-makers there. This article examines these trends and analyses the options for sports associations to get closer to the seat of power and to create structures that can better advance their interests. However, the options that European sports associations may have might be limited by one of the basic characteristics of these organisations. This is their not-for-profit status.<sup>2</sup> What the majority of these organisations have in common is that they are motivated by the desire to promote their particular sport at the European level and not by the desire to maximise profits for their members. When these associations make structural adjustments in order to operate more effectively in Europe they will want to be able to consider their options for incorporation as international not-for-profit associations in the most advantageous location.

## The Factors that may Determine the Location of a European Sport Association

The reasons for choosing a particular geographic location for an international sporting federation will vary from sport to sport, but broadly speaking, the type of factors that may influence the choice of location include the following.<sup>3</sup>

- ‘Political’. The choice of an accepted neutral location so that the national sensibilities of the different national sports associations that make up the membership of the international association will not be offended. Thus, Switzerland has been the choice location of a number of prominent associations such as international political and humanitarian associations (like the agencies of the UN and the Red Cross) and also sports associations like FIFA and UEFA.
- The availability of a range of legal structures to choose from to meet the particular needs of a given sport association both initially and later in its existence when its activities may develop in scale and sophistication.
- A source of personnel with key skills to help the association to function effectively. For example, does the country have a well-educated, multilingual workforce, which is essential if documents of the international association are to be translated for the benefit of the various national members who make up the organisation’s membership.
- The existence and extent of worker protection laws, which determine how easy it is to hire and fire workers. A related factor is the level of employment generally in any particular country. If employment rates are high, it might be more difficult and expensive to attract workers.
- Well-developed support services for international associations such as legal, accounting, tax and public relations services.
- Good communication network and good transport facilities (road rail, sea, air).
- Favourable taxation rates on the organisation and on the staff.
- The cost of living for staff and the price and availability of property to buy or rent.
- The possibility of attracting grants, sponsorship, government funding or tax breaks.
- A favourable regulatory environment where businesses are not ‘over-regulated’, but where contracts are respected and upheld in courts that administer impartial justice.
- The degree of state regulation and interference in companies/organisational structures and the costs associated with incorporation.

Any of these factors may change over time. Taxes may increase, or the government may introduce new regulations that push up operating costs for sports associations, prompting a review of the association’s domicile. In addition, when a sport association becomes bigger and attracts members from a wider range of countries, this too, could cause an association to reconsider its location.<sup>4</sup> There are prominent examples of sport associations changing the location of their central administration. FIFA, for example, started in Paris in the year 1904 and then moved to Amsterdam. From there

it moved to Zurich in Switzerland in 1932. UEFA has moved its HQ five times since its foundation and in the summer of 2000 it completely revamped its managerial and administrative structure to improve its organisational efficiency.<sup>5</sup> The International Hockey Federation moved its headquarters from Paris to Brussels in 1982.<sup>6</sup>

### **The Factors that may Determine the Legal Structure of a European Sport Association**

The founding members of a European sport association will normally have certain requirements in mind when they seek to establish a legal structure to perform the tasks of creating the rules and regulations of the sport at international level. An association will probably want legal personality, so that it can buy, sell or hold property in its own name, bring and defend legal actions in its own name and make contracts in its own name. The officers and the members of the association will usually want to be protected from legal claims by limited liability, particularly if large sums of money are involved in negotiating sponsorship deals or deals involving broadcasting rights. Legal certainty is another desideratum. The founders of an association will usually prefer a legal structure, which has been tried and tested and is coherent, accessible and well understood by the people who deal with such associations in the marketplace. Furthermore, the founding members are likely to prefer a law that has the capacity to resolve most of the common disputes that may occur in an association by reference to well-established rules and principles. This can promote the equitable and efficient resolution of disputes.<sup>7</sup> Ideally, during the incorporation process, the founders of an international association would want the state authorities to offer them a set of rules (in the form of a model constitution) for the new association. These model rules should cover all the basic issues of the corporate constitution, such as the rights and obligations of the members, voting rights, the powers of the directors and the balance of power between the association's officers and its members.<sup>8</sup> However, these model rules should be 'default' rules only, which would leave the association free to alter them to suit the particular needs of the membership.<sup>9</sup>

The founding members will also prefer a legal regime that grants them wide powers to shape the organisational structure of the association. International sports associations tend to be federal associations (that is, associations of national associations). As a consequence, international sports organisations tend to be designed to allow the members the opportunity to participate extensively in the decision-making process of the association.<sup>10</sup> This usually entails the creation of an elaborate committee structure to discuss issues of concern and to reach decisions by consensus.

The close involvement of the members may help the international organisation to gain the support of the membership, but it can also slow down the decision-making process and it may even lead to poor decisions being made.<sup>11</sup> The problem that may emerge is that the organisation, in its efforts to achieve a consensus, may settle for an agreement that is based on the lowest common denominator.<sup>12</sup> When external circumstances change, associations may find that they may have to respond more quickly to government or public opinion. Under these conditions there is much to be said in favour of a national law of associations that allows associations to alter their organisational structures and decision-making processes so that they can be more responsive to changes in the environment.<sup>13</sup>

Few national laws can satisfy all these needs, but the legal systems that come closest to satisfying these requirements will be more desirable as a legal system of choice than those that do not.

