

# ***A HOLISTIC APPROACH TO THE DUAL CAREER OF THE STUDENT-ATHLETE***

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# **Governance Through Soft Laws in Europe. The Case of Guidelines for Dual Careers of Athletes in Portugal**

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## Abstract

The Dual Career of Athletes (DC) is, in short, defined as the effortless reconciliation of academic and sporting demands simultaneously. In order to combat the dropout of students and/or athletes and increase their employability, the European Commission created and published the EU Guidelines on DC of Athletes, thus putting the topic on the agenda of many member states and several national and international institutions. Soft laws (quasi-legal instruments called “protocols”, “guidelines”, “recommendations”, among others, without legal force or coercive mechanisms) have been referred to as an interesting tool for multisectoral coordination in several areas of European Policies, especially because they give (or accept) the stakeholder’s autonomy, highlighting - of course - the member states. In order to study the importance of soft laws in the implementation of European Public Policies and the DC, we organize this chapter according to the following structure: first, the main characteristics of Dual Career are presented as well the policy paper *EU Guidelines on DC of Athletes*, paying special attention to its historical evolution and drafting process. After, the soft law instruments in the EU Sport Law are introduced with their limitations and advantages. Then, we studied the influences from that Policy Paper on DC Public Policy in Portugal.

**Keywords:** public policies, soft law, dual career, Europe, Portugal.

## 1. Introduction

Many international organizations such as the European Union (EU), which were initially founded as economic organizations (De Búrca, 2011; Sennett et al., 2022; Sonntag et al., 2021), had no genuine sport mandate (Weatherill, 2018). But the role of the EU in sport has grown considerably in importance since 1990s' (Aquilina & Henry, 2010). Nowadays, European sport has a relevant social power in the world having the most interesting competitions and most competitive clubs and athletes in several sports. Because of that "sport is one of Europe's most appealing attractions to third-country nationals" (Sonntag et al., 2021, p. 9). And so, EU must be considered a world actor because its commitment to pursuit collective, coordinated and multilateral solution to global problems and continues to export its regulatory standards to many parts of the world (De Búrca, 2011).

On other side, it is impossible to deny that each sport organisation (as sport clubs and sport federations) has an intermingling regulatory and commercial functions at same time, what sooner or later, takes to a conflict of interests with actual or potential competitors on internal market (Pijetlovic, 2018). This particularity had several moments in European Court of Justice, with several decisions (some even controversial, as said by Rincón, [2007]) that helped to shape the EU Sport Public Policies (PP) and the European Sport Model (Geeraert, 2013).

EU gave several steps to define its European Sport Model (ESM), and when there are EU models, Member States (MS) are under pressure what Claudio Radaelli calls "adaptational pressure" (Radaelli, as cited in Featherstone & Radaelli, 2003, p. 42). But due its organizational complexity and the number of stakeholders as accepted in the White Paper on Sport (WP) (European Commission, 2007), the EU reached to the conclusion that unified definition for it was a difficult mission. Nevertheless, the WP has the relevance to define the main characteristics of our ESM and call of our attention to the social and cultural importance of sport at European level (Pijetlovic, 2018).

But the major step on EU sport public policy was made through Lisbon Treaty and its article number 165 (Sonntag et al., 2021). From 2009, the

Treaty came into force, and EU gained new powers in the EU Sport' Policy arena (García & de Wolff, 2018; Mittag & Naul, 2021; Parrish et al., 2010). After article 165°, the Directorate General for Education, Youth, Sport and Culture (EAC), has the institutional responsibility for running sports policy at EU level. But mainly to coordinate through incentive measures (Weatherill, 2018), as recommendations, sharing of best practices or guidelines (soft law). This article highlights the emergence of an European Sport Policy Arena with specific characteristics and dynamics due to a complex process of governance, globalization, modernization and the European integration; with a relevant support from soft laws such as EU Dual Career Guidelines. We study the case of Portugal, where DC programmes are state centralised (Aquilina & Henry, 2010; European Union, 2016) to see if EU soft laws are influencing the implementation of Public Policies (PP) in MS.

