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# EDITORIAL

## **EDITORIAL INTRODUCTION**

We are really pleased to present the second volume of our young *Sports Law, Policy and Diplomacy Journal*. It is already a success that we have managed to put together the first issue of our second volume, full of excellent papers from well established and upcoming academics and practitioners. We are extremely proud to include in this issue an opening paper by no other than Jean-Louis Dupont, the practicing lawyer that revolutionised EU sports law in 1995 with the Bosman case. He is also behind some of the most recent cases that have further transformed the application of EU law to sport following the CJEU rulings of December 2023. Having Jean-Louis Dupont in our journal is testimony to both our ambitions and the strength of the Sport&EU community to which the journal is linked.

But as we said in our opening editorial, this is not a sprint, this is a very long marathon, and we are completely aware that there is a lot of hard work ahead to fulfil our ambition of establishing this free access journal as the outlet of reference for scholarly debate in the disciplines of sports law, sports policy and sports diplomacy in Europe. For that reason, we are extremely grateful to the authors that decided to submit their work to us. Similarly, we cannot thank enough our reviewers, without whose generous contribution the journal would not be possible. We have just reached the first kilometre of our very long run, so there are still many more to come.

Since we published our last issue we have received a good number of submissions, and we would like to encourage colleagues to keep having this journal in mind to disseminate their research. We are painfully aware of the pressures we are all under to publish in indexed journals, and therefore it will come as a welcome news that SLPDJ is already indexed in a number of prestigious databases and that we are working hard to be indexed in Scopus. But to get there we need your excellent contributions, so we can keep producing good quality journal issues like this one.

In the current issue we publish three papers that were first presented in the Sport&EU annual conferences of 2021, 2023 and 2024. We thank the authors for submitting their papers to SLPDJ, reinforcing the virtuous link between the leading academic conference on the study of European sport and the journal.

One thing that is extremely pleasing for us as founding editors of the journal is that three out of the five articles in this issue feature female authors. Similarly, we also see that two articles feature doctoral research of PhD candidates, the academics of the future in our disciplines. We are proud that both Sport&EU and our journal are attracting such a diverse range of authors, and that young upcoming academics find our review process constructive, fair, firm but friendly in the submission of their work.

We hope you find this issue useful, and that you can use the papers in your ongoing work. We look forward to discussing the issues raised in the papers with all of you in the future, either electronically or in person. If you have the opportunity, why not consider joining the debate at the 2025 Sport&EU annual conference in Naples next summer? A call for papers will be published soon.

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





# ARTICLES



## SPORT GOVERNANCE AND EU LAW: THE TIMES THEY ARE (FINALLY !) A-CHANGIN'

JEAN-LOUIS DUPONT\*

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### Abstract

*The Times They Are A-Changin': At last, change is a reality for sport governance in Europe, due to the resolute approach of the CJEU in recent high-profile "sport" cases. This article highlights key points from the three judgments of 21 December, 2023 and underlines some of the cardinal points of ongoing cases related to EU law applied to sport, and, particularly in sport governance. In short, through the orthodox enforcement of competition law and fundamental freedoms (and likely also fundamental rights in the near future), the CJEU imposes a strong democratic control on sports regulators. National courts - re-centred of the game by the ISU ruling and guided by the Antwerp ruling - have the task of making this control fully effective. In short, no more "sports washing."*

**Keywords:** EU Law Applied to Sport, CJEU Recent Case Law, Ongoing EU Law Cases, Principle of Effective Jurisdictional Protection in Sport.

## 1. INTRODUCTION

*"Come gather 'round people  
Wherever you roam  
And admit that the waters  
Around you have grown  
And accept it that soon  
You'll be drenched to the bone  
If your time to you is worth savin'  
And you better start swimmin'  
Or you'll sink like a stone  
For the times they are a-changin'"*

This first verse of Bob Dylan's famous song could well serve as a poetic summary of the three 'sport' rulings handed down by the CJEU on 21 December, 2023<sup>1</sup>: the EU's highest court has

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1 Namely Judgement of 21 December 2023, *International Skating Union* (C-124/21P), ECLI:EU:C:2023:1012; Judgement of 21 December 2023, *Royal Antwerp Football Club* (C-680/21), ECLI:EU:C:2023:1010; Judgement of

indeed sent a very clear message to the current governing bodies of sport in Europe and beyond: The Times They Are A-Changin'!

As a practitioner of EU law, particularly as applied to the sports sector, and given my professional career<sup>2</sup>, I do not claim to be able to analyse the judgments of 21 December, 2023 with perfect Swiss neutrality. The academic world has already done so and will continue to do so.

The sole aim of this article, therefore, is to collect a few 'highlights', a few essential elements, from the three judgments of December 2023 and to point out some of the cardinal points of the ongoing cases.

This selection is necessarily subjective. However, in order to strive for objectivity as much as possible, the opinions I express will be based mainly on recent legal articles by particularly renowned authors. In other words, I will be subjective, but – objectively – in excellent company.

## **2. ISU JUDGEMENT: LONG LIFE TO THE PRINCIPLE OF EFFECTIVE JURISDICTIONAL PROTECTION (C-124/21 P)**

As a practitioner, when faced with a new case, the first question that comes to mind is always the same: who is the competent judge, territorially and materially?

When the opponent is an international sports federation, apart from one exception that proves the rule, this federation systematically maintains that the only "judge" with jurisdiction is the Court of Arbitration for Sport (CAS), in Lausanne, based on this federation's rules imposing such a mandatory arbitration.

This procedural subterfuge guaranteed the sports federations *de facto* immunity from EU law and – just as importantly – the certainty that their disciplinary sanctions would not be challenged by the courts. To ensure the effectiveness of an executive power, what could be more effective than for this executive power to create and control its own "judicial" power?

In other words, Montesquieu is not the favourite author of the presidents of international federations: the separation of powers is not their cup of tea.

Procedurally, this immunity of CAS awards from EU law is ensured by the fact that the only possible state recourse against a CAS award – in particular – is an action for annulment before the Swiss "Federal Court," which considers that EU competition law and EU fundamental freedoms are not part of Swiss international public policy.

With its ISU ruling, the CJEU put an end to this incestuous mechanism.

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21 December 2023, *European Superleague Company* (C-333/21), ECLI:EU:C:2023:1011.

2 In particular, regarding EU law applied to sport, in cases involving the CJEU, Bosman, Meca-Medina, Royal Antwerp FC, European Super League, Lassana Diarra, RFC Seraing, Swift Hespérange, FIFPro Europe's action against FIFA concerning the monopoly of the world calendar, etc., most of them with my partner and alter ego Martin Hissel.

Indeed, in paragraphs 184 to 204 of its *ISU* judgment, the Court held in particular that:

- "(...) while noting that an individual may enter into an agreement that subjects, in clear and precise wording, all or part of any disputes relating to it to an arbitration body in place of the national court that would have had jurisdiction to rule on those disputes under the applicable national law, and that the requirements relating to the effectiveness of the arbitration proceedings may justify the judicial review of arbitral awards being limited (...), the Court has nevertheless pointed out that such judicial review must, in any event, be able to cover the question whether those awards comply with the fundamental provisions that are a matter of EU public policy, which include Articles 101 and 102 TFEU (...). Such a requirement is particularly necessary when such an arbitration mechanism must be regarded as being, in practice, imposed by a person governed by private law, such as an international sports association, on another, such as an athlete" (par. 193).
- "In the absence of such judicial review, the use of an arbitration mechanism is such as to undermine the protection of rights that subjects of the law derive from the direct effect of EU law and the effective compliance with Articles 101 and 102 TFEU, which must be ensured – and would therefore be ensured in the absence of such a mechanism – by the national rules relating to remedies. Compliance with that requirement for effective judicial review applies in particular to arbitration rules such as those imposed by the ISU (...). "(...) rules such as the prior authorisation and eligibility rules must be subject to effective judicial review as is apparent from paragraphs 127 and 134 of the present judgment" (par. 194, 195 and 197).
- "That requirement of effective judicial review means that, in the event that such rules contain provisions conferring mandatory and exclusive jurisdiction on an arbitration body, the court having jurisdiction to review the awards made by that body may confirm that those awards comply with Articles 101 and 102 TFEU. In addition, it entails that court's satisfying all the requirements under Article 267 TFEU, so that it is entitled, or, as the case may be, required, to refer a question to the Court of Justice where it considers that a decision of the Court is necessary concerning a matter of EU law raised in a case pending before it (...)" (par. 198).
- "As essential as it may be (...), the fact that a person is entitled to seek damages for harm caused by conduct liable to prevent, restrict or distort competition cannot compensate for the lack of a remedy entitling that person to bring an action before the relevant national court seeking, as appropriate following the grant of protective measures, to have that conduct brought to an end, or where it constitutes a measure, the review and annulment of that measure, if necessary following a prior arbitration procedure carried out under an agreement that provides for such a procedure. The same applies to persons practising professional sport, whose career may be especially short, in particular where they practise that sport at a high level. In addition, that fact cannot justify that right's being formally preserved but, in practice, deprived of an essential part of its scope, as would be the case if the judicial review that can be carried out in respect of the conduct or measure in question was excessively limited in law or in fact, in particular because it cannot concern the public policy provisions of EU law" (par. 201 and 202).
- "That requirement for effective judicial review" applies not only to the ISU arbitration rules but, more generally, to all "arbitration rules such as those imposed by the ISU" (par. 195).

This is, therefore, the case with the rules of UEFA and FIFA and their members, which impose mandatory arbitration before CAS.

As analysed by Professor Wathelet (former Judge and First Advocate General at the CJUE):

*“In practice, from now on, when a national court of a Member State is seized of a dispute in which a party alleges a breach by an international or national sports federation of fundamental provisions of EU Law, it will no longer be possible for that federation to try to escape the application of EU Law by claiming any arbitration exception for the benefit of the CAS. This procedural subterfuge is a thing of the past. One can only rejoice.*

*Does this mean that the international federations must definitively and entirely renounce arbitration as soon as a question of EU Law arises? We do not think so. The requirements set out in the ISU ruling are not prima facie incompatible with the establishment of an “EU CAS” within a Member State of the Union, with the consequence that its awards may be appealed before a national court of that State in the event of a breach of a fundamental provision of EU Law, with that national court also being able, if necessary, to refer questions to the CJEU for a preliminary ruling.*

*Such a “repatriation” of sports arbitration within the EU would make it possible to convince oneself that sports federations are genuinely interested in arbitration as such. And not just in arbitration in Switzerland».<sup>3</sup>*

### **3. ARTICLE 165 TFEU: LET'S BECOME SERIOUS...**

In his Opinion of 15 December, 2022 in the European Super League (ESL) case (points 30 and 31), Advocate General Rantos states that:

*“Article 165 expresses (...) the ‘constitutional’ recognition of the ‘European Sports Model’, in which “sports federations play a key role.”*

In his Opinion of 9 March, 2023 in the *Royal Antwerp FC* case (paragraphs 51 to 54), First Advocate General Szpunar has showed much more orthodoxy:

*“UEFA and the URBSFA cannot obtain a blank cheque for the purposes of restrictions on the fundamental freedom of Article 45 TFEU by reference to Article 165 TFEU. Restrictions of this fundamental freedom by entities such as UEFA and the URBSFA must be appraised like all other restrictions, according to standard principles.”*

In its *Royal Antwerp FC* ruling, the Court logically followed the opinion of the First Advocate General:

- Article 165 TFEU confers on the Union only a supporting power and this provision assigns objectives “to Union action,” and therefore not to private federations (paragraphs 64 and 65).
- “(...) as observed by the Court on a number of occasions, sporting activity carries considerable

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<sup>3</sup> Melchior Wathelet, “There Has Indeed Been Sport at the Court of Justice of the European Union...And There Will Be More to Come”, *Football Legal*, 31 May, 2024, <https://www.football-legal.com/content/there-has-indeed-been-sport-at-the-court-of-justice-of-the-european-union-and-there-will-be-more-to-come-1-by-melchior-wathelet>.

social and educational importance, henceforth reflected in Article 165 TFEU, for the Union and for its citizens (...). Sporting activity also undeniably has specific characteristics which, whilst relating especially to amateur sport, may also be found in the pursuit of sport as an economic activity (...). Lastly, such specific characteristics may potentially be taken into account along with other elements and provided they are relevant in the application of Articles 45 and 101 TFEU, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those articles" (paragraphs 70 to 72).

In short, contrary to the sport federations' mantra, it is now fully confirmed that there is no such thing as a constitutionalized "European Sports Model."

As indicated by Weatherill:

*"The Court's froideur towards Article 165 is doubtless entirely calculated. The Court wants to advertise that it is not tempted to endorse Advocate General Rantos's wildly adventurous Opinion in ESL delivered in December 2022, which claimed that Article 165 'constitutionalised' the European Sports Model and that accordingly EU law granted a high level of protection to the sporting status quo. Rantos was criticised at the time as going (far) too far<sup>4</sup> and now one year later the Court's rulings of 21 December 2023 ignore Mr Rantos's Opinion and prefer a much more limited reading of the impact of Article 165 TFEU"<sup>5</sup>.*

#### 4. NO MORE "SPORTS WASHING"

As accurately observed by Houben, Budzinski and Wathelet:

*"Obviously, the burden of proof to benefit from the efficiency gains exemption or the Wouters and Meca-Medina exemption, as the case may be, lies with the party claiming them. This is not rocket science. Therefore, it is all the more remarkable that the Court goes out of its way to emphasize this point in the 21 December 2023 verdicts, and that Advocate General Szpunar underlines it again in his Diarra opinion. The Court, furthermore, stresses that domestic courts should not be too lenient in discharging the burden of proof: arguments and evidence must be 'convincing'. This emphasis contains a message to the world of sports: governing bodies cannot get away with anticompetitive conduct by merely claiming to pursue legitimate objectives and/or efficiency; they need to back this up with solid arguments and, ideally, empirical evidence. Vague references to the integrity of sports, ethics, fair play or similar principles may, for example, not in themselves suffice to convince the courts. This is important. If rules would be simply assumed to pursue legitimate objectives and/or to contribute to efficiency gains, instead of being evidenced to do so, this would be an open invitation for 'sports washing', an equivalent of green washing in sports: the mere acceptance of legitimacy just because a sports governing body claims legitimacy. In other words, "no preferential treatment anymore for the sports federations" and "the end of the Article 165 TFEU myth"."<sup>6</sup>*

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4 Wathelet, "There Has Indeed Been Sport at the Court of Justice of the European Union... And There Will Be More to Come[1]".

5 Stephen Weatherill, "The impact of the rulings of 21 December 2023 on the structure of EU sports law", *International Sports Law Journal* 23, no. 4 (2023): 409–415, 410. <https://doi.org/10.1007/s40318-024-00265-w>.

6 Robby Houben, Melchior Wathelet & Oliver Budzinski, "The Transfer System in Football: Diarra and What's

More specifically in paragraph 113 of its *Royal Antwerp FC* ruling, the Court restricted the scope of the *Wouters/Meca-Medina* "exception." A legitimate objective in the general interest must be pursued, "*which [is] not per se anticompetitive in nature.*" Additionally, "*the specific means used to pursue those objectives [must be] genuinely necessary for that purpose*" and strictly proportionate. Importantly, the Court states that the objectives in question must be of an "*ethical or principle*" nature and clarifies that the "MECA exception" can only be applied to restrictions of competition by effect.

Regarding restrictions by object, the only escape door is Article 101 para. 3 TFEU, in which case "*(i)t is for the party relying on such an exemption to demonstrate, by means of convincing arguments and evidence, that all of the conditions required for the exemption are satisfied*" (*Royal Antwerp FC* ruling, par.120). With regards to the "efficiency gains" condition, the sports regulator concerned must prove "*that the efficiency gains made possible by the agreement, decision by an association of undertakings or concerted practice in question have a positive impact on all users, be they traders, intermediate consumers or end consumers*" (*Royal Antwerp FC* ruling, par. 122). Moreover, "*the 'users' include, first and foremost, professional football clubs and the players themselves. Added to that, more broadly, are the final 'consumers' who are, in the economic sense of the term, the spectators or television viewers*" (*Royal Antwerp FC* ruling, par. 130).

Regarding Article 45 TFEU, the Court applies the same standard: "*As regards, more specifically, the condition relating to the suitability of such measures, it should be borne in mind that they can be held to be suitable for ensuring achievement of the aim relied on only if they genuinely reflect a concern to attain it in a consistent and systematic manner (...). Similarly to situations involving a measure of State origin, it is for the party who introduced those measures of non-State origin to demonstrate that those two cumulative conditions are met (...). In the present case, it will therefore be for the referring court to rule on whether the URBSFA rules at issue in the main proceedings satisfy those conditions, in the light of the arguments and evidence produced by the parties*" (*Royal Antwerp FC* ruling, par. 141 to 143).

In *ESL*, the Court held that "*(...) none of the specific attributes that characterise professional football makes it possible to consider as legitimate the adoption nor, a fortiori, the implementation of rules on prior approval and participation which are, in a general way, not subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of a dominant position and, more specifically, where there is no framework for substantive criteria and detailed procedural rules for ensuring that they are transparent, objective, precise and non-discriminatory, when they confer on the entity called on to implement them the power to deny any competing undertaking access to the market. Such rules must be held to infringe Article 102 TFEU (...)*" (*ESL* ruling, par. 147). In paragraphs 177 to 179 of its ruling, the Court reiterates these same requirements with regard to Article 101 TFEU (see also paragraph 4 below).

In short, "no more sports washing."



As a practitioner, I would like to make two final comments:

- It is to be hoped that - at long last - the European Commission will take note of the fact that sports federations are associations of undertakings "like any others",
- As the doctrine rightly points out: *"In its assessment, the Court refers to sport specific features such as maintaining a balance and preserving a certain equality of opportunity as between the participating professional football clubs in European or global interclub competitions, given the interdependence that binds them together. Moreover, the Court refers to a trickle-down effect from those competitions into smaller professional football clubs and amateur football clubs which, whilst not participating therein, invest at local level in the recruitment and training of young, talented players, some of whom will turn professional and aspire to join a participating club. In addition, it emphasizes the solidarity role of football, as long as it is genuine, serving to bolster its educational and social function within the European Union. These arguments go beyond the typical economic consideration – but do stand in line with the special economics of sports – and seem to allow sports governing bodies to make their case on the basis of the specificity of sport, even in event of a 'by object' restriction. However, not in a gratuitous way: the context of the exercise – the efficiency gains exemption with its four cumulative conditions – ensures the seriousness of the debate, and requires sports governing bodies to really and thoroughly demonstrate that their rules are efficient, with facts and figures, and among others involving a comparison of alternatives. It requires sports governing bodies to present (empirical) evidence that the sports-specific efficiencies are actually met (and are not just cheap talk) and that no alternatives exist that are capable of achieving the same goals with less distortive effects on competition"*<sup>7</sup>.

In a nutshell: yes to the specificities of sport (but within a rigorously defined analytical framework); no to cheap talk and 'sports washing.'

## 5. ESL: NO NEED TO BREAKAWAY

So much has already been written about the ESL judgment.

I will therefore confine myself to a single comment, which presupposes to first read paragraphs 149 to 151 of the judgment carefully:

*"149. In that regard, it is irrelevant that FIFA and UEFA do not enjoy a legal monopoly and that competing undertakings may, in theory, set up new competitions which would not be subject to the rules adopted and applied by those two associations. Indeed, as is apparent from the statements of the referring court, the dominant position held by FIFA and UEFA on the market for the organisation and marketing of international interclub football competitions is such that, in practice, at the current juncture it is impossible to set up viably a competition outside their ecosystem, given the control they exercise, directly or through their member national football associations, over clubs, players and other types of competitions, such as those organised at national level.*

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7 Houben, Wathelet & Budzinski, "The Transfer System in Football: Diarra and What's Next".

*In the present case, however, it will be for the referring court to categorise the rules at issue in the main proceedings in the light of Article 102 TFEU, after carrying out the additional verifications it may deem necessary.*

*In that perspective, it should be noted that, in order for it to be held that the rules on prior approval of sporting competitions and participation in those competitions, such as those at issue in the main proceedings, are subject to transparent, objective and precise substantive criteria as well as to transparent and non-discriminatory detailed procedural rules that do not deny effective access to the market, it is necessary, in particular, that those criteria and those detailed rules should have been laid down in an accessible form prior to any implementation of those rules. Moreover, in order for those criteria and detailed rules to be regarded as being non-discriminatory, it is necessary, given, inter alia, the fact that entities such as FIFA and UEFA themselves carry on various economic activities on the market concerned by their rules on prior approval and participation, that those same criteria and detailed rules should not make the organisation and marketing of third-party competitions and the participation of clubs and players therein subject to requirements which are either different from those applicable to competitions organised and marketed by the decision-making entity, or are identical or similar to them but are impossible or excessively difficult to fulfil in practice for an undertaking that does not have the same status as an association or does not have the same powers at its disposal as that entity and accordingly is in a different situation to that entity. Lastly, in order for the sanctions introduced as an adjunct to rules on prior approval and participation, such as those at issue in the main proceedings, not to be discretionary, they must be governed by criteria that must not only be transparent, objective, precise and non-discriminatory, but must also guarantee that those sanctions are determined, in each specific case, in accordance with the principle of proportionality, in the light of, inter alia, the nature, duration and seriousness of the infringement found”.*

In my view, the CJEU has - in a manner of speaking - given FIFA and UEFA a “Judas kiss”:

- First, the Court confirms the right of any competitor to exist outside the FIFA- UEFA ecosystem. This is the necessary consequence of the premise that Article 165 TFEU does not constitutionalise a “European Sports Model,” a temple of which the international federations claimed to be the guardians).
- Secondly, the Court enshrines the right of competitors - if they so wish - to develop their alternative competitions within the existing ecosystem. If competitors make this choice, sports federations (in this case, FIFA and UEFA) can only prevent them from entering the market for extremely specific and limited reasons, without favouring their own competitions. Whether such neutrality is possible in practice for an organisation affected by an existential conflict of interests is extremely doubtful. In other words, what the Court has enshrined is much more a right for competitors to access the existing ecosystem rather than a right for the regulators of that ecosystem to modulate it as they see fit.

## 6. ROYAL ANTWERP FC: A PERFECT ASSIST TO THE NATIONAL JUDGES

As analysed by Wathelet, in its Royal Antwerp FC judgment, the Court gave the national judges an "assist" that could make Kevin De Bruyne himself jealous:

*"(...) the Court took care to provide the referring court (and, by the same token, all national courts that might have to deal with similar questions) with a veritable "user's manual". In our view, these "guidelines" for national courts are formulated in such a way as to enable them to understand not only the rules on "home-grown players" but also, in the future, a large number of other rules adopted and implemented by sports regulators. From this guidance exercise for national courts, I would like to highlight the following points in particular:*

- *As mentioned in the previous point, the Court put an end to the sports regulators' claim to benefit from any preferential treatment, by insisting on the burden of proof that lies with them when they attempt to justify an obstacle or restriction to some fundamental freedoms conferred by Union Law.*
- *In paragraphs 95 et seq. of its ruling, the Court strongly emphasises that "agreements aimed at partitioning markets according to national borders, tending to restore the partitioning of national markets or making the interpenetration of national markets more difficult (...) must, for that reason, be categorised, in principle, as agreements that have as their 'object' the restriction of competition within the meaning of Article 101(1) TFEU". It is a fact that, given the political model of international federations, which are made up of national members, many of their rules may, directly or indirectly, have such a partitioning effect. In the present case, in order to assess whether such a partitioning effect may result from the rules at issue relating to "home-grown players", it should be remembered that "home-grown" is in fact a euphemism designed to conceal a "national training" criterion. That is exactly what the Court said to the national court in paragraph 147 of its ruling on Article 45 TFEU, when it stated that "it is (...) local investment in the training of young players, in particular when it is carried out by small clubs, where appropriate in partnership with other clubs in the same region and possibly with a cross-border dimension, which contributes to fulfilling the social and educational function of sport."*

Clearly and quite rightly, the CJEU has no desire to turn itself into a "European Court of Sport". It has therefore ensured that the national courts have the fundamentals to enable them, as a general rule, to assess for themselves whether a particular rule of a sports regulator complies with EU Law"<sup>8</sup>.

From a practitioner's perspective, this "empowerment" of national courts is an essential ingredient in the imposition of genuine respect for the EU rule of law (and beyond) by sports regulators.

Finally, with specific regard to UEFA's Home-Grown Player Rules, the doctrine emphasises that:

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<sup>8</sup> Wathelet, "There Has Indeed Been Sport at the Court of Justice of the European Union... And There Will Be More to Come[1]".

- "The Court did not decide the point on 21 December 2023. It leaves the final conclusion to the national court. But its preference seems to be to treat the home grown rules as a restriction by object, not effect.

In Royal Antwerp the Court instructs the national court to examine the economic and legal context in which the rules were adopted 'together with the specific characteristics of football' (para 110), but it offers no elaboration of what this entails, and emphasises instead that the rules limit the recruitment of talented players, which has an impact on the competition in which the clubs may engage, not only in the 'upstream or supply market' (the recruitment of players), but also in the 'downstream market' (interclub football competitions). It adds that the rules may partition markets according to national borders or make the interpenetration of national markets more difficult by establishing a form of national preference<sup>9</sup>:

*"The Court's new framework seems straightforward: conduct that by its very nature is anticompetitive, can only be justified by economic efficiency gains; conduct that "merely" has an anticompetitive effect, may be justified in view of the more lenient Wouters and Meca-Medina exemption too.*

In fact, however, the application of the framework may prove difficult, and discussions will shift to focus on whether a certain conduct is anticompetitive "by object" or "by effect". This is a question akin to theological discussions over the nature of the divine. The difficulty is already apparent in RAFC, where the Court itself declined to categorize the "home grown player rule" in either bucket and passed the hot potato to the national court. Nonetheless, without being explicit, the Court did seem to have nudged the referring court towards a qualification of the current homegrown player rules as a "by object" restriction, instead of a "by effect" restriction<sup>10</sup>.

This is exactly the position defended by our clients in this case: based on the Royal Antwerp FC judgment, all current rules on 'home-grown players,' both those of UEFA and those of its member national federations, constitute restrictions of competition 'by object,' contrary to Article 101.1 TFEU.

## 7. THE DIARRA CASE

In this case, on 30 April 2024, the First Advocate General Szpunar delivered conclusions that, in short, applied the jurisprudential grid established by the CJEU (in the Grand Chamber) in its three judgments of 21 December, 2023 to the case in point, namely the FIFA rules relating to the termination of professional players' contracts, which are a key component of the so-called "FIFA transfer system".

Wathelet summarises the conclusions of his successor as follows:

*"(...) the First Advocate General proposes that the Court should hold that Articles 45 and*

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9 Stephen Weatherill, "EU Law Analysis", Blogspot, 11 May 2024, <https://eulawanalysis.blogspot.com/2024/05/protecting-conditional-autonomy-of.html>.

10 Robby Houben, "The Transfer System in Football: A First Case Study of the CJEU's Novel Competition Law Framework (for Sports)" (May 23, 2024). <http://dx.doi.org/10.2139/ssrn.4838909>.

101 TFEU preclude the FIFA rules at issue.

First, he considers that those rules create a restriction of competition between clubs, the elements of which he analyses “are strong indications that there is a restriction of competition BY OBJECT”, which cannot therefore benefit from the Wouters-Meca exception (which may apply only where the restriction is ‘BY EFFECT’) and which, in the present case and according to the First Advocate General, does not satisfy the four cumulative conditions of Article 101. 3 TFEU, those conditions being “clearly not met” (paragraph 58 of the Opinion). Consequently, there is no need to consider whether it constitutes a restriction of competition by effect and could be justified. However, the First Advocate General makes that analysis for the eventuality that the Court favours restriction by effect.

The First Advocate General adds that the ‘Albany’ exception does not apply in casu, for the simple reason that the provisions at issue do not constitute collective agreements between employers and employees.

Secondly, the First Advocate General is equally clear about the restriction on the free movement of workers guaranteed by Article 45 TFEU, a restriction created by the contested provisions insofar as they purely and simply prevent players from being transferred to clubs in other Member States. This is what happened to Mr Diarra, who was prevented from exercising his profession for a long period.

This observation, made in relation to Article 45 TFEU, is - according to the First Advocate General - fully transposable to the case where the Court were to assess the restriction of competition by effect rather than by object: “In the event that the Court were to find there to be a restriction of competition not by object, but by effect, the next step would be to examine the contested provisions in the light of other objectives under the Wouters and Others case-law, so as to ascertain whether they are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive in nature. In this respect, the test would, in essence, be comparable to the justification test under Article 45 TFEU, (...)” (paragraph 59).

The First Advocate General completed his reasoning by referring to Article 15 of the EU Charter of Fundamental Rights, which provides for ‘the right to engage in work and to pursue a freely chosen or accepted occupation’, which he considered applicable to the case before the referring court<sup>11</sup>.

The Court will deliver its ruling in the coming months. I would like to highlight two particularities of this case:

- The Diarra case provides the CJEU the opportunity to examine the rules of sports federations from the perspective of the EU Charter of Fundamental Rights, rather than solely focusing on competition law and freedom of movement. In fact, it was the Court itself that requested to comment on this point ahead of the hearing.

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11 Wathelet, “There Has Indeed Been Sport at the Court of Justice of the European Union... And There Will Be More to Come[1]”.

- In addition to addressing the EU legality of a particular FIFA rule, the judgment could also settle the question of FIFA's legitimacy to regulate an EU labour market in principle. According to FIFPRO Europe, FIFPRO and UNFP (the international and national players' unions supporting Mr. Diarra in the case), this right belongs to the social partners.

## 8. THE RRC SPORT CASE (C-209/23)

The key question submitted to the CJEU by the *Landgericht Mainz* is as follows: Does Article 15(2) of the new FIFA regulations on "football agents," which prohibits the agreement of remuneration for players' agents or the payment to players' agents of remuneration that exceeds a maximum calculated as a percentage of the transfer amount or the annual remuneration of the players, infringe Articles 101 and 102 TFEU and Article 56 TFEU (freedom to provide services)?

In an article entitled "Legitimate Objectives in Antitrust Analysis: The FIFA Regulations of Agents and the Right to Regulate Football in Europe,"<sup>12</sup> Mavroidis and Neven accurately identify the crux of the matter: "As per the ONP judgment, for the CJEU to examine whether FFAR pursues a legitimate objective, it must first ensure that FIFA is entitled to pursue this objective, that, in other words, it is entitled to legislate in this realm and it has the power to adopt the necessary means to this end. Otherwise, anyone could pursue anything and thus use the pursuit of legitimate objective as means to undo the distribution of competencies decided between member states and the EU institutions or possibly conflict with national regulations. Could, for example, FIFA, in the name of promoting universal service, request from TV stations to transmit football matches for a nominal fee? Should not the judiciary first ask whether FIFA is entrusted with the competence to promote universal service?"

This key issue goes far beyond sports regulation.

## 9. THE ROYAL FOOTBALL CLUB SERAING CASE (C-600/23)

In that case, the Belgian Court of Cassation asks the CJUE whether the national courts of the EU Member States must recognise the arbitration awards of the CAS, based in Switzerland, as having any *res judicata* effect (between the parties and *vis-à-vis* third parties) when those awards decide questions of EU Law.

The *Cour de Cassation* seems to suspect that forced arbitration in Switzerland violates the general (and essential) EU Law principle of "effective judicial protection," which was latter on confirmed by the *ISU* judgment of 21 December, 2023. Wathelet considers as follows:

*"Case C-600/23 is nonetheless of interest, particularly in that it could enable the Court to consider the question, not addressed in its judgment in ISU, of the CAS's independence from FIFA, which is both a major contributor and the main provider of business to the arbitral tribunal, as well as the question of whether a third party may rely on a CAS award and, if so, the consequences of such a possibility in terms of the burden of proof"*<sup>13</sup>.

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12 Pedros C. Mavroidis, Damien J Neven, "Legitimate Objectives in Antitrust Analysis The FIFA Regulation of Agents and the Right to Regulate Football in Europe" SSRN (January 14, 2024), p. 23, <http://dx.doi.org/10.2139/ssrn.4694407>.

13 Wathelet, "There Has Indeed Been Sport at the Court of Justice of the European Union... And There Will Be More

In case C-600/23, the hearing will take place in the CJEU (Grand Chamber) on 1<sup>st</sup> October, 2024.

## 10. AND THERE IS MORE TO COME...

A number of cases currently pending before national courts could soon be added to the CJEU's sporting output, as some parties have requested preliminary rulings in cases pending before of national jurisdictions.

I will mention three of them, quoting extracts from press releases issued by the claimants.<sup>14</sup>

The first is the case of "Swift Hespérage FC v UEFA and Fédération Luxembourgeoise de Football (FLF)," pending before the Tribunal d'arrondissement de Luxembourg.

In a press release dated 22 July, 2022, Swift Hespérage stated:

*"FC SWIFT HESPERANGE, a Luxembourg football club, is bringing an action against the Fédération Luxembourgeoise de Football (FLF) and UEFA before the Tribunal d'arrondissement de Luxembourg, requesting a preliminary ruling from the CJEU for infringement of free competition (Article 101 TFEU), free movement of capital (Article 63 TFEU), free movement of workers (Article 45 TFEU) and freedom to provide services (Article 56 TFEU)."*

Indeed, SWIFT HESPERANGE denounces the illegality of various UEFA and FLF rules: UEFA and FLF rules prohibiting clubs from creating and running transnational competitions (e.g. a BENELUX league or a pan-European competition); UEFA and FLF rules imposing quotas for "locally trained players." FLF rules imposing a financial scale for national transfers; FLF transfer rules violating the BOSMAN judgment and FLF rules prohibiting clubs from incorporating as commercial companies.

This conglomeration of rules, which are in direct conflict with EU law, effectively condemns SWIFT HESPERANGE to remain a micro-enterprise forever.<sup>15</sup>

Next, the "TICOMBO v Belgian State" case, is pending before the Brussels Court of First Instance.

In a press release dated 4 June, 2024, TICOMBO stated that:

*"TICOMBO, a digital platform for securing the resale of tickets for cultural and sporting events, and some consumers are suing the Belgian State: they are asking the Brussels Court of First Instance to refer questions to the CJEU for a preliminary ruling on the legality, under EU law, of the Belgian law prohibiting the provision of services such as those offered to consumers by TICOMBO."*

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to Come[1]".

14 In these cases, the claimants are represented in particular by "DUPONT-HISSEL".

15 Regarding this case, see SWIFT HESPERANGE official webpage: <https://www.swifthesper.lu/archiv-44605v4/news/34834?lang=fr>

*At the same time, TICOMBO lodged a complaint with the European Commission against UEFA, denouncing the illegality, under EU competition law, of UEFA's self-proclaimed monopoly on the ticket resale market, particularly with a view to Euro 2024. This monopoly and the unreasonable restrictions of UEFA's resale site are directly harmful towards consumer interests. Most organisers of major sporting events behave in a similar way.*

*(...)*

*In the proceedings brought against the Belgian State, TICOMBO and the consumers are asking the Brussels Court of First Instance to refer the following questions to the CJEU for a preliminary ruling:*

- 1. Is the obstacle to the freedom to provide services, guaranteed by Article 56 TFEU, generated by Article 5 §1 of the Law of 30 July 2013, which provides that "Resale on a regular basis is prohibited, as well as the act of displaying with a view to resale on a regular basis and the act of providing means to be used for resale on a regular basis", justifiable by consumer protection or by another overriding reason in the general interest, insofar as - while making it possible to prevent certain deviant commercial behaviour - it also results in the prohibition of secure intermediation services of the nature offered to consumers by TICOMBO?*
- 2. Insofar as the Law of 30 July 2013 results in conferring on the organiser of an event (and any vendors approved by it) the exclusive right to control and operate the resale market "on a regular basis", should that law be considered to be contrary to Article 106 TFEU read in conjunction with Article 102 TFEU, in particular in that those legislative provisions create a structural inequality of opportunity between, on the one hand, that organiser and, on the other hand, TICOMBO or any similar operators, and in that they reinforce the self-proclaimed monopoly on the resale market of the organisers of major sporting events, with the result that consumers are prevented from escaping any abusive conduct on the part of those organisers?*
- 3. Does the absolute prohibition, contained in Article 5(2) of the Law of 30 July 2013, on the resale of an access right - in all circumstances - at a price higher than its initial sale price infringe Articles 15 and 16 of Directive 2006/123/EC ("Services Directive") and Article 56 TFEU, in particular in that the obstacle thus created to the detriment of operators such as TICOMBO is neither adequate nor proportionate to the objective of consumer protection?*

By putting all operators in the same basket, laws such as the Belgian law are ineffective, excessive and discriminatory.

At the same time, TICOMBO has lodged a complaint with the European Commission against UEFA for breaches of EU competition law committed by UEFA concerning its policy on the resale of tickets for access to the event, in particular in connection with Euro 2024.

According to TICOMBO, the resale policy imposed by UEFA constitutes an abuse of a dominant position.<sup>16</sup>

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<sup>16</sup> Press release, TICOMBO (LinkedIn), "Anti-competitive practices within the European Union in ticket resales for



Thirdly, in a case between FIFPRO Europe and some of its national member unions against FIFA and the Belgian federation, pending before the Brussels Industrial Tribunal, the claimants stated in a press release dated 13 June, 2024, *inter alia*:

*“FIFPRO Europe member unions have today submitted a legal claim against FIFA, challenging the legality of FIFA’s decisions to unilaterally set the International Match Calendar and, in particular, the decision to create and schedule the FIFA Club World Cup 2025.*

*Player unions believe that these decisions violate the rights of players and their unions under the EU Charter of Fundamental Rights while also potentially violating EU competition law.*

*The English Professional Footballers Association (PFA) and the Union Nationale des Footballeurs Professionnels (French player union) are, with the support of FIFPRO Europe, asking the Brussels Court of Commerce to refer the case to the European Court of Justice (ECJ) with four questions for a preliminary ruling.*

*The EU Charter of Fundamental Rights guarantees workers and their trade unions various fundamental rights. These include the prohibition of forced or compulsory labour, freedom of work, the right to negotiate and conclude collective agreements, the right to healthy working conditions and the right to an annual period of paid leave. These rights are covered under Articles 5, 15, 28 and 31 of the Charter.*

Players and their unions have consistently highlighted the current football calendar as overloaded and unworkable.

However, FIFA, as highlighted in recent representations by international unions and leagues, have failed to meaningfully engage or negotiate and have unilaterally continued a programme of competition expansion despite the opposition of player unions. This has included the decision to proceed with a newly expanded FIFA Club World Cup.

The new tournament will see 32 clubs and their players have to take part in this new competition in the United States from mid-June to mid-July 2025. Once preparation periods and travel are included, the tournament is likely to create up to six weeks of additional work to be added to an already crowded schedule.

The role of FIFPRO Europe and its members is not to favour or oppose one competition over another.

However, in the wider context of the global football calendar, the new FIFA Club World Cup is seen by players and unions as representing a tipping point.

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*sports and cultural events: TICOMBO takes legal action against the Belgian state and UEFA denouncing practices contrary to European Law and an abuse of dominant position directly harming consumers’ interests”. PaRR, Ticketing platform Ticombo files UEFA antitrust complaint with EC; seeks ECJ referral from Belgian court, <https://www.dupont-hissel.com/assets/13749d7e-c0f3-4541-9319-3d6e47dae27e/parr.pdf>*

For the players most in demand for both club matches and national team competitions, the right to a guaranteed annual break has become virtually non-existent, with the FIFA Club World Cup 2025 being held during the only period of the year theoretically available to players to take such breaks. Player unions believe that such decisions by FIFA are in breach of the EU Charter of Fundamental Rights (CFREU), without any serious justification. Ultimately, player unions believe the aim of this new competition is to increase the wealth and power of football's global governing body, with no proper regard for the impact on the players involved or on other stakeholders within professional football. Furthermore, player unions believe that, in the light of the ECJ's 'European Super League' ruling, such unilateral and discretionary decisions – which are not the result of clear, objective, transparent, non-discriminatory and democratic legal frameworks – constitute 'restrictions of competition by object within the meaning of Article 101 TFEU'<sup>17</sup>.

