

# Sports Law, Policy & Diplomacy Journal



Vol. 1 / No. 2 (2023)





**UNIVERSITY OF RIJEKA, FACULTY OF LAW**  
**Sports Law, Sports Policies and Sports Diplomacy Centre &**  
**Jean Monnet Chair in EU Sports Law, Policy & Diplomacy**

in partnership with



***Sports Law, Policy & Diplomacy Journal***

**ISSN (Online) 2975-6235**

**UDC 3:796**

**DOI <https://doi.org/10.30925/slpdj>**

**Vol. 1 No. 2**

**Rijeka, 2023**



**Co-funded by  
the European Union**

## **EU NORMATIVE ACTORNESS IN SPORT: AN IDEA(L) WHOSE TIME HAS COME?**

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UDC 347.4:796(4)

796::061.1(4)

DOI <https://doi.org/10.30925/slpdj.1.2.3>

*Received on July 6, 2023*

*Accepted on October 10, 2023*


Original scientific paper

### **Abstract**

Research on the European Union in the fields of international relations and European studies has all too often been skewered towards two important axes of debate which have been running relatively independently of each other: the study of the European Union (EU) as a normative power (NPE) and the study of EU actorness. This paper sets out to demonstrate the conceptual applicability of an integrated EU actorness-NPE perspective for understanding the EU's unique identity. To build on this conceptual linkage, the article utilizes as its unit of analysis, the EU's area of sport policy, before going on to frame it within the NPE-actorness debates when assessing the identity of the EU in international sport. Two central questions drive the study: (1) is the EU a normative actor in the manner espoused by Ian Manners when looking at sport and (2) if it is a normative actor, does it conform to the traditional characteristics of EU actorness that characterizes Jupille and Caporaso's EU actorness thesis. It makes use of document reviews pertaining to EU sport during the period between 2009 – 2022 along with meta-theoretical content analysis. Findings show that the EU is a normative actor through the sport regulation, sport diplomacy, and competition law tracks, whereas it scores highly when looking at the actorness thesis. By showcasing that the EU actorness thesis and EU normative power concepts are complementary, this analysis contributes to the mainstream EU literature and not least by coupling sport as the prism of appraisal, a novel agenda focusing on EU sport policy and its interaction with other EU literature grounded in the political sciences is left to more meaningfully crystallise.

**Keywords:** European Union, Normative Power, Actorness, Normative Actorness, Sport.

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## 1. INTRODUCTION

Dating back to its inception, the European Union has oozed a certain normative sway that is apparent in its dealings globally with the world. Being a distinct institution as it is, the European Union's notion of the self revolves around its responsibility to work for the 'global and common good,'<sup>1</sup> which by and large re-affirms its claim to be a 'different type of international actor'.<sup>2</sup> This has made it present itself as a generational, once-in-a-lifetime leader as far as norms, standards, and prescriptions that are universally applicable are concerned. Such a conception of the European Union (hereafter EU) as an actor laden with normative leadership capabilities is already replete in the literature that attests to its normative nature as seen through its various disparate policy areas, including energy, trade, justice, and home affairs<sup>3</sup> along with the environment.<sup>4 5</sup> As such, the leitmotif surrounding the EU, both academically and policy-wise has centred around a general discourse that has availed and reinforced the EU as an undisputed normative actor par excellence across its range of policy fields, thereby making it a different type of actor in International Relations parlance.

Nevertheless, in spite of this timeless and widely acclaimed modus operandi, one policy area – that of EU Sport Policy – has been routinely side-lined when it comes to such narratives about the EU's normative role and agency. Subsequently, this policy area has all too often found itself being subjected to the doldrums of EU policy domains, with one reason being that frankly, there was never an established legal basis to begin with, which meant that the EU had no business in EU Sport. However, through years of case law culminating in the Bosman ruling along with subsequent developments such as the ushering into being of the Lisbon treaty, the EU now has a legal personality to enact sport policy and as well, to mould sport in the EU under its image, ideas, and ideals, insofar as the member states sanction this.

It is with this backdrop, that the objective of this article is to advance the supposition that the EU (as it consists of an amalgamation of the Commission, Parliament, Council, the Court of Justice of the European Union, and EU member states) is a normative actor in the area of sport as witnessed through its sport policy domain approaches and conduct. The paper shall therefore, go on to assess the extent to which the EU upholds norm circulation and policy transfer using sport, as its alleged normative power status would oblige for it to do. In so doing, this article aims to discuss the role of the EU as a purveyor of norms through sport and the wider implications as such. It argues that the EU reproduces its norms that has set it apart within the international system, also within the area of sport.

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1 Lisbeth Aggestam, "Introduction: ethical power Europe?". *International Affairs* 84, no.1 (2008): 1-11.

2 Natalie Tocci, "Profiling Normative Foreign Policy: The European Union and its Global Partners." Working Document No. 279. Centre for European Policy Studies (CEPS), 2007.

3 Sandra Lavenex, "EU External Governance in 'Wider Europe.'" *Journal of European Public Policy* 11, no.4 (2004): 680-700.

4 John Vogler. "The European Contribution to Global Environmental Governance." *International Affairs* 81 (2005): 835-50.

5 Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London: Routledge, 2006).

## 2. LITERATURE REVIEW

### 2.1. CONCEPTUALIZING THE EU ACTORNESS THESIS

Actorness is defined as the European Union's capacity to act on the international stage. One of the ways through which this actorness is enacted can be through the 'formulation and implementation of EU policy.'<sup>6</sup> Although actorness is usually a preserve of studies about the EU within a more regional setting and as a security actor, it is also applicable to general notions about how the EU acts and operates on the international scene. Notwithstanding this definition, various scholarly works have tried to capture the issue and essence of EU actorness in order to conceptualize it more fully.<sup>7 8</sup>

According to Jupille and Caporaso, there are four standout components that capture an 'actor,' and these are recognition, authority, autonomy, and cohesion.

- i. Recognition: is seen as the 'sine qua non of global actorhood'<sup>9</sup> as it signifies the 'acceptance of and interaction with the entity by others.'<sup>10</sup>
- ii. Authority: this is akin to the EU's competence to act as it entails demonstrating that the EU has competence in a given subject matter.<sup>11</sup> Such an approach is reminiscent of a conceptualization of an actor within international law since actorness is tied to the EU having a legal personality to act only insofar as it has established legal competence in the areas in question.
- iii. Autonomy: is analogous to the institutional distinctiveness and independence of an actor from other actors. In other words, an actor has the agency to act. The aspect of autonomy also draws comparisons with Bretherton and Vogler as, according to them, actorness implies that an entity, in this instance, the EU, exhibits autonomy/agency and operates with volition or purpose.<sup>12</sup> Such a behavioural criteria of actorness means that an entity formulates purposes and makes decisions leading to some form of purposive action. It is in this regard that Sjøstedt already defined actorness as the 'capacity to behave actively and deliberately in relation to other actors in the international system.'<sup>13</sup>
- iv. Cohesion: implies the extent to which a given entity can formulate and articulate policy preferences that also resonate consistently and internally across its institutional make-up. 'It is about the connectedness of claims or actions through shared principles.'<sup>14</sup> Cohesion also entails having a shared commitment to a set of overarching principles.<sup>15</sup>

<sup>6</sup> Bretherton and Vogler, *The European Union as a Global Actor*, 2006:2.

<sup>7</sup> Joseph Jupille and James Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," in *The European Union in the World Community*, ed. Carolyn Rhodes, (Boulder: Lynne Rienner, 1998), 213-230.

<sup>8</sup> Bretherton and Vogler, *The European Union as a Global Actor*, 2006.

<sup>9</sup> Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998, 214.

<sup>10</sup> Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998, 214.

<sup>11</sup> Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998, 216.

<sup>12</sup> Bretherton and Vogler, *The European Union as a Global Actor*, 2006:15.

<sup>13</sup> Gunnar Sjøstedt, *The External Role of the European Community* (Farnborough: Saxon House, 1977:16).

<sup>14</sup> Arne Niemann and Tessa De Wekker, "Normative Power Europe? EU Relations with Moldova." *European Integration Online Papers* 14, no. 14 (2010):8. <http://eiop.or.at/eiop/texte/2010-014a.htm>.

<sup>15</sup> Bretherton and Vogler, *The European Union as a Global Actor*, 2006:30.

There are four dimensions of cohesion including:

- Value/goal cohesion – is there a similarity or compatibility of basic goals among the EU members and EU institutions?<sup>16</sup>
- Tactical cohesion – if goals are different, tactical cohesion is about making the goals fit with one another.
- Procedural cohesion – is there consensus on the rules and procedures used to process issues where conflict exists?
- Output cohesion – is affected by the level of agreement on goals and procedures, as well as the degree to which it is possible to link issues tactically. It considers whether the EU can arrive at collective positions in the form of policy outputs.

Therefore, just as the EU is a multifaceted actor which in fact has the propensity to appear as several different actors, at times contemporaneously, similarly the contending conceptualisations about EU's 'actorness' has a multidimensional character to it as there are many ways by which its actorness can be conceived.