## 2. Dual career in European Union

It is under the first EU Work Plan for Sport (2011 - 2014), that the Expert Group (XG) *Education & Training in Sport* (later called *Human Resources Development in Sport*) had a mandate to prepare proposals for EU guidelines on Dual Careers (European Council, 2011).

The term Dual Career (DC) was introduced by the European Commission in the White Paper on Sport (European Commission, 2007). However, since the beginning of the 21<sup>st</sup> century, the European Commission (EC) had shown a growing concern for the multifaceted life of young European sportsmen and sportswomen and had focused its efforts on protecting their access to educational opportunities and employment, in particular (European Commission, 2011), and related with welfare ideologies (Aquilina & Henry, 2010). And, according to these authors, it is also worth noting the designation of the year 2004 as the *European Year of Education through Sport* by the EC (p. 29).

The EU Guidelines on DC (European Commission, 2012) refer, listing several studies in different fields, to the clear benefits of dual career programmes for student athletes, namely in the educational,

sport, psychological and social fields, preparing them for a (longer) professional life (p. 7). Earlier in the document it can even be read that “the promotion of dual careers supports the achievement of several objectives of the Europe 2020 Strategy (prevention of school drop-out, increase in the number of graduates and higher employability)” (European Commission, 2012, pp. 3–4).

These DC Guidelines were drafted by an *ad hoc* Expert Group (XG) chaired by the Sport Unit of DGEAC, which also provided the secretariat. It was the aforementioned EU XG *Education & Training in Sport* that invited/appointed the different members of the XG, supervised the drafting process and agreed on the final text<sup>1</sup>.

This document, immediately adopted by the European Parliament, is sent to all member states as “inspiration for the formulation and adoption of national recommendations, essentially practical, to support dual careers”, and serves as a basis for funding by the ERASMUS+ - Sport Programmes, from 2014 to the present day<sup>2</sup>.

The EC justifies the creation and approval of these guidelines in the following way:

DC programmes in sport are relatively recent in most MS. Member States where these provisions have been developed some time ago sometimes lack solid agreements between the sport system and the education sector or the labour market. They may also lack a sustainable legal framework or government policy. These guidelines can be useful to develop and improve the necessary conditions for sustainable DC programmes (European Commission, 2012, p. 3).

Briefly, the document is composed of 36 recommendations, divided into three main areas: I) Public Policies, II) European Dimension and III) Supervision, Control and Evaluation (Table 1).

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<sup>1</sup> Approved by the EU Expert Group *Education & Training in Sport* at its meeting in Poznan on 28 September 2012.

<sup>2</sup> For more info, please see <https://erasmus-plus.ec.europa.eu/opportunities/opportunities-for-organisations/sport-actions>, e.g., *Gold in Education and Elite Sport, Study on Minimum Quality Requirements for Dual Career Services, Be a Winner in Elite Sport and Employment Before and After Athletic Retirement*.

**Table 1. EU DC Guidelines areas (European Commission, 2012)**

<b>Public Policies (26)</b>	<b>European Dimension (5)</b>	<b>Supervision, Control and Evaluation (5)</b>
Cross sectorial approach (3)	Mobility	Public awareness
Sport (6)	EU Curriculum development	DC Networks
Education (7)	Quality framework	Research, monitoring and evaluation
Employment (4)		
Health (3)		
Financial incentives (3)		

EU DC recommendations by area, in brief:

- *Public Policies*: High Performance Athletes (with or without disabilities, including former athletes) should be considered as “special” citizens by society and by different governmental areas. National coordination of diversified inter-ministerial measures is suggested, through a structure and the development of national guidelines or by modality. The government should contract, recognise and/or fund in a privileged way all governmental/non-governmental, sports/educational or business structures which implement measures to support DC. Relevance should be given to the professionalisation and specific competence of HR working in the field. The government should promote public policies in the area of education that promote curricular flexibility, individualization of responses at all levels of education, enabling social recognition of the profile of Educational Institutions and/or Sports related to DC. Flexibility for professionalization and partnership with companies is suggested, with special importance for funding and professional training during the career, as well as post-career preparation.

