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# EDITORIAL

## **EDITORIAL INTRODUCTION**

Welcome to the second issue of the *Sports Law, Policy & Diplomacy Journal*. When we launched the journal at the beginning of the year, we mentioned that this will not be just a marathon, but an ultra-trail. After all the training over the year and the hard work, we are not even at the first time-control point of the race. We are pleased to see the number of submissions during the year, some of which are of an excellent quality and having passed external review, appear in this second issue.

This issue is an excellent representation of the potential of the journal. We present five papers. Two are heavily focussed on EU sport policy issues, one explores governance/regulatory issues and the remaining two are extremely interesting papers evaluating sport in developing countries. Our journal has started with a Euro-centric focus given where it is edited and the academic community that launched it, but we hope that, with time, our papers will also include a more global outlook, for sports law, policy and diplomacy are certainly not only European issues. The current state of world (and sporting) affairs amply highlights that point.

We are glad to see a relatively good stream of papers being submitted, but as we are only taking our first steps, we need to reiterate the call we made in our last editorial. Please help the *Sports Law, Policy & Diplomacy Journal* grow by submitting your quality papers, ideas for special issues or joining our pool of reviewers. We really need you to develop the journal. We are perfectly aware the business of publishing is competitive, but we will only be able to reclaim research and publishing for the academic community if journals such as this are successful.

In this issue you will be able to read papers on gender equity, on the European Model of Sport and EU normative actorhood, as well as papers looking at sport in Africa and the Court of Arbitration for Sport's approach to athletes from developing countries. It is a great mixture of topics embracing a diversity of disciplines, from law to political sciences and European integration theories. We are pleased to see that some of the papers were presented at the Sport&EU annual conference. We also encourage you to use our annual conference as a first stage to present your research, whilst keeping us in mind for the publication.

We would like to finish this editorial by thanking the University of Rijeka, Faculty of Law for their constant support in the production of the journal. This will not be possible without them. Equally, we would like to thank all the reviewers that have contributed to make this issue possible.

We hope to receive your papers, so we can start preparing our issues in 2024.

Vanja Smokvina, Richard Parrish & Borja Garcia Garcia  
*Editors-in-Chief*





# ARTICLES



## THE EUROPEAN SPORT MODEL: A MODEL TO DEFEND

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### Abstract

*The contradictory positions taken by the European institutions on the European Sport Model have demonstrated the difficulty of understanding such a model for decades. The existing conflicting situations show that the specificity of sport is struggling to play its role in protecting European sport. It, therefore, seems legitimate to ask the question of how to defend the European sport model, especially in the context of heterogeneous legislation and organisational models for sports within European countries. The aim of the article is, above all, to demonstrate that the European model emanates from a vision based on fundamental values that must take sport beyond the mere consideration of economic activity. As such, one of the challenges lies in maintaining the interactions between the different levels of the pyramid.*


**Keywords:** Sports Law, Sports Economics, Sports Policy, Superleague Case, Closed Leagues

## 1. INTRODUCTION

The current organisational model of football is an illustration of the institutionalisation of European sport and originated in England at the end of the 19<sup>th</sup> century with the creation of bodies called clubs and associations. This organisation spread rapidly en route from India to the Commonwealth or via the various European ports, under the impetus of British commercial employees or engineers responsible for building the railways. At the beginning of the 20<sup>th</sup> century, this process of institutionalisation led to the emergence of what can be likened to a 'model' for the organisation of sport in Europe. A century later, although there is a degree of heterogeneity from one country or sport to another, certain pillars still seem to define the European sport model (ESM):

- The federations' monopoly;
- The regulatory power of federations;
- The affiliation of sportsmen and women to clubs and clubs to federations;
- The organisation of sport according to a pyramid system reinforced by the promotion/relegation phenomenon illustrates the porosity between the levels of the pyramid.

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This model is currently facing challenges, particularly in the face of the emergence of private commercial competition, at both, the top and the bottom of the pyramid, leading several actors within the sporting movement to question the model's sustainability.

In this context, two studies have been carried out in recent years, commissioned by actors from the sporting movement:

- a study on the emergence of closed leagues at the supranational level in Europe, carried out for the French Ministry of Sport, the French Basketball Federation, the Federation of Professional Coaches (FEP), and the Sports Economics Office of the French National Olympic Committee (CNOSF);

and

- a study on the European sport model, aimed at presenting the reasoning behind the defence of such a model, carried out for the CNOSF.<sup>1</sup>

These studies give us the opportunity to highlight a number of results by adopting both an economic and a legal approach. Thus, it is essential to realise that sport is not only a particular sector but also a singular economic good (I), two aspects which in our view justify an adapted application of European Union law (II).

## **2. THE UNIQUENESS OF SPORT AS A SECTOR OF ACTIVITY AND AN ECONOMIC GOOD**

One of the conclusions of the above studies is that the ESM must be defended because of the particular nature of sport as an economic good. In our view, sport has the properties of a 'collective good' in that, in short, its positive impacts on health, citizenship, socialisation, etc. cannot be properly monetised.<sup>2</sup> As a result, economic theory predicts that firms in the private market sector would choose to offer a sub-optimal amount of sport, because they would only focus on its profitable aspects. Taking into account the multiple social impacts of sport requires broad, cross-cutting policies that cannot be implemented by private companies. In this respect, it seems that only public authorities can take on board the reasoning that the increase in expenditure incurred to increase physical activity will be offset by the expenditure avoided in other areas (health, social, security, etc.).

Having said that, it is important to emphasise the principles that underpin sport as a 'collective good':

- Solidarity: in particular the vertical solidarity between the top of the pyramid when it generates revenue and the bottom of the pyramid. For example, UEFA and the IOC already share more than 90% of the revenue generated.<sup>3</sup>
- Training: the ability to develop talent, which is a particularly costly medium to long-term investment.

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1 Jean-François Brocard, and Marie Anglade, *The European Model of Sport, Evaluation and Perspectives* (Limoges: CDES, 2021), [https://cdes.fr/wp-content/uploads/2023/02/v2\\_The-European-Model-of-Sport-VF.pdf](https://cdes.fr/wp-content/uploads/2023/02/v2_The-European-Model-of-Sport-VF.pdf).

2 Alain Beitone, "Biens publics, biens collectifs, Pour tenter d'en finir avec une confusion de vocabulaire," *Revue du MAUSS permanente* [online], <https://www.journaldumauss.net/?Biens-publics-biens-collectifs>.

3 UEFA, *The European Club Footballing Landscape 2020/21*, <https://www.uefa.com/insideuefa/uefaeuropeanclubfootballinglandscape/>

- Territorial coverage: sport must be available to everyone, regardless of social category, ability, or place of residence, so that it is an integral part of regional planning policies.
- Integrity: the integrity of the competition and the physical and mental integrity of the athletes are non-negotiable.

Identifying and analysing these fundamental principles is essential when considering the defence of the ESM, because alternative models have never proved that they can respect these principles. For example, European competition organisers from the private commercial sector, such as the ECA, organise supranational basketball competitions (the Euroleague and the EuroCup) without having implemented clear actions to ensure compliance with these principles. We could also mention that the North American professional leagues were often held up as examples to illustrate the fact that closed leagues would be the solution to all the problems encountered in Europe. The reality is, however, that the leagues, such as the NBA and the NFL, are profit-making organisations that do not share any of their revenues with grassroots sport. At best, they set up 'charity' operations that are far removed from what we in Europe would consider to be solidarity. Furthermore, these leagues only tackle integrity issues when they have potential implications for the revenue generated. We only have to look at the way they deal with issues of doping or sport betting to understand the highly opportunistic nature of actions 'supposedly' aimed at protecting the integrity of sport. Finally, taking advantage of the local university system or training efforts in other parts of the world, these leagues outsource the development of talent, which is in fact available either free of charge or at very low cost.

For a number of reasons, notably fiscal, legal and/or cultural, this closed league model cannot be directly imported into Europe. Furthermore, most attempts to organise closed club competitions at the supranational level in Europe have been economic failures, particularly for the clubs. It is important to remember that participation in the Euroleague is currently not profitable for any club, and some clubs have abysmal deficits.

UEFA and other competition organisers are currently being criticised for their lack of effort in setting up solidarity mechanisms or respecting sporting meritocracy. However, we should not forget that the current situation, while certainly open to criticism, is merely the result of the constant threats of a breakaway league made by the big clubs over the last 30 years in order to protect their own individual interests and increase their share of the revenue generated by UEFA, to the detriment of the smaller clubs and leagues. In a very interesting article published on 22 December 2022, three economists argue that this type of influence by the big clubs should be considered illegal.<sup>4</sup>

Sport is a unique economic good, but it is also a unique sector. By their very nature, athletes and clubs need competitors. The Coca-Cola Company would be delighted to have no competitors in the cola market. Yet, sport is different; competition is necessary. Furthermore, when athletes or clubs seek revenue, they not only need competitors, they need good competitors too, because they are working together to produce a common commercialised product: competition.

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<sup>4</sup> Tsjalle van der Burg, Hanno Beck, and Aloys Prinz, *Why the European Court of Justice should rule against the European Super League*, December 6, 2022, <https://blogs.lse.ac.uk/europpblog/2022/12/06/why-the-european-court-of-justice-should-rule-against-the-european-super-league/>.

Thus, even if sport is indeed an economic activity, its specificity justifies that it be reserved, if not specific treatment, at least an appropriate application of EU law, and in particular competition law.

### **3. THE NEED FOR EU LAW TO BE PROPERLY APPLIED TO SPORT**

While it is now generally accepted by sporting bodies that the rules they draw up and, more broadly, their activities, must comply with the main principles of EU law, including - at the heart of the FIFA/UEFA vs 'Super League' dispute - the principle of free competition, it is equally generally accepted by EU bodies that the assessment of whether sporting bodies have breached these principles must take into account the specific characteristics of sport and its organisation in Europe.

The question is knowing where to find the balance that will allow the two legal systems, the 'European legal system' and the 'sports legal system', to coexist harmoniously, in the sole interest of preserving sport as a 'collective good'.

As a brief historical review will show, this point of balance is not easy to find, as the two systems have long 'sought' and 'gauged' each other since the creation of the European Economic Community. However, we believe that today, with the special place accorded to sport in the Treaty on the Functioning of the European Union (TFEU), and provided that the sporting bodies really grasp the importance of what is at stake, a harmonious coexistence between the two legal systems is possible.

For a very long time, sport lived in a kind of bubble in the belief that it was not subject to Community law because of its specificity, its history, its anteriority, and also its global dimension.

The first very hesitant encounter between the two legal systems took place in the 1970s with the Walrave (1974) and Doña (1976) judgments in which the Court of Justice of the European Communities (CJEC) (now the Court of Justice of the European Union (CJEU)) approached the encounter between Community law and sport solely from an economic point of view by considering that "*the practice of sport falls within the scope of Community law only insofar as it constitutes an economic activity within the meaning of Article 2 of the Treaty.*" The sporting movement then interpreted this distinction as a sporting exception in its favour, giving it the right to circumvent Community law.

Twenty years later, the Bosman ruling (1995) turned everything on its head and swung the pendulum in favour of the pure and simple application of European law to sport. It has to be said, that at the time, both FIFA and UEFA were 'oblivious' of the EU institutions. The Bosman ruling therefore put an end to what had previously been considered a sporting exception: for the first time, non-economic reasons were no longer sufficient to exempt sporting activity from Community rules.

The period following the Bosman ruling was marked by an extension of the scope of Community law, with sport gradually coming under competition law, culminating in the Meca-Medina ruling (2006) in which the CJEU decided that all sporting rules, including "purely"

sporting rules, were potentially open to action for hindering competition.

Despite the feeling of incomprehension that this ruling may have aroused at the time, it has to be noted that since then, not only have the European institutions recognised the concept of “specificity in sport” and largely contributed to defining its contours, but they have also fully integrated it into the decision-making process in sport litigation.

The high point in the recognition of the specific nature of sport by the EU institutions was undoubtedly the 2007 White Paper on Sport, in which the Commission defined the constituent elements, distinguishing in particular between the specific nature of sporting activities and that of sporting structures, and insisting on the fact that this specificity of sport must be taken into account by the case law of the European courts when they are called upon to carry out a proportionality review in order to verify whether the restrictions emanating from the rules of sporting organisations pursue a legitimate interest and are proportionate to the attainment of that interest. Another major step forward was taken in 2009, when the specific nature of sport was enshrined in the Constitution and incorporated into the TFEU Treaty. Article 165 of the TFEU expressly states that “*The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.*” Thus, while sport is not above the law, it cannot be regarded as an ordinary economic activity. For Advocate General Rantos, Article 165 TFEU “*is intended to highlight the special social nature of this economic activity, which is capable of justifying different treatment in certain respects,*” and “*may serve as a standard for the interpretation and application of the provisions of competition law to the field of sport.*”<sup>5</sup> However, by opting for a proportionality test - a test introduced in the Bosman judgment - to check whether a sporting rule is compatible with the fundamental freedoms of the EU or with European competition law, the court has chosen to highlight the specific nature of sport and to allow the sporting rule in question to evade European law if it complies with this proportionality test. As a reminder, this test is carried out in three stages: is the objective pursued by the offending rule legitimate? If yes, is the regulation adopted suitable for achieving this legitimate objective? And, if so, does it go beyond what is necessary to achieve that objective?

Legitimate objectives include, for example, the regularity of sporting competitions (Lethonen, 2000), the fair conduct, integrity and objectivity of sporting competitions (Meca-Medina, 2006), the recruitment and training of players (Bernard, 2010), the smooth running of competitions and the fact that the title of a champion is reserved for a national of the country (Biffi, 2019), or the protection of the integrity of a sporting discipline against the risks associated with betting, the fair running of competitions and the physical and moral integrity of athletes (ISU, 2020).

Even if this is a case-by-case analysis, which by definition does not make it possible to identify objective principles that would de facto apply to sporting rules, the recognition and use of the concept of the particular “nature of sport” by the European courts show that they are aware of the specificity of sport, its organisational model (a pyramidal organisation, interdependence between competitors, or the specificity of sport regulations), and therefore of the reasons

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5 Opinion of the Advocate General in Case C-333/21, European Superleague Company: Press Release No 205/22 Luxembourg, 15 December 2022.

that justify the protection of the sporting movement. However, it is not a question of giving sporting institutions 'carte blanche.' By applying competition law to sport regulations, the aim of the Commission and the CJEU is to oblige sporting institutions to justify, explain, and discuss their regulatory powers in the interests of democratisation and openness.

#### **4. CONCLUSION**

The so-called 'Super League' case provides an opportunity to find the point of balance that will allow the two legal systems to coexist harmoniously and ensure the sustainable development of sport. However, it is all a question of balance: recognising and making full use of the specificity of sport enshrined in Article 165 of the TFEU implies, in return, an obligation on the part of the sporting movement to step up its efforts in terms of (i) governance, (ii) communication vis-à-vis the European institutions, and (iii) concrete actions demonstrating that the fundamental principles that characterise sport as a 'collective good' are taken into account.



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## **THE EVOLUTION OF GENDER REPRESENTATION IN THE DECISION-MAKING POSITIONS OF SPORT GOVERNING BODIES IN SWITZERLAND**

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Original scientific paper


### **Abstract**


This contribution addresses the issue of women's underrepresentation in the decision-making positions of sports organisations with a quantitative descriptive analysis. Building on the results of national and international benchmark studies and a review on measures to improve gender representation, we (a) analyse the evolution of women's representation in decision-making positions of national sport governing bodies in Switzerland over a 10-year period (2012-2021) and (b) compare the observed evolution with the implementation of hard and soft measures. Our findings show a fluctuation of women's representation but no clear evidence of a positive and increasing evolution during the investigated period. We also observe that the level of women's representation compared to men remains low whereas measures have been implemented. We discuss our results with a potential "anticipatory obedience" effect that is detected in the last years of investigation after the announcement of a legally binding target by the federal government and, building on literature, anticipate an increasing positive effect of the measure after its enforcement in 2024. To conclude, our study supports evidence in literature that the implementation of hard measures can contribute to a positive evolution in gender representation in the decision-making positions of sport organisations but still needs more current data to confirm evidence from other countries.

**Keywords:** Public Policy, Women, Gender Representation, Development, Decision-making Positions, Swiss Sport System.

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\* Corinne Zurmühle, Sports Economics Division, Swiss Federal Institute of Sport Magglingen SFISM, Switzerland.  <https://orcid.org/0000-0002-5465-0987>. A hearty thank you to the reviewers for helping steer the manuscript through their helpful comments. ✉ [corinne.zurmuehle@baspo.admin.ch](mailto:corinne.zurmuehle@baspo.admin.ch).

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## 1. INTRODUCTION

Today, women's participation in sports shows positive signals. At the international level, this is illustrated by a record of 48.7% of women participating in the Summer Olympics in Tokyo 2020.<sup>1</sup> In parallel, we observe that more and more sports traditionally perceived as male-dominated, such as American football, hire women in coaching functions. A similar observation applies to the presence of women in the decision-making positions of sport organisations. We see, for instance, an encouraging evolution in the percentage of women members of the International Olympic Committee (IOC) from 21% to 38% between 2013 and 2020.<sup>2</sup> Nevertheless, current studies and data concur to confirm that gender equity in the decision-making positions of sport organisations is still an issue, as women are still and largely underrepresented compared to men.<sup>3,4,5,6,7</sup>

In the Swiss sport system, public intervention in the non-profit sector is based on the principle of subsidiarity<sup>8</sup>. Sport organisations in this sector, such as Swiss national sports federations (SNSF), sport clubs, or the umbrella association of sports (Swiss Olympic), benefit from an important degree of strategic and operational autonomy. However, they also benefit from direct and indirect financial support by the public sector at the three levels of Swiss federalism (federation, cantons, and municipalities). They receive subsidies for their contribution to the development of elite or mass sport and can have facilitated access to sport facilities. Swiss Olympic represents the interests of more than 80 SNSF and partner organisations, and organises the Olympic teams. It mainly relies on public support anchored in time-bound performance agreements with the Federal Office of Sport (FOSPO) – that is part of the Department of Defence, Civil Protection and Sport (DDPS) – as well as from lottery funds. At the national level, we observe that the percentage of women presidents in SNSF and Swiss Olympic stagnated at around 5% for the period between 2000 and 2009.<sup>9</sup> In

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  - 7 "Gender statistics database. Women and men in decision-making. Sports," European Institute for Gender Equality, accessed November 10, 2022, <https://eige.europa.eu/gender-statistics/dgs/browse/wmidm>.
  - 8 Andreas Ch. Weber, and Corinne Zurmühle, "Multilevel leadership within the Swiss elite sports system: The involvement of Alpine skiing elite athletes in national-level policy-making," in *Embedded Multi-Level Leadership in Elite Sport*, eds. Svein Andersen, Per Øystein Hansen, and Barrie Houlihan (Abingdon: Routledge, 2021).
  - 9 Markus Lamprecht, Hanspeter Stamm, Adrian Fischer, and Doris Wiegand, *Observatorium Sport und Bewegung Schweiz. Jahresbericht* (Zurich: L&S Sozialforschung und Beratung AG, 2010), <https://www.sportobs.ch/>

the following years, the representation of women in the presidencies of SNSF recorded an increase and, according to Markus Lamprecht, Rahel Bürgi, Angela Gebert, and Hanspeter Stamm<sup>10</sup>, came to around 20% in 2016. In 2019, the sample of heads of performance surveyed in the study by Hippolyt Kempf et al.<sup>11</sup> consisted of only 21% women. In 2021, only 14.7%<sup>12</sup> of the heads of lower management units of the FOSPO and 30.7%<sup>13</sup> at Swiss Olympic were women. At the local level, of the 20,000 voluntary sport clubs that compose the non-profit sector, membership is largely male-dominated. Only 18% of these organisations are headed by female presidents.<sup>14</sup> Gender underrepresentation in the decision-making positions of the main sport organisations in the public and non-profit sectors in Switzerland is a clue, and this evidence confirms a strong consensus in the literature and other levels of analysis that gender underrepresentation is the norm rather than the exception.<sup>15</sup>

Research that combines gender dynamics and sport governance is not recent.<sup>16</sup> The representation and promotion of women in sport organisations is a traditional sport governance theme that is developing as a result of the desire of sport governing bodies,<sup>17</sup> such as umbrella associations (national Olympic committees [NOCs] and/or association of sports federations) or sport ministries to diversify, democratise, and make more equitable decision-making of sport organisations that are largely dominated by men.<sup>18</sup> Since the early 2000, this organisational deficit has led to an important body of context-sensitive literature that investigates the micro (individual), meso (organisational), or macro (systemic) measures to be

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inhalte/Downloads/SPORTOBS\_2010.pdf.

- 10 Markus Lamprecht, Rahel Bürgi, Angela Gebert, and Hanspeter Stamm, *Sportvereine in der Schweiz: Entwicklungen, Herausforderungen und Perspektiven* (Magglingen: FOSPO, 2017), <https://www.baspo.admin.ch/de/sportvereine-in-der-schweiz>.
- 11 Hippolyt Kempf et al., *Leistungssport Schweiz – Momentaufnahme SPLISS-CH 2019* (Magglingen: FOSPO, 2021).
- 12 Result based on internal raw data from FOSPO.
- 13 Results based on an analysis of the organigram of Swiss Olympic (01.01.2022) available online.
- 14 Markus Lamprecht, Rahel Bürgi, Angela Gebert, and Hanspeter Stamm, *Sportvereine in der Schweiz: Entwicklungen, Herausforderungen und Perspektiven*.
- 15 Larena Hoerber, and Sally Shaw, "What do you mean it hasn't worked out yet? The paradoxes of women in sport governance research," in *Research handbook on sport governance*, eds. Mathieu Winand and Christos Anagnostopoulos (Cheltenham: Edward Elgar Publishing, 2019), 397-411.
- 16 Kathryn Henne, and Madeleine Pape, "Dilemmas of gender and global sports governance: An invitation to southern theory," *Sociology of Sport Journal* 35, no. 3 (2018).
- 17 In this contribution, we define a sport governing body as a sport organisation that governs and rules the organisation and development of sport at a given hierarchical level that may influence other sport organisations in the performance of their strategic and operational tasks. Such organisations perform a steering function.
- 18 Lucy V. Pigott, "Gender and social inequity in and through sport leadership", in *Research Handbook on Sports and Society*, ed. Elizabeth Pike (Cheltenham: Edward Elgar, 2021).

activated to improve the presence of women in decision-making positions.<sup>19,20,21,22,23,24,25,26,27,28,29</sup> The literature highlights the influence and steering role of sport governing bodies and discusses the effectiveness of “hard” (e.g. binding quotas and targets) versus “soft” (e.g. awareness-raising) measures.<sup>30</sup>

In contrast to other European countries, such as Norway, and compared to measures in the areas of sports facilities, sport ethics and security or the promotion of elite and mass sport, we observe that gender equity from a macro perspective has not been a priority until recently. However, the discourse on the need to increase the number of women in decision-making positions of sport organisations has taken on a new dimension since 2019, with the accession of the first woman to head the DDPS since its creation in 1998. This has energised institutional discourse and narratives on the ineffectiveness of gender equity policies in sport and led to the implementation of harder measures to ensure better representation of women in the army<sup>31</sup> and in decision-making positions of SNSF, including a target requirement of a minimum of 40% representation in executive committees to be implemented by the end of 2024.<sup>32,33</sup>

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- 19 Kari Fasting, “Women’s Role in National and International Sports Governing Bodies”, *Women in sport Volume XIII of the encyclopedia of sports medicine* (2000).
  - 20 Kari Fasting, “Women and sport in Norway”, in *Sport and women: Social issues in international perspective*, eds. Ilse Hartmann-Tews and Gertrud Pfister (London: Routledge, 2003).
  - 21 Larena Hoerber, “‘It’s somewhere on the list but maybe it’s one of the bottom ones’: examining gender equity as an organisational value in a sport organisation”, *International Journal of Sport Management and Marketing* 2, no. 4 (2007).
  - 22 Jorid Hovden, “The gender order as a policy issue in sport: A study of Norwegian sports organizations”, *Nordic journal of women’s studies* 14, no. 1 (2006), Jorid Hovden, “Female top leaders—prisoners of gender? The gendering of leadership discourses in Norwegian sports organizations”, *International Journal of Sport Policy and Politics* 2 no. 2 (2010).
  - 23 Inge Claringbould, and Annelies Knoppers, “Doing and Undoing Gender in Sport Governance”, *Sex roles* 58 (2008).
  - 24 Inge Claringbould, and Annelies Knoppers, “Paradoxical Practices of Gender in Sport-Related Organizations”, *Journal of sport management* 26, no. 5 (2012).
  - 25 Berit Skirstad, “Gender policy and organizational change: A contextual approach”, *Sport management review* 12, no. 4 (2009).
  - 26 Johanna A Adriaanse, and Toni Schofield, “Analysing Gender Dynamics in Sport Governance: A New Regimes-Based Approach”, *Sport management review* 16, no. 4 (2013).
  - 27 Laura Burton, “Underrepresentation of women in sport leadership: A review of research”, *Sport Management review* 18, no. 2 (2015).
  - 28 Jorid Hovden, Agnes Elling, and Annelies Knoppers, “Meta-analysis: Policies and strategies”, in *Gender diversity in European sport governance*, eds. Agnes Elling, Jorid Hovden and Annelies Knoppers (London: Routledge, 2018).
  - 29 Joshua McLeod, Shaun Star, and David Shilbury, “Board composition in national sport federations: a cross-country comparative analysis of diversity and board size”, *Managing Sport and Leisure* (2021).
  - 30 Jorid Hovden, “‘Heavyweight’ men and younger women? The gendering of selection processes in Norwegian sports organizations”, *Nordic Journal for Women’s Studies* 8, no. 1 (2000).
  - 31 Generalsekretariat VBS, *Bericht Arbeitsgruppe “Frauen in der Armee». Erhöhung des Frauenanteils in der Armee”* (Bern: Generalsekretariat VBS, 2021), <https://www.news.admin.ch/news/message/attachments/65612.pdf>.
  - 32 Federal Council, *Vorschlag zur Anpassung der Verordnung über die Förderung von Sport und Bewegung (provisorische Fassung)* (Bern: Swiss Confederation, 2022), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-87308.html>.
  - 33 FOSPO, *Änderung der Sportförderungsverordnung; Unabhängige nationale Meldestelle des Schweizer Sports. Erläuternder Bericht zur Vernehmlassungsvorlage* (Magglingen: FOSPO, 2022), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-87308.html>.

Building on sport governance literature and existing longitudinal case studies, the objective of this contribution is to uncover the evolution of gender representation in decision-making positions in sport governing bodies in Switzerland and to identify the relations with associated measures. With a quantitative analysis, we analyse the three important organisations in the Swiss sport system from the public and non-profit sectors – (a) the FOSPO, (b) Swiss Olympic and (c) SNSF – that are not covered by current statistical databases on sport and gender from the European Institute for Gender Equality and focus on three levels of decision-making.<sup>34</sup> The analysis covers the period between 2012 and 2021, which concurs with both the enforcement of the Sports Promotion Act and the available raw data Kempf et al.<sup>35</sup> The first section of this paper highlights the evolution of gender representation in the decision-making of sport organisations at international and national levels and reviews the existing measures to promote gender equity. We include an overview of the initiatives undertaken in the Swiss sport system. The research design and data collection strategy are presented in the second section. We analyse (a) the evolution of women’s representation in decision-making positions in national sports federations in Switzerland over a 10-year period (2012-2021) and (b) compare the observed evolution with the implementation of hard and soft measures.

## 2. LITERATURE REVIEW

### 2.1. GENDER REPRESENTATION IN THE DECISION-MAKING POSITIONS OF SPORT GOVERNING BODIES

Many sports and disciplines have gradually become more feminised since the beginning of the 20th century (more women’s competitions and women’s clubs). The participation of athletes in the 2020 Summer Olympic Games in Tokyo is close to perfect equality, with 48.7% of women participating.<sup>36</sup> Boosted by targeted programmes, such as the Alpine’s Rac(H)er Programme<sup>37</sup> or National Football League’s diversity policy to hire female offensive assistant coaches, the presence and performance of women in traditionally male-dominated sports and functions (car racing, football refereeing and men’s basketball coaching) is increasing. From an economic perspective, a handful of sports offer encouraging examples of commercialisation and growing fan interest. However, the figures are still far from the revenues generated by men’s competitions. In addition, although female athletes can earn more than their male counterparts (e.g., in tennis), the most paid athletes in the sports industry are men at the international level. In the Swiss sports system, this applies especially to ice hockey and soccer.<sup>38</sup> In a similar way, their representation in decision-making functions at the governance and management levels is still mainly dominated by men. At the international level, while we see an encouraging increase in the percentage of women IOC members<sup>39</sup> between 2013

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34 As the structures and hierarchical levels of sport organisations are not homogeneous, we classify decision-making functions into the classical levels of management: top management (board of directors or executive committee), middle management (heads of departments) and low management (team managers).

35 Kempf et al. *List of names from the online survey of performance directors, youth directors, and education directors* (Magglingen: FOSPO, 2019).