### **Why Should a European Sporting Association Consider Changing its Structure or Domicile?**

Most organisations review their managerial structures, form, functions and locations from time to time.<sup>14</sup> Such reviews may come about as a result of changes in the external environment or the result of internal pressures or both. For international sports associations it may be that a change in the nature of the membership may prompt a review of the association's location and structure.<sup>15</sup> Similarly, when an international sport association grows in size and sophistication, it may find that the organisational structures that once served it well may now be stifling the future development of the association.<sup>16</sup> These factors have helped to account for the changes of form and location of some sports associations in the past and may continue to influence future changes. However, for European sports associations there is a new, additional factor that may cause associations to review their structures and domicile. This is the impact of European Community law and policy on international sport. The impact of EC law and policy is well documented and has attracted a great deal of academic analysis and discussion.<sup>17</sup> The following brief account of the effects of EC law on sport highlights why international sports associations may be prepared to consider (amongst other things) changes to their corporate structures and may contemplate establishing a legal presence in Brussels.

It was in the 1970s that EC law first began to make its impact on sport in the cases of *Walrave*<sup>18</sup> and *Dona*.<sup>19</sup> Although the European Court of Justice made a concession which recognised the autonomy of sports associations to make rules that were of 'purely sporting interest',<sup>20</sup> it nevertheless established the principle that where sport constitutes an

economic activity it may fall within the scope of EC law.<sup>21</sup> However, it took until the 1990s, when the rapid commercialisation of professional sport occurred, for sports associations to appreciate just how extensive the reach of EC law could be.<sup>22</sup> This development started with individual litigation (where the player transfer system in football was challenged successfully by Bosman<sup>23</sup>), but soon extended to direct intervention by the EC Commission when sports associations tried to exploit their commercial assets and found themselves subject to the scrutiny of EC competition law.<sup>24</sup> Although the European Community does not have any explicit competence under the Treaty to regulate sport, this has not prevented the Community from attempting to develop an embryonic sports policy. In Declaration 29 of the Treaty of Amsterdam, the European Council acknowledged that sport had a role to play in developing and sustaining social cohesion in the Community. It also asked the Institutions of the Community to consult sports associations on sporting issues, but significantly, this Declaration did not do what the sporting associations most wanted, which was to grant sport an exemption from the full application of EC law.<sup>25</sup> The EC Commission in its Helsinki Report of 1999<sup>26</sup> attempted (amongst other things) to 'give pointers for reconciling the economic dimension of sport with its popular, educational, social and cultural dimensions'.<sup>27</sup> The Report recognised that sport did have special features that may allow it an exemption from EC law in some areas,<sup>28</sup> but the Community still retained its ability to act in the field of sport. As Professor Weatherill said in his article on the Helsinki Report, 'the Commission's agenda is broader [than the judiciary's]. It is not prepared to surrender its concern for the social and educational functions of sport, nor for the preservation of sporting structures and ethics in the face of a changing legal and commercial environment'.<sup>29</sup> As a consequence of these and other developments, sports associations can expect further interventions especially as the trend towards greater commercialisation in sport continues unabated.<sup>30</sup>

In response, European sports associations may have to adopt the tactics of business when they feel that their interests are threatened. European sports associations may have to enter into a sustained dialogue with the Institutions over law and policy, and be ready to lobby against those changes that they perceive to be against their interests and to lobby in favour of those changes that may advance the cause of the associations and their members.<sup>31</sup> But European sports associations must be prepared to do this in a more focused, committed and sustained way than has been their practice in the past.<sup>32</sup> Businesses have found that the best way to obtain the results they desire is to use a range of different strategies. Briefing the Commission on what business associations see as the costs and benefits, strengths and weaknesses of Community proposals is one strategy that can influence

Community decisions. Being prepared to negotiate with the Community Institutions by participating in formal meetings with the Commission, the Parliament and the Council's working groups is another useful strategy used by business to influence law and policy. This may involve conceding points to the Community in some areas in order to gain a concession in another area that may better protect some vital interests of the business association's members. Finally, there is the tactic of lobbying the Institutions and national politicians to exert influence over policy- and law-making in the Community.<sup>33</sup> On the whole, business has been reasonably successful in influencing law and policy in the EC.<sup>34</sup> There are at least 900 EU business associations lobbying on behalf of their corporate members and a further 350 large companies with lobbying departments to act on their behalf.<sup>35</sup> However, most of these organisations appear to believe that they can achieve their promotional and protective goals more effectively by being physically present in Brussels. Thus, 750 of the 900 business associations are based in Brussels, as are 250 of the 350 large companies with public relations departments active in trying to influence Community law and policy.<sup>36</sup> International sports associations could learn a great deal from the examples of business, including the value of establishing a legal presence in Brussels in order to begin a sustained dialogue with the Community Institutions on sports law and policy.

The basic question is, what form should that physical presence take? The principal options are to set up a branch office of the association in Brussels, create a subsidiary body in Brussels, incorporated under Belgian law, or as the radical alternative for existing international sports associations, move the central administration of the association to Brussels and incorporate it under Belgian law. Let us now examine these options.