- *European Dimension*: Coordination of support for athlete's mobility (education, profession or training) between different organisations and countries is suggested. The EU should stimulate, monitor and control opportunities for cooperation and sharing of good practices between MS, recognizing the best practices, services and/or institutions.
- *Supervision, Control and Evaluation*: It is suggested to collaborate with transnational networks that bring together the interests of all stakeholders, promote good practices and support the implementation of EU DC guidelines. Governmental and Sport ONGs, governments and the EU itself, should disseminate the importance of supporting DC among athletes, coaches and society in general. All stakeholders should monitor local and international developments, supported by studies and reports, in order to improve the DC framework.

Strangely (or not), there are no indicators, targets or timeframe, nor expected results in the document. This may give more freedom to each MS and all stakeholders, but making evaluations, coordination and supervision even more difficult.

### **3. The EU soft law in sport. History and conceptualisation**

In European Union Public Policy research, the concept of "soft law" may be linked with ancestral European anti-formal jurists (XIX century), based on social law and legal pluralism notion (Di Robilant, 2006). According to Bryan Druzin, the term "soft law" only appeared in diplomatic discourse in the 1980s and has since become a common term in international circles (Druzin, 2017). But Senden and Prechal (2001) referred that legal scholars trace EU soft law from 1962<sup>3</sup> (Hartlapp, 2019). Nowadays is often used to describe governance arrangements that operate individually or in addition to other governance arrangements, hard law resulting from treaties, regulations, and the Open Method of Coordination (OMC). OMC is the European

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3 See Official Journal 139/291 and 2922.

Union's method of policy-making that includes the joint definition of objectives and the implementation of the policies and resources necessary to achieve them on a voluntary basis. It promotes multi-level coordination, self-assessment, and European regulation. It is a methodology that can be used in different areas, usually combined with legislation or "hard law" (Borrás & Radaelli, 2010; Shelton, 2000). In order to avoid the negative impacts of competition between member states, the EU (in certain areas) has broadened and diversified its involvement by regulating or coordinating competing policies between member states. Various diffuse modes of governance have been created ranging from hierarchical regulation to "soft coordination" or the Open Method of Coordination (Benz, 2010), or as Francis Snyder told before: the EU effectiveness of law is mainly achieved by processes of negotiation through "the Article 169 EEC procedure, soft law and structural reform" (Snyder, 1993, p. 48). Richard Parrish, in his book *Sports law and policy in the European Union* refers to soft law as non-binding measures adopted by EU institutions. He added "soft law is included within the definition of EU sports law" and as a "pragmatic solution" (Parrish, 2018, p. 17).

Di Robilant says, since the previous EU Treaty, that soft laws as "Recommendations and Opinions" had some legal weight, but this may not be constant (Di Robilant, 2006, p. 500). And, Abbot and Snidal, by their side, argue that "international actors often deliberately choose softer forms of legalization as superior institutional arrangements" (Abbott & Snidal, 2000, p. 423). These new methods of governance may bear some resemblance to "hard law". But because they lack enforceability, uniformity, sanctions or a structure for enforcement, they are classified as "soft law" and contrast, sometimes positively, sometimes negatively, with "hard law" as an instrument for European integration (Dehousse, 2008; Trubek et al., 2005). In the next two tables we list some possible limitations and advantages coming from soft law (Table 2 and 3).