## 2.2. NORMATIVE POWER CONCEPT

The concept of actorness has a behavioural criteria to it. This allows for an entity's 'actorness' to be conceptualized or formulated by taking stock of the decisions and purposive actions that actor carries out.<sup>17</sup> In turn, this capacity to behave actively and deliberately helps to forge an actor's identity in the long run. Crucially, identity is an important part of EU presence, with one of the collective identities that the EU has supposedly built up over time being that of a values-based 'normative power.' According to Larsen, a normative power can be construed as a unit with certain capabilities or characteristics,<sup>18</sup> hence, the EU is perceived as a unit that is by and large, based on norms, values along with a distinct set of rules. Strictly speaking, this notion of normative power derives from Ian Manners, who views EU conduct within the international system as having normative aspects at any given time. Allegedly, the EU is run on a set of self-declared normative principles which derive from the solid foundational lineage, based on norms; which itself is constructed upon.<sup>19</sup> The explication about the EU's role in the world politics in official EU texts such as the Lisbon Treaty, whereby the EU commits itself to be a proponent of founding values such as the rule of law, human rights, democracy, and fundamental freedoms highlights this awareness.

According to Manners, by virtue of this *sui generis* nature, the EU is predisposed to act normatively by projecting its ideas and ideals within the international system and other actors it interacts with. Hence, the concept of a normative actor is mostly about what the EU is, given that its solid foundational lineage bequeaths upon it a proclivity to act in a normative

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16 Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998.

17 Bretherton and Vogler, *The European Union as a Global Actor*, 2006.

18 Henrik Larsen, "The EU as a Normative Power and the Research on External Perceptions: the Missing Link." *Journal of Common Market Studies* 52, no. 4, (2014): 898. <https://doi.org/10.1111/jcms.12109>.

19 Ian Manners, "Normative Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies* 40, no. 2 (2002): 235–58.

way. Other scholars such as Diez,<sup>20</sup> Sjursen,<sup>21</sup> Manners,<sup>22</sup> Niemann and De Wekker<sup>23</sup> have all resonated with Manners in highlighting that EU action is always directed at the promotion of universal norms. This has led the concept of normative power to constantly be used when describing the distinctive European 'ideological influence on other members,'<sup>24</sup> albeit limited only within international relations. The notion also focuses on the 'ideational impact of the EU's international identity or role'<sup>25</sup> given it theorizes that it is through the ideational dimension of 'ideas, standards, and values'<sup>26</sup> that the EU comes to shape conceptions of what is 'normal' in international relations.

A normative actor is further depicted as engendering five core values, according to Manners. These core norms include – peace, liberty, democracy, the rule of law, and respect for human rights and fundamental freedoms, along with four subsidiary values – social solidarity, antidiscrimination, sustainable development, and good governance. When taken together, these norms and values represent and are indeed a manifestation of the 'normative identity.' It is therefore, by projecting and promoting the establishment of these norms and values that the EU can be said to exercise its normative power.

### 2.3. GAPS IN LITERATURE AND CONTRIBUTION TO KNOWLEDGE

The previous section demonstrated the wide, but specialized focus of EU actorness across EU scholarship, yet there remain limited identifiable instances attributing this concept of EU normative actorness with sport. With sport far and away fast becoming a key field in EU studies, and whereas the notion of 'actorness' appears to be one of the most frequently used when discussing the specificity of the EU, this concept has still seldomly been applied to the field of sport, thus leaving this growingly important area essentially unaddressed. This paper contributes by filling this gap. The scope of the paper, therefore, encompasses EU actions in the area of sport policy and what this policymaking denotes when grounded within EU scholarship in the political sciences, particularly when actorness blends with normative power. Since the author attributes the EU to be a purveyor of norms and values, the paper intends to highlight how each of the issues identified can be seen as normative actorness maximisers, when appraised by intertwining EU actorness and EU normative power to bring to life EU normative actorness in sport.

It is important to clarify from the outset that the paper will not delve into how normative power is diffused. Granted, Manners outlines the different ways of norm diffusion – contagion, informational diffusion, procedural diffusion, transference, overt diffusion, and the cultural filter,<sup>27</sup> but this paper shall not actually look at these mechanisms of norm transfer as it is

20 Thomas Diez, "Constructing the Self and Changing Others: Problematizing the Concept of "Normative Power Europe,"" *Millennium: Journal of International Studies* 33, no. 3 (2005): 613-636, <https://doi.org/10.1177/03058298050330031701>

21 Sjursen, Helene, "The European Union as a Normative Power: How Can This Be?," *Journal of European Public Policy* 13, no.2 (2006): 235-251, <https://doi.org/10.1080/13501760500451667>

22 Ian Manners, "The Normative Ethics of the European Union," *International Affairs* 84, no. 1, (2008).

23 Arne Niemann Tessa De Wekker, "Normative Power Europe? EU Relations with Moldova," 2010.

24 Manners, "Normative Power Europe: A Contradiction in Terms?," 2002, 238.

25 Manners, "Normative Power Europe: A Contradiction in Terms?," 2002, 238.

26 Manners, "Normative Power Europe: A Contradiction in Terms?," 2002, 239.

27 Manners, "Normative Power Europe: A Contradiction in Terms?," 2002, 238.

mainly fixated at how various EU actions in the area of sport policy echo features of normative power within them. Similarly, other strands that may explain the EU norm diffusion, such as Europeanization and External Governance, will also not be resorted to. In other words, the paper takes it as a given that EU action, be it through law or policy, is said to be normatively laden as it is EU values and norms that are broadcasted. However, it is the significance in prescribing this 'normative action' which this paper tries to link to EU actorness in sport thereby blending the two to the effect that they form a hybrid form of 'normative actorness' in the area of EU sport policy.

## 2.4. RESEARCH QUESTIONS

To tie together this section, the following five research questions emerge as key in driving this analysis. The first research question corresponds to the NPE concept, hence simply seeks to answer whether the EU exudes the qualities of a normative actor in sport in line with the NPE concept by Manners. In addition, the subsequent four research questions will help answer whether the EU fulfils all the qualities expected under the normative actorness thesis by Jupille and Caporaso.

- i. Is the EU a normative actor in the manner espoused by Ian Manners when looking at the area of EU sport?
- ii. Do other actors recognize the EU as an actor in sport?
- iii. What is the EU's legal competence to act in the instances of normative power highlighted?
- iv. Does the EU exhibit an institutional distinctiveness separate from other actors?
- v. What is the level or form of EU cohesion on each of the identified sports issues?

The paper tests the validity of the above questions with emerging answers helping to elucidate the overall ability of the EU to project itself as a normative sport policy actor.

## 3. RESEARCH DESIGN AND METHODOLOGY

This paper aims at analysing the EU's normative actorness against the backdrop of its sport policy domain. In order to fulfil this aim, the study applied a meta-analytical content-based design, which also relied on a qualitative and inductive case study approach, given the latter's suitability in scrutinizing processes over time.<sup>28</sup> The primary sources used comprised of the EU institutions (Commission, Council, Parliament, Court of Justice, etc.) while also encompassing secondary data capturing the interactions between the EU and Sport Governing Bodies, Olympic Committees, along with EU's relations with third countries via sport, as well as extending to its interaction with other policy sectors in the context of sport. Primary and secondary data sources were used to analyse the period from 2009 to 2022, which is the research's timeline.

A total of 12 official sample documents from the EU institutions were used following purposive sampling techniques, as well as a meta-analytical content analysis which provided extensive rich data that allowed the researcher to generate coded themes with the help of four mini case studies. In interpreting the data, the identified themes were integrated with the research

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28 Robert Yin, *Case Study Research: Design and Methods* (SAGE, Los Angeles, 2014).



questions in an attempt to show their analytical utility in providing answers to each of the research questions.

The analysed content has been structured the same way – that is by identifying the issue of interest arrived at via the coded themes, then interpreting the issue in light of the EU NPE concept, alongside/ followed by a conceptualization encased within the EU actorness thesis.

Table 1: Sample Documents Data Sources

Number of Documents	Document Type	Source Year
CJEU or General Court Judgments	2	2020; 2022
European Commission Decisions	2	2014; 2018
European Commission Reports	3	2014; 2016; 2022
European Council conclusions/declarations	1	2020
European Parliament Resolutions	1	2021
European Union Treaties and Charters	3	2007; 2012 (2)
<b>GRAND TOTAL</b>	<b>12</b>	

Source: Author's self-designed elaboration

#### 4. FINDINGS AND DISCUSSION ON NORMATIVE ACTORNESS

The article will now offer its main findings. This section answers the question: Is the EU a 'normative actor' in the manner espoused by Ian Manners when looking at the area of EU sport?

The findings for this section have been divided into two main thematic strands: (1) a depiction of EU normative actorness in sport through the lens of convergence – characterised by cooperation between the EU and the sport movement, entailing that EU actorness can be conceived as naturally taking place and (2) a depiction of EU normative actorness in sport through the lens of rupture – characterised by divergence and increased antagonisms, meaning that normative actorness has been arrived at due to EU activism. Under each of the thematic strands are mini case studies which help evaluate the framework by drawing theoretical inferences.