It seems that the CJEU is not over with its intensive sports program.

## 11. CONCLUSION

Over and above their specific content, the three judgments handed down by the Grand Chamber of the CJEU on 23 December, 2024 send a strong and unambiguous message to all those involved in the sports sector, particularly professional sports: it is up to sport to adapt to the EU rule of law, not the EU rule of law to adapt to sport. The specific characteristics of sport will always be taken into account, but they are no longer a "licence to kill."

In other words, through competition law and fundamental freedoms (and undoubtedly fundamental rights in the near future), the CJEU has imposed a genuine and strong democratic control on sports regulators. The national courts, reinstated at the centre of the game by the ISU ruling and guided by the Antwerp ruling, have the task of making this control fully effective, including by referring questions to the CJEU for a preliminary ruling if necessary.

I am convinced that the case law of the CJEU will lead to changes and even, for certain sports, to concrete sporting and commercial revolutions.

Not everything will be perfect. It never is. But I believe, perhaps naively, that overall, the various stakeholders in the sector will be better off (and consumers better served) in a system of governance that is open and democratic than in the existing autocratic system, that is resolutely resistant to the rule of law and to which the CJEU has shown a red card.

In short, and to paraphrase another famous song, the best-known version of which is by "The Clash," in 2024, we can finally say about certain international sports regulators: "*They fought EU Law and EU Law won*".

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17 FIFPRO, FIFPRO Europe Statement: Legal claim against FIFA, Media Release, 13 June 2024, <https://www.fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa>.

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10. Weatherill, Stephen. "EU Law Analysis"; Blogspot, 11 May 2024. <https://eulawanalysis.blogspot.com/2024/05/protecting-conditional-autonomy-of.html>.



## REFUGEES IN EUROPEAN GRASSROOTS FOOTBALL: FROM ASSUMPTIONS TO EVIDENCE

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### Abstract


Since 2015-2016, when the European continent underwent an unprecedented peak in demands for asylum, grassroots football clubs have been at the forefront in offering refugees a place of first contact with their new host society. The perception of the impact that their initiatives may have had on their target population is however almost exclusively based on some widely shared basic assumptions drawn from anecdotal evidence and, marginally, on a small body of literature grounded in local studies of ethnographic nature.

The article recapitulates the inception and implementation of an original mixed-method research survey within the framework of two successive practice-oriented projects led by civil society actors and supported by the ERASMUS+ Sport funding scheme. Following a literature review, it describes the survey design, analyses the findings, and discusses the added value and limits of this research focused on the principal target group of volunteers in European grassroots football.


**Keywords:** Grassroots Football, Volunteers, Migration, Refugees, Asylum Seekers, Integration, Inclusion, ERASMUS+

## 1. INTRODUCTION: FOOTBALL AND MIGRANTS

Since the invention of modern football in England in 1863, the game has been indissociable from the phenomenon of migration. As Matthew Taylor and Pierre Lanfranchi recalled in the title of their book published in 2001, humans have always been “moving with the ball.”<sup>1</sup> At the same time, the ball itself was moving with the people who kicked it. It travelled in the suitcases of businessmen and engineers, entrepreneurs and teachers, first from the British Isles, but also very soon from Switzerland and Central Europe, who were instrumental in

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1 Matthew Taylor and Pierre Lanfranchi, *Moving with the Ball* (Oxford: Berg, 2001).

spreading the game around the world.<sup>2</sup>

The fast dissemination of football was greatly helped by the globalisation wave of the end of the 19<sup>th</sup> century. International business underwent a massive expansion, for a good part directly linked to the economic and human flows generated by colonialism, but also facilitated by innovations and cost reduction in the field of transport, and by an increasing number of free trade agreements.

Since then, football has never ceased to be a profoundly cross-cultural and transnational social practice.

On the one hand, the remarkably quick professionalisation of football created a whole new labour market with opportunities for those willing to seize lucrative opportunities to sell their talent elsewhere. As early as in the first decades of the 20<sup>th</sup> century, the international circulation of players became a major issue, especially in Europe, to which foreign players tended to converge. Today the screening of this market, as carried out on a regular basis by the CIES Football Observatory in its reports on expatriate players, delivers evidence for continued growth.<sup>3</sup>

On the other hand, for all those who had migrated for other reasons, amateur grassroots football provided an avenue for social integration. All over the twentieth century, labour migration – often, though not exclusively, in the direction of Western Europe – raised the question of the social integration of these migrants and their families in the host societies. Among historians, there is a consensus today that football, together with other sports and cultural activities on the local level, was one of the major fields of everyday culture in which such integration could be successfully negotiated over longer periods of time.<sup>4</sup>

In the 21<sup>st</sup> century, European countries – many of which had been emigration countries for centuries – encounter a very different kind of human migration flow: a massive increase of what is referred to as “forced migration,”<sup>5</sup> stemming from a large variety of countries of origin and reaching Europe both over the Mediterranean and the so-called “Balkan route.”

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2 Paul Dietschy, *Histoire du football* (Paris: Perrin, 2010).

3 Raffaele Poli, Loïc Ravenel, Roger Besson, “Global study of football expatriates (2017-2023),” *CIES Football Observatory Monthly Report*, n°8 (May 2023), <https://football-observatory.com/MonthlyReport85>, consulted June 2024. See also the interactive «Atlas of Migration» by the same authors <https://football-observatory.com/Tool-Migration>.

4 See for instance Dietmar Hüser and Ansbert Baumann, “Fußfassen durch Fußball in der Fremde? Arbeitsmigration und Amateurfußball im Frankreich und Westdeutschland der langen 60er Jahre,” *Lendemains* 41, no. 161 (2016): 7-18; or Daniel Huhn and Stefan Mezger, “Von Kuzorra bis Özil. Der Ruhrgebietsfußball als Aushandlungsort von Zugehörigkeit,” *Lendemains* 41, No. 161 (2016): 38-50. See also Diethelm Blecking, “Integration through Sports? Polish Migrants in the Ruhr”, *International Review of Social History* 23, no. S1 (2015): 275–293, <https://doi.org/10.1017/S0020859015000401>, and in the same publication, Marion Fontaine, “Football, Migration, and Coalmining in Northern France, 1920s–1980s”, *International Review of Social History* 23, no. S1 (2015): 253–273, <https://doi.org/10.1017/S0020859015000395>. For the importance of football fandom for 2<sup>nd</sup> and 3<sup>rd</sup> generation migrants, see Nina Szogs, *Football Fandom and Migration. An Ethnography of Transnational Practices and Narratives in Vienna and Istanbul* (London: Palgrave-Macmillan, 2017).

5 Defined by the European Commission as “A migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes,” [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/forced-migration\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/forced-migration_en), consulted June 2024.

The term almost systematically used by media and politicians to describe this unprecedented challenge is “refugee crisis,” a term that is, however, somewhat misleading, since it implicitly blames refugees for the political and logistical crisis that their arrival provoked in a Europe that was politically unprepared and not up to the task<sup>6</sup>.

Since 2015-2016, when the European continent underwent an unprecedented peak in demands for asylum, the reception of refugees has consistently remained present in the minds of policymakers, media, and public opinion across all member-states, whatever their respective governments’ attitudes and policies in the field. Since February 2022, the sudden need to welcome additional millions of refugees fleeing the Ukrainian territory following the Russian aggression, has further increased the salience of the issue.

Given the number of individuals asking for asylum and protection, many governments, however well-meaning and organised they may be, are overwhelmed with the burden, and strongly dependent on the reactivity, goodwill, and humanist values of civil society when it comes to initiating and accompanying the integration of the newcomers in their new environment.

Needless to say, one of the most widespread and visible components of organised civil society, whether in city centres, suburban districts, or rural areas, are football clubs, set up, administered, and kept alive by countless volunteers.

When the great anthropologist Desmond Morris, at the end of the 1970s, set out to describe *The Soccer Tribe*, he jokingly wondered what the pilot of an alien spaceship would make of all the rectangular green patches spread across the European territory.<sup>7</sup> Their omnipresence is, of course, due to the immense popularity of the game, which has made football, and most of all the clubs or associations that organise its practice locally, an integral aspect of cultural and social life. In some places, people would go so far as to regard them as the backbone of the local community.

These football clubs and the volunteers who drive them are at the focus of the research for this article. Over the last ten years, they have responded with remarkable reactivity, motivation, and determination to the challenge of offering refugees a place of first contact with their new host society outside state administration and bureaucracy. To no one’s surprise, it turned out that football’s popularity and simplicity, as well as its accessibility without significant language skills and the emotions of pleasure and joy that are associated with the game, were conducive to a large variety of initiatives, some of which were actively (and financially) supported by federations or public authorities, others entirely shouldered by the clubs themselves.

Based on a large variety of anecdotal evidence, such as spontaneous feedback on successful initiatives, individual testimonies by beneficiaries and/or volunteers, self-reporting by federations and foundations, or credible claims by activist NGOs, both policymakers and civil society actors, as well as the football community in its largest sense, have formed a consensus over recent years on the potential of football for facilitating the integration of newcomers in their host society.

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6 Andrea Réa, Marco Martiniello, Alessandra Mazzola, Bart Meuleman. *The refugee reception crisis: Polarized opinions and mobilizations* (Brussels: Éditions de l’Université de Bruxelles, 2019).

7 Desmond Morris, *The Soccer Tribe* (London: Jonathan Cape, 1981).

When a major political stakeholder like Aydan Özoğuz, Commissioner for Immigration, Refugees and Integration at the German Chancellery from 2013 to 2018, declares that football has “the special power of bringing together people across cultural differences and thus strengthen social cohesion,”<sup>8</sup> she simultaneously draws on and gives further credit to a commonly held assumption. Well-known civil society organisations, especially of transnational nature, such as the FARE network (Football Against Racism), ISCA (the International Sport and Culture Association), or the European Sport and Citizenship think-tank, regularly insist on the use of football as a powerful “vehicle” or “tool” for social inclusion.<sup>9</sup>

The aim of this contribution is to question these shared assumptions and verify their validity through research conducted within the work programme of two successive ERASMUS+ projects carried out over a period of 54 months by consortia mainly composed of civil society organisations from a significant variety of European countries but also including the three individuals from academia who co-author this article.

The overarching goal of our research was to change perspective. Rather than conducting participant observation or interviewing refugees, we chose as target group of our research the individuals who, as volunteers in clubs, associations, or other civil society organisations, are actively involved in offering football activities to refugees. A significant number of preparatory meetings and interviews (2019-2021) allowed us to verify that the members of this target group are perfectly capable of adopting a posture of critical distance to their own work and the potential impact it may produce.

Our main research question was to verify whether the critical reflection on football activities for refugees by those who put them into place would confirm the widely shared assumptions about their benefits mainly based on anecdotal evidence.

A secondary research question was whether, based on data collected among the volunteers, scenarios of successful outcome could be identified, enabling the project consortium to formulate meaningful recommendations to policymakers.

We start with a few terminological clarifications, followed by a short summary of the two projects, and a literature review including both scientific studies – sociological or ethnographical approaches that have critically investigated the benefits and limits of football activities for refugees – and available reports of “good practices” in the field. We then describe and justify our methodological approaches to the topic, before moving on to present the findings of a survey that, hopefully, provides a meaningful analysis of the perception that grassroots football actors themselves may have of the impact of their own volunteering activities.

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8 As quoted in Deutscher Fußball-Bund (DFB), *Willkommen im Verein! Fussball mit Flüchtlingen* (Frankfurt: DFB, 2016):3, [https://www.dfb.de/fileadmin/\\_dfbdam/117987-115339-DFB\\_Fluechtlingsfussball\\_barrierefrei\\_2016.pdf](https://www.dfb.de/fileadmin/_dfbdam/117987-115339-DFB_Fluechtlingsfussball_barrierefrei_2016.pdf), consulted June 2024.

9 See for instance FARE network, *Inspire toolkit to working with refugee women through football* (London: FARE, 2017):3, [https://refugeesandfootball.org/wp-content/uploads/INSPIRE4ALL\\_Toolkit\\_.pdf](https://refugeesandfootball.org/wp-content/uploads/INSPIRE4ALL_Toolkit_.pdf), consulted June 2024; or the numerous occurrences of the term “tool” in the *Sport and Citizenship Review No. 56* (June 2023). In the UNHCR Sport Strategy 2022-2026, entitled “More than a Game”, the term “tool,” in its singular and plural form, occurs 28 times (<https://www.unhcr.org/about-unhcr/our-partners/sport-partners/unhcr-sport-strategy-2022-2026>), consulted June 2024.



## 2. THE DELICATE SEMANTICS OF INTEGRATION AND MIGRATION

Football as a tool for the social integration of migrants brings together two semantic fields – “integration” and “migration” – which are characterised by a good deal of conceptual confusion. Key terms are regularly misunderstood and misused, most often for lack of knowledge, without bad intention, but also frequently for ideological purposes depending on political agendas.

Both semantic fields are also treacherous lexical grounds: in principle they consist in international words borrowed from Latin, yet, they have very different connotations and nuances in different national (and political) environments.

To start with, the word “migrant” is supposed to be a perfectly neutral term, since it does not refer to reasons for which an individual has moved to another country, but it is important to take into account that today it carries, in various political and linguistic contexts, a negative undertone. Moreover, it does not have any legal meaning and does not make a person eligible to any judiciary status.

For practical purposes, this article will use the term “refugee” as a convenient and semantically neutral<sup>10</sup> umbrella term for newly arrived migrants of different categories. It is also the term most frequently used by the football volunteers and associative structures who were part of our investigation. We are of course well aware that “refugee” refers to a legal status, which many of the individuals seeking asylum may not be granted yet.

There is also a quite some semantic confusion when it comes to describing the ultimate objective of using football as a gateway to a new society. Words like “inclusion,” “integration,” or “assimilation” have a sensitive history and give way to multiple interpretations. This article will use both “integration,” understood as a two-way process engaging both the newcomers and the host society, implying rights and obligations on both sides, and necessarily affecting both sides and “inclusion,” understood as the desirable goal of a process of social integration of newcomers in their host society. “Inclusion” enables newcomers to fully take part in society, on an equal footing with locals.

Finally, the article uses the term “football club” as a generic term for all types of grassroots football organisations, where the game is played on an amateur level. “Club” is used as a shortcut for all kinds of local associations, registered or not, which organise football activities of any kind, on a regular and competitive basis, or spontaneously, outside competition. No terminological difference is made between clubs that are solely focused on football and clubs that also offer other sports.

Grassroots football clubs are generally run by volunteers, the principal target group of our research. “Volunteers” are understood as individuals who commit time and energy for the benefit of their club and the people who participate in its football activities. By definition,

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10 Just how sensitive the entire semantic field has become may be illustrated by a lexical shift in Germany, where the literal translation of refugee, “*Flüchtling*,” ended up being perceived as possessing a condescending undertone and was replaced in many documents and speeches by “*Geflüchtete*” (literally: “people who have fled”).

volunteering activities are undertaken of an individual's free will, without payment or remuneration.

### **3. THE RESEARCH ENVIRONMENT: FOUR AND A HALF YEARS ON FIRE**

The research at the basis of this article was carried out within the framework of two successive projects, the idea of which was elaborated following an international event on refugees in grassroots football that brought together NGO activists, an interdisciplinary mix of scholars, and refugee football players in October 2017 in Nantes University. The result was the "FIRE" project, FIRE standing for "Football Including Refugees in Europe," The project was designed in 2018 and carried out between January 2019 and June 2021, and it led to a follow-up project named "FIRE+," launched in January 2021 and concluded in June 2023.<sup>11</sup> Both projects were funded by the ERASMUS+ Sport Programme, and coordinated by the European think-tank Sport and Citizenship.

Like the coordinator, all partners were not-for-profit civil society organisations – football federations, foundations, NGOs, and associations – with a keen interest in the pragmatic, concrete results of the project work, such as benchmarking and exchange of good practices, the testing of so-called "pilot interventions" (selected and monitored grassroots football initiatives for the benefit of a refugee public), the organisation of public "multiplier" events in their respective national or regional constituencies, and the development of a "Massive Open Online Course" (MOOC), a free open-access self-learning tool targeted at European volunteers willing to engage in refugee-related activities but unsure how to go about it and eager to develop their relevant knowledge and skills.<sup>12</sup>

The authors of this article were the only academics among the fourteen members of the two successive project consortia, one of them being implied from the very initiation of the first project, the two others joining the FIRE+ project in 2021. As is quite often the case in such projects, academic research is not the primary purpose of the endeavour. Scientific expertise is expected to serve the overall societal objectives of the project, rather than being a goal in itself. While it is rewarding, and actually impactful, to make knowledge, methods, empirical work, and findings available to end users in civil society, researchers have to put up with a variety of difficulties, such as "diverging temporalities, heterogeneity of expectations and roles, a technical evaluation and validation framework," as Noemi Garcia-Arjona and Pim Verschuuren recently summarised it in an unpublished conference paper.<sup>13</sup> According to Matthieu Delalandre and Julie Demeslay, reporting on their experience of a project with the French fencing federation, the "stance of the expert-researcher in an environment of social pressure" permanently raises issues of "legitimacy," requiring frequent efforts of

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11 The six-month overlap of the two projects in the first semester of 2021 is solely due to the contingencies of the COVID-19 pandemic.

12 The MOOC is accessible on the international CANVAS platform. It includes seven complete learning modules corresponding to a learning experience of seven weeks, based on a previously elaborated needs assessment, with a total of 40 original video clips of a total duration of 4h20, 23 quizzes and tests, and 20 application exercises in a booklet named "personal toolkit."

13 Noemi Garcia-Arjona and Pim Verschuuren, "Challenges of scientific participation in European projects: the SCORE experience (Sporting Cities Opposing Racism in Europe)," unpublished conference paper, 18<sup>th</sup> Sport&EU conference, Angers, 25 June 2024.

“justification.”<sup>14</sup>

The initial FIRE project did not have any plans for a scientific outcome. Academic expertise and input were certainly more than welcome, and there was no doubt that pedagogical expertise and know-how were indispensable for creating a full-fledged MOOC, but there was no component of a genuine research project. At the same time, the project allowed for multifarious opportunities of original data collection, both in the form of expert interviews and testimonies from actors of the field. This data was collected in a structured way during the preparation of expert video scripts or recording of spontaneous testimonials for the MOOC (involving a total of 38 different international interlocutors who happened to respect a perfect gender parity), but also in a more informal manner during keynotes, symposiums and roundtable discussions with a significant number of individuals attending the ten public events in a variety of European cities,<sup>15</sup> as well as in the feedback from grassroots clubs that conducted a “pilot intervention.” The data thus collected was fed into the different modules of the MOOC, but it also underpinned the research conducted when the follow-up project FIRE+ decided to include an original survey into its work programme and flag it as one of its main “intellectual outcomes.” The objective, methodology and findings of this survey are discussed in sections 5 and 6 of this article.

## 4. LITERATURE REVIEW

The literature on the field of football and the social inclusion of refugees comes in two formats. On the one hand there is a flurry of non-academic reports on good practices, especially on a European level, as well as so-called “toolkits,” a term that is omnipresent in the ERASMUS+ Sport ecosystem and refers to good-practices guidelines published and circulated by civil society actors as the tangible outcome and legacy of a collaborative transnational project. On the other hand, there is a relatively small number of academic publications grounded in solid theoretical frameworks, most often based on local case studies, and applying ethnographic fieldwork or similar methods.

### 4.1. NON-ACADEMIC REPORTS

One of the first good-practices reports that were published immediately in the wake of the vast influx of refugees in 2015/16 was aptly entitled *Mapping of good practices relating to social inclusion of migrants through sport*.<sup>16</sup> Commissioned by the DG Education, Youth, Sport, and Culture of the European Commission, it was produced by the ECORYS consultancy located in Rotterdam. Following a concise literature review and some expert interviews, the report assesses 63 projects and interventions carried out between 2008 and 2016 aiming at the social inclusion of migrants, with a strong focus on the link between sport and employability (educational and vocational training, personal and social development, or volunteering

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14 Matthieu Delalandre and Julie Demeslay, “Concilier recherche académique et expertise: retour sur une expérience d’enquête auprès du pôle France d’escrime,” *Sciences sociales et sport*, 2021/2 (N° 18): 21-38.

15 Besides Brussels (four times), events were held in Glasgow, Bucharest, Madrid, Rome, Dublin, and Frankfurt.

16 Ecorys, *Mapping of good practices relating to social inclusion of migrants through sport. Final report to the DG Education and Culture of the European Commission*, (Brussels: European Commission, 2016), 99 pages, <https://op.europa.eu/en/publication-detail/-/publication/f1174f30-7975-11e6-b076-01aa75ed71a1>, consulted June 2024.

capacity building in sport).

Two years later, on the occasion of the FARE network's 2018 #FootballPeople action weeks, UEFA followed suit with a similar report named "*Football and Refugees. Addressing key challenges*."<sup>17</sup> It was the outcome of a seminar held in Ireland by a UEFA Study Group Scheme on the issue, presenting 33 good practices from a total of 14 member federations, all from Western European countries plus Malta and Greece). The most interesting aspect of the report is its structure, with eight sections responding to what are perceived as the most pressing needs by actors of the field and presenting useful takeaways from these initiatives by national federations.

Beyond such reports, there is, as mentioned above, a remarkable number of "toolkits" or "guides" produced by beneficiaries of public funding streams. Two of them may be mentioned here as illustrations for this type of publications. The first one was authored in 2018 by the Berlin-based NGO Camino on behalf of the partners of the Erasmus+ Project "Sport Welcomes Refugees," coordinated by the Sport Inclusion Network (SPIN).<sup>18</sup> Through 40 pages, it provides insight into the political context of the project partners' home countries (Finland, Portugal, Ireland, Germany, Greece, Italy, Austria, and Hungary), before presenting 33 good practices from these countries, a third of which includes football. Beyond the description of the very heterogeneous sample of initiatives, the document also provides a concise "checklist" that lists criteria for successful attempts to "include refugees in and through sports," meant to "serve as guidelines for high-quality sports activities."

Even prior to the migration peak of 2015, the European Organisation for Grassroots Sports (ENGSO), published a guide on the "Social inclusion of migrants and ethnic minorities,"<sup>19</sup> resulting from a transnational project conducted within the framework of the EU Preparatory Actions in the Field of Sport between 2011 and 2012 (these were the days before the launch of ERASMUS+ Sport). The document, which is based on surveys, interactive workshops, and interviews with stakeholders, identifies "key elements of successful diversity management" and illustrates them with a total of 13 different projects that are presented as examples of good practice.

Finally, there are also online bottom-up platforms that bring together a large variety of individual local practices for the purposes of benchmarking and inspiration. The best example is no doubt the FARE network's "Refugees and Football" database,<sup>20</sup> which refers to an impressive number of small-scale initiatives from 26 countries. Contrary to the majority of good-practices guides or reports that adopt a multisport perspective, this platform is, like the research carried out within the FIRE+ project, entirely focused on football.

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17 UEFA, *Football and Refugees. Addressing key challenges*, (Nyon: UEFA, 2018), 44 pages, [https://www.uefa.com/MultimediaFiles/Download/uefaorg/General/02/57/60/20/2576020\\_DOWNLOAD.pdf](https://www.uefa.com/MultimediaFiles/Download/uefaorg/General/02/57/60/20/2576020_DOWNLOAD.pdf), consulted June 2024.

18 Victoria Schwenzer, *Sport Welcomes Refugees: A Guide to Good Practice in Europe* (Berlin: Camino, 2018), 44 pages, [https://sportinclusion.net/files/SWR\\_Camino\\_GoodPracticeGuide\\_2018\\_web.pdf](https://sportinclusion.net/files/SWR_Camino_GoodPracticeGuide_2018_web.pdf), consulted June 2024.

19 ENGSO, *Creating a Level Playing Field. Social Inclusion of Migrants and Ethnic Minorities in Sport*, (Brussels: Drifosett, 2012), 48 pages, [https://adsdatabase.ohchr.org/IssueLibrary/EUROPEAN%20COMMISSION\\_Creating%20a%20level%20playing%20field%20project.%20Social%20Inclusion%20of%20Migrants%20and%20Ethnic%20Minorities%20in%20Sport.pdf](https://adsdatabase.ohchr.org/IssueLibrary/EUROPEAN%20COMMISSION_Creating%20a%20level%20playing%20field%20project.%20Social%20Inclusion%20of%20Migrants%20and%20Ethnic%20Minorities%20in%20Sport.pdf), consulted June 2024.

20 FARE network, "Refugees and Football database", <https://farenet.org/our-work/refugees-and-football>, consulted June 2024.

While there is no doubt that all these reports on good practices may provide an added value to volunteers wishing to take example on apparently successful initiatives, they are of little help to academic research, as they simply add to the anecdotal evidence that feeds the shared assumptions about the benefits of sport/football for refugees, without including a reflective evaluation of the intended impact of the activities on their target group. All of the reports, without exception, are published by organisations that have a vested interest in promoting the assumptions rather than questioning them.

## 4.2. ACADEMIC LITERATURE

As Enrico Michellini rightly observed in the conclusion of his recent book on the sporting practices of forced migrants, “the landscape of research is fragmented in a multitude of small-scale studies.”<sup>21</sup> Needless to say, the sheer diversity of these explorative projects embedded in small local communities makes it difficult to aggregate findings or exploit the comparative potential of this patchwork. Moreover, national approaches to the issue vary widely,<sup>22</sup> backed by “contrasting political philosophies”<sup>23</sup> that pursue different aims and use different vocabularies.

Still, some patterns emerge from a handful of studies that have been influential in shaping the academic discussion of the impact of sport in general, or football in particular, on forced migrants in their new host society.

One of the most-quoted publications was written by the British cultural sociologist Chris Stone following an ethnographic three-year study (2010-2013) in Sheffield on behalf of the NGO *Football Unites, Racism Divides* (FURD). He gave his carefully crafted *Report on the Role of Football in the Lives of Refugees and Asylum-Seekers* the title *A shared sense of belonging*<sup>24</sup>, an outcome which he understood as “the interconnection between cultural, communal and personal aspects of life that make people feel able to express themselves freely and see themselves as an equal” (page 75). In detail, he identified five major benefits of football for forced migrants: routine (consistency, regularity, normality), catharsis (evacuation of stress, relief from pressure), sociality (channels of interaction, in-group cohesion), empowerment (control, self-confidence), and plurality (the coexistence of difference and sameness, repetitiveness and unpredictability, challenge and comfort, frustration and success).

In a more distinctly Bourdieusian approach, applied to the Australian environment, Ramón

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21 Enrico Michellini, *Sport, Forced Migration and the 'Refugee Crisis'* (Abington: Routledge/Taylor & Francis, 2023), 89.

22 William Gasparini and Giovanna Russo, “Integration by Sport and Physical Activities in Europe: An Introduction”, *Culture e Studi del Sociale* 6, no. 2 (2021): 229–44, <https://www.cussoc.it/journal/article/view/203>.

23 Julien Puech, François Le Yondre, Jane Freedman, “Typology of European Sports Programmes for Welcoming Migrants: Contrasting Political Philosophies,” *Journal of International Migration and Integration*, 24, (2023): 1381–1411. See also the remarkable French-German comparative ethnographic study on the inclusion of refugees in grassroots football by Julien Puech, “L'accueil des migrants par le sport. Les philosophies politiques des dispositifs d'accueil par le sport en Europe et leurs réceptions sensibles par les migrants” (PhD diss., Université de Rennes, 2024), <https://theses.hal.science/tel-04642277>, consulted June 2024.

24 Chris Stone, *Football – A shared sense of belonging* (Sheffield: FURD, 2014), 88 pages, [https://furd.org/uploads/files/Final\\_Research\\_Report\\_-\\_low\\_res.pdf](https://furd.org/uploads/files/Final_Research_Report_-_low_res.pdf), consulted June 2024. See also Chris Stone, “Utopian community football? Sport, hope, and belongingness in the lives of refugees and asylum-seekers”, *Leisure Studies* 37, no 2 (2018): 171–183, <https://doi.org/10.1080/02614367.2017.1329336>.

Spaaij (Victoria University Melbourne), draws on concepts like “habitus” and “capital” to make sense of his observations of sport in the lives of refugees. Like Stone, Spaaij and his co-authors structure their findings in a series of identifiable benefits, such as relief (to alleviate exclusion and alienation), connectedness (to experience group solidarity), self-esteem (to gain new social and cultural capital), transferable benefits (to find access to non-football related spaces).<sup>25</sup> Their findings are confirmed by other interesting small-scale studies in very different local settings like the ones collected in a recent special issue of the Italian journal *Culture e Studi del Sociale*<sup>26</sup> published in 2021.

It is worth mentioning, though, that the authors also insist on the undeniable ambiguity of sport’s capacity to foster social integration of migrants, which is always “conditional and context-dependent.” For them, “any attempt to use sport to promote social inclusion must be informed by a critical awareness of its strengths and limitations as a social practice and cultural form.”<sup>27</sup>

A more modest, but rather revealing, 2014 research working paper based on fieldwork conducted in Glasgow by a collective of master students from the Oxford-based Refugees Studies Centre,<sup>28</sup> explicitly draws on Robert Putnam’s theory of social capital,<sup>29</sup> differentiating between “inward social capital” (emotional resources and ability for capacity building in the social environment) and “outward social capital” (which includes both the capacity of bonding within a social group and bridging between different groups). As will be seen later, in the discussion of the survey findings, this distinction becomes particularly meaningful in the eyes of the volunteers when evaluating the impact on the target group of the football activities they offer.

In a more recent (2022) ethnographic study informed by feminist concepts and covering three years of participant observation in Leeds, Chris Webster<sup>30</sup> came to understand bodily, cognitive and social pleasures derived from the footballing activity not only as benefits but as political acts of resistance to an increasingly hostile asylum environment.

Overall, the literature that deals explicitly with football rather than sport in the largest sense, is not particularly rich in quantity. This scarcity is most likely due to the time-consuming character of meaningful ethnographic field work and, therefore, issues of funding.

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25 Brent McDonald, Ramón Spaaij & Darko Dukic, “Moments of social inclusion: asylum seekers, football and solidarity”, *Sport in Society* 22, no. 6 (2019): 935-949, <https://doi.org/10.1080/17430437.2018.1504774>. See also Ramón Spaaij, “Refugee Youth, Belonging and Community Sport”, *Leisure Studies* 34, no. 3 (2015): 303-318, <https://doi.org/10.1080/02614367.2014.893006>.

26 See for instance Stéphanie Boyer and Béatrice Bertho, “‘J’ai totalement confiance en mon équipe!’: Des filles issues de la migration s’engagent dans le football en Suisse romande”, *Culture e Studi del Sociale* 6, no. 2 (2021): 301-320, <https://www.cussoc.it/journal/article/view/194>; Anna Elia and Valentina Feddele, “Calcio, soggettività e immaginari nell’esperienza dei “minori nonaccompagnati”, *Culture e Studi del Sociale* 6, no. 2 (2021): 283-299, <https://www.cussoc.it/journal/article/view/195>.

27 Ramón Spaaij, “The Ambiguities of Sport and Community Engagement”, *Ethos* 21, no. 2 (2013): 8-11.

28 Olivia Booth et al., “United Glasgow Football Club. A pilot study in sport’s facilitation of integration,” *Refugees Studies Centre Working Paper No. 99*, (Oxford: Oxford University, 2014).

29 Robert Putnam, “Bowling Alone: America’s Declining Social Capital”, *Journal of Democracy* 6, no. 1 (1995): 65-78.

30 Chris Webster, “The (In)Significance of Footballing Pleasures in the Lives of Forced Migrant Men”, *Sport in Society* 25, no. 3 (2022): 523-536., <https://doi.org/10.1080/17430437.2022.2017815>.

What the findings of these studies have in common is their focus on the potential benefits observed and conceptualized by the researchers among the refugee group they accompanied.<sup>31</sup> They seem to validate at least partly the widely shared and oft-repeated assumptions of the positive impact of sport and/or football on vulnerable migrant communities, drawing on impressions and feedback collected from the refugees themselves. What they do much less (or not at all in some cases) is draw on the evaluative feedback of the volunteers who are at the origin of the initiatives.

This gap in the existing research is problematic, especially considering that volunteers have by the far the best oversight on football-related initiatives for refugees. Most of the time, they are themselves the initiators of the activities or have been present at their inception. They are responsible of implementation and have a keen sense of what produces the intended outcomes, and, in case of perceived suboptimal outcomes, what would be needed to improve the impact of the activities.

At the same time, contrary to participant researchers in ethnographic fieldwork, not only do they invariably develop personal relationships with the individuals of their target group, are engaged in conflict-resolving, and serve, more often than they would wish, as confidant for some of the individuals, but they are also embedded in their local communities with a keen sensibility for issues of perception of their own activity by the community concerned.

Finally, the gap is of course also particularly relevant in an action-research perspective. It should not be forgotten that this survey was embedded in a practice-oriented project and was carried out with the aim to provide findings in the form of evidence-based recommendations to be addressed to policymakers who rely on the active contribution by civil society actors in the first place.

## **5. METHODOLOGICAL CHOICES AND LIMITS**

### **5.1. SURVEY DESIGN**

The FIRE<sup>o</sup>+ survey was based on the need for a policy-relevant survey that would allow an evidence-based evaluation of the impact different local football initiatives have had on both the beneficiaries and the grassroots organisations themselves. It sought to provide a meaningful analysis of the perception that grassroots football actors themselves may have of the impact of their own volunteering activities.

To do so, the authors designed a survey aiming at providing responses to their overarching research questions (as formulated at the end of section 1), through understanding

1. the types of support generally received by the football clubs and their volunteers from local, regional and national governments;

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31 An interesting overview of recent empirical literature and impact evaluation studies is provided by Jondis Schwartzkopff, *Integration of Refugees through Sport* (Vienna: Sport Inclusion Network, 2022), 24 pages. The report is available online under [https://sportinclusion.net/files/SPIN\\_Refugees\\_Review-Study\\_2022\\_final.pdf](https://sportinclusion.net/files/SPIN_Refugees_Review-Study_2022_final.pdf), consulted June 2024.

2. the volunteers' perception of the experience of football encounters with refugees and the subsequent interpretation of these encounters;
3. the short and mid-term outcomes of football activities conducted for and with refugees.

We opted for a mixed-method survey, entailing not only traditional survey questions the results of which can be quantified, but also qualitative questions.<sup>32</sup>

There were open-ended questions inquiring what these football events meant for those involved; the meanings they attach to their experience of multi-cultural encounters with the newcomers, and there were more classical survey questions asking them to rate the change that they experienced due to the football events they organized.

In the questions that inquired about different types of support received by the respondents' organizations, support refers to the funding of projects, seed funding for long-term projects, but also one-off support such as equipment sponsoring. The open-ended answers were processed through qualitative data analysis, using research question-oriented coding.

Our investigation spanned diverse contexts and structures across various European regions, with a keen focus on the multitude of realities encountered by those working directly with refugees.

The development of our survey necessitated a nuanced approach. We wanted to ensure that the questionnaire would resonate with our respondents, offering them a comfortable platform to share their experiences and insights. As such, the wording and sampling strategy was meticulously discussed with all project partners.

We employed a purposive sampling strategy for our survey, which, basically means that we specifically targeted individuals who were relevant to our study – those who are working with refugees within grassroots football clubs. This approach allowed us to focus on respondents who had rich, first-hand experiences and narratives to share, thus ensuring the valuable substance in our data.

The survey was designed to be multilingual and tested to cater to a wide range of respondents across Europe. This guaranteed that potential respondents could comfortably participate and contribute to our research in one of the working languages: English; French; German and Italian.

An essential factor that guided the design of our survey was the European Commission's framework of "Key competences for lifelong learning."<sup>33</sup> Adopted by the Council of the European Union in May 2018, this framework identifies eight crucial competences deemed essential for every citizen's personal fulfilment, employability, active citizenship, and social inclusion. The key competences range from literacy, multilingual, and digital competences to personal,

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32 On the importance and use of multiple ways of collecting data, see Norman K. Denzin's entry on "Triangulation" in *The Blackwell Encyclopedia of Sociology*, ed. George Ritzer (New York: John Wiley, 2015), 5083-5088.

33 European Commission, Directorate-General for Education, Youth, Sport and Culture, *Key competences for lifelong learning* (EU Publications Office, 2019), 20 pages, <https://op.europa.eu/en/publication-detail/-/publication/297a33c8-a1f3-11e9-9d01-01aa75ed71a1/language-en>, consulted June 2024.



social, and learning to learn competences, and also include citizenship, entrepreneurship, and cultural awareness and expression competences.

The relevance of these competences to our survey was rooted in the understanding that football-based projects serve as non-formal and informal learning opportunities. They contribute significantly to the competence development of refugees, local participants, and both volunteer and professional staff. Thus, incorporating this framework in our survey helped highlight the transformative potential of these football projects, underscoring their role not just as a sportive activity, but also as an educational tool fostering lifelong learning and competence development.

In the survey, in line with the entire FIRE+ project and this article, we used “refugees” as an umbrella term that includes people with or seeking international protection status (asylum seekers). The respondents were given a brief description in the consent section, with a link to the project site where a detailed explanation is available for those seeking further clarification.

The data of the survey was treated in accordance with the EU’s General Data Protection Regulation. The survey has been approved by the Human Subjects Ethics Committee of Middle East Technical University (approval number: 0452-ODTUIAEK-2022). No personal data was collected through the survey, overtly or covertly.

Our online survey was open for responses over a period of seven months. We received the very first response in August 2022 and collected valuable inputs until the last response was received in February 2023.

## **5.2. THE PRINCIPAL TARGET PUBLIC OF THE SURVEY**

The involvement of multiple stakeholders in football activities welcoming refugees produces a **multi-layered experience**. The layers come from the simultaneous presence of multiple actors: clubs (with their volunteers, trainers, players, etc.), refugees, as well as peripheral actors initially not necessarily foreseen, such as local pub owners, schools or individual teachers, different segments of local communities, local media, as well as the regional, national and supranational football governance bodies, and various levels of political-administrative governing bodies, ranging from sub-local to supranational.

The survey chose to address one segment of this layer – arguably the one on which all these activities are hinged: the individuals who organise meaningful football contacts with refugees, be it structured or unstructured one-off encounters (tournaments, etc.) or regular, structured training sessions.

These encounters are generally peaceful and friendly, and they go deeper than the level of a simple introduction and superficial meeting, since they share a common goal, such as training together and enjoying the collective and individual pleasure football provides. They may lead to building long-term relationships and contribute to the overall integration.

The principal target segment thus includes all actors in grassroots football clubs, with their staff of various levels of commitment, as well as at times civil society organisations who work closely with these clubs.

The rationale for this choice of target respondents to the survey is threefold.

First, it is in line with the overall outlook of the FIRE+ Project, which was first and foremost aimed at the community of European grassroots football in the largest sense, and local football volunteers in particular.

Second, the organisers of grassroots football initiatives for the refugee public are well-placed to observe the results, successes, and failures of their activities, with regard to the progress in their target public's integration process and other changes with regard to attitudes or skills. As many testimonies collected for the MOOC or at the international conferences organised by the partner organisations have clearly shown, those among them who have already engaged with a refugee public for several years, are capable of adopting a reflective distance to the outcome of their own work.