**Table 2. Advantages found in soft law governance.**  
**Adapted from Coglianesi (2020), Shaffer and Pollack, (2008)**  
**and Trubek et al. (2005)**

<b>Advantages</b>
Provide greater flexibility for states with lower “sovereignty costs”, especially in sensitive areas.
Deal better with uncertainty and law imprecisions.
Accommodate faster new standards or improvements without judicial intervention, over time.
Easier and faster to negotiate in “sensitive policy areas”, with less political costs.
Accommodate more and diverse actors in the same policy arena (governmental and/or non-governmental actors).
Allow states and other organisations to be more or less ambitious, depending on their context and resources.
Promote deeper cooperation through diffusing best practices.
May provide a proving ground for innovation and legitimacy, as stakeholders comply voluntarily and have less worries about enforcement or complying with hard law.
Being voluntary may also produce “race-to-the-top” between states and other organisations, including innovative practices, best practices sharing and new standards agreements.
May provide stronger links to hard laws or upgrade standards.

Soft law approaches can be thought preferable because they at least offer something to do when nothing else seems possible. Regardless of the source, (environmental) soft law seeks to achieve the same basic objectives as hard law. The nonbinding nature of soft law also means it does not necessitate the same kind of governmental capacity for monitoring and enforcement that hard laws impose (Coglianesi, 2020).

**Table 3. Limitations found in soft law governance.  
Adapted from Coglianese (2020) and Trubek et al. (2005)**

Limitations
Soft law lacks the clarity and precision needed to provide predictability and a reliable framework for action (Coglianese, call it “greenwashing” due to his work with environmental’ soft law: all goals, criteria and process are reliable, but not the results).
Only hard laws can solve bigger problems as are settled in the TFEU. Soft laws are... soft.
They only attract institutions that are already committed with the theme.
Soft law it is a covert tactic to enlarge the Union’s legislative hard law competence and does not have relevance itself.
They cover diverse standards and it may take the commitment line to the bottom is some of them, due to the possibility of undercut the force from one to another.
Soft law is a legal instrument that is used to have an effect but it by-passes normal systems of accountability; It only works when the backdrop of threats of enforcement actions (hard law).
Soft law may undermine EU legitimacy because their interventions are more symbolic than substantive and it creates expectations without bringing any change.

From the limitations and advantages described before, we can also find some interesting inputs that can help us to understand why the option for soft laws can be a good option also for sport.

According to Saurugger and Terpan (2021), there are not so many publications on how much EU soft law exist in the EU’s political system, comparatively to hard law. But in international law, comparison between “hard law” and “soft law” in governance has a considerable number of works (Saurugger & Terpan, 2021; Terpan, 2015). Within the legislation arena, “hard law” refers to legal obligations from formal issues and binding in nature and “soft law” to laws that are not formally binding, but which can impact behavior (Shaffer & Pollack, 2008). It covers a wide range of instruments of different nature and functions,

that make it very difficult to contain it within a single sentence or even paragraph. And several times its conceptualization debate is between those who deny its existence and those who believe soft law can solve any problems around consensual difficulties. For French authors, according to Stefan and colleagues, "it represents an immature version of true (hard) law, a body of norms in the process of transformation" (Stefan et al., 2019, pp. 4–5). According to Terpan (2015, p. 70) nor EU Treaty or even the Statutes of International Court of Justice (ICJ) mention soft law as a type of secondary legislation. But based on EU Treaty (TFEU), the EU exercise the Union's competences, through regulations, directives, decisions, recommendations and opinions. These latter two instruments shall have no binding force (European Union, 2008, pp. 171–172) and can be considered soft law among others not listed in that TFEU article (Stefan et al., 2019).

Nevertheless, this policies instruments (soft law) are obtaining international acceptance and recognition (Druzin, 2017; Shaffer & Pollack, 2012).

So, we raised this question to answer: The EU DC Guidelines have some or any impact in the implementation of DC Public Policies or programmes at national level? How was in Portugal from 2012?