36 Statista, “Share of female participants in the Olympic Summer Games from 1900 to 2020”.

37 “Rac(H)er Alpine”, Alpine, accessed November 10, 2022, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-87308.html>

38 Kempf et al., *Leistungssport Schweiz – Momentaufnahme SPLISS-CH 2019*.

39 Active athletes, former athletes and the presidents or senior leaders of the International Sports Federations or international organisations recognised by the IOC.

and 2020 from 21% to 38%<sup>40</sup>, the issue was set on the agenda twenty years earlier, in 2000, as part of the IOC reform following the Salt Lake City scandal.<sup>41</sup> In 2010, only 18% of the members of the executive committees of international sports federations were women.<sup>42</sup> This trend has rarely moved six years later, as in 2016, the level of representation barely exceeded 15%.<sup>43,44</sup> In 2020, only one of the 28 international summer sports federations has a board with a gender representation of more than 40%.<sup>45</sup> At the national level, the number of women on the executive committees of the French NSF has also steadily grown. After a stagnation between 2009 and 2013, their representation increased between 2013 and 2017<sup>46</sup>; however, the figures navigated around 35% for Olympic and 30% for non-Olympic NSF. In 2013, only 12% of the executive committee members of the Spanish NSF were women, and this figure rose to 25% in 2018. However, this proportion is much lower for the highest position in decision-making (approx. 5%).<sup>47</sup> This evidence also confirms a trend identified in other countries, as the presence of women in decision-making in NSF of the 28 countries of the European Union (EU) represented – in 2017 – only 14% of all the functions and only 5% for the function of president.<sup>48</sup> Between 2007 and 2020, women's representation in the decision-making functions of the NSF of Liechtenstein stagnated and could not exceed 18%.<sup>49</sup> In 2010, only 17.6% of the executive members of NOCs were women.<sup>50</sup> In 2016, this figure barely exceeded 15%.<sup>51</sup> Although there is a slight positive evolution for the position of president and deputy president, we find evidence that the number of women at the highest executive position of NOCs in the 28 EU countries even decreased from 14.3% to 11.1% between 2019 and 2022.<sup>52</sup> In the public sector, available data from the European Institute for Gender Equality do not allow us to identify a clear longitudinal trend among national sports ministries, but we observe that women are comparatively better represented at the administrator level than at the minister

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- 40 International Olympic Committee. *Olympic Agenda 2020: Closing report* (Lausanne: The Olympic Studies Centre, 2021), <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/IOC-2000-Reform-Follow-up/EN-110th-IOC-Session-Report-by-the-IOC-2000-Commission-December-1999.pdf>
- 41 International Olympic Committee. Report by the IOC 2000 Commission to the 110th IOC Session. Lausanne: International Olympic Committee, 1999. <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/IOC-2000-Reform-Follow-up/EN-110th-IOC-Session-Report-by-the-IOC-2000-Commission-December-1999.pdf>.
- 42 Henry, and Robinson, *Gender equity and leadership in Olympic bodies. Women, Leadership and the Olympic Movement 2010*.
- 43 Women on Boards, *Gender balance in global sport report*.
- 44 Ivana Katsarova, *Gender equality in sport: Getting closer every day*.
- 45 Association of Summer Olympic International Federations, *Third review of International Federation Governance* (Lausanne: ASOIF, 2020), [https://www.asoif.com/sites/default/files/download/asoif\\_third\\_review\\_of\\_if\\_governance\\_fv-0616.pdf](https://www.asoif.com/sites/default/files/download/asoif_third_review_of_if_governance_fv-0616.pdf).
- 46 Annabelle Caprais, Fabien Sabatier, and Stéphanie Rubi, "Electoral Competition and Gender Quotas: Dearth of Female Applicants or Structural Resistance?", *International journal of sport policy and politics* 12, no. 3 (2020).
- 47 Celia Valiente Fernández, "The impact of gender quotas in sport management: the case of Spain", *Sport in Society* 25, no. 5 (2020).
- 48 European Institute for Gender Equality, *Gender in sport* (Vilnius: European Institute for Gender Equality, 2017), [https://eige.europa.eu/sites/default/files/documents/ti\\_pubpdf\\_mh0616311enn\\_pdfweb\\_20170125171327\\_corr.pdf](https://eige.europa.eu/sites/default/files/documents/ti_pubpdf_mh0616311enn_pdfweb_20170125171327_corr.pdf).
- 49 Christian Frommelt, and Thomas Milic, *Sport Monitoring Liechtenstein. Eine Bestandesaufnahme* (Gamprin-Bender: Liechtenstein-Institut, 2022).
- 50 Henry and Robinson, *Gender equity and leadership in Olympic bodies. Women, Leadership and the Olympic Movement 2010*.
- 51 Women on Boards, *Gender balance in global sport report*.
- 52 European Institute for Gender Equality, accessed November 10, 2022, <https://eige.europa.eu/gender-statistics/dgs/browse/wmidm>.



level, particularly senior administrators (49.7% in 2022). Although evidence shows global and perceptible improvements in gender representation in the decision-making positions of sport organisations, the situation is still problematic.<sup>53</sup> While several measures have been implemented to correct gender inequalities, we observe that in some national contexts, the situation has barely changed, and overall, men remain overrepresented, especially in the highest decision-making positions.

## 2.2. MEASURES TO IMPROVE GENDER REPRESENTATION

Studies that combine sport governance perspectives and the question of women's representation and promotion in sport organisations are not recent.<sup>54</sup> There are mainly interested in making these more diversified, democratic, and equitable, as these are still and largely dominated by men.<sup>55</sup> Gender equity is about 'achieving democratic legitimacy.'<sup>56</sup> This domination is considered a constraint that can hamper fairness and social justice values<sup>57</sup> and reinforce the "glass wall" effect for women who seek career advancement,<sup>58</sup> as well as the expected positive influence on the performance and "good" governance of sport organisations.<sup>59,60</sup> This deficit has led to an important body of literature on the micro- (individual), meso- (organisational) or macro-level (systemic) measures to be activated and implemented to make sport organisations more equitable<sup>61,62,63,64</sup>, including a fruitful debate on the effectiveness of "hard" (e.g. regulation or sanction) versus "soft" (e.g. informal communication) ones.<sup>65,66</sup> In this vein, Hovden<sup>67</sup> shows, in particular, that the introduction of quotas is not the principal driver when considering the overall distribution of men and women in decision-making positions, but it can secure the nomination of women, as requested by

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53 Hoerber and Shaw, "What do you mean it hasn't worked out yet? The paradoxes of women in sport governance research".

54 Henne and Pape, "Dilemmas of gender and global sports governance: An invitation to southern theory"

55 Pigott, "Gender and social inequity in and through sport leadership".

56 Daniel Alsarve, "Achieving Gender Equity: Barriers and Possibilities at Board Level in Swedish Sport", *European Sport Management Quarterly* (2022), 3.

57 Jorid Hovden, Agnes Elling and Annelies Knoppers, "Meta-analysis: Policies and strategies", in *Gender diversity in European sport governance*, eds. Agnes Elling, Jorid Hovden and Annelies Knoppers (London: Routledge, 2018).

58 Nefertiti A. Walker, Claire Schaeperkoetter, and Lindsey Darwin, "Institutionalized practices in sport leadership", in *Women in sport leadership*, eds. Laura J. Burton, and Sarah Leberman (London: Routledge, 2017).

59 Janet S. Fink, Donna L. Pastore, and Harold A. Riemer, "Managing Employee Diversity: Perceived Practices and Organisational Outcomes in NCAA Division III Athletic Departments," *Sport Management Review* 6, no. 2 (2003).

60 Janet S. Fink, and Donna L. Pastore, "Diversity in Sport? Utilizing the Business Literature to Devise a Comprehensive Framework of Diversity Initiatives", *Quest* 51, no. 4 (1999).

61 Laura Burton, and Sarah Leberman, "Diversity in Sport Leadership", In *Leadership in Sport*, eds Ian O'Boyle, Duncan Murray, and Paul Cummins (London: Routledge, 2015).

62 Mari Kristin Sisjord, Kari Fasting, and Trond Sveta Sand, "The impact of gender quotas in leadership in Norwegian organised sport", *International Journal of Sport Policy and Politics* 9, no. 3 (2017).

63 Lucy V. Piggott, and Elizabeth C.J. Pike, "'CEO equals man': Gender and informal organisational practices in English sport governance", *International review for the sociology of sport* 55, no. 7 (2020).

64 Pigott, "Gender and social inequity in and through sport leadership".

65 see, for instance, Hovden, "'Heavyweight' men and younger women? The gendering of selection processes in Norwegian sports organizations".

66 Piggott, and Pike, "'CEO equals man': Gender and informal organisational practices in English sport governance".

67 Hovden, "'Heavyweight' men and younger women? The gendering of selection processes in Norwegian sports organizations".

related regulations. Building on studies by Burton and Leberman<sup>68</sup>, Table 1 illustrates potential measures to promote gender representation in sport organisations.

Table 1: Measures to promote gender representation in sport organisations

	Measures	
	Hard	Soft
Micro-level (individual/personal)	<ul style="list-style-type: none"> <li>• Mentoring programmes</li> <li>• Leadership development programmes</li> </ul>	<ul style="list-style-type: none"> <li>• Gender friendly communication</li> <li>• Individual lobbying for decision-making positions</li> </ul>
Meso-level (organisational)	<ul style="list-style-type: none"> <li>• Corporate strategies</li> <li>• Recruiting and hiring processes</li> <li>• Equal salary policies</li> </ul>	<ul style="list-style-type: none"> <li>• Promotion of organisational values</li> <li>• Awareness-rising events</li> </ul>
Macro-level (systemic)	<ul style="list-style-type: none"> <li>• Binding quotas and targets by national regulation</li> <li>• Binding governance codes at the national or international level</li> </ul>	<ul style="list-style-type: none"> <li>• Policy documents (e.g., declarations, mission statement)</li> <li>• Awareness-rising campaigns (conferences, reports, speeches)</li> <li>• Creation of specialised organisations, working groups or task forces</li> <li>• Benchmark analysis</li> </ul>

Source: own illustration.

Micro-level measures focus on the transformation of individual behaviour as a key driver to activate and initiate change within an organisation. Relevant studies build on the assumption that women are often not equipped with the necessary psychosocial predispositions to pursue a career in decision-making positions (e.g. character, confidence, values, perceptions, capital, or beliefs) or that their role can be influenced by the resistance of their (male) peers,<sup>69,70</sup> which, in turn, influences their attainment and retainment in decision-making positions.<sup>71</sup> To unlock such situations, targeted measures are oriented on confidence, motivation-building, and empowerment, including tailor-made mentoring or leadership development programmes, but also on gender-friendly communication (e.g. inclusive writing) and individual lobbying for decision-making positions. In this regard, women leaders and managers play a key role in implementing gender equity measures.<sup>72</sup> Their roles in allocating resources, promoting employees, shaping organisational strategy and culture, and implementing concrete measures are key.<sup>73</sup>

68 Burton and Leberman (“Diversity in Sport Leadership”) and Pigott (“Gender and social inequity in and through sport leadership”).

69 Inge Claringbould, and Annelies Knoppers, “Finding a ‘Normal’woman: Selection Processes for Board Membership”, *Sex roles* 56 (2007).

70 Annelies Knoppers, Ramon Spaaij, and Inge Claringbould, “Discursive resistance to gender diversity in sport governance: sport as a unique field?”, *International Journal of Sport Policy and Politics* 13, no. 3 (2021).

71 Pigott, “Gender and social inequity in and through sport leadership”.

72 Marissa Banu-Lawrence, Stephen Frawley, and Larena Hoeber, “Women and Leadership Development in Australian Sport Organizations”, *Journal of Sport Management* 34, no. 6 (2020).

73 Annelies Knoppers, “Assessing the sociology of sport: On critical sport sociology and sport management”.

At the meso-level, barriers to gender representation are mainly found in negative workplace culture,<sup>74</sup> the lack of strategy and capacity of organisations to set and implement gender-promotive cultural settings or organisational values,<sup>75,76,77</sup> organisational policies or processes, such as selection procedure and informal recruiting processes,<sup>78,79,80</sup> or the influence of dominant leadership discourses and perceptions of gender-oriented skills within an organisation.<sup>81</sup> Typical hard measures to lift this burden include dedicated strategies (i.e. inclusion of gender promotion in the strategic objectives or the strategic plan), positive discrimination recruiting, and hiring or equal salary policies. Softer measures include the development of gender-promotive organisational values or the organisation of conferences and events on the topic.

At the macro level, barriers to gender representation in decision-making positions are mainly found in the ineffectiveness of sport governing bodies to steer the behaviour of organisations in the sport system to be consistent with desired outcomes by pressure, incentives, regulation, or control.<sup>82</sup> Such organisations play a particular role, as they can change the status quo and balance gender injustice through equitable recognition and redistribution.<sup>83</sup> Typical macro-level and hard measures include the implementation of gender quotas and targets by regulation,<sup>84</sup> as well as binding governance codes, as illustrated by the introduction of Sport England and UK Sport's code for sports governance.<sup>85</sup> Several context-sensitive analyses have been performed on the impact and effectiveness of quotas or targets<sup>86</sup> for national

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*International Review for the Sociology of Sport* 50, no. 4-5 (2015).

- 74 "Research Report: Beyond 30%: Workplace culture in Sport," Women in Sport, accessed November 10, 2022, <https://womeninsport.org/research-and-advice/our-publications/beyond-30-workplace-culture-in-sport-report/>.
- 75 Honorata Jakubowska, "Poland: Underrepresentation and misrecognition of women," in *Gender diversity in European Sport Governance*, eds. Agnes Elling, Jorid Hovden, Annelies Knoppers (London: Routledge, 2018).
- 76 Johanna Adriaanse, and Toni Schofield, "The Impact of Gender Quotas on Gender Equality in Sport Governance," *Journal of sport management* 28, no. 5 (2014).
- 77 Madeleine Pape, and Lucie Schoch, "Gendering strategic action fields in sports governance," *International Review for the Sociology of Sport* (2022).
- 78 Hovden, "'Heavyweight' men and younger women? The gendering of selection processes in Norwegian sports organizations".
- 79 Caprais, Sabatier, and Rubi, "Electoral Competition and Gender Quotas: Dearth of Female Applicants or Structural Resistance?".
- 80 Piggott, and Pike, "'CEO equals man': Gender and informal organisational practices in English sport governance".
- 81 Jorid Hovden, "Female top leaders—prisoners of gender? The gendering of leadership discourses in Norwegian sports organizations", *International Journal of Sport Policy and Politics* 2.2 (2010).
- 82 Ian Henry, and Ping Chao Lee, "Governance and ethics in sport", in *The business of sport management*, eds. John Beech, and Simon Chadwick (Harlow: Pearson, 2004).
- 83 Alsarve, "Achieving Gender Equity: Barriers and Possibilities at Board Level in Swedish Sport".
- 84 Johanna A. Adriaanse, "Quotas to Accelerate Gender Equity in Sport Leadership: Do They Work?", in *Women in Sport Leadership* (Abingdon: Routledge, 2017).
- 85 Lucy V. Piggott, Elizabeth C.J. Pike, and Jordan J.K. Matthews, "England: A 'sporting future' for all?," In *Gender diversity in European sport governance*, eds Agnes Elling, Jorid Hovden, and Annelies Knoppers (London: Routledge, 2018).
- 86 See Adriaanse (2017) on the semantic and practical differences between targets and quotas. We distance ourselves from the author by considering both as hard measures.

sport organisations, such as in Australia<sup>87</sup>, France<sup>88</sup>, the United Kingdom<sup>89</sup>, Norway,<sup>90,91,92,93,94</sup> Sweden,<sup>95</sup> or Spain<sup>96,97</sup>. Evidence highlights that quotas and targets have a positive impact on the representation of women in decision-making bodies and that the figures tend to rise after regulations are implemented. Adriaanse, and Schofield<sup>98</sup> found evidence in Australian sport organisations that boards with a minimum of three women represented are perceived as a precondition to advancing gender equity. In Spain, the figures in NSF have increased from 12% in 2013, the year before the implementation of the quota, to 25% in 2018. Similar findings are found in France between 2009 and 2020.<sup>99</sup> Hovden argues for “fast-track” gender quota implementation instead of a more incremental approach, as it can serve as political legitimization to growing stakeholder impatience and fatigue for advancing gender equity in sport organisations for decades.<sup>100</sup> From a soft perspective, initiatives to increase and support the involvement of women in sports in all functions and roles have been introduced one after the other from the mid-1990s, with the organisation of IOC’s World Conferences on Women and Sport since 1994, the creation of International Working Group on Women and Sport (1995), the signing of the IOC supported Brighton Declaration (1994) and the report by the IOC 2000 Commission published in the aftermath of the Salt Lake City Scandal in 1998 that insists on equal representation of men and women members IOC bodies, such as the Athletes’ Commission and the Brighton plus Helsinki Declaration on Women and Sport (2014), whose main tenet is that ‘without women leaders, decision makers and role models and gender-sensitive boards and management with women and men within sport and physical activity, equal opportunities for women and girls will not be achieved’.<sup>101</sup> Such soft initiatives remain present today, as many good governance benchmark analyses, such as the Association of Summer Olympic International Federations Reviews of International Federation Governance (Indicator 3.8) or the Sports Governance Observer (Principles 24 and 50), include gender-targeted measures, a path initiated by the Sydney Scoreboard in 2016. Such soft measures are key ‘in creating awareness of and sensitivity to the issue’<sup>102</sup> of the equal representation of women and men in the governance of sport governing bodies.

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87 Adriaanse, and Schofield, “The Impact of Gender Quotas on Gender Equality in Sport Governance”.

88 Caprais, Sabatier and Rubi, “Electoral Competition and Gender Quotas: Dearth of Female Applicants or Structural Resistance?”.

89 Piggott, Pike, and Matthews, “England: A ‘sporting future’ for all?”.

90 Hovden, “‘Heavyweight’ men and younger women? The gendering of selection processes in Norwegian sports organizations”.

91 Kari Fasting, “Women’s Role in National and International Sports Governing Bodies”, *Women in sport Volume XIII of the encyclopedia of sports medicine* (2000).

92 Kari Fasting, “Women and sport in Norway”.

93 Berit Skirstad, “Gender policy and organizational change: A contextual approach”.

94 Sisjord, Fasting, and Sand, “The impact of gender quotas in leadership in Norwegian organised sport”.

95 Alsarve, “Achieving Gender Equity: Barriers and Possibilities at Board Level in Swedish Sport”.

96 Valiente Fernández, “The impact of gender quotas in sport management: the case of Spain”.

97 See Elling, Hovden and Knoppers (2019) for an overview of context and sport sensitive cases.

98 Adriaanse, and Schofield, “The Impact of Gender Quotas on Gender Equality in Sport Governance”.

99 Caprais, Sabatier, and Rubi, “Electoral Competition and Gender Quotas: Dearth of Female Applicants or Structural Resistance?”.

100 Hovden, Jorid. “The ‘fast track’ as future strategy for achieving gender equality and democracy in sport organisations,” in *Ethics and governance in sport*, eds. Yves Vanden Auweele, Elaine Cook, and Jim Parry (New York: Routledge, 2016).

101 International Working Group Women & Sport, Brighton plus Helsinki 2014 Declaration on Women and Sport (Mount Eden: IWG Women & Sport, 2014), 2, <https://iwgwomenandsport.org/wp-content/uploads/2019/03/Brighton-plus-Helsinki-2014-Declaration-on-Women-and-Sport.pdf>

102 Adriaanse, “Quotas to Accelerate Gender Equity in Sport Leadership: Do They Work?”, 94.

### **2.3. MACRO-LEVEL MEASURES TO PROMOTE GENDER EQUITY IN THE SWISS SPORT SYSTEM**

Between the late 1990s and early 2000s, the Swiss sport system underwent several structural changes that formed the foundations of what is still relevant today. The Swiss Sports Association and the Swiss Olympic Committee merged to form Swiss Olympic, and the Federal Military Department was expanded to include the area of sports, including the creation of FOSPO. Pertaining the division of competencies that is characteristic of a federalist system and the principle of the subsidiarity of public intervention, non-profit sport organisations, such as NSF, benefit from an important degree of strategic and operational autonomy. However, they can also rely on direct and indirect financial support by the public sector at three levels of Swiss federalism: national, cantonal, and local. They receive subsidies for their contributions to elite and mass sports and can have facilitated access to sport facilities. Today, Swiss Olympic represents the interests of more than 80 NSF and partner organisations, and also mainly relies on public funds from lotteries based on time-bound performance agreements with FOSPO. Swiss Olympic and FOSPO also cooperate with numerous actors in the Swiss sport system, particularly when amending laws and ordinances, concluding service agreements, or issuing standards with NSF. This configuration leads to a significant production of interpellations, motions, and concepts in many areas of sport.<sup>103</sup>

At the macro level, the topic of gender representation in the decision-making positions of sport governing bodies emerged at the beginning of 2002, when the Federal Council's (2000) concept for a sports policy in Switzerland recognises that 'the proportion of women in leadership positions (...) is still too low' (p. 6) and that it is necessary to put in place measures to encourage their participation. In 2002, this concept led to a catalogue of measures, which was successively evaluated for the period 2003–2006 and 2007–2010. However, the evaluation did not mention any references to the targeted measures. During this period, neither the law or the ordinance on sport, nor the service agreement between FOSPO and Swiss Olympic made any reference to measures on the promotion of women. Since 2006, Swiss Olympic requires its member federations to allocate at least 15% of the federal subsidies to the promotion of ethics in sport on the basis of the seven principles of the 2004 FOSPO/Swiss Olympic Charter on Ethics in Sport, of which equal treatment is a key principle. However, the principle does not specifically mention gender representation. We observe, however, that the Swiss Sports Observatory gathers information and monitors its evolution – not in the area of "fairer and safer sport," but in the basic dataset.

The 2010s coincided with the first steps of the revision of the Sports Act and a period marked by the fight against organisational corruption in sport. While the fight against doping was already included in the 1972 law, ethics and safety in sports were given an entire chapter in the new draft (Chapter 5). The Charter of Ethics in Sport was revised, and three new specific concepts and measures in the field of mass sport, youth sport, and elite sport and sports facilities were published. Similar to 2000, the federal government's concept for youth and elite sport (only) acknowledges that targeted measures have been taken by clubs and NSF without mentioning concrete examples, but again regrets that women are proportionately

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103 Andreas Ch. Weber et al., "Die Organisation des Sports in der Schweiz". In *Das System Sport in der Schweiz und international*, eds. Hippolyt Kempf, and Hans Lichtsteiner (Maglingen: BASPO, 2015).

less numerous than men in youth and elite sport and significantly underrepresented in decision-making positions in Swiss sport at a historically very low level (Federal Department of Defence, Civil Protection and Sport DDPS 2016). This leads the federal government to call NSF for better promotion, but only from 2024 onwards. Between 2010 and 2018, the strategies of Swiss Olympic adopted and published in 2012 and 2015 or the performance agreements between the FOSPO and Swiss Olympic (2011–2014, 2014–2016, 2017, 2018 and 2019) make no reference to the promotion of women in decision-making positions. As an administrative unit of the federal government, the FOSPO is directly influenced by policymaking in the field of human resources. Based on the Federal Personnel Act (SR 172.220.1), employers must take appropriate measures to ensure equity between women and men. With strategic target values, the federal government sets target values for the proportion of women in the administration.<sup>104</sup> For many years, the FOSPO has been below the target value of 44–48% of women in decision-making positions for 2016–2019 and 46–50% for 2020–2023.<sup>105</sup>

We observe that the discourse on the need to increase the number of women in decision-making positions has taken on a new dimension in 2019, following the accession of the first woman to head the DDPS since its creation in 1998. This has energised institutional and political narratives on the ineffectiveness of gender equity measures in parliament (see Inquiry Trede) and in the federal government, which has led to the implementation of harder measures to ensure better representation of women in decision-making positions. Building on its strategy of 25 November, 2020 for companies linked to the Confederation, the federal government expects the NSF to comply with gender representation targets (Federal Council 2021a). This includes a target requirement of a minimum of 40% of women's representation in executive committees to be implemented by the end of 2024.<sup>106,107</sup> The performance agreement between FOSPO and Swiss Olympic obliges NSF to promote gender equity. In the version of 2021, Swiss Olympic shall set related measures and is also requested to document the progress made on the basis of the performance agreements with NSF. In the medium term, gender equality measures will be integrated into the revision of the Sports Promotion Ordinance, and compliance with the targets should be taken into account in the calculation of subsidies.<sup>108</sup> Ultimately, the federal government considers that Swiss Olympic is responsible for conducting awareness-raising and education campaigns but, currently, without related financial support.<sup>109</sup> In April 2021, the federal government issued Equality Strategy 2030 as the first national strategy to specifically promote gender equity. It sets four action fields (professional and public life, conciliation and family, gender violence, and discrimination) and related goals and measures, particularly related to the improvement of gender representation and gender balance in decision-making positions. This representation should be implemented

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104 Federal Office of Personnel [FOPER], *Strategische Sollwerte für das Personalmanagement der Bundesverwaltung 2020–2023* [unpublished dokument] (Bern: FOPER, 2020).

105 FOPER, *Frauenanteil im Kader des Bundesamts für Sport und der Bundesverwaltung* [unpublished dataset, extract by 08.02.2022] (Bern: FOPER, 2022).

106 Federal Council, *Vorschlag zur Anpassung der Verordnung über die Förderung von Sport und Bewegung* (provisorische Fassung).

107 FOSPO, Änderung der Sportförderungsverordnung; Unabhängige nationale Meldestelle des Schweizer Sports. Erläuternder Bericht zur Vernehmlassungsvorlage.

108 "Offensive en faveur des femmes dans le sport", Parlament, Federal Council, accessed October 17, 2022, <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20213333>.

109 Federal Council, "Offensive en faveur des femmes dans le sport".

in particular in events, conferences, and panels by or with the federal administration.<sup>110</sup>

Another special situation occurred at the meso level at the time examined, with a stronger impact on the advancement of women. “The Magglingen Protocols” is the name given by the media to revelations by eight Swiss female athletes about abuse in gymnastics training at the national sports centre in Magglingen. The documents became public at the end of October 2020 and have been processed in the media and politically since. As a result, the federal government wants to put ethical principles into sports on a legally binding basis. In this way, the federal government can enforce financial cuts if the principles are not adhered to. The ethical principles will be anchored in an amendment to the Sports Promotion Ordinance (SR 425.01), which is due to come into force in 2023.<sup>111</sup> This amendment includes a balanced gender representation in the management bodies of sports organisations (association board, foundation board and board of directors) being required as a prerequisite for the disbursement of financial support.<sup>112</sup> Gender balance is achieved when both genders are represented by at least 40% of the seats in a multimember body.<sup>113</sup> In addition, because the required integration of ethical principles in the Sports Promotion Ordinance is based on the Sport Promotion Act (SR 415.0), these adjustments would have a long-term character.

Ultimately, as it was at the international level, the prevalence of the topic has been reinforced since 2020 – by the creation of specialised organisations, such as Helvetia on Track or Sporti(f) – to improve the visibility and recognition of women in all areas of sport and to ensure that clubs, federations, public authorities, and other sports organisations are involved in its process and public authorities and other sports organisations balance the composition of their bodies, commissions, juries, boards of directors, managements, and management teams.<sup>114</sup> Within this context, measures include benchmark analysis and the ongoing development of a database that includes a list of women leaders in sports. It also includes awareness-raising campaigns. Sporti(f) organises networking events, and Helvetia on Track requests that decision-making positions are publicly communicated, that the criteria are set, and that sport governing bodies, such as Swiss Olympic, shall submit at least one female and one male candidate for each candidacy. In 2020, Swiss Olympic organised the first “Swiss Olympic dialogue” on the topic of women in decision-making functions. In the last two years, several NSFs, such as the Swiss national football association, have also decided to raise awareness on the topic with debates and conferences. Such softer measures are also perceptible with regular political speeches or interviews with Federal Councillor Amherd including calls for

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110 Federal Council, *Stratégie Egalité 2030* (Bern: Swiss Confederation, 2021), [https://www.ebg.admin.ch/dam/ebg/fr/dokumente/publikationen\\_gleichstellung\\_allgemein/Gleichstellungsstrategie%202030.pdf.download.pdf/Strat%C3%A9gie%20Egalit%C3%A9%202030.pdf](https://www.ebg.admin.ch/dam/ebg/fr/dokumente/publikationen_gleichstellung_allgemein/Gleichstellungsstrategie%202030.pdf.download.pdf/Strat%C3%A9gie%20Egalit%C3%A9%202030.pdf).

111 Federal Council, *Vorschlag zur Anpassung der Verordnung über die Förderung von Sport und Bewegung* (provisorische Fassung).

112 Federal Council, *Vorschlag zur Anpassung der Verordnung über die Förderung von Sport und Bewegung* (provisorische Fassung).

113 FOSPO, Änderung der Sportförderungsverordnung; Unabhängige nationale Meldestelle des Schweizer Sports. Erläuternder Bericht zur Vernehmlassungsvorlage.