It is also important to note that the instances of 'normative actorness' pointed out in this section are associated with norms which include ideational features of EU action and conduct in/and or through sport, such as the values, ideas, ideals, standards, and rules through which it projects itself. Given that the NPE concept offered by Manners – which is characterised by five core and four subsidiary values – is of a very general nature, it is apt to consider that the EU's normative power comes in many forms, not least when interacting with the area of sport and not necessarily in line with the norms Manners pre-defines. Hence, keeping in mind the general norms Manners talks of, this section also considers norms and ideals exclusively germane to the field of EU sport, such as a pyramid structure or open competitions, for example.

## 4.1. STRAND 1: NORMATIVE ACTORNESS THROUGH THE LENS OF CONVERGENCE

The Treaty of the Functioning of the European Union of 2009 revolutionized the EU's interaction with sports since before its entry into force, the EU had no business in the EU sports so to speak. It is only with the coming into being of the Lisbon Treaty that a more comprehensive EU Sport policy could be defined, shaped, and refined, especially the ability to broadcast the accompanying norms and values of the EU sport model globally. Therefore, the Lisbon Treaty has notably proved to be a catalyst, firstly in the way the EU now has a legal personality to enact sport policy to begin with, and as well, to promote its values through the use of sport – something which has since gained more and more momentum owing to several initiatives. One of these have been coining of the European Dimension in Sport discourse, through which the promotion of EU values manifests.<sup>29</sup>

### *Case Study A: EU Sport Regulation*

The regulatory scope of the EU in the area of sport has meant that SGBs need to engage and comply with EU law. The EU has thereby been described as something that sports bodies could 'do business with,'<sup>30</sup> with scholars claiming that SGBs only cooperated or engaged with the EU and its institutions in order to soften their intrusive effects.<sup>31 32</sup> In particular, UEFA is portrayed as being among the leading SGBs notable for adapting its strategies towards a more cooperative model with the EU.<sup>33</sup>

According to Niemann and De Wekker, it is norms that are front and '...centre of relations' when it comes to the EU–SGB interaction.<sup>34</sup> Arguably, one of the ways by which norms are promoted is through involvement with SGBs and other actors affected by EU law externalization.<sup>35</sup> An example in this regard is when the EU was able to uphold the norm of respect for human rights by guaranteeing a minimum protection of individual privacy rights of athletes when commenting on the revision of the World Anti-Doping Code.<sup>36</sup> Another manner in which the EU action, alongside the SGBs, promotes the EU norms and values is through interinstitutional Arrangements for Cooperation. This is exemplified by the Commission–UEFA Arrangements for Cooperation that started in 2014, and were later renewed in 2018 and 2022, as well as with the Commission–European Olympic Committees Arrangement of 2022.

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29 Vladimir Zuev and Irana Popova, "The European Model of Sport: Values, Rules and Interests," *International Organisations Research Journal* 13, no.1 (2018), 51–65.

30 Stephen Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty," in *EU Law after Lisbon*, ed. Andrea Biondi, Pier Eeckhout and Stefanie Ripley (Oxford University Press, 2012), 410. <https://dx.doi.org/10.2139/ssrn.1747916>.

31 Borja García, "UEFA and the European Union: from confrontation to cooperation," *Journal of Contemporary European Research* 3., no. 3 (2007): 202–23.

32 Borja García and Stephen Weatherill, "Engaging with the EU in Order to Minimize its Impact: Sport and the Negotiation of the Treaty of Lisbon," *Journal of European Public Policy* 19, no. 2 (2012): 239.

33 García, "UEFA and the European Union: from confrontation to cooperation," 2007, 202.

34 Niemann and De Wekker, "Normative Power Europe? EU Relations with Moldova," 2010, 7.

35 Arnout Geeraert and Edith Drieskens, "Normative Market Europe: the EU as a force for good in international sports governance?," *Journal of European Integration* 39, no. 1 (2017). <https://doi.org/10.1080/07036337.2016.1256395>

36 European Commission, *Report on the Implementation of the European Union Work Plan for Sport 2011–2014*. 2014.

According to both Arrangements, football and the Olympic movement, as seen through UEFA and the European Olympic Committees (EOC) Arrangements respectively, share 'the values and principles of the European Union.'<sup>37 38</sup> The shared values extend to the respect for the rights and principles enshrined in the Charter of Fundamental Rights of the European Union, including non-discrimination, tolerance, respect for human rights, and equality. In what possibly seems like a recruitment of UEFA by the EU, it is clear that it is the EU norms and values that are projected to UEFA, as for instance, the European Commission has used the heightened contact with UEFA in implementing policies related to the topics covered by the Arrangement such as combating antisemitism. This would appear to resonate with the fundamental European norms and values enshrined in Article 21 of the Charter of Fundamental Rights of the European Union,<sup>39</sup> particularly those centred on non-discrimination<sup>40</sup>. It is this commitment in combating such negative phenomena alongside a proclamation of the traditional civilizational components of European identity like non-discrimination, which propels the European Sport Model to appear as a manifesto of EU leadership in establishing value orientations for other countries and regions and confirms the EU as a normative power.<sup>41</sup>

#### **4.1.1. Outcomes from the normative actorness perspective**

The interaction between the EU and sport actors in the form of SGBs, such as UEFA, allows the EU to portray itself as a normative actor in the area of sports. According to Chakawata, the Arrangement between the Commission and UEFA is strategic for a number of reasons, not least because it can help in the realization of the promotion of fundamental values of both, sport and of the European Union itself.<sup>42</sup> For example, both the Commission and UEFA have collaborated in a campaign to assist climate action since 2020. In fact, the Arrangement provided a platform for UEFA to amplify the visibility of the Commission's initiatives such as the European Green Deal during the UEFA EURO 2020<sup>i</sup> championships as UEFA helped in promoting the Green Deal.<sup>43</sup> The literature on actorness identifies a shared commitment to a set of overarching values, such as sustainable development as one of the basic requirements of actorness.<sup>44</sup> Other scholars offer a complimentary perspective when noting that the EU also advances its normative action by spreading its norms through other bodies or organisations that act as co-bearers of EU norms and values.<sup>45</sup> In this case, coupling with UEFA sees the

37 European Commission, *Commission Decision of 14/10/2014 adopting the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA)*, 2014.

38 European Commission, *Commission Decision of 19/02/2018 Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA)*, 2018. [https://sport.ec.europa.eu/sites/default/files/library/documents/decision-eu-uefa-cooperation-2018\\_1.pdf](https://sport.ec.europa.eu/sites/default/files/library/documents/decision-eu-uefa-cooperation-2018_1.pdf)

39 European Union, Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012. [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

40 European Commission, *Commission Decision of 14/10/2014 adopting the Arrangement*, 2014.

41 Zuev and Popova, "The European Model of Sport: Values, Rules and Interests," 2018.

42 Webster Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy." EU Sport Blog, 2020, accessed 03 June, 2023, <https://www.sportandeu.com/post/the-centrality-of-the-uefa-in-the-light-of-an-eu-sport-diplomacy>.

43 Webster Chakawata, "Needs Must: Second generation Commission-UEFA Arrangement reaffirms the EU's leading role." EU Sport Blog, 2022, accessed 18 April 2023, <https://www.sportandeu.com/amp/needs-must-second-generation-commission-uefa-arrangement-reaffirms-the-eu-s-leading-role>.

44 Bretherton and Vogler, *The European Union as a Global Actor*, 2006.

45 Ekaterina Savorskaya, "The Concept of the European Union's Normative Power," *Baltic Region* 26, no.4 (2015): 66-76.

Commission combine political leadership on climate action with football's visibility and influence,<sup>46</sup> which allows for the spreading of environmental norms through the area of sport.

In addition, scholars have singled out the Commission–UEFA Arrangements as merely a way for a competition authority such as UEFA to supervise the regulator in the form of the Commission<sup>47</sup> or outrightly capture the Commission,<sup>48</sup> all of which are deemed helpful in facilitating better compliance. Such a scrutiny is primarily placed on the Commission–the UEFA Arrangement mostly because the Commission has, hitherto until 2022, only struck such an Agreement solely with UEFA and not with regulators of other sports.<sup>49</sup> However, the landscape has now shifted slightly, given that the Commission concluded a similar Arrangement with the European Olympic Committee in June 2022. Although not an SGB proper, the Arrangement with the EOC is a step in the right direction as it symbolizes the deliberate attempt to set up a wider scheme in engaging with different sports by the Commission. In doing so, it allows the Commission to promote its norms not just via UEFA, (of which whose relationship with has already been under the microscope), but also via bodies, such as the EOC, comprising of the EU and non-EU but European committees.

