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Hahlić 6, HR-51000 Rijeka, Croatia

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Hahlić 6, HR-51000 Rijeka, Croatia  
Tel: +385(0)51-359-600  
E-mail: [slpd@pravri.uniri.hr](mailto:slpd@pravri.uniri.hr)

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# EDITORIAL

## **INTRODUCING THE SPORTS LAW, POLICY & DIPLOMACY JOURNAL**

The launch of a new academic journal is always an exciting occasion, but it is only the first step of a very long journey. In this case, the phrase that "it is not a sprint, it is a marathon" might not even be accurate, as it is rather an ultra-trail and very long term race. Nevertheless, the anticipation, emotion and excitement whilst waiting at the start line for the starting gun is the same, if not bigger.

The Sports Law, Policy & Diplomacy Journal is, above all, a journal from academics for academics. It is a bottom-up initiative carefully discussed over the years with many colleagues who felt that, despite the open mind of some traditional journals (to which we are incredibly thankful!) and the creation of some new outlets for publication, we still never felt completely at our academic home. The socio-scientific study of sport politics and regulation has been traditionally led by legal research and political science analysis. But the two disciplines, although talking to one another more than ever, still had their different journals. We have seen increased collaboration and excellent multi-disciplinary research published with an open mind, but there was no journal advocating for an active integration and multidisciplinary approach. We felt that, with the proactive development of sport policy regulation, and the recent raising of sport diplomacy, it was the right time and the right focus to start a new journey that can offer a new home for more established and upcoming scholars in this area.

And we also felt it is the right place. Rijeka University and its Law Faculty's Centre for Sports Law, Sports Policy and Sports Diplomacy has been at the forefront of academic production and debate ever before it was formally created. The Association for the Study of Sport and the European Union vindicated the legitimacy of the study of sport as a discipline of its own within EU studies, law, management and the wider socio-scientific study of Europe. It was only natural that these two organisations made the step forward to try and launch a new journal.

The launch of the Sports Law, Policy & Diplomacy Journal is also an attempt to get academic dissemination back from publishing houses. This is a gold-standard open access journal, from academics, for academics and the wider community. It might be a naïve idea, we know, but the journal's intention is to remain open access and not to charge neither publishing nor subscription fees. We believe in open access science and the need to empower academics to recover a fundamental part of the scientific process. For that reason, we will need the collaboration of authors to send their papers, and reviewers to ensure the quality of the journal. Because open access does not mean, by any stretch of the imagination, less scientific rigour. And it is only on a strong, demanding, and rigorous approach to accepting papers that we can build the journal up, even if that is a long process. We are aware this is a major undertaking, but we believe our scientific community shares much of this approach, and we now rely on you to support us to make this possible. Please have this new journal in mind for your upcoming publications. Also, send us your ideas for special issues or for a better development of the journal.

Our first issue features six original research articles, authored by a mixture of young upcoming academics and more established names. The articles focus on issues of sports law, sports policy, and sports diplomacy, but we must also add that some of them are also

interdisciplinary. We are proud to say that some of the articles came out of papers presented at the 16th Sport&EU Annual Conference, which was held in Lausanne, Switzerland in 2022. This is something we will also use for future issues of the SLPD Journal.

We are already working on the next issue and the plans for future development of the journal. Contact us if you are interested in joining the editorial board or our pool of reviewers. You can also contact us if you have ideas for future issues or conferences where you feel the journal can find suitable articles. We hope you find our first issue useful and the research is of enough quality to be included and cited in your own work. That would be an indication that we are on the right track.

Finally, we would like to thank all those who have enthusiastically supported the journal launch. First, we need to thank the members of our editorial board and the reviewers of the first issue. We would not be here without them. Second, we would like to thank the Association for the Study of Sport and the EU, and the University of Rijeka, specially their Law Faculty, for their support to the journal.

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



# ARTICLES



## SPORTS LAW, SPORTS POLICY AND THE AMATEUR ATHLETE. REFLECTIONS ON *TOPFIT AND BIFFI v. DEUTSCHER LEICHTATHLETIKVERBAND*

DAVID McARDLE\*

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### Abstract

There have been a number of significant papers on the European Court of Justice's 2019 decision in *TopFit v DLV*, a preliminary reference which concerns direct nationality discrimination against an amateur athlete. This paper contributes to that knowledge-base by drawing on those contributions but also by setting the case in its historical context to show how it aligns with forty years' worth of developments in both sports law and sports policy. Furthermore, *TopFit* illustrates that the potential ramifications of the EU's sports competence as laid down in Article 165 TFEU might be greater than they first appear. Contrary to the Advocate General's Opinion, the Court held that direct nationality discrimination laws were applicable to amateur sporting activities – there was no need to establish the existence of economic activity which, fortuitously, Biffi possessed. It thus needs to be considered alongside the wider caselaw on EU citizenship, and the case is not a matter of 'purely sporting interest.' But nationality restrictions can still be legitimate if they are deemed to be a proportionate response to a legitimate sporting concern. In any other cultural sphere, the idea that one's desire to take part in an amateur event might be lawfully ended by 'proportionate' discrimination would seem ludicrous. The paper argues that sport's privileged position within the European Union is a reflection of its ability to leverage its financial muscle and ubiquity, and its concomitant ability to influence policymakers; it does not possess any 'inherent' qualities that make it 'special' in comparison to other cultural fields.

**Keywords:** Sports law, Sports policy, Participation, Amateur sport, Economic activity.

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\* LLB, PhD. School of Law, Stirling University, Scotland.  <https://orcid.org/0000-0002-5140-7201>. A shorter version of this paper was presented at the *Emerging Trends in Economics, Culture and Humanities* Conference at EKA University, Riga in April 2022. Many thanks to the organisers and other participants. A longer one is forthcoming in McArdle, D and O'Leary, L (2023) *European Sports Law* (Edward Elgar). Special thanks to the two reviewers for their incredibly helpful comments. ✉ [d.a.mcardle@stir.ac.uk](mailto:d.a.mcardle@stir.ac.uk)

## 1. INTRODUCTION

This paper explores the link between EU sports policy and the Court's ruling in *TopFit and Biffi v Deutscher Leichtathletikverband*<sup>1</sup> (hereafter *TopFit*). Here, the Court had a first opportunity to consider the implications of Article 165 TFEU for an amateur athlete who argued that restrictions on his ability to compete amounted to discrimination on grounds of nationality. The paper makes the link between the policy, the Treaty provision and the case, showing how the problematic (bordering on fallacious) assertions about sport's social utility in the 1985 Adonnino Report informed the EU's nascent sports policy and contributed to its later development. The policy processes that culminated in Article 165 TFEU, and how that provision informed the Court's reasoning in the case, are also discussed. The contrasts between the ruling and the Advocate General's Opinion, particularly with regard to Biffi's economic activities, are highlighted and explained.

## 2. THE DEVELOPMENT OF AN EU SPORTS POLICY

The Adonnino Report represented the EEC's first formal engagement with sporting activity, and it was its first attempt to overtly leverage sport to serve policy aims.<sup>2</sup> At the 1984 European Council meeting, the member states had resolved to strengthen the identity and image of the Community both for its citizens and to the wider world. A committee chaired by Italian MEP Pietro Adonnino was asked to submit proposals for discussion at the 1985 Heads of State meeting. With that in mind, the committee sought to "encourage (...) sporting activities within the Community and the use of Community emblems in such events"<sup>3</sup> in the context of promoting mobility, especially among young people. The Report proposed the creation of Community teams, suggesting the European Council organise events in collaboration with sports associations, "invit(e) sports teams to wear the Community emblem in addition to their national colours" and promote the exchange of players and coaches.<sup>4</sup>

These suggestions were made at a time when the idea of the free movement of sport-sector workers was almost as novel as the idea of a 'team Europe' emerging in sports other than men's golf<sup>5</sup> or the wearing of a Community emblem. But all of this is troubling. Adonnino had confidently asserted that "since ancient times sport has been an important forum for communication among peoples" and noted that it was still an important part of many people's lives. However, it also noted that "it is all the more regrettable that the enjoyment of international competitive sport has been drastically marred recently by hooliganism" and alluded to the "recent tragic events (which) demonstrated that a much closer co-operation

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1 Judgment of 13 June 2019, *TopFit e.V. and Daniele Biffi v Deutscher Leichtathletikverband e.V.*, C-22/18, EU:C:2019:497.

2 European Parliament (1985) *The (Adonnino) Report from the Ad Hoc Committee on a People's Europe*, <https://ec.europa.eu/dorie/fileDownload.do;jsessionid=jg62PJXBBhnrnZGRLcpQX3zDz1vHwp9n0zyR63mC2qCyyK1BG51C!-572674064?docId=186651&cardId=186651>.

3 Adonnino, para 2.

4 Adonnino, para 5.9.1.

5 Team Europe first participated in the Ryder Cup in 1985, but its creation was a desperate bid to breathe commercial life into a dying competition; the United States had won every match against Great Britain and Ireland over the previous 28 years.

between the authorities and the sports organisations is indispensable in order to prevent and stamp out hooliganism.”<sup>6</sup>

The Report was released at the end of June 1985. The ‘recent tragic event’ to which it alluded had occurred just six weeks earlier. Fifty-six people had died at a fire in an antiquated football ground in Bradford, England where 30 years’ worth of flammable rubbish had built up under a wooden stand in which people were allowed to smoke and where the exit gates were jammed shut so that people could not get in without paying. Four weeks before publication, 39 Italian football fans were killed at the Heysel stadium in Belgium after a toxic juxtaposition of fan violence and crumbling infrastructure resulted in a wall collapsing. Four years later, an almost unbelievable combination of inept policing, stadium mismanagement, a collective failure to learn anything from Bradford and Heysel and unparalleled stupidity and complacency on the part of the police, football’s authorities and the UK government caused further tragedy – the Hillsborough disaster which claimed 97 lives. After publication, police-on-fan and fan-on-fan football violence continued to be routine in many member states, and not just at international games as Adonnino had indicated. Then as now, men’s sports were routinely played against a backdrop of sportwashing, violence, racism, homophobia, xenophobia and casual misogyny. Under the ‘European Model,’ women’s sports were usually a niche pursuit that merited neither funding nor attention unless it served the state’s political or social aims.<sup>7</sup> The idea that either contemporary or ancient sport had ever contributed to feelings of jolly togetherness among the peoples of Europe has never withstood serious scrutiny.

Adonnino’s sports-related suggestions were entirely at odds with the realities of professional sport, but they gained little immediate traction. This was partly because the European Parliament had minimal influence on developing community policies, but after its powers were extended by the 1992 Maastricht Treaty, Parliament published two reports that advocated a more coherent approach to sport and echoed Adonnino. The Larive Report<sup>8</sup> “clearly link(ed) the active or passive participation in sport with the social and cultural identity of people,” while also noting the significant levels of economic activity associated with it. It recommended that sport should receive greater political attention, in relation to both European integration and the single market.<sup>9</sup> Shortly after, the Pack Report<sup>10</sup> was concerned that “the EU currently has no overall concept of the action that needs to be taken in the field of sport” even though the sector was potentially relevant to the work of at least 18 Directorates General. The work of a sports unit within DG X (Information, Communication, Culture, Audiovisual Media) in administering a modest annual sports budget and convening an annual forum was recognised, but Pack stressed that either having a Treaty base for sport “as called for by the sports movement” or annexing a new protocol to the Treaty was imperative.<sup>11</sup> Sport clearly had allies within the Parliament and, crucially, DG X – but the two Reports also acknowledged a distinction between

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6 Adonnino, para 5.9.

7 Gigliola Gori and Allen Guttman, *Italian Fascism and the Female Body: Sport, Submissive Women and Strong Mothers* (London: Routledge, 2004).

8 European Parliament (1994), *Report on the European Community and Sport*, Rapporteur: Mrs J. Larive. A3-0326/94.

9 Richard Parrish, *Sports Law and Policy in the European Union*, (Manchester: Manchester University Press 2003), 165.

10 European Parliament (1997) *Report on the Role of the EU in the Field of Sport*, Rapporteur: Mrs Doris Pack. A4-0197/1997, [https://www.europarl.europa.eu/doceo/document/A-4-1997-0197\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-4-1997-0197_EN.html).

11 European Parliament (1997), 11.

sport as an economic actor and sports as a cultural phenomenon. Sandwiched between them, the *Bosman*<sup>12</sup> ruling, according to proponents of the European Model, had “undermined the twin pillars supporting the European model, namely sporting autonomy and the specificity of sport. Without the ability, free from judicial oversight, to adopt rules to preserve the European model, international sports federations could not protect the special character of European sport.”<sup>13</sup> They needed to win friends and influence people.

The 1997 Amsterdam Treaty had included a non-binding declaration which fell short of the Pack Report’s recommendations, but it further emphasised the social significance of sport and “called on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue.”<sup>14</sup> Thereafter, DG X noted the relationship between sport and EU law but also duly acknowledged its unique educational, social, cultural and public health functions.<sup>15</sup> The Helsinki Report on Sport<sup>16</sup> similarly mentioned sport’s educational and social functions, noting that over half of European Union citizens “regularly do sport” and that “almost two million teachers, instructors and volunteers spend their working or leisure time organising sporting activities.”<sup>17</sup> But some of sport’s key contemporary features – the development of its economic dimension, the internationalisation of sport and its growing audiences – were again identified as sources of tension. Those tensions have never been resolved.