Third, this choice of respondents is also influenced by the fact that over recent years the refugee communities clearly have been over-solicited, almost to the point of abuse, by scholarly field research on all levels. It is not exaggerated to say that they are tired of the incessant data requests from academia. As Göçer and Şenyuva have shown in detail for the Turkish case,<sup>34</sup> research on refugees has various ethical issues, one of which is the over-surveying of the same refugee segments, which may lead to thin data. It is also not ethically responsible to always put the burden of the research on the same segment of the society when the phenomenon under scrutiny has multiple stakeholders.

For all these reasons, this survey conducted under the FIRE+ project was designed for the stakeholder group of European football volunteers to respond. Their observations and experiences do represent the point of view of the initiators and organisers of the football encounters. They have repeated experiences of playing football with refugees, and are familiar with the process and the challenge of welcoming refugees through the sport. In terms of the diversity of their roles or functions within their organisations, the survey reveals, as expected, a wide variety. They include presidents, administrators, trainers, players, diverse volunteering functions, project officers of clubs, and even referees. So, although the main stakeholders of the survey are the clubs that organize football events and projects, there is a multiplicity of voices within that group.

Since we did not narrow down the sample according to the size or impact of the football project or event, we had a chance to include a variety of football encounters from simple plays in the local park to structured training with uniform kits. The variety of the events is as important as the choice of respondents, since different types of events and projects lead to different outcomes. As a result, this choice in methodology allows us to observe different patterns of refugee integration/non-integration through the sport of football emerge from the collected data.

The strong qualitative component of the survey allows us to account for all this multiplicity in the type of actors and events sampled in the survey. In other words, the survey was designed

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34 Derya Göçer and Özgehan Şenyuva, "Uluslararası İlişkiler Disiplini ve Niteliksel Yöntem: Türkiye'de Göç Çalışmaları Örneği" [The Discipline of International Relations and Qualitative Methods: The case of migration research in Turkey], *Uluslararası İlişkiler Dergisi* 18, no. 72 (2021): 19-36, <https://doi.org/10.33458/uidergisi.1000762>, consulted June 2024.

to collect “thick data,”<sup>35</sup> of not just what happened or generally happens on the pitch or in the locker rooms, but also how these interactions are perceived. Perception and interpretation of facts are crucial in understanding processes of encounters through sport, as sport in this context is precisely a tool of changing, transforming perceptions in the first place.

### **5.3. THE IMPLEMENTATION OF THE SURVEY**

Our pursuit of ‘thick description’ necessarily prolonged the time it took to fill out the survey and was demanding on the respondents. The average time spent by respondents on the survey turned out to be 38 minutes, which is impressive.

This burden placed on the respondents also explains why despite collective efforts to circulate the survey widely, the number of fully exploitable responses was 135 (with answers from eleven different European countries).

Given the density of the data, the number of responses was perfectly sufficient, though slightly below initial expectations and doubtlessly showing one of the limits of such “labour-intensive” qualitative research.

There was also unequal implication by the project partners in the dissemination process of the invitation to participate in the survey (also provided in four different languages). Roughly half of the complete responses are of German origin, which is no doubt due to the remarkable outreach of the German partner, the DFB-associated Egidius-Braun-Stiftung, which has implemented successive waves of support schemes to the grassroots football community.

All in all, despite the obvious limits due to the framework within which the survey was conducted, the quality of the exploitable data has enabled us to gather insightful data on the extent to which the assumption of the power of football as a tool for social integration is indeed backed up by experience from the field. Our research underscores the value of football-based projects in enhancing refugees’ ability to thrive in their new communities and contribute positively to society. It’s not just about playing the game; it’s about empowering individuals and transforming societies.

## **6. RESULTS OF THE FIRE SURVEY**

### **6.1. OBSERVED IMPACT ON REFUGEES – QUANTITATIVE FINDINGS**

The survey results indicate a significant positive impact of football-based integration projects on the personal development and social skills of the refugee participants, as evaluated by

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<sup>35</sup> Here, “thick description” is a reference to the detailed stories that the survey required from the respondents. In academic literature it also refers to the thick description of the researcher of an issue in the context of which the researcher immerses him or herself (such as in ethnographic field work). The common point lies in going beyond just asking ‘how often’ or ‘where’ do you meet the refugees but teasing out stories from the respondents. Thickness in qualitative research in the form of evidence-based story telling goes well with social causes since “stories allow others to visualize and empathize with certain situation or plights.” See Sarah Tracey, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*. (New York: John Wiley, 2020), 9.

the respondents, who had the opportunity to observe their personal development over time. A majority of volunteer project managers have thus reported an increase in various essential qualities among the participants after their involvement in these projects. The data suggests that these programmes are not only beneficial for the development of social skills but also foster intellectual, creative, and communicative growth among participants.

The increased respect for commitments (60.9%) and adaptation capacity to new social norms (64.1%) that were observed by the volunteers indicate that refugee participants are learning to navigate the complexities of their new environment more effectively. Additionally, the data highlights the development of key sportsmanship values, with 70.6% of participants showing improved fair play.

One of the most striking outcomes is the reported growth in trust in others (78.3%), which is crucial for fostering a sense of belonging and social cohesion among refugees and host communities. Furthermore, 82.1% of participants showed increased respect for those with different cultural, ethnic, or language backgrounds.

The highest increase observed is in self-confidence (86.6%), which confirms its importance as one of the major aspects identified in the ethnographic research studies mentioned in the literature review above.

Significantly, these initiatives are promoting collaborative problem-solving, as 61.1% of participants were reported to improve their skills in negotiating joint solutions with people holding different viewpoints. This is further supported by the high percentage of participants (75.0%) who are said to have gained confidence in expressing their opinions in discussions. At the same time, the highest increase observed is in the ability to get along with people from different cultural backgrounds (95.0%), arguably an essential skill for successful two-way integration and harmonious coexistence in diverse societies.

Particularly notable results focus on community engagement, language, and teamwork. A striking 80.7% of respondents reported an increased ability of the newcomers to contribute to the interests of their community or society. Additionally, 88.1% improved their communication skills with people who speak another language, and an impressive 90.2% showcased better cooperation within a team.

Respondents also report positive improvement effects in attitudes, such as non-violence (81.7%), understanding and appreciation for cultural diversity (72.4% and 83.6%, respectively), awareness of health and well-being (69.6%) as well as human rights and fundamental rights (71.7%). Finally, 91.7% of respondents reported increased solidarity with people facing difficulties.

## 6.2. TYPES OF REFUGEE INTERACTIONS – QUALITATIVE FINDINGS

There is a three-tier pattern that emerges from the responses to the qualitative survey questions regarding interaction with refugees.

The **first-tier experience** consists of immediate socialising in the local community,

encountering locals in football places, wearing the club jersey or insignia and hence achieving visible mingling (i.e. not looking any different from the locals), attending social events after or before the football events, or simply chatting after a training session. This first-tier experience is necessary to make initial contact and probe feelings of “welcome” and “safety” in a new country. However, if these types of interactions rely exclusively on volunteers in the club, the circulation of people (refugees and volunteers) without building meaningful relationships may tend to be tiring. As a respondent from Ireland put it (echoing others), “we found that once a partnership was developed and working, then these people were moved to their new homes and everything. We as a club had to start again from the beginning. As relying on volunteers to do this, after time it can become frustrating to lose this relationship and have to do it all over again.” In the absence of a strong club, long-term funding or seed funding, refugee experiences risk staying at this tier only.

The **second-tier experience** is when the newcomers start to attend regularly and end up bringing their immediate or extended families, or their friends either as observers or players. This is a crucial stage, and it is only possible if the refugees continue to stay in the same locality and if the club is able to offer continuous opportunities for interaction. This is when the play continues in a regular fashion, so observations of this kind can be made: “I noticed how accommodating and helpful the refugee children are during the warm-up and practice sessions. They integrate and take hints from German players” (coach of a youth team in Germany). This second-tier experience in the sport of football may cross paths with other experiences, such as language classes: “The teachers from the language classes have asked us to offer football after class” (a respondent from Germany). Once the second-tier experiences get regular they also integrate into other segments in the locality that do not have a pre-defined role in integration: “the inhabitants near our field have had the opportunity to meet and make friends with the boys of our team” (a respondent from Italy).

The **third-tier experience** that seems to give the most contentment or gratification to the European respondents is establishing meaningful relationships and friendships on and off the field; attending each other’s birthday parties, engagement or marriage ceremonies, celebrating the start of a new job, removing hierarchical barriers between the locals and the refugees. It is at this level that the trainers, organisers, and officials feel the most pride in reporting the outcome of football encounters. In the words of one respondent from Germany, “One of our participants once said: the club is his new family.” This kind of feeling of unity cannot be achieved in the absence of sustained interactions. The results even lead to a higher level impact that goes beyond mingling at the local level: “We take our [refugee] children to other cities and show them our country. For once, they can concentrate mentally on other things. They also hear other dialects” (another respondent from Germany).

This third-tier experience incorporates many elements that the survey asked quantitatively to the respondents, such as attitude change towards cultural issues, one of which is gender. “It still gives me goosebumps that many women now have a job, a driving licence and their own car and speak very, very good German, go to parties styled. Some even have a new boyfriend and are without a headscarf” (a respondent from Germany). These changes, in attitude, language skills, and the building of lasting relationships then lead to the final and desired outcome of successful integration: “95% of the refugees who have passed through our association – over 2,000 refugees – have successfully built their lives here in Germany

and are very well integrated into work, study and self-employment” (a respondent from very strongly engaged club). So, if the interaction reaches this third tier, then there is a very high chance of achieving lasting results.

### **6.3. OBSERVED IMPACT ON VOLUNTEERS/PROJECT COLLABORATORS – QUANTITATIVE FINDINGS**

A small number of quantitative questions targeted the perceived impact of their own activities on the group of respondents themselves.

Quite significantly, and not entirely unexpectedly, these initiatives are successful in nurturing active citizenship and social responsibility among the volunteers. The data shows that as a result of their experience, they see themselves as even more inclined to engage in civil society (51.7%), voluntary activities (64.4%), and work against discrimination, intolerance, xenophobia, or racism (61.0%). The results also demonstrate that a majority of respondents (63.8%) consider themselves more committed to active citizenship and participation in democratic life after their involvement in these projects.

### **6.4. OBSERVED IMPACT ON THE LOCAL COMMUNITY’S PERCEPTION – QUALITATIVE FINDINGS**

In the responses to the open-ended questions, three types of local communities are portrayed.

1. One type is where the local community is very much in sync with the local club in terms of the spirit with which to approach refugees.
2. A second type of local community is where the locals are not that much aware of the existence of the refugees since there is a very real physical segregation and lack of crossing paths.
3. A third type is where the local community is aware of newcomers but is cautious towards them.

Trying to identify the impact of local football activities is obviously most interesting with regard to the second and third type of community.

The second type of local community is either unaware of or uninterested in the presence, circulation, and possible integration of the refugees. Here, the football club can foster awareness: “Some locals did not know about refugees, and it made them aware of how hard a life can be” (a respondent from Latvia). Mixing locals with refugees in football games or events ensures first that there is more information flowing and fewer uninformed prejudices.

The third type is showing reservations, many of which seem to revolve around the issue of religion. In several contexts, the Muslim headscarf is mentioned explicitly. So, planning projects with gender inclusivity or at least gender mainstreaming might prove to be highly beneficial and efficient in having an impact on not only refugee attitudes but also locals’ attitudes. That women with headscarf can play football seems to be an important fact that percolates through to the locals thanks to first-hand experience. After interacting with the refugees, positive results are reported: “a more positive image towards refugees, they could see that refugees do voluntary work and especially that women and men celebrate and play

football together with local people. Especially that women with headscarves play football and actively participate in sports” (a respondent from Germany).

For communities of the third type, a football club that can target, realise, and sustain third-tier experiences with the refugees, the outcomes are no different than with the first or second type of local communities. The survey results suggest that it is the quality of experiences that make the lasting impact, not necessarily the starting points in terms of attitudes and culture.

It deserves to be noted that organising events with the specific group of Ukrainian newcomers felt easier due to the common religious background. There seems to be more of a collective agreement on the support towards the Ukrainians.

## 6.5. SUCCESSFUL SCENARIOS

The survey allows to detect patterns or scenarios of successful outcomes of partial or full integration of refugees thanks to the actions of football clubs.

The first scenario is found in the presence of a **strong club**, which is well established in the local community, with independent funding and **one continuous football project for the refugees** (one year and older). In such a context, refugees

- a. feel welcome and safe;
- b. mingle with the football community and then the larger local community;
- c. integrate through employment, schooling and/or marriage.

The second scenario requires **seed funding from an external source**, the kind that results in **longer and various projects** and allows for staff to be hired for the long term. The supporting bodies are mostly local governments and football federations. Funding from regional and national governments are scarce. This scenario also leads to successful integration outcomes.

Both scenarios also involve attitude change in the local community towards the refugees, with increased openness to welcome newcomers.

When funding is on a short-term basis and football initiatives rely heavily on volunteers, integration outcomes are weaker. Contrary to the assumption that high refugee mobility may result in fragile integration outcomes, the survey results indicate that the mobility of organisers and instructors has a greater impact on the integration experience and outcome. At least, this is the consensus among European grassroots football stakeholders.

Sometimes, the most successful scenarios do not lead to successful football outcomes! Some of the refugees who settled with the solidarity shown from the football community may drop out of football events. The reasons for this dropping out lie in the way they are integrated. “The majority of the refugees have arrived in the community, have regular jobs and a regular daily routine. Their initial boredom and foreignness are no longer present. They were supported in their integration and are an integral part of the community. They were simply too tired to be active in sports in the evenings and on weekends” (a respondent from Germany). With a slight touch of irony, this phenomenon could be referred to as a “paradoxical success indicator.”

The scenarios that emerged from the findings are of course first and foremost policy-relevant. They should help policymakers on all levels to become more sensitive for the factors that condition the success of their civil society’s initiatives and help them to channel project funding or other types of support in the most efficient way.

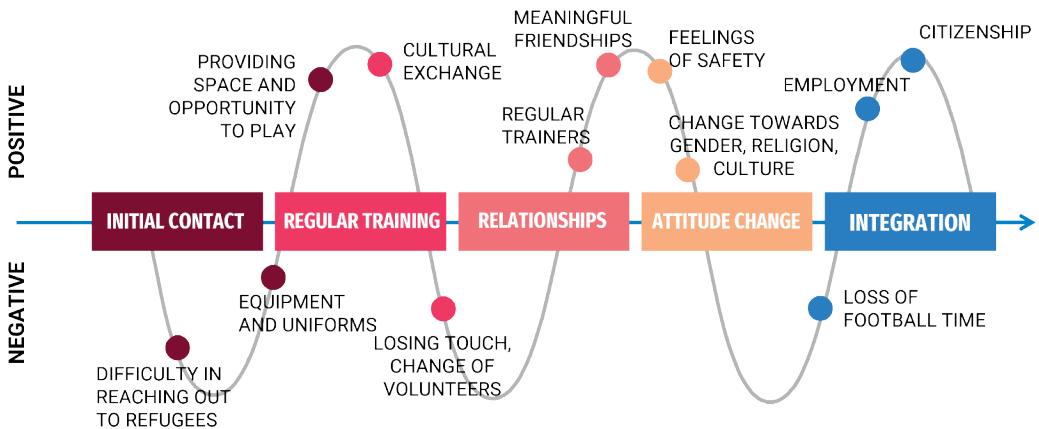
But they are also research-relevant, as they provide a starting point for further academic research. We strongly recommend to civil society actors to engage in future project with academics capable of adopting a more differentiated approach than we were able to, distinguishing from the outset between the different variables (types of clubs, offers, funding, etc.). We also encourage them to embed open-ended academic research in their future project proposals in a more proactive manner. The cooperation between civil society actors and researchers has the potential to be mutually beneficial, but in order to be so, it requires efforts of understanding from both sides.

## 7. CONCLUSION: WHAT A DIFFERENCE A GAME MAKES!

### 7.1. Mapping the refugee’s journey

Football clubs that offer activities geared towards refugees kick off a journey. Based on the survey results we can wrap up that journey in a comprehensive graph, discerning the more challenging and more comfortable parts of the “travel.” In Figure 1 below, the “positive” part refers to experiences along the way that are easy to establish, and the impact of which is relatively high. The “negative” part refers to experiences that are more challenging and the impact of which may not always be as intended.

Figure 1: The refugee’s football journey



Source: Derya Göçer, based on the FIRE+ survey results.

As the oscillations in the graph indicate, the journey is far from easy, and not every individual journey will reach the **integration** stage, which refers to the visible results of the whole process, when jobs are found, citizenship applications are filed and approved, or a separate flat is rented for a young adult. A significant number of cases never go beyond the initial contact, for various reasons (absence of equipment, administrative change of placement,



high turnover of volunteers, etc.). But those who reach the second stage, take root in regular training, and manage to achieve a certain stability, have good chances to move further.

## **7.2. PRACTICAL RECOMMENDATIONS**

Based on the survey and all the complementary data collected over the 54 months of the two projects, we were in a position to formulate a series of practical recommendations to policy-makers, with the objective of addressing the needs of the grassroots football volunteers and increasing the number of refugees who manage to get to the endpoint of the journey. To no surprise, these recommendations – which can be consulted in the dedicated issue of the *Sport & Citizenship Review* of summer 2023<sup>36</sup> – boil down to issues of sustainable funding, training of mediators, specific actions for particularly vulnerable target groups such as women and girls, as well as unaccompanied minors, and assistance in partnerships between clubs and reception centres.

## **7.3. CONTRIBUTION TO THE LITERATURE**

In reflection of the above, from the inception of the projects and the (relatively timid and late) integration of research questions and methods into the project objectives to the discussion of the findings of an original and, despite its limits, rather innovative survey, we conclude that this article makes a valuable contribution to a body of academic literature that is still very much limited to small-scale local ethnographic studies. It does so by introducing the first impact survey on an international scale that has so far been dedicated to the issue. It opens avenues for further, more differentiated studies on the topic, as suggested at the end of section 6.

In being transparent about the inherent difficulties for research in practice-oriented projects, the article also contributes to a better understanding of how the ERASMUS+ sport programme could be used to stimulate better synergies between civil society and academia. In a recent interview with the president of a prominent international sport association, it appeared that civil society actors are weary about fully academic consortia applying for project funding under ERASMUS+ sport and would rather appreciate more fruitful interaction with academic partners in future projects. At the same time, they struggle to fully appreciate what researchers need to make this cooperation beneficial to all parties involved.

## **7.4. CONCLUSION**

Our own journey as researchers across European grassroots football was a fascinating, eye-opening one. The sheer amount of sincere compassion, spontaneous helpfulness, pragmatic solidarity, and positive spirit that grassroots football, in the most diverse places, is able to mobilise despite limited means and often insufficient support, was overwhelming and gave testimony to deeply interiorised humanist values.

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36 *Sport and Citizenship Review* no. 56, special issue “Conclusions of the FIRE+ project,” (July 2023): 36-37. Available under [https://footballwithrefugees.eu/wp-content/uploads/2023/08/revue\\_56\\_sport-et-citoyennete\\_web.pdf](https://footballwithrefugees.eu/wp-content/uploads/2023/08/revue_56_sport-et-citoyennete_web.pdf), consulted June 2024.

A simple sentence may sum up the experience: A football club is something to integrate into.

This statement is not only factually correct, but also a very powerful emotional claim. A football club is a place where the long and difficult process of inclusion in a new society may find a beginning. The contribution that football makes to resolving the huge challenge of integrating refugees in Europe is necessarily a modest one. But it occurs at a crucial moment in that process, where the impact is high.

In the best of all cases, as shown by the testimonies gathered all over the two projects, the football club accompanies the process from the beginning to the end: from the first after-training chats with the locals to becoming – often years later – a volunteer in the same club or another one, in another city. From participation to equal access and opportunity. Of course, grassroots football is unable to give any kind of integration guarantee – things may go wrong on the way, and they often do. But if it did not exist, European societies would be the poorer for it.

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# A COMPARISON OF ESPORTS INTEGRITY POLICIES AND PROGRAMS TO THOSE OF TRADITIONAL SPORTS

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## Abstract

The esports landscape is quite different from traditional sports. However, both aim to protect the integrity of their sports and have put integrity policies and programs in place.

This article analyses integrity policies and programs in esports and draws a comparison to traditional sports to the extent possible. In this respect, competition manipulation and doping have been identified as the most comparable integrity threats.

**Keywords:** Esports, Traditional sports, Integrity, Anti-Corruption, Best Practices.


## 1. INTRODUCTION

### 1.1. CONTEXT AND RELEVANCE OF THE STUDY

In the past, the European traditional sports model was established in a pyramidal structure. In German doctrine, this principle is also referred to as the *Ein-Platz-Prinzip*. The principle provides that in each sport, there can be only one federation per geographical level, therefore only one International Federation (IF), only one continental confederation, only one National Federation, and, as the case may be, only one regional federation.<sup>1</sup>

As such, IFs enjoy great freedom in organising themselves and their sports, which also includes establishing rules and regulations, as well as adopting them over time as they deem appropriate. This includes competition regulations of the respective sport, but also the regulations on how their sport is governed, as well as integrity policies and regulations. At the same time, the IF does however not own the sport as such, i.e. football is not owned by the International Football Federation (FIFA).

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1 Margareta Baddeley, *L'association sportive face au droit: les limites de son autonomie* (Bâle: Helbing & Lichtenhahn, 1994).

Esports, on the other hand, does not follow the same principles or structures. As described by Rizzi and de Rugeriis, and outlined in Fig. 1 below, *esports represents a complex ecosystem of IP rights. This complexity is managed through a web of agreements, each of which must “converse with the others to avoid any infringement of third party IP rights.”*<sup>2</sup>

If one were to compare it to traditional sports, publishers would be positioned at the top of the pyramid, with the difference, however, that they fully own the games, and are free to decide who can and cannot use their rights to the games. The decision on who has the right to organise or to play in an esports competition, therefore, ultimately lays fully with the publisher. This point has to be kept in mind when it comes to integrity in esports.

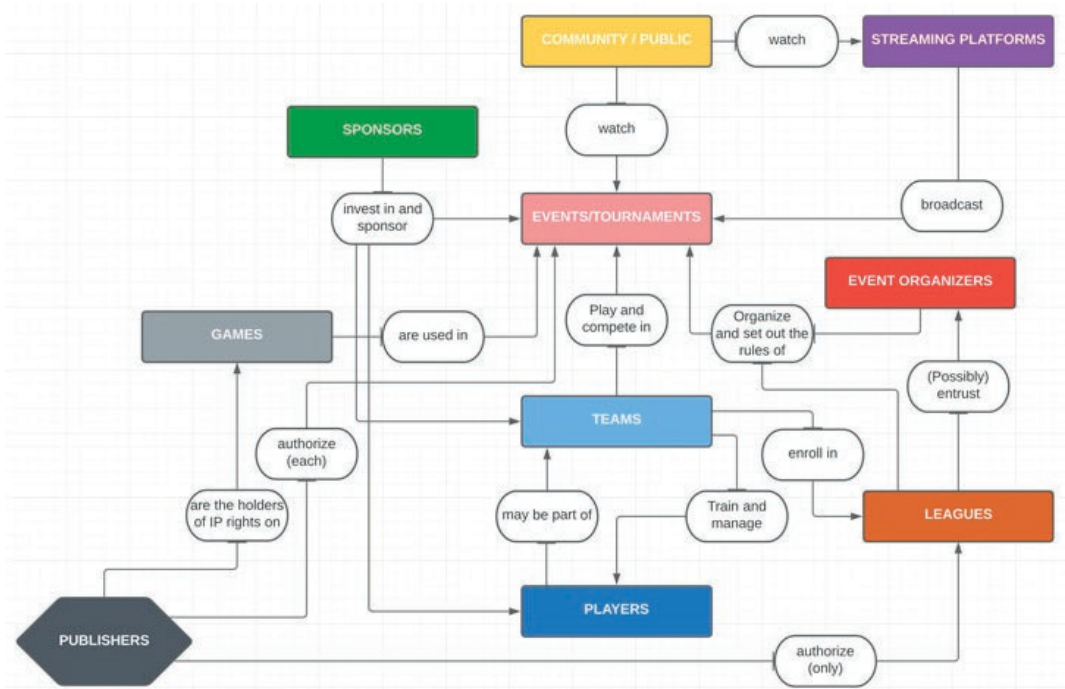


Fig. 1 Complex ecosystem of IP rights. Rizzi and Rugeriis 2022, p. 4

Notwithstanding the foregoing, there are several organisations that aim to become a global or world-wide esports organisation, following somewhat the traditional sports model. For example, the Global Esports Federation (GEF) is one of them.<sup>3</sup> In collaboration with the National Olympic Committees (NOCs), during an internal meeting in May 2023, the GEF reported the affiliation of 134 members.<sup>4</sup> Similarly, according to information on their webpage, the International Esports Federation (IeSF) counts 130 National Federations as its members.<sup>5</sup>

2 Andrea Rizzi, and Francesco de Ruggeriis, “Esports: an overview of a new(ish) frontier in digital entertainment”. *WIPO Magazine*, no. 3 (September 2022), [https://www.wipo.int/wipo\\_magazine/en/2022/03/article\\_0003.html](https://www.wipo.int/wipo_magazine/en/2022/03/article_0003.html).  
 3 Global Esports Federation, <https://www.globalesports.org>.  
 4 The author was invited to attend the meeting as an observer.  
 5 International Esports Federation, <https://iesf.org>.



In 2023, the International Olympic Committee (IOC) also launched the Olympic Esports Series (OES). *The OES is a global virtual and simulated sports competition created by the IOC, and in collaboration with International Federations (IFs) and game publishers.* The virtual sports included in this first series are archery, baseball, chess, cycling, dance, motor sport, sailing, shooting, tennis, and taekwondo.<sup>6</sup> Hence, here traditional sporting organisations are extending their regulatory, development, and competition functions to also include virtual versions of their sports.

Finally, esports is trying to become recognised as sports also on a governmental level. Some examples of where esports are regarded as sports are China, South Korea, Italy, and Denmark.<sup>7</sup>

## 1.2. THE SCOPE AND ANALYSIS METHOD

As previously seen, some merging of traditional sports and esports is currently taking place. However, some specificities in sports integrity might undermine the legitimacy, credibility, and effectiveness of such merging. The question is, thus, how do both activities compare when it comes to integrity?

The scope of this study is, therefore, to analyse integrity policies and programs in esports and draw comparisons to traditional sports where applicable.

For this purpose, the author reviewed the integrity regulations of Riot Games (EMEA) and the ESIC in May 2023. During the analysis of these regulations, the integrity threats of competition manipulation and doping were identified as the most comparable integrity issues also seen in traditional sports. Hence, this article focuses mostly on doping and match-fixing,<sup>8</sup> while taking into account an overall view of integrity threats and programs.

More precisely, this study provides brief introductions to integrity policies and regulations, as well as integrity threats in esports. Then it delves into the coverage of persons under these regulations, offences, and sanctions, as well as disciplinary procedures relevant to Riot Games and the ESIC. Each section concludes with a comparison to traditional sports, and a discussion thereof.

## 2. INTEGRITY POLICIES AND INTEGRITY THREATS

### 2.1. INTEGRITY POLICIES IN ESPORTS

As described by Czegledy, esports integrity policies are primarily adopted by two kinds of entities,<sup>9</sup> game-neutral entities on the one hand, such as the ESIC, and game-specific entities, such as Riot Games. He suggests that when establishing integrity policies game-specific entities were to consider the protection of intellectual property proprietary technology,

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<sup>6</sup> International Olympic Committee, <https://olympics.com/en/esports/>.

<sup>7</sup> See for example <https://www.esports.net/wiki/guides/is-esports-a-sport/>.

<sup>8</sup> In this article, the terms “match-fixing” and “competition manipulation” are used interchangeably, unless otherwise indicated.

<sup>9</sup> Peter K. Czegledy, “Esports Integrity Policies”, *GLR*, no. 4 (2021):161-170.

corporate reputation, and economic value. Whereas, the first category of entities might be expected to have policies that focus more on the actions of individuals.<sup>10</sup>

## 2.2. INTEGRITY THREATS IN ESPORTS

With regard to integrity threats, Czegledy proposes three broad categories of integrity issues in esports, namely (i) technological issues; (ii) player issues; and (iii) institutional issues. He then further divides technological issues as manipulation of software, such as “aimbots,” which provide players with automatic targeting of the opponents, “wallhacks,” which allow players to manipulate properties of in-game wall and other opaque environmental elements to easily locate their opponents or other objects of interest, and “extra sensory perception” or ESP, which allows players to receive information beyond what is permitted by the developer, such as information on player health and the location and status of opponents or objects of interest.<sup>11</sup> Other technological issues include manipulation of hardware, exploitation of in-game bugs and glitches, as well as server attacks, so-called *Distributed denial-of-service (DDOS) attacks*, which occur when a network becomes maliciously flooded with traffic or information so that its intended users are unable to access it.<sup>12</sup>

Player issues include doping, match-fixing, and disabling and abusing opponents. Czegledy describes institutional issues as corruption of technicians and officials, issues with proportionality of sanctions, as well as protection of players, which seems to be lacking.<sup>13</sup>

With respect to the ESIC, prior to its establishment in July 2016,<sup>14</sup> the current ESIC Commissioner, Ian Smith, was commissioned to carry out a threat assessment of esports, in which he identified nine (9) integrity threats, of which the four (4) most significant have been identified as, cheating to win using software cheats, online attacks to slow or disable an opponent, match-fixing, and doping.<sup>15</sup>

## 2.3. TRADITIONAL SPORTS

In traditional sports, integrity policies historically have been established by game-specific entities, with each IF implementing its integrity program in place for its respective sport. Having said that, those sports that are to be included in the Olympic Programme are required to be compliant with the World Anti-Doping Code (WADC) and the Olympic Movement Code on the Prevention of Manipulation of Competitions.<sup>16</sup> In 2016, the International Olympic Committee (IOC) further issued safeguarding guidelines, which are to be implemented by IFs

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10 Czegledy, “Esports Integrity Policies”.

11 Czegledy, “Esports Integrity Policies”.

12 Czegledy, “Esports Integrity Policies”.

13 Czegledy, “Esports Integrity Policies”.

14 ESIC, Esports Integrity Coalition launched with Ian Smith appointed as the first Esports Integrity Commissioner, LawInSport, 5 July 2016, <https://www.lawinsport.com/topics/news/item/esports-integrity-coalition-launched-with-ian-smith-appointed-as-the-first-esports-integrity-commissioner>.

15 Ian Smith, “The mission and role of the Esports Integrity Coalition (ESIC)”. *GSLTR: Global sports law and taxation reports*, no. 3, (September 2017):41-44. See also <https://beta.playthegame.org/media/7492317/Ian-Smith.pdf>.

16 International Olympic Committee. “Olympic Charter”. <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

as a minimum requirement.<sup>17</sup> In addition, integrity programs provide for codes of conduct and/or ethics codes, as well as governance and bidding regulations for certain sports.

Recently, however, an increasing number of traditional sports have decided to create at least operationally independent integrity units.<sup>18</sup> In addition, similar to the ESIC, third-party service providers now offer integrity services on IFs' behalf. One example is the International Testing Agency (ITA) which provides Anti-Doping services for IFs.<sup>19</sup> In addition, there is a growing trend towards outsourcing disciplinary proceedings, which is described further in section 5.3 below.

### **3. THE COVERAGE OF PERSONS UNDER REGULATIONS**

#### **3.1. RIOT GAMES**

Firstly, the author analysed which persons are covered under the respective integrity regulations. For the purpose of this study, the author analysed the regulations of Riot Games which were applied to the League of Legends (LoL) EMEA Championship for the 2023 season.

The persons covered under those regulations are the *Team's Team Managers & Team members and other employees but apply only to official League play and not to other competitions, tournaments or organised play of League of Legends.*<sup>20</sup>

#### **3.2. THE ESIC**

At the time of this research, the ESIC members included a few National Esports Federations, such as the ones of Switzerland, New Zealand, and Portugal, but mostly Tournament Operator Members, including ESL of the ESL FACEIT GROUP, organisers of the ESL Pro Tour for CS:GO, DOTA2 and STARCRAFT II tournaments.<sup>21</sup> Pursuant to Article 1.4, the ESIC Anti-Corruption Code applies to all "Participants," whereas the definition of participants is very broad, and includes

- i. any player who *is a registered user or account holder of any Game published by or offered for play or streamed by an ESIC Member and who plays or has played or attempts to play against another Player in a Match; and/or those players serving an unexpired period of Ineligibility;*
- ii. any Player Support Personnel who *is employed by, represents or is otherwise affiliated to (or who has been employed by, has represented or has been otherwise affiliated to in the preceding twenty-four (24) months) a Team or Player that participates in Matches; and/or those persons serving an unexpired period of Ineligibility;*

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17 International Olympic Committee. "IOC Athlete Safeguarding Guidelines". <https://olympics.com/ioc/safe-sport/assistance-for-olympic-movement-stakeholders>.

18 Erika Riedl, "How sport regulations are being used to restore trust following the International Biathlon Union Scandal" in *Restoring Trust in Sport: Corruption cases and solutions*, ed. Catherine Ordway (London and New York: Routledge, 2021), 48-63.

19 International Testing Agency. <https://ita.sport>.

20 Riot Games – EMEA Competitive Operations. "LEC Rulebook. League of Legends EMEA Championship. 2023 Season Official Rules", <https://www.emea-competitiveops.com>.

21 ESIC, "ESIC Codes", <https://esic.gg/codes/>.

- iii. ESIC Director or ESIC Member Director, Officer, Official, Employee, Agent or Contractor engaged by ESIC or ESIC Member, Administrator, Referee or Technician.<sup>22</sup>

Participants are further bound by the ESIC Anti-Doping Code and remain bound until they have not participated or been involved in a match or event for a period of three (3) months.<sup>23</sup>

While seemingly clear on paper, in practice, jurisdiction over certain individuals can be very complex, according to the ESIC Commissioner. For example, in those cases where a participant breaches the ESIC Anti-Corruption Code while playing in a match organised by a company that is not an ESIC member but seeks to play in an ESIC-member-controlled match.<sup>24</sup>

### 3.3. TRADITIONAL SPORTS AND DISCUSSION

In traditional sports, the coverage of persons under integrity regulations varies greatly. This has also been confirmed by Kuwelker et al. in their study on competition manipulation in IF's regulations.<sup>25</sup> At times, it concerns those participating in an event, other times it also includes officers of the IF, and sometimes it includes all athletes, support personnel and officers in the sport, including those on a national level.<sup>26</sup> In addition, in athletics for example, the persons covered under the Integrity Code of Conduct also include *Persons and entities bidding to host, or hosting, International Competitions, as well as such other persons who agree in writing to be bound by this Integrity Code of Conduct (...)*.<sup>27</sup> However, pursuant to Article 2.1 of the Integrity Code of Conduct, the code shall only apply to the Area Officials and Member Federation Officials limited to their relations or dealings with the World Athletics.

The World Athletics Anti-Doping Rules also include the Athletics Integrity Unit (AIU) Board, employees of the AIU, and consultants and advisors of the AIU, as well as Delegated Third Parties and their employees who are involved in any aspect of doping control and/or anti-doping education.<sup>28</sup> With regard to competition manipulations, and as confirmed by jurisprudence in this respect, clubs, i.e., not only physical persons, might also be sanctioned for these types of violations.<sup>29</sup>

In fact, many traditional sports have considered it a challenge to pursue the conducts of persons not affiliated with their sport, as the IF lacks jurisdiction over those persons. In order to bind those persons, in 2021, the International Cricket Council (ICC) introduced an Excluded Person Policy for those individuals in the ICC Anti-Corruption Code. This policy allows the ICC

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22 ESIC, "ESIC Codes".

23 ESIC, "ESIC Codes".

24 Smith, "The mission and role of the Esports Integrity Coalition (ESIC)".

25 Surbhi Kuwelker, Madalina Diaconu, and André Kuhn, "Competition manipulation in international sport federations' regulations: a legal synopsis", *The International Sports Law Journal* 22, no. 4 (2022):288-313, <https://doi.org/10.1007/s40318-022-00210-9>.

26 Riedl, "How sport regulations are being used to restore trust following the International Biathlon Union Scandal", 52.

27 Athletics Integrity Unit. "World Athletics Integrity Code of Conduct", <https://www.athleticsintegrity.org/know-the-rules/understand-the-rules-of-governance>.

28 Athletics Integrity Unit. "World Athletics Anti-Doping Rules", <https://www.athleticsintegrity.org/know-the-rules/understand-the-anti-doping-rules>.

29 Kuwelker, Diaconu, and Kuhn, "Competition manipulation in international sport federations' regulations: a legal synopsis", 294-295.

to conduct an investigation into the activities of any non-Participant that it reasonably believes may be a genuine threat to the integrity of the sport (for example but without limitation, where such individual is actively involved in attempting to corrupt Participants, or where he/she acts as an intermediary for someone actively involved in attempting to corrupt cricket). The ICC may issue an Exclusion Order, which will exclude the person from having any role in cricket, including financing any cricket league, tournament, event, or match, as well as from attending any match as a spectator.<sup>30</sup>

The question arises, whether an entire team in esports could be sanctioned for integrity reasons. As seen above, both Riot Games and the ESIC have jurisdiction over individuals only. The rules of Riot Games, however, allow for the exclusion of teams under eligibility requirements, which, in the author's view, could also include integrity issues. Thus, this could end up with similar outcomes as described with regards to clubs in traditional sports. In fact, the League may, at its sole discretion, deny admission.<sup>31</sup> Nonetheless, in the author's view, it would be advisable to establish clear rules in this regard. In contrast, specific rules do exist for team exclusion when it comes to poaching of players, a threat outlined further in section 4.1 below.

## **4. OFFENCES AND SANCTIONS**

### **4.1. RIOT GAMES**

In the following section, the author explores the sanctions available under different integrity programs. Starting with Riot Games, the regulations specify the following categories of sanctions:

- *Verbal Warning*
- *Loss of Side Selection for current or future Game(s)*
- *Loss of Ban(s) for Current or Future Game(s)*
- *Fine(s) and/or Prize Forfeiture(s)*
- *Game and/or Match Forfeiture(s)*
- *Suspension(s)*
- *Disqualification(s)*

More specifically, Riot Games provides a LEC Penalty Index and/or the Global Penalty Index for major infractions according to its rules.<sup>32</sup> When looking at the LoL Esports Global Penalty Index,<sup>33</sup> Ongoing Misconduct, which is defined as major repeated instances of unacceptable behaviour towards another person or persons, and Extreme Misconduct, which is defined as a single instance of extraordinarily inappropriate behaviour, are punished with a suspension of three (3) to ten (10) competitive months. The statute of limitation for these offences is one

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30 International Cricket Council. "ICC Anti-Corruption Code for Participants". <https://www.icc-cricket.com/about/integrity/anti-corruption/the-code-pmoa>.

31 Riot Games – EMEA Competitive Operations. "LEC Rulebook. League of Legends EMEA Championship. 2023 Season Official Rules".

32 Riot Games – EMEA Competitive Operations. "LEC Rulebook. League of Legends EMEA Championship. 2023 Season Official Rules".

33 Riot Games – EMEA Competitive Operations. "League of Legends Esports Global Penalty Index", <https://www.emea-competitiveops.com>.