### *Case Study B: Carving out an EU Sport Diplomacy*

The coming into being of the Lisbon Treaty in 2009 proved to be a watershed moment as it was a game changer first in the way the European Union would have a legal personality to enact a sport policy to begin with, while also reflecting an ambition to project its European dimension in sport externally towards other regions.<sup>50</sup> Scholars regard the Lisbon Treaty as the springboard for the EU's use of sport in amplifying its foreign policy messages.<sup>51</sup> Key in this ambition is Article 165/3 TFEU declaring that '*the Union shall foster co-operation with third countries...in the field of sport...*',<sup>52</sup> a declaration which 'frees up the EU to advance its external actions through sport.'<sup>53</sup> In fact, even prior to the coming into existence of the Lisbon Treaty, coupled with the constraint ensured by the principle of conferral in Article 5 TEU, the EU has long exhibited strong machinations about the potential of using sport to achieve EU policy goals.<sup>54 55</sup>

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46 UEFA, "#EveryTrickCounts: joint UEFA-European Commission campaign tackles climate change. 18 October 2021, <https://uefa.com/insideuefa/mediaservices/mediareleases/news/026e-1381ac4083d9-81ee53423345-1000--everytrickcounts-joint-uefa-european-commission-campaign-tackle/>

47 Arnout Geeraert, *The EU in International Sports Governance: A Principal – Agent Perspective on EU Control of FIFA and UEFA* (New York: Palgrave MacMillan, 2016).

48 Henk Erik Meier, Borja García, Serhat Yilmaz and Webster Chakawata, "The Capture of EU Football Regulation by the Football Governing Bodies," *Journal of Common Market Studies* (2022): 1-20. <https://doi.org/10.1111/jcms.13405>.

49 Giorgio Monti, "Sports Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union," TILC Discussion Paper, Tilburg University, 2023. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4316259](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4316259).

50 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

51 Richard Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come." *Journal of Common Market Studies* 60, no.5 (2022): 1511-1528. <https://doi.org/10.1111/jcms.13317>.

52 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01, Art 165-166.

53 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

54 Coopers and Lybrand. *The Impact of European Union Activities on Sport*. Study for DGX of the European Commission. 1995.

55 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

Far and above, one of the means through which the EU can produce and reproduce its ideas and ideals through sport diplomacy and externally to other regions is via its interinstitutional relations with SGBs such as UEFA. As already alluded to, the two have been engaged in an advanced cooperation since 2014, which signifies a step towards strengthening of diplomatic relations with sport organizations on the Commission's part.<sup>56</sup> Whilst a lot has been made about this cooperation by several scholars and outside the scope of this paper, what is truly telling when it comes to EU sport diplomacy in light of the Commission–UEFA Arrangements for Cooperation is that UEFA harbours member associations such as Azerbaijan, Georgia, Israel, Moldova and Ukraine – all of which are quite important for the EU when it comes to the European Neighbourhood Policy (ENP).<sup>57</sup> In Israel, the EU is vested in resolving the protracted Israeli–Palestinian Conflict, among other things, while also wanting to resolve the Nagorno–Karabagh conflict in the South Caucasus, where it often plays a political role through engagements, but without recognising the de facto states there.<sup>58</sup> It is noteworthy that the ENP is already one of the EU External Relations and Foreign Policy fields identified by the High Level Group on Sport Diplomacy as an area in which Sport could bring added value if deployed in advancing the EU's external relations objectives.<sup>59</sup>

In addition, further actions have also been enacted to help further fortify EU sport diplomacy. According to Parrish, this has been done through a series of ad hoc practical initiatives, such as the integration of sport into the EU–China High Level People to People Dialogue (HPPD) in November 2017.<sup>60</sup> Furthermore, sport was also a feature of the EU–Japan Policy Dialogue on Education, Youth and Sport in July 2018.<sup>61</sup> This was designed to help foster people to people contacts in the context of the Japan–EU Strategic Partnership Agreement.

#### **4.1.2. Outcomes from the normative actorness perspective**

The advent of the Lisbon Treaty has allowed the EU to package and project itself as a normative actor through sport diplomacy perhaps more than at any other time. In particular, the EU's cooperation with UEFA is important in this regard as through it, UEFA becomes a touchstone to advancing the EU's diplomatic outreach via sport by transferring EU principles such as transparency, good governance, and accountability, along with democratization, human rights and tolerance among others.<sup>62</sup> Indeed, scholars such as Geeraert and Drieskens view this as an uptake of 'new sectoral diplomacies' such as sport by the EU, in its external relations portfolio.<sup>63</sup> This promotion of rules and values is something that the Commission has earmarked to be incorporated into each of the sectoral programs that characterize EU relations with third countries, cutting across all dimensions (economic, environmental,

56 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

57 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

58 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

59 European Commission, *High Level Group on Sport Diplomacy: Report to Commissioner Tibor Navracsics*, 2016, [https://ec.europa.eu/assets/eac/sport/library/policy\\_documents/hlg-sport-diplomacy-final\\_en.pdf](https://ec.europa.eu/assets/eac/sport/library/policy_documents/hlg-sport-diplomacy-final_en.pdf).

60 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

61 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

62 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

63 Arnout Geeraert and Edith Drieskens, "Playing a different game: The EU's engagement in international sports Governance," in *The European Union's Evolving External Engagement: Towards new sectoral diplomacies?*, ed. Chad Damro, Sieglinde Gstohl and Simon Schunz (Routledge, 2018), 216-236.

political, and social),<sup>64</sup> hence sport presents another arena to drive EU norm entrepreneurship in achieving overarching foreign policy goals.

According to the Commission, sport is one of the EU's most prominent sources of attraction for the external audiences,<sup>65</sup> and sport diplomacy now forms an indispensable part of the EU's new strategy having emerged as a credible 'diplomatic lubricant'<sup>66</sup> in furthering the EU's foreign policy goals. Moreover, the status of sport within the EU's institutional architecture has never been more enhanced than it currently finds itself.<sup>67</sup> In deploying it as a diplomatic resource, the Commission does this by promoting European values through sport diplomacy.<sup>68</sup> Further still, Arrangements such as the one with UEFA have also been infused with wanting to promote EU norms through sport events such as the UEFA EURO 2020 (staged in 2021) with the aim of portraying 'a positive image of Europe and its common values.'<sup>69</sup> Apart from this, a norm interplay is also seen through the promotion of ethical norms such as financial fair play which, according to Zuev, has its roots in the traditional EU principle of good governance<sup>70</sup> which takes an economic-functional dimension.<sup>71</sup> Such an application of the financial fair play principle goes a long way in consolidating the normative power of the EU, while also strengthening its position in the region, given that it also extends its remit to the non-EU countries.<sup>72</sup>

## 4.2. STRAND 2: NORMATIVE ACTORNESS THROUGH THE LENS OF RUPTURE – VYING WITH MARKET DISRUPTORS

The traditionally endorsed organisational structure of sport in Europe has always seen sports federations being the rule-setting and regulatory principals with exclusive competence over their respective disciplines. According to Pijetlovic, while performing this function, they also carry the dual role of being commercial actors with exclusive economic interests in the sports they oversee, a conflict of interest that has a particularly detrimental effect on potential competitors on the market.<sup>73</sup> Due to this precarious position in which sport federations find themselves – jostling between regulatory and commercial interests – sport in the EU has encountered some existential threats in terms of its organizational pyramid in the form of breakaway or alternative competitions. Thorp and Shah define breakaway competitions as leagues that have 'been set up without the sanction of the "official" national or supranational governing body for that sport,'<sup>74</sup> while Pijetlovic further narrows them as partly opened or

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64 Tina Freyburg, Sandra Lavenex, Frank Schimmelfennig, Tatiana Skripka and Anne Wetzel, "EU Promotion of Democratic Governance in the Neighbourhood," *Journal of European Public Policy* 16, no. 6 (2009): 916-934.

65 European Commission, *High Level Group on Sport Diplomacy*, 2016.

66 Chakawata, "The Centrality of UEFA in the light of an EU Sport Diplomacy," 2020.

67 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

68 Council of the European Union. *European Union Work Plan for Sport (1 July 2017–31 December 2020) – Council Resolution, 24/05/2017, 9639/17*. 2017. <http://data.consilium.europa.eu/doc/document/ST-9639-2017-INIT/en/pdf>

69 European Commission, *Commission Decision of 19/02/2018 Arrangement for Cooperation*, 2018.

70 Vladimir Zuev, *Global Regulatory Institutions* (Moscow: Magistr, 2016).

71 Hendrik Huelss, "A Force for Good Governance? The European Union's Normative Power and Standards of Appropriate Governing," *European Foreign Affairs Review* 17, no.1 (2012): 93-112.

72 Zuev and Popova, "The European Model of Sport: Values, Rules and Interests," 2018.

73 Katarina Pijetlovic, *EU sports law and breakaway leagues in football* (The Hague: T.M.C. Asser Press, 2015).

74 Simon Thorp and S Shah, "Breakaway leagues: justifying restrictions under EU law." World sport law report, 2008, accessed 06 June 2023, [http://www.onsidelaw.co.uk/binary\\_data/147\\_world\\_sport\\_law\\_report.pdf](http://www.onsidelaw.co.uk/binary_data/147_world_sport_law_report.pdf).

closed private leagues created by organizers united by commercial interests.<sup>75</sup>

### **Case Study C: International Skating Union Case**

A precursor in the rising instances of third-party competition sport organisers, bringing to a head the relationship between sport and the application of EU competition law when looking at the remit SGBs have in limiting commercially driven competitions came by way of the International Skating Union (ISU) case. As a precursory instance, it also drew attention to the relationship between athletes and sport's governing bodies, extending to the rights of athletes to participate in events organised by a third party.