### **Establishing A Belgian Base**

It is possible for an international sport association, based elsewhere in Europe, to set up a branch office in Brussels. This branch office would be merely an extension of the association's legal personality in another country (where the host state is prepared to recognise it as such under its rules of international private law<sup>37</sup>). A branch office would not therefore be a separate person in law, and this fact distinguishes the branch from the subsidiary, which would, by way of contrast, have separate personality in the host state. The advantage of setting up a branch is that it can be done quickly and easily and it avoids the need to incur the expenses of incorporating a legal entity in Belgium and then having to comply with the annual reporting requirements for Belgian corporate bodies. It also gives the parent association full freedom to determine the organisational and

management structure of the branch without Belgian state interference. This usually means that the headquarters of the association can exert a high degree of control over the operations of the branch office and could use it merely as a conduit for communications. The major disadvantage of setting up a branch office in Belgium is that it may face practical problems arising from its legal status under Belgian law. Although there are rules of international private law to determine such matters as the legal capacity of a branch entity and the scope of the agency powers of branch officials to conclude contracts, the practical problems remain. Belgian citizens, both corporate and individual, may be reluctant to enter into contracts with a branch office of a foreign entity. As a consequence, it is possible that a branch office could find it difficult to rent premises or obtain goods and services from cautious Belgians who might want some re-assurance about the validity and enforceability of contracts that they may conclude with a branch office of a foreign undertaking. This could make it difficult for the branch to function smoothly.

However, these problems can be overcome to a large extent if the branch is able to register its existence under Belgian law and receive formal recognition of its legal personality as a branch of a foreign entity.<sup>38</sup> This would enable the branch to exercise the rights granted to it by its national law while operating within Belgium. It has been possible since 1919 to apply to the Ministry of Justice to be registered as a branch of a foreign not-for-profit association in Belgium.<sup>39</sup> In order to receive a certificate of recognition from the Ministry of Justice a number of conditions have to be met. The main conditions are as follows. The applicant must show that it is an international not-for-profit entity, which also conforms to the criteria set out in the relevant Belgian legislation. Second, the branch must be willing to publish its constitution in one of the official languages of Belgium in the Annexes to the Belgian Official Journal, the *Belgisch Staatsblad/Moniteur belge* (BS/MB). And finally, the branch must intend to establish a permanent office in Belgium (details of which must be supplied to the Ministry). This procedure has been criticised for being 'cumbersome and time-consuming' in practice.<sup>40</sup> However, it has been recently revised and streamlined by the law of 2002 so that legal recognition can be attained by the branch when it publishes its constitution, address and names of its officers in the Official Journal (the BS/MB).<sup>41</sup> As a result of these recent developments, branch offices should find the process of obtaining formal recognition from the Belgian state much easier.

### **The Subsidiary Association**

The other option for establishing a presence in Belgium is for the founders of the international sport association to create a subsidiary organisation



incorporated under Belgian law. The advantages of establishing a Belgian entity, which has both a separate legal personality and limited liability makes it an option that may be preferable (in many cases) to the alternative of establishing a branch office in Belgium.

It is not unusual for not-for-profit sport associations to create subsidiary corporate bodies. The Scottish Football Association (which is a not-for-profit company limited by guarantee under the UK Companies Act 1985)<sup>42</sup> recently incorporated a subsidiary company (again limited by guarantee) called Hampden Park Ltd to operate the national stadium in Scotland.<sup>43</sup> Indeed, the articles of association of many not-for-profit associations and charities often permit the parent bodies to create subsidiaries.<sup>44</sup> This general power to create subsidiaries can extend to the creation of subsidiary companies that are commercial limited liability companies committed to seeking a profit. An association's constitution may permit this, provided that the profit obtained is used to finance the activities of the parent association, which has the social or charitable objectives.<sup>45</sup>

However, an international sport association wishing to set up a subsidiary for the purposes of promoting the sport and representing the members' interests is likely to favour a Belgian entity that allows the sport association to operate through a not-for-profit structure. There is a well-established, not-for-profit structure (dating back to 1921) which is available to foreign associations. This offers legal personality, limited liability and a high degree of legal certainty. It is known as the domestic, not-for-profit association (*Association sans but lucratif*, or ASBL).<sup>46</sup> It is used extensively by Belgian sports associations (such as the Belgian football league<sup>47</sup>) and also by foreign national associations wishing to collaborate with each other to create an establishment in Belgium (such as the International Student Football Federation<sup>48</sup>). Under the original 1921 ASBL legislation there was a requirement that at least three-fifths of the members be Belgian nationals or persons duly residing or registered in Belgium.<sup>49</sup> This could pose a problem for foreign associations wishing to use this entity. However, following a successful legal challenge to this law by the Commission against the Belgian State before the European Court of Justice in 1999,<sup>50</sup> this nationality requirement in the 1921 law was declared to be discriminatory and contrary to EC law. The 1921 legislation was then amended by a special law of 30 June 2000, to remove the offending discriminatory provisions. Now, following the recent 2002 revision of the law on ASBLs it is possible for a foreign association to create a Belgian ASBL with no Belgian members and no Belgian directors if it so wishes.