One of the first signs of these developments is the overloading of sporting calendars, which, linked to the need to produce results under the pressures of sponsors, may be considered one of the causes of the expansion of doping.

A second consequence is the increase in the number of lucrative sporting events, which may end up promoting the commercial approach to the detriment of sporting principles and the social function of sport.

A third symptom is the temptation for certain sporting operators and certain large clubs to leave the federation in order to derive the maximum benefit from the economic potential of sport for themselves alone. This tendency may jeopardise the principle of financial solidarity between professional and amateur sport and the system of promotion and relegation common to most federations.

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12 Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, C-415/93, EU:C:1994:463.

13 Andrea Cattaneo and Richard Parrish, *Sports Law in the European Union*, (Alphen aan den Rijn: Kluwer Law International 2020), 17.

14 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Declaration 29 (OJ C 340, 10.11.1997, p. 136), <http://data.europa.eu/eli/treaty/ams/sign>.

15 European Commission, Commission Staff Working Paper (1998) *The Development and Prospects for Community Action in the Field of Sport* (Brussels: DG X 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), *Opinion of the Committee of the Regions on The European Model of Sport* (1999/C 374/14), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:374:0056:0066:EN:PDF>.

16 Commission of the European Communities, *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>.

17 Commission of the European Communities (1999), para 1.

Another consequence that has been observed is the hazardous future facing young people who are being led into top-level competitive sport at an increasingly early age, often with no other vocational training, with the resulting risks for their physical and mental health and their subsequent switch to other employment.<sup>18</sup>

The Helsinki Report was the first attempt to meaningfully articulate the social, cultural and educational values of sport, and to link them to its economic aspects. It concluded with a plea for a partnership approach in order to reconcile the need to apply EU law to the sports sector with the equally-pressing need to respect its unique characteristics.

Insufficient coordination between the protagonists of sport (federations, member states and the European Community), all of them working in isolation, would risk thwarting efforts to achieve these shared principles. However, their convergent efforts...could make an effective contribution to the promotion in Europe of sport that is true to its social role while ensuring that its organisational aspects assimilate the new economic order.<sup>19</sup>

Notwithstanding Amsterdam failure to provide a Treaty competence for sport, Parliament and the Commission had at least given guidance on how they expected EU institutions, member states and sporting stakeholders to approach their relationship. That guidance was significantly different from "the single-market regulatory ethos that characterised the *Bosman* environment,"<sup>20</sup> and it was further articulated in the European Council's 2000 Declaration on Sport which noted the Community "must...take account of the social, educational and cultural functions inherent in sport and making it special."<sup>21</sup>

This was the first time that the concept of 'inherency' had been used in the context of sport at the Community level, while the greater social-cultural sensitivity had been apparent both in the Court's post-*Bosman* judgments and in several Competition Commission decisions. For example, the UEFA rules on multiple ownership of clubs were deemed to be "inherent to the very existence of club competitions"<sup>22</sup> and in an unpublished decision on the location of clubs' grounds it said that the 'home and away rule' was indispensable for the organisation of competitions.<sup>23</sup> In both cases, the Commission also decided the restrictive rule in question was proportionate. Through these and other decisions, there developed a competition policy which became "one of the most centralised and powerful EU competences, which is only subject to review by the EU courts."<sup>24</sup> Competition law's impact on sport has been profound and that impact will continue, not least with the ongoing dispute over a European Super League in football and the challenge in reconciling the European model with the fact that rules or

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18 Commission of the European Communities (1999), para 2.

19 Commission of the European Communities (1999), para 5.

20 Richard Parrish, "Sports Regulation in the European Union: A New Approach?", *Managing Leisure* 6 (2001): 194, <https://doi.org/10.1080/13606710110079099>.

21 European Council (2000) *Conclusions of the Presidency*: Annex IV, [https://www.europarl.europa.eu/summits/nice2\\_en.htm#an4](https://www.europarl.europa.eu/summits/nice2_en.htm#an4).

22 European Commission Decision of 27 June 2002, Comp/IV/37.806 (*ENIC/UEFA*), [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/37806/37806\\_7\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/37806/37806_7_3.pdf).

23 European Commission Decision of 3 December 1999, Comp/E3/36.85 (*Lille/UEFA*), unpublished Commission Decision of 3 December 1999.

24 Borja Garcia and Henk-Erik Meier, "Limits of Interest Empowerment in the European Union: The Case of Football", *European Integration* 34, no. 4(2012): 362, <https://doi.org/10.1080/07036337.2011.611400>.

actions which prevent participation in 'breakaway' events *prima facie* breach competition law.<sup>25</sup> Reconciling sport's unique features with the principles of economic integration have similarly "had the effect of shifting EU involvement in sport from classic Single Market regulation to a form of regulation that recognises the socio-cultural and integrationist qualities of European sport."<sup>26</sup>

But how does all this impact on amateur participation, which was the key issue in *TopFit* and is thus the subject-matter of this paper?

Several introductory points will help set the context. First, Weatherill<sup>27</sup> and others have discussed how, in the aftermath of *Bosman*, the Commission and the Court had acknowledged the specific, legitimate factors that render sports which constituted economic activity 'different,' but the relevance of those factors to wholly amateur sport was unclear until now. Second, the views of sporting authorities themselves were not uniform, so there was no single policy position that sports actors collectively sought support for. Led by UEFA and FIFA, 'big' sport's immediate response to *Bosman* had been to seek to a blanket exemption from EU law, lobbying for a protocol that would prevent the EU from any involvement, but there was never a 'sporting exception' of the kind they lobbied for, and it was never a viable proposition. In contrast, a 'socio-cultural coalition' of sporting federations, international confederations, National Olympic Committees, grassroots and amateur sport stakeholders wanted to limit EU regulatory involvement in order to safeguard those socio-cultural elements. Third, public service broadcasters had sought to protect their market share in the face of competition from satellite and pay-per-view channels who could use sport as a battering-ram into people's homes and receive both advertising and subscription revenue in return, but by definition that had been of little direct relevance to amateur sports. Fourth, after *TopFit* amateur sport has now been addressed from "the perspective of the emergence of a pluralist, cohesive and multicultural European society which represents the ideal context and the national evolution of Union citizenship."<sup>28</sup> Finally, the case is an example of the Court's developing "an EU administrative law shield against arbitrary national decision-making...prior authorisation schemes – when they can potentially restrict EU free movement – must be based on accessible, objective and non-discriminatory criteria which are known in advance and decisions to refuse authorisation must be reasoned, taken in a timely manner, and subject to effective judicial review."<sup>29</sup> While the educational, cultural and social significance of sport have been widely, if problematically, acknowledged, and while sport has played a superb hand in cajoling the EU towards its way of thinking,<sup>30</sup> the first three points illustrate why *TopFit* is significant for sports, while the last two are crucial to a proper understanding of its wider implications.

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25 Case C-333/21 *European Superleague Company* application for a preliminary ruling 3 September 2021.

26 Parrish, "Sports Regulation in the European Union: A New Approach?", 188.

27 Stephen Weatherill, *Principles and Practice in EU Sports Law* (Oxford: Oxford University Press, 2001).

28 Antonio Di Marco, "Amateur Sport and Union Citizenship in the *Biffi* Case: Towards a European Sporting Citizenship", *Maastricht Journal of European and Comparative Law* 27, no. 5(2020): 600, <https://doi.org/10.1177/1023263X20946539>.

29 Angelica Ericsson, "EU Law and the Discretion of Private National Decision-Makers in Light of the Court's Judgment in Case C-22/18 *TopFit and Biffi*", *Nordic Journal of European Law* 3, no. 2 (2020): 83, <https://doi.org/10.36969/njel.v3i2.22391>.

30 Borja Garcia and Stephen Weatherill, "Engaging with the EU in Order to Minimise Its Impact: Sport and the Negotiation of the Treaty of Lisbon", *Journal of European Public Policy* 19, no. 2 (2012): 238-256, <http://dx.doi.org/10.1080/13501763.2011.609710>.



### 3. ARTICLE 165 TFEU

As noted, the Court and the EU institutions had acknowledged that their approach to sport had to be sensitive to its particular features, but federations and other stakeholders remained critical of what they perceived as a continuing restrictive approach towards the specificity of sport. Crucially, however, those stakeholders had also realised that engaging with the EU was a far better strategy than outright hostility. This had especially been the case after *Meca-Medina*,<sup>31</sup> where the Court's support for anti-doping rules had helped persuade the sports world that its practices and interests were not inevitably incompatible with the Treaties, that the Court was not 'anti-sport' and that "cooperation was the most promising way to promote awareness of sporting exceptionalism."<sup>32</sup> These strategies of negotiation and lobbying finally culminated in the adoption of a new, albeit limited, sporting competence in Article 165 TFEU.

In 2010, Weatherill<sup>33</sup> had suggested that the impact of Art 165 would be both profound and trivial. The triviality arose from the cautious approach of the member states, whose reluctance to confer new powers on the EU meant that Article 165 TFEU did not take EU law beyond the degree of regulation and control over sport which the institutions were already exercising in practice. Its profundity, he suggested, lay in the simple fact that it provided the Treaty base that key actors in the EU and beyond had long sought. And as Celik wrote a decade later, "the official involvement of the EU institutions provided the possibility (of) finding an appropriate balance between the wishes of the sporting world and the requirements of EU law; the institutions could support, co-ordinate or compliment sports' actions" while acknowledging the primary role of the sporting organisations.<sup>34</sup>

Understanding the implications of Article 165 TFEU, especially for amateur athletes like Biffi, requires an understanding of the three types of competence the EU has. First, Art 2 TFEU states that the EU enjoys either exclusive competence, shared competence or supporting competence. Under Article 3 TFEU, only the EU can legislate and adopt legally binding measures in relation to monetary policy, competition rules, the customs union, the protection of marine resources and commercial policies. The member states may do so only if empowered by the EU. Shared competence under Art 4 TFEU enables the member states to exercise their competence where the Union has not done so, or decides not to do so, in respect of the areas covered under that Article. It applies to at least a dozen important areas including agriculture, energy, the environment and consumer protection. Finally, under Article 6, the EU can only intervene to support, coordinate or complement the actions of member states. It does not supersede their competence in the stated areas. Those stated areas include culture, tourism and education as well as sport. This supporting competence means the EU cannot pass legally binding measures which entail the harmonisation of member states' laws or regulations; it is the 'softest' of the three competencies available, and it is immediately apparent that Art 165 TFEU does not provide a 'sporting exception' to European

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31 Judgment of 30 September 2004, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, T-312/02, EU:T:2004:282.

32 Berna Celik, "The Impact of the EU on the European Model of Sport" (PhD diss., Edge Hill University, 2021), 92, <https://research.edgehill.ac.uk/en/studentTheses/the-impact-of-the-eu-on-the-european-model-of-sport>.

33 Stephen Weatherill, "Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law?", *International Sports Law Journal* no. 3-4 (2010): 11.

34 Celik "The Impact of the EU on the European Model of Sport", 107.

law. It recognises that there are specific aspects of sport which need to be recognised and taken into account in reaching decisions which impact upon it, but 'taking into account' does not mean that sports' interest take precedence if there is a conflict with legal norms. In fact, every relevant Court and Commission decision since *Walrave*<sup>35</sup> has taken sport's particular features 'into account.'

Writing shortly after the TFEU came into force, Downward et al pointed out that "tak(ing) account of the specific nature of sport ... did not unequivocally establish this provision as a horizontal obligation which applies to the exercise of other EU powers such as free movement and competition law."<sup>36</sup> 'Taking account' contrasts with, for example, "in all its activities the EU shall aim to eliminate inequalities" as used in TFEU Art 8 (on equality between men and women), and "must be integrated into...the Union's policies and activities" as per TFEU Article 11 (on environmental protection). Those provisions "mandate the EU institutions to respect these obligations in the exercise of other Treaty competences" and they have a horizontal obligation that Article 165 TFEU lacks. Those phrases "mandate the EU institutions to respect these obligations in the exercise of other Treaty competences. By contrast, reference to the need to protect 'the specific nature of sport' appears to only bind those actions which are connected to 'the promotion of European sporting issues.'"<sup>37</sup>

That absence of horizontal obligation, together with the EU having a supporting competence rather than a shared or exclusive one seemingly acts as a very strong limit on the potential of Article 165 TFEU. It does not have an internal market aim or objective, there is no economic or social right (although the 'social function' of sport is expressly acknowledged) and Art 165(4) expressly excludes any potential for the EU to adopt harmonising legislation. As Di Marco notes, "the inclusion of a specific sporting competence in the Lisbon Treaty, with its weak legislative remit and reference to 'the specificity of sport' should not be a genuine extension of EU competence."<sup>38</sup> So far as the Court has been concerned, in *Olympique Lyonnais*<sup>39</sup> it merely said Article 165 TFEU corroborated its views on justifications for restrictive practices while in *Murphy*<sup>40</sup> its existence was simply 'noted.' But in *TopFit* the Court's approach was far more robust, representing "an evolving importance attached to sport, and in particular on the basis of 'the constitutional objective of integration' of EU citizens in the host Member State."<sup>41</sup>

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35 Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.

36 Paul Downward et. al., "An Assessment of the Compatibility of UEFA's Homegrown Player Rule with Article 45 TFEU", *European Law Review* 35, no. 4 (2014): 500.

37 Richard Parrish, "Lex Sportiva and EU Sports Law", *European Law Review* 37, no. 6 (2012): 727.

38 Di Marco, "Amateur Sport", 607.

39 Judgment of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, C-325/08, EU:C:2010:143.

40 Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others and Karen Murphy v Media Protection Services Ltd*, C-403/08 and C-429/08, EU:C:2011:631.