As the globally administrative figure skating and speed skating body, ISU prevented a private company (third party) from organizing the Dubai Icederby Grand Prix in 2014. Moreover, the ISU further threatened to enforce its Eligibility rules that would essentially entail a lifetime ban for all athletes and officials partaking in competitions arranged by parties other than ISU. Consequently, two Dutch professional speed skaters (Mark Tuitert and Niels Kerstholt) levied a complaint to the Commission, against the ISU's Eligibility rules. In turn, the Commission ruled the Eligibility rules enforced by ISU unjustified as they were not inherent in or proportionate to the pursuit of legitimate objectives and, as such, in breach of Article 101 TFEU. In 2020, the General Court of the European Union later echoed the Commission's decision, citing the Eligibility rules as an infringement upon EU competition law, but did not deem the Commission's finding of the arbitral rules of ISU problematic under the same law. Thus, while ISU had performed the regulatory function of an SGB, its pre-authorization system was deemed as not catering to the objective, transparent and non-discriminatory procedure in pursuing legitimate objectives. ISU later appealed this General Court judgment, which deemed it to have restricted the organising of speed skating competition by a third party and a ban on competing athletes therein, thereby deeming ISU to have breached Article 101 TFEU.

European sport is best understood as 'a pyramid with a hierarchy'<sup>76</sup> which is made up of different 'integrated and interdependent' levels,<sup>77</sup> with continental and international federations at the top of the pyramid. This pyramidal paradigm allows SGBs to be the sole regulators of their respective disciplines and grants them a monopoly within reasonable territorial limits. However, scrutinized under Article 101 and Article 102 TFEU, this pyramidal setup becomes vulnerable under EU competition law.<sup>78</sup> The ISU case offers a prime example since ISU sought to use its regulatory powers as the SGB for speed and figure skating, to restrict competition and realize a commercial advantage for its undertaking in the process,<sup>79</sup> hence forming part of the reason why the General Court followed the Commission in characterising ISU's rules as a restriction of competition.

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75 Pijetlovic, *EU sports law and breakaway leagues in football*, 2015.

76 European Commission, *European Model of Sport: Consultation Document of DGX (1998)*, para. 1.1

77 James Nafziger, "A comparison of the European and North American models of sports organisation," *International Sports Law Journal*, no. 3-4 (2008): 100.

78 Rusa Agafonova, "International Skating Union v. European Commission: Is the European sports model under threat?", *The International Sports Law Journal* 19 (2019): 87-101. <https://doi.org/10.1007/s40318-019-00155-6>.

79 Robby Houben, Jan Blockx and Steve Nuyts, "UEFA and the Super League: Who is calling who a cartel?," *The International Sports Law Journal* (2022): 205-216. <https://doi.org/10.1007/s40318-021-00201-2>.

### **Case Study D: The European Super League Case**

Having taken regard to the ISU case and fast forwarded to 2021, the European Super League was formed originally as the brain child of twelve European clubs comprising six from England, three from Italy, and three from Spain. It revolved around the formation of a new football competition in a closed system featuring footballing heavyweights, hereby challenging the monopoly of the European governing body UEFA. According to the Super League, such a competition would help by '*improving the quality and intensity of existing European competitions...*' along with '*creating a format for top clubs and players to compete on a regular basis.*'<sup>80</sup> In response, football's global and continental custodians FIFA and UEFA – in fierce opposition to such breakaway leagues, summarily dismissed such a competition, labelling it a threat to the traditional pyramid football model based on solidarity and open competitions, and otherwise disregarding it as a financially motivated gimmick.

With other football clubs, politicians, European leaders, and football fans rejecting the underpinning rationale of the European Super League project and actively clamouring for its dissolution alongside the threat of sanctions from FIFA and UEFA, nine of the founding twelve members withdrew their support, leaving only Barcelona, Juventus, and Real Madrid to appeal to a Spanish court against UEFA's supposed dominant position as both competition regulators and commercial operators. By way of the Preliminary Ruling procedure, the case was referred to the CJEU to clarify the interpretation of EU competition law and of the fundamental economic freedoms in order to establish whether UEFA had breached the EU competition law. In concrete terms, the remaining three teams (now European Super League Company) sought to challenge the legality of the specific UEFA (Articles 49 and 51) and FIFA (Articles 22.3, 71 and 73) articles and provisions, doing so while seeking recourse through disparate EU law provisions ranging from competition provisions (Articles 101 and 102, TEU) to fundamental freedoms of EU law (Articles 45, 49, 56 and 63).

The European Super League CJEU hearing resulted in an Opinion in December 2022 by Advocate General Rantos. In what is usually a dress rehearsal for the Courts final decision, AG Rantos gave an Opinion that FIFA and UEFA rules that were largely contested by the European Super League Company were indeed compatible with EU competition law due to their 'proportionate' and 'legitimate' objectives related to the specific nature of the sport. The AG went on to hail the 'special nature of sport' appearing in Article 165 of the Treaty of Lisbon and the groundwork laid by the EU institutions in advancing this special nature. In turn, this 'special nature' commands the 'constitutional recognition of the European Sports Model' run on the basis of a pyramid structure, open competitions, and solidarity within the football pyramid.<sup>81</sup>

Indeed, the Attorney General's Opinion falls in line with the previous judgments in EU case law, particularly in the Meca Medina judgment where the CJEU asserted that restrictions contained in rules set by professional sports governing bodies may escape the prohibition of Article 101 (and 102) TFEU if these restrictions are inherent in the pursuit of legitimate

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80 The Super League, Press release. 2021, accessed 19 May 2021, <https://thesuperleague.com/press.html>.

81 Court of Justice of the European Union, *Advocate General Rantos: The FIFA-UEFA rules under which any new competition is subject to prior approval are compatible with EU competition law*, Press Release No 205/22.15 December 2022, Luxembourg, 2022.



objectives of general interest and are proportionate to them. It also falls in line with the CJEU judgment in *Wouters* where the Court made restriction of competition permissible if done in the interest of the public. This reinforces Houben's assertion that the Commission and the European Courts have, over the years, developed some sympathy for the specific need to organize sports competitions especially when decisions of undertakings which restrict freedom of action, are underpinned by legitimate objectives.<sup>82</sup> Hence, in this case, the solidarity principle characterising European football can be regarded as part of the specific nature of football and contributes to the social function thereof.<sup>83</sup>

#### **4.2.1. Outcomes from the normative actorness perspective**

The parallels between the ISU case and the European Super League litigation are apparent and allow the EU to position itself as a normative actor when dealing with the threat of breakaway competitions. While both cases bring to a head the relationship between sport and the application of EU competition law when considering the remit SGBs have in limiting commercially driven competitions organized by third parties, despite the technical similarities between the two, it is notable that initial judgments in both offered divergences.

Looking at the European Super League litigation, while FIFA and UEFA restrictions are deemed to be underpinned by the legitimate objectives, what is really telling in terms of EU normative actorness in sport is that aspects such as solidarity within the football pyramid along with proper conduct of competitions carry significant weight in the eyes of the Commission and indeed, this is credited with making the case for UEFA and FIFA's 'right of refusal' stronger and more credible than at any point in the ISU case.<sup>84</sup> Thus, whereas in the ISU case, the pyramid setup strikes as non-compliant due to its effect in restricting free competition within the internal market under EU competition law provisions, in the European Super League litigation, the EU Courts revert to normative type by recognizing the relevance of the European Sports Model and thereby protecting the various elements encapsulating it such as, the solidarity regime, open competitions, and a hierarchical pyramid structure at continental, national, and local levels.<sup>85</sup> The solidarity model, for example, can be regarded as part of the specific nature of football as it contributes to football's social function, hence making the Commission and the Courts determined to protect it.

In explaining the divergences in both cases and in particular that of the European Super League, one ought not to also forget the importance attached to football in Europe in relation to other sports. According to the European Parliament, football is an inalienable part of European culture and is regarded as Europe's number one sport, but it also transcends Europe as it has a 'pulling' potential through which it creates a European consciousness.<sup>86</sup> Some scholars have touted this seemingly evident Commission inclination and signalling of support towards

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82 Houben, Blockx and Nuyts, "UEFA and the Super League: Who is calling who a cartel?," 2022.

83 Pijetlovic, *EU sports law and breakaway leagues in football*, 2015: 270.

84 Houben, Blockx and Nuyts, "UEFA and the Super League: Who is calling who a cartel?," 2022.

85 Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA*, 2016.

86 Jurgen Mittag and Benjamin Legrand, "Towards a Europeanization of football? Historical phases in the evolution of the UEFA European Football Championship," *Soccer and Society* 11, no. 6 (2010): 709-722.