The legislation of 2002 on the ASBL has also made it easier and quicker to establish a subsidiary not-for-profit association in Belgium in an effort to attract foreign associations to establish a presence in the country.<sup>51</sup> To set up

an ASBL the founders need only deposit the appropriate constitutional documents, declarations and other registration data (e.g. on the directors of the ASBL) with the Clerk of a Belgian Court of First Instance to obtain legal personality.<sup>52</sup> This new procedure avoids the inevitable delays of the old registration system, which required the documents to be submitted for publication in the Annexes of the Belgian Official Journal and then delayed the grant of legal personality until ten days after the date of publication in the Official Journal.

The issues that must be addressed in the corporate constitution of an ASBL are listed in Chapter II of the new law. These require the founders of the ASBL to create rules on the rights and obligations of the members, the powers of the directors, the persons who are to be granted the power to litigate on behalf of the association, and so on.<sup>53</sup> The founders have the freedom to decide on the precise content of these rules. The members of the association are subsequently able to change the details of these rules by an appropriate majority vote during the existence of the ASBL without the need to seek approval for these changes from the Ministry of Justice. Therefore the ASBL does enjoy a degree of constitutional flexibility.

However, the reforms of 2002 are a mixed blessing for foreign associations seeking to establish an ASBL. Under the law of 1921, the financial reporting requirements of an ASBL were minimal. Now, depending on the number of employees and the amount of the association's assets or revenues, ASBLs have to publish annual accounts.<sup>54</sup> The small ASBLs are required to publish abbreviated annual accounts. For the larger ASBLs with an average of 50 full-time equivalent employees and revenues which exceed 6,250,000, or assets in excess of 3,125,000, a statutory auditor must be appointed to produce audited accounts for publication.<sup>55</sup> However, in this post-Enron<sup>56</sup> age it is perhaps inevitable that Belgium, like most Western countries, has tightened up its laws on financial reporting in an effort to prevent corporate bodies of all kinds from being vehicles for fraud.

There are three other disadvantages associated with the creation of a Belgian subsidiary. First, there is the added cost of running two organisations (the parent and the subsidiary). Belgium is a high cost country where skilled labour can be difficult to obtain because of the relatively high levels of employment in the country. It is also a country where property prices are high. These costs could be a significant disincentive for associations that represent minority sports; particularly where there are limited opportunities to generate income through sponsorship or broadcasting rights. Second, there is the problem of control. This concerns the extent to which managers based in another country can effectively monitor and control the operations of the legally separate Belgian

subsidiary. Then, finally, there is the practical question of how far the parent body can rely on the agents in the Belgian subsidiary to represent and promote the association's interests effectively before the institutions of the European Community on a routine basis. The problem may become chronic when the senior managers who have the responsibility to promote the strategic interests of the association are normally resident in another European country and have to rely on information about the EC that is initially filtered through their Brussels agents.

Therefore, the creation of a Belgian subsidiary does not solve all the problems for an international sport association wishing to represent the interests of the members before the Institutions of the European Community.

### **The Belgian International Not-for-Profit Association** *(Association Internationale Sans But Lucratif)*

For existing European sports associations there is one remaining, but very radical alternative, to setting up a branch office, or a subsidiary organisation in Brussels. This radical alternative is for the international sport association to move its central administration to Belgium in order to be closer to where many of the political and legal decisions that can affect their sports are taken. As noted previously, Belgium offers many advantages to international associations seeking a base there. Belgium (and Brussels in particular) has excellent communication links and a pool of highly skilled, multilingual workers. This location also offers a full range of professional services. These service-providers are well experienced in providing accountancy, legal, managerial and public relations advice to international entities. In addition, Belgium has a special form of not-for-profit association that has been specifically designed to meet the needs of international associations. This entity is the international not-for-profit association (*Association Internationale Sans But Lucratif*, or AISBL). With these general benefits on offer in Belgium, national sports associations wishing to create an international association at European level for the first time may find Belgium an attractive choice of location.

However, for European sports associations located elsewhere in Europe, it may be very hard to contemplate a move to Belgium. There is a tendency for organisations that are consensus-driven like sports associations to become conservative with age and maturity.<sup>57</sup> Wilson has argued that 'the history of most associations shows ... that [they] become bureaucratised [sic], routinised [sic], and open to the accusation of being ponderous, undemocratic, or conservative'.<sup>58</sup> Yet despite this innate conservatism, some important international sports associations have shown themselves to be

more mobile than their commercial counterparts, the public listed companies. One significant factor that may allow sports associations to be able to think radically about location in some circumstances is the nature of its membership. As stated previously, the membership of European sports associations is multinational. Therefore, the choice of location might not be so easily influenced by the chauvinistic concerns of members from one particular country. Loyalty to an existing location might be strong amongst international sports associations, but it is unlikely to be an insurmountable obstacle to change, where a change of domicile is deemed necessary for the greater good of the sport. In contrast, public companies (including the so-called multinational companies) tend to be more tied to a particular location. These companies will usually have their primary listing on a national stock exchange in the country where they were incorporated and have a significant number of their shares held by the nationals of that country. These factors make it socially and politically difficult for such companies to move their central administration to another country. European sports associations do not face that kind of impediment to their mobility.<sup>59</sup> So, in theory at least, a move to become incorporated as an international not-for-profit association under Belgian law may remain a radical (and perhaps a remote) option that is open for consideration by them.