41 Di Marco, "Amateur Sport", 609.

#### 4. TOPFIT AND ARTICLE 165 TFEU

*TopFit* illustrates, and helps resolve, the tension between EU citizens' free movement rights and the European Model of Sport. At issue was the free movement rights of wholly amateur athletes, and the judgment considered whether EU citizenship rights have horizontal direct effect so that they be relied upon in respect of private actors such as sports governing bodies. If they could, the question which then arose was "to what extent can direct discrimination on the grounds of nationality be justified considering conditions particular to the area of sport?"<sup>42</sup>

In *TopFit*, a German amateur sports club and an Italian national residing in Germany challenged a recently-changed rule of the federal umbrella organisation for amateur sports. The rule stopped non-German nationals participating in German athletics championships on equal terms. Biffi, a sprinter, could seek permission to participate before the registration deadline expired, but even if permission were granted he would only be able to participate in the heats and not progress to the final. The Deutscher Leichtathletik-Verband (DLV) justified the rule change on the ground that only athletes of German nationality should be crowned the German champion, the rationale being that "the German champion should be somebody who is also entitled to start for 'GER' (Germany)"<sup>43</sup> in international events. The athlete and his club challenged the legality of the rule before the German court. Although an amateur athlete, Biffi used his success in competitions to promote his business as an athletics coach and personal trainer, so to that extent there was 'economic activity' in what he did.

The German court sought a preliminary ruling on whether the nationality requirement constituted unlawful discrimination. The DLV said that as an amateur athlete he was not engaging in an economic activity, so EU law did not apply, while the referring court was unsure whether the application of EU law to sport required there to be economic activity at all. But the referring court noted that Art 165 TFEU meant that EU law did now explicitly refer to sport, and that the right to reside in other member states without discrimination under Articles 18, 20 and 21 TFEU was not dependent on there being economic activity in other contexts. It therefore felt that Biffi should be eligible, and while exceptions could apply in the case of national titles and championships those exceptions should be proportionate and "not go beyond what is absolutely necessary to guarantee sporting competition."<sup>44</sup> The referring court asked if Articles 18, 21 and 165 TFEU meant that a provision which made participation by an amateur athlete dependent on German nationality, or which stopped a non-national from taking part in the final or excluded him from the award of national titles was impermissible discrimination

Significantly, the Advocate General advised against "expanding the material scope of EU law,"<sup>45</sup> which would arise if Article 21 TFEU were given horizontal direct effect. Instead, the solution was to be found in the link between Biffi's participation and his work as an athletics trainer. This amounted to economic activity and, discussing *Deliege*<sup>46</sup> at length, the Advocate

42 Richard Parrish and Johan Lindholm, "Horizontal Direct Effect of Union Citizenship and the Evolving Sporting Exception: *TopFit*", *Common Market Law Review* 57, no. 4 (2020): 1284, <https://doi.org/10.54648/cola2020724>.

43 Opinion of 7 March 2019, *TopFit*, C-22/18, EU:C:2019:181, para 18

44 Judgment of 13 June 2019, *TopFit*, C-22/18, para 20.

45 Opinion of 7 March 2019, *TopFit*, C-22/18, para 51.

46 *Christelle Deliege v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union*

General said this meant Biffi was not an amateur sportsman.<sup>47</sup> His economic activity was not marginal and ancillary<sup>48</sup> and the DLV rules made the provision of his services less attractive in comparison with a German national who was running a similar business.<sup>49</sup> The Advocate General suggested that “although the referring court has apprehended the dispute here as one primarily concerned with...Article 21 TFEU...what is in issue is (a) restriction, founded on the basis of nationality, of...freedom of establishment under Article 49 TFEU.”<sup>50</sup>

While recognising that rules restricting the title of national champion and the awarding of podium places “are best qualified as a rule of purely sporting interest, falling outside of the EU Treaty” the sporting exception to the rules on nationality discrimination in team composition “is subject to compliance with the principle of proportionality.” On that issue, the Advocate General felt that “perceived public confidence” being maintained by “ensuring that the national champion has a sufficiently strong link with Germany, and the need not to disturb or distort the process of selecting athletes to represent Germany at the international level” were legitimate public policy objectives, but the strategies for achieving them which were disproportionate.<sup>51</sup> The DLV had made no transitional provision for citizens like Biffi and its directly discriminatory rules had not existed when he exercised his free movement rights and become established in a different member state. Consequently, he had lost rights that he had previously enjoyed. “It would be contrary to the underlying logic of gradual integration that ‘informs’ Article 21(1) TFEU for EU citizens to lose rights they have acquired as a result of having exercised their freedom of movement.”<sup>52</sup> Germany’s selection processes for over-35 athletes like Biffi had functioned for over 30 years without such rules existing,<sup>53</sup> and the arguments as to why different rules could not exist for different categories were “unpersuasive.”<sup>54</sup> However, while all these matters would have to be carefully assessed by the referring court he did agree with the DLV that “the aims pursued by (it) equate to an overriding ground of public interest.”<sup>55</sup>

The Advocate General’s approach “reflected the orthodoxy of how EU sports law has, to date, largely developed, which is on the basis of individuals connecting defence of their EU rights to the pursuit of economic activity.”<sup>56</sup> If the Court rejected that approach, he said, then there would be no applicable provision of EU law: expanding the case law so that Article 21 TFEU applied also to the horizontal relationship between two private parties would be “a significant constitutional step,” but in any event the open-ended nature of Article 21 rights “rendered them ill-adapted to direct horizontal application to disputes between private parties.”<sup>57</sup> He also said that the principle of non-discrimination on the basis of nationality under Article 18 TFEU “is given specific expression with effect to freedom of establishment by Article 49 TFEU,”<sup>58</sup> and

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*européenne de judo and François Pacquée*, Case C-51/96 and C-191/97, EU:C:2000:199.

47 Opinion of 7 March 2019, *TopFit*, C-22/18, para 51.

48 Opinion of 7 March 2019, *TopFit*, C-22/18, para 52.

49 Opinion of 7 March 2019, *TopFit*, C-22/18, para 62.

50 Opinion of 7 March 2019, *TopFit*, C-22/18, para 48.

51 Opinion of 7 March 2019, *TopFit*, C-22/18, para 76-78.

52 Opinion of 7 March 2019, *TopFit*, C-22/18, para 86.

53 Opinion of 7 March 2019, *TopFit*, C-22/18, para 88.

54 Opinion of 7 March 2019, *TopFit*, C-22/18, para 94.

55 Opinion of 7 March 2019, *TopFit*, C-22/18, para 98.

56 Parrish and Lindholm, “Horizontal Direct Effect”, 4.

57 Opinion of 7 March 2019, *TopFit*, C-22/18, para 105.

58 Opinion of 7 March 2019, *TopFit*, C-22/18, para 56.

that Article 49 TFEU does not only apply to the actions of public authorities “but extend also to rules of any other nature aimed at regulating in a collective manner gainful employment, self-employment and the provision of services.”<sup>59</sup> The only alternative to providing a remedy under Article 49 TFEU would be to implement specific measures under Article 165 TFEU, but “none of the precursors to the elaboration of Article 165 TFEU point towards the development of EU law to the point that anti-discrimination protection under Articles 18 and 21 can be extended to leisure sports.”<sup>60</sup>

The Court took a very different approach.

Biffi had resided in Germany for fifteen years and had exercised his free movement rights within the meaning of Article 21 TFEU. Further, it was settled law that “union citizenship is destined to be the fundamental status of nationals of the member states,” so that they enjoy the same treatment in law as the nationals of the member state in question, subject to express exceptions,<sup>61</sup> while Article 18 TFEU established the principle of non-discrimination on grounds of nationality in respect of those who, like Biffi, move between member states.<sup>62</sup> The Court had previously held that access to leisure activities is “a corollary to freedom of movement”<sup>63</sup> because the opportunity to engage in such activities promoted the EU citizen’s gradual integration in the host state. The role of Article 165 TFEU is that it “reflects the considerable social importance of sport...in particular amateur sport”<sup>64</sup> as highlighted in the Treaty of Amsterdam and explored in *Bosman*<sup>65</sup> and *Lehtonen*.<sup>66</sup> Biffi could thus rely on Articles 18 and 21 to pursue his involvement in competitive amateur sport, but nevertheless “the question (then) arises whether the rules of national sports associations are subject to the rules of the Treaty in the same way as they are subject to the rules of the state of origin.”<sup>67</sup>

In that respect, the General Court pointed out that in *Walrave*,<sup>68</sup> *Bosman*<sup>69</sup> and *Olympique Lyonnais*<sup>70</sup> sporting rules which discriminated on the basis of nationality were also prohibited under the Treaties because although they “were not public in nature (they) are aimed at regulating gainful employment and the provision of services in a collective manner.”<sup>71</sup> The abolition between member states on obstacles to the free movement of persons and the free movement of services applies equally in cases where a group or organisation imposes “conditions which adversely affect the exercise of the fundamental freedoms guaranteed

59 Opinion of 7 March 2019, *TopFit*, C-22/18, para 59.

60 Opinion of 7 March 2019, *TopFit*, C-22/18, para 108.

61 Judgment of 13 June 2019, *TopFit*, C-22/18, para 28. See also Judgment 20 September 2001, *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, C-184/99, EU:C:2001:458.

62 Judgment of 13 June 2019, *TopFit*, C-22/18, para 29. See also Judgment 13 November 2018, *Denis Raugevicius*, C-247/17, EU:C:2018:898.

63 Judgment of 13 June 2019, *TopFit*, C-22/18, para 31. See also Judgment 7 March 1996, *Commission v France*, C-334/94, EU:C:1996:90.

64 Judgment of 13 June 2019, *TopFit*, C-22/18, para 33.

65 Judgment of 15 December 1995, *Bosman*, C-415/93.

66 Judgment of 13 April 2000, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, C-176/96, EU:C:2000:201.

67 Judgment of 13 June 2019, *TopFit*, C-22/18, para 36.

68 Judgment of 12 December 1974, *Walrave*, C-36/74.

69 Judgment 15 December 1995, *Bosman*, C-415/93.

70 Judgment of 16 March 2010, *Olympique Lyonnais*, C-325/08.

71 Judgment of 13 June 2019, *TopFit*, C-22/18, para 36.

under the Treaty,” the rules of sports organisations were thus subject to Articles 18 and 21 TFEU “and it is appropriate to examine whether (the DLVs) rules comply with those Articles”.<sup>72</sup>

Biffi and TopFit argued that amateur athletes who were nationals of other member states might be less well supported by their clubs if there was no prospect of them competing in national championships. This made it more challenging for them to integrate themselves into the club and, consequently, the wider society. The Court agreed with this argument, advising that amateur sport would be less attractive for EU citizens and the rules thus constituted a restriction on the freedom of movement under Article 21 TFEU. They could only be justified if they were based on objective considerations and were proportionate to a legitimate objective.<sup>73</sup> It “appeared to be legitimate to limit the award of the title of national champion to a national of the relevant member state and consider that nationality requirement to be a characteristic of the title of national champion itself,”<sup>74</sup> and the DLV argued that it was proportionate because success in the elite national amateur championship was used to select German competitors in international events such as the European championships. It was “not possible to distinguish between the age categories and to make rules for senior sport” that diverged from those for youth and elite participants,” it said. It also argued that “the public expects” the national champion to be a national of that state and, contrary to what had been established in *Bosman*, it said that as a sports association it was free to make its own rules.<sup>75</sup> The General Court said that what ‘the public expects’ does not justify a restriction.

In any event, it became evident during the hearing that any senior-category competitor who reached the qualifying standard could register and participate in international senior championships on their own initiative. They could pay the entrance fee, turn up and run, and did not have to be selected by a national federation in order to do so.<sup>76</sup> The DLV’s power of selection only applied in the ‘elite’ category, so its argument that it could not have different rules for different groups was unsustainable because those different rules already existed. Further, while the presence of non-nationals in the final might hinder the designation of ‘best national,’ in deciding whether the ban on their participation was a proportionate way of establishing who was, it would be necessary for the referring court to take into account that the ban was a very recent introduction.<sup>77</sup> Taking all those factors into account, Articles 18, 21 and 165 TFEU had to be interpreted as precluding the rules in question unless those rules could be justified by objective considerations which were proportionate to the legitimate objective pursued. That was ultimately a matter for the referring court,<sup>78</sup> but Articles 18 (prohibition of discrimination on grounds of nationality and Article 21 (free movement of EU citizens) did not rely on the presence of economic activity.

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72 Judgment of 13 June 2019, *TopFit*, C-22/18, paras 39-41.

73 Judgment of 13 June 2019, *TopFit*, C-22/18, para 48. See judgment 13 November 2018, *Raugevicius*, C-247/17, para 31.

74 Judgment of 13 June 2019, *TopFit*, C-22/18, para 50.

75 Judgment of 13 June 2019, *TopFit*, C-22/18, para 51. Sports’ supposed freedom to make their own rules in violation of the Treaties had been laid to rest in judgment 15 December 1995, *Bosman*, C-415/93, para 81.

76 The Rules for the European Senior Masters Championships confirm this: <https://european-masters-athletics.org/lawsarules.html>, last accessed 22 March 2022.