UEFA as the regulatory capture of the Commission by the football governing bodies.<sup>87</sup> While this is a fair assessment, the jury remains out on whether this is ultimately the case when taking into account how the EU's approach to sports itself has been strongly influenced by the jurisprudence of the European Court of Justice. As far as EU law is concerned, the specificity of sport entails that sports rules can still be applied even if they contain restrictions to EU law, subject to having demonstrated a pure sports interest – as captured in the European Super League account. Hence, taking the European Sport Model (and its preservation thereof) as the highest embodiment of a 'norm' that the EU and its institutions can recognise, protect, and promote when it comes to the area of sport, it can be argued that this can be construed as normative actorness by the EU in the area of sport, given the core distinctive features comprising that sport model.

This is further substantiated by the Advocate General Rantos' complementary Opinion in the ISU case, whereby he opines that the judgment of the General Court on the anticompetitive nature of ISU rules ought to be set aside, and for the case to be referred back to the General Court.<sup>88</sup> This somewhat echoes the Opinion rendered in the European Super League case, thereby bringing the interpretation of EU law in the two cases more closely aligned, at least in theory. In so doing, this demonstrates how the landscape has evolved with the EU being now more determined to take into account the specificity of sport and safeguarding of the hierarchical sport organisational pyramid therein. Given that what is really at stake in the European Super League case is not only dealing with football in the application of EU law, as much as it is about dealing with sport. The leading scholars also regard the Opinion as having 'constitutionalised' sport in the EU in its own right, as it makes sport ascend to have constitutional value in the Treaty, much like competition is a constitutional value of the treaty.<sup>89</sup>

While it is apparent that the concept of the specific nature of sport is taken into account when driving the pushback against breakaway competitions such as the European Super League when assessing whether it complies with the requirements of EU law (fundamental rights, free movement, prohibition of discrimination, competition, etc.), these prerequisites of EU law also comprise part and parcel of the EU's more hardcore political norms. For example, according to Article 45 of the TEU, the right to free movement of workers is a requirement of EU law<sup>90</sup> as it constitutes the exercise of such values, such as respect for human rights, democracy, freedom, and fundamental rights. In essence, these are all core EU norms defined by Manners. Therefore, even though it is the so-called specificity of sport that the internal market and competition law provisions are based on by the Court, the EU's normative actorness through the area of sport is perhaps nowhere seen more fully than in its ardent support for these above mentioned liberal norms that not only intersect with sport, but are 'generally acknowledged, within the United Nations system, to be universally applicable.'<sup>91</sup>

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87 Meier, García, Yilmaz and Chakawata, "The Capture of EU Football Regulation by the Football Governing Bodies," 2022.

88 General Court of the European Union, *The General Court confirms that the rules of the International Skating Union (ISU) providing for severe penalties for athletes taking part in speed skating events not recognized by it are contrary to EU competition law*, Press Release No 159/20, Luxembourg, 2020. <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200159en.pdf>

89 Monti, "Sports Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union," 2023.

90 European Union, Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012., Art. 45.

91 Manners, "The Normative Ethics of the European Union," 2008.

## 5. ANALYSIS ON THE NORMATIVE ACTORNESS CRITERIA

### 5.1. FULFILLING THE NORMATIVE ACTORNESS CRITERION

Excluding norms is fairly straightforward as the paper has shown so far. Thus, while the EU might portray itself as a normative power, does it act in a manner befitting of the actorness thesis when looking at other features of its normative action? Hence, a second sub-related question is warranted to establish whether the EU exhibits a normative actorness in the field of sport, and it revolves around the following key considerations:

- i. Do other actors recognize the EU as an actor in sport?
- ii. What is the EU's legal competence to act in the instances of normative power highlighted?
- iii. Does the EU exhibit an institutional distinctiveness separate from other actors?
- iv. What is the level or form of EU cohesion on each of the identified sport issues?

#### *5.1.1. Recognition Test: Do other actors recognize the EU as an actor in sport?*

According to Jupille and Caporaso, the EU's recognition as a global actor stems from the 'acceptance of and interaction with the entity by others.'<sup>92</sup> In this regard, several instances would point to the fact that the EU is widely recognised as a leading actor in the area of sports. One instance is the interaction between the EU and other sports actors in the form of Sports Governing Bodies such as UEFA, FIFA, as well as the EOC. Through different instruments, such as Arrangements for Cooperation, this serves to reinforce the recognition and acceptance of the EU by these sports entities, as an actor par excellence in sport. Both, Article 165 TFEU and Savorskaya<sup>93</sup> proffer that the Commission can couple with active partner organisations, akin to UEFA and the EOC. This allows for the spreading of these norms in the area of sports as such organisations act as co-bearers of EU norms and values. It is in this regard that Geeraert established that sport organisations such as FIFA and UEFA do also help enhance the Commission's legitimacy to conduct sports policy.<sup>94</sup> This is akin to recognition, the 'sine qua non of global actorhood.'<sup>95</sup>

Another instrument that can be used as a yardstick in assessing whether the EU has the recognition as a sport actor can be the extent of acceptance of its European Sport Model. The European Sports Model, in many ways an ideal type when it comes to international sports governance, has been developed by the EU institutions, and it specifies the core features of how sport is organised in Europe.<sup>96</sup> Among its core essential elements, it is characterised by a pyramid structure, open competitions, solidarity, and autonomy. This preoccupation or rather a recognition of the European Sport Model is also evident in the emphasis of the Arrangements for Cooperation between the Commission and sports organisations like UEFA and the EOC. As stated by Chakawata, the rhetoric of the new Arrangements is that of defiance, as the

92 Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998.

93 Savorskaya, "The Concept of the European Union's Normative Power," 2015.

94 Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA*, 2016.

95 Jupille and Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," 1998.

96 KEA and ECORYS, *Study on the European Sport Model: A report to the European Commission*, Directorate-General for Education and Culture. Brussels: European Commission, 2022.

focus is exclusively stressed on the European Sport Model and the European values inherent within that model. Accordingly, in the Commission–UEFA Arrangement, the commitment to the ‘European Sport Model’ is expressly mentioned no less than 6 times compared to previous Arrangements, whereas in the Commission–EOC Arrangement, this mention is made at least 3 times.<sup>97</sup> Given that the EU’s *Acquis Communautaire sportive* is comprised of the common rules, rights, norms, and values prescribed within the European Sport Model, acceptance of the Commission’s European Sport Model with accumulated EU legislation in sport hereby confirms and affirms its recognition even by other sports bodies.

Evidently, an even more telling milestone in terms of the EU’s recognition as an actor in the field of sport is its unanimous recognition by Sport Governing Bodies in the wake of proposals to form a European Super League. As seen in Walrave and Koch along with Mecca Medina and others, Sport Governing Bodies and actors representing professional sports, have always sought and indeed prided themselves in securing exemption of the sports sector from the marauding application of EU law. Indeed, they even went on to claim that sport was autonomous and independent from interference from other actors while viewing the Commission with suspicion when it comes to the control and regulation of sport, something which has been labelled as ‘interference by non-sporting entities (such as EU institutions).’<sup>98</sup> Yet remarkably, however, ever since plans to form a Super League came to light, these Sport Governing Bodies and actors have responded by seeking for more rather than less intervention by the EU institutions and governments, which is significant as it helps indicate the recognition allotted to the EU when it comes to sport. In fact, even bodies such as the Olympic Committee and its sports have also in this period stated their declaration of EU recognition given that EU intervention gives sports federations the legal certainty and flexibility needed in regulating their sports as the European Super League case impacts all sports.<sup>99</sup>

### **5.1.2. Authority Test: What is the EU’s legal competence to act in the instances of normative power highlighted?**

The EU’s authority as an actor is analogous to the legitimacy of its legal competence to act within a given area. As such, it is with the coming into being of the Lisbon Treaty that the EU was conferred some modest competencies in sport.<sup>100</sup> In addition, however, it is the regulatory jurisprudence offered by the CJEU that has given the EU authority and competence to act in the area of sport. While this authority may not be widespread and replete, it conceptualizes the EU as an actor as it is tied to competition law where the EU has an undoubted legal personality to act. This authority has allowed the Commission to assume the role of competition law public enforcer and legal guardian of the treaties, especially in instances where sport comprises an economic activity.

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97 Chakawata, “Needs Must: Second generation Commission-UEFA Arrangement reaffirms the EU’s leading role,” 2022.

98 Pijetlovic, *EU sports law and breakaway leagues in football*, 2015: 7-8.

99 José Araujo, *Review of the Economic and Legal Aspects of the Organisation of Football in Europe*, Luxembourg, 2023.

100 Monti, “Sports Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union,” 2023.

This is why, due to the EU's authority in sports, the CJEU is emboldened to constitutionalize the European Sports Model in the manner stated by AG Rantos. Article 165 establishes the EU's authority as it culminates the political views of the EU institutions on the European Sports Model, hence it was not by chance that the provisions of Article 165 were adopted in the Lisbon Treaty itself, but as a deliberate means to hand sport a constitutional dignity.<sup>101</sup> The Court, for the first time, thereby draws out principles in EU law from the political intent of the Treaty<sup>102</sup> by exercising the authority to recognize the constitutional status of sports when it concretizes the pre-authorisation powers of sport federations against interests seeking to undermine the sports ecosystem. This hereby constitutionalizes the European Sport Model that has Article 165 as its building block.