(1) year.<sup>34</sup>

Riot Games imposes so-called life bans which are foreseen for match-fixing and cheating in professional play offences. Riot Games defines match-fixing as *influencing or attempting to perversely influence the outcome of a match*, and cheating in professional play as, *the utilization of any illicit in or out-of-game technique to affect competitive play in a majorly impactful way*,<sup>35</sup> such as electronic signaling, hacks, etc. The minimum suspension foreseen for those offences is ten (10) competitive months, which effectively translates to a one (1) year suspension, as all months but November and December are considered competitive months. The maximum suspension is indefinite, and the statute of limitations for these offences is three (3) years.

Whereas, when it comes to *colluding with other teams or individuals to manipulate ranked rating for the purpose of entering a sanctioned qualifier*, the sanction range is five (5) to ten (10) competitive months, with a statute of limitation of one (1) year. Finally, wagering on semi-professional or professional games, carries the same sanctions as the production, usage, distribution of non-compliant programs such as hacks, exploits in public play,<sup>36</sup> namely ten (10) to twenty (20) competitive months. The statute of limitation for these offences is also one (1) year.

According to the sanctions recorded by Riot Games for the EMEA region at the time of research, five (5) individuals have been suspended for life, of which three (3) for match-fixing and collusion, one (1) for extreme toxicity, and the remaining for toxic behaviour & harassment.<sup>37</sup>

Another esports specific category of sanctions concerns the poaching of players while under contract by another team. In this regard, three offences are outlined on the LoL Esports Global Penalty Index, namely firstly, concerning a player intensively tampering with or poaching another player,<sup>38</sup> secondly, a non-player team affiliate intensively tampering or poaching a

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34 Examples of Ongoing Misconduct include repeated instances of in-game toxicity despite repeated minor penalties and warnings, whereas Extreme Misconduct examples include credible death threats, physical violence, extreme bigotry, or speech intended to incite violence against a person or group of persons.

35 Riot Games – EMEA Competitive Operations. "League of Legends Esports Global Penalty Index".

36 Defined as *utilizing software, scripts, hacks, DDoS attacks, exploits or other techniques against the League of Legends Terms of Service or that majorly harm and undermine the competitive integrity of play and any LoL realm or server, including public play on the Live environment*.

37 EMEA Penalty Tracker. The match-fixing seems to concern a Greek match manipulation case; see for example <https://win.gg/news/riot-makes-competitive-ruling-on-greek-match-manipulation-case/>.

38 *No current player or inactive player may solicit, lure, or make an offer of employment to any official coach or player who is contracted to a team through a league-recognized contract, nor encourage any such official coach or player to breach or otherwise terminate a contract with said team. Violations of this rule shall be subject to penalties, at the discretion of league officials. To inquire about the status of an official coach or player from another team, managers must contact the management of the team that the player and/or official coach is currently contracted with. In this context, "intensive" is understood to be a credible, directed, and earnest attempt to make an offer of employment to a coach or player who is under a league-recognized contract. For the avoidance of the doubt, any discussion of contractual relations, whether that pertains to the current contractual status or future potential employment after the duration of an active contract, is impermissible.*

player,<sup>39</sup> and thirdly a player or coach enticing or soliciting teams to poach player or coach.<sup>40</sup> For the first and third offence the suspension ranges are from five (5) and three (3) to ten (10) competitive months respectively. The sanction for the second offence is a minimum ten (10) competitive month suspension, in addition to acquisition being blocked, and a large organizational fine at the League's discretion. Furthermore, the League may deny entry or presence into Riot-sanctioned leagues in any official capacity. The suspension range goes all the way to an indefinite suspension.

Extenuating or aggravating circumstances may qualify for a reduction or increase in the length of suspensions. *However, those actions that have already been penalized and occurred more than 1 calendar year in the past will not be considered aggravating.*<sup>41</sup>

At the time of this research, Riot Games seems not to have introduced any specific anti-doping regulations. The LoL rules in Article 12.2.8 provide that *A Team Member/Member may not engage in any activity which is prohibited by common law, statute, or treaty and which leads to or may be reasonably deemed likely to lead to conviction in any court or competent jurisdiction. This includes but is not limited to the use of substances prohibited by law in Germany any other potentially applicable jurisdiction.* In Germany, the Anti-Doping Act came into force on 10 December 2015, thus, doping has been considered a criminal offence since then.<sup>42</sup> However, whether the Anti-Doping Act applies to esports seems unclear,<sup>43</sup> and it has been discussed as being negative since esports would not fall within the definition of "sports" under the Anti-Doping Act. That said, narcotics laws still apply, which do however not prohibit the presence of narcotics, but criminalise only the possession and distribution of those substances.<sup>44</sup>

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39 *No team Member or affiliate of a team (excluding players) may solicit, lure or make an offer of employment to any official coach or player who is contracted to a team through a league-recognized contract, nor encourage any such official coach or player to breach or otherwise terminate a contract with said team. Violation of this rule shall be subject to penalties, at the discretion of LCS officials. To inquire about the status of an official coach or player from another team, managers must contact the management of the team that the player and/or official coach is currently contracted with. In this context, "intensive" is understood to be a credible, directed, and earnest attempt to make an offer of employment to a coach or player who is under a league-recognized contract. For the avoidance of the doubt, any discussion of contractual relations, whether that pertains to the current contractual status or future potential employment after the duration of an active contract, is impermissible.*

40 *A player or coach under a league-recognized contract attempting to negotiate or solicit an offer of employment from another current or prospective League of Legends team. An official coach or player may express publicly their desire to leave the team and encourage in a general fashion (i.e. not toward a specific team) any and all interested parties to contact their management. But, to be clear, the official coach or player may not entice a team directly to reach out to their contractual obligations. For the avoidance of the doubt, any discussion of contractual relations, whether that interferes with the current contract or entails offers of future employment after the duration of an active contract, is impermissible.*

41 Riot Games – EMEA Competitive Operations. "League of Legends Esports Global Penalty Index".

42 NADA. "Anti-Doping Act (AntiDopG)". <https://www.nada.de/en/legal-matters/anti-doping-law>.

43 Ruppert Felix, "Drei Tage Wach? Zur Strafbarkeit von Doping im eSport". *Spurt: Zeitschrift für Sport und Recht*, no. 3, (2020):106-111.

44 Bundesministerium der Justiz – Bundesamt für Justiz. "Gesetz über den Verkehr mit Betäubungsmitteln (narcotics law Germany)", [https://www.gesetze-im-internet.de/btmg\\_1981/](https://www.gesetze-im-internet.de/btmg_1981/). See for example also <https://www.lto.de/recht/hintergruende/h/doping-im-e-sport-verbot-sperren-juristische-grundlagen-ueberblick/>.

## 4.2. THE ESIC

The ESIC rules provide for a code of ethics, a code of conduct, an anti-corruption code, and an anti-doping code. While the code of ethics governs the conduct of persons serving on the executive board of ESIC,<sup>45</sup> the other codes apply to the Participants.

Depending on the gravity of the conduct, offences under the code of conduct are divided into four (4) levels. The severity of the sanctions imposed corresponds to the level of the offence with higher-level offences, receiving more severe sanctions. The sanction will also be increased for repeat offenders within a period of twenty-four (24) months, as outlined in Fig. 2 below. The same period of time will be taken into consideration for the accumulation of suspension points. Any fines are directly deducted from the prize money due to the player and redistributed amongst all other players/teams eligible for prize money in the relevant match or event.<sup>46</sup>

Swearing is for example considered a Level 1 offence, whereas, Level 2 offences include the *deliberate and malicious distraction or obstruction of another Participant during a Match*, but also *Any attempt to manipulate a Match for inappropriate strategic or tactical reasons*, such as when a player or a team deliberately loses a pool match in an event in order to affect the standings of other players or teams in that event. Intimidation of any participant and a threat of assault on another participant or any other person are considered Level 3 infractions, while physical assault and acts of violence are considered Level 4 offences. Depending on the nature and seriousness of the *cheating or attempting to cheat to win a Game or Match*, the conduct is categorised as either a Level 3 or a Level 4 offence. Examples of these types of cheating include map hacks, aimbots, ghosting, or any external software that directly tampers with the game software to gain an advantage in the game.<sup>47</sup>

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45 ESIC, "ESIC Codes".

46 ESIC, "ESIC Codes".

47 ESIC, "ESIC Codes".



Level of Offence	Range of Sanctions (first offence)	Range of Sanctions (second offence)	Range of Sanctions (third offence)	Range of Sanctions (fourth and subsequent offences)
<b>Level 1</b>	<b>Warning/reprimand</b> and/or a <b>fine</b> of up to 25% of Match and/or Event prize money (or equivalent for non-Players)	<b>Fine</b> of up to 50% of Match and/or Event prize money (or equivalent) and/or <b>2 Suspension Points</b>	<b>Fine</b> of up to 100% of Match and/or Event prize money (or equivalent) and/or <b>2-8 Suspension Points</b>	<b>Fine</b> of any size and/or <b>8 Suspension Points</b> and/or <b>suspension</b> from the Game and/or Event/s for up to 12 months
<b>Level 2</b>	A <b>fine</b> of up to 50% of Match and/or Event prize money (or equivalent) and/or up to two (2) <b>Suspension Points</b> .	A <b>fine</b> of up to 100% of Match and/or Event prize money (or equivalent) and/or <b>2-8 Suspension Points</b>	Eight (8) <b>Suspension Points</b> or <b>suspension</b> from the Game and/or Event/s for up to 12 months	<b>suspension</b> from the Game and/or Event/s of between 1 and 5 years.
<b>Level 3</b>	A <b>fine</b> of up to 100% of Match and/or Event prize money (or equivalent) and/or up to four (4) <b>Suspension Points</b>	Eight (8) <b>Suspension Points</b> or <b>suspension</b> from the Game and/or Event/s for up to 12 months	<b>suspension</b> from the Game and/or Event/s of between 1 and 5 years.	<b>suspension</b> from the Game and/or Event/s up to a lifetime.
<b>Level 4</b>	A <b>fine</b> of up to 100% of Match and/or Event Prize money (or equivalent) and/or between 4 and 8 <b>Suspension Points</b> and/or <b>suspension</b> from the Game and/or Event/s of up to 24 months	<b>suspension</b> from the Game and/or Event/s and/or any Game/s and/or and Event/s and/or all Esports of between one (1) year and a lifetime	Up to a lifetime suspension from all Esports	n/a

Fig. 2 Sanctions according to Article 7 of the ESIC Code of Conduct

The ESIC Anti-Corruption Code, on the other hand, foresees four (4) categories of sanctions, namely Corruption, Betting, Misuse of Inside Information, and others.<sup>48</sup> Under ESIC rules the term corruption is defined as:

*2.1.1 Fixing or contriving in any way or otherwise influencing improperly, or being a party to any agreement or effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any Match, including (without limitation) by deliberately underperforming therein.*

*2.1.2 Ensuring for Betting or other corrupt purposes the occurrence of a particular incident in a Match or Event. (...)*

*2.1.3 Seeking, accepting, offering or agreeing to accept any bribe or other Reward to: (a) fix or to contrive in any way or otherwise to influence improperly the result, progress, conduct or any other aspect of any Match; or (b) ensure for Betting or other corrupt purposes the occurrence of a particular incident in a Match.*

*2.1.4 Directly or indirectly soliciting, inducing, enticing, instructing, persuading, encouraging or*

48 ESIC, "ESIC Codes".

*intentionally facilitating any Participant to breach any of the foregoing provisions of this Article 2.1.*<sup>49</sup>

Individuals will be sanctioned with a period of ineligibility ranging from two (2) events to a lifetime. Betting, on the other hand, carries a period of ineligibility from two (2) events to two (2) years, while the misuse of inside information range of sanctions spans from no minimum period of ineligibility to three (3) years.<sup>50</sup>

The fourth category of offences includes giving or providing gifts, payments, hospitality, or other benefits to procure, directly or indirectly, any breach of the ESIC Anti-Corruption Code, failing to disclose to ESIC the receipt of any such gifts, payments, hospitality, or other benefits, as well as failing to disclose in general any gifts, hospitality, or benefits that have a value of USD 500 or more.

In addition, participants have the obligation to report to ESIC any approaches or invitations received by the *Participant to engage in Corrupt Conduct under the Anti-Corruption Code*, as well as to disclose *full details of any incident, fact, or matter that comes to the attention of a Participant that may evidence Corrupt Conduct under the Anti-Corruption Code by another Participant (...)*. Failing to report such approaches and incidents is considered an offence,<sup>51</sup> which is punishable with a period of ineligibility from two (2) events to five (5) years.

Interestingly, the ESIC Anti-Corruption Code requires individuals to undergo education sessions and additional reasonable and proportionate monitoring procedures prior to becoming re-eligible.<sup>52</sup> Rehabilitation programs, education, and social work have also been included by some IFs in their rules as measures for competition manipulations.<sup>53</sup> Similarly, in anti-doping, rehabilitation measures are foreseen for so-called *Substances of Abuse*, a category introduced with the 2021 WADC. If an Athlete undergoes a Substance of Abuse treatment program, the sanction for those substances may be reduced to one (1) month, provided that the use of those substances occurred out-of-competition and was unrelated to sport performance.<sup>54</sup>

While the use of doping in esports seems to be widely confirmed, the performance-enhancing effects are still discussed, with further scientific studies wanted.<sup>55</sup> Esports are generally compared with mind sports, like chess and poker, when it comes to performance-enhancing substances. In these sports, stimulants that increase attention and suppress fatigue and tiredness are seen as the most helpful category of substances for enhancing performance.<sup>56</sup> Esports players themselves have admitted to playing better when taking Adderall, for

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49 ESIC, "ESIC Codes".

50 ESIC, "ESIC Codes".

51 ESIC, "ESIC Codes".

52 ESIC, "ESIC Codes".

53 Kuwelker, Diaconu, and Kuhn, "Competition manipulation in international sport federations' regulations: a legal synopsis", 299.

54 World Anti-Doping Agency. "World Anti-Doping Code 2021". Accessed 7 June 2023. [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).

55 Fashina Oluwatamilore, "Doping in Esports: How and to What Extent Can We Look to WADA for Guidance". *Sports Law.J.* 28 (17 May 2021).

56 Jana Heene, "Gehirndoping im Denk- und E-Sport: zur Konzeption adäquater Anti-Doping Regelwerke". *Spurt: Zeitschrift für Sport und Recht*, no. 3, (2016):98-103.

example.<sup>57</sup> Even leaving the potential for performance enhancement aside, if one were to apply the three criteria for which substances are put on the WADA Prohibited List, the remaining two, i.e., health risk and violation of the spirit of the sport would certainly be fulfilled.<sup>58</sup>

Contrary to the extensive WADA Prohibited List, the ESIC Esports Prohibited List is limited to the following substances (examples of brand names):<sup>59</sup>

- *Amphetamine sulfate (Evekeo)*
- *Dextroamphetamine (Adderall and Adderall XR)*,
- *Dexedrine, (ProCentra, Zenzedi)*
- *Dexmethylphenidate (Focalin and Focalin XR)*
- *Lisdexamfetamine (Vyvanse)*
- *Methylphenidate (Concerta, Daytrana, Metadate CD and Metadate ER, Methylin and Methylin ER, Ritalin, Ritalin SR, Ritalin LA, Quillivant XR)*
- *Modafinil and armodafinil.*

While generally following the principles of the WADC, there are a few major distinctions in the ESIC Anti-Doping Code. Firstly, under the ESIC Anti-Doping Code, *Prohibited Association* is not considered a violation *per se*, but only adverse inference may be drawn by the panel deciding the case. Therefore, the rules suggest avoiding any association with persons who are banned by ESIC for a doping offence or any other Anti-Doping Organisation, or who appear on the WADA warning list.<sup>60</sup> The ESIC Anti-Doping Code does not include the newly added violation of "Retaliation," which was included in the 2021 WADC.<sup>61</sup>

Furthermore, pursuant to Article 6.6 of the ESIC Anti-Doping Code, the Integrity Commissioner may recommend that a player undergoes at his own expense a programme of assessment, counselling, treatment, or rehabilitation, without referring the case to discipline, where it concerns a case of recreational drugs.

Finally, the range of sanctions is the same as for a Level 4 offence in the code of conduct, i.e., technological cheating. For a first offence a fine of up to 100% of a Match and/or Event Prize money (or equivalent) and/or between four (4) and eight (8) Suspension Points and/or a fixed term of suspension from the Game and/or Event/s of up to twenty (24) months is foreseen, while a second offence carries a period of ineligibility between 1 year and a lifetime, and a third offence up to a lifetime suspension from all esports.<sup>62</sup> When determining the sanction, the Integrity Commissioner or Panel will take into account any other factors that they deem relevant and appropriate for mitigating or aggravating the nature of the Anti-Doping Policy offence.<sup>63</sup>

While aggravating and mitigating factors do play a role in traditional sports that implement anti-doping rules in compliance with the WADC, the primary factors determining the sanction

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57 Timo Schöber, and Georg Stadtmann, "The dark side of esports – An analysis of cheating, doping, match-fixing, and their countermeasures". *International Journal of Esports* 1, no. 1 (2022).

58 World Anti-Doping Agency, "WADA Prohibited List FAQ". <https://www.wada-ama.org/en/prohibited-list>.

59 ESIC, "ESIC Codes".

60 ESIC, "ESIC Codes".

61 World Anti-Doping Agency, "World Anti-Doping Code 2021".

62 ESIC, "ESIC Codes".

63 ESIC, "ESIC Codes".

are the type of Prohibited Substance, i.e., whether it concerns a Specified or non-Specified Prohibited Substance, Intent, as well as the degree of Fault or Negligence.<sup>64</sup>

For example, Adderall contains Amphetamine and Dexamphetamine, which are listed under Stimulants in S6.A on the WADA Prohibited List and considered Non-Specified Substances, prohibited In-Competition only. This means that under the WADC, the starting sanction is four (4) years. If the Athlete can show that the violation was not intentional, the maximum sanction is up to two (2) years. If the Athlete can also establish No Fault or Negligence, which only applies in exceptional circumstances, then no period of ineligibility would apply. If the Athlete can establish No Significant Fault or Negligence a period of Ineligibility between one (1) and two (2) years applies. Only in cases of Contaminated Products can a reprimand be issued, with no period of Ineligibility or a maximum period of up to two (2) years.<sup>65</sup> Technically speaking, the maximum period of ineligibility is, therefore, double the length under the WADC in comparison to the ESIC sanctions, i.e., two (2) versus four (4) years of Ineligibility.

### 4.3. TRADITIONAL SPORTS AND DISCUSSION

In traditional sports, one of the main purposes of the WADC is to ensure harmonisation in anti-doping, including the uniformity of violations and sanctions.<sup>66</sup> The IOC's aim in issuing the 2018 Guidelines for Sports Organisations on the Sanctioning of Competition Manipulation (IOC Sanctioning Guidelines)<sup>67</sup> was the same, i.e., to achieve some degree of harmonisation in the sanctions applied to competition manipulation.

For example, according to the IOC Sanctioning Guidelines, offences related to manipulation of sports competitions and corrupt conduct recommend sanctions of approximately a four (4) year ban and a fine for betting-related conduct, and approximately a two (2) year ban and a fine for sport-related conduct, subject to mitigating and aggravating circumstances.<sup>68</sup> However, according to research by Kuwelker et al., most competition manipulation related decisions at the IF level for those sports where match-fixing is ripe, i.e. football, tennis, cricket, and badminton, have seen life bans or at least career-ending bans.<sup>69</sup>

As previously described, the sanctions for match-fixing according to the LoL Global Esports Penalty Index range from ten (10) competitive months to indefinite, while the same conduct under the ESIC Anti-Corruption Code provides for a period of ineligibility from two (2) events to lifetime.

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64 Antonio Rigozzi, Ulrich Haas, Emily Wisnosky, and Marjolaine Viret, "Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code". *The International Sports Law Journal* 15, no. 1 (2015): 3-48. <https://doi.org/10.1007/s40318-015-0068-6>.

65 Rigozzi, Haas, Wisnosky, and Viret, "Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code". 15-19.

66 World Anti-Doping Agency. "World Anti-Doping Code 2021".

67 International Olympic Committee. "IOC Guidelines for Sports Organisations on the Sanctioning of Competition Manipulation". <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Protecting-Clean-Athletes/Competition-manipulation/Sanctioning-Guidelines-EN.pdf>.

68 International Olympic Committee. "IOC Guidelines for Sports Organisations on the Sanctioning of Competition Manipulation", 11-13.

69 Kuwelker, Diaconu, and Kuhn, "Competition manipulation in international sport federations' regulations: a legal synopsis", 299-300.

As seen, sports-related manipulation<sup>70</sup> in traditional sports carries a ban of two (2) years. The offense of “tactical loss” has also been included in the Council of Europe’s Convention on the Manipulation of Sport Competitions (Macolin Convention), and as such, has been included as a criminal offence in countries that have ratified the convention, such as Switzerland for example. Whether a tactical loss should be considered a crime is widely discussed and has been openly criticised by scholars. It has been suggested that such behaviour should rather be sanctioned by the relevant sporting regulations or preferably, lead to a change of the rules of the game and/or conduct of a competition.<sup>71</sup>

Both, ESIC and Riot Games, clearly distinguish match-fixing from tactical losses. ESIC includes the latter as a Level 2 offence in its code of conduct rather than in the anti-corruption code. A Level 2 offence involves any attempt to manipulate a Match for inappropriate strategic or tactical reasons. To recall, a first offence is punishable with only a fine of up to 50% of a Match and/or Event prize money (or equivalent) and/or up to two (2) Suspension Points. Riot Games has a similar offence called Ranked Ladder Manipulation for Qualifiers, a stand-alone offence from match-fixing, which is sanctioned with a suspension of 5 to 10 competitive months.

Like many anti-corruption codes in traditional sports,<sup>72</sup> participants have a reporting obligation under Article 2 of the ESIC Anti-Corruption Code. Failure to report constitutes an offence. While ESIC includes any approaches or invitations received by a participant or known to a participant concerning another participant, the anti-corruption code in tennis goes even further and explicitly prohibits those covered by the code from dissuading or preventing any other covered person from complying with any reporting obligation,<sup>73</sup> i.e., similar to the Retaliation offence in anti-doping. The respective regulations analysed by Riot Games are silent on any reporting obligations and do not appear to sanction any such conduct.

As outlined in section 4.2 above, failure to report is sanctioned with a suspension ranging from two (2) events to a maximum of up to five (5) years. In traditional sport, according to an analysis by Haas and Hessert, the basic sanction deriving from CAS jurisprudence and international association tribunals for failure to report ranges from six (6) to twelve (12) months.<sup>74</sup> The IOC Sanctioning Guidelines recommend a ban ranging from 0 to two (2) years and a fine.<sup>75</sup>

Failure to cooperate has to be distinguished from a failure to report. The purpose of the duty to cooperate is ultimately for the sports organisation to determine whether a match manipulation has occurred, and thus facilitate investigations by sports organisations.<sup>76</sup> In this respect, the

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70 *Sports related manipulation means manipulation for the sake of competitive advantage e.g. by underperforming in the early stages of a tournament, a Participant or a team may be attempting to get an easier opponent in the later stages of the tournament. The disciplinary body should always be clear on what constitutes manipulation and what distinguishes it from the sports strategy and tactics.*

71 Madalina Diaconu, and André Kuhn. “Match-fixing, the Macolin Convention and Swiss Law: An Overview”. *Jusletter* (16 September 2019).

72 International Tennis Integrity Agency. “Tennis Anti-Corruption Program (TACP)”. <https://www.itia.tennis/tacp/rules/>.

73 International Tennis Integrity Agency. “Tennis Anti-Corruption Program (TACP)”.

74 Ulrich Haas, and Björn Hessert. “Sanctioning regime in match-fixing cases”. *Jusletter* (21 June 2021).

75 International Olympic Committee. “IOC Guidelines for Sports Organisations on the Sanctioning of Competition Manipulation”.

76 Haas, and Hessert, “Sanctioning regime in match-fixing cases”, 8-10.

IOC Sanctioning Guidelines distinguish between a failure to provide requested assistance, where the same sanction as for a failure to report is recommended, while obstructing or delaying investigation should be punished with a ban from 1-2 years and a fine.

Regarding cooperation duties, disciplinary proceedings from sports organisations have to be distinguished from potential criminal proceedings that may be initiated for the same conduct depending on national laws with regard to match-fixing and doping. Sports organisations and law enforcement agencies might share intelligence or investigation results with each other. Hessert argues that *the forced nature of the disclosure of all kind of information, including self-incriminating information, plays a significant role in answering the question whether the exchange of information between sports organisations and law enforcement agencies is compatible with the defence rights of athletes in criminal proceedings*. He suggests that the best solution is to permit the forced provision of information for the purpose of finding the truth in internal sport investigations. Simultaneously, sports organisations should adhere to the principle of *nemo tenetur se ipse accusare*, refraining from sharing self-incriminating information with law enforcement agencies.<sup>77</sup>

The other end of the scale seems to be athletes, support personnel, and at times also sport administrators, who are trying to conceal conduct, such as doping. The AIU has, for example, prosecuted several cases where medical documents were forged, dates on emails altered, fake doctors, hospital appointments, and treatments put forward.<sup>78</sup> In fact, tampering or attempted tampering with any part of the doping control by an athlete or other person, which includes tampering during the results management process, is considered a separate anti-doping rule violation under the WADC.<sup>79</sup> This might lead to athletes being suspended for eight (8) years or even longer, instead of four (4) years, i.e., for the presence of a prohibited substance and for tampering.

## 5. DISCIPLINARY PROCEDURES

### 5.1. RIOT GAMES

Riot Games rules provide for a review procedure upon the League's determination of a Major Rules Violation, i.e., in a first instance the League decides of any violation and sanctions thereof. The review procedure is either Expedited, i.e., completed within 24 hours, or Non-Expedited. It is the League that will form a committee consisting of three non-case related Rioters. For Non-Expedited review, the League forms a committee comprising a representative from the affected team, a league representative, and an agreed-upon third party. Reviews are not *de novo*, and no new evidence is allowed during this procedure.<sup>80</sup>

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77 Björn Hessert, "The exchange of self-incriminating information of athletes between sports organisations and law enforcement". *The International Sports Law Journal* 22, no. 1 (2022):5-16, <https://doi.org/10.1007/s40318-021-00194-y>.

78 David Howman, "Tampering in Athletics doubles an Athlete's trouble – and then some!", issued 17 April 2023, <https://www.athleticsintegrity.org/downloads/pdfs/other/SHINING-A-LIGHT-SERIES-No.1-Tampering-by-David-Howman.pdf>.

79 World Anti-Doping Agency, "World Anti-Doping Code 2021".

80 Riot Games – EMEA Competitive Operations. "LEC Rulebook. League of Legends EMEA Championship. 2023 Season Official Rules".

## 5.2. THE ESIC

The ESIC, on the other hand, has established specific regulations for disciplinary procedures, providing for either a Simple Procedure or a Full Procedure.<sup>81</sup> The Simple Procedure applies to alleged Level 1 or Level 2 code of conduct offences in which the Integrity Commissioner makes decisions regarding whether a violation occurred and the extent of the sanction. The aim of the Simple Procedure seems to be to deal with the matters within a short time frame. In fact, the rules foresee that a hearing (if any) is to be held within thirty-six (36) hours of the Notice of Charge, and a decision is to be issued by the Integrity Commissioner no later than forty-eight (48) hours from the conclusion of the hearing. Decisions for Level 1 offences are not appealable.

The Full Procedure applies to alleged Level 3 and Level 4 offences under the ESIC Code of Conduct, alleged breaches of the ESIC Anti-Corruption Code, and alleged violations under the ESIC Anti-Doping Policy. The chairman of the ESIC Panel (its appointment is outlined further below) appoints one member to sit as the adjudicator to hear the case concerning an alleged Code of Conduct violation. For serious Code of Conduct cases, as well as for alleged violations of the Anti-Corruption Code or Anti-Doping Code, a three-member panel hears the case. Similar to the Simple Procedure, the adjudicator is to issue a decision within forty-eight (48) hours from the conclusion of the hearing, and the hearing should take place no longer than fourteen (14) days from the receipt of the Notice of Charge. Except for a first Level 1 offence under the Code of Conduct, all decisions are appealable to an Appeal Panel, which decides matters on a *de novo* basis. The procedural time limits are as follows. The Notice of Appeal must be lodged with the Integrity Commissioner within forty-eight (48) hours of receiving the decision. Within forty-eight (48) hours of receiving the Notice to Appeal an Appeal Panel is to be appointed. An appeal hearing shall commence no later than seven (7) days from the appointment of the Appeal Panel. Any decisions made by the Appeal Panel are final and binding.

As the ESIC Disciplinary Procedure describes in its introductory section, the ESIC Panel is made up of *legally experienced, independent individuals from various jurisdictions*. Where a three-member panel is to be appointed the chairman of the panel shall be appointed by the chairman of the ESIC Panel, one member shall be nominated by the accused party, and the remaining member shall be nominated by the Integrity Commissioner.<sup>82</sup>

## 5.3. TRADITIONAL SPORTS AND DISCUSSION

In traditional sports, IFs establish bodies or organs, so-called association tribunals, which are competent to make certain decisions, including regulatory decisions, disciplinary decisions, etc.<sup>83</sup> Depending on the IF, there may be either a single level only, or the possibility to appeal decisions internally within the IF, similar to the case of ESIC's Appeal Panel.

The lack of harmonisation in dispute resolution mechanisms within IFs has also been

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81 ESIC, "ESIC Codes".

82 ESIC, "ESIC Codes".

83 Erika Riedl, "Association Tribunals", in *Encyclopedia of Sports Law*. Elgar Concise (forthcoming).

confirmed by Kuwelker et al. with regard to match-fixing. They found that some IFs, such as the International Table Tennis Federation (ITTF), have procedures unique to manipulation offences. Others have a combination of specific regulations and certain provisions that apply to uniform procedures or sanctions, or make specific exemptions. The rest, such as tennis under the TACP, have uniform processes for all disciplinary and/or other disputes within the federation.<sup>84</sup>

Final decisions of association tribunals may be appealable to arbitration tribunals, such as the Court of Arbitration (CAS), or to ordinary courts. Pursuant to R47 of the Code of Sports-related Arbitration (CAS Code), the requirement for such an appeal is, in addition to an arbitration clause in the statutes or regulations of the IFs or a specific arbitration agreement, the legal remedies available within the federations' internal dispute resolution mechanisms must have been exhausted.<sup>85</sup>

In equestrian, for example, minor cases may be administratively processed via a so-called Administrative Disciplinary Procedure, where the sanctions include, but are not limited to, a warning, a fine not exceeding 2,000 Swiss Francs, or a suspension of up to three-months. This includes breaches of the FEI Code on the Manipulation of Competitions for which sanctions from a warning to life might be imposed, as well as a fine from 1,000 to 15,000 Swiss Francs.<sup>86</sup> One can expect that the aim of simplified procedures, such as the one used by the FEI, as well as Riot Games' Expedited Procedure, and the Simple Procedure under the ESIC rules, is to deal with minor cases in a time- and resource-efficient way. However, it has to be noted that in all three aforementioned cases, the prosecutor also becomes at the same time the decision-taker, which has to be questioned by itself. That said, in the FEI case, parties can request that cases be dealt with by the independent FEI Tribunal, whereas this possibility does not exist for Riot Games or for the ESIC. Neither Riot Games nor ESIC provide the possibility to appeal internal decisions to an arbitration tribunal. It is to be expected that the parties to the dispute refer their cases to ordinary courts in the respective countries.

Concerning anti-doping, the latest edition of the WADC requires anti-doping hearing panels to be 'operationally independent.' The accompanying WADC guidelines also clarify that, apart from not being involved in any other capacity within an IF, an anti-doping hearing panel member cannot have any part in the investigation or pre-adjudication of the matter. In response to this requirement, some IFs, such as the International Tennis Federation (ITF), have chosen to refer their anti-doping cases to the Independent Hearing Panel of Sport Resolutions UK, which determines first-instance anti-doping matters for IFs or other Anti-Doping Organisations wishing to make use of the tribunal's services. Other IFs refer their anti-doping matters to the CAS Anti-Doping Division (ADD).<sup>87</sup>

The ESIC would clearly not fulfil this operational independence requirement when it comes to recreational drugs, as these fall within the arbitrary decision of the Commissioner, who may choose not to refer them to discipline. Returning to equestrian and regulations for

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84 Kuwelker, Diaconu, and Kuhn, "Competition manipulation in international sport federations' regulations: a legal synopsis", 303-304.

85 Riedl, "Association Tribunals".

86 FEI, "FEI General Regulations and Statutes", <https://inside.fei.org/content/general-regs-statutes>.

87 Riedl, "Association Tribunals".



Controlled Medication Substances applicable to equines, an Administrative Procedure exists where certain circumstances are fulfilled. These include cases where only one (1) Controlled Medication Substance is detected in the Sample, first-time offenders, considered as those not having had any cases within the past four (4) years, and the event in question is not a major event, such as the Olympic Games. Also here, the person charged may elect to have the case heard by the FEI Tribunal.<sup>88</sup>

## **6. CONCLUSIONS**

This study has aimed to analyse and describe integrity policies and programs in esports, drawing comparisons to similar policies and programs in place in traditional sports. The integrity threats of competition manipulation and doping were found to be comparable to the policies and programs put in place in traditional sports.

However, as described in this article, in addition to match-fixing and doping, additional threats have been considered significant for esports, namely the use of software cheats, the manipulation of hardware, the exploitation of in-game bugs and glitches, or server attacks. These threats, often referred to as e-doping, or technological issues outlined in this article, are particular to esports and do not necessarily exist in traditional sports. This means that integrity policies and programs in esports need to take into consideration also these threats, thus encompassing a wider range of threats compared to traditional sports.

Throughout the study, it has become clear that ESIC is somewhat adopting elements from traditional sports integrity programs, albeit with some major differences, and seems to have tailored the traditional policies to suit the requirements of esports. Riot Games, on the other hand, differentiates quite a lot from traditional integrity policies. At the time of the study, regulations and procedures were not as developed as in traditional sports or as found with the ESIC. However, as the publisher and the esports game organiser, licenses could simply be revoked at any time for any reason, including integrity reasons.

In the author's view, integrity programs in esports are only partially comparable to the ones in traditional sports, particularly regarding some individual threats, such as competition manipulation and doping. One still needs to take into account specificities in esports with regard to these threats. For example, skin gambling, which does not exist in traditional sports, or the type of substances used on the one hand, and their potential to enhance an esports player's performance on the other hand.

Most importantly, esports integrity programs need to – in addition - also focus on the e-doping threat which is specific to esports. Those traditional sports that wish to include virtual competitions into their activities, should be aware of these additional threats, assess the risks, and establish strategies to prevent and encounter these threats. Thus, for example, cycling competitions and virtual cycling competitions cannot be considered the same sport from an integrity standpoint.

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<sup>88</sup> FEI, "FEI Equine Anti-Doping and Controlled Medication Regulations". <https://inside.fei.org/content/anti-doping-rules>.

The establishment of integrity programs in esports is quite recent, suggesting that we can expect further evolution in the upcoming years. This article has reviewed only some of the regulations and integrity programs in place in esports. Further studies of the remaining players in the esports industries would provide a more complete picture of the existing or non-existing esports integrity programs. In addition, a study of the evolution of such integrity programs over time, as well as of their effectiveness would provide further insights into this topic.

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## **CHILDREN AND SPORTS: THE RIGHT TO ENGAGE IN PLAY AND RECREATIONAL ACTIVITIES**

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### **Abstract**

Every child has the right to play. Sports, therefore, play a valuable role in children's development and growth. Starting from Article 31 of the UN Convention on the Rights of the Child, numerous other international, supranational, and national legal sources define children's right to play sports with the purpose of developing their whole personality. Indeed, sports allow children to engage in the exercise necessary for correct psychophysical development; improve children's social inclusion, and aim to offer equal opportunities to all children in promoting their social life. The right to engage in play and recreational activities is an important right of every child, which must be exercised taking into account the right to health, as well as the possibility to rest and the choice "not to become a champion at all costs," likewise other important children's rights that will be analysed in the paper.

It will also reflect on the moment when recreational sports turn into competitive sports, where competitive dynamics make the appreciation of the protection of children's rights much more complex. Considering the central role played by parents and trainers in ensuring that children practice sports in a manner most appropriate to their balanced psycho-physical development, the best interests of child will be considered in relation to the abovementioned demanding dynamics of competitive sport.

The aim of this paper is to investigate whether fundamental rights are respected in sports activities involving children, trying to raise awareness of the position of minor athletes in the world of sports since they are particularly vulnerable and in need of protection.

**Keywords:** Sport, Children's Rights, Right to Engage in Play and Recreational Activities, Best Interests of the Child, Parental Responsibility.

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## 1. SOME INTRODUCTORY REMARKS ABOUT CHILD'S RIGHTS AND SPORTS

It is difficult to begin reflections on this topic using a clearer and more powerful sentence than the following quote: "Law and Rights are not concepts that are traditionally associated with either sports or children."<sup>1</sup>

In fact, it makes reflect on the fact that neither sports nor children have traditionally been fields covered by the law. This means that unlike other aspects of human life that have been certainly regulated by law for centuries, these two areas are among those that have not been considered for a long time or have been considered marginally. However, at a certain point, it was realized that there was a need to provide specific rules for sports, which are usually considered to be rules included in a (sports) legal system that is independent and distinct from the general legal system. Additionally, there was the need to regulate children's rights with specific and greater attention than with respect to general rules governing private relations. Nowadays, when sports law and children's rights represent two areas of law that are structured in a rather complex way, the question that arises, returning to the quote from the beginning, is: *quid iuris* if these two worlds intersect?

Observing the issue from the point of view of those who deal with children's rights rather than sports law, one wonders whether the protection of children follows exclusively the path of the traditional legal sources established for the protection of minors, or whether the internal rules of sports also pay particular attention to situations in which the athletes in question are children. In essence are there two distinct tracks between which the real protection of minors is dispersed or is it possible to recognize a sensitivity for children's rights that should transversally affect every single aspect of human life, including sports? The question becomes even more complicated when we try to understand which specific children's rights we are referring to and especially what aspect of sports is under consideration. Are we referring to any manifestation of sports or to competitive sports?

First of all, it must be said that the right to play has to be understood in two senses. The first is the right to participate in the game itself, which does not have to be productive.<sup>2</sup> The sense is the fun of playing it in itself. The other is the realisation of other rights through play, such as the right to health, psycho-physical and emotional development, social inclusion, etc. All these fundamental rights find strong expression when the recreational activity is sport. In other words, when the right to play is identified with the right to sport.

However, it must also be immediately understood that the recreational connotation is lost when it is imposed. It is on this thin thread that all the considerations the author will attempt to offer in this work will actually develop.

Referring back to what was observed earlier, it must be said that sport and the right to

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1 Antti Aine, Jatta Muhonen, Virve Toivonen, „Children's right to play sports in a safe and healthy environment," *The International Sports Law Journal* 22, no. 2 (2022): 95, <https://doi.org/10.1007/s40318-022-00217-2>.

2 Margareta Aspán, „Article 31 – The Forgotten Right to Cultural Life and Arts", in *The Rights of the Child, Legal, Political and Ethical Challenges*, ed. Rebecca Adami, Anna Kaldal, Margareta Aspán (Leiden/Boston: Brill Nijhoff, 2023), 184. Quoting the Author: "the childness" is defined by the negations to adult activities, and accordingly established by pleasure, non-productivity, and freedom from obligations."

practise it is certainly a right of all individuals, whether adults or children.<sup>3</sup> All persons have the right to engage in physical activity in order to express their personality as individuals, but also within a group. Furthermore, sporting exercise improves the physical and mental health of the individuals, contributing to social inclusion that involves the general well-being of the community as a whole.<sup>4</sup>

## **2. CHILDREN AND SPORT – AN ATTEMPT TO IDENTIFY THE LEGAL FRAMEWORK**

It is necessary to try to systematise the sources of law with the intention of recognising the fundamental rights of children to be protected in sport. First of all, from a family law perspective, the most important global, European and Croatian sources dealing with children will be highlighted. Subsequently, an attempt will be made to highlight those specifically present in the sports legal system, referring to children in sports.