77 Judgment of 13 June 2019, *TopFit*, C-22/18, para 62

78 Judgment of 13 June 2019, *TopFit*, C-22/18, para 67.

## 5. CONCLUSION

Bearing the Advocate General's approach in mind, it is notable the Court explored Article 165 TFEU by "deviat(ing) from the orthodoxy of only permitting direct nationality discrimination to be justified with reference to the express Treaty derogations."<sup>79</sup>

Article 165 TFEU reflects the considerable social importance of sport in the European Union, in particular amateur sport...and the role of sport as a factor for integration in the society of the host Member State.

It is therefore clear from Article 21(1) TFEU, read in conjunction with article 165 TFEU, that practising an amateur sport, in particular as part of a sports club, allows an EU citizen residing in a Member State other than the Member State of which he is a national to create bonds with the society of the State to which he has moved and in which he is residing or to consolidate them. That is also the case with regard to participation in sporting competitions at all levels.

It follows that an EU citizen, such as Mr Biffi, can legitimately rely on Articles 18 and 21 TFEU in connection with his practice of a competitive amateur sport in the society of the host Member State.

Nevertheless, the question arises whether the rules of national sports associations are subject to the rules of the Treaty in the same way as they are subject to the rules of the State of origin.<sup>80</sup>

Lindholm and Parrish argue that *TopFit* "opens a new dimension in EU sports law by connecting amateur sporting practices to the Treaty."<sup>81</sup> Di Marco similarly asserts that "the non-discriminatory access to sporting activities, and in particular to amateur activities, could be interpreted as a 'corollary' to freedom of movement of EU citizens and to the fundamental objective of their integration, as leisure activities are a corollary to freedom of movement of the 'market citizen."<sup>82</sup> Ericsson persuasively argues that the case "combines the case-law concerning the right of EU citizens not just to move freely but to integrate -effectively and without disproportionate sanctions - in the member state they happen to settle down in, with a case-law on horizontal direct effect of the free movement provisions connected to economic activity, and hitherto only applied to private employers or organisations that would regulate access to the economic activity."<sup>83</sup>

But its significance should not be over-stated. Restricting the participation of non-nationals, if proportionate, can still justify directly discriminatory nationality restrictions in sports and "all is not lost for those sports bodies wanting to preserve sport's national character."<sup>84</sup> Furthermore

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79 Parrish and Lindholm, "Horizontal Direct Effect", 16.

80 Judgment of 13 June 2019, *TopFit*, C-22/18, paras 33-36.

81 Parrish and Lindholm, "Horizontal Direct Effect", 17.

82 Di Marco, "Amateur Sport", 611.

83 Ericsson, "EU Law", 94.

84 Parrish and Lindholm, "Horizontal Direct Effect", 18.



Sports bodies can also rely on the inherent rules approach. In *Deliege* the ECJ took a different path from (*TopFit*) by finding that selection rules do not constitute a restriction on the freedom to provide services on the ground that they were inherent in the conduct of an international high-level sports event. The inherent rules logic, which was subsequently repeated in *Meca-Medina*, can reasonably be used in a non-economic context and while neither case concerned nationality discrimination, it must remain a possibility that in future, sporting rules and practices based on direct nationality discrimination could find shelter under this doctrine.<sup>85</sup>

But if Biffi had played in a pipe band, or sung in a church choir, the idea that his aspirations to compete in international events might be thwarted by direct nationality discrimination which is deemed 'proportionate' because it served some higher agenda would appear ludicrous. That such an outcome was even possible was a consequence of *Bosman*, but sport's social, cultural and educational functions are no more worthwhile, and in some ways are far more problematic, than other cultural forms. The idea that sport is 'special' has characterised the EU's engagement with it since *Dona*, *Walrave* and the Adonnino Report. Its social, cultural and educational functions and potential are no more significant than music, theatre, or dance, but it has carved out a unique position as an economic, social and cultural field.

In 1958, Raymond Williams famously asserted that 'culture is ordinary.'<sup>86</sup> That was true at the time, but for all its ordinariness, contemporary sport is distinct from those other cultural forms partly by the negative qualities alluded to above but also by the adoration it attracts from policy makers and politicians, its popular and populist appeal, and the revenue it generates. That is what makes it extraordinary. Perhaps most importantly of all, the cultural field of sports has been able to coalesce around policy positions and to successfully influence law and policy makers without ever reconciling those tensions between economic activity and recreational (broadly defined) participation. Sport's anomalous position has less to do with any inherent qualities than with that ability to leverage both its financial might its undoubted socio-cultural significance. This gave it considerable influence over, first, the development of an EU sports policy and, second, over policy implementation.

Neither the policy nor the judgment in *TopFit* are a cause for regret. Biffi's ability to participate fully should not have depended on the fortuitous fact of his work as a personal trainer as opposed to a piano teacher or a yoga instructor (although the latter might have given rise to some interesting conversations about whether yoga is a sport) and the Court's departing from the Advocate General in that regard is to be welcomed. The full ramifications of Article 165 TFEU are not fully understood yet, but the judgment indicates that it does not merely give legislative effect to the longstanding approaches of the Court and the Commission, and perhaps those who argue that it represents "another seismic ECJ ruling on sport"<sup>87</sup> will be proved right in time. That aside, the case impliedly articulates the processes through which sport and the law have influenced one another. The extraordinary ability of powerful interest groups to rewrite history, and to exploit sports for economic and political ends, is what makes it 'special.' For this author at least, *TopFit* epitomises the combination of factors which makes the discipline problematic, exasperating and rewarding.

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85 Parrish and Lindholm, "Horizontal Direct Effect", 19.

86 Raymond Williams, "Culture is Ordinary." In Norman Mackenzie, Ed, *Conviction* (London: MacGibbon and Kee, 1958): 74-92.

87 Di Marco, "Amateur Sport", 613.



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26. Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.
27. Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, C-415/93, EU:C:1994:463.
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32. Judgment of 30 September 2004, *Meca-Medina*, T-312/02, EU:T:2004:282.
33. Judgment of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, C-325/08, EU:C:2010:143.
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36. Judgment of 13 June 2019 & Opinion of 7 March 2019, *TopFit e.V. and Daniele Biffi v Deutscher Leichtathletikverband e.V.*, C-22/18, EU:C:2019:497 & EU:C:2019:181.

## TO BE OR NOT TO BE SPECIFIC? UNDERSTANDING EU INSTITUTIONS' DEFINITION OF THE SPECIFIC NATURE OF SPORT

JACK MEREDITH\*  
BORJA GARCÍA\*\*


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### Abstract

This article analyses how EU institutions have defined the so-called specificity of sport and the extent to which its recognition might have affected the application of internal market and competition law to sport after the adoption of Article 165 TFEU. The article relies on qualitative and inductive thematic analysis of 83 sport-related documents adopted by EU institutions. Four main themes have been identified: Definition of sports specificity, categorisation of sporting exceptions, contribution of sporting exceptions to the specificity of sport, and the impact of Article 165 TFEU in the application of EU sports law. Our findings suggest that the EU has defined the specificity of sport around a set of unique characteristics that differentiates sport from other industries. While the formal recognition of the specific structures of sport in the Treaties had little effect on the application of free movement and anti-trust provisions to sport, it seems to have had some impact in the recent application of state aid provisions to sport. Our findings are of relevance for existing debates on the regulation and governance of sport in Europe and the development of the so-called European Model of Sport.

**Keywords:** Specificity of sport, Sporting exception, Article 165 TFEU, EU Sports law, Thematic analysis.

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\* School of Sport, Exercise and Health Sciences, Loughborough University, UK. ✉ [jack.meredith15@gmail.com](mailto:jack.meredith15@gmail.com)  
\*\* Ph.D. School of Sport, Exercise and Health Sciences, Loughborough University, UK.  <https://orcid.org/0000-0002-7841-7805>. ✉ [b.garcia-garcia@lboro.ac.uk](mailto:b.garcia-garcia@lboro.ac.uk).

## 1. INTRODUCTION

The specificity of sport has been a key discussion within European sports law since the first sport-related rulings of the Court of Justice of the European Union (CJEU) in the *Walrave* and *Donà-Mantero* cases. In *Walrave* the Court established that sport fell within its jurisdiction as an economic activity<sup>1</sup>, and importantly referred to the specific nature of sport, creating what has been referred to as the sporting exception.<sup>2</sup> Since *Walrave*, EU institutions have crossed paths with sport through several cases, including the landmark rulings of *Bosman* and *Meca-Medina*. But also in policy documents, informal political declarations and soft-law instruments, until the Treaty on the Functioning of the European Union (TFEU) entered into force in 2009 with the inclusion of sport in Article 165 as a supporting competence for the EU.

Even after the adoption of Article 165 TFEU, the concept of the specificity of sport continues to be of major interest as it remains a grey area without a definitive meaning,<sup>3</sup> given the Treaty refers to it, but it does not provide a firm definition. The reticence of EU institutions to compile a conclusive list of sporting exceptions (i.e. situations under which the specificity of sport will require special application of EU law), but rather to decide on a case by case basis,<sup>4 5</sup> has added to this uncertainty, leaving it open to interpretation.<sup>6</sup>

Thus, the primary aim of this article is to critically evaluate how EU institutions have defined the specificity of sport in their case law and policy-making. This is done through an inductive thematic analysis of EU official documents to elicit whether common meaningful themes can be identified in their understanding of the specific nature of sport despite the case by case approach normally adopted as a result of CJEU case law. Building on this, our second research aim is to identify and categorise which sport rules have been considered as sporting exceptions in EU case law. Indeed, over the years several rules and policies of sport bodies have been challenged by stakeholders and analysed by the EU to ascertain the extent to which they could be considered as part of the specific nature of sport or not. EU institutions, however, have generally refused to produce a systematic catalogue of such rules,<sup>7</sup> except for the discussion in the accompanying documents to the European Commission 2007 White Paper on Sport.

This article, therefore, aims to contribute to ongoing debates on EU sports law and policy by interrogating EU official documents to find common approaches (if there are any) in the case-by-case approach to sport regulations adopted by the Commission and the CJEU.

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1 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): 238–256, <https://doi.org/10.1080/13501763.2011.609710>.

2 Erika Szyszczak, "Competition and Sport: No Longer so Special?", *Journal of European Competition Law & Practice* 9, no. 2 (February 2018): 188-196, <https://doi.org/10.1093/jecclap/lpy012>.

3 Stephen Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", in *European Sports Law: Collected Papers*, ed. Stephen Weatherill (The Hague: TMC Asser Press, 2014), 507-525.

4 Robert Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", *Introduction to International and European Sports Law* (2012): 697-725, [https://doi.org/10.1007/978-90-6704-852-1\\_3](https://doi.org/10.1007/978-90-6704-852-1_3).

5 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

6 Oliver Budzinski, "The Institutional Framework for doing Sports Business: Principles of EU Competition Policy in Sports Markets", *International Journal of Sport Management and Marketing* 11 no.1-2 (2012): 44-72, <https://doi.org/10.1504/IJSMM.2012.045485>.

7 Budzinski "The Institutional Framework", 44-72.

Methodologically, the article adopts a qualitative research design based on thematic analysis of EU documents. The article proceeds now in four steps. First, we review the existing academic literature on the specificity of sport to define our analytical framework. Second, we discuss our research design. Third, we present our results. Finally, we discuss the relevance of our findings.

## 2. LITERATURE REVIEW

In this section we review the academic literature around three main bodies of work to provide a suitable conceptual framework for our analysis. First, we discuss the academic contributions to the definition of sports specificity. Second, we examine academic literature that has explored the characteristics that might differentiate sport from other industries. Finally, this section analyses a body of work that has discussed how far sport's special nature has been recognised by the Commission and CJEU.

### 2.1. DEFINING THE SPECIFICITY OF SPORT

Sports bodies have long argued sport is *unique*, hence it could not be regulated like other industries in the EU; this resulted in initial requests to exclude sport from the application of EU law.<sup>8</sup> However, such an overarching and wide-ranging request has been met with a critical eye from academic analysis, leading to a far more nuanced line of argumentation from the sport governing bodies later down the line. Academic literature on the specificity of sport can be grouped around two questions. Firstly, does sport merit special treatment?<sup>9</sup> If so, what does the phrase 'sports specificity' mean?<sup>10</sup>

The literature generally agrees that sports specificity deserves acknowledgement within European law, as sport possess some unique characteristics that call for a flexible approach.<sup>11</sup><sup>12 13 14 15</sup> There are, however, also authors that have put forward a less common, yet noticeable, counter-argument; these authors argue that professional sports produce substantial revenues rivalling other industries, and therefore cannot be specific, but rather be seen as a commercially focused businesses.<sup>16</sup>

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8 Jean-Loup Chappelet, "The Autonomy of Sport and the EU", in *Research Handbook on EU Sports Law and Policy*, eds. Jack Anderson, Richard Parrish, and Borja García (Cheltenham: Edward Elgar, 2018), 157-172.

9 Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", 697-725.

10 García, and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

11 Richard Parrish, "The Birth of European Union Sports Law", *Entertainment Law Journal* 2, no. 2 (Summer 2003): 20-39, <https://doi.org/10.16997/eslj.137>.

12 Stefaan V. D. Bogaert, and An Vermeersch, "Sport and the EC Treaty: A Tale of Uneasy Bedfellows?", *European Law Review* 31, no. 6 (January 2006): 821-840.

13 Erika Szyszczak, "Is Sport Special?," in *The Regulation of Sport in the European Union*, eds. Barbara Bogusz, Adam Cygan, and Erika Szyszczak (Cheltenham: Edward Elgar, 2007), 3-32.