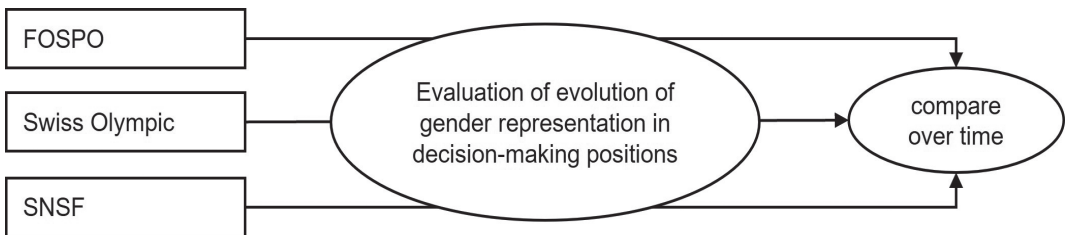
114 “Wir fordern”, Sporti(f), Sporti(f), <https://sportif.info/wir-fordern/>.

more women in sport governing bodies or a better promotion of women.<sup>115, 116, 117</sup>

### 3. METHODS

To provide evidence in response to the research question, a descriptive analysis of the quantitative data was conducted. The analysis period covers 2012–2021, as the Federal Act on the Promotion of Sport and Exercise (SR 415.0) was passed in 2012; this act represents a landmark in Swiss sports policy and therefore provides the legal basis for the national promotion and financial support of sports. The Sports Promotion Act counts among the hard measures at the macro level (see Table 1).

Figure 1. Study Design



Notes: FOSPO = Federal Office of Sport; SNSF = Swiss National Sports Federations.

Source: own illustration.

The quantitative data collection and analysis measures the variation in women’s representation in decision-making positions in sport governing bodies. Three different organisations were considered that act on a national level: (a) the FOSPO, (b) Swiss Olympic and (c) SNSF. The FOSPO represents the public sector, while Swiss Olympic and the SNSF represent the non-profit sector. For all three organisations, gender representation in operational decision-making positions was analysed.

At the FOSPO and Swiss Olympic, decision-making positions were defined if the persons worked in a management function according to their employment contract. Within these two organisations, the lower, middle, and higher managements were examined in an aggregated manner since no information on the level of the management position was available in the data set. The data on the proportion of women at FOSPO were supplied directly by FOPER as percentages over the years 2012 to 2021.<sup>118</sup> No data on absolute figures for the FOSPO were available. The data set for Swiss Olympic was supplied by Swiss Olympic itself over the entire period from 2012 to 2021.<sup>119</sup> The data set contained absolute numbers of women and men

115 Viola Amherd, “Mehr Frauen in hohen Funktionen wären wichtig”, interview by Lino Schaeren, *Federal Department of Defence, Civil Protection and Sport*, November 11, 2019, <https://www.vbs.admin.ch/de/vbs/organisation/cvbs.detail.news.html/vbs-internet/interviews/2019/191107a.html>.

116 Viola Amherd, Ansprache zum Zukunftstag “Strategie Sportwirtschaft 5.0,” *Der Bundesrat*, June 9, 2020, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-79391.html>.

117 FOSPO, *Sprechnotiz Bundesrätin Viola Amherd zur Medienkonferenz 28.6.2021 zur Studie Leistungssport Schweiz 2019* [unpublished document]. (Magglingen: FOSPO, 2021).

118 FOPER, *Frauenanteil im Kader des Bundesamts für Sport und der Bundesverwaltung*.

119 Swiss Olympic, *Gender-Statistik* [unpublished dataset, extract by 11.03.2022] (Ittigen: Swiss Olympic, 2022).

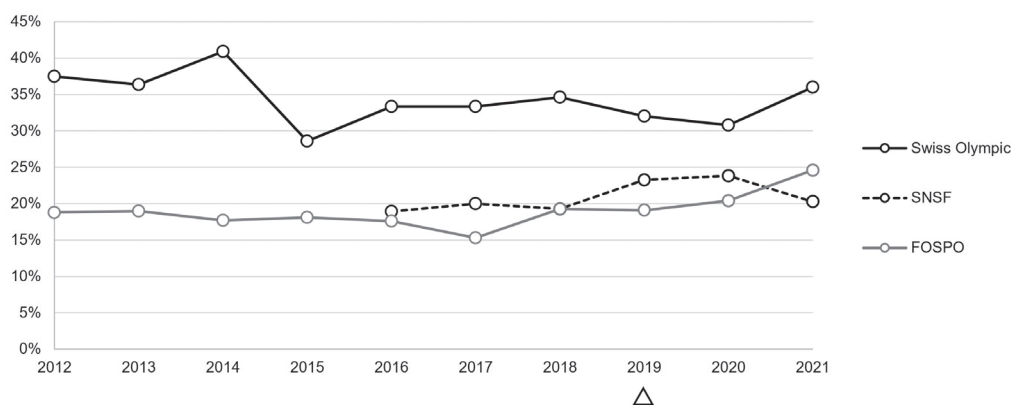


over the specified period with a sampling size varying between  $n = 16$  and  $25$  depending on the year. At the SNSF, leadership positions were defined according to their function, with the underlying idea of examining the superiors of athletes in elite sports. Therefore, performance directors and youth sport directors were examined, as they act as supervisors of athletes in elite sports. Those positions can be assigned to lower management without an existing definition by the SNSF respectively. The data was provided by Swiss Olympic and originates from a database extract as of 25.02.2022 of the functions performance directors and youth sports directors with a varying sample size of  $n = 74$  to  $88$  from 34 SNSF representing 55 different sports over the period between 2016 and 2021. Since the functions were not systematically recorded before 2016, there is no data available for the previous years.

#### 4. RESULTS

The quantitative data analysis examined whether the proportion of women in leadership positions changed between 2012 and 2021. Looking at the gender representation in decision-making positions in the three different sport governing bodies (Figure 2), it is apparent that Swiss Olympic has the highest proportion of women overall. In all three organisations, there is fluctuation in women's representation, and therefore no trend identifiable towards more women over the entire period from 2012 to 2021. The FOSPO has shown an upward trend since 2018, with a slightly stronger increase from 2020 to 2021. This increase is also identifiable at Swiss Olympic. In contrast, SNSF showed a decline in 2021 after an increase in the proportion of women in previous years.

Figure 2. Proportion of women in operational leadership positions of Swiss sport governing bodies 2012–2021

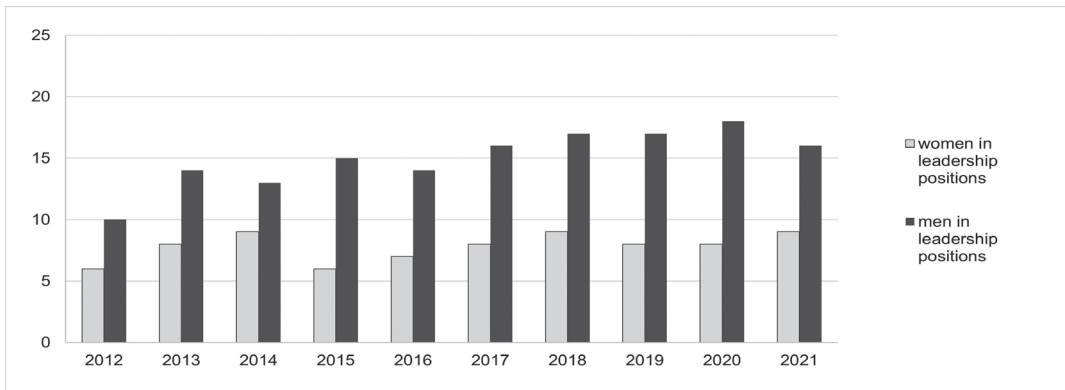


Notes: FOSPO = Federal Office of Sport; SNSF = Swiss National Sports Federations;  $\Delta$  = Taking office of Federal Councillor Viola Amherd.

Source: FOPER, *Frauenanteil im Kader des Bundesamts für Sport und der Bundesverwaltung*; Swiss Olympic, *Gender-Statistik*; Swiss Olympic, "Card-Inhaber (Swiss Olympic Techniker)" [dataset], accessed February 25, 2022, <https://www.swissolympic.ch/athleten-trainer/swiss-olympic-card/card-inhaber.html?searchId=7971>.

Figure 3 shows the absolute number of women and men at Swiss Olympic over time. It is evident that the proportion of women fluctuated over the entire period and that the proportion of women in 2021, at 36%, was very slightly below the baseline level of 2012, at 37.5%. In 2015, there was a drop in the proportion of women caused by an increase in the number of men, accompanied by a reduction in the number of women. Since then, the proportion of women has fluctuated, never returning to its peak level in 2014 (41% of women). The increase in women's representation in 2021 can be explained by an increase in women and a decrease in men at the same time. Consequently, no pattern can be identified as to whether the gender distribution is more likely due to a change in the proportion of women or to a change in the proportion of men. However, it can be seen that when large changes in the gender distribution occurred, this was due to an opposite development in the two gender ratios.

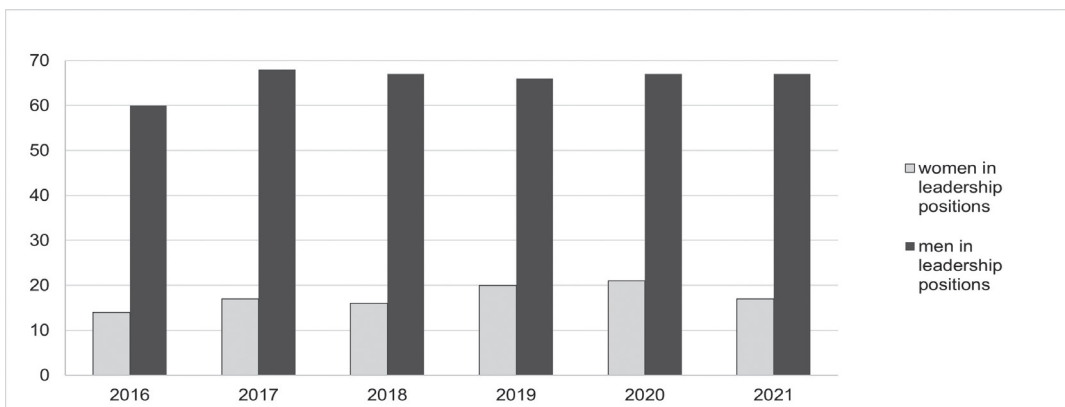
Figure 3. Number of women and men in management positions at Swiss Olympic 2012–2021



Notes: Source: Swiss Olympic, *Gender-Statistik*

The absolute number of women and men at the SNSF over time is shown in Figure 4. Similar to Swiss Olympic, the SNSF do not show clear patterns in gender distribution, but rather fluctuations among women, as well as men.

Figure 4. Number of women and men in leadership positions at SNSF 2016–2021



Notes: Source: Swiss Olympic, "Card-Inhaber (Swiss Olympic Techniker)"

## 5. DISCUSSION

The aim of this study was to present the evolution of gender representation in sport governing bodies in Switzerland in light of three cases: FOSPO, Swiss Olympic, and SNSF. During the period 2012 and 2021, evidence from our data shows that (a) there is no overall positive trend in the representation of women in decision-making positions in the three examined organisations and (b) that compared to other national contexts, figures are relatively low for national sport governing bodies and FOSPO (15.3% to 24.6%) and rather average–good for Swiss Olympic (28.6% to 40.9%). During this period, some national sport federations have hired or elected women in top management positions (e.g., rugby in 2013 or gymnastics in 2021) or middle management positions, but such initiatives remain rare. We can isolate a slight positive increase in representation at FOSPO since 2017 and a stronger increase between 2020 and 2021. This observation is comparable to Swiss Olympic for the same period. On the contrary, after a positive evolution in the last two years, the representation of women in SNSF dropped from 2020 to 2021.

Our results for Switzerland contradict evidence from other countries, such as Norway, France or Spain, where the presence of women in decision-making positions or bodies has grown faster in the last years. Most of the period under investigation in our study does not take into account the introduction of a hard measure, such as a quota, which was only communicated in late 2021 for implementation by 2024 and consubstantial to the modification of the Sports Promotion Ordinance. However, this observation suggests that possible soft measures at the micro or meso level within the Swiss sport system may be ineffective in achieving the policy objectives, as the Swiss sport system includes a high degree of cooperation,<sup>120</sup> public sector subsidiarity, and autonomy of non-profit sport organisations. On the other hand, we observe a possible effect of “anticipatory obedience” in the period 2020–2021, during which Federal Councillor Amherd activated soft (macro) measures to emphasise the importance of gender representation by calling for more women in sport governing bodies or a better promotion of women in the army with public speeches and interviews.<sup>121,122,123</sup> This anticipatory obedience was also observed during the COVID-19 pandemic.<sup>124</sup> In parallel, a set of governmental policy documents clearly insist on the topic of diversity in public administration (e.g. Federal Personnel Act). Furthermore, specialised organisations, such as Sporti(f) or Helvetia on Track, were created, and gathering women leaders (including Federal Councillor Viola Amherd) has gained much visibility and legitimacy through important communication campaigns. With awareness-rising power, soft macro-level measures can, therefore, have a catalytic effect to lay the ground for the implementation of stronger measures by sport governing bodies.

In the period of 2020–2021, the interference of the federal government in the governance and management of autonomous non-profit sport governing bodies and the pressure for

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120 Emmanuel Bayle, “Switzerland: The organisation of sport and policy towards sport federations”, *Sport Policy Systems and Sport Federations: A Cross-National Perspective* (2017).

121 Amherd, “Mehr Frauen in hohen Funktionen wären wichtig”.

122 Amherd, “Ansprache zum Zukunftstag «Strategie Sportwirtschaft 5.0»”.

123 FOSPO, *Sprechnotiz Bundesrätin Viola Amherd zur Medienkonferenz 28.6.2021 zur Studie Leistungssport Schweiz 2019*.

124 Benjamin Ewert, “Citizenship as a Form of Anticipatory Obedience? Implications of Preventive Health Policy in Germany”, *Politics & Policy* 49, no. 4 (2021).

organisational change have also been backed by two exogenous factors: the particular situation due to the COVID-19 crisis and the “Maggingen protocols” in 2020. Both events have catalysed a larger reform of the Swiss sport system, as they changed power relations and respective expectations among the stakeholders. In the first case, the federal government injected substantial public funds with the intention of limiting the damages caused by the pandemic, which, in turn, stabilised the capabilities of sport organisations. This has reinforced the reporting and accountability processes between public and non-profit sport organisations. In the second case, the “Maggingen protocols” created a climate for reform towards a more ethical and fair sport system, including the amendment of the Sports Promotion Ordinance by 2023. Both events have generated a new sense of urgency in the sport system. The traditional democratic and participatory rather lengthy processes characteristic of the Swiss political system moved into sharper and faster processes tinted with a humanistic approach with regard to sport-related issues. In this vein, the occurrence of these two events created a peculiar sporting climate in the period of 2020–2021, which, in turn, may have influenced the legitimacy and prevalence of the gender narrative in the Swiss sport system.

Compared to other countries, such as Norway, Sweden, or Spain, Switzerland does not have a strong track record in the development and implementation of hard macro-level measures, such as quotas or targets. In Norway, the gender quota system has been implemented for the umbrella federation since 1987.<sup>125</sup> In Switzerland, such measures have only emerged in recent years. This mirrors Hovden’s recommendation<sup>126</sup> to “fast-track” gender quota implementation to serve as political legitimation to growing stakeholder impatience for advancing gender equity in sport organisations. Building on the experiences of other national contexts, we can expect the overall number of women to increase, especially if the quota is followed by financial sanctioning mechanisms for non-compliance<sup>127</sup> and anchored in the Sports Promotion Ordinance. In turn, having more women in decision-making positions reinforces concern and raises social awareness of the issue, as quantitatively more people carry out the narrative. However, building on Hovden,<sup>128</sup> the introduction of quotas is not the principal driver when considering the overall distribution of men and women in decision-making positions. It can secure the nomination of women, as requested by related regulations, but other factors can hinder or boost the achievement of the objectives set by the quota, particularly at the meso level. Caprais, Sabatier, and Ruby<sup>129</sup> mentioned that the governance structure and representation system of NSF (e.g., number of seats in decision-making bodies, number of management units, type of nomination process, and terms of reference of the position) may influence the decision of a career pathway. This decision is also more broadly related to the number of women candidates for a position, the type of sports disciplines and the width of their participation base (i.e., number of women in the sports discipline). Longitudinal evidence from Spain shows that the higher the position is located in the hierarchy, the more difficult it

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125 Hovden, “Female top leaders—prisoners of gender? The gendering of leadership discourses in Norwegian sports organizations”.

126 Hovden, Jorid. “The ‘fast track’ as future strategy for achieving gender equality and democracy in sport organisations”.

127 Valiente Fernández, “The impact of gender quotas in sport management: the case of Spain”.

128 Hovden (“‘Heavyweight’ men and younger women? The gendering of selection processes in Norwegian sports organizations”.

129 Caprais, Sabatier, and Ruby, “Electoral Competition and Gender Quotas: Dearth of Female Applicants or Structural Resistance?”.

is for women to access it.<sup>130</sup>

This study provides new data on gender representation in decision-making positions in the Swiss sport system. It can complement benchmark studies on European countries. It also offers a descriptive account of the measures that promote gender representation. However, it should be pointed out that the literature review is partly based on publicly available policy documents and that the results are based on an interpretation of quantitative descriptive raw data. From there, we do not build evidence on a statistical relationship between the types of measures and their effect, but rather discuss potential causalities. To better understand these mechanisms and also to prove explanatory evidence, a series of qualitative interviews with decision-makers (men and women) should be conducted (e.g., on the ideological resistance to quotas, the type of structural and processual challenges related to implementation within an organisation, the role of leadership or the existence and interplay between macro- and micro-level initiatives that have already been implemented in sport governing bodies). A mixed-methods approach is recommended for further investigation. Qualitative data can be used to explain the effects that emerge from quantitative data. This will allow for grounder research outcomes in the Swiss sport context, comparable to other national case studies and secure the effectiveness of policy measures over the long run. Furthermore, to follow Valiente Fernández,<sup>131</sup> who regrets a lack of reflection on the type of organisation that implements a quota (e.g., government, private companies, and non-profits), and Jakubowska,<sup>132</sup> Adriaanse, and Schofield<sup>133</sup> and Pape, and Schoch,<sup>134</sup> who highlight that gender-promotive measures are consubstantial to organisational culture and values, a more representative sampling and sharper segmentation of sport governing bodies should be performed. In our analysis, we included three types of organisations that represent two different sectors – public and non-profit – and that have their own logic. The results for one type of organisation, NSF, are also a clustering of data. In the public sector, we focused on a single organisation (FOSPO). It would be relevant to analyse the impact of a gender quota and its interplay with other measures within each sector.

## 6. CONCLUSION

Improvement of gender representation in sports remains slow, but many initiatives have been undertaken. To date, their effectiveness has been measured using descriptive quantitative benchmark analysis. Although they can be criticised methodologically, they have the advantage of problematising and creating awareness of an issue. Our analysis does not show clear evidence that the number of women who hold decision-making positions in sport organisations is steadily growing in the long run. Building on the literature, we can expect a positive effect after the enforcement of the target in 2024. However, we have also observed that other types of measures can contribute to reaching the policy aim. Therefore, it is an opportunity for researchers to continue to collect and analyse quantitative data among the same sport governing bodies in the long term and sharpen the analysis with a better deconstruction of the decision-making positions within. This, in turn, will provide better

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130 Valiente Fernández, "The impact of gender quotas in sport management: the case of Spain".

131 Valiente Fernández, "The impact of gender quotas in sport management: the case of Spain".

132 Jakubowska, "Poland: Underrepresentation and misrecognition of women".

133 Adriaanse, and Schofield, "The Impact of Gender Quotas on Gender Equality in Sport Governance".

134 Pape, and Schoch, "Gendering strategic action fields in sports governance".

evidence to support the implementation of sustainable meso- and micro-level measures for the development of sport organisations and contribute to re-anchoring the principle of the subsidiarity of public intervention and the autonomy of non-profit sport organisations.

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

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### **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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  - 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,

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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.

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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.'



## COURT OF ARBITRATION FOR SPORT (CAS), PROCEDURAL JUSTICE, AND ATHLETES' APPEALS IN DEVELOPING COUNTRIES

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### Abstract

The kinetic energy that goes into sports competition is healthy and dynamic and should promote goodwill between nations. There is a presumption that sports politics impinges on the judgments of the sports adjudicating body, the Court of Arbitration for Sport (CAS), in determining appeals in their rulings on the validity of results in international sports competitions. The CAS system for arbitration has rules that follow the *lex loci arbitri* and its procedures conform to the Swiss Private International law in appeals to the Swiss Federal Tribunal for athletes. The jurisdiction of CAS has to conform to the principles of natural justice when appeals from athletes who have disputes with international sports federations are brought to its attention. This is of particular concern when the national federations of developing countries are involved in sanctioning or supporting athletes who have encountered discrimination. The research question in this paper is whether the CAS exercised procedural justice when the adjudication process involved athletes who had been banned from competition and if the rulings were in accordance with fairness and impartiality. The recourse to the European Court of Human Rights, Article 6.1, has been in sharp focus and the judgments of the court on public hearings and the role of quasi-tribunals need to be structured in accordance with natural justice. This paper argues that the CAS process should increase the scope of procedural justice by granting a fair hearing and by being seen as bias free.

**Key words:** Court of Arbitration for Sport (CAS), Procedural Law, Substantive Law, Swiss Law, Swiss Federal Tribunal, International Olympic Committee, Independence of Arbitrators, Jurisdiction, Public Policy, Rule against bias.

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## 1. INTRODUCTION

The sports federation of a nation is constituted on a model where the international rules of the sport form part of its regulatory framework. The organisation of events, its legal framework, and application of disciplinary codes are governed by the international federation.<sup>1</sup> If an athlete is sanctioned because of a breach of Codes of Practice, then they can exercise the right of appeal to the Court of Arbitration for Sport (CAS), based in Switzerland, which is the adjudicating body for disputes of athletes with their domestic or international federations. Article 27 of the Swiss law empowers CAS under private international law to determine appeals according to the accepted procedures of administrative law. This needs examination because of the athletes' appeals in developing countries who have been discriminated against by the International Olympic Committee (IOC), or an affiliated body with disciplinary powers.

CAS was established in 1984 by the International Olympic Committee (IOC) in order to create a supreme adjudicating forum for the resolution of sports disputes which was separate from the jurisdiction of state courts.<sup>2</sup> The location of CAS is in Lausanne, and the Swiss legal regime and private international law are part of its substantive and procedural law that govern arbitration in sport.<sup>3</sup> Under Article R28 of the CAS Procedural Rules of the Code of Sports-related Arbitration (CAS Code), the proceedings are heard in Switzerland regardless of where the hearings first commenced in the national jurisdiction. The law applicable is the Swiss law of arbitration at any of the CAS proceedings.<sup>4</sup>

IOC, founded CAS in 1984, and there has been a certain level of scholarly criticism referring to a lack of its independence. The organisation of CAS is an autonomous body that is not integrated with the IOC.<sup>5</sup> The same provision applies to the arbitral tribunals of the CAS Ad Hoc Divisions sitting, for example, at the Olympic Games. The location of the hearing has no consequence on the legal seat of the arbitration, which remains in Lausanne.<sup>25</sup> As such, the CAS panel constitutes an international arbitral tribunal seated in Switzerland, and all CAS proceedings are subject to the provisions of Switzerland's Private International Law Act (PILA), which ensures that there is procedural consistency between CAS cases.

The most common cases before the CAS are appeals from decisions of FIFA (Federation of International Football Associations / the Fédération internationale de football association),

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1 The International Sports Federations are international non-governmental organisations recognised by the International Olympic Committee (IOC) as administering one or more sports at world level, <https://www.olympic.org/ioc-governance-international-sports-federations>.

2 See Despina Mavromati and Matthieu Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases & Materials* (Alphen aan den Rijn: Kluwer Law International 2015), 1-15

3 This was affirmed by the subsequent ruling at the Swiss Federal Tribunal where the dispute includes the regulations of sports governing bodies framed by a set of rules that contain the arbitration clause SFT 4P.267-270/2002, Judgment of 27 May 2003 (Lazutina / Danilova).

4 See e.g. cases where the CAS hearing was held in another country (see e.g. the Essendon CAS Award which is further analysed below, CAS 2015/A/4059, WADA v. Thomas Bellchambers et al., AFL & ASADA, award of 11 January 2016).

5 The decision in *USOC v IOC* (CAS 2011/O/2422) provides possibly the most eloquent example of the independence of CAS in relation to the IOC. In this case, the CAS held as invalid and unenforceable an IOC decision, which prohibited athletes who had been suspended for more than six months for an anti-doping rule violation from participating in the next Olympic Games following the expiry of their suspension.

the world governing body for football, which has its own internal judicial system.<sup>6</sup> This type of dispute typically arises from the termination of the employment contracts of players or coaches or the movement of players between clubs. As a consequence of such movement, remuneration is generally payable to the player's previous clubs, either pursuant to contractual agreements between the parties, or according to the complex series of regulations that apply to football transfers, both in a national and international context.<sup>7</sup>

The second most represented type of disputes before the CAS are appeals against disciplinary sanctions, with the largest subsection being appeals against sanctions for anti-doping rule violations.<sup>8</sup> Since CAS was designated as the exclusive appeals body for all international anti-doping cases, it has received a constant stream of appeals against decisions based on anti-doping rules. In many cases, the appellant in an anti-doping case is a sportsperson who is appealing against a suspension imposed upon him or her, but the CAS also regularly receives appeals from the World Anti-Doping Agency and international sports federations, which, after its inception in 2004 at the Athens Olympics, has imposed sanction against a sportsperson on grounds of "strict liability".<sup>9</sup>

The disputes regarding match fixing and corruption have emerged in recent years and have brought the focus of CAS on this issue after an initial "general interest" without coercive investigatory powers in gathering sufficient evidence.<sup>10</sup> This has changed in recent times when the CAS has become more proactive and adopted a policy of disciplining sportsmen as "a crucial aspect of addressing the threats to integrity in sports as an effective education" for all concerned with sports as a vocation.<sup>11</sup> The sports arbitration procedure is the most frequently used within the CAS, and it provides a distinctive framework for sports arbitration. It is a *de novo* procedure, the arbitral tribunal having 'full power to review the facts and the law.'<sup>12</sup>

There have been several books published in international arbitration on sports in the last ten

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6 Pursuant to Article 66 of FIFA Statutes, FIFA explicitly recognizes CAS to resolve disputes between FIFA, members, confederations, leagues, clubs, players, officials, and licensed match agents and players' agents. Further, Article 67(1) of the FIFA Statutes provides that appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members, or leagues shall be lodged with the CAS within 21 days of notification of the decision in question.

7 CAS policy is based "*in relation to the substance of the unilateral option clause, parity of termination rights is no longer to be taken as a benchmark for public policy, since (as shown) a disparity of termination rights has to be accepted as such; instead, the question to be answered here is how great the disparity may be.*" Wolfgang Portman, "Unilateral option clauses in Footballer's contracts of employment: An assessment from the perspective of International Sports Arbitration", *ISLR* 7, no. 1 (2007): 6-16.

8 According to Article 13.2.1. of World Anti-Doping Code "cases concerning participants in international events or cases involving international level athletes, the decisions concerning anti-doping rule infraction may only be appealed exclusively before CAS in accordance with the rules of the court."

9 Richard McLaren, "CAS doping jurisprudence. What can we learn?" *ISLR* 1, (2006):4.

10 Efraim Barak and Dennis Koolard, "Match fixing. The aftermath of Pobeda - what have the past four years brought us". *Bulletin TAS, CAS* 1, (2014): 7.

11 Barak and Koolard, "Match fixing. The aftermath of Pobeda - what have the past four years brought us", 78.

12 In CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA, para. 78. CAS panel in Pobeda came to the conclusion that match-fixing could be sanctioned on the basis of this general provision as it "*touches at the very essence of the principle of loyalty, integrity and sportsmanship because it has an unsporting impact on the result of the game by inducing players not to perform according to their real sporting capacities and because they get rewarded for their misconduct...*".

years. These focus on sports law as an international legal system and established norms of sports arbitration as equivalent to arbitration in investment. The authors include Despina Mavromati, Mathieu Reeb;<sup>13</sup> Antoine Duval and Antonio Rigozzi;<sup>14</sup> James Nafziger and Ryan Gauthier;<sup>15</sup> Johan Lindholm;<sup>16</sup> David McArdle;<sup>17</sup> and Adam Lewis and Jonathon Taylor.<sup>18</sup>

My article differs in a way that it is concerned with the substantive and procedural aspects of natural justice which relate to the right to a fair hearing and the rule against bias. The subject of the thesis are the pro novo appeals which have not been adjudged fairly or expeditiously by the sports federations of athletes in their home countries and have had to be raised at the CAS level. The gap in the existing literature is to do with the lack of attention paid to athletes from developing countries and the obstacles faced by these athletes in appealing to the higher arbitration forum of CAS and the appeals procedure. This has been identified by this paper, and it is intended to create conditions for a fair system of arbitration in sport for athletes from the southern hemisphere.

This paper considers the substantive and procedural jurisdiction of CAS in considering appeals and examines Swiss Private International Law in its framework. The focus of the article is on the arbitration process and procedural justice, which is the essence of the natural justice principles that are adopted by CAS. The explored issues are the appeals of athletes and the possibility of bias in the manner in which those appeals have been considered. It will examine the Swiss procedural law to doping-related procedures before CAS, including the admissibility of evidence; CAS proceedings; the appeals from there to the Swiss Federal Tribunal (SFT); and appeals of athletes from the developing world countries and the possibility of bias in the hearings of CAS. The rules of breach of natural justice will be considered and the discrimination in appeals where athletes from the developing countries have not received a fair hearing at CAS and have appealed to the higher appeals tribunal or at the European Court of Human Rights (ECtHR). The argument in this paper is that justice must be done and that the arbitration process should incorporate both substantive and procedural justice and decisions. Where there is lack of either of the two principles should be vitiated for bias.