If sports law jurists would proceed in an attempt to understand how to include minors in the rules dedicated to athletes, jurists, on the other hand, who deal with children will first clarify in their reasoning whether and where sport finds a place and foundation among the fundamental rights of children.

Thus, it is important to start from the source *par excellence* when dealing with children: the United Nations Convention on the Rights of the Child (CRC) adopted on 20. November, 1989.<sup>5</sup>

There are numerous articles of the CRC that should be recalled, but since there is a structural relationship between these rights when the child enters the world of sports, they will be addressed in more detail in the next section. It is sufficient now to mention two fundamental ones: Art. 3 and Art. 31. The former deals with the best interests of the child, while the latter, for what concerns here, refers to the right to play.

Surely the right to play is the starting point. Often also referred to as 'the forgotten right' - but more commonly in reference to other activities therein - it recites in para 1: „States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.”<sup>6</sup>

The right to play and leisure certainly includes sporting activity. Indeed, very often this right to play is manifested in an organised and collective manner.<sup>7</sup> In addition, very helpful in the

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3 Enrico Lubrano, „Il diritto dello sport come diritto fondamentale in prospettiva anche costituzionale”, *dirittifondamentali.it* 2 (2020): 267.

4 About the importance of social inclusion in particular in situation of child poverty see more in Olja Družić Ljubotina, Marijana Kletečki Radović, “Siromaštvo i djeca”, in *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 267.

5 „UN Convention on the Rights of the Child,” United Nations, accessed May 10, 2024, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. See an accurate analysis in Olga Cvejić Jančić, “The UN Convention on the Rights of the Child: 25 Years After,” *The Rights of the Child in a Changing World, 25 Years after the UN Convention on the Rights of the Child* ed. Olga Cvejić Jančić (Switzerland: Springer International Publishing, 2016), 7 et seq.

6 Art. 31 United Nations Convention on the Rights of the Child (CRC). In literature see Aspán, „Article 31,” 184.

7 See more in Dubravka Hrabar, “Pravni položaj maloljetnika u sportu,” in *Sportsko pravo*, ed. Hrvoje Kačer (Split:

interpretation of the right to play is the General Comment n. 17 (2013).<sup>8</sup>

As to the European regional level, from a child protection perspective, an important reference should be made to Art. 3 of the Treaty on The European Union (TEU) and Art. 24 of the EU Charter of Fundamental Rights (EU Charter).<sup>9</sup> Both articles protect children, showing due care for their vulnerability in the growth phase.<sup>10</sup> While from the perspective of the right to sports, Art. 165 of the TEU is noteworthy, which also states in its first paragraph 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."<sup>11</sup> Still, it should be remembered at the European level that the development of sport is the subject of numerous policy documents as well. One of the most important was the White Paper on Sport from 2007, which is certainly one of the European Commission's key inputs to the sport and its importance in the everyday lives of EU citizens.<sup>12</sup>

Staying on the international level and moving to the sources of sports law, several sources are worth mentioning. Indeed, the steps taken in the world of sports to raise awareness about the vulnerability of children and the need to protect their rights are to be commended. Many charters, recommendations, and acts seek to raise responsiveness in the world of sport, particularly at the European level, emphasising that every child has the right to take part in sports regardless of the results and successes they can or want to achieve.

So, without any claim to completeness, reference is made here to the Olympic Charter, which states that the practice of sport is a human right; as well as the International Charter of Physical Education, Physical Activity and Sport. Originally adopted by UNESCO in 1978, it

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Sveučilište u Splitu, Pravni fakultet, 2018), 342 *et seq.*

- 8 General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31). The Committee on the Rights of the Child through this commentary aims highlight that the significance of article 31 in children's lives by stating that „play and recreation facilitate children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.“ Available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsqkirKQZLK2M58RF%2F5F0vFw58qKy0NsTuVUIOzAukKtwGqGgFkAgArTuTdZZUuSZObAaHCoPsdppxu9L6un29TyD4Jyrk0F22kRyLCMeCvM>
- 9 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ C 202/1, 7.6.2016). Charter of the Fundamental Rights of the European Union (OJ C 202/389, 7.6.2016). See Jacopo Tognon, *Diritto e politiche dello Sport nell'Unione europea. Ruolo sociale, dimensione economica e integrità* (Padova: CLEUP, 2016), 40 *et seq.* See also Helen Stalford, *Children and the European Union, Rights, Welfare and Accountability*, Modern studies in European Law (Oxford and Portland, Oregon: Hart Publishing, 2012), 39 *et seq.* See Aleksandra Korać Graovac, "Povelja o temeljnim pravima Europske unije i obiteljsko pravo", in *Europsko obiteljsko pravo* ed. Aleksandra Korać Graovac, Irena Majstorović (Zagreb: Narodne novine, 2013), 25-51.
- 10 About children's rights in the EU framework see Tunjica Petrašević, "Dijete u pravu Europske unije" in *Dijete i pravo*, ed. Branka Rešetar (Osijek: Pravni fakultet u Osijeku, 2009), 273.
- 11 Jacopo Tognon, *Le minacce dello sport moderno, Guida pratica e ragionata alla lotta alla discriminazione, al doping, al match fixing e alla violenza nello sport* (Padova: CLEUP, 2023), 87. Stephen Weatherill, „EU Sports Law: the effect of the Lisbon Treaty,” *Legal Research Paper Series no. 3* (January 2011):11, <http://dx.doi.org/10.2139/ssrn.1747916>.
- 12 White Paper on Sport (COM(2007) 391 final). See Tognon, „Diritto e politiche dello Sport,” 56 *et seq.* Ines Medić, "Pravna zaštita maloljetnih sportaša u kontekstu prava EU", *Zbornik radova Pravnog fakulteta u Splitu*, 52, no. 4, (2015): 1111.



has since been amended several times to meet the new challenges facing the sport. Apart from underlining the health benefits of sports, the importance of this document is shown in the aim to include persons with disabilities, to protect children, to promote development and peace through sports, as well as to protect the integrity of sports from doping, violence, manipulation, and corruption.<sup>13</sup>

As previously mentioned, the right to sport is certainly a right of all persons, adults or children. All individuals have the right to exercise in order to express their personality as an individual, but also within a group. Again, exercise improves the physical and mental health of both the individual and the community. Not infrequently in modern constitutions, the right to sport has been positivised as a right in itself, as well as a means for the realisation of other rights such as the right to health.<sup>14</sup> However, these constitutions do not include the Croatian one.

With reference to the Croatian constitution, the fundamental norm that must be recalled is its Art. 63.<sup>15</sup> It states that “the state shall protect maternity, children and youth, and shall create social, cultural, educational, material and other conditions promoting the achievement of the right to a decent life.” Reading this provision certainly shows that children enjoy special protection as a vulnerable group in society. It is also evident that the numerous activities promoted for a decent life include sports, although the word sport is not expressly mentioned.

In the light of the international sources mentioned so far, first and foremost the CRC, it is clear that sport as a recreational and leisure activity is one of the activities that has various functions for children, ranging from educational, leisure enjoyment, to health protection.<sup>16</sup>

Nonetheless, apart from the constitutional provision invoked with reference to children, it could be opportune to recall also Art. 70 of the Croatian Constitution, which in its first paragraph states “everyone shall have the right to a healthy life.” “The state shall ensure conditions for a healthy environment. Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment.” Subsequently, in the third paragraph, it also refers to human health. The question therefore arises whether this constitutional provision should be interpreted as a provision which promotes health through sport - understood as physical activity.

Without going into disquisitions on the right to health, it must be acknowledged that sport as a healthy practice is certainly among the activities implemented to preserve health.<sup>17</sup>

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13 UNESCO International Charter of Physical Education and Sport, 21 November 1978, <https://unesdoc.unesco.org/ark:/48223/pf0000216489>.

14 Lubrano, “Il diritto dello sport,” 234 et seq.

15 Croatian Constitution (Ustav Republike Hrvatske), Official Gazette no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14. Branko Smerdel, *Ustavno uređenje Europske Hrvatske* (Zagreb: Narodne novine, 2020), 373.

16 For an accurate historical research see *International documents on children* ed. Geraldine Van Bueren (The Hague/Boston/London: Martinus Nijhoff Publishers, 1998).

17 Dubravka Hrabar, “Prava djece u obiteljskom zakonodavstvu”, *Prava djece – multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 64-66.

See WHO Sport for Health Programme: <https://www.who.int/initiatives/sports-and-health>. The aim of this programme is to rely on the great potential of helping people worldwide lead healthy lives through promoting participation in sports, helping the achievement of the established goal n. 3. of the UN Agenda 2030: „Ensure healthy lives and promote well-being for all at all ages“.

Realistically it must be said that, as will be referenced below, sport is mostly dealt with from a competitive perspective rather than a solidarity perspective, understood as a leisure activity that helps people's physical and mental well-being. Therefore, most of the time the instrumental function of sport, aimed at improving other fundamental human rights, gives way to sport itself, with all its dynamics - especially those of the market nature.

In the end, the Croatian Family Act must be mentioned.<sup>18</sup> Indeed, there are different rules, which starting from the Art. 84, regulate children's rights and parental responsibility.<sup>19</sup> Precisely, Art. 84 begins in the first paragraph by establishing that the child has the right to care for his/her life and health, and then continues in the second paragraph that he/she has the right to receive an education suited to the satisfaction of his needs - physical, psychological, and others.<sup>20</sup>

Certainly, these rules also regulate the child's right to approach the world of sport, which is understood as an activity aimed at achieving balanced psycho-physical and emotional development. Parents first and foremost, but also the other adults who find themselves interacting with the child in the world of sport, must necessarily act with respect for the child's talents and affinities, but also for his or her needs. This means, as will be seen in the text, that it is always necessary to act in the best interests of the child.

### **3. RESPECTING THE RIGHTS OF THE CHILD IN THE WORLD OF SPORT: A REALITY OR A CHIMERA?**

From the interpretation of the CRC, as well as other international and supranational legal sources, it can be seen that children have the right to play sports with the purpose of developing their whole personality. In light of what was previously observed in reviewing the most relevant sources, first of all it means that sport allows children to practice the exercise necessary for correct psychophysical development. Also, sport stimulates the emotional development of the minors, as well as it improves children's social inclusion and aims to offer equal opportunities to all children in the promotion of social life. It should be reiterated that the Art. 31 of the CRC enshrines the specific right of all children to have rest and leisure, to engage in play and recreational activities proper to their age, and to join freely in cultural life and the arts.<sup>21</sup> In other words, it means that children's right to engage in play and recreational - sports - activities is an important right of every child. Indeed, sport has an extremely important role in children's development and growth. It is defined as a right of a mixed nature. There is, in fact, a strong connection between motoric and recreational activities, which lead to motoric development and, at the same time, intellectual and psychophysical growth.

Sport must be understood as a right in itself and as a right instrumental to the realization of many other children's rights. The exercise of sports, practiced by a child, requires the exercise of numerous rights of the child. One of these rights is to express their opinion. Precisely, it

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18 Croatian Family Act (Obiteljski zakon), Official Gazette no. 103/2015, 98/19, 47/20, 49/23 and 156/23. See more in Hrabar, "Pravni položaj maloljetnika", 347.

19 See in detail Dubravka Hrabar *et al.*, *Obiteljsko pravo*, ed. Dubravka Hrabar (Zagreb: Narodne novine, 2021).

20 Ninoslava Pečnik, "Suvremeno roditeljstvo i prava djeteta", in *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 178-179.

21 See more about art. 31 CRC in Aspán, "Article 31," 184.

must be pointed out that every child right to make the decision independently, and in order to realise this right the minor has the right to be heard (to express their opinion) and – even before that - to be informed.<sup>22</sup> For instance, every child-athlete should be very well informed about the possible risks to their health (i.e. risks of accidents).

The opportunity to rest should not be underestimated either. The frenetic rhythms of training are often calibrated for the competitive future of the few, rather than the recreational needs of the many. Once the basic features of this right have been outlined, any subsequent consideration must start from the consideration of the best interests of the child, which in substance, through a case-by-case valuation, leads to making the most appropriate choices to ensure the most serene and balanced physical, psychological, and emotional children's growth. ...“leads to making the most appropriate choices” ... the question is by whom? As will be analysed in the next chapter, the answer would be by all the persons who are involved in the child's life. First of all, child's parents/guardians, but also trainers, physicians, and others.

To return to the right to play - understood in this paper as sport-, it must be clearly underlined that it presumes reflections related to different aspects of the concrete exercise of this right such as: the right to health, also training in a healthy and safe environment; the possibility to rest, the choice “not to become a champion at all costs,” the opportunity to have fun; the right to be treated with dignity and respect without punishment and threats, and finally the at the very end (or better at the very beginning) the freedom to choose a specific sport discipline, change sport, and to experience different sports.<sup>23</sup>

On this regard, in stating that the child has the right to choose whether he or she wants to play sport and which sport, this is associated with another fundamental right of the child, namely the abovementioned right to express their view.<sup>24</sup> In this regard, it must be remembered that the child's opinion must be taken into account according to their age and maturity.<sup>25</sup>

As D. Hrabar emphasises, this freedom of choice of the child concerns several aspects, such as the decision to practise sport for leisure or competition; the choice of sporting discipline and to join a sporting organisation; the decision to stop sporting activity.<sup>26</sup> It is rightly pointed out in doctrine that the right to express one's opinion is exercised in its totality only when the child is informed in advance about all the circumstances. In sports, this means that in the

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22 Cvejić Jančić, “The UN Convention” 19. Aleksandra Korać Graovac, “Pravo djeteta da bude saslušano – Opći komentar br. 12 Odbora za prava djeteta, in *Dijete u pravosudnom postupku - Primjena Europske konvencije o ostvarivanju dječjih prava*: Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu Gordana Filipović, Davorka Osmak Franjić (ed.). Zagreb: Ured pravobranitelja za djecu Republike Hrvatske, 2012. 117-137.

23 See Maurizio Di Masi, “Diritto sportivo e bilanciamenti dei diritti fondamentali. Alcune questioni attuali”, in *Liber Amicorum per Paolo Zatti*, vol. II (Napoli: Jovene, 2023), 1133 *et seq.*

24 Hrabar, “Pravni položaj maloljetnika,” 343. Quoting the Author: „smatra se da poštivanjem ovog prava poštuje se djetetova osobnost, samosvijest, autonomnost te se dijete uvažava kao subjekt, a ne kao objekt postupanja (odraslih).” / English translation „it is considered that by respecting this right, the child's personality, self-awareness, and autonomy are respected, and the child is respected as a subject and not as an object of actions (of adults)”

25 Dubravka Hrabar, „Prava djece,” 78. Also see Irena Majstorović, “The realisation of the right of the child to express his/her views – How “visible” are children in Croatian family judicial proceedings?”, *Ljetopis Socijalnog rada*, 24, no. 1 (2017): 55-71.

26 About article 12 CRC on children's right to express his or her views see more in Hrabar, “Pravni položaj maloljetnika”, 348.

first place, the parents or guardians, but also the trainers, must make the child aware of the training methods, the rules of the game, and the risks of injury. Criticism is often observed at this stage because, in the competitive game, children who are still too immature to understand it fully on their own are often not informed of the sporting life they may be facing, especially if they are children who aspire (or whose parents aspire) to a professional sporting career. Adults should in this respect advise children in their best interests even when this could lead to the interruption of a sports career.<sup>27</sup>

As to the choice of sports activity it is opportune to mention briefly also another aspect which could be very problematic and cause many problems in violation of children's rights. It arises when the choice of sports is conditioned because the family does not have the resources for equipment.<sup>28</sup> In such cases, relationships with third parties can arise that can lead to future serious risks of economic dependence, disadvantageous contractual ties for the child athletes, and even situations of exploitation or slavery.<sup>29</sup>

Another aspect related to ensuring a conscious choice is to have the opportunity to measure oneself against people who have the same chance of success.<sup>30</sup> This means the same age, but also the same physical capabilities. Not only competitions, but also training must be appropriate to age and psychophysical abilities. Unfortunately, when sporting play becomes competitive, it often happens that children are subjected to the same rhythms as adults. This could lead to serious consequences for children's well-being, such as eating disorders, burn-out syndrome, psychological abuse, but also physical complications, or doping problems.<sup>31</sup>

P. David very appropriately wonders whether such training and competition rhythms should be compared to unacceptable child labour practices.<sup>32</sup>

Children, vulnerable because of their non-fullness of maturity and ability to protect themselves, are treated like adult athletes, even if they "are not miniaturized adults!"<sup>33</sup> Children are fragile and that is why even the dynamics of sport have to accept this. Children require special protection and this is exactly the deepest and truest sense of the CRC. Certainly, the sports world is developing an important sensitivity towards child athletes. An example of this is the raising of the age limit for competing in certain sports.<sup>34</sup>

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27 See Paulo David, *Human Rights in Youth Sport. A Critical Review of Children's Rights in Competitive Sport*, (London and New York, 2005), 231 *et seq.*

28 Aleksandra Korać Graovac, "Uzdržavanje kao sredstvo ostvarenja prava djeteta na životni standard", *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 85.

29 See more in Paulo David, *Children's rights and sports, Young athletes and competitive sports: exploit and exploitation*, *The Journal of Children's Rights*, no. 7 (1999): 68-71. It is appropriate to refer to Article 101 of the Croatian Family Law, which expressly deals in paragraphs 3 and 4 with contracts (including sports contracts) involving minors. In particular, in order to protect the child athlete, the legislator expressly provides that such contracts may last until the athlete reaches the age of majority. On this regard see in detail Hrabar, "Pravni položaj maloljetnika," 359 *et seq.* For a different view of this restriction see Blanka Ivančić-Kačer, "Športski ugovori maloljetnika, posebno s aspekta mjerodavnog prava", *Zbornik radova Pravnog fakulteta u Splitu*, 47, 2 (2010): 441-442.

30 Di Masi, "Diritto sportivo e bilanciamenti", 1133.

31 See David, "Human Rights in Youth Sport", 105 *et seq.*

32 David, "Children's rights", 65.

33 Quoting David, "Children's rights", 57.

34 David, "Human Rights in Youth Sport", 39 *et seq.* As to an age limit, there is no a specific one. Indeed, it depends on each International Sports Federation and the rules it states for its sport. The Croatian Sports Act (Zakon o

Sport is (or should be) also a vehicle for increasing social inclusion. This means that sport must guarantee the equality of all children, including those with disabilities.<sup>35</sup>

As to "not becoming a champion", it seems rather challenging to protect the welfare of talented children who are placed in a system that wants them to be future champions, especially when the very people who should protect them most of all push them in this direction. Three additional aspects must be highlighted here: the possibility to train in line with their age, the opportunity to rest, and also to be treated with dignity and respect without punishment and threats. Needs of synthesis do not allow us to go into as much detail as this aspect would deserve. However, it has to be sadly highlighted that despite the provision of Art.19 of the CRC, the problem of violence in juvenile sports is very much present.<sup>36</sup> Precisely, the first paragraph reads as follows: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

A part from these aspects related to the minor's right to play sports, there are also rights whose exercise, however, is prevented or restricted by sports. The reference is primarily to the right of every child to live with his/her parents, which is compressed when children live in sports camps in retreats (intensive training programmes), away from their parents. The absolute centrality and irreplaceability of the right of every child to live with his/her parents can already be recognised just by reading the most important supranational sources that guarantee it.<sup>37</sup>

Another right that is greatly affected in particular by competitive sport is the child's right to education, which is often compromised and which should be given appropriate attention.<sup>38</sup>

Once the attempt to reconstruct the framework of children's rights to be protected in the context of sporting activity has been concluded, it is necessary to proceed to the analysis of the method of protecting the interests of children in the way that is most appropriate. The many facets of the complex concept of the best interests of the child therefore require separate and more in-depth analysis that follows in the next chapter.

#### **4. THE BEST INTERESTS OF THE CHILD(-ATHLETE)**

Article 3, para 1 of the CRC states that "in all decisions concerning children, whether taken by public or private welfare institutions, courts of law, administrative authorities or legislative

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sportu), Official Gazette no. 141/2022 in its art. 10 defines that professional athlete could be only an athlete minimum 16 years old.

35 See more in Hrabar, "Pravni položaj maloljetnika", 343.

36 Aine, Muhonen, Toivonen, "Children's right to play sports", 94.

37 *In concreto*: Art. 9 of the CRC, the Art. 24 of the EU Charter, but also the Art. 8 of the European Convention on Human Rights (ECHR). In literature see Sandra Winkler, "Obiteljski odnosi", *Europsko privatno pravo* ed. Emilia Mišćenić (Zagreb: Školska knjiga, 2021), 466-467. David, "Children's rights," 79. The Author clearly highlights that "only 5 of 63 of the greatest Olympic athletes have specialized in their sport before the age of 12 (...). The 58 other athletes have experienced several different sports before excelling in one."

38 More about it see in Stalford, "Children," 143.

bodies, the best interests of the child shall be a primary consideration.” From this rule, the central position the best interests of the child take in the legal protection of children clearly emerges in any decision that affects them in any way and with reference to any situation. So it should be in sport, too.<sup>39</sup> However, since the CRC does not expressly determine what is meant by ‘best interests of the child,’ often it is not so easy to interpret it *in concreto*. Sometimes the concrete meaning escapes the jurist who has to interpret both the scope of Art. 3 CRC *per se* and the norms that implement it in national legal systems.

Fortunately, the interpreter can rely on the clarification provided by General Comment No. 14 of the UN Committee on the Rights of the Child.<sup>40</sup> According to this source, the notion of the best interests of the child consists of three aspects. First of all, the best interests of the child must be understood as a genuine right of the child to have their best interests substantially taken into account. Secondly, it would be an interpretative source; finally, a procedural rule in any situation in which a matter concerning a child has to be decided upon.<sup>41</sup>

Although this clarification is helpful, it must nevertheless be said that the interpretation necessarily requires a case-by-case assessment because the best interests of the child cannot be built on pre-established objective factors. What may in a certain social context and in a certain historical moment be in the best interest of a child, it is not necessarily so for every child living in the same reality. This means that in the same way what may meet the needs of one child athlete may not be equally suitable for the correct psycho-physical and emotional development of another child athlete. On this regard, Croatian family law doctrine observed that even if the concept of the best interests of the child is not defined, it is definable.<sup>42</sup>

The identification of the best interests of the child is closely linked to the identification of a specific need of the child that must be met in the most appropriate way. This specific need of the child must be understood as functional to their optimal psychophysical and emotional development. To relate, therefore, to the concrete issue at hand, certainly this same logical-interpretive path must be followed in recognising legal protection for the child athlete. Specifically, when it comes to competitive sports, the question that often arises in doctrine is: “Does the reality of competitive sport always follow the best interests of the child?”<sup>43</sup>

Art. 3, para 2 CRC provides that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.” One can hardly imagine a more real and concrete protection of the child’s welfare if not through the proper exercise of parental responsibility.<sup>44</sup> But there is more. As the CRC guarantees, but

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39 See more David, “Children’s rights,” 55.

40 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)

41 For a detailed and accurate analysis please refer to Dubravka Hrabar, „Obiteljskopравни odnosi roditelja i djece“, in *Obiteljsko pravo*, ed. Dubravka Hrabar (Zagreb: Narodne novine, 2021), 196 *et seq.*

42 Again, Hrabar, “Obiteljskopравни odnosi”, 206 *et seq.*

43 David, “Children’s rights,” 56.

44 Isabelle Roskam, “Psychological Insights. Parent-Child Relationships in the Light of Psychology,” *Adults and Children in Postmodern Societies, A Comparative Law and Multidisciplinary Handbook*, ed. Jehanne Sosson, Geoffrey Willems, Gwendoline Motte (Cambridge – Antwerp – Chicago: Intersentia, 2019), 657 *et seq.*

also reaffirmed by the EU Charter of Fundamental Rights and the Croatian Family Act, all those who are in contact with children must always act in their best interests. This obligation extends to trainers, as well as all other persons involved in the world of sports whose actions may affect the welfare of the child. Recalling the rights set out above, this will be discussed in more detail below.

Finally, Art. 3 para 3 CRC states that “States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

All these aspects from safety to health have already been discussed at some length above, so there is no need to consider them further. The intention was only to emphasise once again, by pointing out the rule that states the supremacy of the child’s well-being, how easily those aspects can be jeopardised in the world of child sports.

As to children’s well-being, a reference should be made also to Art. 24 of the EU Charter of Fundamental Rights, which states in its first paragraph that “children shall have the right to such protection and care as is necessary for their well-being. They may freely express their opinion. This shall be taken into account in matters which concern them in accordance with their age and maturity.” The second paragraph further states that “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.” Finally, the third paragraph states that “the child shall have the right to maintain on a regular basis personal relations and direct contact with both parents, unless it is contrary to his or her best interests.” All three paragraphs take up, in concise form, the contents of the CRC, confirming the latter’s extraordinary influence on EU legal sources.<sup>45</sup> This is an example of the phenomenon of cross-fertilisation by means of which the possible absence of specific precepts concerning children is filled in, affirming conversely the universal scope of the CRC.<sup>46</sup>

The analysis of the concept of the best interests of the child and the assertion of its absolute supremacy in any decision-making process concerning children is certainly a fundamental step in the theoretical discourse conducted in this paper. However, these theoretical efforts will remain vain if this concept would not be connected to the subjects who are called upon to take into consideration the welfare of the child in the concrete situations, that affect him or her in life. Therefore, in the following it is necessary to focus on the role of those subjects who are called upon to respect the best interests of the child.

## **5. THE RESPONSIBILITY OF PARENTS AND TRAINERS IN PROTECTING THE CHILDREN’S RIGHTS IN SPORT**

As already observed, there are many rights of the child to be protected when they enter the

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45 More about the art. 24 of the Charter in Irena Majstorović, “Europski obiteljskopравни sustav zaštite djece,” *Prava djece. Multidisciplinarni pristup*, ed. Dubravka Hrabar (Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2016), 58.

46 Hrabar, “Prava djece u Europskoj uniji – pravni okvir”, 53-71.

world of sport. It is possible to recall them in a few categories. First of all, the right to health, which undoubtedly goes with the right to train in a healthy and safe environment, as well as to rest. A second aspect refers to the enjoyment of this activity. It has already been said that for children, sport is mainly a form of recreation. children should not have to become champions at all costs and should be able to freely choose which sport to practise and according to which training regime. Of course, they should also have the freedom to experience different sports. Finally, hoping that for children the meaning of the sporting game is not the achievement of the result but the game itself, each child has the right to be treated with dignity and respect without punishment and threats.

Why to repeat them? Each of these rights of the child corresponds to a precise obligation on the part of the parents to exercise their parental responsibility in line with the needs, affinities, and talents of their children.<sup>47</sup>

This may seem obvious, yet we too often see pressure from parents who, perhaps by identifying with their children, try to fulfil their own unrealised sporting/agonistic aspirations.<sup>48</sup> In this respect, the child has the right to avoid psychological pressure from adults, which could generate anxiety about expectations related to sports wins and successes.<sup>49</sup> Indeed, out of thousands of children who will grow up healthy thanks to sports, only a few will become champions, and perhaps not all of these few by their own choice.<sup>50</sup>

From the perspective of children's rights, it must be understood that sport does not necessarily mean agonism. In other words, it is the parents' duty in the exercise of parental responsibility, as well as the trainers' responsibility to be aware that agonism is not always in the best interests of the child.

As to the central role of the trainer, A. G. Parisi notes that those who train children must not limit themselves to teaching sports techniques.<sup>51</sup> They must, rather, direct the child to practise sport correctly and fairly, respecting the rules and opponents.<sup>52</sup> In essence, children must be educated in sports by their parents in the first place, but also by the school and sports associations.

Once again, we encounter the conclusion we have already referred to, namely that the recreational dimension of sport is often the one that should carry the most weight in ensuring a balanced psycho-physical and emotional development of the child-athlete.

This certainly takes into account the realisation of the best interests of the child, respecting the child's needs for an optimal psychophysical and emotional growth of the person. Recalling what was previously analysed with regard to the supremacy of the child's well-being, the brief

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47 See more in Pečnik, "Suvremeno roditeljstvo" 177 *et seq.* Korać Graovac, "Uzdržavanje kao sredstvo," 83. Annamaria Giulia Parisi, "Sport, minori e responsabilità genitoriale" *Comparazione e diritto civile*, (September 2016) [www.comparazionediritto civile.it](http://www.comparazionediritto civile.it), 9.

48 Medić, "Pravna zaštita maloljetnih sportaša," 1106.

49 About "winning at all costs" see Aine, Muhonen, Toivonen, "Children's right," 94.

50 Very indicative numbers can be found in David, "Children's rights", 64.

51 Parisi, "Sport, minori", 8.

52 Such a normative provision could be found in the Croatian Sports Act (Zakon o sportu), Official Gazette no. 141/2022 under the Art. 19, which regulates trainers' position.



reflections in this chapter were intended to emphasise the importance of the role of parents/guardians and trainers in acting in the best interests of each child. Since the child's best interests may vary from case to case, the actions of adults must be such that they respect the needs of each individual child, which means a personalised approach since each child (athlete) is unique.<sup>53</sup>

## **6. SOME CONCLUDING REMARKS: SPORT BETWEEN AFFIRMATION AND DENIAL OF CHILDREN'S RIGHTS**

The very first conclusion that emerges at the end of this brief analysis is that when looking at the sport from the perspective of children, one has to start from the idea of play and not of competition. The game in fact is not necessarily productive. On the contrary, the *darker* side of sports law when it comes to children is precisely that of competition. We live in a performance-centred culture in every sphere of life, and so also in sports, and this leads to emotional violence. The problem is that sport and its relationship with children is looked at almost exclusively through the eyes of adults. Eyes that see sport only as competition, achievement, prestige, and recognition.

The question is: do children, including those who are talented, see sports in the same way? Everything suggests that the answer is not affirmative.

This paper mainly discusses the problems that arise from agonism: violence, disregard of the child's opinion, separation of children from their parents, health, anorexia, doping, financial issues, and exploitation.

On the contrary, we should ask ourselves about sports at all levels, not only agonism. In fact, more should be done to promote sport and its social function of improving children's health and social inclusion. Many children's problems today range from obesity, through the (worrying) digital way of life, and all the way to poverty, which is often in the background of the existing social divide between children.<sup>54</sup>

Although it all seems so far away, it should be mentioned that the recent Covid pandemic has left behind enormous consequences for children. The impact of Covid-19 was (and still is) harmful for the psychophysical and emotional development of children. The absence of socialization normally associated with school and leisure activities carries a serious risk of damaging the health (especially mental health) of children.

Any future efforts to strengthen the inclusive power of sport should therefore be welcomed and supported. In the author's opinion, sports must serve the development of children who should

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53 It is opportune to recall once again art. 31 CRC and the General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Art. 31) where stating „Article 31 must be understood holistically, both in terms of its constituent parts and also in its relationship with the Convention in its entirety. Each element of article 31 is mutually linked and reinforcing, and when realized, serves to enrich the lives of children. Together, they describe conditions necessary to protect the unique and evolving nature of childhood.“

54 Reading highly recommended: Grant Jarvie, James Thornton, Hector Mackie, *Sport, Culture and Society – An Introduction* (London and New York: Routledge, 2018), 412 *et seq.*

have the opportunity to grow through the noble rules of sport. It should be inconceivable that it is the children who serve the sport to achieve increasingly unreachable goals and records, whatever the costs in terms of children's well-being. Children must be able to make mistakes, change their minds, realize that the meaning of sport is not always contained in a victory: only in this way they will become champions, but only if they want it.

*"Just play. Have fun. Enjoy the game."* – Michael Jordan

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## 'SPORTING MERIT' IN EUROPEAN UNION LAW

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### Abstract

'Sporting merit' played a central role in the judgments of the Court of Justice of the European Union (CJEU) in *European Super League Company* and *Royal Antwerp*. However, the concept has been undertheorised, and its role in the so-called 'European sport model' ('ESM') has been understudied. This article seeks to address this literature gap by understanding both the meaning and role of 'sporting merit' in EU law. It begins by analysing the Court's use of 'sporting merit' in its recent case law, arguing that the concept has become a cornerstone of the ESM. It then attempts to conceptualise 'sporting merit,' arguing that there are two possible ways to define this concept: a 'static' one, which prioritises the reward of immediate sporting achievements; and a 'dynamic' one, which places a greater emphasis on the promotion of long-term competitive balance. To understand the respective implications of these definitions, this article then explores how sporting merit is approached in both Europe and the USA. It argues that, whereas the ESM places a greater emphasis on the 'static' understanding of sporting merit, its North American counterpart embraces a 'dynamic' approach thereto, for example through financial redistribution and through sport-related corrective mechanisms such as draft systems. Building on the above, this article queries whether – and if so how – such corrective mechanisms could be incorporated into the ESM; whether doing so would lead to a more coherent approach to the promotion of 'sporting merit,' and whether it would be more in line with Article 165 TFEU.

**Keywords:** EU law, EU Sport Law, Sporting Merit, Competitive Balance, European Sport Model, North American Sport Model.

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## 1. INTRODUCTION

'Sporting merit' played a central role in recent judgments of the Court of Justice of the European Union (CJEU) in *European Super League Company* ('ESLC')<sup>1</sup> and *Royal Antwerp*.<sup>2</sup> However, the concept has been undertheorised, and its role in the so-called 'European Sport Model' ('ESM')<sup>3</sup> has been understudied. This article seeks to address this literature gap by understanding the role played by 'sporting merit' in EU sport law. It will do so by focusing on football, Europe's most popular sport and that which has been the subject of the most recent judicial battles before the Court of Justice.

The article will begin by tracing the origins of 'sporting merit' in European Union (EU) sport law and policy. This will be done by reference to both the EU treaties and the various policy documents produced by the EU and by the Council of Europe (section 2). Having done so, it will explore the Court's case law, with a particular focus on *European Super League Company* and *Royal Antwerp* (section 3). It will build on this analysis to provide a working definition of sporting merit and to discuss the apparent tension between sporting merit and competitiveness, two seemingly contradictory objectives that any regulatory framework must balance (section 4). Having discussed the theoretical implications of this tension, the article will turn to the approach embraced by the 'North American sports model,' which will be contrasted with that embraced by European football (section 5). This will pave the way for the final section of this article, which will query what role sporting merit ought to play in EU sport law, what lessons – if any – can be learned from the North American approach, and whether any American concepts could be transplanted into ESM in a manner consistent with Article 165 TFEU (section 6). Section 7 will conclude.

By engaging in this discussion, the present article hopes to make a threefold contribution to the academic debate. First, it provides a descriptive understanding of the legal role of sporting merit in EU law, particularly in the wake of the recent judgments handed down by the Court of Justice. Second, it discusses the tension between competitive balance and sporting merit – one which has significant practical implications, but which has been undertheorised by the academic literature. Third, it engages in a comparative assessment with the so-called 'North American model,' understanding their relative strengths and weaknesses and querying what, if anything, EU law can learn from the latter.

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1 Case C-333/21 *European Super League Company* EU:C:2023:1011 ('ESLC').

2 Case C-680/21 *Royal Antwerp Football Club* EU:C:2023:1010 ('*Royal Antwerp*').

3 The very existence of a single 'European sport model' – one which presents a set of characteristics which are common to all European sports – is controversial. This is particularly the case in relation to the requirements that competitions be open or that they embrace a 'pyramid structure,' which many sports and tournaments do not comply with. This article will not engage in an empirical analysis of the existence or otherwise of this model across the EU, nor will it explore its normative desirability. Instead, it will take the Court's case law at face value, accepting that a 'European sport model' plays a role in EU sport law and that sporting merit is deemed to constitute one of its key characteristics.

## 2. SPORTING MERIT IN EU LAW

### 2.1. THE TREATIES

In EU law, the principle of conferral establishes that the Union can only legislate where it is expressly authorized to do so by the treaties.<sup>4</sup> Although sport-related disputes first reached the Court of Justice fifty years ago,<sup>5</sup> sport policy was only expressly incorporated into the EU treaties through the Lisbon Treaty, which came into force in 2009.

EU sport policy is governed by Article 165 TFEU, which is located in Title XII of Part Three of the TFEU, titled 'Education, vocational training, youth and sport.' According to Article 165(1) (b) TFEU, "[t]he 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." This is further developed by Article 165(2)(g), which specifies that "Union action shall be aimed at ... developing *the European dimension in sport, by promoting fairness and openness in sporting competitions*."<sup>6</sup> In order to contribute to the achievement of these objectives, Article 165(3) requires the Union and the Member States to "foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe." Article 165(4), on the other hand, allows the European Parliament and the Council, "acting in accordance with the ordinary legislative procedure," to "adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States." It also holds that the Council, on a proposal from the Commission, may 'adopt recommendations' on sport-related issues.

For the purposes of this article, two conclusions can be drawn from a purely textual analysis of Article 165 TFEU. The first such conclusion concerns the Union's capacity to regulate sport-related matters. As the Court of Justice clarified in both *ELSC* and *Royal Antwerp*, Article 165(4) allows the EU to engage in some sport-related rule-making, but cannot be relied on as a self-standing legal basis for the harmonisation of Union legislation.<sup>7</sup> In the Court's own words, the Union has no general regulatory competence over sport, but merely a *supporting* one which allows it to pursue 'not a 'policy', as provided for by other provisions of the [TFEU], but an 'action' in a number of specific areas, including sport.'<sup>8</sup>

The second conclusion concerns what – if anything – the TFEU tells us about the meaning of 'sporting merit' in EU law. Although Article 165 TFEU does not refer to this concept, it does highlight three related ones. First, it refers to the 'specific nature of sport' – a highly contested notion, both legally and normatively.<sup>9</sup> Second, it mandates the promotion of 'fairness ... in sporting competitions.' Third, it refers to the advancement of 'openness' in said competitions. As this article will argue, all three concepts can be interpreted in different ways, each with

4 Article 5(2) TFEU. The EU treaties are the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which have equal legal weight.

5 Case 36/74 *Walrave and Koch* EU:C:1974:140.

6 Emphasis added.

7 *ESLC*, paras 99-100; *Royal Antwerp*, paras 67-68.

8 *ESLC*, paras 99-100; *Royal Antwerp*, paras 67-68.

9 Stephen Weatherill, "Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law?," in *European Sports Law: Collected Papers*, ed. Stephen Weatherill (2nd edn., The Hague: Springer, The Hague, 2014), 527-541, 528.

significant implications for the operationalisation of sporting merit and, in turn, for the organisation and regulation of European sport. All three will therefore play a central role in the debate entertained in the following sections.

## 2.2. BEYOND THE TREATIES

The fact that sport did not feature in EU primary law prior to the Lisbon Treaty does not mean that there was no EU sport policy until 2009. For decades, there has been a relatively consistent effort to set out a European sport policy, both in the EU and within the framework of the Council of Europe. For reasons of space, the present section will not discuss all the instruments – ranging from ministerial conclusions to guidelines and from policy statements to reports – that refer to the regulation of sport in Europe.<sup>10</sup> Instead, it will focus on those instruments which expressly refer to sporting merit or to the main characteristics of the European sport model. In doing so, it will seek to understand what – in anything – these documents tell us about the meaning of sporting merit in Union law.