Moreover, far from giving a *carte blanche* to sports federations, as many EU sport scholars and commentators may have observed, the Commission articulates that the granting of regulatory rights and powers to sports bodies is contingent upon them in turn respecting EU laws.<sup>103</sup> Hence, even though a sport federation such as FIFA is non-resident in the EU and has at times proven difficult to control,<sup>104 105</sup> it is the EU that has emerged as one of the few public bodies able to regulate it due to its authority.<sup>106</sup>

### **5.1.3. Autonomy Test: Does the EU exhibit an institutional distinctiveness separate from other actors?**

The EU's autonomy as an actor refers to its agency to act independent of other actors within a system. Taking sport as an international system, therefore, the EU's autonomy is projected by how the EU operates with the purpose to entrench the influence of EU law on sports actors and activities far removed from EU territory itself. Added to FIFA and UEFA are other powerful Swiss-based entities, such as the Court of Arbitration for Sport (CAS) and the World Anti-Doping Agency (WADA), whose governance ought to emanate from Swiss law. Pijetlovic describes *lex sportiva* as 'the body of norms that binds its subjects is created and enforced by national or international sports federations including, in particular, the jurisprudence of the Court of Arbitration for Sport.'<sup>107</sup> By and large, these Switzerland-based entities ought to benefit from a quasi-unregulated system, including from public authorities domiciled outside the hosting nation, yet EU law has had a substantial impact on the functioning of these organisations.<sup>108</sup> As such, the EU typical regulatory structure of the *lex sportiva* ensures that it is impossible to resist the marauding influence of EU law on European sport entities outside of the EU bloc itself. One reason this happens is that most sporting activities taking

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101 Da Cruz Vilaça, *Review of the Economic and Legal Aspects of the Organisation of Football in Europe*, Luxembourg, 2023.

102 Ian Forrester, *Review of the Economic and Legal Aspects of the Organisation of Football in Europe*, Luxembourg, 2023.

103 Jean-Loup Chapelet, *The autonomy of sport in Europe* (Strasbourg: Council of Europe Publications, 2010).

104 Roger Pielke, "How can FIFA be held accountable?" *Sport Management Review* 16 (2013): 255 – 267.

105 Arnout Geeraert and Edith Drieskens, "The EU Controls FIFA and UEFA: A Principal-Agent Perspective," *Journal of European Public Policy* 22 (2015): 1448–1466.

106 Henk Meier and Borja Garcia, "Protecting Private Transnational Authority Against Public Intervention: FIFA's Power over National Governments," *Public Administration* 93, no.4 (2015): 890 – 906.

107 Katarina Pijetlovic, *EU sports law and breakaway leagues in football*, 2015.

108 Geeraert, *The EU in International Sports Governance: A Principal – Agent Perspective on EU Control of FIFA and UEFA*, 2016.

place in the EU or connected to it must comply with EU law – something which usually entails an acceptance of EU sport-related norms and values.

This has created for example a situation whereby non-EU countries that are UEFA members such as Israel, Georgia, Azerbaijan, etc., have had to comply with 'EU law' provisions when it comes to their sports practices.<sup>109</sup> This would appear to suggest that throughout the bloodstream of transnational sports law, what is being transported/promoted is not purely national sports law or regional law but rather; it is EU legal precepts, concepts, ideas, and ideals; extending to norms and values. Consequently, with the reliance on EU law a *fait accompli*, this means that sports rules and principles that are promoted and applied globally draw heavily from 'EU law,' which truly is a catalogue of norms and values. This showcases that what we think of as transnational sports law is in fact EU law that is complex and interwoven, which bequeaths upon itself an almost universal and extra-terrestrial dimension. More still, with the European Sport Model being applied also beyond borders, this has ensured that EU law spill overs to other regions, thereby making it a powerful resource for projecting and promoting European norms, values, and interests in sport management practice at the global level.<sup>110</sup> It is in this regard that Sjøstedt already defined actorness as the 'capacity to behave actively and deliberately in relation to other actors in the international system,'<sup>111</sup> something one sees the EU doing through the intrusive effects of EU law albeit within sport.

#### **5.1.4. Cohesion Test: What is the level or form of EU cohesion on each of the identified sport issue?**

According to Jupille and Caporaso, EU actorness has cohesion when articulated actions or policy preferences resonate internally, and consistently across the EU institutional make-up.<sup>112</sup> EU actorness thereby has everything to do with preference homogeneity not only at EU level but across its institutional structures and member states. The period following the coming into being of the Lisbon Treaty draws some very relevant examples of EU cohesion. While the Commission has been especially prominent in setting the agenda regarding EU sport, parts of its institutional configuration have also increasingly showcased some form of cohesion when it comes to affirming the centrality of sport.

At EU level, the High-Level Group established by Commissioner Tibor Navracsics already recommended using sport in promoting EU values through major sport events and also leveraging it to cultivate an EU organizational culture of sports diplomacy.<sup>113</sup> At the member state level, the utilization of sports in order to broadcast European norms and values is also being developed. According to ISCA, France boasts the most well-developed national strategy in the EU, which is aimed towards economic growth alongside developing French influence

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109 Webster Chakawata, "The impact of the EU-UEFA Arrangement for Cooperation not withstanding EURO 2020 postponement," EU Sport Blog, 2021 accessed 05 May 2023, <https://www.sportandeu.com/amp/the-impact-of-the-eu-uefa-arrangement-for-cooperation-not-withstanding-euro-2020-postponement-i>.

110 Roger Levermore and Peter Millward, "Official Policies and Informal Transversal Networks: Creating 'PanEuropean Identifications' through Sport?", *The Sociological Review* 55, no 1 (2007): 144–164.

111 Sjøstedt, *The External Role of the European Community*, 1977.

112 Joseph Jupille and James Caporaso, "States, Agencies and Rules: the European Union in global environmental politics," in *The European Union in the World Community*, 1998:215.

113 European Commission, *High Level Group on Sport Diplomacy*, 2016.

globally.<sup>114</sup> Meanwhile, at the Council level, utilizing sport as a means of projecting EU norms and values has been recognized as a 'priority theme' by the Council Resolution on the *European Union Work Plan for Sport 2017–2020*.<sup>115</sup> In fact, by identifying the promotion of EU values via sport as a priority theme, the Council Resolution has been said to have added political and administrative impetus to the importance of using sport as a vehicle in showcasing EU values within and among other EU institutions.<sup>116</sup> This has led to, among others, the creation of key platforms for dialogue on sport at the EU level, such as the European Sport Forum, consisting of EU Sport Ministers, UEFA, FIFA, and the European Olympic Committees<sup>117</sup> along with the European Week of Sport.<sup>118</sup> Consequently, one can argue that this is an expression of EU cohesion when it comes to sports' normative aspect.

Notwithstanding the seemingly evident elements of cohesion when it comes to promoting EU values using sport, some elements of cohesion can also be discerned when looking at the infamous European Super League project. Coverage and endorsement of the European Sport Model has witnessed a revival in the wake of the European Super League proposal of April 2021. In fact, since then, the topic has been identified as a key area in the 2021–2024 EU Work Plan on Sport, before being singled out as an important area of study by the Directorate-General for Education, Youth, Sport, and Culture (DG EAC). Moreover, at the EU institutional level, a landmark European Parliament Resolution of October 2021 had already called for the protection and strengthening of the European Sport Model, particularly citing the threat of closed competitions. It is important to note that such involvement by the European Parliament is rare, with the Parliaments self-admission over its limited role in the development of EU sport strategy highlighting this awareness.<sup>119</sup> Likewise, in November 2021, at the Council of the European Union, the Council of Ministers approved a resolution outlining the key aspects of a European Sport Model. The endorsement of the European Sport Model is further illustrated at the CJEU Super League hearing, whereby twenty-one EU countries rallied behind the existing pyramidal structure.<sup>120</sup> This thereby serves to demonstrate how the European Super League has added more institutional cohesion when it comes to EU sports policy as it has made the EU and its institutions and member states 'speak in one voice' when underscoring its values in the area of sport. This is important given that a lack of cohesiveness decreases the likelihood of externalisation,<sup>121</sup> especially in areas like sport, where the EU only has limited competence to begin with.

As Geeraert (2016) reminds us, the Commission never truly operates autonomously from the member states, which are united in the (European) Council, and, to an extent, the Parliament. In fact, he goes further to label the Commission an agent of these aforementioned institutions,

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114 ISCA (undated), *Grassroots Sport Diplomacy: Overview, Mapping and Definitions*, [http://isca-web.org/files/Grassroots\\_Sport\\_Diplomacy/Grassroots\\_Sport\\_Diplomacy\\_-\\_Overview\\_mapping\\_definitions\[1\].pdf](http://isca-web.org/files/Grassroots_Sport_Diplomacy/Grassroots_Sport_Diplomacy_-_Overview_mapping_definitions[1].pdf)

115 Council of the European Union. *European Union Work Plan for Sport*, 2017.

116 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

117 Pijetlovic, *EU sports law and breakaway leagues in football*, 2015.

118 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

119 European Parliament. *Resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward*, 2021, [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0463\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0463_EN.html).