If a newly created European sport association or even an existing one contemplates incorporation in Belgium, in order to promote more effectively the interests of the sport, it is possible that the AISBL entity could meet many of this association's requirements in terms of aims, structure and adaptability.

The AISBL is a well-established legal entity under Belgian law and dates back to the Law of 25 October 1919. It was created to allow international organisations of many kinds the opportunity to obtain legal personality, limited liability and indeed a degree of respectability and prestige by the grant of a Belgian Royal Decree heralding the association's official incorporation.<sup>60</sup> Originally, only those associations pursuing a 'scientific purpose' (such as the prevention of or cure for disease) could obtain incorporation by Royal Decree. But following effective lobbying by the *Federation des Associations Internationales Etablies en Belgique*<sup>61</sup> during the post-war economic boom the law was amended by the Law of 6 December 1954 to permit a wider range of organisations the right to apply for recognition as an AISBL. The 1954 amendment expanded the range of legitimate purposes to include 'philanthropic, religious, artistic and educational' aims.<sup>62</sup> These broad aims have been interpreted liberally by the Belgian courts to enable bodies as diverse as European trade associations and sport associations to obtain incorporation by Royal Decree.<sup>63</sup> This has been achieved by permitting those organisations to pursue their particular

activities (such as defending the economic interests of industry or regulating a sport at international level) as legitimate secondary objectives under the condition that these secondary purposes serve the main statutory aim of 'promoting education'. The tactic of mixing the objectives of an association had to be done carefully in order to obtain the Ministry of Justice's approval to seek incorporation as an AISBL. Fortunately, this particular drafting problem may no longer exist following the latest consolidating statute of the Belgian legislature on AISBLs passed in May 2002. The new test of eligibility as regards to the objective of the association is now a less restrictive one of establishing that the association's aim is 'a non-profit aim of international utility'.<sup>64</sup> The Belgian courts are likely to interpret this new single objective broadly to include the promotion of 'health or charity or culture or the promotion of solutions to problems of an international economic character' as concrete examples of 'utility'.<sup>65</sup> These new changes should therefore make it easier for European sports associations to apply for AISBL status and avoid the need to draft elaborate object clauses.

Article 46 of the new law sets out four further criteria for incorporation, which most national sports associations wishing to create a European association could meet. First, the association may not carry out industrial or commercial activities and may not aim to provide its members with a (direct) material gain (for example in the form of a dividend payment). Second, the association's membership must be open to Belgians and non-Belgians alike. Third, the association's registered office must be in Belgium. And finally, the association's purpose or activities must not be contrary to Belgian law of public policy. Of these four criteria, only the prohibition on economic activities would appear to cause difficulty for sports associations wishing to negotiate broadcasting rights or sponsorship deals and other potentially revenue-earning contracts at European level. However, there is scope for an AISBL to engage in revenue-earning activities, despite the apparently blanket proscription against such activities. Belgian jurisprudence has established that after its incorporation an AISBL may carry out activities that bring in revenues to the association.<sup>66</sup> The case law specifies that the revenues earned must be used to advance the non-profit goals of the association, but this may include using the money to offer indirect benefits to the members (such as offering membership discounts on a number of advice services). Examples of economic activity that have been recognised as legitimate for a not-for-profit association to pursue have included publishing and the exploitation of intellectual property.

The founders of an AISBL have a degree of freedom to create an initial constitution document for the corporate entity. It is possible for them to achieve a degree of organisational flexibility by the use of the committee structure. Like the British company limited by guarantee, Belgian

international not-for-profit associations (AISBLs) can create special rules for the operation of these committees.<sup>67</sup> These rules can be changed by the organisation to suit its administrative requirements without the need to change the formal constitution. The founders of an AISBL are also free to determine the working language of the association (which can be English)<sup>68</sup> and whether any member can have a weighted vote.<sup>69</sup>

The constitutional document of an AISBL can be altered to meet later needs by the requisite majority vote of the members. However, unlike the domestic (Belgian) not-for-profit association, certain proposed changes to the constitution of an AISBL may require the approval of the Ministry of Justice if such changes are to be effective. This can be a time-consuming process and it has been observed that delays of up to six months are not exceptional.

One important consideration when setting up any not-for-profit association is the costs of meeting the statutory reporting and filing requirements. For organisations that cannot aim to maximise profits, rigorous cost control plays an important part in keeping the non-profit organisation functioning. The administrative cost of complying with the financial and other reporting requirements is a factor that not-for-profit associations will take into account when they consider where to locate a European organisation. Under the pre-2002 law on international not-for-profit associations (AISBLs), there were no requirements placed on international associations incorporated in Belgium to publish audited financial accounts. However, the law of 2 May 2002 has changed that situation. Just as the domestic not-for-profit associations in Belgium are required to produce financial reports, so too must the Belgian-based, international associations. The financial reporting requirements for AISBLs are very similar to those that affect the domestic ASBLs. With the exception of very small AISBLs (which are only required to produce abbreviated accounts for the Belgian Ministry of Justice), international associations with five full-time equivalent employees and revenues of 250,000, or assets worth 1,000,000 must produce full financial statements on an annual basis in accordance with Belgium's 1975 accounting law.<sup>70</sup> If an international association has 50 full-time equivalent employees and revenues of 650,000, or assets worth 3,125,000, a statutory auditor has to be appointed to verify the financial records of the association. What these figures show is that these financial reporting thresholds are fairly generous. Nor is Belgium unusual in demanding that not-for-profit associations produce financial reports. Financial reporting is increasingly becoming an unavoidable part of life for not-for-profit associations across Europe and therefore is unlikely to become a decisive factor in choosing a location for a European sport association.