## 2. LEGAL FRAMEWORK OF SWISS LEX ARBITRI

The process of arbitration in CAS is governed by arbitral procedure under Chapter 12, Article 182 PILA, with the heading "Principle," which states that "the parties may, directly or by reference to rules of arbitration, determine the arbitral procedure" (first paragraph) and that, "[i]f the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a statute or to rules of arbitration" (second paragraph), keeping in mind that "[r]egardless of the procedure chosen, the Arbitral tribunal shall ensure equal treatment of the parties and the right of both parties to be heard in adversarial

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13 Mavromati and Reeb, *The Code of the Court of Arbitration for Sport: Commentary, Cases & Materials*.

14 Antoine Duval and Antonio Rigozzi, *Yearbook of International Sports Arbitration* (The Hague: T.M.C. Asser Press & Springer, 2017). <https://doi.org/10.1007/978-94-6265-319-1>.

15 James Nafziger and Ryan Gauthier, *Handbook on International Sports Law, 2nd edition* (Glos: Edward Elgar, 2022). <https://doi.org/10.4337/9781839108617>.

16 Johan Lindholm, *The Court of Arbitration for Sport and its Jurisprudence: An Empirical Inquiry into Lex Sportiva*, (The Hague: T.M.C. Asser Press & Springer, 2019). <https://doi.org/10.1007/978-94-6265-285-9>.

17 David McArdle, *Dispute Resolution in Sport, Athletes, Law and Arbitration, 1st edition* (Oxon: Routledge, 2015).

18 Jonathon Taylor and Adam Lewis, *Sports: Law and Practice, 4th edition* (London: Bloomsbury Publishing, 2021).

*proceedings*" (third paragraph).

The CAS arbitration hearings are conducted according to *lex loci arbitri*,<sup>19</sup> which regulates the hearing process. This applies to all parties except those domiciled in Switzerland. These are overriding principles that exist under the international law of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (UNITRAL).<sup>20</sup> The PILA framework sets out the main rules applicable to international arbitrations in Switzerland, including: the requirements for the validity of the arbitration agreement, including arbitrability; the fundamental rules of procedure; the authority to order provisional and conservatory measures; the law applicable to the merits of the dispute; and the annulment of awards.<sup>21</sup>

The parties are implied to have indirectly determined the arbitral procedure by reference to the CAS Code, which then assumes the binding "rules of arbitration" within the meaning of Article 182(1) PILA). The specific agreement agreed upon should always prevail, even if the parties could still enter into a separate agreement on the procedure to be adopted unless it does not conform to the 'mandatory procedural rules' and the arbitration has to be conducted by an arbitrator who is registered on the CAS arbitrator list.<sup>22</sup>

Pursuant to article 190 of the PILA, CAS awards are final upon communication to the parties and can only be challenged on very limited grounds before the SFT. The application of Swiss law to the CAS arbitration ensures the uniform application of procedural rules notwithstanding the venue of the sporting event or the nationality of athletes.<sup>23</sup> The process to challenge a decision is before the SFT and that all motions to set aside CAS awards are by filing before the SFT, according to Article 190 para. 2 PILA.

The grounds are the following:

*"a. where the sole arbitrator has been improperly appointed or where the arbitral tribunal has been improperly constituted; b. where the arbitral tribunal has wrongly accepted or denied jurisdiction; c. where the arbitral tribunal has ruled beyond the claims submitted to it, or failed to decide one of the claims; d. where the principle of equal treatment of the parties or their right to be heard in an adversary procedure has not been observed; e. where the award is incompatible with public policy".*

The SFT has held that advance waivers of any right to challenge the award pursuant to Article 192(1) of the PILA are in principle unenforceable in sports arbitrations, given that the athletes' purported consent to such exclusion agreements 'obviously [does] not rest on a free will' and is therefore *'tainted ab novo'*.<sup>24</sup> The procedure before the Appeals Arbitration

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19 Swiss law applies as the fundamental rule that is the law of the place where the arbitration takes place.

20 See in particular Article V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, <https://www.newyorkconvention.org/>.

21 See for instance CAS 2010/A/2083, UCI v. Jan Ullrich & Swiss Olympic, para. 27.

22 In CAS 2011/O/2574, UEFA v. Olympique des Alpes SA / FC Sion, para. 73, the Respondent criticised the closed list of CAS arbitrators and informed the tribunal that they wished to appoint Mr Niels Sørensen (judge at the State Court of the Canton of Neuchâtel).

23 Provided in Article R58 CAS Code. See e.g. CAS 2014/A/3639 Amar Muralidharan v. Indian National Anti-Doping Agency (NADA), Indian National Dope Testing Laboratory, Ministry of Youth Affairs & Sports, award of 8 April 2015.

24 See decision by the Swiss Supreme Court X [Guillermo Canas] v ATP Tour [& TAS], 4P. 172/2006 of 22 March

Division is governed by the General Provisions of the CAS Code (articles R27 to R37) and by the Special Provisions Applicable to the Appeals Arbitration Proceedings (articles R47 to R59 of the CAS Code). The rules of law applicable to the merits of the dispute are governed in CAS under the substantive law according to Article R58 of the CAS Code which provides that the arbitral tribunal:

*"shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

Article R33 of the CAS Code provides that 'Every arbitrator shall appear on the list drawn up by the ICAS' (i.e. the CAS List of Arbitrators). Having originally comprised 60 members, the CAS list now consists of approximately 325 arbitrators, each appointed for a renewable period of four years. This is a closed list and in CAS arbitrations, all arbitrators must be appointed from this list. The practice of maintaining a closed list has been criticised,<sup>32</sup> although the Swiss Supreme Court upheld the system in the case of *Larissa Lazutina*.<sup>33</sup> The arbitral process was not independent and the procedural right to a fair hearing and that a party must not be a judge in its own case were not respected. This led to its jurisdiction being challenged in the SFT.

In *Gundel v. FEI* case,<sup>25</sup> the SFT acknowledged "(i) that the decisions of an international federation incorporated in Switzerland could be validly made subject to arbitration (in lieu of being submitted to the courts at the seat of the relevant federation, as provided in Art. 75 CC) by the inclusion of a clause to that effect in the federation's statutes, and (albeit with some reservations) (ii) that CAS arbitration under the then applicable CAS arbitration rules was, as a matter of principle, sufficiently independent from the sports federations to qualify as "true arbitration" under Swiss law.<sup>26</sup>

The ruling also stated that Chapter 12 of the PILA is widely regarded as being 'arbitration friendly'.<sup>26</sup> In accordance with this ruling, the administration of CAS was reformed in order to create an independent arbitral process and this increased the number of CAS proceedings (due to the fact that many other important sports-governing bodies had in the meantime followed the FEI's example by including a CAS arbitration clause in their regulations). This induced the IOC to launch a revision of the CAS arbitration rules. The so-called "1994 reform," which resulted in the enactment of the CAS Code, addressed concerns raised by the Swiss Federal Tribunal in *Gundel*, but also led to the enactment of a specific set of rules to govern arbitrations arising from appeals against the decisions issued by sports-governing bodies, i.e., Arts. R47-R70 of the CAS Code. This set of rules, which is also commonly referred to as the "appeal arbitration rules," or "CAS appeals proceedings," has augmented the CAS's process and as a consequence more than 80% of CAS cases are conducted as appeals proceedings pursuant to Art. R47 et seqq. of the Code.<sup>27</sup>

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2007, reported in the Official Collection of the Supreme Court's Decisions (ATF) ATF 133 III 235, 243; also reported in ASA Bull, 2007, p. 592 and translated in Swiss Int'l Arb.L.Rep 2007, 65-99.

25 SFT 4P.217/1992. Judgment of 15 March 1993 (*Gundel*).

26 ASA Bull. 1993, p. 398; translated in: Mealey's I.A.R., 10 (October 1993): 12, with a comment by Jan Paulsson.

27 Manuel Arroyo, *Arbitration in Switzerland the Practitioner's Guide*, 2<sup>nd</sup> edition (Alphen aan den Rijn: Walter Kluwer, 2018), 392-393.

The original wording of Art. R47 remained unchanged until 2004, when the scope of application of the appeals procedure was clarified by substituting the words “decision of a disciplinary tribunal or similar body of a federation, association or sports body” with the terms “decision of a federation, association or sports-related body.” This definition is concise and objective as to its purpose relating to the CAS appeals proceedings and is effective in challenging rulings issued by all sports-governing bodies, and relates to decisions that are on different matters which are not solely disciplinary.

The only provision of Chapter 12 that specifically deals with evidentiary issues that could have a bearing on natural justice is Article 184. Under the heading “[t]aking of evidence,” this provision states that “[t]he Arbitral tribunal shall itself conduct the taking of evidence” (first paragraph) and that, “[i]f the assistance of state judiciary authorities is necessary for the taking of evidence, the Arbitral tribunal or a party with the consent of the Arbitral tribunal, may request the assistance of the state judge at the seat of the Arbitral tribunal; the judge shall apply his own law” (second paragraph). Despite this, PILA and the SFT have established its own jurisprudence in interpreting Swiss law.

According to the CAS Code (Article R27 & Article R47) and the general rules on jurisdiction provided in Articles 177 ff. of the PILA, the important condition for an appeal is the existence of a valid arbitration clause. The PILA provides arbitration for a range of cases including any “*dispute involving financial interest may be the subject of an arbitration,*” meaning that all sports disputes involving a professional athlete are arbitrable. The disciplinary character of doping disputes is not a restriction to their arbitrability under Swiss law.<sup>28</sup>

The determination by the SFT in the Gundel judgment was that the doping-related sanctions arise from a private law relationship between an association and its members and can therefore be subject to arbitration, on condition that the financial interest requirement of Article 177 para. 1 PILA is met.<sup>29</sup> The majority of doping-related appeals emanating from the World Anti-Doping Agency (WADA) to the CAS are based on arbitration clauses contained in the rules and regulations of the sports governing bodies that have ratified the World Anti-Doping Code. (WADC)<sup>30</sup>

### **3. OBJECTIVITY OF ARBITRATORS IN DOPING CASES**

In doping cases, when determining the arbitrability of a dispute and the jurisdiction of CAS, the SFT has been following a liberal approach when it comes to the validity of an arbitration agreement in favour of CAS, in order to have international rulings with the object of terminating doping.<sup>31</sup> Accordingly, global references are valid if they can be understood as the acceptance of the arbitration clause included in the agreement.<sup>32</sup> The SFT also held that the

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28 See SFT 4P.217/1992, Judgment of 15 March 1993 (Gundel). See also. Antonio Rigozzi, Dominique Sprumont, Yann Hafner (Basel: Helbing Lichtenhahn Verlag, 2012): 439

29 See SFT 4P.172/2006, Judgment of 22 March 2007 (Cañas) & SFT 4A\_460/2008, Judgment of 12 January 2009 (Dodô), para. 6.2.

30 On the Player Entry Forms as valid arbitration agreements see also, generally SFT 4A\_358/2009, Judgment of 06 November 2009 (Busch).

31 See also SFT 4P.230/2000, Judgment of 7 February 2001 (Stanley Roberts).

32 SFT 4A\_428/2011, Judgment of 13 February 2012 (Wickmayer).

CAS arbitration clause is "*branchentypisch*" in professional sports, meaning that professional athletes could not validly argue that they ignored the existence of a CAS arbitration clause in order to challenge its validity.<sup>33</sup>

The SFT has interpreted the scope of CAS arbitration clauses in numerous judgments related to doping.<sup>34</sup> According to the principle of trust ("*principe de la confiance*" in French, "*Vertrauensprinzip*" in German), an arbitration clause through a global reference is binding on a party that is aware of its existence and does not raise any objections e.g., if an athlete validly consents through their signature of the specimen agreement / of the entry form to the major competition, whose regulations expressly contained the arbitration clause.<sup>35</sup> However, when an athlete signs a player entry form for a specific championship, this does not constitute a broader arbitration agreement (or a general consent / blanket consent) outside the scope of the event.<sup>36</sup>

The determination in the case of *Essendon*<sup>37</sup> (a professional Australian football club) which was under Swiss law ipso facto in which CAS imposed a two-year suspension upon thirty-two Essendon's players for the use of the prohibited substance Thymosin Beta 4. This was within the framework of the players' supplements program banning the drug in 2012.<sup>38</sup> The players subsequently filed a motion to set aside the CAS award before the SFT holding that CAS had exceeded its jurisdiction (Article 190 para. 2 b PILA) by deciding the case de novo. Although the players had filed their objections as to the full power of the Panel's review (which, according to the applicable version of the AFL Anti-Doping Code 2010 would be a limited review), they subsequently signed the Order of Procedure (which included the Panel's decision to rule de novo) without reservations. The SFT therefore rejected the athletes' motion, in essence holding that they had lost their right to challenge the jurisdiction due to their conduct during the proceedings.<sup>39</sup>

Notwithstanding its finding, the SFT did consider the issue of jurisdiction and held (as an obiter dictum) that the jurisdictional issue (and in particular the validity of the arbitration agreement) is determined according to Swiss law. Under Swiss law, and according to the binding CAS Rules (Article R57 of the CAS Code), it is not possible to reduce the full scrutiny of the appeal through a different arbitration agreement. When such an agreement is made, it constitutes an agreement with "*partially impossible content*" ("*defective*" arbitration clause),

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33 The SFT has admitted two motions to set aside a doping-related CAS award based on jurisdictional grounds: SFT 4A\_358/2009, Judgment of 06 November 2009 (Busch); SFT 4A\_456/2009, Judgment of 03 May 2010 (Athletics South Africa).

34 SFT 4C\_44/1996, Judgment of 31 October 1996 (Nagel); SFT 4P.230/2000, Judgment of 7 February 2001 (Stanley Roberts); SFT 4A\_460/2008, Judgment of 9 January 2009 (Dodò).

35 SFT 4A\_358/2009, Judgment of 6 November 2009 (Busch), para. 3.2.3.

36 CAS 2015/A/4059 WADA v. Thomas Bell chambers et al., AFL & ASADA, award of 11 January 2016.

37 Decision 4A\_102/2016 of 27 September 2016, ASA Bull. 1/2017, 115.

38 4A\_102/2016, Judgment of 27 September 2016. See also Katherine Voser, and Nathalie Bell, "Swiss Supreme Court confirms requirement under Swiss law to timely and expressly file objection to jurisdiction", November 16, 2016, [https://uk.practicallaw.thomsonreuters.com/w-004-5554?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-004-5554?transitionType=Default&contextData=(sc.Default)&firstPage=true).

39 See BGE 138 III 29 E.2.3.2, p. 37; SFT 4A\_102/2016, Judgment of 27 September 2016, (*Essendon*), para. 3.4. Also, the players did not claim that they would not have opted for CAS had they known that it was not possible to restrict CAS' power of review.



which is not invalid as such (under Swiss law):<sup>40</sup> in these cases, it is important to determine, whether the parties would still have opted for CAS had they been aware of such “*impossible content*” of the agreement.<sup>41</sup>

The representatives of athletes can validly challenge the appointment of one of the arbitrators before CAS can subsequently file a motion to set aside its award based on the first ground for annulment of an arbitral award (Article 190 para. 2 a PILA). Although, according to the jurisprudence of the Swiss Federal Tribunal, arbitrators are presumed to perform their tasks in an independent and impartial way, the SFT will review the independence of the challenged arbitrators and the validity of the ICAS decision in this respect. The parties who wish to challenge a CAS arbitrator have to do so as soon as they know about it.<sup>42</sup> An issue of particular relevance in this respect is the one of “recurring appointments” of arbitrators, in particular by sports governing bodies.<sup>43</sup>

The IBA Guidelines regarding conflicts of interests provide that the practice of recurring appointments might be justified in specialized forms of arbitration.<sup>44</sup> According to the jurisprudence of the SFT, an arbitrator who accepted specific assignments several years prior to the CAS proceedings in question was “*a university professor who merely put his expertise at the service of the sport community in the general interest (i.e. codifying Anti-Doping Rules and reviewing their application)*” does not violate Article 190 para. 2 a PILA.<sup>45</sup>

The right to be heard and the equality of the parties (in adversarial proceedings PILA) is an internationally recognized legal principle and is also provided in Article 182 (3) PILA. A violation of these rights constitutes a ground for appeal. Under the jurisprudence of the SFT, the parties have to raise all procedural objections /concerns in a timely manner, failing which they lose their right to validly argue a violation of their procedural rights. The Panel must take into consideration all the parties’ legal and factual submissions which are relevant for rendering its decision.<sup>46</sup> There have been four appeals to overrule. CAS awards have so far been (partly or totally) accepted on this ground by the SFT and only one case relates to a doping suspension. In these cases, the CAS Panel will re-hear the case and remedy the elements violated through the previous award.<sup>47</sup>

The CAS award can be annulled if it violates (procedural or substantive) public policy (Article 190 (2) (e) PILA). The Swiss Federal Tribunal has offered a wide variety of what constitutes

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40 See BGE 138 III 29, E.2.3 and BGE 131 III 467 E. 1.2.

41 SFT 4A\_234/2010, Judgment of 29 October 2010 (Valverde II) para. 3.2.2.

42 Notwithstanding the so-called “duty of curiosity” of the parties’ counsel, arbitrators should systematically disclose a maximum information before their appointment. See also SFT 4A\_110/2012, Judgment of 9 October 2012 (Paulissen).

43 Notwithstanding the so-called “duty of curiosity” of the parties’ counsel, arbitrators should systematically disclose a maximum information before their appointment. See also SFT 4A\_110/2012, Judgment of 9 October 2012 (Paulissen).

44 In this case, the university professor who was challenged (Prof. Ulrich Haas) was a Chair of the Group of Independent Observers at the 2004 Olympic Games and Member of the Expert Group for the 2009 WADC.

45 SFT 4A\_234/2010, Judgment of 29 October 2010 (Valverde II).

46 Knoll, ad Art.182 PILA, in *Arbitration in Switzerland – The Practitioner’s Guide* para 111.

47 E.g., CAS 2005/A/951 Guillermo Cañas v. ATP Tour, revised award of 23 May 2007; SFT 4P.172/2006, Judgment of 22 March 2007 (Cañas). This is the only doping-related CAS award that was admitted by the SFT based on Article 190 para. 2 d PILA.

(and what falls outside the scope of) public policy, also within the context of doping cases. An award can only be annulled for substantive reasons if it violates substantive public policy. The Federal Tribunal has reiterated in many cases its view that such a notion is to be interpreted very narrowly and covers only “*fundamental principles that are widely recognized and should underlie any system of law according to the prevailing conceptions in Switzerland*”<sup>48</sup> The SFT has acknowledged that the principles of strict liability and sanctions do not violate substantive public policy.<sup>49</sup> With specific regard to anti-doping rules, the Federal Tribunal found that awards that excessively restrict athletes’ personality rights may, under specific circumstances, violate substantive public policy.<sup>50</sup> The issue of personality rights under Swiss law is also relevant in doping cases and is further examined below.

The evidentiary rules do not make it binding for the CAS arbitrators to apply the procedural rules that would be applicable in a Swiss Court. This is unless the applicable sports regulations contain specific evidentiary rules. The obligation arises from the procedural rule that needs compliance with equal treatment of the parties and the right of both parties to be heard under the “procedural public policy” governed by Article 182(3) PILA). The procedural rules are infringed when due process is violated and the decision appears to be a breach of the rules of natural justice.

The CAS proceedings have to be in accordance with transnational sets of rules specifically drafted for arbitration proceedings rather than in national litigation in court proceedings. This is an important consideration for CAS which insists on professional arbitrators who are selected from their list.<sup>51</sup> The International Bar Association Rules (IBA Rules) on the Taking of Evidence in International Arbitration<sup>52</sup> have been sourced in CAS proceedings to codify the state of the law regarding evidence and are considered to operate as guidance for arbitrators when they have to decide procedural questions for which the applicable arbitration rules do not contain any provision.<sup>53</sup> There are also supplementary rules of evidence in the form of requirements that are contained in the CAS Code which holds some basic provisions such as arbitration exhibits, witness statements, and expert reports.<sup>54</sup> This creates a framework that can assist in the evidentiary measures that can be supplemented by the IBA Rules in order for it to form an agreement in a CAS arbitration.

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48 ATF 132 III 389, para. 2.2.3 (X v. Y), Judgment of 3 August 2006.

49 SFT 4A\_148/2006, Judgment of 10 January 2007, para. 7.3.2.

50 Although the first - and only - case where the Federal Tribunal annulled a CAS award based on this ground was a non-doping case (SFT 4A\_558/2011, Judgment of 27 March 2012 (Matuzalem), para. 4.3.2), the protection of personality rights is also a major issue that is taken into consideration by the Federal Tribunal within the context of doping-related cases.

51 See for instance CAS 2009/A/1752 Vadim Devyatovskiy v. International Olympic Committee (IOC) & CAS 2009/A/1753 Ivan Tsikhan v. IOC, award of 10 June 2010, 8. See SFT 4P.267-270/2002, para. 4.2.1.

52 International Bar Association Rules (IBA Rules) on the Taking of Evidence in International Arbitration, 17 December 2021. <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b>

53 Bernhard Berger and Franz Kellerhals, *International and Domestic Arbitration in Switzerland, 2nd edition* (Bern: Stämpfli Publishers, 2021), 1200.

54 Exhibits Pursuant to Articles R51(1) and R55(1), the parties’ submissions must be accompanied by all “exhibits and specification of other evidence upon which [the relevant party].

#### 4. PROCEDURAL FAIRNESS FOR ATHLETES AND DE NOVO HEARINGS

It is necessary to evaluate the existence of natural justice and its two fundamental requirements (i) the right to a fair hearing and (ii) the rule against bias. This is necessary because of the perception in developing countries that the decisions of CAS may be tainted by bias, and if they are prejudicial, then they should be vitiated on account of the principle that one should not be a judge in its own cause. The issues that need to be considered are the appeals by athletes from the southern hemisphere who have come up against the rules that have led to the probability of bias.<sup>55</sup>

There are some legal experts who have argued that athletes from less developed countries are worse off under the current system of arbitration in sports.<sup>56</sup> The academics who have observed the procedures adopted by CAS have stated that those at the centre of the judicial system are motivated by "... the values set out by middle-class Western men in developed countries with a history of amateur sports ideologies that can be transferred to the rest of the world."<sup>57</sup> It is also a documented fact that there are fewer CAS arbitrators from Asian countries and other parts of the developing world.<sup>58</sup>

Efverström and Bäckström state that in the anti-doping framework "inequities and structural injustice emerge on an individual level because of the varying contexts and conditions."<sup>59</sup> The dispute resolution procedures in developing countries are often criticized for "their lengthy delays and access to justice issues, and the doping control process is no different."<sup>60</sup> The applicable law, CAS jurisprudence, WADA Code, and juristic opinion all maintain that the attributes of procedural fairness in anti-doping disputes should be upheld.

This has been reinforced given the minimum mandatory standards formulated in the

55 Ian Blackshaw, "The rules of natural justice: what are they and why are they important in sports disciplinary cases?" *International Sports Law Journal* 9, no: 1-2 (2009):134-135.

56 See e.g., Bengt Kayser, Alexandre Mauro and Andy Miah, "Current anti-doping policy: a critical appraisal", *BMC Medical Ethics* 8, no. 2 (2007):3. <https://doi.org/10.1186/1472-6939-8-2>.

57 Paul Dimeo and Verener Møller, *The anti-doping crisis in sport: causes, consequences, solutions* (New York: Routledge, 2008), 56.

58 Lindholm, *The court of arbitration for sport and its jurisprudence*, 270-274. Also see, Rustam Sethna, "A data analysis of the arbitrators, cases, and sports at the court of arbitration for sport", *Law in Sport*, 2019, accessed May 16, 2020, [www.lawinsport.com/topics/sports/esports/item/a-data-analysis-of-the-arbitrators-sports-and-cases-at-the-court-of-arbitration-for-sport?category\\_id=672](http://www.lawinsport.com/topics/sports/esports/item/a-data-analysis-of-the-arbitrators-sports-and-cases-at-the-court-of-arbitration-for-sport?category_id=672).

59 Anna Efverström and Asa Bäckström, Different societies, different conditions: Lessons from anti-doping in elite-sport on a global level. In: *Doping in sport, doping in society - Lessons, themes and connections: Book of abstracts*. Paper presented at International Network for Doping Research (INDR), 24th and 25th of August, (2017), Aarhus, Denmark (pp. 7-8). Aarhus University, Department of Public Health.

60 See cases involving Indian athletes, including *World Anti-Doping Agency v. Amit and National Anti-Doping Agency of India* (CAS 2014/A/3869), award of 23 November 2015, para 63; *World Anti-Doping Agency v. Nirupama Devi Laishram and National Anti-Doping Agency of India* (CAS 2012/A/2979), award of 8 November 2013, paras 119-120. See also, Venezuela: *International Paralympic Committee (IPC) v. I., Venezuelan National Paralympic Committee (COPAVEN), Venezuelan National Anti-Doping Organization (VNADO) and Sport Federation for Visually Impaired Athletes in Venezuela (FEPOCIVE)* (CAS 2012/A/2789), award of 17 December 2012; South Africa: *WADA v. Gert Thys, Athletics South Africa and South African Institute for Drug-Free Sport* (CAS 2011/A/2435), award of 30 November 2011.

International Standard for Results Management (ISRM)<sup>61</sup> and the 2021 WADA Code.<sup>62</sup> Despite this, there are gaps in the application of procedural fairness rights of athletes, particularly at a domestic level. Given the positive reforms in some developed countries, as opposed to the access to justice issues and the systemic procedural issues that exist in some developing countries, the difficulties of compliance with procedural norms may be more prevalent in developing countries.

In *Amar Muralidharan v. Indian National Anti-Doping Agency (NADA)*,<sup>63</sup> an Indian swimmer, Muralidharan tested positive for methylhexanamine (MHA), a banned substance under the WADA Code, during an in-competition test at the Indian national championships in August 2010. He was informed of the anti-doping rule violation in September 2010 (when he was provisionally suspended) but the case was subsequently heard for the first time by the Anti-Doping Disciplinary Panel (ADDP) 2 years later, in September 2012. After further delays in the ADDP issuing its award, a 2-year suspension was imposed on 5 November 2012, taking into account the time he had served under his provisional suspension. The entire duration of the ban was served by the time ADDP reached its final determination.

While this delay at first instance, inter alia, exposes procedural concerns, the athlete's appeal to the Anti-Doping Appellate Panel (ADAP) was heard on 13 March 2014, more than 13 months after the required deadline under the NADA Rules.<sup>64</sup> The decision was reached by the ADAP on 3 June 2014, almost 4 years after the alleged anti-doping violation. On appeal, the CAS stated that, in doing so, the NADA had "undisputedly violated the Appellant's right to a procedure in line with the timing requirements."<sup>65</sup> However, it was further held that the virtue of the CAS appeal system was its ability to cure any procedural defects.<sup>66</sup> The athlete's entitlement, therefore, "was to a system which allowed any defects in the hearing before the ADDP that was to be cured by the hearing before the CAS."<sup>67</sup>

Shaun Star and Sarah Kelly argue that "*these types of violations of procedural norms are inconsistent with the concept of fairness that the WADA Code purports to uphold.*" *These are alleged to cause "unreasonable delays such as those in the Amar case that undermine the athlete's right to a fair trial and are unjust. Yet, despite this, the CAS maintains that it can cure all such defects on appeal. That aside, relying only on the de novo mechanism of the CAS to fix procedural problems in the system is short-sighted and focuses only on the case at hand."*<sup>68</sup>

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61 The ISRM, which is effective from January 2021, is a mandatory international standard developed as part of the World Anti-Doping Program. It sets out the core responsibilities of Anti-Doping Organizations (ADOs) with respect to results management.

62 The WADA 2021 Code states "International Standards for different technical and operational areas within the anti-doping program have been and will be developed in consultation with the signatories and governments and approved by WADA. The purpose of the international standards is harmonization among Anti-Doping Organizations responsible for specific technical and operational parts of antidoping programs." [https://www.wada-ama.org/sites/default/files/resources/files/2021\\_wada\\_code.pdf](https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf).

63 CAS 2014/A/3639.

64 *National Anti-Doping Rules, 2010* (India), Rule 8.3.8.

65 CAS 2014/A/3639, para 88.

66 CAS 2014/A/3639, para 89.

67 CAS 2014/A/3639, para 89.

68 Shaun Star, Sarah Kelly, "A level playing field in anti-doping disputes? The need to scrutinize procedural fairness at first instance hearings", *International Sports Law Journal* 21, no. 1-2 (2021): 94-117, <https://doi.org/10.1007/s40318-020-00176-6>.