14 Jonathan Hill, "The European Commission's White Paper on Sport: A Step Backwards for Specificity?," *International Journal of Sport Policy and Politics* 1, no. 3 (November 2009): 253-266, <https://doi.org/10.1080/19406940903265533>.

15 Tom Serby, "The State of EU Sports Law: Lessons Learned from UEFA's "Financial Fair Play" Regulations", *International Sports Law Journal* 16 (April 2016): 37-51, <https://doi.org/10.1007/s40318-016-0091-2>.

16 Adam Cygan, "Competition and Free movement Issues in the Regulation of Formula One Motor Racing", in *The Regulation of Sport in the European Union*, eds. Barbara Bogusz, Adam Cygan, and Erika Szyszczak (Cheltenham: Edward Elgar, 2007), 74-94.

The most common view, though, is that although commercialisation has increased in sport, the notion of sport priorities playing second fiddle to commercial exploits in sports institutions is a stretch.<sup>17</sup> Indeed, this is summarised by Hill,<sup>18</sup> who points out that regardless of commercialisation 'the internal mechanisms of sport remain the same'. This implies that regardless of commercialisation sport remains at the heart of these institutions and therefore, some specific characteristics are acknowledged because sport should be considered special. Yet, despite the emerging consensus, the literature is also quick to point out that the increasing commercialisation of sport has raised questions about the exact definition, the reach and the contours of the specificity of sport.<sup>19 20</sup>

The specificity of sport has no widely accepted single definition in the literature, perhaps because it has been approached from a variety of disciplinary angles from law to economics. This, naturally, makes our analysis more difficult. Generally, specificity tends to be defined in generic terms as sports' unique features that isolate and differentiate it from other industries.<sup>21</sup> In European law terms, García and Weatherill define it as a call to 'have the law moulded in application'<sup>22</sup> of sports unique characteristics. Flanagan's<sup>23</sup> definition is slightly stronger, stating it is the belief that sports bodies should have complete autonomy over sports from the EU. This is where the definitions differ, as García and Weatherill<sup>24</sup> suggest specificity is a step below autonomy, while Flanagan<sup>25</sup> implies autonomy is part of the specificity of sport. Such a definition comes with important consequences for the governance of sport. García and Weatherill's definition is perhaps closer to the current institutional and regulatory *status quo*, as Flanagan's perhaps more aspirational definition implies a level of self-regulation which sports organisations do not currently hold. Indeed, the literature tends to agree that while the EU has recognised sports specificity, they have not granted complete autonomy.<sup>26</sup>

Away from academic definitions, the Union of European Football Associations (UEFA) define sports specificity as acknowledging 'the particular and essential aspects of sport that distinguish it from any other economic sector'.<sup>27</sup> This suggests UEFA have a similar definition to García and Weatherill<sup>28</sup> and Szyszczak.<sup>29</sup> However, UEFA<sup>30</sup> also highlight the need for assurance on autonomy, suggesting they would like to see autonomy recognised in the same way as specificity, similar to Flanagan's<sup>31</sup> definition.

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17 Serby, "The State of EU Sports Law", 37-51.

18 Hill, "The European Commission's White Paper on Sport", 261.

19 Parrish, "The Birth of European Union Sports Law", 20-39.

20 Philip Kienapfel and Andreas Stein, "The Application of Articles 81 and 82 ECC in the Sport Sector", *Competition Policy Newsletter*, no. 3 (2007): 6-7.

21 Szyszczak, "Competition and Sport: No Longer so Special?", 188-196.

22 García, and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 248.

23 Christopher A. Flanagan, "A Tricky European Fixture: An Assessment of UEFA's Financial Fair Play Regulations and their Compatibility with EU Law", *International Sports Law Journal*, 13 (April 2013): 148-167, <https://doi.org/10.1007/s40318-013-0006-4>.

24 García, and Weatherill, "Engaging with the EU in Order to Minimize its Impact," 248.

25 Flanagan, "A Tricky European Fixture," 148-167.

26 Bogaert and Vermeersch, "Sport and the EC Treaty," 821-840.

27 Union of European Football Associations, "UEFA's position on Article 165 of the Lisbon Treaty." *UEFA*, November 14, 2020, 3.

28 García and Weatherill, "Engaging with the EU in Order to Minimize its Impact," 238-256.

29 Szyszczak, "Competition and Sport: No Longer so Special?", 188-196.

30 UEFA, "UEFA's position on Article 165", 1-12.

31 Flanagan, "A Tricky European Fixture", 148-167.

Amongst these attempts to provide firmer definitions of sport specificity, Hill<sup>32</sup> suggests a different approach: Sports bodies should work with the Commission to ensure rules are compatible with internal market and competition law, rather than asking the Commission to recognise sports specificity if they are challenged. The home-grown players' rule can be seen as an example of this.<sup>33 34</sup> This view is a more pragmatic approach to the attempts to define the specificity of sport, and perhaps one worth exploring given its complexity. On the other hand, this provides conceptual uncertainty and heterogeneity, which might make analysis more difficult. This approach is similar to the European Commission's refusal to provide a single comprehensive definition, which builds inevitably on the CJEU case-by-case approach,<sup>35</sup> that has now to be accepted in the absence of any political effort to move the debate forward. Hill's view is a good summary of the existing gap and the contribution this article seeks to make. As we have seen in this review, there is a good group of academic work acknowledging the specificity of sport and providing more or less detailed definitions. Yet, there is not a clear consensus and, moreover, EU institutions have decided to proceed on a case-by-case basis, hence not providing a definition either. Therefore, identifying the common trends of that case-by-case approach over time, as this article does, could enhance this area of research.

## 2.2. SPORT SPECIFIC CHARACTERISTICS

The specificity of sport has been recognised through a series of unique and inherent characteristics that differentiate sport from other economic and social activities.<sup>36 37</sup> There is a wide consensus in the academic literature that the Commission and CJEU have taken sports unique characteristics into account when applying EU law.<sup>38 39 40</sup> In that respect, García and Weatherill<sup>41</sup> point out that sports bodies have lobbied for a stronger recognition of the specificity of sport, but it would be unfair to say EU institutions have not recognised sport's special features. Across the literature, we can find four main characteristics of sport that are consistently highlighted as being specific. These are: Sport depends on rivalry, unpredictability, pyramid structure and sports societal benefits.<sup>42 43 44 45</sup> We now discuss these in turn.

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32 Hill, "The European Commission's White Paper on Sport", 253-566.

33 Borja García, "UEFA and the European Union: From Confrontation to co-operation?", *Journal of Contemporary European Research* 3, no. 3 (2007): 202-223, <https://doi.org/10.30950/jcer.v3i3.52>.

34 Hill, "The European Commission's White Paper on Sport", 253-566.

35 Parrish, "The Birth of European Union Sports Law", 20-39.

36 Bob Stewart and Aaron Smith, "The Special Features of Sport", *Annals of Leisure Research* 2, no. 1 (1999): 87-99, <https://doi.org/10.1080/11745398.1999.10600874>.

37 Kienapfel and Stein, "The Application of Articles 81 and 82 ECC", 6-7.

38 Parrish, "The Birth of European Union Sports Law", 20-39.

39 Lenita Lindström-Rossi, Sandra De Waele, and Dovile Vaigauskaite, "Application of EC Antitrust Rules in the Sport Sector – An Update", *Competition Policy Newsletter*, no. 3 (Autumn 2005): 72-77.

40 Hill, "The European Commission's White Paper on Sport", 253-566.

41 García and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

42 Kienapfel and Stein, "The Application of Articles 81 and 82 ECC", 6-7.

43 Hill, "The European Commission's White Paper on Sport", 253-566.

44 Budzinski "The Institutional Framework", 44-72.

45 Geoff Pearson, "Sporting Justification under EU Free Movement and Competition Law: The Case of the Football 'Transfer System'", *European Law Journal* 21, no. 2 (March 2015): 220-238, <https://doi.org/10.1111/eulj.12110>.



### 2.2.1. Sport Depends on Rivalry

While teams are competitive on the pitch, Parrish and Miettinen<sup>46</sup> emphasise that off the pitch clubs in some respect are uncompetitive. This is because for sports teams to exist, a level of sustained rivalry is needed. Rivalry in other industries signifies beating competitors in the hope of removing them from the sector.<sup>47</sup> This philosophy is not shared in sports where multiple teams (or athletes in individual sports) are required to compete.<sup>48</sup> This highlights a divide between sport and other industries contributing to the argument for a special recognition under European law.

### 2.2.2. Unpredictability

Another body of work focuses on the need to maintain uncertainty of results as a key component of the specificity of sport.<sup>49</sup> <sup>50</sup> Budzinski<sup>51</sup> believes this characteristic can be split into two prisms. Firstly, it relates to maintaining morality in terms of regulating breaches like 'match-fixing, doping etc.' which distorts true results. Secondly, it is the ability to maintain unpredictability, with numerous teams or athletes contesting to avoid a monopolistic competition. This is often referred to as the need to maintain competitive balance.

### 2.2.3. Pyramidal Structure of Governance

The third specific characteristic of sport that can be commonly found in the literature is a reference to the so-called 'pyramid structure' of how sports are organised; this refers to sport systemic governance with one international federation sitting on top,<sup>52</sup> and only one federation per sport. This is a clear separation between sport and other businesses.<sup>53</sup> However, Weatherill<sup>54</sup> argues the pyramid structure itself is not the key element, but the freedom of sport regulatory bodies internal organisation is. He suggests that sports bodies enjoy relative freedom in organising their structures, making it near impossible to enter from the outside.

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46 Richard Parrish and Samuli Miettinen, *The Sporting Exception in European Union Law* (The Hague: T.M.C Asser Press, 2008).

47 Ruben Conzelmann, "Models for the Promotion of Home Grown Players for the Protection of National Representative Teams", in *EU, Sport, law and Policy: Regulation, Re-regulation and Representation*, eds. Simon Gardiner, Richard Parrish and Robert Siekmann (The Hague: T.M.C Asser Press, 2009), 215-225.

48 Budzinski "The Institutional Framework", 44-72.

49 Hill, "The European Commission's White Paper on Sport", 253-566.

50 Parrish and Miettinen, *The Sporting Exception in European Union Law*.

51 Budzinski "The Institutional Framework", 56.

52 Kienapfel and Stein, "The Application of Articles 81 and 82 ECC", 7.

53 Roberto B. Martins, "Agenda for a social dialogue in the European professional football sector," in *EU, Sport, law and Policy: Regulation, Re-regulation and Representation*, eds. Simon Gardiner, Richard Parrish and Robert Siekmann (The Hague: T.M.C Asser Press, 2009), 345-400.

54 Stephen Weatherill "The White Paper on Sport as an Exercise in 'Better Regulation'" in *EU, Sport, Law and Policy: Regulation, Re-regulation and Representation*, eds. Simon Gardiner, Richard Parrish and Robert Siekmann (The Hague: T.M.C Asser Press, 2009), 101-114.



#### 2.2.4. The Social Dimension of Sport

Finally, there is also another group of authors that cite commonly the societal benefits of sport,<sup>55</sup> highlighting its 'educational, public health, social, cultural and recreational elements.'<sup>57</sup> This denotes the virtue of professional sports redistributing its wealth down the structure to the grassroots level.<sup>58</sup> This implies the importance of sport in society. However, Weed *et al.*<sup>59</sup> and Weed<sup>60</sup> challenge this, emphasising that politicians often overinflate the societal benefits of sport to justify investments. Citing an absence of evidence for sports positive impact, namely participation rates.

#### 2.2.5. Other Characteristics

Whereas the four features reviewed above are the most found in the literature, given the nature of this body of academic work many others have also been mentioned, but not to the same extent or consensus. Stewart and Smith<sup>61</sup> suggest the trade-off between profit and on-field success, that arguably sports businesses rank winning higher. This might not be true globally as American leagues are organised like cartels,<sup>62</sup> whereby it is an exclusive club with no promotion or relegation.<sup>63</sup> This means clubs are protected so can prioritise profit over winning unlike in Europe. Downward, Dawson and Dejonghe<sup>64</sup> highlight the employment market in sport as unique, with higher employee turnover due to short careers common in sport. Finally, UEFA<sup>65</sup> highlight promotion and relegation, which is unique. However, the limitation is that not all leagues possess this, so this is specific to individual sports rather than the blanket of European sport. On the other side, Weatherill<sup>66</sup> discusses characteristics that are shared between sports and other industries. This implies that a blanket approach to European sport cannot be applied as not all sports aspects are special, some are heavily commercial.

55 Kienapfel and Stein, "The Application of Articles 81 and 82 ECC", 6-7.

56 Budzinski "The Institutional Framework", 44-72.

57 Henk E. Meier, "Emergence, Dynamics and Impact of European Sport Policy – Perspectives from Political Science", in *EU, Sport, law and Policy: Regulation, Re-regulation and Representation*, eds. Simon Gardiner, Richard Parrish and Robert Siekmann (The Hague: T.M.C Asser Press, 2009), 8.

58 Budzinski "The Institutional Framework", 44-72.

59 Mike Weed et al., "The Olympic Games and Raising Sport Participation: A Systematic Review of Evidence and an Interrogation of Policy for a Demonstration Effect", *European Sport Management Quarterly* 15, no. 2 (January 2015): 195-226, <https://doi.org/10.1080/16184742.2014.998695>.

60 Mike Weed, "Should we Privilege Sport for Health? The Comparative Effectiveness of UK Government Investment in Sport as a Public Health Intervention", *International Journal of Sport Policy* 8, no. 4 (October 2016): 559-576, <https://doi.org/10.1080/19406940.2016.1235600>.