#### **4. The importance of soft law (guidelines) to support athletes' dual career in Portugal**

The Dual Career of athletes is not a problem that can only be solved through the educational system (given the autonomy, for example, of Higher Education Institutions - see RJIES, Law no. 62/2007 of 10 September) or only through the sporting system (given the specificity of sport and the autonomy of its structures - see the White Paper on Sport, 2007, p.14). This is also the opinion expressed by the European Union, according to which the promotion of dual careers highlights that all sport organisations and all governments have a responsibility to enable athletes to succeed in a DC (European Commission, 2012).

In other words, in Europe and especially in Portugal, the success of DC support programmes may not be possible without the coordination and active participation of educational and sport organisations, public and private institutions, with the Portuguese State.

After the publication of the EU Guidelines on DC of Athletes (2012), six diplomas (laws) were published in this area of support to high performance in Portugal (Table 4):

- *Decree-Law (DL) no. 45/2013, of 05 April*: Establishes specific measures to support the preparation and international participation of national teams or other national sports representations.
- *Dispatch no. 5025/2014, of April 09*: Creates the working group for analysis of the European recommendations and student-athlete status in Higher Education.
- *Dispatch no. 9386-A/2016, of 21 July*: Creates the pilot project of the Support Units for High Performance in Schools UAARE (Unidades de Apoio ao Alto Rendimento na Escola).
- *Decree-Law (DL) no. 55/2018, of July 06*: Establishes the overall programme to achieve the student's profile and competences foreseen at the end of compulsory school.
- *Decree-Law (DL) no. 55/2019, of April 24*: Regulates the statute of student-athlete in Higher Education.
- *Ordinance No. 275/2019, of 27 August*: Generalizes the UAARE at National level.

The DL n° 45/2013, was published immediately after the disclosure of the guidelines, so the incorporation of some of the recommendations, would be unlikely. On the other hand, and despite the fact that this is legislation related to high performance sports agents, conciliation is not within the scope of the diploma.

The creation of the working group (Order No. 5025/2014), multi-sectoral and inter-ministerial, refers to the guidelines as inspiration: "Given the urgency of the matter of dual careers, the European Union has recently defined a set of guidelines regarding this matter,

recommending to all member states the adoption of supporting policy actions” (Diário da República, n° 70 - 9 April 2014, p. 9759). On the other hand, it accepts and follows the recommendation of multi-level coordination and co-participation of stakeholders by including in the working group representatives of various ministries, representatives of athletes, federations, among others (European Commission, 2012, p. 8 - recommendations n° 1, 2 and 3).

The diplomas referring to the pilot project and generalization of the UAARE do not make any reference to the guidelines but to a local project of support to student-athletes which resulted and inspired the update and national generalization.

**Table 4. Sport laws production between 2002 and 2022, in Portugal, related with Sport, including political party, and Prime Minister in the Government and Department (area) in charge**

XXVI	XXVII	XXVIII	XXIX	XX	XXI	XXII	Portuguese Government
PSD	PS	PS	PSD	PSD	PS	PS	Party as Leader
Santana Lopes	José Sócrates	José Sócrates	Pedro Passos Coelho	Pedro Passos Coelho	António Costa	António Costa	Prime Minister
2004.07.17	2005.03.12	2009.10.26	2011.06.20	2015.10.30	2015.11.26	2019.10.26	Mandate Start
2005.03.12	2009.10.26	2011.06.20	2015.10.30	2015.11.26	2019.10.26	1º tri. 2022	Mandate End
Deputy Ministry for Prime Minister	Ministry of Presidency	Ministry of Presidency	Ministry of Presidency and for Parliamentary Affairs	Ministry of Presidency & Local Development	Education Ministry	Education Ministry	Sport
Education Ministry	Education Ministry	Education Ministry	Education & Science Ministry	Education & Science Ministry	Science, Technology & Higher Education Ministry	Science, Technology & Higher Education Ministry	Education
Science, Higher Education & Technology Ministry	Science, Higher Education & Technology Ministry	Science, Higher Education & Technology Ministry	Education & Science Ministry	Education & Science Ministry	Science, Technology & Higher Education Ministry	Science, Technology & Higher Education Ministry	Higher Education
Law 5/2007	- Law 62/2007 - White Book on Sport - EU Treaty - DL 248-B/2008	- DL 272/2009 - Portaria 325/2010	- <b>EU Guidelines DC athletes</b> - DL 45/2013 - Despacho 4833/2013 - <b>Despacho 5025/2014</b> - Portaria 103/2014		- Despacho 9386-A/2016 - Resolução AR - DL 55/2018 - <b>DL 55/2019</b> - Portaria 275/2019		Laws or official legal documents related with Dual Career