The authors argue further that empirical research is required on procedural fairness in the anti-doping dispute resolution process across jurisdictions. Such research may provide persuasive data to support reform and appraise the level of “*compliance with procedural fairness norms as required under the applicable rules, and adherence to time limits under the ISRM and domestic rules, by domestic panels and NADOs in domestic anti-doping disputes, particularly from developing countries such as India; comparative procedural fairness issues across developed and developing countries such as India; and to consider the barriers of appealing athletes disputes to the CAS to be and what mechanisms would remove or reduce these barriers from the perspective of athletes, including inter alia improving access to legal aid for quality legal counsel and scientific expertise, promoting regional CAS hearings.*”

The CAS statements have repeatedly criticized the unreasonable delays of the first-instance hearings conducted in some developing countries.<sup>69</sup> This implies only a small percentage of cases are heard by the CAS, which suggests that most procedural defects have remained unrecognised and irredeemable. Article 8.3 of the NADA ADR (which, in essence, follows Article 8.1 of the WADA Code) provides, *inter alia*, for detailed procedural rights of athletes as to being provided fair and timely information of the asserted anti-doping rule violation, an expedited hearing for a provisional suspension, and a fair hearing on whether the asserted anti-doping rule violation has been committed.<sup>70</sup>

It was further acknowledged that this provision had not been complied with in the initial proceedings against *Muralidharan*. However, given that the CAS has the power for *de novo* review, the sole arbitrator determined that the procedural delays that took place before the ADDP and ADAP could have been cured by a full CAS hearing. This is because the delay did not “unduly prejudice his right to obtain evidence, interview witnesses, or adequately defend the claims brought against him.”<sup>71</sup> The Sole Arbitrator held that “*while the NADA showed an alarming inability to effectively, timely, and appropriately handle the Appellant’s case, such delay did not fundamentally violate the Appellant’s procedural rights.*”<sup>72</sup>

The *de novo* right of review of the CAS may be an effective mechanism to fix some procedural defects, but only when such cases are appealed to the CAS.<sup>73</sup> Although the *Muralidharan* ruling was the only appeal by an Indian athlete to CAS, the ruling delivered on 8 April 2015 (more than 4 years after his anti-doping violation), was the first recognition by the CAS where Indian

69 Venezuela: *International Paralympic Committee (IPC) v. I., Venezuelan National Paralympic Committee (COPAVEN), Venezuelan National Anti-Doping Organization (VNADO) and Sport Federation for Visually Impaired Athletes in Venezuela (FEPOCIVE)* (CAS 2012/A/2789), award of 17 December 2012; South Africa: *WADA v. Gert Thys, Athletics South Africa and South African Institute for Drug-Free Sport* (CAS 2011/A/2435), award of 30 November 2011; *Simpson v. Jamaica Anti-Doping Commission* (CAS 2014/A/3572), award of 7 July 2015; *Powell v. Jamaica Anti-Doping Commission* (CAS 2014/A/3571); *World Anti-Doping Agency v. Amit and National Anti-Doping Agency of India* (CAS 2014/A/3869), award of 23 November 2015.

70 CAS 2014/A/3639, para 85.

71 CAS 2014/A/3639, para 91.

72 CAS 2014/A/3639, para 91.

73 In the *Arbitration Tatyana Chernova v. International Association of Athletics Federations (IAAF)* (CAS 2017/A/4949) the ruling stated that the “Validity of a rule providing for CAS jurisdiction in the first instance. The *de novo* power of review conferred upon a CAS panel under Article R57 of the CAS Code allows it to consider jurisdiction and the grounds there anew. According to the Swiss Federal Tribunal, a court can find that it has jurisdiction on grounds different from those enunciated previously, “as long as the facts found by the arbitral tribunal are sufficient to justify the substitution of new reasons,” para. 1.

dispute resolution bodies were allowing undue delay and violations of athletes' rights of procedural fairness. While a *de novo* review of this case may have cured the defects in this particular case, the extended duration of the dispute resolution process was in violation of the express time limits of the NADA Rules, 2010, and, therefore, breached the procedural rights of the athletes, as acknowledged by the CAS.<sup>74</sup> There needs to be more legal academic reflection and practitioners also need to contribute towards a critical analysis in interdisciplinary research in anti-doping, ensuring "... that the resulting insights are appropriately transposed into regulatory terms."<sup>75</sup>

In the *Arbitration Tatyana Chernova v. International Association of Athletics Federations (IAAF)*,<sup>76</sup> the ruling stated that the "validity of a rule providing for a CAS jurisdiction in the first instance was a *de novo* power of review conferred upon a panel under Article R57 of the CAS Code. This allows it to consider jurisdiction and the grounds for review. According to the Swiss Federal Tribunal, a court can find that it has jurisdiction on grounds different from those enunciated previously, "as long as the facts found by the arbitral tribunal are sufficient to justify the substitution of new reasons." Therefore, the reasons for a CAS panel's findings on jurisdiction in appeals proceedings can differ from those identified by a CAS Sole Arbitrator in the first instance.

There needs to be a holistic approach to evaluate the present structure of the CAS to consider the extent of allegations of impartiality and independence and their substantive merit and whether structural improvements are necessary to improve the legitimacy of these institutions. The need is for research to further this inquiry to determine the perspectives of operational and institutional independence of national first instance and appellate panels.

## 5. JUDICIAL REVIEW AND THE ROLE OF QUASI-JUDICIAL TRIBUNALS

The right to be free from discrimination is a fundamental right of an athlete and this is enshrined in the Olympic Charter that is in force since 8 August 2021.<sup>77</sup> The salient points are as follows:

*Principle 4. The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind, and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity, and fair play.*

*Principle 6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political, or other opinion, national or social origin, property, birth or other status.*<sup>78</sup>

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74 The time limits are set out in procedural rules. R32 of the CAS Code, <https://www.tas-cas.org/en/arbitration/code-procedural-rules.html>.

75 See Marjolaine Viret, "Using interdisciplinary tools to improve anti-doping: utopia or necessity?", *International Sports Law Journal* 20, no. 1-2 (2020): 83, <https://doi.org/10.1007/s40318-019-00161-8>.

76 CAS 2017/A/4949.

77 Olympic Charter, 15 October 2023, <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>

78 Olympic Charter, p 8.

*The IOC's role is to promote safe sports and the protection of athletes from all forms of harassment and abuse.*<sup>79</sup>

In relation to the appeals to CAS, there has been a determination that where the rights are protected, infringements may also take place. This has caused the procedural rules of the CAS to come under focus and be subjected to intense scrutiny by those who proffer that the body may be partial in its rulings against athletes from developing countries. The manner in which it has considered the appeals has come to attention because of the contentious nature of the ruling and the natural justice principles involved.

The above principles that CAS has formulated have been considered when appeals from athletes allege discrimination by the national and international federations. These have brought into sharp relief the relevance of the substantive and procedural rules of the arbitration process. In recent times, the appeals process has concerned athletes from developing countries and issues that have a direct impact on their human rights, and if these can be part of any equation in any adjudicative process.

In *Dutee Chand v. Athletics Federation of India (AFI) & International Association of Athletics Federations (IAAF)*<sup>80</sup> an Indian female athlete, who had been withdrawn from the national team in 2014 and prevented from participating in the Commonwealth Games in Glasgow, brought action against the national federation and the International Association of Athletics Federation (IAAF) due to them finding her natural testosterone concentrations elevated to male levels. The CAS determination was that the withdrawal and the ban were based on the lack of prima facie "evidence that does not equal the level of testosterone in females with a percentage increase in competitive advantage. In the absence of such evidence, one cannot conclude that hyperandrogenic female athletes may enjoy such a significant performance advantage that it is necessary to exclude them from competing in the female category."<sup>81</sup> Specifically, the IAAF had "not provided sufficient scientific evidence about the quantitative relationship between enhanced testosterone levels and improved athletic performance in hyperandrogenic athletes."<sup>82</sup>

The IAAF was given two years to provide such evidence to "validate" their claims.<sup>83</sup> The ruling had temporarily suspended the IAAF regulation then in force and held that the IAAF had not shown that athletes with hyperandrogenism had a significant advantage in terms of performance compared to other female athletes. The IAAF had a new policy effective in 2018 that stipulated a maximum level of hormone levels for female athletes, otherwise, they could not compete within the women's category in international events.

In *Mokgadi Caster Semenya v IAAF*,<sup>84</sup> and *Athletic South Africa v IAAF*<sup>85</sup> concerned an appeal

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79 Rule 2.18 was included in the Charter in 2019.

80 Arbitration CAS 2014/A/3759.

81 CAS 2014/A/3759, para. 5.

82 CAS 2014/A/3759, para. 547.

83 CAS 2014/A/3759, para. 548.

84 CAS 2018/0/5794, Mokgadi Caster Semenya v. International Association of Athletics Federations, award of 30 April 2019.

85 CAS 2018/0/5798, Athletics South Africa v. International Association of Athletics Federations, award of 30 April 2019.

by the South African female middle-distance runner who was 18 years old when she won the gold medal in the women's 800 m at the World Championships in Berlin in August 2009. Despite her winning time of 2 seconds slower than the world record, the IAAF requested on that same day for her to undergo gender verification tests to determine her eligibility to compete in women's sports because of ambiguity with regard to her sex. She was allowed to compete by a panel of medical experts in 2012 and won the silver medal in the 800 m event at the Olympic Games in London, which was upgraded to gold after the Russian winner was proven to have been on stimulants because her victory was in the spotlight for higher than acceptable female hormonal levels.

The IAAF's April 2018 rule change that had lowered the threshold for the tolerable level of DSD for female athletes was a consequence of the recommendations, and Semenya challenged them at the CAS, as a breach of natural justice.<sup>86</sup> Semenya was disbarred from the competition by the (IAAF) for higher than permitted blood testosterone levels in breach of the "Eligibility Regulations for the Female Classifications (Athletes with differences of sex development)" (DSD Regulations) for her gender. Semenya challenged this stipulation at the CAS, which the South Africa Athletics Federation supported.

The IAAF had allegedly produced the evidence which has been described as a "flawed and highly questionable study."<sup>87</sup> The decision of the CAS was that "such discrimination was a necessary, reasonable, and proportionate means of achieving the legitimate objective of ensuring fair competition in female athletics in certain events and protecting the 'protected class' of female athletes in those events."<sup>88</sup>

This ruling proved very controversial and evidence that was available from medically qualified experts on the amount of hormones that makes an athlete traverse the boundaries of the female gender was in favour of Semenya. The World Medical Association (WMA)'s Declaration of Geneva, and its International Code of Medical Ethics<sup>89</sup> place an obligation on medical professionals to act in the patient's best interest and uphold the highest standards of occupational conduct, and not to allow their judgement to be influenced by unfair discrimination. The WMA Declaration on Principles of Health Care for Sports Medicine<sup>90</sup> obliges doctors to

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86 The regulations, which came into effect on 8 May, state that events from 400 m to the mile, including 400 m, hurdles races, 800 m, 1,500 m, 1-mile races, and combined events over the same distances ('Restricted Events'), require any athletes who have DSD to meet certain criteria: the athlete is required to be recognised by law as either female or intersex (or equivalent); her blood testosterone level must be reduced to below 5 nmol/L for a continuous period of at least 6 months; and thereafter, her blood testosterone level must be maintained below 5 nmol/L continuously for as long as she wishes to remain eligible.

87 The Special Rapporteur of Human Rights under the United Nations (UN) Human Rights Special Procedures issued an open letter to the IAAF in which he highlighted several "Human rights considerations. Several human rights concerns have become apparent as a result of the IAAF regulations, which highlighted contraventions of international human rights norms and standards, including: the right to equality and non-discrimination; the right to the highest attainable standard of physical and mental health; the right to physical and bodily integrity; the right to freedom from torture, and other cruel, inhuman or degrading treatment and harmful practices. OHCHR report (§ 54(b)). United Nations Human Rights Special Procedures. Open letter to IAAF. 24 Sept 2018. <https://www.sportsintegrityinitiative.com/un-urges-iaaf-to-withdraw-dsd-regulations/>.

88 CAS 2018/0/5798, para 626.

89 World Medical Association. International Code of Medical Ethics. *Adopted by the 3<sup>rd</sup> General Assembly of the World Medical Association, London, England, October 1949 (as amended)*, <https://www.wma.net/policiespost/wma-international-code-of-medical-ethic>.

90 WMA Declaration on Principles of Health Care for Sports Medicine. *Adopted by the 34<sup>th</sup> World Medical Association*



oppose or refuse to administer any interventions that are contrary to medical ethics and could be harmful to the athlete using them. This includes interventions that artificially modify blood constituents or biochemistry, such as forcing contraception on female athletes.

Both the WMA<sup>91</sup> and the South African Medical Association<sup>92</sup> have condemned the IAAF regulations and the WMA has urged physicians globally not to implement the rules and to refrain from prescribing treatment for a condition that is not recognised as pathological.<sup>93</sup> In addition, the right not to be subjected to medical or scientific experiments without informed consent is protected by the UN Covenant on Economic, Social, and Cultural Rights<sup>94</sup> and in SA by section 12(2) of the Bill of Rights, where it is defined “as a non-derogable, fundamental right.” These instruments also apply to sporting bodies that have a responsibility to abide by international standards and ban discrimination in sports. The principle exists that the right to bodily integrity, which allows for the control of all aspects of one’s health, informed consent, and autonomy, must not be violated.

After the determination by the CAS, Semenya lodged an appeal to the SFT that challenged the ruling arrived at by arbitration. In *Caster Semenya & ASAF v. IAAF*,<sup>95</sup> the SFT dismissed the appeal made by Semenya and the ASAF against the CAS decision upholding the CAS’s ruling that had found that the Difference in Sexual Development (DSD) regulations were reasonable and proportionate. The SFT held that “CAS was the only possible dispute settlement mechanism in the case, as the DSD Regulations hold explicitly that any dispute related to the rules’ application must be submitted to the CAS.”<sup>96</sup>

The SFT emphasized that its competencies in the case were limited to examine whether the CAS Award violates fundamental and widely recognized principles of public order, which, as it clarified, includes the prohibition of discrimination, certain personality rights of athletes and the notion of human dignity.<sup>97</sup> The SFT further stressed that an arbitration award violates “public order” only when it is “manifestly untenable,” clearly disregards important legal principles, and “shockingly” offends the feeling of justice and equity.<sup>98</sup> The decision noted that as the case involves an agreement between the two private bodies, World Athletics and an athlete, it is doubtful whether the prohibition of this specific type of discrimination “is included in the scope of the restrictive notion of public order.”<sup>99</sup>

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*General Assembly, Lisbon, Portugal, September/October 1981*, <https://www.wma.net/policies-post/wma-declaration-on-principles-of-health-care-for-sports-medicine/>.

91 World Medical Association. WMA urges physicians not to implement the IAAF rules on classifying women athletes. 5 May 2019 <https://www.wma.net/news-post/wma-urges-physicians-not-to-implement-iaaf-rules-on-classifying-women-athletes/>.

92 South African Medical Association. SAMA support to Caster Semenya. SAMA Media release. 28 February 2019 <https://www.samedical.org/cmsuploader/viewArticle/822>.

93 Sofia Mahomed and Ames Dhai, “Global injustice in sport: The Caster Semenya ordeal – prejudice, discrimination and racial bias”, *South African Medical Journal* 109, no. 8 (2019): 548-551, DOI:10.7196/SAMJ.2018.v109i1.13268

94 Article 12 (1) states “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

95 SFT 4A\_248\_2019 & 4A 398\_2019, Judgment of 25 August 2020 (*Caster Semenya & ASAF v. IAAF*)

96 SFT, *Caster Semenya & ASAF v. IAAF*, paras. 5.2, 5.3.

97 SFT, *Caster Semenya & ASAF v. IAAF*, paras. 9.4, 10.1, 11.

98 SFT, *Caster Semenya & ASAF v. IAAF*, para. 9.1.

99 SFT, *Caster Semenya & ASAF v. IAAF*, para. 9.4.

Lena Holzer argues that the “SFC also failed to discuss other issues related to the principle of non-discrimination, which could potentially be the case because Semenya and ASA might have not raised them in their submissions.”<sup>100</sup> For instance, the SFC did not debate whether it is discriminatory against women that there are no upper testosterone limits for men, as the DSD Regulations’ rationale that high testosterone harms the ‘level playing field’ by conferring a competitive advantage should logically also apply to men’s competitions. The SFC judges equally ignored the Regulation’s problem of (indirect) race discrimination, substantiated by some evidence showing that mainly black and brown athletes and athletes from the Global South have been subjected to testosterone tests based on the DSD Regulations. Lastly, it is unfortunate that the SFC did not fully embrace the protection against horizontal discrimination as part of an issue of ‘public order.’”

Furthermore, the SFC stated in its decision that it was not a proper Appeal Court for CAS awards, but that its jurisdiction is limited to overturning an award if it is incompatible with “public order,” which “happens only on extremely rare occasions (*“est chose rarissime”*). Additionally, it held that violations of the Swiss Constitution and the European Convention on Human Rights (ECHR) cannot be invoked in the SFT review of the CAS Award, even if principles of the Constitution and the ECHR can help to interpret the notion of ‘public order.’”<sup>101</sup>

This implies that, at least when the CAS is the dispute settlement mechanism, athletes like Semenya can avail themselves neither to a proper appeal mechanism nor the protection of European and constitutional human rights protections. The argument that the ECHR does not apply to private arbitration awards assessed by the SFC cannot be sustained in the context of the 2018 ruling of the European Court of Human Rights (ECtHR) in *Mutu and Pechstein v. Switzerland*<sup>102</sup> The Human Rights Court made several important points concerning the applicability of the ECHR to CAS Awards and it concluded that the “athletes’ acceptance of settling a dispute with a sports federation through CAS arbitration is mostly *de facto* compulsory, instead of voluntary.”<sup>103</sup> Deciding between accepting the CAS arbitration or electing not to participate in competitions is not a prudent choice for athletes because their “careers depend upon participating and winning competitions.”<sup>104</sup> Thus, the ECtHR can hold Switzerland accountable for validating acts or omissions by the CAS that are contrary to the ECHR.

The ECtHR had also stated that Switzerland’s responsibilities under the ECHR could be engaged concerning the acts and omissions of the CAS Award, since the SFC had given the Award the force of law under the Swiss legal system.<sup>105</sup> The Court’s conclusion was that in such cases of compulsory CAS arbitration, waiving safeguards provided for under Article 6.1 of the ECHR is not plausible. The CAS proceedings must therefore guarantee, at least, the right to a fair trial as protected by ECHR Article 6.1.”<sup>106</sup>

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100 Lena Holzer, “The decision of the Swiss Federal Supreme Court in the Caster Semenya Case: A Human Rights and Gender Analysis”, *Opinio Juris*, accessed October 9, 2023, <http://opiniojuris.org/2020/09/30/the-decision-of-the-swiss-federal-supreme-court-in-the-caster-semenya-case-a-human-rights-and-gender-analysis>.

101 SFT, *Caster Semenya & ASAF v. IAAF*, para. 9.2.

102 ECtHR, Case no 40575/10 and 67474/10, 2 October 2018, Dissenting Opinion of Judges Keller and Serghides, para 2.

103 ECtHR, Case no 40575/10 and 67474/10, 2 October 2018, para. 123.

104 ECtHR, Case no 40575/10 and 67474/10, 2 October 2018, para. 181.

105 ECtHR, Case no 40575/10 and 67474/10, 2 October 2018, para. 62-67.

106 ECtHR, Case no 40575/10 and 67474/10, 2 October 2018, para. 95-96.

In *Semanya v Switzerland*<sup>107</sup> the argument before the ECtHR was that there had been a breach of ECHR in being forced to lower her DSD levels. The Court framed 10 questions to the parties which included as follows: “Does the obligation to take contraceptives in order to lower one’s testosterone level, and by the allegedly stigmatising and demeaning effect of the DSD Regulations, has the applicant suffered treatment contrary to her human dignity, her physical and mental integrity, and her social and gender identity, in violation of Article 3 of the Convention?”<sup>108</sup> Secondly, “Did the applicant suffer a violation of the right to respect for her private life as protected by Article 8 of the Convention? In addition, has she suffered an infringement of her right to practice her profession?”<sup>109</sup>

There is also precedence in another case which went to the European Court of Human Rights and was from a decision by the CAS not to hear an appeal by a Turkish footballer against his club in Turkey that it had infringed his rights. This application stemmed from Ali Riza, a professional football player who played for ‘Trabzonspor Kulbu Derneği,’ which in January 2008 fined him for violating contractual terms. The applicant later terminated his contract due to the non-payment of his salary. The club later brought claims against him, and he raised counter-claims before the Dispute Resolution Committee of the TFF, which upheld in 2 December 2008 the club’s claims. The Arbitration Committee of the TFF, upon the objection by the first applicant, commenced an investigation whose findings upheld the Dispute Resolution Committee’s findings. However, it reduced the amount owed by the applicant to the club. He took the matter to CAS, which declared his application inadmissible for the lack of an “international element.”<sup>110</sup>

While the matter was still pending at the SFT, the applicant raised the matter at the ECtHR by invoking his rights under Article 6 (1). In *Ali Riza v. Turkey*<sup>111</sup> the claims raised in this application related to the alleged violations of this provision and his right to a fair hearing and the rule against bias. Riza’s application alleged that the manner in which the arbitration proceedings of the Turkish Football Federation (TFF) were conducted denied him substantive and procedural justice. The Court addressed the issue whether the TFF Arbitration Committee’s rulings were final, and therefore, not amenable to judicial review by any court.<sup>112</sup>

The Court first clarified that the Arbitration Committee can be considered as a tribunal within the meaning of Article 6 (1) (§204). With respect to the elements of independence and impartiality, the Court found ‘the existence of a number of strong organisational and structural ties between the Board of Directors and the Arbitration Committee.’<sup>113</sup> The Court considered

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107 ECtHR, *Semanya v Switzerland*, Application No. 10934/21.

108 In ECtHR, *Platini v Switzerland*, Application No. 525/18, the applicant had argued that the eight-year ban on him infringed his ‘freedom to exercise a professional activity.’ See para 52. Platini’s application was dismissed. The ECtHR did confirm that Switzerland was accountable for validating acts or omissions by the CAS that are contrary to the ECHR. Paras. 36-38

109 ECtHR, *Platini v Switzerland*, Application No. 525/18, at para 62

110 CAS 2010/A/1996 *Omer Riza v. Trabzonspor Kulübü Derneği & Turkish Football Federation (TFF)*, award of 10 June 2010, para. 22

111 ECtHR, *Ali Riza & others v. Turkey*, Application No. 5809/08.

112 ECtHR, *Ali Riza & others v. Turkey*, para. 181.

113 ECtHR, *Ali Riza & others v. Turkey*, para. 216.

the procedural justice issues and examined whether the functioning of the Arbitration Committee of the TFF can be described as independent and impartial. It found that there was a 'significant level of influence that the Board of Directors enjoyed over the functioning of the Arbitration Committee,' and members of the Arbitration Committee were not required to follow "any rules of professional conduct' or 'to swear an oath or make a solemn declaration before taking up their duties."<sup>114</sup>

Further, the Court found that members of the Arbitration Committee "are not obliged to disclose potential and/or actual conflicts of interest nor does there exist procedure to challenge their independence and impartiality."<sup>115</sup> After concluding that there was a breach of natural justice in the procedures, the ruling alluded to the cases of *Mutu and Pechstein*, by distinguishing the proceedings before the Arbitration Committee of the TFF and those before the CAS by stating that most Members of the TFF Board of Directors are former or current club executives, whereas other stakeholders such as players, referees and others have been only marginally represented.<sup>116</sup>

The Court therefore found that the "fact that the players do not enjoy the same level of representation as clubs may be considered to tip the balance in favour of clubs in proceedings before the Arbitration Committee."<sup>117</sup> There were systematic shortcomings in the absence of effective legal protections that cast doubts on its functioning, particularly given the extensive influence of the Board of Directors.<sup>118</sup> The Court thereby confirmed the existence of not only potential, but also actual organisational and structural conflicts of interests between the Arbitration Committee and the Boards of Directors, which taints the fairness of arbitration proceedings. As for the execution of this judgment under Article 46 ECHR, the Court focused on the endemic flaws in the resolution of football disputes in Turkey and caused the Football Federation to adopt general measures aimed at reforming the arbitration process under the TFF' and "at restructuring of the institutional basis of the Arbitration Committee' in order to guarantee its normative and organisational independence."<sup>119</sup>

As a consequence of this ruling by the ECtHR the domestic sports associations will now have to reform their dispute resolution systems in order to ensure their arbitration bodies comply with the Article 6 (1) ECHR and/or provide for judicial review of their decisions. The fact that the decisions of the Arbitration Committee (and, more generally, the decisions of all sports tribunals) were final was also decisive in the *Riza et al.* Judgment. The exclusion clause of the Constitution of sports arbitration bodies generally provides that "(...) Decisions of arbitration committees are final and shall not be appealed to any judicial authority." The ECtHR had already stated in *Mutu and Pechstein* that there is a "right to a public hearing before CAS"<sup>120</sup> and that fair trial guarantees be strengthened both at the international and domestic levels. The *Ali Riza* case extends the "fair trial guarantees not only to quasi-judicial tribunals, such as CAS, but also domestic arbitration bodies without judicial supervision." It therefore,

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114 ECtHR, *Ali Riza & others v. Turkey*, para. 216.

115 ECtHR, *Ali Riza & others v. Turkey*, para. 215.

116 ECtHR, *Ali Riza & others v. Turkey*, para. 219.

117 ECtHR, *Ali Riza & others v. Turkey*, para. 219.

118 ECtHR, *Ali Riza & others v. Turkey*, para. 219.

119 ECtHR, *Ali Riza & others v. Turkey*, para. 242

120 ECtHR, *Mutu and Pechstein v. Switzerland*, Application No. 40575/10 and 67474/10, para. 183.

affirms, reinforces, and also broadens the previous judgment in terms of the natural justice scope of the ruling.<sup>121</sup>

In the claim of *Ali Rıza v Switzerland*<sup>122</sup> the ECtHR had ruled that the fact that the applicant could not exercise his right to an independent and impartial tribunal in Turkey did not imply that there was automatically an obligation on Switzerland to guarantee such proceedings before a Swiss tribunal. The Court left the question whether or not the applicant could rely on a right of access to SFT open, stating that “there is no foundation for the alleged violation to be appealed from the CAS decision not to hear the case”.<sup>123</sup> The Court stated that the right to access to a court is not violated by a decision that a “*court lacks jurisdiction when the applicant’s arguments in favour of the court’s jurisdiction have been the subject of ‘a real and effective examination’ and the court has adequately substantiated the reasons on which its decision is based.*”<sup>124</sup>

This ruling by the Court affirmed the ruling by CAS not to hear the arbitration application had to be balance limitation on the right of access to a court with the proportionate aim to ensure that the substance of the right was not affected.<sup>125</sup> As there was no international element, the Regulations on the Arbitration Committee of the TFF could not be used as a basis for jurisdiction of CAS. The Court considered that a restriction on the right of access to CAS whose purpose was the legitimate aim of the proper administration of justice and the effectiveness of domestic judicial decisions.<sup>126</sup> This validates the CAS ruling that the case was inadmissible and the SFT’s decision not to proceed with the appeal on the matter of jurisdiction. The ECtHR will not overrule decisions if the grounds provided by the SFT for not hearing the case include “answering all grounds raised by the applicant with ‘clear reasoning and convincing conclusions’ and if the Federal Court refusal is ‘neither arbitrary nor manifestly unreasonable.’”<sup>127</sup>

## 6. CONCLUSION

The governance of Olympic sports is based on the European model of sports, a hierarchical, inverted pyramid model in which each sport is governed vertically on a global basis by an international body with the corresponding transnational, national, regional, and local federations. Although Olympic athletes have a voice and representation on IOC bodies, they lack any collective veto power and must accept the dispute making procedures that have been established by the Olympic Committee. The CAS arbitration system, which was established to resolve on the merits virtually all disputes involving Olympic sports athletes, is supervised by very limited judicial review of the Swiss Federal Tribunal (Switzerland’s highest court) and other national courts.

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121 Strasburg Observer, Sports Law Blog, The Future of the Rule of Law in Sport. 20 March 2020 <https://strasbourgoobservers.com/2020/03/18/the-future-of-the-rule-of-law-in-sports-law-ali-riza-and-others-v-turkey/>.

122 ECtHR, *Ali Rıza v. Switzerland*, Application No. 74989/11.

123 ECtHR, *Ali Rıza v. Switzerland*, para. 83.

124 ECtHR, *Ali Rıza v. Switzerland*, para. 88.

125 ECtHR, *Ali Rıza v. Switzerland*, para. 91.

126 ECtHR, *Ali Rıza v. Switzerland*, paras. 96-97.

127 ECtHR, *Ali Rıza v. Switzerland*, paras. 96-97.

The CAS arbitration process is vested with the plenary governing authority over the international sports bodies in their relations with athletes, and the rulings are the final and binding resolution of disputes. It is onerous to objectively measure the extent to which the CAS has a compiled body of substantive law because it is not an appellate court that has a system of precedence and each case turns on its own facts. This decision-making process that is drawn from both the civil and common law system, consists of an inherent degree of subjectivity. The procedural fairness, if it is achieved, will increase the likelihood of substantive justice, and that will depend on the perspective of athletes from the countries that have outstanding issues, such as discrimination in their appeals. The approach of CAS has been to override the suspicion of unfairness by a compromise approach, that is, by considering the policy of the national governments and their respective judicial systems, which is directly related to the general level of good faith in the trust that its principles embody the principle of natural justice.