The Commission's early sport-related policy documents contained no reference to sporting merit, nor did they expressly refer to a European sport model. The Communication on the European Community and sport,<sup>11</sup> published in 1991, did not mention either concept, nor was this notion addressed in the 1998 Staff Working Paper on 'the development and prospects for Community action in the field of sport' – a report which did, however, provide the first indications of what would later become the ESM, arguing that national competitions based on promotions and relegations constituted one of sport's 'unique characteristics.'<sup>12</sup> A similar silence characterised the Member States' most important sport-related statements: neither the Amsterdam Declaration, attached to the Amsterdam Treaty,<sup>13</sup> nor the European Council's Nice Declaration, published in December 2000, made any specific references to sporting merit.<sup>14</sup>

Far more explicit was the so-called Helsinki Report, produced by the Commission in 1999.<sup>15</sup> In its introduction, the Report points towards a European model of sport, arguing that there are "many common features in the ways in which sport is practised and organised in the Union, in spite of certain differences between the Member States," and suggesting that it

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10 For a more extensive analysis, see Vivienne Halleux, *EU sport policy: An overview* (European Parliament Research Service, 2015) <https://www.europarl.europa.eu/EPRS/EPRS-IDA-565908-EU-sport-policy-overview-FINAL-28pages.pdf>, although note that the report does not refer to sporting merit.

11 European Commission, *The European community and Sport*. Communication from the Commission to the Council and the European Parliament SEC (91) 1438 final (1991) <http://aei.pitt.edu/3453/>.

12 European Commission, *Commission Staff Working Paper: The Development and Prospects for Community Action in the Field of Sport* (1998) [https://ec.europa.eu/assets/eac/sport/library/documents/doc252\\_en.pdf](https://ec.europa.eu/assets/eac/sport/library/documents/doc252_en.pdf), 6-7.

13 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts – Declarations adopted by the Conference – Declaration on sport [1997] OJ C340/136.

14 European Council, 2000 Nice Declaration, Annex IV, para 2, [https://www.europarl.europa.eu/summits/nice2\\_en.htm](https://www.europarl.europa.eu/summits/nice2_en.htm).

15 European Commission, *Report from the Commission to the European Council with a view to safeguarding current sports structures and maintaining the social function of sport within the Community framework – The Helsinki Report on Sport – COM (1999) 644 final* <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1999:0644:FIN:EN:PDF>.



is “therefore possible to talk of a European approach to sport based on common concepts and principles.”<sup>16</sup> Building on the above, it notes that the increasing commercialisation of sport, as well as the growing profits attached thereto, were putting at risk the “principle of financial solidarity between professional and amateur sport and the system of promotion and relegation common to most federations.”<sup>17</sup> Once again, therefore, a European approach to sport is closely linked to the system of promotion of relegations which, the Report argues, ensures that competitions are premised on sporting merit. This is made even more explicit several pages later, where the Commission notes that “[t]he system of promotion and relegation is one of the characteristics of European sport” by “giving small or medium-sized clubs a better chance,” thereby “reward[ing] sporting merit.”<sup>18</sup>

Several years later, the Staff Working Document accompanying the highly influential 2007 White Paper on Sport once again referred to sporting merit. When discussing licensing systems for European football clubs, the Commission argues that:

“[l]icensing systems represent a compromise between the traditional openness of competitions in Europe, where access is allegedly based only on sporting merits, and the alternative approach of closed competitions in professional leagues, where the “financial” merit is preponderant. *Licensing systems thus represent an evolution of the so-called European approach to sport, where sport merit remains the main criterion for a club to be entitled to participate in often highly professionalized competitions [...]*”

In fact, it is from the White Paper onwards – a timeframe which coincides with the adoption of the Lisbon Treaty<sup>19</sup> – that a shift in tone can be observed, both in the EU and in the Council of Europe. On the one hand, a 2008 resolution by the Parliamentary Assembly of the Council of Europe stressed “the need to preserve the European Sports Model,” a model which was “neither homogeneous nor perfect,” but was which was “deeply rooted in European civil society,” was “an important expression of European culture and the European attitude towards sporting values,” and was a “democratic model that serves to ensure sport remains open to everyone.”<sup>20</sup> Having set out the above, the PACE urged Member States to “uphold the European sports model based on the twin principles of financial solidarity and openness of competition (promotion and relegation, opportunity for all)” – a wording very similar to that set out in Article 165 TFEU.

In the EU context, a 2011 communication published by the Commission noted that “legitimate objectives pursued by sport organisations may relate, for example, to the fairness of sporting competitions [and] the uncertainty of results.”<sup>21</sup> One year later, the European Parliament adopted a resolution which highlighted that:

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16 The Helsinki Report on Sport, 3.

17 The Helsinki Report on Sport, 4.

18 The Helsinki Report on Sport, 10.

19 On the negotiations preceding Article 165 TFEU, see 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): 238, <https://doi.org/10.1080/13501763.2011.609710>.

20 Parliamentary Assembly of the Council of Europe, Resolution 1602 (2008), ‘The need to preserve the European Sport Model,’ recital 2, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17628&lang=en>.

21 European Commission, Developing the European Dimension in Sport’ COM 2011 12 final <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0012:FIN:en:PDF>, 12.

“the European model of sport is based on a federation for each sports discipline, and whereas mechanisms for sports and financial solidarity, such as the principle of promotion and relegation and open competitions involving both clubs and national teams, are organised on an autonomous, democratic and territorial basis and in a pyramid structure, as the result of a longstanding democratic tradition.”<sup>22</sup>

A similar conclusion was reached in 2017, where the Parliament argued that “the European organised sport model is based on the principles of territoriality and nationality, with one federation per discipline, and on solidarity mechanisms between elite and grassroots sports, as well as on promotion-relegation, open competitions and financial redistribution.”<sup>23</sup> In that same resolution, it reiterated “its attachment to the European organised sports models ... with open competitions and based on sporting merit.”<sup>24</sup>

In 2021, only one year before the announcement of the breakaway European Super League, two relevant policy documents were published. The revised European Sports Chapter, adopted by the Council of Europe, noted that “[t]he organisation of top-level and professional sports competitions should be in compliance with the principle of openness in sporting competitions, giving priority to sporting merit.”<sup>25</sup> At the same time, the European Parliament referred to sporting merit as one of the key principles underlying the European sports model.<sup>26</sup> In its view, “open competition, sporting merit and fairness” were three of the principles which justified “strongly oppos[ing] breakaway competitions that undermine such principles and endanger the stability of the overall sports ecosystem.”<sup>27</sup>

What can be gleaned from the policy documents reviewed above and how is it relevant to the question addressed in this article? First, both the Union and the Council of Europe acknowledge the existence of a ‘European sport model’ of sorts – in other words, of an approach to the organisation of European sports which, despite being ‘neither homogeneous nor perfect,’ boasts certain central characteristics. Second, the analysis carried out above shows how, over time, ‘sporting merit’ has gradually become one of the central characteristics underlying this model. Although the promotion of sporting merit plays an important role, it is not the only such characteristic that can be deduced from the above analysis: concepts such as the openness and fairness of sporting competitions, the system of promotions and relegations, and the principle of financial solidarity also feature in the policy documents explored in this section. Third, although these documents seem to agree that sporting merit plays a central role in the European approach to sport, none of them contain a definition of what sporting merit does or does not entail, nor do they set out how this concept can be operationalised:

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22 European Parliament resolution of 2 February 2012 on the European dimension in sport (2011/2087(INI)) [2012] OJ C239E/46, recital AE.

23 (2016/2143(INI)) [2017] OJ C252/2, recital O.

24 European Parliament resolution of 2 February 2017 on an integrated approach to Sport Policy: good governance, accessibility and integrity, para 39.

25 Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter (Adopted by the Committee of Ministers on 13 October 2021 at the 1414<sup>th</sup> meeting of the Ministers’ Deputies), para 14.3, <https://search.coe.int/cm?i=0900001680a42107>.

26 European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward (2021/2058(INI)) [2021] OJ C224/2, para 13.

27 European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward, para 13.

indeed, as will be set out below, the Court's recent case law has only partly clarified these questions. It is to this case law that this analysis will now turn.

### 3. SPORTING MERIT IN THE COURT'S CASE LAW

Although sport-related cases have been making their way to the Court of Justice for over five decades, 'sporting merit' did not feature in the Court's early case law. Instead, this concept was first mentioned in *Royal Antwerp* and *ESLC*, both of which were handed down, by the Grand Chamber, on 21 December 2023.

#### 3.1. EUROPEAN SUPER LEAGUE COMPANY

'Sporting merit' was first raised by Advocate General ('AG') Rantos in *ESLC*, the dispute concerning the proposed breakaway league made up of twelve leading European football clubs. In his Opinion,<sup>28</sup> AG Rantos argued that the insertion of Article 165 TFEU through the Treaty of Lisbon had culminated the gradual process of constitutionalization that sport had undergone since the early days of Union law, a process which was encouraged by landmark judgments such as *Bosman*.<sup>29</sup> In his view, Article 165 not only confirmed that sport fell within the scope of Union law: it also afforded "constitutional recognition" to a "European Sport Model," a system "which is characterised by a series of elements applicable to a number of sporting disciplines on the European continent, including football."<sup>30</sup>

Three such elements were identified, by the Advocate General, as characterising the ESM. First, "a pyramid structure with, at its base, amateur sport and, at its summit, professional sport." Second, *a system of open competitions based on sporting merit*. Third, a regime of financial solidarity, which allows profits to be redistributed to lower levels of the pyramid.<sup>31</sup> When a court was faced with a case involving a sport-related dispute, AG Rantos argued, the dispute in question ought to be analysed in light of these special characteristics and of the "horizontal" nature of Article 165 TFEU,<sup>32</sup> both of which should inform the Court's reading of the relevant provisions of EU law – for example, on competition law or free movement – raised by the dispute.

As is well known, the Court of Justice in *ESLC* shied away from affording sport the 'constitutional status' which AG Rantos advocated for.<sup>33</sup> Instead, the Court embraced what has long been

28 Case C-333/21, *European Super League Company*, EU:C:2022:993, Opinion of AG Rantos, para 30.

29 Case C-415/93, *Bosman*, EU:C:1995:463.

30 For an analysis of the Opinion, see Guillermo Íñiguez, "Constitutionalising European Football: AG Rantos' Opinion in *European Superleague Company* (C-333/21)," *EU Law Live*, December 16, 2022, <https://eulawlive.com/oped-constitutionalising-european-football-ag-rantos-opinion-in-european-superleague-company-c-333-21-by-guillermo-iniguez/>; Jan Zgliniski, "Constitutionalising the European Sports Model: The opinion of Advocate General Rantos in the European Super League case," *EUROPP – European Politics and Policy*, December 16, 2022, <https://blogs.lse.ac.uk/europpblog/2022/12/16/constitutionalising-the-european-sports-model-the-opinion-of-advocate-general-rantos-in-the-european-super-league-case/>.

31 *Ibid.* On the 'European Sport Model,' see Floris de Witte and Jan Zgliniski, "The Idea of Europe in Football," *European Law Open* 1, no. 2 (2022): 286, <https://doi.org/10.1017/elo.2022.15>.

32 *ESLC*, Opinion of AG Rantos, paras 34-41.

33 Guillermo Íñiguez, "European Super League Company and The (New) Law of European Football," *European Papers* 9, no. 1 (2024): 1, 8-10.

its orthodox approach to the interaction between EU law and sport: namely, that Union law affords no special status to sports law; that it is applicable to sport insofar as the latter “constitutes an economic activity,”<sup>34</sup> and that it is only “certain specific rules adopted solely on non-economic grounds and which relate to questions of interest solely to sporting per se” – for example, on national teams or raking criteria – that can fall outside the scope of the TFEU.<sup>35</sup> Having set the analytical scene, the *ESLC* judgment refers to sporting merit on three occasions. First, in its analysis under Article 102 TFEU, and more specifically when discussing the role of sport governing bodies (SGBs) in establishing prior approval rules for participation in breakaway competitions. In holding that the Treaties do not, in principle, preclude SGBs from setting such rules, the Court of Justice argues that this follows from the “considerable social and cultural importance” of football in the EU and from the former’s “specific characteristics”, including the importance of sporting merit in such competitions.<sup>36</sup> The concept is also relied on when addressing the application of Article 101 TFEU to the facts of the case. In this section of the judgment, the Court of Justice employs ‘sporting merit’ to tighten the scrutiny that SGBs must face when their rules on breakaway competitions are challenged before national courts. In essence, the Court of Justice holds that, although the referring court may take into account “the principles, values and rules of the game underpinning professional football, in particular the open, meritocratic nature of the competitions concerned,” simply referring to these objectives will not suffice to exempt UEFA and FIFA from Article 101(1) TFEU. On the contrary, the latter will have to show, on the basis of convincing evidence, that all requirements are actually satisfied on the facts.<sup>37</sup> Finally, sporting merit features in the Court’s analysis of the alleged restriction on the freedom to provide services, which is addressed at paragraphs 242-257 of the judgment. Having established that the UEFA-FIFA rules could amount to a violation of Article 56 TFEU, the Court notes that such restrictions ‘may be justified, in terms of its very principle, by public interest objectives consisting in ensuring, prior to the organisation of such competitions, that they will be organised in observance of the principles, values, and rules of the game underpinning professional football, *in particular the values of openness, merit and solidarity*.’<sup>38</sup>

Based on the above, what role do sport’s ‘specific characteristics’ – including sporting merit – play in the analysis of sport-related cases? *ESLC* evidences that these characteristics will feature once two prior boxes have been ticked. To begin with, the applicant will have to establish that the case in question falls within the scope of EU law. Although this will often be an easy hurdle to clear, particularly given the Court’s growing insistence that sport enjoys no special status within EU law, it need not always be the case: as set out above, rules with no economic dimension, for example on the composition of national football teams, will not be caught by the treaties. On the other hand, the applicant will also have to identify a breach of Union law. Once these two elements have been established, ‘sporting merit’ will play a central

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34 *Walrave and Koch*, para 4.

35 *ESLC*, see note 1 above, para 84. On the ‘purely sporting rule,’ see *Walrave and Koch*, see note 5 above, para 8, and *Bosman*, see note 29 above, paras 76 and 127. See also Stephen Weatherill, “The impact of the rulings of 21 December 2023 on the structure of EU sports law,” *International Sports Law Journal* 23, no. 4 (2023): 409, 414; Íñiguez, “*European Super League Company*”; and Jan Zgliniski, “Can EU competition law save sports governance?,” *International Sports Law Journal* 23, no. 4 (2023), 475, 476-478, <https://doi.org/10.1007/s40318-024-00258-9>.

36 *ESLC*, paras 144-145.

37 Íñiguez, “*European Super League Company*,” 11.

38 *ESLC*, see note 1 above, para 253 (emphasis added).

role at the two subsequent stages of the Court's analysis: first, when determining whether the breach of EU law can be justified, and second, when assessing whether any such justification is a proportionate means of achieving the proposed justification.

### 3.2. ROYAL ANTWERP

Sporting merit also features in *Royal Antwerp*, a judgment concerning the 'home-grown player' rules enacted by the Union of European Football Associations (UEFA) and the Belgian Football Association (URBFA).<sup>39</sup> *Royal Antwerp* and *ESLC* are highly cross-referential judgments. It is therefore not surprising that the Court's reasoning – and its analysis of the role of sporting merit – is very similar in both judgments. As in *ESLC*, sporting merit is once again listed as one of the "specific characteristics of professional football."<sup>40</sup> In the Court's own words:

"[The] specific characteristics [of European football] include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, *it also limits participation in those competitions to teams which have achieved certain sporting results ...*, with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, *it is, essentially, based on sporting merit*, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity."<sup>41</sup>

In *Royal Antwerp*, therefore, sporting merit acquires an even greater relevance than in *ESLC*, becoming *the* central characteristic of European football; that which underpins the European sport model as a whole. Indeed, having set out its understanding of this model, the Court of Justice proceeds to draw on football's 'specific characteristics' to carry out its subsequent analysis concerning the categorisation of the restrictions in question as 'by object' or 'by effect.' When doing so, the Court relies on three factors: football's 'considerable social and cultural importance;' the fact that competitions are often organised nationally; and the centrality of 'sporting merit' to the organisation of those competitions,<sup>42</sup> all of which have to be considered by the referring court in its analysis of the dispute before it.

### 3.3. DRAWING THE THREADS TOGETHER

Several provisional conclusions can be drawn from the analysis of the Court's case law. First, and in line with the analysis carried out in section 2, both *Royal Antwerp* and *ESLC* confirm that the promotion (and protection) of sporting merit is one of the 'specific characteristics' of the European Sport Model. Arguably, the Court's language denotes that it constitutes *the* central

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39 For a more detailed commentary on the judgment, see Guillermo Íñiguez and Sergio Íñiguez, "A further piece in the football law jigsaw: *Royal Antwerp* (C-680/21)," *EU Law Live*, January 16, 2024, <https://eulawlive.com/op-ed-a-further-piece-in-the-football-law-jigsaw-royal-antwerp-c-680-21-by-guillermo-iniguez-and-sergio-iniguez/>.

40 *Royal Antwerp*, para 104.

41 *Royal Antwerp*, para 105 (emphasis added).

42 *Royal Antwerp*, paras 104-106.

characteristic of this model. Therefore, wherever a sport-related case reaches the Court of Justice, sporting merit is likely to play an important role in the latter's interpretation of the Treaty's competition or free movement provisions, although it is far from clear what type of evidence parties will have to adduce when invoking this concept before the Court.

Second, the Court of Justice makes it clear that the ESM is to enjoy no *sui generis* 'constitutional' role within the EU treaties. Contrary to what AG Rantos calls for in his Opinion, the ESM is not to be afforded a horizontal status which requires its characteristics to be taken into account by the EU legislator in all circumstances.<sup>43</sup> Nor do these specific characteristics allow SGBs to circumvent the treaties, for example by relying on sport's supposed autonomy to turn sport regulation into a *lex specialis* and escaping EU Courts' scrutiny.<sup>44</sup> However, although the Court of Justice shies away – or indeed, rebukes – the Advocate General's constitutional language, it does afford the 'specific characteristics' of European sport an important role in its interpretation of sport-related case law.

On the one hand, these specific characteristics, and hence sporting merit, can be used to identify objective justifications that parties may rely on when derogating from the EU treaties. This can be seen, for example, in the competition law analysis in *ESLC*, where the Court relies on both sport's specific characteristics – including sporting merit – when evaluating the legality of the UEFA-FIFA breakaway rules and when analysing the possible justifications of the joint sale of broadcasting rights.<sup>45</sup> On the other hand, sporting merit provides a factor which the Court can consider in its proportionality analysis, as *Royal Antwerp* evidences. As this author has previously argued, the Court of Justice embraces the approach of AG Szpunar in *Royal Antwerp*, taking into account the particular reality of football but stripping it of its constitutional fanfare. In other words, the Court of Justice adopts a nuanced – and orthodox – approach, whereby the peculiarities of sport neither enjoy a *carte blanche*, nor can they be disregarded by national courts. In that sense, sport is no different from other areas of the internal market, with Union law setting out an outer framework that cannot be derogated from whilst taking into account the economic reality of the sector in question.

#### 4. THE TENSION: SPORTING MERIT VERSUS COMPETITIVE BALANCE

The preceding section has traced the Court of Justice's reliance on 'sporting merit' in its case law. Despite the Court's growing recourse to this concept, however, the latter has not yet been given a working definition. In other words, the Court's case law thus far tells us that sporting merit is important but does not tell us *what* this concept *means*. This is a fundamental weakness of EU sport law as it currently stands. After all, without a clear definition of this term, two parallel risks arise: first, that it is misapplied by the courts, both in the Member States and in Luxembourg; second, that its (mis)application by the latter cannot be properly analysed and critiqued.

At first sight, the meaning of sporting merit can be thought to be straightforward. After all, the idea that sporting events must be decided based solely on merit, and not on the basis of

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43 *ESLC*, para 101.

44 As discussed in Stephen Weatherill, "Saving Football from Itself: Why and How to Re-Make EU Sports Law," *Cambridge Yearbook of European Legal Studies* 24 (2022): 4, <https://doi.org/10.1017/cel.2022.3>.

45 Íñiguez, "European Super League Company," 10.

unrelated considerations – such as the regulator’s preferred team, the government’s political preferences, or indeed because the result has been fixed in advance by participants – will seem obvious to most readers. This working definition, which this article will build on, reflects an intuitive link between ‘sporting merit’ and ‘fairness,’ a link which is best captured by the phrase “may the best team win.” For such sporting events to be ‘fair,’ clubs must be able to participate in sporting competitions under equal conditions, and rules and procedures must be designed to ensure that the best-performing team is able to win. Sporting merit, or merit-based sport competitions, can therefore be understood as an operationalization of ‘fairness’ in the context of sport, allowing an abstract concept to be transformed into detailed rules that can in turn govern the conduct of specific sporting events – or, indeed, the operation of a European model of sport.

However, a closer look at the concept of sporting merit reveals a picture that is more nuanced, and therefore less clear-cut and more diffuse. If sporting merit is indeed understood as a manifestation of ‘fairness’ – as a mechanism to promote fairness, but also a reflection of the latter in the context of sport governance –, it is suggested that there are two possible understandings of how sporting merit, and hence ‘fairness,’ can be encouraged. Both such definitions have distinct regulatory implications for European sport, and both are therefore worth addressing in turn.

The first possible understanding of sporting merit can be described as a ‘static’ one. The focus of the ‘static’ approach is on rewarding the most immediate manifestation of sporting merit: for example, by rewarding the winner of the most recent game or competition at hand. This operationalisation advances sporting merit in the intuitive, ‘static’ sense set out above, with a focus on promoting equality of *opportunity* among participating teams. At the same time, by rewarding the winner of openly competitive events, it can be thought to enhance ‘fairness’: provided that competitions are designed in a way that enables all participants to win and that punishes those who attempt to cheat, whoever emerges as the winner will have done so ‘fairly.’ Therefore, as well as promoting sporting merit, this definition also seems to fulfil the mandate – to promote ‘fairness and openness in sporting competitions’ – set out in Article 165(2)(g) TFEU.

The ‘static’ approach to sporting merit can be contrasted with a ‘dynamic’ one. As with the static framework, the ‘dynamic’ understanding of sporting merit will also ensure that the best-performing team wins. However, its approach will be more forward-looking. Instead of simply focusing on the most immediate tournament, it will understand that the promotion of sporting merit in a substantive manner requires a level playing field over time. Otherwise, in the context of team sports such as football, the static, ‘winner-take-all’ approach may give rise to growing sporting inequalities, with the winner reaping the financial rewards of its victory, using those rewards to strengthen its squad, and becoming increasingly dominant in the long run. In other words, the focus of the ‘dynamic’ approach lies on redistributing resources to ensure there is true competition on the merits *over time*, even if this requires moving away from a ‘pure’ merit-based approach.

The above discussion reflects a tension at the heart of the ESM. It will be recalled from Section 3 that the promotion of sporting merit is not the only characteristic highlighted by the Court of Justice. In *Royal Antwerp*, the Court notes that ‘sporting merit ... can be guaranteed only if all

the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.<sup>46</sup> More generally, as set out above, the TFEU mandates that Union action be aimed at 'developing the European dimension in sport *by promoting fairness and openness in sporting competitions*.'<sup>47</sup> In other words, as well as promoting sporting merit, the ESM requires that the Union promote the *competitive balance* of its competitions. For present purposes, competitive balance can be understood as 'the overall balance of a sports league or championship, i.e. the competitive closeness of all participants in the contest.'<sup>48</sup>

This apparent tension between the promotion of sporting merit and that of a competitive balance poses a dilemma for European sports law. By placing too heavy an emphasis on 'static' sporting merit, the ESM may inadvertently jeopardise the pursuit of a competitive balance, giving rise to more unequal competitions in which winners are rewarded and losing teams find themselves unable, in practice, to compete. This, in itself, may reduce the *uncertainty of outcome* characterising European sport, thereby leading to competitions which are less attractive for both fans and economic actors.<sup>49</sup> In other words, merely pursuing 'static' sporting merit may make 'dynamic' sporting merit more difficult to achieve, thereby resulting in competitions which are growingly unequal. In such a scenario, can it be said that sporting merit is truly being promoted, or does the latter require a playing field that is genuinely level? Conversely, although prioritizing competitive balance at the expense of sporting merit may result in 'fairer' competitions, it may in turn require sport-related corrective mechanisms which are alien to the cultural dimension of European sport.<sup>50</sup> Insofar as this is the case, it can be queried whether competitions which focused exclusively on the pursuit of a competitive balance at the expense of 'sporting merit' could be compatible with EU sport law.

How this tension is resolved is not merely of theoretical interest. Instead, it will have important practical implications, and may in turn result in radically different sporting outcomes. To illustrate these difficulties, let us focus on one of the cornerstones of the European sport model: namely, the system of promotions and relegations upon which the pyramid structure is based. To many, this system is the archetype of merit-based competition. At the end of any given season, the worst-performing teams will be relegated to a lower tier, whereas the best-performing ones in the lower tiers will be promoted to a higher one. At the same time, these systems will also draw a direct link between a team's end-of-season ranking and the financial reward they obtain for their performance, with higher-ranked clubs obtaining

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46 *Royal Antwerp*, para 105.

47 Article 165(2)(g) TFEU (emphasis added). On 'fairness' and 'openness' in European sports law, see Weatherill, "Fairness, Openness and the Specific Nature of Sport," 536-538.

48 See Oliver Budzinski and Tim Pawlowski, "The behavioural economics of competitive balance: Implications for league policy and championship management," Ilmenau Economics Discussion Papers No. 89 (2014), 2. For an interesting statistical analysis, see Michael J Lopez, Gregory J Matthews and Benjamin S Baumer, "How Often Does the Best Team Win? A Unified Approach to Understanding Randomness in North American Sport," *The Annals of Applied Statistics* 12, no. 4 (December 2018): 2483, <https://doi.org/10.1214/18-AOAS1165>. See also Kevin Alwell, "Analyzing Competitive Balance in Professional Sport" (Honors scholar thesis, University of Connecticut, 2020).

49 On which, see Tsjalle van der Burg, "Why transfer fee systems improve market competition, and why the Bosman ruling was flawed" *International Sports Law Journal* (2024): 1, <https://doi.org/10.1007/s40318-024-00271-y>; and Loek Groot, *Economics, Uncertainty and European Football: Trends in Competitive Balance* (Cheltenham: Edward Elgar, 2018).

50 On which, see De Witte and Zglinski, "The Idea of Europe in Football," 287.



significantly higher payouts than lower-ranked teams.

This system, which rewards immediate sporting success, can be thought to advance a 'static' understanding of sporting merit. At first sight, several arguments can be advanced in favour of this approach. First, it provides an immediate incentive for teams to perform well: after all, whoever does so will have access to higher financial rewards, and will thereby be able to purchase better players and access more exciting competitions. Second, by drawing a link between a team's league position and their financial reward, such a system rewards merit in a way that directly corresponds to their sporting performance. In other words, this framework sits as closely to the "may the best team win (and benefit from their victory)" mantra as can be. The above considerations help to explain why the promotion and relegation system is seen as a cornerstone of the European sport model.<sup>51</sup>

However, this ideal model also evidences the limitations of a static understanding of sporting merit. Although this 'static' framework may be thought to reward the best-performing teams, its close relationship with financial income can give rise to a perverse situation. In order to address this, let us focus, once again, on football and on the domestic league structure. In any such league, teams wishing to perform well will have to access football's most valuable resource: players. In turn, for these players to be signed, they will need football's second most valuable resource: money.

Let us imagine that Team A wins its domestic league, and therefore receives a significant financial reward, both directly (from its performance throughout the season) and indirectly (from the associated broadcasting rights and through its qualification for the UEFA Champions League). In the following transfer window, Team A therefore has access to a significantly larger budget than its counterparts, and is thus able to sign three of the world's most promising young players, which until this transfer window played in middle-ranking teams in the same domestic league. Team A therefore significantly improves the quality of its squad, whereas three of its domestic rivals miss out on its star players. The following season ends with Team A winning yet another championship, which in turn gives rise to another significant financial reward, therefore allowing Team A, once again, to sign star players. Hypothetically, this can lead to a never-ending cycle of greater income and better players; one which can hardly be thought to be in line with the European Sport Model, whether in its 'affective' dimension or, indeed, in its 'governance' one.<sup>52</sup>

Far from constituting a mere theoretical exercise, the above thought experiment reflects the present reality of European football, where competitive balance has noticeably decreased over the years.<sup>53</sup> In Europe's top five leagues (Spain, England, Germany, France, and Italy), it has become increasingly possible to predict who will be the winner even before the season has started. In the period spanning the seasons 2013/14 to 2022/23,<sup>54</sup> Paris Saint-Germain have won eight French leagues; Manchester City, six English Premier Leagues; Real Madrid and FC Barcelona, a combined Spanish eight; Juventus, seven Italian leagues; and Bayern

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51 That the pyramid system constitutes a cornerstone of the ESM has been widely acknowledged by the literature. See among others Íñiguez, "European Super League Company," De Witte and Zglinski, "The Idea of Europe in Football", and Weatherill, "Saving Football from Itself."

52 On which, see De Witte and Zglinski, "The Idea of Europe in Football."

53 On which, see Van der Burg, "Why transfer fee systems improve market competition."

54 2013/2014 to 2022/2023.

Munich, all ten German *Bundesliga* titles. Although much of this dominance can be linked to the distribution of income from broadcasting rights, a broader debate concerning the pyramid structure can also be raised. After all, it is far from clear whether this structure is truly meritocratic, enabling any club to reach the top tier, or whether, by limiting the number of teams that can be promoted in any given season, it simply entrenches existing hierarchies, benefitting a competition's founding clubs and rendering it almost impossible for clubs at lower steps of the pyramid to access the top divisions. Beyond the domestic context, a similar phenomenon has played out in the UEFA-organised Champions League, which has witnessed a growing dominance by a select few teams which has, itself, contributed to a decline in the tournament's competitive balance.<sup>55</sup> This is best illustrated by the fact that, in the entire 21<sup>st</sup> century, only one team from outside the top five leagues – FC Porto, in the 2003/04 season – has won the tournament.

Building on this example, it is therefore suggested that there is an inherent tension between the promotion of sporting merit and that of a competitive balance: in other words, a model which places an excessive emphasis on 'static' sporting merit may be unable to ensure that sporting competitions remain competitive over time. This, it is argued, is a central flaw of the European sport model as it stands. Given that the promotion of 'sporting merit' is not the only characteristic of the ESM, and must instead be reconciled with other considerations – such as the promotion of fair and open competitions or a system of financial solidarity –, it is suggested that a model which struck a more balanced approach would be more closely aligned with the European sport model. The following section will explore how the ESM can reconcile these seemingly mutually exclusive goals. It will do so by reference to the so-called North American sport model, which approaches this tension in a somewhat different manner to the European one.

## 5. A COMPARATIVE APPROACH: HOW DOES THE USA PROMOTE 'SPORTING MERIT'?

### 5.1. UNDERSTANDING THE AMERICAN SPORT MODEL

So far, this article has focused on the central features characterising the so-called 'European Sport Model,' with a particular focus on the Court's case law and on the theoretical and practical tensions that sporting merit may give rise to within that European model. The present section will embrace a comparative approach, focusing on the so-called 'North American' model of sport. When referring to the 'North American' model, this article will focus on the economic and sporting structure governing the four most important US leagues: the National Basketball Association (NBA), the National Football League (NFL), the Major League Baseball (MLB), and the National Hockey League (NHL). Other leagues, such as the Major League Soccer (MLS), are organized according to a different model, and will therefore be disregarded for the purposes of this article.<sup>56</sup>

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55 Miguel Poiães Maduro, "Can EU law save European football?", *Europa Felix*, May 25, 2023, <https://www.europafelix.eu/2027039/12801132>.

56 On the MLS, see Todd Jewell, "Major league soccer in the USA", in *Handbook on the Economics of Professional Football*, eds. John Goddard and Peter Sloane (Cheltenham: Edward Elgar, 2014), 351-367.

The differences between the European and American sport models concern both their respective goals and the manner in which those objectives are pursued. Some of these differences were set out, albeit very cursorily, by Advocate General Rantos in his Opinion in *ESLC*. In his view, the European model “differs from the North American model, which is primarily based on ‘closed’ competitions or leagues, in which the participation of clubs, which are franchised businesses, is guaranteed, pre-determined and based on an entrance fee.”<sup>57</sup> In fact, for AG Rantos, the differences between these approaches are not merely coincidental, nor are they the result of a historical accident. In his words, “it is precisely in response to the other models which exist that the EU legislature decided to incorporate the concept of the ‘European Sports Model’ into the Treaty in order to draw a clear distinction between it and those other models and to guarantee its protection through the adoption of Article 165 TFEU.”<sup>58</sup> In essence, the Advocate General seems to suggest that the differences between both approaches are existential, in that the European sport model exists to protect itself from the American one.

To begin with, the Big Four American leagues are closed, with a horizontal structure and no system of promotions and relegations. In other words, the ‘pyramid’ structure that characterizes European sport is nowhere to be found in the American system.<sup>59</sup> The stability in the composition of North American leagues gives rise to a business model that is radically different to the European one. Regarding clubs, “the certainty of remaining in the highest level of a given league provides incentives for [them] to promote and grow their brands” – for example, by allowing “existing team owners to use the scarcity of teams to pressure municipalities into building their teams publicly funded facilities and has allowed them to sell expansion teams at uniquely expensive prices.”<sup>60</sup> At the same time, the quasi-permanent nature of the leagues themselves has facilitated long-term agreements between franchises on matters such as intellectual property rights or the centralized sale of betting data.<sup>61</sup> This greater collective focus, which has also allowed leagues to focus on generating revenue in order to attract top talent *to the league as a whole*, rather than to individual clubs at the expense of others, is facilitated by the suspension of traditional US antitrust and labour laws in relation to sports.<sup>62</sup>

Second, the North American model is characterised by greater self-regulation, with very limited public intervention from the federal government and the understanding that leagues

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57 *ESLC*, Opinion of AG Rantos, para 33.

58 *ESLC*, Opinion of AG Rantos, para 33.

59 Although the structure of some European leagues, such as the Euroleague Basketball, increasingly resembles the North American format.

60 Marc Edelman, “European Super League Will Bring the Lucrative U.S. Sports Model Overseas,” *Forbes*, April 19, 2021, <https://www.forbes.com/sites/marcedelman/2021/04/19/european-super-league-brings-lucrative-us-sports-model-overseas/?sh=549587150b17>.

61 *Ibid.* On data-sharing agreements, see also Marc Edelman and JT Holden, “Monopolising Sports Data,” *William & Mary Law Review* 63, no. 1 (2021-2022): 69, <https://scholarship.law.wm.edu/wmlr/vol63/iss1/3>.

62 See 15 U.S.C. § 1291 (2022), which ‘exempt[s] from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues’, although note, more generally, 15 U.S.C. § 1294 (2022), which limits the scope of the exemption set out at § 1291. For a detailed analysis, see Leah Farzin, “On the Antitrust Exemption for Professional Sports in the United States and Europe,” *Jeffrey S. Moorad Sports Law Journal* 22, no. 1 (2015): 75. This approach is worth contrasting with that embraced by the Court of Justice of the European Union, which (arguably) treats sport clubs as ‘ordinary’ businesses for the purposes of EU competition law and the free movement provisions.

and franchises are best left to their own devices. This stands in clear contrast to Europe, where there is a greater public dimension to sport – as exemplified by national sports federations, which are often quasi-public bodies – and where the European Union has become increasingly involved in recent years.

Third, and most importantly for present purposes, the American model also includes sport-related corrective mechanisms – in other words, mechanisms aimed at correcting inequality between teams and promoting the competitive balance of domestic leagues.<sup>63</sup> Two such mechanisms stand out. On the one hand, salary caps, which limit the money franchises can spend on their players' salaries and which have been shown to produce "more balanced league[s]."<sup>64</sup> On the other, so-called 'draft systems,' which allow the worst-performing teams in any given season to access the most sought-after young players, therefore providing them with an opportunity to rebuild their squads whilst limiting top-performing teams' ability to access this young talent. Collectively, these systems ensure that competitions remain competitive over time, and that performing well is a *real* possibility, not just a fiction, for all participating teams.

As Van Bottenburg suggests, the differences between the European and North American sports models result from their distinct historical roots. In his words, "[i]n the nineteenth and twentieth century, the European and American sports formations and cultures developed along quite different paths," both in relation to which sports became popular; the contexts in which they were first practised; and how they were commercialized and organized.<sup>65</sup> More broadly, however, the European and American sports models are also reflective of the broader cultural, political, and ideological differences underlying European and American societies. These differences transcend the context of sport, but also unequivocally shape how the latter is organised. The fact that sport is organized "independently of the state"<sup>66</sup> – that it is market-driven, with government regulation viewed as unthinkable – is reflective of a broader American model of regulation which Anu Bradford has explored at length in her work on technological regulation.<sup>67</sup> Conversely, the European model – one which views regulation as a more acceptable means through which to achieve 'fair' competition – is closer to the European model of regulation in other areas, not least the ordoliberal influence on the Union's

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63 For a comparative analysis of the relative competitive balance of 'open' European football leagues and of 'closed' American leagues, see Loek Groot, "Competitive Balance in Team Sports: The Scoring Context, Referees, and Overtime," *Journal of Institutional and Theoretical Economics* 165, no. 3 (2009): 384, <https://doi.org/10.1628/093245609789471961>.

64 See Helmut M Dietl, Egon Franck, Markus Lang and Alexander Rathke, "Salary cap regulation in professional team sports," *Contemporary Economic Policy* 30, no. 3 (2012): 307, <https://doi.org/10.1111/j.1465-7287.2011.00265.x>, although the effectiveness of salary caps is questioned by Stefan Késenne, "The Impact of Salary Caps in Professional Team Sports," *Scottish Journal of Political Economy* 47, no. 4 (2000): 422, <https://doi.org/10.1111/1467-9485.00171>.

65 Maarten van Bottenburg, "Why are the European and American sports worlds so different? Path dependence in the European and American sports history," in *Sport and the Transformation of Modern Europe: States, media and markets 1950-2010*, eds. Alan Tomlinson, Christopher Young and Richard Holt R (Abingdon: Routledge, Abingdon, 2011), 205-225.

66 van Bottenburg, "Why are the European and American sports worlds so different? Path dependence in the European and American sports history," 205.

67 See Anu Bradford, *Digital Empires* (Oxford: Oxford University Press, 2023); and Anu Bradford, "The False Choice Between Digital Regulation and Innovation," *Northwestern University Law Review* 118, no. 2 (October 2024) (forthcoming).

competition law framework<sup>68</sup> or its hands-on approach to the regulation of “digital empires.”<sup>69</sup>

## **5.2. SPORTING MERIT AND COMPETITIVE BALANCE UNDER THE AMERICAN SPORT MODEL**

How, then, does the American sports model understand the tension between sporting merit and competitive balance? Building on the framework set out above, the present article suggests that, whereas the European sport model tends to endorse a ‘static’ view of sporting merit, the American model emphasises a ‘dynamic’ one: in other words, it places a greater emphasis on maintaining a competitive balance *over time*, even if this requires greater *ex ante* intervention by domestic leagues in order to redistribute the sport’s most important resources. This can be observed, on the one hand, from the agreements struck between franchises to enable the pooling of financial resources – such as the income obtained from the joint sale of broadcasting rights – which are jointly exploited by leagues and subsequently redistributed to enhance the latter’s value. No less importantly, the emphasis on promoting a competitive balance can also be deduced from the presence of sport-related corrective mechanisms, such as salary caps or the draft system.