61 Stewart and Smith, "The Special Features of Sport", 87-99.

62 John Vrooman, "The Economic Structure of the NFL" in *The Economic of the National Football League: The State of the art*, ed. Kevin Quinn (New York: Springer, 2012), 7-31.

63 Stewart and Smith, "The Special Features of Sport", 87-99.

64 Paul Downward, Alister Dawson, and Trudo Dejonghe, *Sports Economics: Theory, Evidence and Policy* (Oxford: Butterworth-Heinemann, 2009).

65 UEFA, "UEFA's position on Article 165", 1-12.

66 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

### 2.3. HOW FAR HAS SPORTS SPECIAL NATURE BEEN RECOGNISED?

Having analysed the literature on the specificity of sport, there is one final area of work that needs to be discussed. Indeed, much academic debate has been focused, especially in legal academia, on the extent to which the specificity of sport has been recognised by EU institutions or not. Foster<sup>67</sup> highlights in that respect that for the most part sports bodies have enjoyed recognition of their special nature. Bogaert and Vermeersch<sup>68</sup> built on this, implying sports bodies have enjoyed a great deal of success in cases with the Commission and CJEU. An increase in EU sports cases unfolded as clubs and players believed they could challenge rules set by sporting bodies under free movement and competition law.<sup>69</sup> While an increase in cases might have been assumed as negative for sports bodies, Weatherill<sup>70</sup> and Bogaert and Vermeersch<sup>71</sup> argue the EU institutions were often too lenient, granting sports regulators a wide degree of flexibility.

A different view was taken by Hill,<sup>72</sup> who argued that the European Commission White Paper on Sport was an assault on sporting rules. Hill's view, however, is not supported by the most recent body of work in this area, which raises similar conclusions to those of García, Weatherill or Vermeersch cited above. Pearson,<sup>73</sup> for example, suggests that the EU has had a hands-off approach, citing the UEFA home-grown players' rule as an example. Weatherill, unsurprisingly, shares this point of view and raises concerns over the true compatibility of UEFA's home-grown players' requirement with EU law.<sup>74</sup> Weatherill's argument might not be far off the mark, since the home-grown players rules have been referred for a CJEU preliminary ruling at the time of writing this article. Serby<sup>75</sup> highlights another example of this leniency, suggesting the Financial Fair Play (FFP) rules would be hard to defend based on proportionality. In relation to this debate, earlier work by García and Weatherill<sup>76</sup> emphasised the EU might be showing greater leniency to sports bodies because of the adoption of Article 165 TFEU, an argument that is also put forward by Pearson. However, some of these authors in their later work have nuanced their argument<sup>77 78</sup>, suggesting that, actually, Article 165 has likely just legitimised and codified the EU's pre-TFEU approach to the special nature of sport.

There is, finally, an interesting body of work in relation to the recognition of the specificity of sport that deserves mentioning. There are several authors which have evaluated the consequences that such a recognition has had on the governance of sport. Thus, authors argue

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67 Ken Foster, "Can Sport be Regulated by Europe? An Analysis of Alternative Models" in *Professional Sport in the European Union*, eds, Andrew Caiger and Simon Gardiner (The Hague: TMC Asser Press, 2000), 43-64.

68 Bogaert and Vermeersch, "Sport and the EC Treaty", 821-840.

69 García and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

70 Stephen Weatherill, "Fair Play Please: Recent Developments in the Application of EC Law to Sport", *Common Market Law Review*, 40 (2003): 51-93, [https://doi.org/10.1007/978-90-6704-939-9\\_9](https://doi.org/10.1007/978-90-6704-939-9_9).

71 Bogaert and Vermeersch, "Sport and the EC Treaty", 821-840.

72 Hill, "The European Commission's White Paper on Sport", 253-566.

73 Pearson, "Sporting Justification under EU Free Movement and Competition Law", 220-238.

74 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

75 Serby, "The State of EU Sports Law", 37-51.

76 García and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

77 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

78 Borja García, An Vermeersch, and Stephen Weatherill, "A new Horizon in European Sports Law: The Application of the EU State Aid Rules meets the Specific Nature of Sport", *European Competition Journal* 13, no. 1 (2017): 28-61, <https://doi.org/10.1080/17441056.2017.1311146>.

that not all stakeholders have benefitted equally from the EU's recognition of some sport specific rules. Weatherill,<sup>79</sup> for example, emphasises the adverse effects the home-grown players' requirement has on less financially rich clubs. Vöpel<sup>80</sup> suggests the FFP requirements could similarly harm smaller clubs, therefore, distorting fair competition. Pearson,<sup>81</sup> on the other hand, emphasises the consequences for players' free movement generated by (so far) accepted practices in team sport transfer regulations, such as transfer windows. The overall idea behind the work of these authors is that the analysis of the recognition of the specificity of sport by the EU needs to go beyond the mere assessment of the extent to which it has happened. It is also necessary to ascertain its consequences and which stakeholders might have benefited (if at all) over others in the complex governance structures of European sport. This is relevant because further recognition sports specificity or a wider definition of the term by EU institutions will come with some (positive or detrimental) consequences for stakeholders.

## 2.4. LITERATURE GAPS AND CONTRIBUTION TO KNOWLEDGE

This section has highlighted that there is a wide range of literature on sports specificity but limited identifiable EU definitions of this concept. Although the literature does extensively discuss and assess the characteristics which might make sport unique, this has not been done in a consistent way. This paper contributes to fill to this gap. Secondly, Kienapfel and Stein<sup>82</sup> and Siekmann<sup>83</sup> argue that there is merit in creating a list of sporting exceptions based on previous case law in the absence of a conclusive list from the EU.<sup>84</sup> This, however, has not been done systematically; and existing efforts in this respect are now relatively dated, most of them pre-dating the entering into force of Article 165 TFEU. But more importantly from a conceptual level, there has been very limited analysis on how specific rules that are considered as sporting exceptions link with the concept of the specificity of sport. This is, again, a limitation in the existing research that we seek to address with this paper.

## 3. METHODOLOGY AND DATA ANALYSIS

This article relies on qualitative and inductive thematic analysis of EU institutions' documents. Documents facilitate understanding and interpretation of the sports law area, contributing to the research aims of this study.<sup>85</sup> This enables the researcher to uncover definitions and themes.<sup>86</sup> Moreover, Bryman<sup>87</sup> emphasises that documents from government institutions such as EU organisations supply rich extensive data. This rich data generates new themes and builds upon ones identified in the literature review to address the research aims.

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79 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

80 Henning Vöpel, "Do we really need Financial Fair Play in European Club Football? An Economic Analysis," *CESifo DICE Report* 9, no. 3 (2011): 54-59.

81 Pearson, "Sporting Justification under EU Free Movement and Competition Law", 220-238.

82 Kienapfel and Stein, "The Application of Articles 81 and 82 ECC", 6-7.

83 Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", 697-725.

84 Alfonso Rincón, "EC Competition and Internal Market Law: On the Existence of a Sporting Exception and its Withdrawal," *Journal of Contemporary European Research* 3, no. 3 (2007): 224-237, <https://doi.org/10.30950/jcer.v3i3.51>.

85 Sharan, Merriam, *Case Study Research in Education: A Qualitative Approach* (San Francisco: Jossey-Bass, 1988).

86 DavidAltheide, "QualitativeMediaAnalysis", *Poetics* 27(2000):287-299, <https://doi.org/10.4135/9781412985536>.

87 Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2016).

For the selection of the documents, we used a 'purposive sampling' strategy based on 'criterion sampling'.<sup>88</sup> This is when documents are selected which meet pre-set criteria. The criteria established to select documents into the sample for analysis were as follows:

- Documents concerning internal market or competition law produced by the European Commission, General Court, or CJEU pertaining to sport.
- Produced between 1974 and 2020.
- Accessible in the public domain.

This produced a sample of a total of 83 documents. See table 1 (below) for details on the final composition of the sample.

*Table 1. Composition of the sample of documents selected for analysis*

<b>Document Type</b>	<b>Number of documents</b>
European Commission Decision	14
European Commission formal letter in competition cases	16
European Commission soft-policy (non- legally binding) documents and reports	4
European Commission press release	23
CJEU or General Court judgments	15
Advocate-General opinion	8
European Council conclusions or declarations	3
<b>TOTAL</b>	<b>83</b>

It is necessary to acknowledge the limitations that come with this sampling strategy. First and foremost, the focus on the European Commission and the CJEU comes at the expense of not covering the European Parliament and the Council of the EU. There are three European Council documents included in the sample given their relevance in the build-up to the introduction of Article 165 TFEU, though. We acknowledge, along with the literature<sup>89</sup> the relevance of these institutions in the development of EU sports law and policy; however, we argue that an initial focus on the Commission and CJEU as enforcers and interpreters of the Treaty is still of value, especially when focusing on the consequences for sport regulation. Moreover, the literature argues that the interventions of the Parliament and the Council have been incorporated in the evolution of the Commission and CJEU's legal thinking, hence their analysis reflects, to a certain extent and perhaps indirectly, also the interventions of the Parliament and the Council. Nevertheless, this is a limitation that needs to be openly recognised. Overall, we argue that there is still merit in this research, though, as it opens the way for a line of enquiry. Hence the

<sup>88</sup> Bryman, *Social Research Methods*, 408.

<sup>89</sup> García and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

paper might need to be seen as exploratory, inviting other colleagues to continue this line of investigation with a focus on other institutions.

A second limitation comes from the time frame we selected (1974 to 2020). This is perhaps less impactful, as one needs to draw a line somewhere when doing research. The dates were chosen because Walrave in 1974 was the first sport-related case decided by the CJEU, and because 2020 features the General Court's decision on ISU, which is the latest case with a formal and final decision, although we acknowledge it is pending appeal at the time of writing, and other sport-related cases are also before the CJEU at the time of writing.

Once sampled, documents were analysed using Braun and Clarke's<sup>90</sup> framework for thematic analysis, which provides flexibility that allows for both inductive and deductive approaches to the generation of codes. Braun and Clarke recommend a six-phase approach. The first step is for the researcher to immerse themselves in the data, highlighting preliminary points from reading the EU documents. This is also used to generate conceptually-informed codes that will be used in the next stage. Secondly, the coding of the documents is done by the research team. Coding in our case was done by one single member of the team to avoid inter coder discrepancies. The coding process included an extra measure to ensure intra coder reliability.<sup>91</sup> The coder went back and repeated the coding of each tenth document to ensure there were no significant differences between the coding of that document at the first and second time. The third and fourth step are the generation of overarching themes from the coded data and then reviewing the themes against the coded EU documents to check they match. This step can be seen as 'quality control', making changes when needed.<sup>92</sup> These two steps involved the research team as a whole and were done through a series of conceptually-informed iterative discussions. The fifth step involves defining the key themes that accurately reflect the concepts identified in the data, while also naming each theme. The final step, naturally, is the creation of the report. In this case, the writing up of the paper. This encompasses tying the analysis of the documents back to the research questions and outlining how the themes generated provide an answer to these.

### **3. FINDINGS**

The thematic analysis of the EU documents produced four main themes: Development of sports specificity, categorisation of sporting exceptions, contribution of sporting exceptions to the specificity of sport, and Article 165 TFEU's impact on EU sports law. In this section we present and discuss these four themes, along with the subthemes that have also been identified.

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90 Virginia Braun and Victoria Clarke, "Using Thematic Analysis in Psychology", *Qualitative Research in Psychology* 3, no. 2 (2006): 77-101, <https://doi.org/10.1191/1478088706qp063oa>.

91 Will Hoonard, "Inter- and Intracoder Reliability," in *The SAGE Encyclopedia of Qualitative Research methods*, ed. Lisa Given (London: Sage, 2008), 445-446.

92 Gareth Terry et al., "Thematic Analysis", *The SAGE handbook of qualitative Research in Psychology*, eds. Carla Willig, and Wendy Stainton-Rogers (London: Sage, 2017), 29.

### 3.1. DEVELOPMENT OF SPORTS SPECIFICITY

The EU's acceptance that sport is specific developed from the CJEU's *Walrave* ruling<sup>93</sup> when it declared national team composition 'a question of purely sporting interest and as such has nothing to do with economic activity' (para 8). While sports specificity was not mentioned in those terms, the acknowledgement that a rule is 'incompatible with Article 48 of the EEC Treaty'<sup>94</sup> but can be exempt based on sporting interest<sup>95</sup> should be seen as an acceptance that sport is somehow, and to some extent, specific, i.e. different from other industries, even if neither the Court nor other institutions did provide a definition of this notion at the time. While *Walrave* is where the EU first recognised sport possessed specific qualities, it is in more political and soft-law documents where the EU developed an understanding of the specificity of sport. The Amsterdam Declaration on Sport referred to the 'particular characteristics of amateur sport'.<sup>96</sup> The Helsinki Report on Sport<sup>97</sup> and the Nice Declaration on Sport<sup>98</sup> built on this by highlighting a handful of sport-specific characteristics like the unpredictability of results and pyramid structure of sports. However, these documents consisted of soft law meaning the recognition was not legally binding. Though soft law, evidence exists that the Commission acknowledged sports specificity in formal decisions following those political declarations. In the UEFA joint selling of Champions League TV rights case, the European Commission declared the 'the Commission fully endorsed the specificity of sport'.<sup>99</sup>

Following the landmark ruling of *Meca-Medina*<sup>100</sup> where the CJEU rejected that sporting rules were not necessarily outside of the application of EU law by virtue of its sporting nature, the Commission published the White Paper on Sport<sup>101</sup>. This developed sports specificity further by identifying 'sport has certain characteristics, which are often referred to as the "specificity of sport"'.<sup>102</sup> In the accompanying Staff Working Document the European Commission added that sports specificity was 'the distinctive features setting sport apart from other economic activities'.<sup>103</sup> Although not legally binding, this presented a more robust acknowledgement of

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93 Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.