\* In bold, the document produced has direct reference to EU DC Guidelines.

The Decree-Law regulating the student athlete status in higher education, probably based on the recommendations/conclusions of the working group created for this purpose in 2014, categorically states: “in line with the European Union’s recommendations for the adoption of mechanisms to support the development of dual careers of student athletes” (Diário da República, n° 80 - 24 April 2019, p. 2267). The recommendation n° 10 (in the area of Education) seems to have been the main influence for the creation of this specific statute.

These observations in the implementation of measures provided for in Guidelines (soft law) in Portugal and with regard to DC, will not be very different from those observed in the case of directives (hard law) in the most diverse areas. Falkner et al. (2005) in this respect concluded the following:

The implementation of EU law is neither mechanical nor automatic, nor efficient. It is slow (only about 11 per cent of the cases studied were transposed correctly and on time), painstaking (a large number of processes are required to achieve reasonable levels of compliance) and incremental (often many steps are required before a directive is fully implemented) (Falkner et al., 2005, p. 343).

## **5. Conclusions, limitations and further steps**

A huge body of soft law has been so far developed by EU (Robilant, 2006), specially by the EC (Batta, 2007, p. 4). Recommendations or guidelines are one of the main means of expression for most international institutions. One reason being that their statutes or treaties only rarely permits the adoption of instruments that are binding on states (Friedrich, 2013, p. 22). Another reason raised up by Terpan (2015), is that soft law is intergovernmental-oriented and hard law is supranational-oriented. By other hand, the independence of sports organizations and their right to organise themselves through appropriate associative structures was recognized by the Nice

Declaration in 2000<sup>4</sup>, what can also justify the EU option for soft laws on EU Sport PP.

Although with some controversies about their efficiency, soft policies have been used by the EU for PP coordination in several areas (employability, economy, health and sports). Guidelines or recommendations are among the various policy instruments inherent to this soft law methodology. The recommendations have even been used by other public and private organisations (UN, WHO, UNESCO, OECD, ILO, etc.).

The recommendations for the implementation of Dual Careers programmes in EU Member States that support the conciliation between sporting and academic (or professional) life, have been on the European and National political agenda, and implemented in various ways. In the case of Portugal, the contribution to its implementation has not been linear, as it is possible to identify publication of laws with, but also, without reference to these recommendations. This particularity may make it difficult to refer its effective contribution in Portugal as positive; but it will need further research.

Identical conclusions are referred in a first attempt to know the level of implementation of the Guidelines carried out in 2016 by the *XG Human Resources Development in Sport*. This report (based on the responses of 28 MS, observers and one EC member), concluded that in the areas of Education and Sport there was an active development after 2012 (in contrast to the previous period). But, they point out, that this active development may not be completely related to the recommendations of the EU (Expert Group on Human Resources Development in Sport, 2017).

It would also be interesting to assess in greater depth the contribution that the Guidelines have made to the support programme for Dual Careers in Portugal (e.g. UAARE), involving the whole context (federations, clubs, schools, employers, etc.) and the different (possible) programmes implemented and not only the legal diplomas.

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4 Please see European Council. Conclusions of the Presidency. Annex IV, Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies. The Declaration is available at [https://www.europarl.europa.eu/summits/nice2\\_en.htm](https://www.europarl.europa.eu/summits/nice2_en.htm) accessed 06 June 2022.

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