120 Ali Walker, "UEFA battles Super League at EU's top court," *Politico*, 2022, accessed 11 June 2023, <https://www.politico.eu/article/super-league-uefa-begin-battle-at-eus-top-court/>.

121 Eugénia da Conceição-Heldt, and Sophie Meunier, "Speaking with a single voice: internal cohesiveness and external effectiveness of the EU in global governance," *Journal of Economic Public Policy* 21, no. 7 (2014): 961–979. <https://doi.org/10.1080/13501763.2014.913219>.

which redefines the conceptions of cohesiveness bounding them, as they are not unitary actors, but behave with sufficient coherence.<sup>122</sup> In this regard, even though political science accounts about the EU's image as an influential global regulator, have viewed the EU's success as being merely down to the regulatory capabilities of its interlocutors and congruence with their preferences,<sup>123</sup> <sup>124</sup> when looking at sport there appears to be a keenly developed sense of internal cohesion and symbiosis within the EU structural architecture and institutional set-up as such.

The cohesion of the EU appears to be predominantly a value/goal cohesion, as there seems to be a strong resemblance and compatibility of basic goals when it comes to sport and the EU's place within it. Shades of output cohesion can, however, also be seen, particularly when looking at the Super League opinion by the Attorney General, which arrived by linking issues tactically to help fortify EU normative leadership in sport. Here, the opinion arrived at by the Attorney General that seems almost to afford an 'constitutional' recognition of the European Sport Model – characterized by a pyramid structure, open competitions and financial solidarity – is in fact in no way informed by Article 165 TFEU as strictly speaking, it does not make mention of the European Sport Model and its attendant characteristics; but rather, it is elicited or implied from other non-binding documents<sup>ii</sup> published from the EU institutions,<sup>125</sup> as well as by drawing heavily from the political intent of the Treaty.<sup>126</sup> Arguably, one of those documents is the November 2021 Council of the adopted European Union resolution on the European Sport Model, which unequivocally called on EU institutions to take a more substantive role in supporting the sport sector in order to help set out the fundamental features of European sports policy.<sup>127</sup> This thereby serves to draw an imperially different picture to other scholars that contend that there is a lack of internal cohesiveness to begin with, in turn downplaying the EU from becoming a force for good in the context of international sport.<sup>128</sup>

## 6. CONCLUSION

Since its creation, the EU has been a vivid promoter of principles and the values, norms, ideas, and ideals constituting its own identity. According to Manners, the EU will always look to project its fundamental core norms both internally and in its external dealings with other international bodies and states. As a polity, the specificity of the EU has overtime come to be successfully constructed and built around it being a value-laden actor, even extending to its conduct across various policy fields. In a bid to demonstrate whether or not the normative

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122 Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA*, 2016.

123 Richard Young, "Confounding Conventional Wisdom: Political not Principled Differences in the Transatlantic Regulatory Relationship," *British Journal of Politics and International Relations* 11, no. 4 (2009): 666–689.

124 Richard Young, "The Rise (and Fall?) of the EU's Performance in the Multilateral Trading System," *Journal of European Integration* 33, no. 6 (2011): 715–729.

125 Monti, "Sports Governance after the Opinions of Advocate General Rantos in Superleague and International Skating Union," 2023.

126 Forrester, Review of the Economic and Legal Aspects of the Organisation of Football in Europe, 2023.

127 Andrew Bennett, "What's next for European sports governance and how will it address its current challenges?", Squire Patton Boggs, 2022, accessed 14 June, 2023, <https://www.sports.legal/2022/01/whats-next-for-european-sports-governance-and-how-will-it-address-its-current-challenges/>.

128 Arnout Geeraert and Edith Drieskens, "Normative Market Europe: the EU as a force for good in international sports governance?", *Journal of European Integration* 39, no. 1 (2017): 79–94. <https://doi.org/10.1080/07036337.2016.1256395>



dimension of EU actorness holds true in the sports domain, the paper bridged the gap between the two independent but interrelated concepts – that of EU normative power and that of EU actorness. Even though the EU has long established itself as an actor in international sport,<sup>129</sup> a lack of clarity pervades when it comes to what kind of an actor it really is when it comes to this specific and autonomous domain. With academic literature, policy research, and discourse rarely shining a light on the EU's normative character in this field, the accompanying purpose of this article was to consider the idea of EU normative actorness and then to assess the EU's subsequent role and contribution to this distinction through the field of sport.

Having been buttressed along two different, but interrelated concepts, this paper has built the case that the EU is a normative actor in sport in its own right, given it acts with 'volition and purpose,'<sup>130</sup> possesses an institutional distinctiveness and independence from other actors, while having the ability to take action at international level. The analysis has demonstrated that the EU's actions and behaviour through the domain of sport are tantamount to and, indeed tick all the boxes of a normative power. Be that as it may, universal norms will always form the basis for EU action as it is predisposed to act in normative ways. Therefore, the paper has also provided four primary variables: recognition, autonomy, authority, and cohesion, whose actorness qualities were ascertained in order for the EU to be considered overall as being a normative actor in sport. To its credit, the EU scores consistently and fulfils all four criteria of the actorness thesis when scrutinized under many different contexts. This hereby underlines it as a hallmark of normative actorness within the field of sport and makes its identity more readily accessible.

While the line of research inquiry about sport, the EU, and normative power has in the past been fiddled with somewhat by García and Meier,<sup>131</sup> as well as Geeraert and Drieskens<sup>132</sup> who looked at the EU's market and normative power in the context of global sports regulation and governance respectively, Parrish rightfully laments the dwindling conception of studies that look into sport as an expression of EU normative power.<sup>133</sup> This article taps into the increasingly relevant conversation across the broader community of EU scholarship by stating that the role of sport as an expression of EU normative actorness has all too often received little mainstream attention from EU scholars. This is something that has sought to be remedied by taking into consideration the EU institutional architecture, its actions, conduct, and engagements within various settings where it responds to contemporary issues, which has helped more meaningfully crystallise EU actorness in sport as both an idea and an ideal whose time has come.

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129 Geeraert, *The EU in International Sports Governance: A Principal – Agent Perspective on EU Control of FIFA and UEFA*, 2016.

130 Bretherton and Vogler, *The European Union as a Global Actor*, 2006.

131 Borja García and Henk Erik Meier, "Global Sport Power Europe? The Efficacy of the European Union in Global Sport Regulation," *Journal of Common Market Studies* 55, no.4, (2017): 850–70.

132 Geeraert and Drieskens, "Normative Market Europe: the EU as a force for good in international sports governance?", 2017.

133 Parrish, "EU Sport Diplomacy: An Idea Whose Time Has Nearly Come," 2022.

## **7. THEORETICAL CONTRIBUTION AND POLICY IMPLICATIONS**

Leveraging upon the explanatory powers of the NPE and EU actorness concepts, this study has found that manifestations of EU sport policy and law increasingly portray the EU as a normative actor in sport. Firstly, by encasing sport within EU political science notions of normative power and of EU actorness, the study enriches our understanding of both the NPE concept and the actorness thesis as it takes the concepts beyond their original ambitions. Secondly, the paper makes an original contribution by filling a void in the political science literature in EU studies as it applies EU normative actorness to sport when assessing its normative behaviour in sport together with an appraisal of the combined potential of the two independent frameworks. This challenges existing, hitherto limited views from both frameworks when it comes to the EU and sport while also providing alternative explanations and analysis of the EU's complex identity when resorting to the international sports domain.

## **8. LIMITATIONS AND FURTHER RESEARCH**

The author acknowledges that the study may come with some limitations, particularly as it concerns the primary documents reviewed (12), which may present a small sample size for some analysts. However, this underscores the patchy state of research in this particular area as most of the primary documents were soft-law instruments. Regarding further research, the present study only restricted itself to the actorness thesis as it is captured along its four criterions according to Jupille and Caporaso in explaining the EU's normative actorness in sport. However, debates about EU actorness are also accentuated further by Bretherton and Vogler, who explore its application both internally and externally to the EU by considering the three aspects of EU presence, opportunity, and capability, for example. Therefore, while this study bypassed this conception of EU actorness, similar studies could look to inculcate such an approach in their conceptualization of EU normative actorness in the field of sport given the EU's actorness has a multidimensional character to it as there are many ways by which its actorness can be conceived.

### ***Disclosure Statement***

No potential conflict of interest was reported by the author.

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<sup>i</sup>Took place in 2021 because of the COVID-19 enforced hiatus.

<sup>ii</sup> According to Pijetlovic (2015), The Commission Communication on Developing European Dimension in Sport that came after the Lisbon Treaty amendments, however, interprets the 'specificity of sport' referred to in Article 165 TFEU as the concept encompassing 'all the characteristics that make sport special, such as for instance the interdependence between competing adversaries or the pyramid structure of open competitions.'