By prioritising the pursuit of a long-term competitive balance over that of short-term sporting merit, the North American sport model facilitates sport-related turnovers that are almost unthinkable in Europe. In the NBA, for example, an intelligent use of draft picks allowed the Boston Celtics, one of the worst-ranked teams in the 2006/07 season, to win the title the following season.<sup>70</sup> It also enabled the Golden State Warriors, a consistently mid-ranking team for many years, to create a hegemonic dynasty in the space of a few years. Similar examples can be found in other sports. In the NFL, the New England Patriots went from an underwhelming 2000-2001 season, with 5 victories and 11 defeats, to a highly successful 2001-2002 one, in which they topped their division and went on to win the Super Bowl. This turnaround was largely facilitated by the performance of their draft pick Tom Brady, a largely unknown player who had been signed by the Patriots two years earlier. Although European football underdogs have carried out historic upsets in recent years – with Leicester’s 2015-16 Premier League win or Atlético de Madrid’s 2013-14 La Liga triumph providing perhaps the most remarkable examples – these are largely historical accidents, rather than the product of structural corrective mechanisms designed to ensure that competitive balance is upheld over time. In the Premier League, Leicester City’s win proved a one-off phenomenon; in Spain’s La Liga, Atlético’s two recent league titles have proved a mere drop in a 19-year ocean of Real Madrid and FC Barcelona dominance. Nor did Lille OSC’s victory in the 2020-2021 Ligue 1 prevent eight PSG league titles in the last ten years.

None of the above, of course, means that the North American model does away with sporting merit in the organisation of its major leagues. However, as the previous examples illustrate, the approach embraced by these leagues does strike a better balance between the reward of

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68 On which, see Elias Deutscher and Stavros Makris, “Exploring the Ordoliberal Paradigm: The Competition-Democracy Nexus,” *The Competition Law Review* 11, no. 2 (2016): 181,

69 Bradford, *Digital Empires*, and Bradford, “The False Choice Between Digital Regulation and Innovation,”

70 Yash Matange, “Five best single-season turnarounds in NBA history,” *The Sporting News*, May 5, 2021, <https://www.sportingnews.com/ca/nba/news/5-best-single-season-turnarounds-boston-celtics-2008-san-antonio-spurs-phoenix-suns/1q7z8kfmeqjs61hp0lr43rzd35>.

short-term sporting merit and the pursuit of long-term competitive balance, ensuring that its leagues are won by a wider range of clubs. In the ten seasons spanning the years 2013/14 to 2022/23, the NBA has been won by eight different franchises;<sup>71</sup> the NFL, by seven;<sup>72</sup> the MLB World Series, by nine;<sup>73</sup> and the NHL, by eight.<sup>74</sup> Collectively, therefore, 34 franchises have won the Big Four US leagues, whereas only fifteen clubs<sup>75</sup> have won the five most important European football leagues.

Similarly, the above does not imply that the North American sports model is perfect or that Europe should transplant every single of the model's features within its own framework. As von Bottenburg's analysis highlights, both models are deep-rooted in their respective social, political, and cultural systems. Indeed, the pyramid structure which characterises many – albeit not all – European sports can be thought to belong to the “affective” dimension of the European Sports Model, as the fallout from the *Superleague* saga illustrated.<sup>76</sup> However, the analysis undertaken in this article does suggest that Europe would do well in learning from the American model to promote greater competitive balance in its sporting competitions.

### 5.3. WHAT CAN THE EU LEARN FROM THE US?

Many of the financial corrective measures promoted in the US would be almost impossible to implement in the European Union. To name but one example, the centralisation of financial, intellectual property, or data resources which characterises the North American model would most likely be incompatible with Article 101 TFEU, since EU law does not exempt sport clubs from the EU competition *acquis* in the same way that US law does. Nor is it obvious, for similar reasons, that salary caps or other labour-related measures could survive the Court's scrutiny. This could only be the case if they were deemed to fall within the 'purely sporting rule' discussed above – an avenue that has become significantly narrower following the December judgments.<sup>77</sup> However, this is not to say that *sport*-related corrective measures could not be envisaged. This is particularly the case in relation to the draft system, which “reflects the deeper commitment of North American sports leagues to managing competitive equality and uncertainty of results.”<sup>78</sup>

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71 Denver Nuggets, Golden State Warriors, Milwaukee Bucks, Los Angeles Lakers, Toronto Raptors, Cleveland Cavaliers, San Antonio Spurs.

72 New England Patriots, Denver Broncos, Philadelphia Eagles, Kansas City Chiefs, Tampa Bay Buccaneers, Los Angeles Rams.

73 Texas Rangers, Houston Astros, Atlanta Braves, Los Angeles Dodgers, Washington Nationals, Boston Red Sox, Chicago Cubs, Kansas City Royals, San Francisco Giants.

74 Vegas Golden Knights, Colorado Avalanche, Tampa Bay Lightning, St Louis Blues, Washington Capitals, Pittsburgh Penguins, Los Angeles Kings, Chicago Blackhawks.

75 Leicester City FC, Chelsea FC, Manchester City FC, Liverpool FC; FC Barcelona, Real Madrid CF; Club Atlético de Madrid; FC Bayern Munich; Paris Saint-Germain FC, Lille OSC, AS Monaco FC; Juventus FC, AC Milan, FC Internazionale Milan, SSC Napoli.

76 On the 'affective' dimension of European sport, see D Witte and Zgliniski, “The Idea of Europe in Football.”

77 On which, see the literature cited in footnote 35, above. See also Stephen Weatherill, “Protecting the conditional autonomy of governing bodies in sport from review ‘from a competition standpoint’: how the Court should decide its pending cases on the transfer system, the regulation of agents and club (re-)location,” *EU Law Analysis*, May 11, 2024, <http://eulawanalysis.blogspot.com/2024/05/protecting-conditional-autonomy-of.html>.

78 Weatherill, “Resisting the Pressures of ‘Americanization’: The Influence of European Community Law on the ‘European Sport Model’”, in Stephen Weatherill, *European Sports Law: Collected Papers* (2nd edn., The Hague: Springer), 177-200, 190.

Draft-related rules would be unlikely to fall foul of the EU treaties. On the one hand, they do not concern EU's economic rules and could therefore be argued to fall outside the scope of EU law in the first place. It is worth recalling that, in *ESLC*, the Court of Justice reiterated that "specific rules adopted solely on non-economic grounds and which relate to questions of interest solely to sporting per se," such as those that determine the ranking criteria used to select athletes or clubs participating in competitions, fall outside the scope of EU law.<sup>79</sup> Arguably, a draft system – in other words, a framework designed to assign players to clubs participating in a league based on their past performance – would be caught by this *dictum* and thus be exempt from the scrutiny of EU law.

However, even if this rule were deemed to fall within the scope of Union law, it is easy to envisage how, drawing on the argument put forward throughout this article, they could be justified by reference to Article 165 TFEU. Indeed, although draft-like mechanisms are "culturally ... alien" to European sport *as it stands*,<sup>80</sup> it is suggested that these self-correcting mechanisms not only reflect the particular values projected by American sports: but they may also be better suited to promote the very objectives that the *European* sports model sets out to achieve. After all, it must be recalled that Article 165 TFEU calls for the promotion of "*fairness and openness in sporting competitions*." If, as this article argues, the promotion of a competitive balance must form part of this quest for 'fairness' and 'openness' by ensuring that European sporting competitions are open to a wider range of participants; and if sport-related corrective mechanisms contribute to the attainment of long-term competitive balance within these competitions, there is nothing in the European sport model, and hence in EU law, that precludes the adoption of such mechanisms. Indeed, the introduction of sport-related corrective mechanisms could complement existing mechanisms, such as those designed to facilitate the redistribution of broadcasting rights, which have shown themselves unable to remedy the growing inequality underlying European football.

## 5. CONCLUSION

This article has explored the doctrinal and normative role of sporting merit in European sport, with a particular focus on football. It has first traced the origins of the concept in the EU treaties and in different soft-law instruments produced by both the European Union and the Council of Europe. Although both institutions have acknowledged the existence of a European approach to sport, which is comprised of several characteristics including the promotion of sporting merit, none of the aforementioned instruments attempt to define the concept. It has then explored the growing role that the concept has acquired in the case law of the CJEU, with a particular focus on the recent judgments in *ESLC* and in *Royal Antwerp*, where sporting merit has arguably become *the* central characteristic of the European sport model.

Building on this descriptive analysis, this article has engaged in a normative evaluation of the concept. After providing a working definition of the concept, it has highlighted the tension between sporting merit and the promotion of competitive balance, two objectives that reflect different goals mandated by Article 165 TFEU ('fairness' vs. 'openness'). This has paved the way for a comparative analysis of the role of both sporting merit and the pursuit of a

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<sup>79</sup> *ESLC*, para 84.

<sup>80</sup> Weatherill, "Resisting the Pressures of 'Americanization,'" 190.

competitive balance in North American sport. It has been argued that, despite being anathema to the values supposedly espoused by the European Sport Model, many of the self-correcting instruments relied on in American sport, such as the draft system, may in fact be better at advancing these values. Although seemingly at the expense of sporting merit – for example, by rewarding the worst-performing teams with the best draft picks, thereby allowing them to access the most talented young players of the time – these mechanisms may result in greater competitive balance over time, allowing clubs to build high-performing teams over a period of time and giving rise to a bigger pool of potential competitors.

Having set out the above, it is worth reflecting on the lessons which this article can teach us. To begin with, the Court's recent case law evidences that the promotion of sporting merit is likely to become one of the key characteristics – if not *the* key characteristic – of the European sport model, and therefore to play a growing role in the future cases making their way to the Court of Justice. Given the above, it is therefore necessary to define this concept, and to consider the role which it ought to play in EU sport law. As this article has suggested, this will require regulators to make a choice between two possible approaches: one predominantly premised upon the promotion of short-term sporting merit and another which prioritises the pursuit of long-term competitive balance. Both avenues have significant practical implications. Opting for the former may feel like the more natural expression of 'fairness,' but may simultaneously enhance inequalities over time, thereby diminishing the 'fairness' and 'openness' of European sport. Conversely, opting for more radical redistributive mechanisms may feel hard to reconcile with the 'affective' dimension of European sport, but may arguably be better at pursuing the objectives set out in Article 165 TFEU. A third likelier avenue – one which opted for a balance between both approaches – would perhaps be best at addressing this tension but would raise questions, requiring the EU to establish a hierarchy between both objectives.

Whatever the model embraced by the Union, several issues will have to be addressed. To begin with, the question arises of whose job is it to define what 'sporting merit' should – and should not – entail. Is this a question that should be left to SGBs themselves, with little, if any, EU scrutiny? Conversely, if the Union steps in, are these questions that the Court of Justice, as a 'negative legislator,' should be left to answer, or should the EU legislator step in? Is the definition of 'sporting merit' a question pertaining to the *substance* of sport, or does it relate to the *structure* of how the sport is organised? Does this distinction matter when deciding whether the EU is legitimised to step in? Finally, can a European sport model provide a single definition of 'sporting merit' and its interaction with the pursuit of open competition, or should each sport be entitled to carry out its own balancing exercise?

Beyond these questions, any attempt to regulate the pursuit of 'sporting merit' would have to consider the effectiveness of doing so. Is the promotion of a competitive balance incompatible with the ESM's 'affective' dimension, or can it, in fact, contribute towards saving this affective dimension by safeguarding the competitiveness of European sport? Does this matter from the point of view of the Union's regulatory legitimacy? What can European sport law and policy learn from other areas of EU law, such as competition law or indeed technological regulation, which have faced questions about the balance between open markets, competition, and 'fairness'? How can it borrow the regulatory solutions embraced by the North American sport model in order to promote competitive competitions, rather than simply doing so selectively –



for example, by promoting a breakaway league that results in an even greater concentration of resources among a few elite clubs?

With the proliferation of alternative sport models and league structures within the European Union, as the intersection between EU law and sport governance becomes increasingly frequent, and as calls for a greater regulatory role from the European Union increase, the questions posed throughout this article are likely to become increasingly relevant, and to require a consistent approach from both regulators and policymakers. For this to be possible, the concept of 'sporting merit,' a central aspect of the Court's recent case law, requires careful consideration, both normatively and in practical terms. It is by shedding light on this notion, and by understanding the role that it plays – and should play – in EU law, that the present article hopes to contribute to the contemporary debate.

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## THE DEVELOPMENT OF SPORTS POLICY IN SLOVAKIA

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### Abstract


The article provides the first overview of the sports ecosystem and the development of sports policy in Slovakia. It reviews how sports policy has evolved across different periods and under varying political structures. The paper is organized around specific policy areas, linking the historical overview, major sports actors, and main strategic directions into a cohesive structure. In addition, major trends and challenges are discussed. The funding scheme will be elaborated thoroughly as it represents both a complex process and a contribution to the uniqueness of the sports ecosystem in Slovakia. The concluding remarks indicate a lack of coordination at the horizontal level within the public sector and in efforts to coordinate with the sub-national level in utilizing available resources for the development of sports in Slovakia.


**Keywords:** Sports; Policy; Slovakia; Public Authorities; Sports Organisations.


## 1. INTRODUCTION


Slovakia has undergone significant changes, especially after 1989 when communism collapsed, and the socialist economic structure transformed into a market economy.<sup>1,2</sup> According to Marušiak the transition phase in Slovakia followed similar or mimetic processes as in other countries of the former Eastern Bloc, with efforts to shift towards a

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1 Ladislav Križan, "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska", [http://www.ucps.sk/clanok-0-1455/Od\\_hyperaktivneho\\_statu\\_k\\_statu\\_nevladnemu\\_historia\\_vztahu\\_statu\\_%E2%80%93\\_sportu\\_%E2%80%93\\_prava\\_na\\_uzemi\\_Slovenska.html](http://www.ucps.sk/clanok-0-1455/Od_hyperaktivneho_statu_k_statu_nevladnemu_historia_vztahu_statu_%E2%80%93_sportu_%E2%80%93_prava_na_uzemi_Slovenska.html).

2 Ján Grexa, *Milníky slovenského športu* (Bratislava: Slovenský olympijský výbor, 2018), 22-25.

more pluralistic and open government and society.<sup>3</sup> These changes resulted in a number of changes within sports in Slovakia. Namely, new sport-related legislation now defines the natural and legal persons that constitute the sports ecosystem. A sports professional may perform various functions in sports. Legal persons include sports organisations, such as sports clubs, national sports associations, and other national sports organisations.<sup>4</sup> Public authorities form the overall sports structure within the public sector, which operates on three main levels: national, regional, and local. At the national level, central authorities manage sporting affairs, including policymaking, finance, and cooperation with NGOs. The Ministry of Tourism and Sports plays a crucial role in funding sports, with other ministries such as the Ministry of Interior and the Ministry of Defence supporting various sporting initiatives. Regional authorities focus on the development of sports within their regions, supporting the construction and operation of sports infrastructure, and collaborating with local sports organisations to organise competitions and events. At the local level, municipalities support physical culture, the education of sporting talent, and the organisation of local sporting events.<sup>5,6,7</sup> This structure is pivotal to the sustainable development of sports in the Slovak Republic and the promotion of physical activity across all age groups.

The sports ecosystem's specificity represents the funding scheme through a complex system of various public sector actors. The main element is the Sports Funding Formula (SFF), which considers sporting success, interest in sports, and membership up to the age of 23. This formula is crucial for the redistribution of funding at the national level. The Ministry of Tourism and Sports (MTS) is the primary funding body, distributing funds to various programmes. These programmes include support for recognised sports, sports infrastructure, national sports projects, and sport-for-all initiatives. In addition, the MTS provides merit grants for athletes. In contrast, the Ministry of Interior and the Ministry of Defence primarily fund their respective sports clubs and organisations. The Government Office also contributes funding, although this is often irregular and mostly related to special projects and support for sporting events. However, perhaps the most important component of funding comes from cities and the higher territorial units (HTUs), with cities providing the majority of the funding. This money is primarily earmarked for sports activities, events, and infrastructure in local communities. However, many authors' analyses have shown that this funding is not sufficient, making sports in Slovakia often dependent on the commercial sector.<sup>8,9,10</sup>

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3 Juraj Marušiak, "The Paradox of Slovakia's Post-Communist Transition", <https://www.rosalux.de/en/news/id/44863/the-paradox-of-slovakias-post-communist-transition>.

4 "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov", Paliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/20210101>.

5 "Slovakia", European Commission, <https://portal.cor.europa.eu/divisionpowers/Pages/Slovakia.aspx>.

6 Michal Varmus, Milan Kubina, Gabriel Koman, Patrik Ferenc, "Ensuring the Long-Term Sustainability Cooperation with Stakeholders of Sports Organizations in Slovakia", *Sustainability* 10, no. 6 (2018), 1833, <https://doi.org/10.3390/su10061833>.

7 "Konceptcia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-konceptcia-financovania-sportu-SR-2018.pdf>.

8 Michal Varmus, Milan Kubina, Martin Mičiak, Michal Šarlák, Patrik Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure", *Economic and Social Development* 2023, 91, 128.

9 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21.

10 Ivan Greguška and Michal Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia", *Comparative European Research* 2022, 63, (London: Scieemce Publishing, 2022).

The 2017 Concept of Sport Funding in the Slovak Republic revealed that the private sector contributed less than 15% to the total funding of sports.<sup>11</sup> Efforts to increase private sector support through sponsorship agreements and super-deduction have faced challenges and setbacks. These issues have been addressed in the 2030 Sports Strategy, which sets out key priorities across six pillars: transparent funding, infrastructure modernisation, education, development of elite sports, promotion of active participation among the population, and digitalisation. The authors of this document identify the most important challenges as the lack of transparency in funding and the low level of sports participation among the population.<sup>12</sup>

## 2. LITERATURE REVIEW

The disintegration of the Soviet Union served as a catalyst for major geopolitical shifts in the 1990s, significantly impacting emerging countries in Central Europe. Early on, these countries engaged in strategic cooperation with the West, pursuing integration into the North Atlantic Treaty Organization (NATO) and the European Union (EU). Internally, many of these countries are still navigating the transition, with instances of democratic backsliding observed even after more than three decades.<sup>13</sup> This constellation did not bypass the sports sector, which experienced significant changes, particularly regarding ownership transfer and the extent of political presence.<sup>14</sup> Despite limited research interest in sport-related policymaking in Central Europe, the interplay between the public sector and the sports movement continues to shape the sports landscape, which is characterized by a culture of public administration and strong bureaucracy.<sup>15, 16</sup> This seems to be a common feature among post-communist countries, although the governmentalization of sport is neither a new phenomenon nor exclusive to communist countries.<sup>17</sup> While sport in leading democracies rests on a high degree of autonomy, the public sector remains closely involved in policymaking due to the importance of sports in health, cultural policy, or broader social cohesion efforts.<sup>18</sup> The setup of a sport-related policy network depends on democratic capacity and socio-political structure. For instance, in plural societies like Norway, the executive branch exercises strong coordinating efforts with the sports movement. In contrast, less developed societies, such as those in the Western Balkan, are less pluralistic and more politicized and bureaucratic.<sup>19, 20, 21</sup> Due to the ongoing transition

11 "Konceptcia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-koncepcia-financovania-sportu-SR-2018.pdf>.

12 "Stratégia športu", Slovak Olympic and Sports Committee, [https://www.olympic.sk/sites/default/files/2022-05/Sport\\_2030\\_Phase\\_II\\_PwC\\_v6.pdf](https://www.olympic.sk/sites/default/files/2022-05/Sport_2030_Phase_II_PwC_v6.pdf).

13 Bence Garamvölgyi, Marko Begović, and Tamás Dóczi. 2021. "Sport Diplomacy in Hybrid Regimes: The Cases of Hungary and Montenegro." *Journal of Global Sport Management*, December, 1–18, <https://doi.org/10.1080/24704067.2021.2008804>.

14 Marko Begović, *Sports Policy and Politics in the Western Balkans* (London: Routledge, 2024), 198.

15 Marko Begović, "Corruption in sports: Lessons from Montenegro", *International Review for the Sociology of Sport* 58, no. 1 (2022): 126-145. <https://doi.org/10.1177/10126902221094186>.

16 László Péter, "The Romanian sport system: Paths to commercialisation", in *Sport, Statehood and Transition in Europe* (London: Routledge, 2020), 19.

17 Eivind Skille and Redar Säfvenbom, "Sport policy in Norway", *International Journal of Sport Policy and Politics* 3, no. 2 (2011): 289-299. <http://dx.doi.org/10.1080/19406940.2010.547867>.

18 Nils Bergsgard and Hilmar Rommetvedt, "Sport and Politics: The Case of Norway", *International Review for the Sociology of Sport* 41, no. 1 (2006), 7-27. <https://doi.org/10.1177/1012690206073146>.

19 Skille and Säfvenbom, "Sport policy in Norway" 292.

20 Marko Begović, *Sports Policy and Politics in the Western Balkans* (London: Routledge, 2024), 198.

21 Marko Begović, "The development of sport policy in Montenegro", *International Journal of Sport Policy and Politics* 2020, 12(2), 321-330. <http://dx.doi.org/10.1080/19406940.2020.1719186>.

processes, this should be observed in an individual and contextual manner, as the distribution of jurisdictions and competencies often bypass formal institutional settings and regulatory regimes, either contributing to or limiting the consolidation of a coherent sports ecosystem.<sup>22</sup> Therefore, the nominal dominance of the public sector should be understood in the context of the historical development of sport-related institutions and the socio-political realm that influences and shapes sport governance. That being said, document analysis will be employed to understand how sports policy has been shaped over different periods, including the development of appropriate institutional arrangements. Given the limited research both nationally and regionally, legislation and policies will be major sources, clustered depending on their origin and nature.

### 3. HISTORICAL OVERVIEW OF THE DEVELOPMENT OF SPORT POLICY

According to the Association of the Learned Law Society (UčPS), the beginnings of the relationship between the state and sports in Slovakia can be tracked back to 1869 (UčPS, 2023).<sup>23</sup> Reich Law No. 62/1869 made the teaching of physical education compulsory in real schools in Moravia. These early developments constituted a foundation for contemporary sports. However, it was not until the end of WWII, that the introduction of a more system approach in sports policy development occurred:

- Czechoslovak Socialist Republic (1948-1989)
- Czech-Slovak Federative Republic (1990-1992),
- Slovak Republic (1993-present).

#### 3.1. CZECHOSLOVAK SOCIALIST REPUBLIC

In the late 19th and early 20th centuries, the funding of sports primarily relied on membership fees paid to sports associations and clubs. At that time, there was no concept of full state funding for sports. However, after 1948, the situation regarding the funding of sports changed. Antonín Imla, chairman of the Czechoslovak Union of Physical Education, emphasized that the Union played a crucial role in the national front and served to fulfil state goals.<sup>24</sup> This association became the highest body responsible for the development of basic physical education, sports, and tourism in Czecho-Slovakia.<sup>25</sup> The new understanding of sports during this period continued the state funding that had already begun during the First Czechoslovak Republic. This resulted in significant changes to Slovak sports, with the full integration of sports into state control and regulation. During this time, sports were heavily subsidised by the state, but also fell under complete state control. This period is also referred to colloquially as the period when sports were the showcase of communism. The organisation of sports in post-1948 Slovakia was strongly directive and subject to the communist sports movement. This period saw the unification of various entities involved in sports, physical education, and tourism, often achieved through violent means. The trends that developed in sports during this time can be characterized by politicisation, militarisation, and centralisation. Politicisation

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22 Marko Begović, "Sports Policy and Politics in the Western Balkans", 198.

23 "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska", UčPS, accessed October 10, 2023, <https://beta.ucps.sk/od-hyperaktivneho-statu-k-statu-nevladnemu;-historia-vztahu-statu-%E2%80%93-sportu-%E2%80%93-prava-na-uzemi-slovenska>.

24 Rudolf Dušek, *Sport v Československu* (Praha: Olympia 1983), 5.

25 "Šport v rokoch (1945 - 1992)", Slovak sport portal, <https://sport.iedu.sk/Page/sport-v-rokoch-1945-1992>.



meant that sports became an instrument of political influence and propaganda. Militarisation involved using sports to promote military objectives and prepare youth for military service. Centralisation occurred through the merger of various sports organisations into a unified system under the leadership of the Czechoslovak Sports Federation (CSF).<sup>26</sup> These changes weakened the autonomy of the sports movement due to increased state interventionism. Overall, the post-1948 period led to significant changes in the funding and organisation of sports, turning them into instruments of state control and political influence.<sup>27</sup>

Fundamental changes in the system of sports and its funding emerged with the adoption of Act No. 187/1949 Coll. on the State Care of Physical Education and Sport.<sup>28</sup> This Act established the State Committee for Physical Education and Sport, composed of various members, including representatives of the Czechoslovak Sokol Community. In addition, the law required defunct physical education and sports organizations, which had ceased to exist due to unification, to transfer their property to the Czechoslovak Sokol Community. According to Križan, this step can be interpreted as the state de facto taking control of Slovak and Czech sports.<sup>29</sup> Later, Act No. 68/1956 Coll. on the Organisation of Physical Education was issued, further centralising the sports system by entrusting the organisation and management of voluntary physical education and its planned development to a single voluntary physical education organisation.<sup>30</sup> All existing state committees were abolished, and power was transferred to the new Czechoslovak Union of Physical Education. Its main task was to ensure the overall management and organisation of the entire sports movement, which, by 1979, had as many as 1,703,000 members in 25,240 physical education units.<sup>31</sup> However, major changes in the organisation and funding of sports did not occur until 1990. During the period of normalization, there were attempts at democratisation, but political leaders were reluctant to introduce major reforms. Sport was a tool of propaganda and power for them, and the funds associated with sports were significant. The aim was not only to keep sports at a high level but also to use them to promote the socialist regime and its success.<sup>32</sup>

## 3.2. CZECH-SLOVAK FEDERAL REPUBLIC

In an attempt to preserve the federation, the Government of National Understanding was formed, aiming to establish a more pluralist political system.<sup>33</sup> Following this event, significant changes occurred in the field of sports. The first logical step was the decentralisation and nationalisation of sports. Despite these changes, political intervention in sports continued to

26 Ladislav Križan, "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska", [http://www.ucps.sk/clanok-0-1455/Od\\_hyperaktivneho\\_statu\\_k\\_statu\\_nevladnemu\\_historia\\_vztahu\\_statu\\_%E2%80%93\\_sportu\\_%E2%80%93\\_prava\\_na\\_uzemi\\_Slovenska.html](http://www.ucps.sk/clanok-0-1455/Od_hyperaktivneho_statu_k_statu_nevladnemu_historia_vztahu_statu_%E2%80%93_sportu_%E2%80%93_prava_na_uzemi_Slovenska.html).

27 Martina Gajdošová and Soňa Košíčiarová, *Sloboda združovania – verejnoprávne a súkromnoprávne aspekty* (Trnava: Slovenská akadémia vied, 2019), 127.

28 "Zákon o štátnej starostlivosti o telesnú výchovu a šport", Parliament of Slovak Republic, accessed October 10, 2023, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1949/187/>.

29 Križan, "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska".

30 "Zákon o organizácii telesnej výchovy", Parliament of Slovak Republic, 2023, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1956/68/19570101.html>.

31 Dieter Wrobel, *Zlatá kniha socialistického športu* (Praha: Olympia, 1979), 16.

32 Ján Grexa, *Mílniky slovenského športu* (Bratislava: Slovenský olympijský výbor, 2018), 84.

33 Juraj Marušiak, "The Paradox of Slovakia's Post-Communist Transition", <https://www.rosalux.de/en/news/id/44863/the-paradox-of-slovakias-post-communist-transition>.

some extent, particularly with the adoption of Act No 198/1990 Coll.<sup>34</sup> This law removed most aspects of the militarisation of sports and transformed sports into a humanising element. It also responded to the increasing commercialisation of sports, the rise of entrepreneurial activity in sports, and the growing role of sponsorship. However, these statutes were basic and did not comprehensively address the entire system in these areas of sports.<sup>35</sup> After 1990, the door was opened for more decentralisation and a greater role for private actors in sports, while political influence was still present, but to a lesser extent than under the previous regime.

The new system Slovakia adopted from Western countries proved to be problematic and did not achieve the expected success. Križan characterised this development by noting that sports had to adapt to a freer society, where they no longer occupied the forefront of attention as they did in the communist, state-owned system, with provided generous public funding and other forms of support.<sup>36</sup> There was a need for sports to quickly transform into a voluntary sport, or even a sports industry on the territory of Slovakia, similar to the process that occurred in Western European countries over the course of the 20th century. However, it was expected that this transition would happen relatively quickly in Slovakia, even without significant state support. A similar transition of the sports system can be observed in Hungary.<sup>37</sup>

The summary of the era up to the end of 1992 indicates that the transformation of sports brought more problems than positive results. Among the biggest problems were economic difficulties linked to insufficient funds, non-coordination of cooperation, and privatisation of sports facilities. Other equally important problems included limited state support, the absence of a stable and transparent funding model, the lack of a clear concept for the development of sports, rising costs of sports, the abolishment of sports clubs, the disappearance of training centres, and many other negative factors.<sup>38</sup> This era of sports in the Czecho-Slovak Federative Republic was definitively ended by the peaceful division into two separate states, the Czech Republic and the Slovak Republic, in 1993.<sup>39</sup>

### 3.3. SLOVAK REPUBLIC

The last stage of development in the field of funding and operation of sports spans from 1993 to 2015, marked by the adoption of a new sports act and the introduction of a new funding model that remains in use today, albeit with some modifications. During this era, the number of sports bodies with stable structures and established internal regulations stabilised. Simultaneously, new sports emerged, while some traditional sports saw a decline in popularity. The transfer of competencies in sports from central authorities (ministries) to

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34 "Zákon o telesnej kultúre", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1990/198/19900518.html>.

35 Križan, "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska".

36 Križan, "Od hyperaktívneho štátu k štátu nevládnemu: história vzťahu štátu – športu – práva na území Slovenska".

37 Szilvia Perényi, "Hungary", in *Comparative Sport Development Systems, Participation and Public Policy* (New York: Springer, 2013), 89.

38 Ján Grexa, *Mílniky slovenského športu* (Bratislava: Slovenský olympijský výbor, 2018), 91.

39 Grexa, *Mílniky slovenského športu*, 92.

regional levels that aligned with territorial reforms could be observed as well.<sup>40</sup>

The era of autonomy in sports began on a positive note with Slovakia's adoption of several international activities by the Council of Europe, including the European Charter for Sports, the Council of Europe Convention against Doping, and the European Convention on Violence and Spectator Restraint at Sporting Events. During this period, Slovakia also enacted some significant laws, although they were not perfect. One of these laws was Act No. 264/1993 Coll. on the State Fund of Physical Culture, which regulated the conditions for funding sports through lottery companies. Another important legislation was Act No. 288/1997 Coll. on Physical Culture, which focused on education and entrepreneurship in sports and introduced foundational principles in this field.<sup>41, 42, 43</sup>

During this era, spanning from 1993 to 1997, there is a notable lack of precise records regarding the funding allocated to sports, as highlighted in the 2004 report on the state of sports in the Slovak Republic.<sup>44</sup> One of the main reasons for the decline in financial support for sports was a methodological error dating back to 1993, resulting in an annual loss of 400 million Slovak crowns from the budget. The methodological error was corrected only in 2003, yet its repercussions are still evident today.<sup>45</sup> Furthermore, the Government Decision of the Slovak Republic No. 904/2001, which abolished the State Fund of Physical Culture and transferred its financial resources to the Ministry of Tourism and Sports, marked the end of sports and physical education organisations' ability to influence the allocation of public resources to sports.<sup>46</sup>

This legislation laid the groundwork for sports regulations, with Act No. 455/1991 Coll. on Trade Business specifying conditions for business activities. These acts intersected by regulating state budget funding, business sponsorship, taxes, and compliance for activities and entities involved in sports within the country. Overall, the relationship between these acts and sports funding is complex and multifaceted. However, it is clear that the state budget allocations and business support facilitated under these acts play a vital role in supporting the development of sports in Slovakia.<sup>47, 48</sup>

40 Grexa, *Mílniky slovenského športu*, 93.

41 Grexa, *Mílniky slovenského športu*, 93.

42 "Zákon o Štátnom fonde telesnej kultúry", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1993/264/19940101.html>.

43 "Zákon o telesnej kultúre a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov.", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1997/288/20140201.html>.

44 "Správa o plnení úloh a súčasnom stave športu v SR", Parliament of Slovak Republic, <https://www.nrsr.sk/web/dynamic/Download.aspx?DocID=189402>.

45 Marián Šimo, "Vláda dá do parlamentu sterilnú správu o športe", <https://www.olympic.sk/clanok/vlada-da-do-parlamentu-sterilnu-spravu-o-sporte>.

46 Karol Morvaj, *Transformácia ekonomiky: skúsenosti Slovenska* (Bratislava: Retro-print, 2005), 66.

47 "Zákon o telesnej kultúre a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov.", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1997/288/20140201.html>.

48 "Zákon o živnostenskom podnikaní (živnostenský zákon).", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/19980701.html>.

After 2004, the Slovak Republic introduced a new organisational structure for sports funding aimed at streamlining and eliminating redundant elements, although it remained a complex and somewhat inefficient system. Between 2010-2012, a new concept was adopted to promote sports in schools, support interest groups, encourage volunteering in sports, and address various organizational issues within the sports sector. The 2015 Act on Sports, including its later amendments, sets out the current rules for sports funding in Slovakia. However, critics argue that the Act has been less effective following policy changes compared to its original intent.<sup>49</sup> The remainder of this article analyses the form and implementation of the current Act on Sports, which is why it has not been discussed in more detail within this chapter.

#### 4. UNDERSTANDING THE SPORTS ECOSYSTEM IN SLOVAKIA

Slovakia, as a member of the European Union, has undergone various changes in the past that have impacted its economic, political, legislative, and social life of the country. The last significant change occurred after 1989, when the communist regime fell in former Czechoslovakia. This marked the collapse of the socialist economic structure. Morvay et al., define this economic transformation as an effort to establish a functional market mechanism capable of generating strong sustainable growth, thereby eliminating distortions and facilitating equal interactions with more advanced market economies.<sup>50</sup> Thus, Slovakia has been undergoing a gradual transformation towards becoming a market-oriented economy.

This transformation was logically connected to the introduction of a new Civil Code, which aimed to encompass various legal aspects and definitions related to this concept. The Civil Code has undergone several revisions since its inception. In its most recent edition, similar to the business sector, it classifies entities in sports into natural persons and legal persons. Specifically, Act No 440/2015 Coll. on Sports and on Amendments and Additions to Certain Acts (hereinafter, the 'Act on Sports') addresses this issue in greater depth. In addition to natural and legal persons in sports, the activities of public authorities and public administration bodies can be observed. These are particularly important from the perspective of sports funding.<sup>51</sup> Changes to sports funding have made it easier to obtain the funds, introduced new funding methods, and simplified the monitoring of expenditures. Previously, different funding rules applied to sports organizations depending on whether they were set up as non-profit groups or businesses. This simplifies fund allocation, as the separation of funding for individuals and organizations has made it easier to verify how the money is spent.<sup>52</sup> A closer look at this division can be seen in Figure 1 below.

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49 Jaroslav Šisolák, "Aké je postavenie športu v slovenskej spoločnosti?", <https://futbalnet.tv/ake-je-postavenie-sportu-v-slovenskej-spolocnosti>.

50 Morvay, *Transformácia ekonomiky: skúsenosti Slovenska*, 5.

51 "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/20210101>.

52 Peter Kolník, "Šport a právo: Zmeny v Občianskom zákonníku a ich vplyv na financovanie športu", <https://www.ujps.sk/sites/default/files/pdf/casopis/2017/10/95.pdf>.

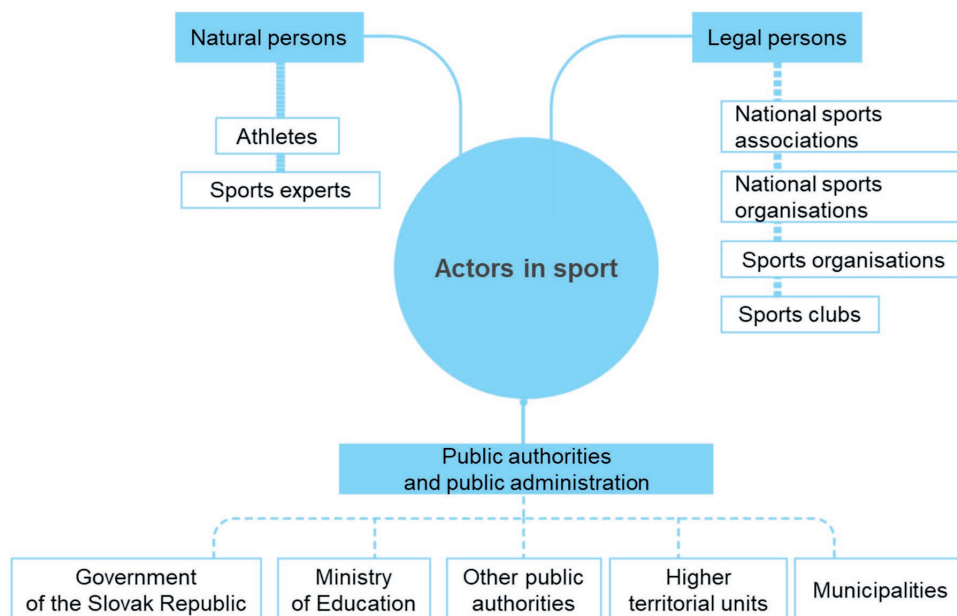


Figure 1 – Entities active in sports in Slovakia

Source: Own elaboration, 2023

#### 4.1. Natural persons

According to the Sports Act, individuals involved in sports are categorised into athletes and sports professionals. There are three categories of athletes: professional, amateur, and unorganized athletes (recreational). Only professional and amateur athletes are eligible to participate in organized sports events representing organizations registered in the official registry.<sup>53</sup> Professional athletes are required to perform sports activities based on a contract for professional sports performance or another contract if they perform sports for a sports organization as self-employed individuals. Prior to 2016, the status of professional athletes was not regulated, with athletes signing contracts according to Civil or Commercial Laws, which constituted a breach of Labor Law provisions from 2007.<sup>54</sup> Since 2016, the status of athletes has gradually improved, allowing them to be considered employees or self-employed under a special type of employment – sports employment – which constitutes an employment relationship.<sup>55,56,57</sup> However, the legislation introduced a transitional period of five years, providing athletes the option to choose between a contract for professional

53 "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov".

54 Tomáš Gábriš, "The Status of Professional Players Between Self-Employed and Employee Status: State of the Art in Slovakia and In East-Central Europe", *Zbornik Pravnog Fakulteta Sveučilišta u Rijeci* 41, no.3 (2020): 847–863.

55 Law of sport 440, s. 4(3).

56 Law of sport 440, s. 46(1).

57 Gábriš, "The Status of Professional Players Between Self-Employed and Employee Status: State of the Art in Slovakia and In East-Central Europe", 857.

sports performance and other types of contracts. This legal provision has led to ambiguity regarding the legality and predictability of labor relations in sports, particularly the position of professional athletes, while favoring sports organizations.<sup>58</sup>

Conversely, amateur athletes engage without formal contracts, with their participation limited to working no more than 8 hours weekly, five days per month, or 30 calendar days. Talent and activity in athletes are categorized into two groups: talented athletes and active athletes. Talented athletes are under 23 years old, showcasing exceptional skills, and are listed in the talent registry.<sup>59</sup> Active athletes are those who have in a minimum of three competitions organized by their registered sports organization in the past year, excluding “sports for all” events.<sup>60</sup> Regarding sports professionals, their operations can be classified as either volunteer-based or business-based classifications. The law recognizes sports coaches, instructors, officials, and inspectors as sports professionals.<sup>61</sup> They can perform their roles as a business, based on a contract for professional activity, within an employment relationship or a similar employment relationship, as volunteers, or without a contract (§ 6, para. 3 of Act No. 440/2015 Coll.).<sup>62</sup> The performance of sports professionals’ activities is always determined by the specific nature of the sports activity they are involved in, whether it meets the characteristics of dependent work, business, or can be performed as a voluntary activity.