The breach of human rights, that is, manifest in its approach towards the athletes of developing countries, and in this regard the appeals have been rejected in the case of Semenya, which is based on human rights considerations, and of Ali Riza which is declared to be in admissible needs of a more holistic approach. There was a breach of the rule against bias in the former case and of the rule against a fair hearing in the latter case, and in each instance the evidence was ignored by international legal and ethical principles. The issues at stake need to be viewed from the perspective of the injustice that these athletes have suffered and that the determination should have been in their favour.

It is important to ensure that the arbitrators are aware of international treaties and obligations. They need to harmonise their approach with the athletes, sports governing bodies, attorneys, and academics to facilitate a predictable, reconcilable, and equitable decision-making process by CAS. There should be a single supreme appellate panel above the ad hoc body considering appeals within the CAS to achieve substantive and procedural fairness. This will enable the development of a consistent body of international *lex sportiva*, and fairness in the decision-making process. This should be an essential component of the existing CAS system of international legal pluralism that needs to be enhanced in order for human rights standards to be adopted and for the athletes in developing countries to be given a fair hearing.

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## **AWARENESS OF THE AFRICAN CONTINENTAL FREE TRADE AREA SOCIO-ECONOMIC BENEFITS AS DRIVERS OF SPORT INDUSTRY STAKEHOLDERS' EXPECTATIONS IN ZIMBABWE**

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### **Abstract**


Despite the proliferation of free trade agreements worldwide, few studies have examined how the supposed benefits of the agreements are interpreted, understood, and applied by those operating in the sport industry. In light of the recently operationalized African Continental Free Trade Area (AfCFTA) Agreement and in response to a glaring lack of research into the sport industry's expectations arising from this Agreement, the present study analysed whether the awareness of the AfCFTA socio-economic benefits can be considered drivers of sports industry stakeholders' expectations in Zimbabwe. Data analysis deployed descriptive statistical processes with tests for correlation to determine the relationship between the awareness of social and economic benefits of the AfCFTA on the expectations of the sport industry stakeholders. Consequently, the social benefits played a significant relative role when accounting for the stakeholders' expectations compared to the economic benefits. The study provides insight into how the sport industry in Zimbabwe can take advantage of foreseen or unforeseen developments within its external environment, such as the AfCFTA, whose transversal benefits cut across the sport industry and can address both the country's and its sport industry's present challenges.

**Keywords:** AfCFTA, AfCFTA awareness, Expectations, Sport industry, Socio-economic benefits, Zimbabwe

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## 1. INTRODUCTION

Despite its seemingly rarefied standing which is buoyed by the size of its industry thought to be worth up to US \$512 billion globally<sup>1</sup>, the sport industry seldom exists in a vacuum. The amount of sway held by the external environment the sport industry operates has been well documented in sport management literature.<sup>2</sup> Among some of the external forces affecting the sport industry, over which it has no control; and to which it must adapt, are societal, political, and economic trends,<sup>3</sup> as well as technological and geopolitical forces.<sup>4</sup>

Liberalization of international trade through Free Trade Agreements (hereafter FTAs) presents one of those external forces that can affect the sport industry.<sup>5</sup> FTAs consist of two or more countries that consent to gradually either reduce or outrightly eliminate trade barriers (tariff and non-tariff) between them, while also facilitating free trade through the unrestricted importing and exporting of goods and services between countries<sup>5</sup> and in so doing, establishing a trade bloc known as a free trade area.<sup>6</sup> While not a magic bullet, trade in general and free trade, in particular, can play a significant role in a country's social and structural economic transformation.<sup>7</sup> In and of themselves, free trade areas are said to harbour a catalogue of benefits for the participating countries and regions including among others increased GDP, job creation, lower costs of doing business, investments, and technological innovation.<sup>8 9</sup>

Coincidentally, when factoring in the sport industry, free trade benefits tend to overlap or rather coincide with some of the salient features that drive the sport industry. According to Zhang *et al.*, free trade in tangible and intangible resources is said to shape the sport industry by stimulating investments and technology transfers together with the free movement of people among other important sport industry-related benefits.<sup>10</sup>

The 21st century has witnessed a proliferation of FTAs, particularly in the form of regional trade agreements, which tend to amalgamate countries in the same region into one consolidated trading bloc. Currently, as of 2023, there are around 361 regional trade agreements in force that establish free trade areas around the world.<sup>11</sup> At the same time, the sport industry is

- 1 Christina Gough, "Sports industry revenue worldwide in 2022, with a forecast for 2023 and 2027", Statista Research Department, 2023, <https://www.statista.com/statistics/370560/worldwide-sports-market-revenue/>.
- 2 Paul Pedersen and Lucie Thibault, *Contemporary Sport Management* (Human Kinetics, USA, 2019), 172.
- 3 Richard Lipsey, *The Sporting Goods Industry: History, Practice and Products* (McFarland & Company Publishers, USA, 2006), 5, 36.
- 4 John Amis, and Rachida Aïssaoui, "Readiness for Change: An Institutional Perspective," *Journal of Change Management* 13, no. 2 (2013): 69. <https://doi.org/10.1080/14697017.2013.768435>.
- 5 Robert Longley, *What is Free Trade?. Definition, Theories, Pros and Cons*, ThoughtCo, 2018, <https://www.thoughtco.com/free-trade-definition-theories-4571024>.
- 6 Arthur O'Sullivan and Steven Sheffrin, *Economics: Principles in Action* (New Jersey: Prentice Hall, 2003), 453.
- 7 Guangwen Meng, and Douglas Zeng, Z, "Structural transformation through free trade zones: the case of Shanghai," *Transnational Corporations Journal* 26, no. 2, (2019): 99, <https://ssrn.com/abstract=3623044>.
- 8 European Commission, *The EU in 2016: General report on the activities of the European Union* (Luxembourg: Publications Office of the European Union, 2017), 52.
- 9 Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organisation: Texts, Cases and Materials* (London: Cambridge University Press, 2017), 21-22.
- 10 James Zhang, Huang Haiyan and John Nauright, *Sport Business in Leading Economies* (Emerald Publishing Limited: UK, 2018), 1.
- 11 WTO, Regional Trade Agreements Database, RTAs in force and inactive, 1948 – 2023, 2023, <https://rtais.wto>.

touted as being both affected and shaped by the border-transcending free flow of ideas, people, goods, and services which FTAs potentiate<sup>12</sup> through capital investments, international movement of people as human resources, such as athletes and coaches, together with the infusion of technology in manufacturing goods, to name a few.<sup>13</sup>

Noteworthy examples of these regional FTAs include, among others, the Association for South East Asian Nations (ASEAN), the European Union (EU), the North American Free Trade Agreement (NAFTA), and the Southern African Development Community (SADC), to mention a few. The African Continental Free Trade Agreement (AfCFTA), whose trading activities began on 1 January 2021, joins the ranks among some of the existing regional FTAs in the world. In fact, with a market made up of 1.3 billion people across the 54 participating countries, it is by far the largest free trade area in the world since the formation of the World Trade Organization.<sup>14</sup>

In this light, international trade and the sport industry are a peculiar combination whose conceptual and empirical links appear not to have garnered much attention, especially in Africa in the context of the AfCFTA. Despite this lack of coverage, political and socio-economic forces, such as international trade policy agreements, can be responsible for shaping and reshaping the sport industry. By this token, the AfCFTA provides a broader framework that can allow African countries, one of which is Zimbabwe, to realize the full scope of FTA benefits for their sport industry.

## **2. LITERATURE REVIEW**

### **2.1. OVERVIEW OF THE AFCFTA**

The African Continental Free Trade Area has been brokered through the Agreement formed between 54 of the 55 African member states, which provides a framework for the continent wide economic and regional integration through trade liberalization of both goods and services. It entered into force in 2019 based on the submission of the instrument after its ratification by the required minimum number of 24 countries, which has since increased to 47 states as of August 2023.<sup>15</sup> To date, 47 of the 54 signatory countries (87%) have now deposited their instruments for the AfCFTA ratification with the African Union Commission Chairperson.<sup>16</sup> The AfCFTA has the potential to advance economic, social, and cultural ties at the regional level owing to the free movement of people, capital, goods, and services.<sup>17</sup>

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org/UI/charts.aspx.

12 Linda Swayne and Mark Dodd, *Encyclopaedia of Sports Management and Marketing* (SAGE Publications, USA, 2011), 1589.

13 Zhang, Haiyan and Nauright, *Sport Business in Leading Economies*, 2018, 2.

14 Landry Signé, and Colette van der Ven, Keys to success for the AfCFTA negotiations. *The Africa Growth Initiative at Brookings Policy Brief*, (2019): 1, [https://www.brookings.edu/wp-content/uploads/2019/05/Keys\\_to\\_success\\_for\\_AfCFTA.pdf](https://www.brookings.edu/wp-content/uploads/2019/05/Keys_to_success_for_AfCFTA.pdf).

15 Tralac, *African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents*, 2022, <https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html#legal-texts>.

16 Tralac, *African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents*, 2022.

17 Damien Brownson and Johnson Laosebikan, African Continental Free Trade Area (AfCFTA) and the World of Work in Nigeria: Prospects and Challenges. *Crawford Journal of Business and Social Sciences* 10, no.1 (2020):111.

## 2.2. OVERVIEW OF THE SPORT INDUSTRY

An industry is a market where similar or closely related products or services are sold to buyers.<sup>18</sup> It can also be defined as any grouping of businesses that have a common method of generating revenue.<sup>19</sup> More often than not, industries tend to contribute significantly to the well-being of the societies they are a part of, as they are a lifeblood of structural and economic development, due to their ability to potentiate job creation, innovation, trade, and investment between countries.<sup>20</sup> The sport industry is no different, and the United Nations Office on Sport for Development and Peace validates this assertion when highlighting how in every country, the sport industry is effectively part of the national industry, and therefore a major cog in socio-economic growth.<sup>21</sup> The sport industry is therefore seen as a market whereby the products offered to its buyers are sport, fitness, recreational, and leisure-related, and it encompasses activities, goods, services, people, places, and ideas.<sup>22</sup>

The sport industry can further be divided into three sectors: the sports performance industry segment, the sports production industry segment, and the sports promotion industry segment.<sup>23</sup> The sports performance sector includes amateur and recreational physical activities, and it extends to organized, professional high-performance sports. It is mainly made up of other management-related subindustries, for example, various professional sport event management, facility management, and sport tourism.<sup>24</sup> The sports production sector is principally supporting as it provides the products and services needed to support the production of sports activities. In addition, it is also engaged in the trading of products in the form of goods and services that are related to sports activities and is widely regarded as forming the core of the sport industry.<sup>25</sup> Lastly, the sports promotion segment of the sport industry includes management, marketing, finance, sponsorships, as well as business goods and services.<sup>26</sup> It is also a segment where sport businesses are concentrated and ultimately investment and profit-oriented.

Therefore, as the sum of all individual industries or segments that produce sports products and services, including both tangible sporting goods and intangible sporting services; the sport industry brings together different factors, segments, and activities. It also aggregates a universality of stakeholders with non-aligned goals that engage within the economic relations within the field of sports.<sup>27</sup> These stakeholders include sellers of sports products

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18 Micheal Porter, *Competitive Advantage: Creating and sustaining superior performance*. (New York: the Free Press), 1985, 233.

19 Thomas Sawyer, Kimberly Bodey and Lawrence Judge, *Sport Governance and Policy Development: An Ethical Approach to Managing Sport in the 21st Century* (USA: Sagamore Publishing, 2008), 4.

20 John Weiss, *Industry in developing countries: Theory, policy and evidence* (London and New York: Croom Helm, 1988), 6.

21 United Nations Office on Sport for Development and Peace, *Sport for Sustainable Development*, 2016, <https://sport4sd.com/goal-9-industry-innovation-and-infrastructure/>.

22 Brenda Pitts and David Stotlar, *Fundamentals of sport marketing* (Fitness Information Technology, 2013), 4.

23 Brenda Pitts, Lawrence Fielding and Lori Miller, "Industry segmentation theory and the sport industry: Developing a sport industry segment model", *Sport Marketing Quarterly* 3, no. 1 (1994): 19.

24 Paul Pedersen and Lucie Thibault, *Contemporary Sport Management*, 2019, 55.

25 Ming Li, Susan Hofacre and Dan Mahony, *Economics of sport* (Morgantown: Fitness Information Tech, 2001), 6.

26 Brenda Pitts, Lawrence Fielding and Lori Miller, "Industry segmentation theory and the sport industry: Developing a sport industry segment model", 1994, 22.

27 Victor Galkin, *Sports economics and sports business* (Moscow: KNORUS, 2006).

and services, users of sports information, organizers of sports events together with fans, who are consumers of sports products and information,<sup>28</sup> companies that produce sporting products and information, the most salient being the media, sports sponsors, manufacturers of equipment, and software.<sup>29</sup> They also include athletes, coaches, trainers, sports clubs, leagues, and federations.<sup>30</sup>

### **2.3. FTAs – SPORT INDUSTRY NEXUS**

The liberalization of international trade through FTAs not only provides benefits of increased trade and low tariffs<sup>31</sup> but increasingly, FTAs are now deemed to constitute key opportunities that can address some of the issues confronting the global sport industry.<sup>32</sup> Like any other business, the sport industry must adhere to the rules and regulations of international trade. FTAs, therefore, help address issues facing the sport industry, which include, for example, issues dealing with the movement of playing talent, market access, high tariffs, unemployment, export restrictions, uniform protection of intellectual property rights, and the reform of export restrictions.<sup>33</sup> In addition, sports goods, equipment, and products are made in different parts of the world and have to be delivered to various locations, meaning that sports manufacturers are governed by FTA rules and procedures.<sup>34</sup>

### **2.4. THE AfCFTA AND THE SPORT INDUSTRY**

The AfCFTA is a blueprint initiative of the African Union's Agenda 2063, which, among other things, is predicated on ensuring the long-term socio-economic development of all African countries. The Agenda 2063 charts the continent along a 50-year socio-economic development trajectory. Therefore, the revised Policy for the Sustainable Development of Sport in Africa situates sport within this broader framework as sport is enmeshed along five core areas, which would see it contribute to sustainable socio-economic development<sup>35</sup> as depicted by the diagram below.

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28 Galkin, *Sports economics and sports business*, 2006.

29 Laura Mars-Proietti, *Sport Market Place Directory* (United States: Grey House Publishing, 2017).

30 Galkin, *Sports economics and sports business*, 2006.

31 Swayne and Dodd, *Encyclopaedia of Sports Management and Marketing*, 2011, 1590.

32 Cho, Sungho, and Kim Kyoo, "International Trade in Sport Products: Free trade agreements, sporting goods and playing talent," in *Routledge Handbook of International Sport Business*, ed. Mark Dodds, Kevin Heisey and Aila Ahonen (Routledge, 2017), 193.

33 Sungho, and Kyoo, "International Trade in Sport Products: Free trade agreements, sporting goods and playing Talent," 2017, 185.

34 Swayne and Dodd, *Encyclopaedia of Sports Management and Marketing*, 2011, 1590.

35 African Union. *Policy and Framework for the Sustainable Development of Sport in Africa*. Draft. n.d., 10.

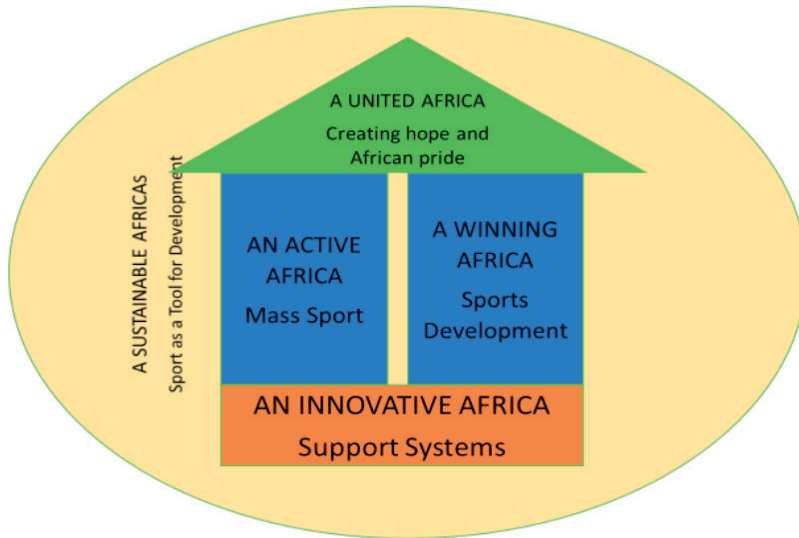


Figure 1: *The Africa We Want, the African Union*<sup>36</sup>

A well-coordinated continental sports policy can contribute positively to the development of sports on the continent and the overarching priorities of the African Union (hereafter AU), such as the political, economic, and social priorities outlined in the Agenda 2063. The AfCFTA represents one of these political, economic, and socially charged policies which the AU perceives as having close synergies with Sport.<sup>37</sup> In particular, through Sport and the Economy, a ‘Sustainable Africa’ is envisioned, and one of the activities through which the AU envisages this happening is by leveraging the AfCFTA to stimulate sports and recreation-related services and goods circulation.<sup>38</sup>

The AU Draft Policy also states several ambitions in the form of aims, objectives, and indicators that would concretize the realization of the ‘Sustainable Africa’ policy component. Coincidentally, looking at some of the benefits espoused by the AfCFTA as a stand-alone component, there appears to be a convergence between the AfCFTA benefits on the one hand, vis-à-vis the AU’s aims, activities, and indicators of socio-economic development, when it comes to realizing socio-economic development through sport, on the other hand. The extent to which they seem to overlap is articulated in the table below:

36 African Union. *Policy and Framework for the Sustainable Development of Sport in Africa*, n.d., 10.

37 African Union. *Policy and Framework for the Sustainable Development of Sport in Africa*, n.d., 5.

38 African Union. *Policy and Framework for the Sustainable Development of Sport in Africa*, n.d., 54.



AfCFTA Benefits	<ul style="list-style-type: none"> <li>• The AU Draft Policy aims, activities, and indicators for socio-economic development through sport</li> </ul>
Free Movement	<ul style="list-style-type: none"> <li>• Leverage African sports events to stimulate intra-African travelling and tourism.</li> <li>• Attract both local and international visitors/tourists to African destinations through sporting activities and events.</li> <li>• The AUSC shall develop a legal framework for the safe migration of African athletes within Africa.</li> <li>• Leverage the AfCFTA to stimulate sports and recreation related services and goods circulation.</li> <li>• Attract both local and international visitors/tourists to African destinations through sporting activities and events.</li> </ul>
Technology & Innovation	<ul style="list-style-type: none"> <li>• Provide grants and technological support to develop a sporting goods and apparel industry.</li> <li>• Invest in creative and innovative strategies to boost Information Technologies (ICT), including digital platforms and literacy process efficiencies to support the achievement of sports policy targets and bring African sports on par with the global sport industry.</li> <li>• To enhance and transform media and broadcasting as a stimulant for sports and recreation industry revenue diversification.</li> <li>• Develop local capacities in producing and manufacturing sporting goods and equipment.</li> <li>• Talent identification and nurturing.</li> </ul>
Social Inclusion	<ul style="list-style-type: none"> <li>• Empower persons with disabilities, girls, women, and other marginalized/vulnerable groups.</li> <li>• Use sport as a stimulant for economic development through sustainable sports business entrepreneurship.</li> <li>• Develop local capacities in producing and manufacturing sporting goods and equipment.</li> <li>• Baseline on levels of participation by women, youth, girls, persons with disabilities, and other vulnerable and marginalized groups in sport.</li> <li>• Support the development and implementation of training programs.</li> </ul>
Economic Growth	<ul style="list-style-type: none"> <li>• Leverage the AfCFTA to stimulate sports and recreation related services and goods circulation.</li> <li>• Percentage contribution of sport to the Gross Domestic Product.</li> <li>• Stimulating sustainable multi-sectorial public and private investments.</li> <li>• Attract both local and international visitors/tourists to African destinations through sporting activities and events.</li> </ul>
Job Creation	<ul style="list-style-type: none"> <li>• Use sport as a stimulant for economic development through sustainable sports business entrepreneurship.</li> </ul>
Investments	<ul style="list-style-type: none"> <li>• Invest in creative and innovative strategies to boost Information Technologies (ICT), including digital platforms and literacy process efficiencies to support the achievement of sports policy targets and bring African sports on par with the global sport industry.</li> <li>• Stimulating sustainable multi-sectorial public and private investments.</li> <li>• Develop local capacities in producing and manufacturing sporting goods and equipment.</li> <li>• Promoting local material in sports and recreation facilities building.</li> </ul>
Reduced Cost of Doing Business	<ul style="list-style-type: none"> <li>• Develop local capacities in producing and manufacturing sporting goods and equipment.</li> </ul>

*Table 1: Showing the link between general AfCFTA benefits and the AU Sport Policy outcomes*

In this regard, the table shows that whereas only the AU's goal to 'Leverage AfCFTA to stimulate sports and recreation-related services and good circulation' expressly includes mention of the AfCFTA, the subsequent indicators making up the independent variable 'AfCFTA benefits' have been arrived at by analysing primary sources such as the AfCFTA Agreement, the AU's Agenda 2063 document, and the AU's Sustainable Sport Policy Draft.<sup>ii</sup>

## 2.5. POSITIONING THE STUDY

### 2.5.1. Trade in Zimbabwe

Trade in Zimbabwe takes place against a terrain on which the country is estimated as having the largest informal sector in Africa.<sup>39</sup> As in many African countries, the development trajectory of Zimbabwe continues to be riddled by wider socio-economic problems akin to youth unemployment rising to above 94%,<sup>40</sup> poor working conditions, and widespread poverty.<sup>41</sup> In addition, the prevailing trade climate has in general put women at the forefront as they occupy between 70-80 percent of informal traders.<sup>42</sup>

### 2.5.2. Sport Industry Challenges in Zimbabwe

As sport and by extension the sport industry is a microcosm of wider society, the country also continues to undergo numerous challenges when it comes to its sport industry.<sup>43</sup> The problem of a lack of investments continues to affect the Zimbabwean sport industry and impedes against development of a sporting infrastructure.<sup>44</sup> The country faces challenges when it comes to private-sector investments in the sport industry due to a lack of incentives to attract private-sector corporations. Moreover, this is epitomized by Zimbabwe's legislation, currently run on protectionist principles which sees sports equipment and sporting goods manufacturers facing restrictive tariff and non-tariff barriers at trading ports of entry.<sup>45</sup>

The sport industry in Zimbabwe also experiences a lack of innovation and technology whilst operating amidst a backdrop that is riddled with economic turmoil, which renders its services more or less ineffectual.<sup>46</sup> As a result, unlike in other countries or regions, Zimbabwe has not managed to leverage its sport industry to benefit economically.<sup>47</sup> Still, on the aspect of

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39 Nyaradzo Ruwisi, Female Traders in Zimbabwe: Economic struggles amidst the COVID-19 pandemic. *Rosa Luxemburg Stiftung*, 2020, <https://www.rosalux.de/en/news/id/42646/female-traders-in-zimbabwe>.

40 Simbarashe Gukurume, "#ThisFlag and #ThisGown Cyber Protests in Zimbabwe: Reclaiming Political Space," *African Journalism Studies* 38, no. 2, (2017): 54.

41 Manase Chiweshe, and Gerald Dandah, "Sport and Leisure Promotion in Urban Zimbabwe: Instrument for Sustainable Development and Resilience-building". *Journal of Urban Systems and Innovations for Resilience in Zimbabwe* 3, no. 1 (2021): 177.

42 Abel Chikanda, and Godfrey Tawodzera, *Informal Entrepreneurship and Cross-Border Trade between Zimbabwe and South Africa*, Southern African Migration Programme (SAMP), 2017: 8.

43 World Football Summit, "The African Football Industry and its main challenges", 2020, <https://worldfootballsummit.com/wp-content/uploads/2020/12/Report-Africa-20-16dic20-FINAL.pdf>.

44 Sikhumbuzo Moyo, "Zimbabwe is far from taking sport as a business," *The Chronicle*, October 3, 2020, <https://www.chronicle.co.zw/zimbabwe-is-far-from-taking-sport-as-a-business/>.

45 Moyo, "Zimbabwe is far from taking sport as a business", 2020.

46 Gerald Dandah, and Manase Chiweshe, "Zimbabwe Premier Soccer League in the Context of COVID 19", *Journal of Global Sport Management* 8, no. 3, (2023): 613, <https://doi.org/10.1080/24704067.2021.1899768>.

47 Manase Chiweshe, "The problem with African football: Corruption and the (under)development of the game on

a lack of technology, the adoption of technology in Zimbabwe's sport industry has remained stunted due to a lack of investments in the sport industry, lack of competence, and fear of change.<sup>48</sup> These and other challenges that sport industry stakeholders continue to face have led to a malaise in the sport industry in Zimbabwe.<sup>49</sup> This has compelled the Government of Zimbabwe, through its National Sport and Recreation Policy,<sup>50</sup> together with its Vision 2030 Agenda<sup>51</sup> to attempt to intercede by creating opportunities through the country's sport industry and in so doing, attempt to offset a trajectory of development through the country's sport industry.

### **2.5.3. Free Trade Area Economic Benefits and the Sport Industry**

The European Union (both a free trade area and a Customs Union) provides a gold standard when it comes to the benefits of a free trade area for the sport industry with sport-related intra-European Union trading and extra-European Union trading with the rest of the world being said to result in over €310 billion GDP that is sport industry related.<sup>52</sup> Free trade is also said to create sport industry-related jobs with almost 3% of employment,<sup>53</sup> equating to 5.2 million employees in the sport industries of EU countries when mapping various stakeholder groups such as coaches, clubs, athletes, manufacturers, and federations, inter alia. In Indonesia, membership to a free trade area is said to have helped create jobs for 160,000 employees working in sportswear production for global multinational companies such as Nike.<sup>54</sup> The creation of a free trade area has also impacted the economy in Pakistan as it accounts for a reported 300,000 to 350,000 employees in the sports goods manufacturing related small and medium enterprises (SMEs), including both skilled and unskilled laborers.<sup>55</sup> Apart from job creation and contribution to the GDP, other economic benefits of FTAs to the sport industry include reductions in the costs of doing business, since FTAs make the business environment more open and therefore conducive for sport businesses operating in the industry.<sup>56</sup> In addition, creation of free trade areas also helps to attract foreign investments in the sport industry.<sup>57</sup>

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the continent." *Africa Sports Law and Business Bulletin*, 2, (2014): 32.

48 Edmore Nhamo, and Simbarashe Magonde, "Information Technology Applications and Challenges: An Empirical Study of National Sports Associations in Zimbabwe," *The International Journal of Engineering and Science* 2, no. 7, (2017): 23.

49 Moyo. "Zimbabwe is far from taking sport as a business", 2020.

50 Government of Zimbabwe, *National Sport and Recreation Policy (Ministry of Sport and Recreation, 2016)*.

51 Government of Zimbabwe, *Vision 2030: Towards a prosperous and empowered Upper Middle-Class Income Society by 2030 (Zimbabwe Government, 2018)*.

52 European Commission, *Mapping of sport statistics and data in the EU: final report to the European Commission*, Directorate-General for Education, Youth, Sport and Culture, Publications Office. Brussels, 2021, <https://data.europa.eu/doi/10.2766/297949>.

53 European Commission, *Sport in the European Union, 2020* [https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet\\_en.pdf](https://ec.europa.eu/assets/eac/sport/library/documents/eu-sport-factsheet_en.pdf).

54 Madeleine Andreff, and Wladimir Andreff, "Global trade in sports goods: International specialization of major trading countries," *European Sport Management Quarterly* 9, no. 3 (2009): 281, <https://doi.org/10.1080/16184740903024029>

55 Farah Hassan, Kiran Javaid, and Hadia Majid, "Pakistan-India Bilateral Trade in Sports Goods Sector," in *India-Pakistan Trade: Strengthening Economic Relations*, ed. Nisha Taneja and Sanjib Pohit (Indian Council for Research on International Economic Relation, 2015), 250.

56 Sungho, and Kyoo, "International Trade in Sport Products: Free trade agreements, sporting goods and playing Talent," 2017, 186.