It would appear from this analysis of the AISBL that the entity does have some disadvantages, but the many positive features of the entity probably outweigh these. This may help to make it a serious option for new international sports associations seeking to incorporate in Belgium. This form of association may also be attractive to existing associations that consider the less radical options of a branch office or a subsidiary company as less effective options for achieving the goals of the membership.

### **Conclusion**

Sport associations may become more effective in promoting their particular sports and in defending their members' interests if they have a legal presence of some kind in Brussels.

Brussels has become, for better or worse, the de facto capital of the European Union and it is the place where many of the regulatory and policy decisions are made which can have an impact on sport. The various options for establishing a presence in Brussels have been reviewed and it is clear that the choices concerning domicile and structure will depend on the particular size, circumstances and finances of each sporting organisation. If it is decided on the basis of a cost-benefit analysis that there is more to be gained legally, politically, socially or economically by moving some or all of the association's operations to Brussels and adopting a new legal structure, then such a change should be considered. It is possible that the smaller sporting associations may find it easier to relocate the centre of their activities to Belgium than the larger ones because they tend to employ fewer staff and are more likely to operate out of modest rented accommodation. However, larger sports associations have found it relatively less difficult to move their corporate headquarters than the large multinational commercial companies, so the issue of mobility and structural change need not be off the agenda as a radical option in an operational review, even for large European sports associations. Finally, what emerges from the analysis is that if European associations do make the decision to locate in Belgium there are two valuable legal structures available as options for incorporation under the law of 2 May 2002.

### **NOTES**

1. Some associations are small and govern amateur sports, like the International Student Football Federation (based in Antwerp, Belgium). Other organisations are large and are complex organisations operation through a web of specialist committees (like FIFA and UEFA, both of which are based in Switzerland).
2. The freedom of establishment rules for corporate bodies under the EC Treaty (Articles 43–46) does not apply to not-for-profit associations. Article 48 specifically excludes

- undertakings 'which are non-profit-making' from the general scheme.
3. This is an indicative list and not an exhaustive list. Many of the factors listed would also apply to commercial companies.
  4. See the history of FIFA on its website, [www.fifa.com/en/organisation/historyfifa.html](http://www.fifa.com/en/organisation/historyfifa.html). FIFA started as a purely European association and then over time gained members from other regions in the world such as South America, North America and so on. These developments helped to encourage FIFA to look for a neutral location, which would be acceptable to the diverse international membership of the association. The choice of Switzerland was acceptable because it was recognised as a neutral country. This choice of location was made more attractive because Switzerland (which was keen to attract international associations to its country) had created favourable laws for non-profit associations under its Swiss Civil Code (Articles 60–79).
  5. UEFA was based in Paris until 1959. It then moved to Switzerland, locating its headquarters in the city of Berne. UEFA then moved its offices to different addresses within the city of Berne in 1962 and in 1974. UEFA then moved to the town of Nyon in western Switzerland in 1995. Four years later UEFA moved to new purpose-built headquarters in Geneva on 22 September 1999. See its website, [www.uefa.com/uefa/aboutuefa/overview/index.newsId=2491.html](http://www.uefa.com/uefa/aboutuefa/overview/index.newsId=2491.html).
  6. The International Hockey Federation was founded in Paris in 1924. When it merged with the International Federation of Women's Hockey Associations, the new, enlarged FIH moved its headquarters to Brussels in 1982. See the FIH website, [www.fihockey.org](http://www.fihockey.org).
  7. For example, the Federation of International Associations Established in Belgium (FAIB) found that the desire for legal certainty was a crucial factor in choosing what form of incorporation the association should adopt. In its survey of a representative sample of 214 not-for-profit organisations operating in Belgium in 1999, the FAIB found that the main reason for associations choosing to use a particular kind of not-for-profit legal entity was that it offered the organisation a high degree of 'legal certainty', [www.faiib.org/profile](http://www.faiib.org/profile).
  8. Under British Company Law these model rules are to be found in the Companies (Table A to F) Regulations 1985 S.I. 1985/805.
  9. Brian Cheffins, *Company Law (Theory, Structure and Operation)* (Oxford: Oxford University Press, 1997), 218–20.
  10. Charles Handy, *Understanding Voluntary Organisations* (London: Penguin, 1988), 115–20.
  11. M. Hudson, *Managing without Profit* (London: Penguin, 1995), 41–69. Hudson notes on p.58 that federal structures 'have often developed a complex network of institutional arrangements in order to balance the different interests. However, they can easily become a major impediment to rapid decision-taking ...'.
  12. J Greenwood, *Inside the EU Business Associations* (Basingstoke: Palgrave, 2002), 79.
  13. A good example of this for non-profit-making associations is the British company limited by guarantee, where the members have extensive freedom to rearrange their organisational structures at will (and subject to the approval of three-quarters of the membership). The flexibility to rearrange the committee structure without the need to alter the articles of association in these companies is yet another remarkable feature of these companies. See E. West, *Companies Limited by Guarantee* (Bristol: Jordans, 2000), 50–1.
  14. The seminal work which stresses the need for organisations to engage in periodic strategic reviews in order to ensure survival and growth is I. Ansoff, *Corporate Strategy*, revised edn. (London: Penguin, 1987).
  15. An example of this is the International Hockey Federation, which merged with the women's federation in 1982 and changed its structure and the location of its headquarters from Paris to Brussels. See note 6, above.
  16. See D.O. Wilson, 'How do Voluntary Agencies Manage Organisational Change?', in D. Billis and M. Harris (eds.), *Voluntary Agencies* Basingstoke: Macmillan, 1996), 80–97.
  17. Recent examples of this burgeoning literature include S. Weatherill, 'The Helsinki Report on Sport', *European Law Review* 25 (2000), 282; S. Van den Bogaert, 'The Court of Justice on the Tatami: Ippon, Waza-Ari or Koka?', *European Law Review* 25 (2000), 554; K. Foster, 'Is there a Global Sports Law?', *Entertainment Law* 2/1 (2003), 1; R. Parrish, 'Judicial Intervention and Sporting Autonomy: Defining the Territories of European Union