94 Opinion of 24 October 1974, *Walrave and Koch v. Association Union Cycliste Internationale* C-36/74, EU:C:1974:111.

95 Judgment of 12 December 1974, *Walrave*, C-36/74.

96 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Declaration 29 (OJ C 340, 10.11.1997, p. 136), <https://eur-lex.europa.eu/eli/treaty/ams/sign>.

97 Commission of the European Communities, *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>.

98 European Council (2000) Conclusions of the Presidency: Annex IV, [https://www.europarl.europa.eu/summits/nice2\\_en.htm#an4](https://www.europarl.europa.eu/summits/nice2_en.htm#an4).

99 European Commission Decision of 23 July 2003, Comp/2-37.398, *Joint Selling of the Commercial Rights of the UEFA Champions League* [2003] EC 778, Para 131, <http://data.europa.eu/eli/dec/2003/778/oj>.

100 Judgment of 18 July 2006, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, Case C-519/04, EU:C:2006:492.

101 European Commission, *White Paper on Sport*, COM (2007) 391 Final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391>.

102 White Paper on Sport, 13.

103 European Commission, *Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport*, COM (2007) 391 final, 69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC0935>.

sports specificity, confirming the Commission and CJEU had applied this prior to the White Paper on Sport. This is supported by decisions such as UEFA's multiple club ownership rules,<sup>104</sup> regarding the protection of uncertainty of outcomes. Also, the *Lehtonen* judgment<sup>105</sup> supports this, where a single transfer deadline for all federations inside and outside of the European zone was deemed compatible with EU law based on contributing to sport's proper functioning. The recognition of these features of the specificity of sport implies a level of 'conditional autonomy' of sport, but not complete autonomy.<sup>106</sup>

Sports specificity gained formal recognition with the entering into force of the Lisbon Treaty and its Article 165 which refers to 'taking account of the specific nature of sport'. Though legally binding at this point, the evidence above suggests sports specificity was recognised before its formal codification in the Treaty. However, the impact on EU law has been slow, and perhaps even limited, as our analysis also reveal that, actually, many Commission decisions that cited the specificity of sport were finally taken on economic or market grounds, not on the basis of the specificity of sport.<sup>107 108 109</sup>

#### 4.1.1. Characteristics of Sports Specificity

The White Paper on Sport<sup>110</sup> provides the clearest breakdown of characteristics that the EU views as sport specific. These are shown in Table 2 (below). The White Paper splits these characteristics into 'sporting activities' and 'sporting structures'. While the majority of these were highlighted in the literature review, some were not. For instance, separate competition for men and women or limitations on participants in competitions. Although, with transgender participation increasingly being recognised in sport<sup>111</sup> along with gender-fluid athletes, it could prove increasingly difficult for sport to argue separate competitions for genders is a specific characteristic. Limitations on participants are needed for the proper functioning of competition. If not, any individual in theory could argue for inclusion. This characteristic received acknowledgement in the *Deliège* case<sup>112</sup> where the CJEU declared that selection rules limiting participants did not present 'a restriction on the freedom to provide services' as it was inherent to sports functionality.

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104 European Commission Decision of 27 June 2002, Comp/IV/37.806 (ENIC/UEFA), [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/37806/37806\\_7\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/37806/37806_7_3.pdf).

105 Judgment of 13 April 2000, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, Case C-176/96, EU:C:2000:201.

106 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 524.

107 European Commission Decision of 19 April 2001, Case 37.576, (*UEFA's Broadcasting Regulations*), <http://data.europa.eu/eli/dec/2001/478/oj>.

108 European Commission Decision of 23 July 2003, Comp/2-37.398, (Joint selling of the commercial rights of the UEFA Champions League), <http://data.europa.eu/eli/dec/2003/778/oj>.

109 European Commission Decision of 22 March 2003, Comp/C-2/38.173, (Joint selling of the media rights to the FA Premier League), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008XC0112%2803%29>.

110 White Paper on Sport, 13.

111 Owen Hargie, David Mitchell, and Ian Somerville, "People have a knack of making you feel excluded if they catch on to your difference: Transgender experiences of exclusion in sport", *International Review for the Sociology of Sport* 52, no. 2, (2017): 223–239, <https://doi.org/10.1177/1012690215583283>.

112 Judgment of 11 April 2000, *Christelle Deliège v Ligue francophone de judo et disciplines associées ASBL, Ligue belge de judo ASBL, Union européenne de judo and François Pacquée*, Case C-51/96 and C-191/97, EU:C:2000:199, para 64.



Table 2. *The specificity of sport according to the 2007 White Paper on Sport*

<b>Sporting Activities</b>	<b>Sporting Structures</b>
Reliance on rivalry between teams	Pyramid framework of sport governance
Uncertainty of results	Autonomy of sport organisations
Separate competition for men and women	Open competition structure and solidarity between grassroots and elite level
Limitation on participants in competitions	

There are limitations to the application of sports specificity and its characteristics, as defined in the White Paper. The most relevant limitation lies in the heterogeneity of sport, and the fact that not all those characteristics can be found in every sport. This demonstrates the problem of a single definition, which in turn could create regulatory instability. The European Commission indeed highlights this problem, accepting that ‘features often presented as characteristics such as system of open competitions based on promotion and relegation, are actually limited to a certain category of sport’.<sup>113</sup> An example is the 6 Nations tournament in rugby union, where the tournament is ring-fenced to include the same teams. Similarly, sports like tennis and golf differ from the typical pyramid structure of competition. This implies the sport-specific characteristics cannot be cumulatively generalised to all European sports. The implication is that EU institutions might be limited in developing blanket sport policies or law, like a general sporting exception if European sports cannot be uniformed under the same specific characteristics.

A takeaway from the recognition of only a few characteristics as sport-specific is ‘it cannot be constructed so as to justify a general exemption from the application of EU law’.<sup>114</sup> This is because not all sports elements are specific, some are common in other industries as highlighted by Weatherill.<sup>115</sup> Thus a blanket sports exception is extremely difficult to build, and it could even be argued that it is neither feasible, nor desirable. This would be a justification to support the EU’s case-by-case approach to the specificity of sport, confirmed for example in *Meca-Medina*. The consequence of not having a blanket exception, though, is that it might create a certain level of insecurity for sports bodies.<sup>116 117</sup> On the other hand, it can be argued that it can be beneficial for wider sport governance, because it places a limit on the governing bodies’ autonomy and regulatory power. A secondary consequence of not having a blanket exception that defines the specificity of sport is that it obliges sport governing bodies to focus on good governance in their decision making, because it empowers stakeholders to challenge the traditional vertical governance structure of European sports under EU Law.<sup>118</sup>

113 Commission Staff Working Document – Accompanying document to the White Paper on Sport, 40.

114 White Paper on Sport, 13.

115 Weatherill, “EU Sports Law: The Effect of the Lisbon Treaty”, 507-525.

116 Weatherill, “EU Sports Law: The Effect of the Lisbon Treaty”, 507-525.

117 Stephen Weatherill, “Is there such a thing as EU Sports Law?” in *European Sports Law: Collected Papers*, ed. Stephen Weatherill (The Hague: TMC Asser Press, 2014), 543-553.

118 Borja García, “Sport governance after the White Paper: The demise of the European model?”, *International Journal of Sport Policy and Politics* 1, no. 3 (2009): 267–284, <https://doi.org/10.1080/19406940903265541>.



### 4.1.2. Cooperation as a Method towards Specificity?

Evidence exists of cooperation between the EU and sports regulators seen in examples like the home-grown players' rule.<sup>119</sup> Hill<sup>120</sup> advocated for this approach to specificity recognition. UEFA alluded to cooperation in the Bosman case,<sup>121</sup> as they claimed the '3+2 rule was drawn up in collaboration with the Commission'. Although this claim yielded no success, more recently the EU has embraced cooperation with UEFA, with the Commission signing a cooperation agreement with the football governing body since 2014.<sup>122 123</sup> It could be argued that this cooperation is a result of recognising the specificity of sport. Noticeably, this cooperation seems to be led by UEFA, with little evidence of other bodies partaking. García and Weatherill<sup>124</sup> highlight that UEFA took this approach to perhaps confine interference from the EU.<sup>125</sup> However, the cooperation between EU institutions and sport bodies in the regulation of sport still has its limits, as seen in the ISU case, where first the Commission and then the General Court ruled against the International Skating Union's eligibility rules.<sup>126</sup> This, in turn, reinforces the argument that even through cooperation, it is unlikely that sport will obtain a general definition of its specificity from EU institutions and any type of blanket exemption from EU law.

## 4.2. CATEGORISATION OF SPORTING EXCEPTIONS

We move now to the second theme identified in our analysis. This refers to the efforts to categorise specific sporting rules adopted by sports organisations as being sporting exceptions recognised under EU law. Our analysis of EU documents adds to previous academic work<sup>127 128</sup> that took stock of sporting exceptions recognised by the EU. The list of sporting rules that have been categorised as exceptions by EU institutions can be seen in Table 3 (below).

A sporting exception is defined as the acceptance of sports rules that would normally be contrary, *prima facie* to EU law. These rules are deemed compatible with the Treaty, and hence accepted, based on being inherent to the functioning of sports activities.<sup>129 130 131</sup> Inherency was established in *Walrave* where the CJEU declared discrimination on the basis of nationality

119 European Commission Press Release, *UEFA rule on 'home-grown players': compatibility with the principle of free movement of persons*. IP/08/807, 2008, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_08\\_807](https://ec.europa.eu/commission/presscorner/detail/en/IP_08_807).

120 Hill, "The European Commission's White Paper on Sport", 253-566.

121 Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, EU:C:1995:463, para 126.

122 European Commission Press Release, *European Commission and UEFA consolidate cooperation*. IP/18/901, 2018, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_901](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_901).

123 Henk Meier et al. "The short life of the European Super League: a case study on institutional tensions in sport industries", *Managing Sport and Leisure* (2022): 1-22, <https://doi.org/10.1080/23750472.2022.2058071>.

124 García, and Weatherill, "Engaging with the EU in Order to Minimize its Impact", 238-256.

125 See also Meier et al. "The Short Life of the European Super league", 1-22.

126 European Commission Decision of 8 December 2017, Case AT.40208 (International Skating Union's eligibility rules), [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40208/40208\\_1579\\_5.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40208/40208_1579_5.pdf).

127 Kienapfel, and Stein, "The Application of Articles 81 and 82 ECC", 6-7.

128 Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", 697-725.

129 Judgment of 15 December 1995, *Bosman*, Case C-415/93.

130 Judgment of 11 April 2000, *Deliège*, Case C-51/96 and C-191/97.

131 Judgment of 18 July 2006, *Meca-Medina*, Case C-519/04.

for international competitions were 'inherent in the concept of a national team'.<sup>132</sup>

Robert Siekmann, in his work, included the joint selling of media rights as a sporting exception<sup>133</sup>. This is debatable, however, as the conclusion of the European Commission<sup>134</sup> in the UCL case was that the joint selling arrangements were granted an 'exemption pursuant to Article 81(3)'. This implies sports specificity was not the reason for the exemption. It was based on an exemption clause non-sport-related industries can attain. Thus, not a sporting exception. The same is true for an agency licensing system as outlined in the Piau case. The CJEU confirmed that sports specificity was not relevant as it stated 'the "specific nature" of sport may not be relied on... The contested decision is not based on such an exception'.<sup>135</sup> This supports the view that sporting rules that are exempt under Article 81(3) are not necessarily, at least formally, sporting exceptions and therefore we have decided not to include those in Table 3. This is of course a conceptual debate, but with policy implications, which can require further research and discussion, and we invite colleagues to build on our contribution for that. Be that as it may, the implications of our findings are that, as pointed out above, very few sporting rules are actually considered inherent to sport. The explanation is perhaps relatively simple, as most cases that reach EU institutions deal with the economic dimension of sport, and therefore EU institutions are minded to rule on those economic grounds.

*Table 3. Sporting rules and activities recognised as exceptions*

<b>Sporting rule/activity</b>	<b>Case in which it was identified</b>
National team composition	Walrave (1974)
Team selection/participant limitation	Deliège (2000)
Transfer system/deadline	Bosman (1995) and Lehtonen (2000)
Compensation for training young players	Bernard (2010)
Anti-doping regulations	Meca-Medina (2006)
Multiple ownership in the same competition	ENIC/UEFA (2002)
Gatekeeping/license system	FIA (2001) and ISU (2017)
Home and away rule	Mouscron (1999)

Source: *Authors' elaboration with analysis of EU documents*

#### **4.2.1. Importance of Proportionality**

A subtheme that appears clearly in the recognition and classification of sporting exceptions is the issue of proportionality, for it is one of the main criteria to adjudicate by the Commission

<sup>132</sup> Judgment of 12 December 1974, *Walrave*, C-36/74, 1410.

<sup>133</sup> Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", 697-725.

<sup>134</sup> European Commission Decision of 23 July 2003, Comp/2-37.398, (Joint selling of the commercial rights of the UEFA Champions League), para 201.