57 Amin Saberi, Kalateh Masoumeh, Dosti Morteza, Mohammad Seyed and Razavi Farzan, "Designing a Sport

#### 2.5.4. Free Trade Area Social Benefits and the Sport Industry

A significant social benefit of FTAs for the sport industry is their facilitation of the free movement of sporting talent. A notable example of a free trade area that is above and beyond in its facilitation of the movement of playing talent is the European Union (*hereafter* the EU),<sup>58</sup> where the Bosman ruling inaugurated the unfettered free movement of players within the EU free trade area, as outlined in under Article 45 of the Treaty of the European Union.<sup>59, 60</sup> The social benefits of FTAs to the sports industry also includes the technology component, as creation of free trade areas makes it possible to import machinery at low tariffs, which results in the increased adoption of the modern technology needed in the manufacturing of sporting goods.<sup>61</sup> Having efficient technology improves the methods of production as well as the competitiveness of the sport industry, while also helping decrease the costs of production and subsequent cost of buying sporting goods.<sup>62</sup> Finally, an added social benefit of free trade within the context of a free trade area is how it contributes to social inclusion in the sport industry. For instance, in the EU, men account for 54%, and women make up 46% of the gender of those employed in the sport industry.<sup>63</sup> Furthermore, when scrutinized down to individual EU countries, such as Lithuania (60%), Finland (55%), Sweden (56%), and the Netherlands (51%), more women than men benefit from the opportunities to work in the sport industry.<sup>64</sup> Hence, free trade contributes to social inclusion in the EU sport industry when considering that the percentage of females working in the sport industry is higher than of those employed across all other industries.<sup>65</sup> More still, free trade areas also contribute to the sport industry through the social inclusion of youth segments. A point in case is in the EU sport industry, where the youth segments aged between 15-29 years make up 38% of the workforce. This is twice as much as the total employment of the youth segment across all other industries, which totals 17%.<sup>66</sup> In fact, when taking a look at individual countries such as Cyprus and Spain, the number of young people working in the sports sector is 2.6 times higher than of those employed in the rest of the industries there.<sup>67</sup> This aspect of social inclusion through employment appears to echo literature stating that FTAs allow the sport industry to develop along an economic foundation by driving economic growth, which in turn stimulates social development.<sup>68</sup>

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Development Model in Iran's Free Trade Industrial Zones," *Annals of Applied Sport Science* 6, no. 4, (2018): 51, <http://dx.doi.org/10.29252/aassjournal.6.4.49>

58 Sungho, and Kyoo, "International Trade in Sport Products" in *Routledge Handbook of International Sport Business*, 196.

59 Richard Parrish and David McArdle, "Beyond Bosman: The European Union's Influence upon Professional Athletes' Freedom of Movement," *Law and Criminology* 7, no. 3, (2004): 403, <https://doi.org/10.1080/1743043042000291712>.

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

61 Ijaz Nawaz, Muhammad Aqib, Nabeel Shahzad, Muhammad Yasir and Fareeha Zafar. "Contribution of Sports Goods Industry towards Economic Growth of Pakistan". *Advances in Social Sciences Research Journal* 4, no. 13, (2017), 75, <https://doi.org/10.14738/assrj.413.2705>.

62 Nadia Shakoor, and Muhammad Rehan, "Deterring Export Potential of Pakistan," *European Academic Research* 7, no. 8, (2019): 4058, 4059.

63 Eurostat. *Employment in sport*, 2021, accessed 10 May 2022, Employment in sport -Statistics Explained (europa.eu).

64 Eurostat, *Employment in sport*. 2021

65 Eurostat, *Employment in sport*. 2021

66 Eurostat, *Employment in sport in the EU*, 2019.

67 Eurostat, *Employment in sport in the EU*, 2019.

68 Hao Xiaogang, and Gao Xuemei, "Study on the Strategic Cooperation and Development of Sports Industry

### **2.5.5. Renouncing of FTA membership and associated Sport Industry Effects**

The emergence of Britain's opt-out from the EU in 2016 (Brexit) has steered studies to highlight the link between free trade areas and the sport industry by looking at the effects that a country's sport industry would undergo if that particular country decided to exit the free trade area it was previously under. Before Brexit, the sport industry in the UK was heavily influenced by its membership in the EU,<sup>69</sup> especially when it comes to its flagship brand of the English Premier League<sup>70</sup> (EPL). Previously, the EPL could easily recruit talented players within the EU trading bloc, while only players from non-EU countries were obliged to obtain work permits.<sup>71</sup> However, this EU-UK player mobility pathway and vice versa has been significantly curtailed due to Brexit,<sup>72</sup> which obliges Britain to renounce all free trade benefits offered by the EU. As such, movement regulations for EU nationals to the UK have been equated to those of non-EU player, which means that European and non-European players both need to satisfy the same regulatory requirements to qualify for a work permit in the UK, which is expected to lead to fewer transfers to the EPL and other British professional sports.<sup>73</sup>

The literature on Brexit also unveils how Britain's exit from the free trade area with the EU makes its sport industry vulnerable when it comes to talented player recruitment.<sup>74</sup> According to Article 19 of FIFA's Regulations on the Status and Transfer of Players (2016), the international transfer of players younger than 18 years old is prohibited unless it occurs when the player transfers within the territory of the EU as this chimes with the EU's 'free movement of people' principle.<sup>75</sup> Hence, due to Brexit, British clubs are no longer able to benefit from the EU exemption of signing talented athletes aged between 16 to 18 years, which may reduce the appeal and strength of the EPL.<sup>76</sup> This inability to attract young players can result in the decreased popularity and entertainment value of the EPL competition,<sup>77</sup> resulting in increased financial losses of the EPL clubs – which are major stakeholders in the UK sport industry.<sup>78</sup>

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in Yangtze River Delta under Advantage of Regional Free Trade Area", *Journal of Hebei Institute of Physical Education* 29, no. 1, (2015), 18.

69 Justin Humphries, "Brexit Means Brexit, But What Does It Mean For The Premier League And Its Players?" *LawInSport*, 2019, <https://www.lawinsport.com/topics/item/brexit-means-brexit-but-what-does-it-mean-for-the-premier-league-and-its-players#references>.

70 Sungho, and Kyoo, "International Trade in Sport Products" in *Routledge Handbook of International Sport Business*, 196.

71 Sungho, and Kyoo, "International Trade in Sport Products", 197.

72 Simon Leaf and Tom Murray, "How Brexit Has Impacted the Sport Industry: A Legal Perspective from the first 100 days", *LawInSport*, 2021, [https://www.lawinsport.com/topics/item/how-brexit-has-impacted-the-sports-industry-a-legal-perspective-from-the-first-100-days?utm\\_content=163483756&utm\\_medium=social&utm\\_source=twitter&hss\\_channel=tw-145208608](https://www.lawinsport.com/topics/item/how-brexit-has-impacted-the-sports-industry-a-legal-perspective-from-the-first-100-days?utm_content=163483756&utm_medium=social&utm_source=twitter&hss_channel=tw-145208608)

73 Jürgen Mittag and Roland Naul, *EU sports policy: assessment and possible ways forward*. European Parliament, Research for CULT Committee, Brussels, 2021.

74 Stephen O'Flaherty, "The Transfer of Overseas Players Post Brexit," *LawInSport*, 2020, <https://www.lawinsport.com/topics/podcast/item/the-transfer-of-overseas-players-post-brexit-with-stephen-o-flaherty-e99?highlight=WyJvJ2ZsYWwhcnR5l10=>.

75 Tiran Gunawardena and Rustam Sethna, "Analysis of FIFA's 2021 Regulatory Changes – Female Players, Coaches, Brexit And More," *LawInSport*, 2021, <https://www.lawinsport.com/topics/item/fifa-s-2021-regulatory-changes-female-players-coaches-brexit-and-more>.

76 Simon Leaf and Tom Murray, "How Brexit Has Impacted the Sport Industry," 2021.

77 Borja Garcia, "Will Brexit break up the Premier League? UK In A Changing Europe," 2018, accessed April 5, 2022, <https://ukandeu.ac.uk/will-brexit-break-up-the-premier-league/>.

78 Humphries, "Brexit Means Brexit," 2019.

Already, a dramatic fall of the pound has been witnessed following Brexit, with Humphries alleging that £1 (GBP) was worth €1.43 (EUR) in August 2015, then worth €1.26 before the referendum, but is now pegged at €1.18.<sup>79</sup> The fall of the pound represents an 18% drop in the spending power for British teams, therefore copious amounts of literature point to the increased transfer costs being incurred by British teams paying for a foreign transfer from the rest of the EU-based leagues that operate on the EUR.<sup>80</sup> Cumulatively, this all ties in with Cho and Kim, whose work shows that the declining value of the British pound after Brexit can financially, further affect the EPL sector of the sport industry in the UK due to a devaluation of EPL franchises and broadcasting rights, as well as higher retention costs for veteran players.<sup>81</sup>

## 2.6. LITERATURE GAPS AND CONTRIBUTION TO KNOWLEDGE

Even though the provinces of FTAs, free trade areas and the sport industry are both thoroughly researched, in tandem they have seldom been studied together, much less in the light of developing regions such as Africa where among others, youth populations are high, unemployment is rampant, and the sport industry is not well developed, contributing only around 0.5% to the GDP.<sup>82</sup> This is a glaring gap that is worth addressing as with so much talk about AfCFTA as an initiative geared towards promoting socio-economic development across all industries, one would be mistaken for thinking that the sport industry also prefigures among those affected industries. The existing literature, while being dominated by developed regions and countries, has till now only looked at the major sport industry benefits that accrue from the formation of FTAs. However, it seems to be silent on whether the existing macro-structural policies, such as AfCFTA, shape the expectations of sport industry stakeholders involved in the business of sport. To the authors' knowledge, leveraging the sport industry for human and socio-economic development has not received adequate attention, particularly in the context of FTAs, which are important drivers in both, the sport industry, as well as human and socio-economic development, through their unrivalled ability to support human agency<sup>iii</sup> and human centred development via the sport industry. This paper contributes to filling this gap by examining the relationship between free trade areas and sport industry stakeholder expectations needed to provide the building blocks that can serve as a basis for planning and policymaking by the officials in the sport industry in Zimbabwe.

## 3. RATIONALE AND RESEARCH QUESTIONS

Whilst AfCFTA foresees bringing about benefits in areas like manufacturing, food security, and industrialization among others, much less attention (if any) has been given to how the sport industry might find itself being affected by the benefits that the Agreement envisages. Despite being an important innovation that ties into the African continent's socio-economic development aspirations by doing away with protectionist measures, the AfCFTA makes no direct recognition of sport even though sport engenders numerous multifaceted contributions within the socio-economic arena as it affects businesses, the economy, social development,

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79 Humphries, "Brexit Means Brexit," 2019.

80 Garcia, "Will Brexit break up the Premier League?," 2018.

81 Sungbo, and Kyoo, "International Trade in Sport Products" in *Routledge Handbook of International Sport Business*, 197.

82 Mazars & ASCI. *The sports ecosystem in Africa: a potential development lever*, 2021, 5, <https://www.africansci.com/wp-content/uploads/2022/01/ASCI-Sports-Ecosystem-in-Africa-2021-LowD.pdf>

including even governmental and intergovernmental cooperation. Moreover, FTAs have so far been underutilized by the sport industry, most times due to a lack of knowledge that the instrument exists or what is needed to fully benefit from the FTA in place, which greatly curtails the sport industry's knowledge of the benefits a trade policy instrument like AfCFTA brings. Nevertheless, the proposed benefits of the AfCFTA that this study expects will accrue towards the sport industry will not be fully realized without the awareness and involvement of its stakeholders. According to Miragaia *et al.*, stakeholders within the sport industry need to be kept informed and aware of the ongoing developments that occur within sports political, social, and economic environment.<sup>83</sup>

Hence, this study explored the awareness of the AfCFTA socio-economic benefits among the sport industry stakeholders in Zimbabwe and the influence this has on their expectations. It focused on:

- The awareness of the AfCFTA among the sport industry stakeholders in Zimbabwe.
- The relationship between the awareness of socio-economic benefits and the expectations of the sport industry stakeholders in Zimbabwe.

### 3.1. THE CONCEPTUAL FRAMEWORK

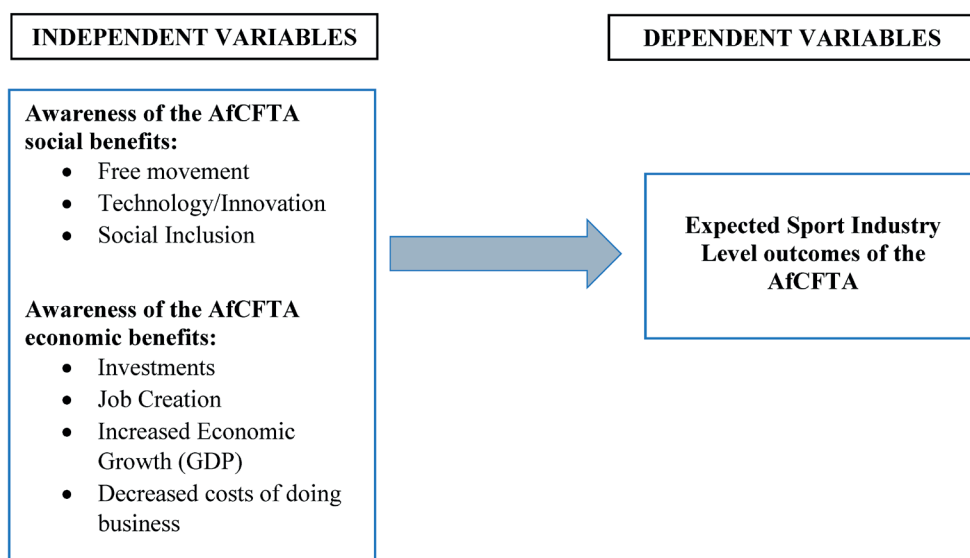


Figure 2. Self-developed conceptual model

The following research questions were used to drive the study:

**Research question 1:** What is the relationship between the awareness of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

83 Dina Miragaia, João Ferreira and André Carreira, "Do Stakeholders Matter in Strategic Decision Making of a Sports Organization," *Revista de Administração de Empresas* 54, no. 6 (2014): 648, <http://dx.doi.org/10.1590/S0034-759020140605>.

**Research question 2:** What is the relationship between the awareness of the social benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

**Research question 3:** What is the relationship between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

**Research question 4:** Is there a significant joint and composite relationship between the social and economic benefits on the expectations of the sport industry stakeholders?

## 4. METHODOLOGICAL ASSUMPTIONS

This study is made up of certain assumptions. First, socio-economic factors (specifically free movement, technology/innovation, social inclusion, job creation, investments, increased economic growth, and decreased cost of doing business) are important Free Trade Agreement benefits. Secondly, those socio-economic factors, while not expressly mentioned in the AfCFTA in terms of their relation to sport or the sport industry, are by and large conveyed as conducing benefits and opportunities that can address some of the challenges facing the sport industry<sup>84 85</sup> as other Free Trade Agreements have been known to do. Lastly, it is assumed that awareness of the AfCFTA and of the AfCFTA's socio-economic benefits will result in more positive sport industry stakeholder expectations, which in turn will also help in the implementation of the AfCFTA when it comes to achieving its stated benefits (specifically free movement, technology/innovation, social inclusion, job creation, investments, increased economic growth, and decreased cost of doing business). Ultimately, the assumption is that there exists a relationship between the sport industry stakeholders' their awareness of the AfCFTA, its socioeconomic benefits, and the expectations as such.

### 4.1. CONSTRUCTION OF INDEPENDENT VARIABLES AND THEIR OPERATIONALISATION

In collating and arriving at the independent variables, the study used awareness of the AfCFTA benefits as the Independent Variable which was then constructed into 'the AfCFTA social benefits' and 'the AfCFTA economic benefits. They are further operationalised by a total of 7 indicators that highlight the AfCFTA social benefits (Free movement, Technology/Innovation, Social Inclusion) and the AfCFTA economic benefits (Investments, Job Creation, Increased Economic Growth/GDP, and Decreased costs of doing business).

The AfCFTA benefits (as they have been operationalized) derived from document reviews of multiple sources/texts. According to Andrew *et al*<sup>86</sup>, legal or policy research in the sport management field, which this is – requires a researcher to combine sources of authority that would be applicable to the research problem. Hence, the independent variables were arrived at by analysing primary sources such as the AfCFTA Agreement, the AU's Agenda 2063, and the AU's Sustainable Sport Policy Draft. Secondary sources that interpret and comment on

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84 Sungho, and Kyoo, "International Trade in Sport Products: Free trade agreements, sporting goods and playing talent," 2017, 186.

85 Zhang and Nauright, *Sport Business in Leading Economies*, 2018, 1-2.

86 Damon Andrew, Paul Mark Pedersen and Chad McEvoy, *Research Methods, and Design in Sport Management*, 2011, 188.



the AfCFTA and its application, such as articles and textbooks were also used. In addition, it is also important to note that while not labelled as the AfCFTA 'benefits' by the text of the Agreement itself, these indicator variables that are classified as 'AfCFTA benefits' are deduced primarily from the AfCFTA Agreement and other primary and secondary document reviews. For example, the AfCFTA Agreement presents the aims and objectives of the AfCFTA, which one could deduce as the AfCFTA's benefits/opportunities as it makes sense that the aims and objectives aspired for, carry benefits.

Therefore, data sources for each of the variables can be considered as the following:

Table 2. Showing the sources of data used to construct the independent variable indicators.

Independent Variable	Data Source
<b>Free Movement</b>  <i>(constructed to encompass the free movement of goods, services, and people – as the questionnaire items under the free movement section shows)</i>	<p>Article 3 of the AfCFTA Agreement articulates one of its general objectives as creating 'a single market, facilitated by movement of persons' (Art. 3, para.4)</p> <p>The same article also notes the general objective to 'Create a liberalized market for goods and services' (Art. 3, para.4)</p> <p>In addition, tailored protocols governing the free movement of goods (Protocol on Trade in Goods; Part 1 Art. 2, para 19), services (Protocol on Trade in Services, Art. 2, para. 32) and persons (Protocol on the Free Movement of Persons and Labour, para.1) have been created.</p> <p>*The Protocol on Free Movement of Persons and Labour has always been there but has now been revived and re-purposed under the AU Agenda 2063 and the AfCFTA. <a href="https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf">https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf</a></p>
<b>Technology/Innovation</b>	<p>The Protocol on Investment is said to be 'determined to allow the instrument to be suitable for Africa's needs and therefore advances the importance of industrialization, technological developments...'<sup>1</sup></p>
<b>Social Inclusion</b>	<p>The AU's Agenda 2063, which is the overarching framework that the AfCFTA falls under is said to be people-centred (the African Union Sustainable Sport Policy Draft, para.7).</p> <p>The general objectives of the AfCFTA Agreement itself also include some aspects of social inclusion as it aspires to bring about socioeconomic development, gender equality, and structural transformation (Art. 3, para. 4).</p> <p>Article 27 of the AfCFTA Agreement also highlights the AfCFTA as an enabler of socio-economic inclusion as it is predicated to improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers (Art. 27, para. 52).</p>
<b>Investment Creation</b>	<p>The Agreement indicates one of the AfCFTA's objectives to be to 'contribute to the movement of capital and natural persons and facilitate investments' (Art. 3, para.4). In addition, the objective to create investments is even covered through the Protocol on Investment which promotes foreign direct investment (FDI) by allowing for the free movement of capital, thereby making it easier for investments to occur<sup>2</sup>.</p>
<b>Job Creation</b>	<p>According to the AfCFTA Agreement, in line with the AU's Agenda 2063, the AfCFTA is intended to promote structural economic transformation (Preamble, pg.1); whereas according to AU's Agenda 2063, economies are structurally transformed to create shared growth, decent jobs, and economic opportunities for all.<sup>3</sup></p>
<b>Increased Economic Growth (GDP)</b>	<p>The AfCFTA's Protocol on Services is intent on boosting intra-African trade and promoting economic growth and development within the continent (Preamble, pg. 31)</p> <p>*Increased Economic Growth/GDP Increase as a benefit of the AfCFTA can also be tied to other benefits such as Investments and jobs created, which tend to be directly proportional to higher GDP</p>

<p><b>Decreased costs of doing business</b></p>	<p>According to the Agreement, the Protocol on Trade in Services helps to advance the AfCFTA through economies of scale, reduced business costs, enhanced continental market access, etc. (Part 3, Art. 3, para. 36).                  The Agreement also commits to 'Progressively eliminate tariffs and non-tariff barriers to trade in goods' and to 'Progressively liberalize trade in services' (Art. 4, pg.5).                  In addition, the aim of the Protocols on Trade in Goods and Services is to reduce, and progressively reduce all trade costs through a 90% reduction in tariffs on all traded goods and services (Art. 2, para. 19)</p>
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## 4.2. RESEARCH DESIGN

The study employed a descriptive survey research design of the correlation type. Descriptive correlational studies focus on studying the relationship between variables. A descriptive survey was employed to investigate the demography of study participants while correlations were used to study the expectations of the stakeholders in Zimbabwe's sport industry. Keeping in mind the research objective, which was the quantification of expectations held by the sport industry stakeholders, the research made recourse to a descriptive quantitative methodology.<sup>87</sup> Such an approach was deemed necessary in order to quantify the expectations and to undertake a statistical confirmation from the obtained results.

### a) Population and sample

The population studied consisted of all sport industry stakeholders in Zimbabwe. The research sample included 365 people who were selected using non-probability and probability sampling. The non-probability sampling strategy was used to make a list of stakeholders based on previous studies, as well as through the input delivered by experts engaged via systematic interviewing conducted with 12 sport industry experts. Snowball sampling was then used to help account for all stakeholders using referrals pointed out by the experts. Consequently, nine categories of stakeholder groups emerged. Probability sampling was then used with a sample from the identified population being carefully selected through stratified random sampling. This was done by dividing the population (sport industry stakeholders) into different segments before randomly sampling participants stakeholders from each of the segments. By the end, the following stakeholder groups formed the study sample: CEO's, sport coaches, sport managers, sport administrators, sport arbitrators, players, sport experts, (consultants, scientists, marketers, journalists, etc.), sporting goods/product manufacturers, and sport retailers. These needed to be in organizations registered with the SRC in Zimbabwe or in at least one sport federation, and working in the sport industry for more than two consecutive years.

### b) Research Instrument

The researchers used a 43-item self-designed instrument divided into three sections: socio-demographics section, social benefits, and economic benefits sections. The Likert scale-type questions were made up of three variables that constitute the social benefits and 4 variables constituting the economic benefits of the AfCFTA. These include free movement, technology/

87 Joe Hair, Mary Celsi, Arthur Money, Phillip Samouel and Michael Page. *Essentials of Business Research Methods* (New York and London: Routledge, 2016), 155-157.

innovation and social inclusion (social benefits), investment creation, job creation, increased economic growth, and decreased costs of business (economic benefits). The 5-point Likert scale ranged from: Very unlikely = 1, Unlikely = 2, Neither likely nor unlikely = 3, Likely = 4, to Very likely = 5, in order to examine the extent to which awareness of the social and economic benefits of the AfCFTA, contributed to the sport industry stakeholders' expectations in Zimbabwe. A total of 430 questionnaires were distributed among sample members and 365 questionnaires were collected, indicating a response rate of 84.8 percent. To assess the validity of the questionnaire, 3 sports management lecturers were used from Ghana, Qatar, and the University of Ibadan in Nigeria. Through the test and re-test method, the Cronbach's alpha gave a reliability reading of  $\alpha = 0.85$  for the questionnaire.

### c) Statistical analysis

Descriptive statistics was applied to the socio demographic information of the sport industry stakeholders in terms of frequencies and proportions using SPSS. Inferential Statistics of Pearson's Product Moment correlation Coefficient was used on the individual variables and all other variables included in the data collection, while Multiple regression analysis was conducted with both awareness and expectations as target variables, and the social benefits (free movement, technology/innovation, social inclusion) along with the economic benefits (job creation, investments creation, increased economic growth, and decreased costs of doing business) as predictor variables. The multivariate linear regression model was applied to identify the predictor variables for sport industry expectations at a 95% confidence interval (CI) and p-value < 0.05 for statistically significant relationships between the independent variables with the outcome of interest.

*Table 3: Decision Rule to Interpret the Mean Scores*

Mean Score	Interpretation of the Statement
0.0 – 1.4	Very low expectation
1.5 – 2.4	Low expectation
2.5 – 3.4	High expectation
3.5 – 5.0	Very high expectation

Table 3 shows the decision rule to interpret the mean scores arrived at by using the weighted mean of the seven items (free movement, technology/innovation, social inclusion, job creation, investment creation, increased economic growth, and decreased cost of doing business). In this case, the weighted mean was  $\bar{X} = 3.4$ . The lowest score recorded across all individual Likert items (2.56) was then subtracted from the weighted mean score with results indicating 0.8, which meant the scale for the mean score began at 0.0 (Very low). Consequently, everything that fell under the lowest score of 2.5 resulted in a 'low' score, while everything above or equal to 2.5 received a 'high' score. In addition, a decision rule was again included to help further interpret the extent of the 'high' expectation score. Here, all means falling above or equal to the initial weighed mean of  $\bar{X} = 3.4$  were further weighted to result in a weighted 'high' score mean of  $\bar{X} = 3.5$ , which implied that the expectations were interpreted as being 'very high' if they fell over 3.5.

d) Study variables

The awareness of African Continental Free Trade Area s social and economic benefits are the independent variables. Sport industry-level outcomes of FTAs were considered the dependent variable, with the result of this correlation adjudged to be sport industry stakeholders' expectations.

## 5. RESULTS

### 5.1. SUMMARY OF DESCRIPTIVE RESULTS

Table 4. Presentation of the descriptive statistics

	N	Mean	Std. Deviation	Variance
SOCIAL BENEFITS				
Free movement	365	3.07	.914	.838
Technology/Innovation	365	3.56	.808	.660
Social Inclusion	365	3.67	.904	.828
ECONOMIC BENEFITS				
Job Creation	365	3.55	1.107	1.211
Investment Creation	365	3.40	.904	.821
Increased Economic Growth (GDP)	365	3.13	.897	1.808
Decreased cost of doing business	365	3.09	1.009	1.024

Source: Field Data 2022

Table 4 shows the descriptive statistics (mean, standard deviation, and variance) for the awareness of the AfCFTA social and economic benefits. Under the social benefits, social inclusion scored the highest while free movement scored the least among the sport industry stakeholders. Under the economic benefits, job creation scored the highest, while the decreased cost of doing business scored the least among the sport industry stakeholders.

### 5.2. DEMOGRAPHIC FEATURES OF THE SPORT INDUSTRY STAKEHOLDERS

Of the 365 sport industry stakeholders selected for the study, 59.7% were male. The majority (n=75) were between 31-35 years of age (which constituted 20.5% of the total stakeholders). In total, 248 sport industry stakeholders identified themselves as being equal or younger than 40 years of age (equivalent to 67.9%), and thereby constituted the 'youth' demographic.

### 5.3. DESCRIPTION OF THE AFCFTA AWARENESS

Of the 365 sport industry stakeholders, n=287 (which constitutes 78.63% of the total stakeholders) were aware of the AfCFTA, while n=78 (which constitutes 21.37% of the total stakeholders) were unaware of the AfCFTA. However, the high levels of awareness did not appear to translate fully into similarly high levels of expectations as only n=99 (which constitutes 27.13% of total stakeholders) carried additional expectations.

Regarding the AfCFTA awareness, the most common sources of the awareness were through social media (n=83, constituting 22.74% of total stakeholders), internal sources (n=60, constituting 16.44% of total stakeholders), TV/Radio (n=58, constituting 15.89% of total stakeholders), with newspapers and seminars both accounting for n=43 (constituting 11.78% of total stakeholders). The data further indicated the stakeholder groups holding the most awareness. As shown in the chart, sports administrators (n=50) exhibited the most awareness of the AfCFTA followed by sports managers (n=43) and sports coaches (n=42). On the other hand, sports retailers (n=15) and sports arbitrators (n=17) showcased the least awareness of the AfCFTA among the stakeholder sample chosen.

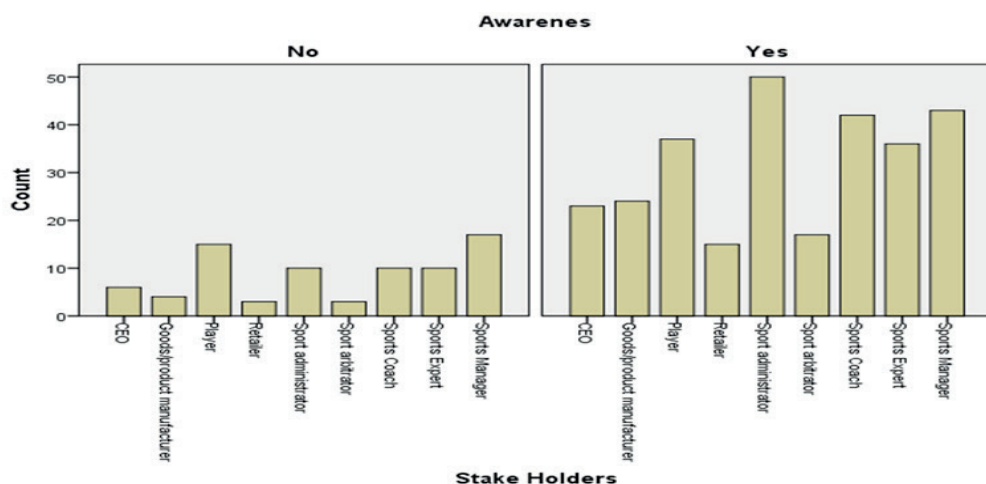


Figure 3. Bar chart representation of the number of stakeholders' holding awareness of the AfCFTA, based on their stakeholder category.

### 5.4. AWARENESS OF THE AFCFTA SOCIAL BENEFITS

The awareness of the AfCFTA social benefits produced a 'high' grand mean ( $\bar{x}$ ) of 3.10. Out of the three social benefits items 'free movement,' 'technology/innovation,' and 'social inclusion,' sport industry stakeholders exhibited a 'very high' level of awareness on free movement ( $\bar{x}$  = 3.62), a 'high' level of awareness on technology/innovation ( $\bar{x}$  = 2.85), and a 'high' level of awareness on social inclusion ( $\bar{x}$  = 2.83).