- Involvement in Sport', *European Sport Management Quarterly* 2 (2002), 296; L. Crolley, R. Levermore and G. Pearson, 'For Business or Pleasure? A Discussion of the Impact of European Union Law on the Economic and Socio-Cultural Aspects of Football', *European Sport Management Quarterly* 2 (2002), 276; J.P. McCutcheon, 'Free Movement in European Sport', *European Sport Management Quarterly* 2 (2002), 308; P. Morris, S. Morrow and P. Spink, 'The New Transfer Fee System in Professional Soccer: An Interdisciplinary Study', *Contemporary Issues in Law* 5 (2000–01), 253. See also the range of excellent essays on EU sports law in A. Caiger and S. Gardiner (eds.), *Professional Sport in the EU: Regulation and Re-regulation* (The Hague: T.M.C. Asser Press, 2000).
18. *Walrave and Koch v. UCI*, case 36/74 [1974] ECR 1405.
  19. *Dona v. Mantero*, case 13/76 [1976] ECR 1333.
  20. *Walrave* (note 18) at 1405, where the Court ruled that the prohibition against discrimination 'does not affect the composition of sports teams, in particular national teams, the formation of which is a question of purely sporting interest and as such is nothing to do with economic activity'. But see also *URBSFA v. Bosman* (note 23), where discrimination on the grounds of nationality was prohibited at the level of club football.
  21. *Walrave* (note 18) at 1405, where the Court stated that 'the practice of sport is subject to Community Law only in so far as it is constitutes an economic activity within the meaning of Article 2 [ex Article 2] of the Treaty'.
  22. Weatherill (note 17). See also Parrish (note 17), where Parrish noted that 'as sport began to operate less as a social activity and more as a business, so law permeated its domain'.
  23. *URBSFA v. Bosman*, case C-415/93 [1995] ECR I-4921.
  24. See S. Weatherill, 'Fair Play Please: Recent Developments in the Application of EC Law to Sport', *Common Market Law Review* 40 (2003), 51–93. Note particularly his review of the competition cases affecting sport at 59–80. These cover issues such as ticket sales, the collective selling of broadcasting rights and so on.
  25. *Ibid.*, 88.
  26. COM [1999] 644.
  27. *Ibid.*, 1.
  28. Weatherill (note 17), 291.
  29. *Ibid.*, 292.
  30. Weatherill (note 24), at 93: 'it is hard to believe that the commercialisation of sport will permit the EC Institutions much peace. A case might arrive that the Commission deems irresistible; and there is plenty of scope for troubling the Court with individual litigation'.
  31. There is a real opportunity for sports associations to promote their members' interests at the European level because the Commission is so keen to enter into a dialogue with sports associations. Weatherill notes this development in his two recent articles on sports law. In Weatherill (note 24), at 89, he notes that 'a process of dialogue endures' which is exemplified by the creation of the European Sports Forum (set up by the Commission). This Forum conclude its first meeting by stressing the importance of 'partnership between interested parties' (including the European sports associations) in the development of sport. In his article on the Helsinki Report, Weatherill (note 17) notes that the Commission is particularly keen on 'consultation and partnership between interested levels of governance, including sports bodies' in the future development of sport in Europe.
  32. Weatherill (note 24), 88. When it comes to applying pressure on the EC Institutions, sports associations do not do it in a sustained way. He notes that 'pressure has been periodically exerted by the sports industry to exempt sport from the scope of EC Law. Sports bodies are modestly skilful at exploiting the media to broadcast their (usually unsubstantiated) allegation that they are better left to their own regulatory devices ... But the assembly of unanimous support would represent an arduous task and frankly the sports sector has failed to present an intellectually convincing case as to why it deserves such unique treatment [to merit an exemption from the normal rules of EC Law]'.
  33. J. Humphreys, *Negotiating in the European Union* (London: Random House, 1997).
  34. R.J. Bennett, 'Factors Influencing the Effectiveness of Business Associations: A Review', in J. Greenwood (ed.), *The Effectiveness of EU Business Associations* (Basingstoke: Palgrave, 2002), 15.