## 4.2. LEGAL PERSONS

The Sports Act delineates three types of non-governmental sports organizations with legal status: sports clubs that foster engagement and prepare individuals or teams for sports events; national sports associations recognized by the Ministry of Education that hold an international sports body membership, control specific sports in Slovakia, and aid athletes for international contests; and other sports bodies like the Slovak Olympic and Sports Committee and the Slovak Paralympic Committee acknowledged by the Ministry, these bodies have two-year affiliations with international sports organisations and govern particular sports sectors within Slovakia, such as Deaflympic sports, Special Olympics, university sports, school sports, and sports for all.<sup>63</sup>

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58 Gábriš, “The Status of Professional Players Between Self-Employed and Employee Status: State of the Art in Slovakia and In East-Central Europe”, 858.

59 Law of sport 440, s. 4(5).

60 Law of sport 440, s. 4(6).

61 “Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov”, Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/20210101>.

62 Law of sport 440, s. 6(3).

63 “Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov”

### 4.3. PUBLIC AUTHORITIES AND PUBLIC ADMINISTRATION

Under the major reforms initiated between 2003 and 2006, the public sector system was reformed into a deconcentrated state administration with a new structure established.<sup>64</sup> The Sports Act's fourth part outlines the roles of public authorities and public administration entities in the field of sports, which include the Government of the Slovak Republic, the Ministry of Education, other central authorities of state power, self-governing regions, and municipalities.<sup>65</sup> The Government of the Slovak Republic is responsible for approving concepts for the development of sports and other materials related to state policies in the field of sports. Additionally, the government approves guarantees for significant competitions and decides on the construction, modernization, and reconstruction of nationally significant sports infrastructure. Lastly, the government makes decisions regarding specially supported sports, which are recognized as sports for all.<sup>66</sup> Regarding the government's support for the *sport for all* concept and the National Sports Federations (NSFs) it involves, the aim is typically to encourage broad sports participation. While specific NSFs may focus on different sports, the government's emphasis on sports for all generally involves supporting initiatives that promote inclusivity and accessibility to sports across various disciplines and communities.<sup>67</sup>

<sup>68, 69</sup>

### 5. THE STRUCTURE OF THE SPORTS ECOSYSTEM

The structure is based on three levels: national, regional, and local levels, interrelated in contributing to coherent structure.

<sup>64</sup> "Deklarácia slovenského športu 2023 pomenúva najpálčivejšie problémy, TASR", <https://www.teraz.sk/sport/sosv-schvalil-deklaraciu-slovenskeho/717097-clanok.html>.

<sup>65</sup> "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov".

<sup>66</sup> Law of sport 440, s. 55(1).

<sup>67</sup> Varmus, Kubina, Mičiak, Šarlák, and Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure".

<sup>68</sup> Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21

<sup>69</sup> Greguška and Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".

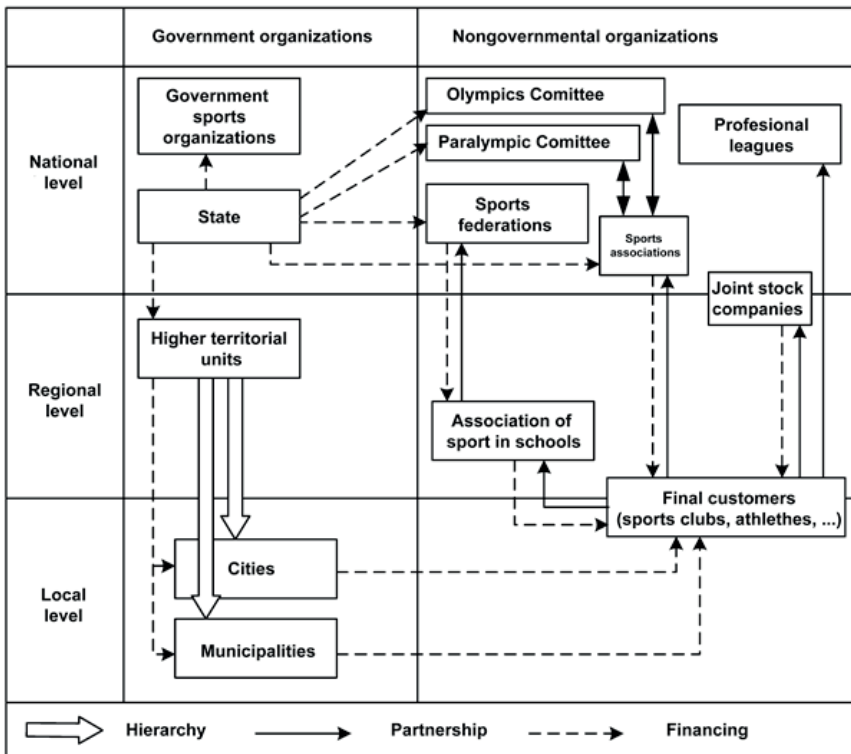


Figure 2 – Sports funding model in Slovakia  
Source: Varmus et al. 2018

The legal nature of professional sports leagues in the Slovak Republic is complex and depends on the specific league and sport. Generally, these leagues are established as separate legal entities according to the Civil Code. They can take several forms including civil associations, non-profit organisations, or commercial.<sup>70</sup> Some professional sports leagues are directly managed by national sports associations (NSA). For example, the Slovak Ice Hockey Extraliga is managed by the Slovak Ice Hockey Association.<sup>71</sup> Other professional sports leagues operate independently of the NSA. For instance, the Slovak Basketball League is governed by a separate association called the Slovak Association of Basketball Clubs.<sup>72</sup> In some cases, professional sports leagues may cooperate with the NSA. For example, the Slovak Football League is governed by the Slovak Football Association but also has its own governing bodies.<sup>73</sup>

70 "Zákon o živnostenskom podnikaní (živnostenský zákon)", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/455/19980701.html>.

71 "Stanovy Slovenského zväzu ľadového hokeja", Slovak ice hockey association, <https://www.hockeyslovakia.sk/userfiles/file/Stanovy/STANOVY%20SZ%C4%BDH.pdf>.

72 "Stanovy Slovenskej basketbalovej asociácie", Slovak Association of Basketball Clubs, [https://slovakbasket.sk/userfiles/file/Stanovy\\_2021.pdf](https://slovakbasket.sk/userfiles/file/Stanovy_2021.pdf).

73 "Stanovy Slovenského futbalového zväzu", Slovak football association, <https://mediamanager.sportnet.online/media/pages/f/futbalsfz.sk/2022/03/2022-02-25-ksfz-standovy-sfz-novela-1.pdf>.



## 5.1. NATIONAL LEVEL

The central government in Slovakia is responsible for the management and coordination of sport-related matter. This includes the development of national policies, legislation, and financial frameworks to support sports development. Additionally, the government collaborates with non-governmental organisations and provides subsidies to sports associations from the state budget. There is no permanent parliamentary body responsible for sports in the Parliament of the Slovak Republic. However, this will change as of 1 January 2024, when the new Ministry of Sport and Tourism of the Slovak Republic will be established, leading to the introduction of an appropriate parliamentary body to oversee sports developments.<sup>74</sup> Currently, the area of sports is entrusted to several committees, in particular the Committee on Education, Science, Youth, and Sport; the Committee on Social Affairs and Families; and the Committee on Culture and Media. The government is also responsible for sports education and international cooperation. In addition, the central government is responsible for youth policy, which includes the preparation of conceptual and decision-making materials and the coordination of the government's activities in the planning and implementation of youth policy. They also provide technical, organisational, and substantive support to the activities of the Intergovernmental Working Group on Youth Policy. The central government prepares legislation and establishes conditions for financial support to youth organisations and other institutions providing services to children and youth. This represents an important parameter that plays a central role in setting sports promotion within youth categories.<sup>75, 76, 77</sup>

Furthermore, the central government guarantees cooperation between government and local levels of youth policy and creates conditions for the work of children's and youth organisations. They also coordinate the work of the Accreditation Commission for Youth Work Programmes, including issuing certificates for accredited institutions. To support these activities, the central government publishes research, analytical and forecasting documents, and organizes workshops, conferences, and training sessions for representatives of regions, cities, and municipalities, along with youth and youth workers.<sup>78,79,80</sup>

The funding of sports as a separate category primarily falls under the role of the Ministry of Tourism and Sports of the Slovak Republic.<sup>81</sup> However, this does not mean that other ministries are not involved in the funding of sports at the national level. For example, the Ministry of the Interior funds the police sports clubs, the Ministry of Defence allocates funds for the military sports centre, and the Office of the Government, along with subsidies from the

74 Martin Benko, "Vláda povedala, kedy vznikne nové ministerstvo športu a cestovného ruchu", <https://sita.sk/vlada-povedala-kedy-vznikne-nove-ministerstvo-sportu-a-cestovneho-ruchu/>.

75 Michal Varmus, Milan Kubina, Gabriel Koman, Patrik Ferenc, "Ensuring the Long-Term Sustainability Cooperation with Stakeholders of Sports Organizations in Slovakia", *Sustainability* 10, no. 6 (2018): 1833, <https://doi.org/10.3390/su10061833>.

76 "Konceptia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-konceptia-financovania-sportu-SR-2018.pdf>.

77 "Slovakia", European Commission, <https://portal.cor.europa.eu/divisionpowers/Pages/Slovakia.aspx>.

78 Varmus, "Ensuring the Long-Term Sustainability Cooperation with Stakeholders of Sports Organizations in Slovakia".

79 "Konceptia financovania športu v Slovenskej republike", KPMG.

80 "Slovakia", European Commission.

81 "Financovanie športu", Ministry of Education, Science, Research and Sport of the Slovak Republic, <https://www.minedu.sk/financovanie-sportu/>.

Prime Minister's Reserve, funds various sports projects.<sup>82, 83, 84</sup>

## 5.2. REGIONAL AND LOCAL LEVEL

Regional sports strategies in Slovakia are aligned with national directives. In 2021, the 2021-2030 National Sports Strategy of the Slovak Republic was approved. This strategy sets the basic objectives and priorities for sports nationwide. Thus, the management of sports in regions and cities remains within the limits of adaptable cooperation.<sup>85</sup>

At the regional level in Slovakia, self-governing regions take charge of sports development initiatives, focusing on infrastructure construction, maintenance, and operation in collaboration with municipalities and sports organizations. They manage sports facilities in secondary schools, emphasizing on youth engagement and covering associated expenses. Self-governing regions also collaborate with federations and clubs to establish sports centres, offering sports opportunities, especially for youth, under expert guidance. Additionally, they actively promote and host significant inclusive sports events, thereby enhancing sports participation and providing opportunities for the disabled within their regions.<sup>86, 87, 88</sup>

At the local level, municipalities act as public authorities and entities responsible for developing sports development concepts tailored to their municipal conditions. They support the construction, modernization, reconstruction, maintenance, and operation of sports infrastructure within the municipality, including ensuring the utilization of sports infrastructure in elementary schools they establish. Furthermore, municipalities participate in organizing sports activities for all, with an emphasis on youth, often in cooperation with sports federations and sports clubs. For instance, in Považská Bystrica, the association of sports clubs operates under the city's administration. Municipalities, alongside sports associations and clubs, establish sports centres aim at conducting sports activities for all, particularly youth, guided by sports experts. In addition, municipalities participate in creating conditions for sports for all practices and sports competitions, including those for disabled individuals within the municipality. Finally, municipalities acknowledge and reward athletes and sports professionals active within their community.<sup>89, 90, 91</sup> To operationalize these responsibilities, municipalities allocate budgets, make administrative decisions through mayor's offices or dedicated sports departments, collaborate closely with sports entities,

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82 "Detailný rozpočet v roku 2023", Ministry of Defence of the Slovak Republic, <https://www.rozpocet.sk/web/#/rozpocet/VS/kapitoly/0/kapitola/11/detail/f/2021/DEBT/FNC>.

83 "Dotácie", Ministry of the Interior of the Slovak Republic, <https://www.minv.sk/?dotacie-1>.

84 "Dotácie ÚV SR", Office of the Government of the Slovak Republic, <https://www.vlada.gov.sk/dotacie/>.

85 "Stratégia športu 2030", Slovak Olympic and Sports Committee, [https://www.olympic.sk/sites/default/files/2022-05/Sport\\_2030\\_Phase\\_II\\_PwC\\_v6.pdf](https://www.olympic.sk/sites/default/files/2022-05/Sport_2030_Phase_II_PwC_v6.pdf).

86 Varmus, Kubina, Koman, Ferenc, "Ensuring the Long-Term Sustainability Cooperation with Stakeholders of Sports Organizations in Slovakia", 1833.

87 "Konceptcia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-koncepcia-financovania-sportu-SR-2018.pdf>.

88 "Slovakia", European Commission, <https://portal.cor.europa.eu/divisionpowers/Pages/Slovakia.aspx>.

89 Varmus, Kubina, Koman, Ferenc, "Ensuring the Long-Term Sustainability Cooperation with Stakeholders of Sports Organizations in Slovakia", 1833.

90 "Konceptcia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-koncepcia-financovania-sportu-SR-2018.pdf>.

91 "Slovakia", European Commission, <https://portal.cor.europa.eu/divisionpowers/Pages/Slovakia.aspx>.

and initiate specific funding programs or grants. Funding sources typically include budget allocations, government grants, and partnerships with higher authorities. Decision-making processes involve various administrative bodies and adapt based on the municipality's structure and available resources.<sup>92, 93, 94</sup>

## 6. THE SPORTS FUNDING SYSTEM

The interrelation between different levels of the public sector is based on a comprehensive policy framework governing state funding priorities in sports, largely shaped by the sports funding formula.

### 6.1. THE FORMULA FOR CALCULATING THE RECOGNISED SPORTS SHARE

The Recognised Sport Share (RSS), created in response to the Sports Act, is a formula designed by experts within the sports movement to enhance transparency in funding allocation. This formula, outlined in paragraph 68 of the Sports Act, comprises three main components. The first part represents sporting success and depends on the coefficient of significance of the result in the adult category or the coefficient of significance of the result in the youth category. Overall, this part accounts for 40% of the whole formula. The second part of the formula consists of interest in sport or, in other words, the popularity of sport. Within this category, the foreign interest in sport and domestic interest in sport are considered, with domestic interest playing the primary role and accounting for up to 70%, while foreign interest accounts for the remaining 30%. As with the first category, this part accounts for 40% of the whole formula. The last part of the RSS is the average number of active athletes in a recognised sport under the age of 23. This part logically accounts for the remaining 20% of the formula.<sup>95, 96, 97</sup>

Simplistically, this RSS notation could be expressed as  $P = \text{sporting success} * \text{interest in sport} + \text{membership under 23}$  (detailed description included in Figure 3). Thus, greater sporting success with increased interest and higher youth membership, all contribute significantly to the funding allocation.<sup>98</sup>

92 Varmus, Kubina, Mičiak, Šarlák, and Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure".

93 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21

94 Greguška and Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".

95 Ivan Greguška, "Vzorec na výpočet príspevku uznanému športu: Náhrada subjektívneho rozhodovania politikov a priestor na neustále zlepšovanie výpočtu", [http://www.ucps.sk/VZOREC\\_Nahrada\\_subjektivneho\\_rozhodovania\\_politikov\\_a\\_priestor\\_na\\_neustale\\_zlepsovanie\\_vypoctu](http://www.ucps.sk/VZOREC_Nahrada_subjektivneho_rozhodovania_politikov_a_priestor_na_neustale_zlepsovanie_vypoctu).

96 Helena Laposová, "Metodika na výpočet podielu uznaného športu", <https://www.isamosprava.sk/clanky/metodika-na-vypocet-podielu-uznaneho-sportu/>.

97 "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/20210101>.

98 Greguška, "Vzorec na výpočet príspevku uznanému športu: Náhrada subjektívneho rozhodovania politikov a priestor na neustále zlepšovanie výpočtu".

<b>FORMULA FOR CALCULATING THE RECOGNISED SPORT SHARE</b>
$P = (A * KVVD + A * KVVM) * (B * ZD + C * ZZ) + (1 - 2 * A) * M23$
<p><i>P</i> – proportion of the recognized sport affected  <i>A</i> – percentage of the weight of sporting achievement (40%)  <i>B</i> – percentage weight of domestic interest in sport (70%)  <i>C</i> – percentage weight of foreign interest in sport (30%)  <i>KVVD</i> – coefficient of significance of the result in the adult category  <i>KVVM</i> – coefficient of significance of the result in the youth category  <i>ZD</i> – domestic interest in the relevant recognized sport  <i>ZZ</i> – foreign interest in the relevant recognized sport  <i>M23</i> – the average number of active athletes in a recognized sport under the age of 23</p>
<p><b>P = sport achievements * interest rate + youth up to 23 years of age</b></p> <p style="text-align: center;">80%                      20%</p>

*Figure 3 – The formula for calculating the share of recognised sports*  
 Source: Greguška (2019)

The formula for the share of recognised sport applies exclusively at the national level. At the regional or local level, financial support for sport is determined by the decisions of individual self-governing regions or municipalities. In most cases, these decisions are governed by general binding regulations and respond directly to the various subsidy calls issued by the municipalities or self-governing regions.<sup>99, 100, 101</sup>

The formula as a whole is very complex, evolving constantly and subject to various legislative amendments. This was also documented by Žaneta Surmajová (2022), Director General of the Legislative and Legal Section of the Ministry of Education, a member of the Council of the UčPS and Vice-Chair of the Chamber for Dispute Resolution (SFA). During a presentation at the Sport and Law 2022 event, she discussed that there has been a total of 13 amendments to the law since 2016, which were not merely technical in nature. In 2019, the UčPS team provided a detailed explanation of the formula to the entire sports sector and the general public involved in this matter. This was in response to demands for a better explanation during the inter-ministerial comment procedure. However, this explanation did not become a sufficient priority from the perspective of the Ministry of Education and Science.<sup>102</sup> A closer view of the formula can be seen in Figure 3 above.

99 Varmus, Kubina, Mičiak, Šarlák, and Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure".

100 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21

101 Greguška and Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".

102 Ivan Greguška, "Vzorec na výpočet príspevku uznanému športu: Náhrada subjektívneho rozhodovania politikov a priestor na neustále zlepšovanie výpočtu", [http://www.ucps.sk/VZOREC\\_Nahrada\\_subjektivneho\\_rozhodovania\\_politikov\\_a\\_priestor\\_na\\_neustale\\_zlepsovanie\\_vypoctu](http://www.ucps.sk/VZOREC_Nahrada_subjektivneho_rozhodovania_politikov_a_priestor_na_neustale_zlepsovanie_vypoctu).

## 6.2. FUNDING OF SPORTS BY INDIVIDUAL ORGANISATIONS

Varmus et al. 2023 underlined that the municipalities and the Ministry of Education and Sports of the Slovak Republic play the most important roles in the funding of sports in Slovakia. This is mainly because they manage the largest allocations of money dedicated to sports.<sup>103, 104</sup>

### 6.2.1. Government Office and subsidy allocation

Funding for sports activities via the Cabinet Office and the institution of the Prime Minister's grant is often irregular, making reliance on this source risky. Allocation of the Prime Minister's subsidies for the promotion of sports is regulated by Slovak Government Regulation No.440/2017 Coll. on the provision of subsidies from the Prime Minister's reserve. This Regulation stipulates that subsidies from the Prime Minister may be provided to support projects in the field of sports that contribute to the development of sports in Slovakia. The Prime Minister's Reserve is an extra-budgetary fund intended to cover emergency situations, with the promotion of sports falling under the discretionary power of the Prime Minister. This means that the Prime Minister decides which projects will be supported and the amount of the subsidy.<sup>105</sup> The competence to propose the allocation of these subsidies for the promotion of sports lies with the Ministry of Tourism and Sports of the Slovak Republic. The allocation of these subsidies is often linked to projects intended to raise the level of sports in Slovakia. Specific examples supported by these subsidies include: organisation of sporting events (e.g., support for the Women's European Championship – CEV EuroVolley 2019), modernisation of sports facilities (e.g., the construction of a multifunctional playground in the municipality of Valča), support for training and coaching of athletes (e.g., the purchase of timing devices for firefighting sports competitions), and promotion of sport and health improvement projects to prevent health problems (project: 'Let's do sport – in summer and in winter').<sup>106</sup>

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103 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21.

104 Greguška an Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".

105 "Poskytovanie finančných prostriedkov z rozpočtovej rezervy predsedu vlády SR", Government office of the Slovak republic, accessed October 10, 2023, <https://www.vlada.gov.sk/poskytovanie-financnych-prostriedkov-z-rozpoctovej-rezervy-predsedu-vlady-sr/>.

106 "Národné športové projekty", Ministry of Education, Science, Research and Sport of the Slovak Republic, <https://www.minedu.sk/narodne-sportove-projekty/>.

Table 1 – Distribution of the share of sports funding by individual organizations (in millions of euros)

Year	MTS	MI	MD	GO and SA	Municipalities and HTUs	Total
2017	105.97	0.72	5.48	-	107.57	219.74
2018	68.61	0.76	6.09	9.00	132.28	216.74
2019	99.35	1.02	6.55	10.03	139.18	256.13
2020	117.63	-	14.74	-	130.64	263.01
2021	141.41	0.75	15.50	-	136.75	294.41
Total	532.97	3.25	48.36	19.03	646.42	1 250.03

Note: MTS = Ministry of Tourism and Sports of the Slovak Republic; MI = Ministry of the Interior of the Slovak Republic; MD = Ministry of Defence of the Slovak Republic; GO = Government Office; SA = subsidy allocation; HTUs = higher territorial units.

Source: Varmus et al., 2023

### 6.2.2. Ministry of Tourism and Sports

Allocation of funds by the central body of the Ministry of Tourism and Sports of the Slovak Republic (previously the competent Ministry of Education, Science, Research and Sport) amounts to a total value of € 532.97 million in the period between 2017–2021. The largest share of funding overall goes to recognised sports (hereafter referred to as RS), which are funded through the RSS. Over the last three years this funding has remained stable, ranging between € 56–58 million annually. The total funds allocated for this programme during 2017–2021 were € 251.39 million.<sup>107</sup> The second largest sector is the sports infrastructure. This separate category is mainly devoted to funding the Football Stadiums 2013–2022 project under UV SR No. 115 of 27.2.2013. A third part of the funding goes to the Sports Promotion Fund. The last big category in terms of funding significance is the category of national sports projects. This category was funded totaling €65.59 million, covering the costs for the Olympics in Tokyo, ensuring the preparation and participation of the sports representation in the XVI Paralympic Games in Tokyo, providing rewards to youth coaches for their athletes' medal placements at major international events in 2020, and supporting activities and tasks related to university sports in 2021, among others. This funding distribution confirms orientation toward high-performance sports, including support for the Slovak Anti-Doping Agency and the National Sports Centre. However, programmes promoting sports for all are underfinanced.<sup>108,109</sup>

107 "Financovanie športu", Ministry of Education, Science, Research and Sport of the Slovak Republic, <https://www.minedu.sk/financovanie-sportu/>.

108 Ministry of Education, Science, Research and Sport of the Slovak Republic, "Financovanie športu"

109 "Program", Association of Sports for All of the Slovak Republic, <http://aspv.sk/aspv-sr/program/>.

Table 2 – Distribution of funding of the MTS for individual sports programs (in million €)

Year	SFA	RS	NSP	SI	TA	P_021	Total
2017	1.55	36.29	10.03	53.35	4.75	-	105.97
2018	1.26	44.63	12.58	7.25	2.89	-	68.62
2019	1.45	56.55	12.88	25.00	3.47	-	99.35
2020	0.25	57.23	15.19	9.00	2.69	33.27	117.63
2021	0.44	56.68	14.91	9.00	3.80	56.58	141.41
<b>Total</b>	<b>4.95</b>	<b>251.39</b>	<b>65.59</b>	<b>103.60</b>	<b>17.59</b>	<b>89.85</b>	<b>532.97</b>

Note: SFA = Sports for all; RS= Recognised sports; NSP= National sports projects; SI = Sports infrastructure; TA = Transversal activities; P\_021 = Program 021

Source: Ministry of Tourism and Sports of the Slovak Republic, 2023

### 6.2.3. Ministry of the Interior

The Ministry of the Interior is not a very significant contributor to sports funding. The funding of the department is primarily concentrated on police sports clubs and the Union of Sports Organisations of the Police of the Slovak Republic. Regular allocations for sports from this department amount to around 750,000 euros, with no funding provided during the COVID-19 crisis (MVSR, 2023).<sup>110</sup>

Table 3 – Distribution of the Ministry of the Interior of the Slovak Republic funding for individual sports programs (in million €)

Year	PSC BA	PSC KE	PSC BB	UPEOP SR	OPSC	Total
2017	0.30	0.16	0.04	0.05	0.18	0.72
2018	0.26	0.10	0.11	0.05	0.25	0.76
2019	0.27	0.07	0.09	0.05	0.54	1.02
2020	0.00	0.00	0.00	0.00	0.00	0.00
2021	0.26	0.07	0.09	0.05	0.29	0.75
<b>Total</b>	<b>1.09</b>	<b>0.39</b>	<b>0.33</b>	<b>0.18</b>	<b>1.26</b>	<b>3.25</b>

Note: PSC BA = Police Sports Club Bratislava; PSC KE = Police Sports Club Košice; PSC BB = Police Sports Club Banská Bystrica; UPEOP SR= Union of Physical Education Organizations of the Police of the Slovak Republic; OPSC = Other Police sports clubs

Source: Ministry of the Interior of the Slovak Republic, 2023

110 "Dotácie", Ministry of the Interior of the Slovak Republic, <https://www.minv.sk/?dotacie-1>.

### 6.2.4. Ministry of Defence

The Ministry of Defence (MoD) plays a key role in supporting athletes of the Dukla Military Sports Centre. The total budget allocated for this purpose over the period 2017-2021 amounted to €48.36 million, primarily focusing on high-performance sports.

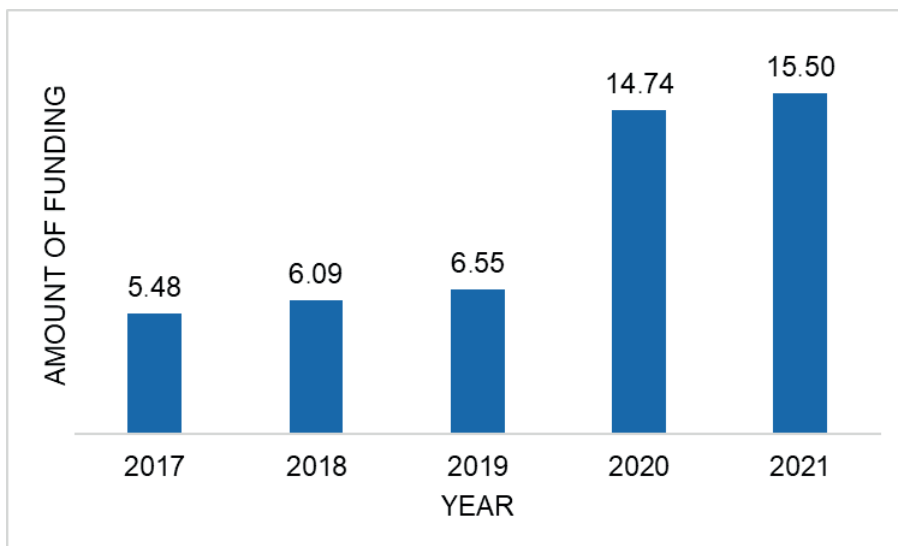


Figure 4 – Development of the MoD budget allocated to the sports section (in million €).  
Source: Ministry of Defence of the Slovak Republic, 2023

The Dukla Military Sports Centre supports a large number of recognised sports, most of which have a section included within Dukla Banská Bystrica. Others, such as road cycling, water slalom, or speed canoeing, are managed by sections located in three other centres, which are Dukla Liptovský Mikuláš, Dukla Trenčín and Dukla Žilina.<sup>111</sup>

### 6.2.5. Higher territorial units and Municipalities

From the perspective of sports funding, HTUs, and cities in Slovakia, it can be stated that HTUs contribute an estimated 1% of all financial resources allocated to sports, among the financial package for sports from cities and HTUs. The remaining 99% of allocations are covered by cities. These funds are primarily used for the operation of recognised sports, the organization of sports events, and the development of sports infrastructure in cities and counties. More detailed results of this funding distribution are contained in the authors' research projects.<sup>112, 113, 114</sup>

111 "Športy", Dukla Military Sports Centre, accessed October 10, 2023, <https://www.dukla.sk/>

112 Varmus, Kubina, Mičiak, Šarlák, and Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure".

113 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21

114 Greguška and Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".



## 7. SERVICE PROVIDERS IN THE FIELD OF SPORTS

Analyse the commercial sector of sports in Slovakia is challenging, as evidenced by the Concept of Sports Funding in the Slovak Republic (2018). Revenues from sponsorship, donations, and similar private company sources accounted for less than 15% of the total funding for sports in Slovakia. More recent data are currently unavailable. The authors of this study argue that this low percentage indicates that Slovakia, as an EU country, is below average compared to other European countries.<sup>115</sup>

Paradoxically, another study conducted by the authors showed that when surveyed by TNS Slovakia and Strategy magazine about the status of sponsorship in marketing, 40% of marketing managers indicated that sponsorship is a stable part of marketing communication. Furthermore, 34% confirmed that sponsorship should be considered a stand-alone marketing tool. Only 3% of executives viewed sponsorship as a waste of money.<sup>116</sup>

In recent years, attempts have been made to increase financial support from the private sector in two ways. The first is the sponsorship agreement, defined in sections 50 and 51 of the Sports Act, which allows sponsors to provide support to athletes, sports professionals, or sports organisations that are members of sports federations.<sup>117</sup> The second measure is the institution of the super-deduction, intended to incentivise the private sector to invest funds in sports through sponsorship agreements. Despite some advantages, the super-deduction was not included in the amendment to the Income Tax Act and is not currently in force.<sup>118</sup>

A sports sponsorship contract combines the concept of a specialised gift with advertising, primarily aimed at supporting the sponsored entity's sporting activities (90%), while secondarily promoting the sponsor's name or brand (10%).

## 8. STRATEGIC PRIORITIES FOR BUILDING SPORT

The key priorities for building the future of sports in Slovakia are outlined in the strategic document titled "*Sport Strategy 2030*" or "*Vision and Concept of Sport Development in Slovakia until 2030*." This document outlines the future vision for sports, drawing on international best practices. Over the next decade, the primary goal is to elevate sports, athletes, and the sports industry to a status that mirrors their societal and economic contributions. The Slovak Olympic and Sports Committee aims to enhance global visibility through sporting achievements while ensuring universal access to sports for all citizens, regardless of location, age, living conditions, or health limitations. This includes promoting sustainable growth in the sports economy, modernizing sports infrastructure, enhancing sports education, encouraging physical activity among children, and promoting healthy lifestyles. Embracing innovations

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115 "Konceptcia financovania športu v Slovenskej republike", KPMG, <https://www.olympic.sk/sites/default/files/2021-01/KPMG-konceptcia-financovania-sportu-SR-2018.pdf>.

116 Michal Varmus, Viliam Lendel, Jakub Soviar, Josef Vodák, Milan Kubina, "Sports Sponsoring - Part of Corporate Strategy", *Communications - Scientific Letters of the University of Zilina* 18, no. 11 (2016): 36-41.

117 "Zákon č. 440/2015 o športe a o zmene a doplnení niektorých zákonov", Parliament of Slovak Republic, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/440/20210101>.

118 "Konceptcia financovania športu v Slovenskej republike", KPMG.

and modern technologies within the sports domain is equally pivotal.<sup>119, 120, 121</sup>



Figure 5 – Strategic Priorities for Building Sports in Slovakia

Source: Slovak Olympic and Sports Committee (2021), modified according to Varmus et al. (2023)

The strategic pillars of the Sport Development Concept by 2030 are based on the main objectives of the Sport Strategy 2030 project. These pillars are developed hierarchically across various levels, ranging from the main areas of development to specific projects and initiatives. Each of the six strategic pillars has defined main objectives, stakeholders, challenges, risks, and key principles for the development of sports in that area, along with an implementation plan. A closer description of these pillars looks as follows:

### 1. Sustainable Funding & Development

- Enhancing funding models for long-term sports growth.
- Boosting GDP contribution, cutting healthcare costs, creating jobs, and aligning with EU funding.

### 2. Modernized Sports Environment

- Updating infrastructure, building modern facilities.
- Cutting investment debt, improving elite training, adopting innovative solutions.

### 3. Quality Education & Sports Integration

- Elevating physical education standards at all levels.
- Improving school resources, training coaches, enhancing management skills.

119 "Stratégia športu", Slovak Olympic and Sports Committee, [www.olympic.sk/sites/default/files/2022-05/Sport\\_2030\\_Phase\\_II\\_PwC\\_v6.pdf](http://www.olympic.sk/sites/default/files/2022-05/Sport_2030_Phase_II_PwC_v6.pdf).

120 "Stanovy Slovenského futbalového zväzu", Slovak football association, <https://mediamanager.sportnet.online/media/pages/f/futbalsfz.sk/2022/03/2022-02-25-ksfz-standovy-sfz-novela-1.pdf>.

121 "Deklarácia slovenského športu 2023 pomenúva najpálčivejšie problémy, TASR", <https://www.teraz.sk/sport/sosv-schvalil-deklaraciu-slovenskeho/717097-clanok.html>.

#### **4. Excellence in Elite Sports**

- Fostering youth talent, supporting elite athletes.
- Boosting international successes, providing career support, and applying modern solutions.

#### **5. Healthy & Active Society**

- Encouraging sports participation and healthier lifestyles.
- Implementing 'Slovakia Is Sporty,' devising plans, creating aid schemes.

#### **6. Sports Digitalization & Innovation**

- Digitizing sports, fostering innovations for equal opportunities.
- Improving sports tech, establishing data centre, preparing resources.<sup>122, 123</sup>

Additionally, it is worth mentioning the document from the Ministry of Investment, Regional Development, and Informatization of the Slovak Republic titled "Proposal for the Vision and Strategy for the Development of Slovakia by 2030 – Long-term Strategy for Sustainable Development of the Slovak Republic." This document discusses long-term sports development in Slovakia with a focus on supporting families, optimizing financial planning, and building sports infrastructure.<sup>124</sup>

## **9. CONCLUSION AND DISCUSSION**

From a theoretical standpoint, the primary challenge in building sports in Slovakia can be identified as the transparency of funding. The formula for recognised sport share serves as an indicator of system alignment and transparency, even if it does not work perfectly. Previous research highlights this issue, particularly at the regional or local levels where such a transparent system is absent.<sup>125, 126, 127</sup> On the contrary, the Ministry of Tourism and Sports of the Slovak Republic identifies the biggest challenges in the field of health in the context of sports development. Within the strategic document titled "*Concept of Sport 2022-2026*," the following challenges are included:

- increase in the share of free time and opportunities for its meaningful utilization,
- decline in natural and occupational physical activity, a growing trend of a sedentary lifestyle, and physical and mental health issues,
- aging of the population and an increasing proportion of non-productive age groups,

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122 "Stratégia športu", Slovak Olympic and Sports Committee, [https://www.olympic.sk/sites/default/files/2022-05/Sport\\_2030\\_Phase\\_II\\_PwC\\_v6.pdf](https://www.olympic.sk/sites/default/files/2022-05/Sport_2030_Phase_II_PwC_v6.pdf).

123 "Deklarácia slovenského športu 2023 pomenúva najpálčivejšie problémy, TASR", <https://www.teraz.sk/sport/sosv-schvalil-deklaraciu-slovenskeho/717097-clanok.html>.

124 "Návrh Vízie a stratégie rozvoja Slovenska do roku 2030 - dlhodobá stratégia udržateľného rozvoja Slovenskej republiky – Slovensko 2030 – nové znenie", Ministry of Investments, Regional Development, and Informatization of the Slovak Republic, <https://mirri.gov.sk/wp-content/uploads/2021/01/SLOVENSKO-2030.pdf>.

125 Michal Varmus and Michal Šarlák, "Financovanie športu vyššími územnými celkami Slovenskej republiky; Prerozdelenie financií na šport v krajských mestách na Slovensku", *Magister Officiorum* 6, no. 2 (December 2022): 6-21.

126 Greguška and Šarlák, "Analysis of sport support through self-governing regions and local governments in Slovakia".

127 Varmus, Kubina, Mičiak, Šarlák, and Klampár, "Education and Knowledge in the Field of Sponsorship and General Funding of Sports Infrastructure".

- loss of common values, solidarity, and a shared identity,
- new epidemics and pandemics, including civilization-related diseases and obesity.<sup>128</sup>

Building on this information, it can be argued that while researchers perceive the primary challenges in sports primarily in terms of establishing effective funding, the MTS SR, as the central body responsible for sports administration, perceives the problems and challenges of sports, especially in terms of physical and mental well-being. The leadership of the Slovak Olympic and Sports Committee (SOŠV) acknowledges the connection between these issues. In May, they issued the “*Declaration of Slovak Sports 2023*,” which discusses the most pressing issues of Slovak sports. Within this declaration, efforts can be seen to adjust the competency classification of sports within the highest executive bodies of the state, affirming and emphasizing its universal character. According to the SOŠV, sports should not be an unwanted appendage of any ministry; rather, it should be managed by an authority for where it holds a top priority. Another aspect highlighted is funding itself, which should be sufficient and systematically structured to maximise effectiveness across all forms and levels, both at the state and local levels. Other challenges addressed the establishment of a unified National Sports Development Program, ensuring the renovation and construction of sustainable sports infrastructure, guaranteeing long-term, systematic, and transparent support for national sports representation, promoting sports as an integral part of education, and introducing a comprehensive system of sports certifications for young people.<sup>129, 130</sup>

The lack of coordination horizontally within the central public sector (government and ministries) and at the sub-national level (regions and local communities) in promoting sports often results in segmentation and fragmentation of resources. This can constrain the effectiveness and impact of support. Synergies and coordination between these levels are key to ensuring that financial and organisational resources are effectively utilized to support and develop sports activities and programmes nationwide. Improved collaboration among government bodies, local communities, and sports stakeholders can foster synergistic efforts and create a better environment for the growth and promotion of sports at different levels of society.

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128 “Prieskum športu”, Ministry of Education, Science, Research and Sport of the Slovak Republic, [https://www.minedu.sk/data/files/11275\\_ipsos\\_sekcia\\_sportu\\_prieskum\\_sportov\\_2022\\_na\\_minedu.pdf](https://www.minedu.sk/data/files/11275_ipsos_sekcia_sportu_prieskum_sportov_2022_na_minedu.pdf).

129 “Deklarácia slovenského športu 2023 pomenúva najpálčivejšie problémy, TASR”, <https://www.teraz.sk/sport/sosv-schvalil-deklaraci-slovenskeho/717097-clanok.html>.

130 “Konceptia športu 2022 – 2026”, Ministry of Education, Science, Research and Sport of the Slovak Republic, [https://www.minedu.sk/data/files/11170\\_koncepciasportu2022.pdf](https://www.minedu.sk/data/files/11170_koncepciasportu2022.pdf).

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