## 5.5. AWARENESS OF THE AFCFTA ECONOMIC BENEFITS

The awareness of the AfCFTA economic benefits produced a 'very high' grand mean ( $\bar{x}$ ) of 3.59. Out of four economic benefits, items of 'job creation,' 'investment creation,' and 'decreased cost of doing business,' sport industry stakeholders recorded a 'very high' level of mean awareness, while a 'high' mean level of awareness was recorded for the economic benefit of 'increased economic growth.'

## 5.6. RESULTS FROM THE RESEARCH QUESTIONS

**Research question 1:** What is the relationship between the awareness of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

A relationship emerged between the awareness of the AfCFTA and the expectations of the sport industry stakeholders.

*Table 5. Correlation analysis of the relationship between awareness of the AfCFTA and the sport industry stakeholders' expectations*

Variables	n	r	df	p-value	Decision
AfCFTA Awareness	365	.622	363	.000	Significant
Stakeholders' Expectations					

As shown in Table 5, the r-value of .622 for the relationship between awareness of the AfCFTA and the expectations of the sport industry stakeholders is significant since the p-value of .000 is less than .05 levels of significance at 363 degrees of freedom. Hence, there is a relationship between the awareness of the AfCFTA and the expectations of the sport industry stakeholders.

**Research question 2:** What is the relationship between the awareness of social benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

A relationship emerged between the awareness of the social benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe.

*Table 6. Correlation analysis of the relationship between the awareness of the social benefits of the AfCFTA and sport industry stakeholders' expectations*

Variables	n	r	df	p-value	Decision
Social Benefits	365	.535	363	.000	Significant
Stakeholders' Expectations					

As shown in Table 6, the r-value of .535 for the relationship between the awareness of the social benefits of the AfCFTA and the expectations of the sport industry stakeholders is significant since the p-value of .000 is less than .05 levels of significance at 363 degrees of freedom. Hence, there is a relationship between the awareness of the social benefits of the AfCFTA and the expectations of the sport industry stakeholders.

**Research question 3:** What is the relationship between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe?

A relationship emerged between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe.

*Table 7. Correlation analysis of the relationship between the awareness of the economic benefits of the AfCFTA and sport industry stakeholders' expectations*

Variables	n	r	df	p-value	Decision
Economic Benefits					
Stakeholders' Expectations	365	.516	363	.000	Significant

As shown in Table 7, the r-value of .516 for the relationship between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders is significant since the p-value of .000 is less than .05 levels of significance at 363 degrees of freedom. Hence, there is a relationship between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders.

**Research question 4:** Is there a significant joint and composite relationship between the social and economic benefits on the expectations of the sport industry stakeholders?

*Table 8. Multiple regression analysis of the social and economic benefits on the expectations of the sport industry stakeholders'*

Model	Sum of Squares	Df	Mean Square	F	Sig.
Regression	1317.180	2	658.590	70.427	.000b
Residual	3385.204	362	9.351		
Total	4702.384	364			
a. Dependent Variable: Stakeholders' Expectations					
b. Predictors: (Constant), Economic Benefits, Social Benefits					

The result in Table 8 indicated that calculated F-value of 70.427 for the joint and composite relationship of the social and economic benefits on the expectations of the sport industry stakeholders is significant since the p-value of .000 is less than .05 levels of significance at 2 and 362 degrees of freedom. Hence, there is a joint and composite relationship between the social and economic benefits on the expectations of the sport industry stakeholders. The model yielded an R Square of .280 and Adjusted R Square of .276, indicating that 28% of

the significance can be explained by the independent variables of the economic and social benefits of the AfCFTA on the sport industry stakeholders' expectations in Zimbabwe.

To determine the influence of each of the predicting variables, the summary of Beta coefficient was presented in Table 9 below.

Table 9. Beta Coefficient for the Composite Relationship of the Social and Economic Benefits on the Expectations of the Sport Industry Stakeholders

Model		Unstandardized Coefficients		Standardized Coefficients	T	Sig.
		B	Std. Error	Beta		
1	(Constant)	-3.334	2.827		-1.179	.239
	Social Benefits	.643	.065	.444	9.942	.000
	Economic Benefits	.394	.066	.264	5.921	.000
Dependent Variable: Stakeholders' Expectations						

The results in Table 9 indicated the Beta ( $\beta$ ) coefficient for the composite relationship of the social and economic benefits on the expectations of the sport industry stakeholders. The table reveals a constant of -1.179 and calculated t-values of 9.942 for the social benefits and 5.921 for the economic benefit. The p-values for the social benefit and economic benefits were both less than .05, which is an indication that the social benefits, rather than the economic benefits, contributed significantly to the expectations of the sport industry stakeholders in Zimbabwe.

## 6. DISCUSSION

A high number of sport industry stakeholders indicated being aware of the AfCFTA, with social media being cited as the main source of the awareness. This can be explained by the greater importance attached to the social media by the contemporary sport industry. There is a 'high' level of the awareness of the social benefits and a 'very high' level of the awareness of the economic benefits, which contrasts sharply with previous studies by Xiaogang and Xuemei, showing a lack of awareness of FTA and free trade zone benefits by the government at a sport industry level, when it comes to developing the Yangtze River Delta under the regional free trade area there.<sup>88</sup> The finding also digresses from PricewaterhouseCoopers who alleges that FTA benefits are unknown to sport industry stakeholders.<sup>89</sup> Furthermore, the existence of a 'high' level of awareness of the social benefits and a 'very high' level of awareness of the economic benefits by sport industry stakeholders could be due to the wide publicity given to the AfCFTA by the Zimbabwean government, through its Ministry of Sport, Arts, and Culture, which foresees the added value of utilizing the sport industry to offset the creation of opportunities, such as jobs as outlined in Article. 256 of its Vision 2030

88 Xiaogang, and Xuemei, "Study on the Strategic Cooperation and Development of Sports Industry", 18.

89 PricewaterhouseCoopers, "10 Minutes on Sport," 2016. <https://www.pwc.com.au/publications/assets/people-10-minutes-on-sport-nov16.pdf>.



Agenda and in the country's National Sport and Recreation Policy Draft.<sup>90 91</sup> Therefore, it is not inconceivable that the Ministry of Sport in Zimbabwe is active in promoting the ongoing emergent developments such as the AfCFTA, which enables it to leverage the sport industry to benefit socio-economically – something it has so far failed to do according to the findings put forward by Chiweshe.<sup>92</sup>

The results indicated that the stakeholders' 'high' and 'very high' levels of awareness did not appear to translate fully into similarly high levels of expectations. Instead, only 27.13% indicated any additional expectations. However, the additional expectations indicated the social and economic benefits of the AfCFTA including among others: the exchange in knowledge and experience of sport industry personnel, increased sponsorship, cheaper acquisition of the sports equipment and goods, cheaper cost of travel in continental competitions, and the increased attractiveness of the sport industry in Zimbabwe. This meant that stakeholders considered these additional expectations as relevant aspects and as drivers when it comes to the relationship between the AfCFTA and the sport industry in Zimbabwe.

The expectation of the AfCFTA resulting in an increased exchange of knowledge and experience of the sport industry personnel is in line with the literature by Boit attesting that one of the social benefits of FTAs for the sport industry is the promotion of cultural ties through the sport industry.<sup>93</sup> This serves to reinforce the relative awareness of the benefit of free movement among the stakeholders and similar social benefits of increased sport industry knowledge, and experience exchanges, that have also been achieved under the ASEAN FTA, which consists of 10 countries. This has been achieved via the promotion of the national traditional sport industry aspects that are considered germane to the local customs and are created by people of all ethnic groups within the free trade area.<sup>94</sup> Furthermore, such traditional sport industry-related events are also exported to China within the ASEAN-China FTA.<sup>95</sup> The expectation of having an increased exchange of knowledge and experience among the sport industry personnel also corroborates findings by Jiapeng and Haichun, where the Fujian free trade zone was revealed to contribute to the deepening of the sport industry linkages between China's Fujian provinces and the sport industries in Taiwan.<sup>96</sup>

In addition, an additional expectation among the sport industry stakeholders is to have cheaper travel costs in continental competitions. This is in harmony with the findings from the EU by Parrish and McArdle stating that the EU single market helped revolutionize the freedom of movement among coaches and athletes by facilitating free movement of sports personnel.<sup>97</sup> The expectation also dovetails with the literature findings by Saberi *et al.*, to the effect that

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90 Government of Zimbabwe, *Vision 2030: Towards a prosperous and empowered Upper Middle-Class Income Society by 2030*, 2018.

91 Government of Zimbabwe, *National Sport, and Recreation Policy*, 2016.

92 Chiweshe, "The problem with African football", 2014, 32.

93 Michael Boit, "Promoting Sport in Africa: An Opportunity for the East African Community's Social and Economic Development", in *Beyond the Scoreboard: Youth Employment Opportunities and Skill Development. In the Sports Sector*, ed. Giovanni di Cola (Publications Bureau International Organization Office, UN: Geneva, 2006), 114.

94 Nie Chunli and Zhang Yu, "ASEAN Free Trade Area – Protection and Development of Guangxi Minorities Traditional Sports," *Sport Science and Technology* 34, no. 1 (2013): 15.

95 Chunli and Yu, "ASEAN Free Trade Area", 2013, 15.

96 Li Jiapeng and Chen Haichun, "Exploration on the Development Innovation and Optimization Transformation of Regional Sports Product Manufacturing Industry after the Establishment of Fujian Free Trade Zone", *Journal of Heze University* 40, no. 2, (2018), 84-85.

97 Parrish and McArdle, "Beyond Bosman", 2004, 403.

the free trade zone in Iran has benefited the sport industry, thereby making it easier to recruit sport professionals, such as coaches, and to attract tourists due to facilitation of the ease in free movement.<sup>98</sup> Thus, this also confirms the high awareness of the free movement benefit of the AfCFTA in reference to others, as it can increase free movement in areas such as sports tourism and free movement of goods, as well as tangible and intangible services. Therefore, this could signal the value stakeholders attach on free movement, which can enhance the social capital of youth entrepreneurs and their employability through networking and acquisition of sport industry training and experience.

Furthermore, some other expectations by sport industry stakeholders include cheaper acquisition of sports equipment and goods. This is an expectation that appears to coalesce with the existing literature by Moyo which identifies protectionist trade measures in Zimbabwe as a challenge for the sport industry there due to the restrictive tariff and non-tariff barriers that sports equipment and sporting goods manufacturers in Zimbabwe face when importing goods.<sup>99</sup> Moreover, there is also the expectation that AfCFTA will increase the attractiveness of sport in Zimbabwe. This also ties into the literature that looks at the challenges faced by the sport industry in Africa, which are outlined in previous studies. For instance, the lack of technology is a factor that influences the unpopularity and unattractiveness of the African sport industry within the African market. This lack of attractiveness of the sport industry in Africa is also established by Zhang *et al.*, who point out that sport consumers in Africa appear to favour global sport teams, leagues, and sporting products over the same locally manufactured products.<sup>100</sup>

Our results from research question 1 confirmed the relationship between the awareness of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe. These findings chime with theoretical literature by Hargitai that demonstrates that sport stakeholders exhibit more interested expectations towards the political and social developments, such as trade that is likely to affect sports business in economic terms.<sup>101</sup> It also conflates with the literature by Thormann and Wicker outlining that the stakeholders with more awareness tended to exhibit more positive expectations of how Major Sports Organizations ought to respond to COVID-19. From an empirical perspective, both the high positive relationship and the significant relationship between the awareness and expectations is also analogous to the literature that foresees FTAs to potentiate numerous improvements when introduced within the African sport industry context.<sup>102</sup> Boit further outlines several areas that a regional FTA is anticipated to proffer for the sport industry in Africa, including aspects such as improved trade and technology, better sports infrastructure, and better sport competition standards

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98 Saberi, Masoumeh, Morteza, Seyed and Farzan, "Designing a Sport Development Model in Iran's Free Trade Industrial Zones", 2018, 51.

99 Moyo, "Zimbabwe is far from taking sport as a business", 2020.

100 Zhang James, Kim Euisoo, Marstromartino Brandon, Qian Tyreal, and Nauright John, "The sport industry in growing economies: critical issues and challenges," *International Journal of Sports Marketing and Sponsorship* 19, no. 2, (2018): 113. <https://doi.org/10.1108/IJSMS-03-2018-0023>

101 David Hargitai, "Stakeholder Attitudes in Hungarian Athletics – Qualitative Analysis?", *Pannon Management Review* 7, no. 1, (2018): 70.

102 Tim Thormann and Pamela Wicker, "The Perceived Corporate Social Responsibility of Major Sport Organizations by the German Public: An Empirical Analysis During the COVID-19 Pandemic", *Frontiers in Sports Active Living* 3, no.679772 (2021), 13. <https://doi.org/10.3389/fspor.2021.679772>.

among others.<sup>103</sup> This is not to add to other more general expectations, such as the realization of increased sport industry sales and profits,<sup>104</sup> which probably can become more concrete and varied once more in-depth awareness of the AfCFTA has been created.

The second research question confirmed a relationship between the awareness of the social benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe. Of these, social inclusion showed a higher mean compared to both, free movement, and technology/innovation. Considering the emerging developments in Zimbabwe where high levels of unemployment exist among the youth,<sup>105</sup> wider social realities as these may compel the sport industry's stakeholders to place a very high rating on social inclusion, especially if it is conceived as a means of enhancing the acquisition of sport industry training and experience for the youths. This falls in line with the theoretical literature by Babiak and Kihl, extending the view that sport industry stakeholders' expectations become more sustained when activities impact upon youth development.<sup>106</sup> Moreover, it also resonates with European literature citing from the EU, stating that sport has facilitated the employability of up to 38% youths in its sector.<sup>107</sup> Therefore, in the case of the youth in Zimbabwe, it is likely that social inclusion informs the expectations of the sport industry stakeholders, given that the youths are believed to have the skills and capacities required to drive entrepreneurial sport innovations that can be traded to generate earnings and support the local industry production processes. These processes include manufacturing, supplies, and sales while building regional value chains via trade in locally manufactured products that can be used to grow Zimbabwe's sport industry.

The third research question confirmed a relationship between the awareness of the economic benefits of the AfCFTA and the expectations of the sport industry stakeholders in Zimbabwe. Of the four economic benefits, job creation had the highest rating followed by investment creation. Increased economic growth and decreased cost of doing business had the least, but equal in terms of mean ratings. The reason for both findings could be that the majority of sport industry stakeholders in Zimbabwe conceive that the AfCFTA will have similar benefits to that of the EU free trade area, which provides a golden standard when it comes to the benefits of a free trade area for the sport industry. This would tally with the European Commission's outline that the EU trading bloc has helped create numerous sport industry-related jobs,<sup>108</sup> which account for up to 3% of the employment in the trading bloc, translating to around 5.2 million people. In addition, this benefit also encompasses the EU FTAs with other countries such as Indonesia.<sup>109</sup> FTAs have also helped create up to 160,000 sport industry-related jobs in India<sup>110</sup> and up to over 300,000 in Pakistan, whose sport industry absorbs both skilled and unskilled workers.<sup>111</sup>

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103 Boit, "Promoting Sport in Africa," in *Beyond the Scoreboard*, 114.

104 Andanje Mwisukha and Stephen Mabagala. "Sports Management Practices in Africa: Governance Challenges in Sport in East Africa [Paper presentation]". African Sport Management Association, Kampala, Uganda, 2013,1.

105 Gukurume, "#ThisFlag and #ThisGown Cyber Protests in Zimbabwe," 54.

106 Kathy Babiak and Lisa Kihl, "A Case Study of Stakeholder Dialogue in Professional Sport: An Example of CSR Engagement", *Business and Society Review* 123, no. 1 (2018): 133. <https://doi.org/10.1111/basr.12137>

107 Eurostat, *Employment in sport in the EU*, 2019.

108 European Commission, *Sport in the European Union*, 2020.

109 Federation of the European Sporting Goods Industry, "FESI Position Paper: EU- Indonesia FTA," Brussels, 2016.

110 Andreff, and Andreff, "Global trade in sports goods", 2009, 281.

111 Hassan, Javaid and Majid, "Pakistan-India Bilateral Trade in Sports Goods Sector, 2015, 250.

Lastly, the fourth research question yielded that the social benefits had a significant relative influence on the expectations of the sport industry stakeholders, which implies that the social benefits contributed more to the stakeholders' expectations than did the economic benefits. In general, it is the economic benefits of FTAs that have been said to be more salient when it comes to the sport industry. For instance, Xiaogang and Xuemei outline the relative importance attached to economic benefits of the Yangtze free trade zone as it bolsters the economic security of the sport industry there.<sup>112</sup> Also, Jiapeng and Haichun highlight the relative importance of economic benefits in the literature on free trade zone in China, with cost reduction in particular identified as being the biggest benefit.<sup>113</sup> This relative importance of economic benefits is also reflected by Garcia<sup>114</sup> and Humphries<sup>115</sup> who inadvertently highlight the relative importance of economic benefits when outlining the economic destabilization encountered with Britain's exit from the EU free trade area.

This importance attached to the social benefits is even more striking given that the economic terrain in Zimbabwe is characterized by up to as much as 94% unemployment, with most of the employees belonging to the informal sector.<sup>116</sup> Hence, it is significant that the sport industry stakeholders in Zimbabwe do not attach more significance to the economic benefits when notifying their expectations given the country's overall lack of employment. In the Zimbabwean context, the reason for the social benefits to have a relatively significant influence on the stakeholders' expectations could be because Zimbabwe's economic development dwarfs in comparison to the level of economic development that characterizes the other countries so far studied. It is feasible that the social benefits weigh more on stakeholders' expectations because of the extent to which the social and economic benefits, themselves, are interlinked. For example, social benefits such as free movement, social inclusion, and technology/innovation seem to also all cater to economic benefits, such as job creation and decreased costs of doing business, among others, as they entail human resources-centred aspects to bring about socio-economic inclusion. This reasoning resonates with findings by Nawaz *et al.* on free trade area creation in Pakistan resulting in the subsequent influx of technology required to manufacture sporting goods,<sup>117</sup> which has had a hand in helping decrease not only the costs of production but also the cost of buying sporting goods there.<sup>118</sup> Also, a report from Eurostat on the EU trading bloc contributing to social inclusion through the employment of more women than men in the sports industries of Lithuania, Sweden, Finland, and the Netherlands can also be taken into account, alongside contributing to social inclusion through increasing employability of youths in the sports sector by up to 35%.<sup>119</sup>

## 7. CONCLUSION

This study focused on the role awareness of the AfCFTA socio-economic benefits in predicting the expectations among the sport industry stakeholders within the context of both sport

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112 Xiaogang, and Xuemei, "Study on the Strategic Cooperation and Development of Sports Industry", 18.

113 Jiapeng and Haichun, "Exploration on the Development Innovation", 2018, 84-85.

114 Garcia, "Will Brexit break up the Premier League?", 2018.

115 Humphries, "Brexit Means Brexit", 2019.

116 Gukurume, "#ThisFlag and #ThisGown Cyber Protests in Zimbabwe, 2017, 54.

117 Nawaz, Aqib, Shahzad, Yasir and Zafar, "Contribution of Sports Goods Industry", 2017, 75.

118 Shakoor and Rehan, "Deterring Export Potential of Pakistan" 2019, 4058, 4059.

119 Eurostat, *Employment in sport*. 2021.

industry challenges and an increasingly fractured socio-economic development trajectory in Zimbabwe. The awareness of the social and economic benefits of the AfCFTA were shown as significant correlates or drivers in the formation of the sport industry's expectations. Based on the findings of this study, it is further concluded that the socio-economic benefits of the AfCFTA and the awareness of these benefits significantly influenced the expectations of the sport industry stakeholders. This finding reinforces the importance of awareness-raising initiatives on the AfCFTA by the Zimbabwean government with respect to acknowledging the applicability of its socio-economic benefits towards the current challenges within the sport industry. It was also confirmed that from the social and economic benefits, it was the social benefits that contributed more to the expectations of the sport industry stakeholders since the AfCFTA social benefits had a significant relative influence than the economic benefits did.

Moreover, the findings also serve to highlight the social development potential the sport industry has, when interacting with the AfCFTA. In this regard, when the sport industry interacts with the AfCFTA, it brings about human agency that can support the activities and participation of the key human resources demographics, such as sport industry youth entrepreneurs. Given that the facilitation of youth agency is an important strategy that can combat seismic unemployment rates, the relationship between the AfCFTA socio-economic benefits and the sport industry expectations is important since the youth have a high affinity for sport and the entrepreneurial capacity necessary to drive the sport industry innovations needed, to take advantage of the opportunities bequeathed by the AfCFTA socio-economic benefits. It is in this regard that the demographic dividend in Zimbabwe arguably lies in its youth. Therefore, the Zimbabwean government would do well to capitalize upon this dividend by adopting a holistic approach that takes cognizance of wider socio-economic issues while embracing the AfCFTA's ability to stimulate the human agency of the youth groups operating in the country's sport industry, which can help tackle these wider socio-economic challenges. For instance, given that the high representation of the stakeholders in the research is under the age of 40 and therefore considered as youths, more ownership of the sport industry governance should be in the hands of those who occupy the largest stake and have the nous to develop the sector further when presented with the socio-economic benefits the AfCFTA brings.

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

This research has succeeded in bridging two concepts seldom studied together, one being trade, which is a form of public policy, and the other being the sport industry. The main contribution it conveys therefore is that the sport industry does not exist in a vacuum, but rather, it is affected by and in turn affects its external environment. The links between the sport industry vis-à-vis structural policies existing outside the sport industry's immediate remit (such as the AfCFTA) and the resultant stakeholder expectations is an underexplored area in sport management research. The study filled this gap by exploring the link between the sport industry and the external concept of the AfCFTA. From a sports managerial standpoint, the study's results provide a deeper understanding of the contribution of the AfCFTA social and economic-related benefits to the sport industry stakeholders' expectations. Consequently, there is a need to create more awareness about the AfCFTA to enable sport industry stakeholders to form even more expectations about how they can benefit by leveraging these AfCFTA socio-economic benefits in addressing the already existent sport industry-related

challenges that they appear to have grasped more fully. The onus, therefore, lies on the Zimbabwean government, through its sport ministry, to educate various stakeholder groups (such as local sport industry stakeholders and owners of sports businesses SMEs) on the bespoke benefits of the AfCFTA, hereby allowing them to leverage all the opportunities by using them to their advantage.

Also, as research on the development of the AfCFTA and the sport industry is in its infancy, it is important for Zimbabwe's sport ministry to construct suitable communication plans that strengthen and increase the publicity of how the AfCFTA is not a stand-alone component independent of the sport industry, but can both benefit the sport industry and address its challenges. An additional policy implication of the study is that it provides preliminary findings that can help sport industry stakeholders' to lobby the Zimbabwean Ministry of Sport for the inclusion of the AfCFTA in the current and future sport policymaking on the one hand, while also enabling African governments – including that of Zimbabwe, to lobby the African Union for the inclusion of a sport-related protocol in the text of the AfCFTA document in order to enable the sport industry to gain recognition as AfCFTA 'stakeholders' by having the sport policy lever added to the AfCFTA Agreement itself, on the other hand. Apart from its very practical policy contributions, the study also contributes to the body of literature on the range of socioeconomic value chains that the sport industry helps to create when allowed to combine with free trade.

## **9. LIMITATIONS AND FURTHER RESEARCH**

Due to a dearth of empirical literature highlighting the nexus between FTAs, free trade areas and the sport industry, the study also made use of the literature looking at Free Trade Zones<sup>iv</sup> and the sport industry, which can count as a limitation. The literature conveys different benefits that are carried by FTAs, but this study limited itself to only 7 variables falling under the construct of the AfCFTA social and economic benefits – further studies, if done, could reveal more. The study also focused on the sport industry in Zimbabwe, but the relationships between constructs may differ between countries, which means that its results may be difficult to generalize when including other African countries. Consequently, it would be interesting to conduct similar studies on sport industry stakeholders' awareness and expectations of the AfCFTA in other contexts apart from Zimbabwe since the AfCFTA is binding to 54 African countries. Finally, since trade implies two or more countries engaged in an exchange relationship, future studies can adopt comparative approaches to sport industry stakeholder expectations on the AfCFTA to discover whether a gap in expectations exists.

### **Disclosure Statement**

No potential conflict of interest was reported by the authors.

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- i This paper uses the term 'sport industry' as opposed to sports industry. The sport industry conveys the idea of all aspects pertaining to sport as it is a holistic and all-encompassing concept as opposed to sports industry, which can be taken to mean only given aspects of the sport industry, such as sports activities.
- ii A full breakdown of the data sources used to arrive at the independent variable indicators has been added in the Methodological Assumptions section of the article.
- iii Human agency is defined as the capacity to act.
- iv Whereas a free trade area, which is formed by the signing of a Free Trade Agreement, involves two or more countries doing trade, a Free Trade Zone typically is established only by a single country. When looking at the whole concept of free trade, Malhotra (2007) considers Free Trade Zones as a miniature model for testing free trade with other countries at the national level.

# EVENTS



## **REFLECTIONS ON THE 2023 SPORT&EU ANNUAL CONFERENCE**

The 17th Annual Conference of the Association for the Study of Sport and the European Union (Sport&EU) took place in Lisbon on 6-7 July 2023, excellently organised by the *Universidade Autonoma de Lisboa*. It was the first time Sport&EU's flagship event was staged in Portugal, and the second (after Madrid in 2016) in the Iberian Peninsula. The conference gathered 50 delegates, including paper givers, discussants and attendees.

As usual, the conference was an excellent opportunity to discuss the latest trends and developments around sport and Europe. Centre stage, of course, where discussions about the ongoing legal challenges that are pending before the Court of Justice of the European Union. An excellent panel and round table featuring Miguel Maduro Poiares, Ben van Rompuy, Katarina Pjetlovic and Benoit Keane discussed not only the ongoing proceedings before the court, but focused on the conflict of interest of sport governing bodies as regulators and commercial actors in today's professional sport.

But beyond the more traditional topics of Sport&EU conferences, perhaps there were two eye-opening sessions in Lisbon. The first one was devoted to technology, sport and regulatory issues. With debates not just about esports, which are perhaps better known, but about how the use of technology is changing the way sport is practiced and managed. One question out of that very pertinent session is that, in a very similar way to current debates on the use of the internet, technology and social networks, perhaps the EU and member states should pay more attention to the impact that the use of technology is having on sport, from changing practices (i.e. VAR in football) to data gathering and data protection issues.

A second area of interest that appeared in several panels is perhaps less ground-breaking, but pertinent and relevant, nonetheless. There were a few papers, and one panel specially, that reflected on the implementation of EU sport policy. Indeed, it will be soon 15 years since the Treaty of Lisbon and Article 165 entered into force. There have been several rounds of Erasmus+ projects, funding of studies and reports of expert groups in topics as varied as sports diplomacy, grassroots sport or Health Enhancing Physical Education. But there seems not to be clear, articulated and properly structured research on the impact of those measures, let alone on the implementation process. Policy implementation is not a new area for those doing research in the political sciences, but it seems not to have arrived, yet, to the Sport&EU community, as we still seem to be debating more basic issues such as the horizontal effect of Article 165 TFEU. Moreover, two interesting papers presenting research on the possible Europeanization effect of European football competitions suggested that there might be a, ever so slight, soft feeling of Europeanism through daily football contact. Thus, the message I picked up by attending those panels and papers was that there is "something" going on, and that the repeated contacts through either informal social activities or more formal policy initiatives and projects might be having some consequences. However, we really still do not

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know much about it, and whether it might be effective or not. A starting point could be to take stock of Erasmus+ projects or to investigate the implementation of the HEPA guidelines in member states. Hopefully we will see papers on those topics in future Sport&EU conferences.

Whereas the academic quality of the conference was high, perhaps some of the best in the last few years, the social element was also excellent. Sport&EU prides itself on being a welcoming academic community and this is reflected in the number of participants that keep attending each year, but also the new delegates we welcomed in Lisbon. It is specially encouraging to see the number of younger academics that attended the conference. We hope it was an enriching experience for them. Equally, it was noticeable the diversity amongst the paper givers and delegates. We achieved an excellent gender parity level, with no male-dominated panels and a noticeable presence of female academics, which is something we value dearly at Sport&EU. In this Lisbon edition there was also a noticeable racial diversity, with one panel featuring all non-white European paper givers. Whereas the conference still lacks more racial diversity, we hope to encourage Sport&EU members from under-represented racial groups to attend our events. If you are reading this conference report, rest assured you will be welcome into our conference with open arms and we will make all efforts to ensure that Sport&EU remains the diverse, equitable association that we aim to be.

Finally, a word of immense thanks has to go to the local organisers. Professor Vera Pedragosa was the head of the local organising committee and her enthusiasm for the event transpired in the preparation and delivery of the conference. The professionalism of her team will be very difficult to follow up. We also would like to thanks Rui Alexander Jesus, Sport&EU's board member and Invited Professor at the Universidade Autonoma, for his work in the preparation and delivery of the conference. Last, but by no means least, the team of student volunteers were the bedrock of the conference and were excellent throughout. Without them, the conference would not have been the same.

We look forward to seeing you at the 2024 Sport&EU conference, which will take place in Angers (France). We equally look forward to reading your conference papers if you decide to submit them to the journal.

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Sport&EU Executive Director

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