35. Greenwood (note 34), 3.
36. *Ibid.*, 3.
37. See S. Rammeloo, *Corporations in Private International Law* (Oxford: Oxford University Press, 2001), ch.2.
38. Under Article 8 of the Law of 1919.
39. The Ministry of Justice will issue an 'Article 8 Certificate' after it is satisfied that the applicant has met all the conditions of registration required under this Article.
40. D. Lontings, 'L' Association International Sans But Lucratif: Vehicule Belge pour collaboration Transnationale Entre les Societes Commerciales', *RDAl/IBLJ* 5 (1994), at 608–11.
41. Article 58 of the new law of 2 May 2002 BS/MB, together with Article 51 which states what information the branch must publish in the Official Journal to gain recognition.
42. See the Articles of Association of the Scottish Football Association Limited (as amended in 1994) at [www.scottishfa.co.uk](http://www.scottishfa.co.uk).
43. See [www.scottishfa.co.uk/publication/annual\\_report2003/subsidiary.pdf](http://www.scottishfa.co.uk/publication/annual_report2003/subsidiary.pdf).
44. For example, see C. Barker, P. Ford *et al.* (eds.), *Charity Law in Scotland* (Edinburgh: W. Green, 1996), at 29.
45. *Ibid.*, 29, 'Where companies limited by shares arise within the charity sector they tend to be used in ... an ancillary role'.
46. The statute creating this entity was the Law of 27 June 1921 and is published in the Belgian Official journal, the *Belgisch Staatsblad/Moniteur belge*.
47. *Union Royale Belge des Societes de Football Association*, ASBL
48. The ISFF established itself in Antwerp in Belgium. See [www.Esfa.be/statutes.pdf](http://www.Esfa.be/statutes.pdf).
49. Article 26 of the Law of 27 June 1921, BS/MB.
50. *Commission of the European Communities v. The Kingdom of Belgium*, case C-172/98, OJ 28 August 1999, no C246, 6. See also the case note by K.W. Simon, 'Nationality Requirements for NGO Registration', at [www.icnl.org/journal/vol2iss/cn\\_Belgium.htm](http://www.icnl.org/journal/vol2iss/cn_Belgium.htm).
51. The total revenue of international non-profit associations is in the region of 1bn and 75 per cent is spent in Belgium. These international non-profit associations also employ around 8,000 people in Belgium. See Luc Stolle, 'The International Association: New Belgium [sic] Legislation', at [www.ey.com/GLOBAL/contents.nsf/Belgium](http://www.ey.com/GLOBAL/contents.nsf/Belgium).
52. Article 26 of the Law of 2 May 2002, BS/MB.
53. Chapter II, Articles 2–41 of the Law of 2 May 2002.
54. Article 27, *ibid.*
55. Article 27(subsections 1–6), *ibid.*
56. The Enron Corporation was one of the biggest corporate bankruptcies in America with debts of \$63.4bn. One of the main issues for regulators, anxious to prevent another corporate collapse on this scale, was to find ways to improve the patent inadequacies of the financial reporting rules which had allowed the scandal to go unnoticed for such a long period before the company's collapse. This led to major reforms in financial reporting in all Western countries and not just the US.
57. Greenwood (note 12), 78.
58. J.Q. Wilson, *Political Organisations* (Princeton, NJ: Princeton University Press, 1995), 223.
59. It can be difficult for not-for-profit associations to change domicile for many of the same reasons that prevent commercial companies from changing their domicile. These barriers to change would include the political pressure a government may place on an organisation to remain within the country and the opposition of the permanent staff of the organisation who do not want to leave the country. However, despite these barriers sports organisations have managed to change their central administrations to other countries. See notes 4, 5 and 6 above.
60. After the First World War Belgium was interested in becoming the location for the League of Nations. The Belgian government tried to make Belgium an attractive place for incorporation for non-profit associations and non-governmental organisations by its law of 1919 for international non-profit associations. Yet despite this attempt, the founders of the League of Nations decided for political reasons that Geneva in Switzerland (a non-combatant country in the First World War) should be the headquarters for the League in 1920.



## EUROPEAN SPORTS FEDERATIONS

19

61. *Federation des Associations Internationales Etablies en Belgique* (FAIB) is a lobbying organisation for international associations based in Belgium. This organisation played a significant role in having the Belgian law amended in 1954. See Lontings (note 40).
62. Law of 6 December 1954, published on 16 December 1954, BS/MB.
63. Lontings (note 40), at 588.
64. Article 46 of the Law of 2 May 2002, BS/MB.
65. H. Briet, 'Les Associations internationales sans but lucratif', in Centre d'Etudes Jean Renaud (ed.), *Le nouveau droit des ASBL et des fondations: La Loi du 2 Mai 2002* (Brussels: Bruylant, 2002), 190.
66. Cass, 3 Octobre 1996 TVR 1997, 217.
67. Lontings (note 40), 608.
68. The Statutes of the International Student Football Federation provide in Title 1 of their constitution, paragraph 3 that 'the working language of the International Student Football Federation is English'. See website, [www.esfa.be/statutes.pdf](http://www.esfa.be/statutes.pdf).
69. Lontings (note 40), 605.
70. Article 53 of the Law of 2 May 2002, BS/MB.