<sup>135</sup> Judgment of 15 December 1995, *Bosman*, Case C-415/93, para 105.

and the CJEU. Sports regulators have had to adhere to a two-step process when defending their rules. Firstly, to objectively justify the sport rule. Secondly, to ensure proportionality. This process is what Parrish and Miettinen<sup>136</sup> identified, whereby they attempted to outline the process that has led to the recognition of some sporting exemptions.

Proportionality, thus, is key. If this is not met, then the compatibility with EU law or exception status of the sporting rule under analysis is lost. This was most evident in *Bosman* where the CJUE accepted the defendant's justifications could be deemed legitimate. However, they were not proportional as 'the same aims can be achieved at least efficiently by other means which do not impede freedom of movement for workers'.<sup>137</sup> And has been repeated more recently on the ISU case, where the eligibility rules were deemed to go beyond what was necessary. Thus, as Kienapfel and Stein<sup>138</sup> emphasise, proportionality presents a significant challenge to a conclusive categorisation of rules which can be relied upon to predict future compatibility. However, while challenging, it is not impossible to predict future compatibility using a deductive analysis of existing case law, as we do in our article. As time goes on with this case-by-case approach, more sporting exceptions could be added to the list, and therefore prediction of future compatibility will become easier, with incremental clarity likely being provided with each future decision.

#### **4.3. THE LINK BETWEEN SPORTING EXCEPTIONS AND THE SPECIFICITY OF SPORT**

The first two themes of our findings analyse the way in which EU institutions have defined the specificity of sport and identify the sporting rules that have been accepted as sporting exceptions. This leads almost naturally to one question: Is it possible to relate, analytically, those sporting rules to the specificity of sport? In other words, which sporting exceptions contribute to the specificity of sport? This can be discussed by juxtaposing our first two themes to create a combined narrative whose relevance deserves to be presented as a theme on its own.

Indeed, it can be seen that the sporting exceptions recognised by the EU, and summarised in our second theme and Table 3 (above), are justified because they contribute to specific and legitimate sporting objectives; that is to say, those rules are identified because they maintain some of the characteristics of the specificity of sport identified by the EU, and summarised in our first theme and Table 2 (above). Therefore, this implies that it is possible, for analytical matters, to link sporting exceptions to the definition of the specificity of sport. For example, UEFA's ban on multiple club ownership analysed by the Commission in the ENIC case in the same competitions was justified to 'ensure the uncertainty of the outcome',<sup>139</sup> which is one of the characteristics identified in the definition of the specificity of sport. Another example is sports federations being allowed to operate a licensing system for the organisation of competitions as part of the pyramidal structure of sport governance (another of the characteristics of the specificity of sport), as confirmed in the ISU decision.<sup>140</sup> The Commission accepted a licensing

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136 Parrish and Miettinen, "The Sporting Exception in European Union Law".

137 Judgment of 15 December 1995, *Bosman*, Case C-415/93, para 110.

138 Siekmann, "The Specificity of Sport: Sporting Exceptions in EU Law", 697-725.

139 European Commission Decision of 27 June 2002, Comp/IV/37.806 (ENIC/UEFA), para 28.

140 European Commission Decision of 8 December 2017, Case AT.40208 (International Skating Union's eligibility rules).

system could be compatible, but only if the ISU made changes to its eligibility rules. In both examples, of course, the relevance of proportionality is paramount, as we have also discussed above. Whereas those rules might be accepted and, therefore, linked to the specificity of sport, their legality under EU law will not be judged purely on the objective that is pursued, but also on the proportionality of its application.

However, this does not detract the relevance of our analysis here. Characteristics of the specificity of sport have been cited by the EU institutions when elucidating the nature of those sporting rules. It is therefore possible to elaborate a categorisation of the sporting rules that have been categorised as sporting exceptions, and link those to the features of sport specificity that such rules are protecting. This is summarised in Table 4 (below).

*Table 4. Categorisation of sporting rules according to their contribution to the specificity of sport*

<b>Characteristics of the specificity of sport</b>	<b>Sporting rules recognised as exceptions that protect sports specificity</b>
Reliance on rivalry between teams	<ul style="list-style-type: none"> <li>• Compensation for training young players</li> <li>• Transfer system/deadline</li> </ul>
Uncertainty of results	<ul style="list-style-type: none"> <li>• Multiple ownership in same competition</li> <li>• Anti-doping regulations</li> <li>• Transfer system/deadline</li> </ul>
Separate competition for men and women	<ul style="list-style-type: none"> <li>• Team selection/participant limitation</li> </ul>
Limitation on participants in competition	<ul style="list-style-type: none"> <li>• National team composition</li> <li>• Team selection/participant limitation</li> <li>• Multiple ownership in same competition</li> </ul>
Pyramid framework of sport	<ul style="list-style-type: none"> <li>• Gatekeeping/license system</li> <li>• Team selection/participant limitation</li> </ul>
Autonomy of sport organisations	<ul style="list-style-type: none"> <li>• Anti-doping regulations</li> <li>• Team selection/participant limitation</li> <li>• Home and away rule</li> <li>• National team composition</li> <li>• Transfer system/deadline</li> </ul>
Competition structure and solidarity between grassroots level and elite level	<ul style="list-style-type: none"> <li>• Compensation for training young players</li> <li>• Team selection/participant limitation</li> </ul>

Source: *Authors' elaboration with analysis of EU documents*

#### **4.4. THE IMPACT OF ARTICLE 165 TFEU**

The final theme that we identified in our analysis refers to a discussion of the extent to which Article 165 TFEU might have had an impact in the definition of the specificity of sport and the identification of sporting exceptions by EU institutions. We have identified two different practices, which we present as sub themes in this section.

#### 4.4.1. Impact on the Application of Articles 101 and 102 TFEU: Confirmation of Existing Practice

When the EU have applied Articles 101 and 102 TFEU it has mostly accounted for the specificity of sport as outlined above. In the first post-Lisbon case (*Bernard*), Article 165 was referenced. However, the reference was merely a confirmation of what was already established. That 'recruitment and training of young players must be accepted as legitimate'.<sup>141</sup> This argument is reinforced as the CJEU reminded in *Bernard*<sup>142</sup> that the training of young players was recognised as a legitimate objective already in *Bosman*.<sup>143</sup> As García, Vermeersch and Weatherill<sup>144</sup> have pointed out, the formal recognition of sports specificity in Article 165 TFEU has likely just formalised the EU's existing approach to sport.

Similarly, resemblances can be drawn between the European Commission decision on FIA regulations<sup>145</sup> and its more recent ISU decision,<sup>146</sup> which has been appealed to the General Court and the CJEU. In both decisions, the Commission raised objections, citing a conflict of interest as both FIA and ISU were abusing regulatory power to protect commercial activities. However, in both cases the Commission acknowledged that a pre-authorisation system of alternate competitions to their own could be legitimately justified if they were proportional. These similarities reinforce the suggestion that the EU's approach to sport has not changed based on the formal introduction of specificity in Article 165.

#### 4.4.2. Impact on State Aid: Development of an Emerging Sports Law Area

Since 2011 state aid decisions concerning sport have surged. This started with the European Commission's<sup>147</sup> verdict on the Hungarian tax scheme. In this case, the Commission used the recognition of sports specificity in Article 165 to show a common interest objective. This being one of the criteria for an exception under Article 107(3)(c), that it needs to be 'aimed at a well-defined objective of common interest, i.e. does the proposed aid address a market failure or other objective?'.<sup>148</sup>

Our findings confirm García, Vermeersch and Weatherill's<sup>149</sup> analysis that recent state aid cases can be split into two groups. Those concerning building or renovation of sports infrastructure

141 Judgement of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, Case C-325/08, EU:C:2010:143, para 139.

142 Judgement of 16 March 2010, *Olympique Lyonnais*, Case C-325/08.

143 Judgment of 15 December 1995, *Bosman*, Case C-415/93, para 110.

144 García et al, "A new Horizon in European Sports Law", 28-61.

145 European Commission, *Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning Cases COMP/35.163, Notification of FIA Regulations, COMP/36.638, Notification by FIA/FOA of agreements relating to the FIA Formula One World Championship, COMP/36.776, GTR/FIA & others*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52001XC0613%2801%29>.

146 European Commission Decision of 8 December 2017, Case AT.40208 (International Skating Union's eligibility rules), [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/40208/40208\\_1579\\_5.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/40208/40208_1579_5.pdf).

147 European Commission Decision of 9 November 2011, Case SA.31722 (Supporting the Hungarian sport sector via tax benefit scheme), [https://ec.europa.eu/competition/state\\_aid/cases/240466/240466\\_1271180\\_52\\_3.pdf](https://ec.europa.eu/competition/state_aid/cases/240466/240466_1271180_52_3.pdf).

148 European Commission Decision of 20 November 2013, Case SA.37109 (Belgium football stadiums in Flanders), para 29, [https://ec.europa.eu/competition/state\\_aid/cases/249493/249493\\_1510284\\_167\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/249493/249493_1510284_167_2.pdf).

149 García et al, "A new Horizon in European Sports Law", 28-61.

and those regarding professional sports teams. The trend is the Commission were more favourable on the former group. Regarding infrastructure, Article 165 TFEU is referenced in almost all cases to show a common interest.<sup>150 151 152 153 154 155 156 157 158 159 160</sup> This demonstrates Article 165 is having a reasonable impact on state aid decisions. In the European Commission decision of renovation to a Flanders stadium, they acknowledged 'sport has an educational role, as well as a social, cultural and health dimension'.<sup>161</sup> This suggests the Commission took account of sports societal benefits, implying Article 165 is having an impact. Interestingly, nine of the decisions above that reference Article 165<sup>162 163 164 165 166 167 168 169 170</sup> also reference the Amsterdam Treaty and its declaration on sport, which suggests that Article 165 TFEU cannot be considered as the only reason to recognise the specificity of sport. In turn, that moderates, or at least qualifies, the impact of Article 165 on its own in the legal reasoning of the Commission.

Regarding state aid to sport clubs, the Commission has taken a less lenient approach, and it has made far less reference to Article 165 TFEU. This suggests that, irrespective of other legal reasoning, decisions that accept a level of state aid to sport-related activities do indeed tend to mention Article 165 TFEU. Even if it is perhaps not the main contributor to the final decision, it is another tool the European Commission can use to elaborate on and support the specificity of sport.

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150 European Commission, *Supporting the Hungarian sport sector via tax benefit scheme*.

151 European Commission Decision of 5 December 2012, Case SA.33952 SA.33952 (Germany climbing centres of Deutscher Alpenverein), [https://ec.europa.eu/competition/state\\_aid/cases/246072/246072\\_1392662\\_211\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/246072/246072_1392662_211_2.pdf)

152 European Commission, *Belgium football stadiums in Flanders*.

153 European Commission Decision of 20 March 2013, Case SA.35135 (Germany Multifunktionsarena der Stadt Erfurt), [https://ec.europa.eu/competition/state\\_aid/cases/245994/245994\\_1426005\\_90\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/245994/245994_1426005_90_2.pdf).

154 European Commission Decision of 20 March 2013, Case SA.35440, (Germany Multifunktionsarena der Stadt Jena), [https://ec.europa.eu/competition/state\\_aid/cases/245993/245993\\_1426022\\_126\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/245993/245993_1426022_126_2.pdf).

155 European Commission Decision of 2 October 2010, Case SA.36105, (Germany Fußballstadion Chemnitz), [https://ec.europa.eu/competition/state\\_aid/cases/247460/247460\\_1472227\\_93\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/247460/247460_1472227_93_2.pdf).

156 European Commission Decision of 2 May 2013, SA.33618 (Sweden is planning to implement for Uppsala arena), [https://ec.europa.eu/competition/state\\_aid/cases/244148/244148\\_1453714\\_110\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/244148/244148_1453714_110_2.pdf).

157 European Commission Decision of 13 December 2013, Case SA.37373, (The Netherlands contribution to the renovation of ice arena Thialf in Heerenveen), [https://ec.europa.eu/competition/state\\_aid/cases/250448/250448\\_1502751\\_94\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/250448/250448_1502751_94_2.pdf).

158 European Commission Decision of 18 December 2013, Case SA.35501, (France Financement de la construction et de la rénovation des stades pour l'EURO 2016), [https://ec.europa.eu/competition/state\\_aid/cases/248555/248555\\_1532962\\_165\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/248555/248555_1532962_165_2.pdf).

159 European Commission Decision of 9 April 2014, Case SA.37342, (United Kingdom regional stadia development in Northern Ireland), [https://ec.europa.eu/competition/state\\_aid/cases/252038/252038\\_1585421\\_47\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/252038/252038_1585421_47_2.pdf).

160 European Commission Decision of 24 May 2017, Case SA.46530, (Slovakia National football stadium), [https://ec.europa.eu/competition/state\\_aid/cases/266249/266249\\_1924988\\_109\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/266249/266249_1924988_109_2.pdf).

161 European Commission, *Belgium football stadiums in Flanders*, para 31.

162 European Commission, *Belgium football stadiums in Flanders*.

163 European Commission, *Germany Multifunktionsarena der Stadt Erfurt*.

164 European Commission, *Germany Multifunktionsarena der Stadt Jena*.

165 European Commission, *Germany, Fußballstadion Chemnitz*.

166 European Commission, *Sweden is planning to implement for Uppsala arena*.

167 European Commission, *The Netherlands contribution to the renovation of ice arena Thialf in Heerenveen*.

168 European Commission, *France Financement de la construction et de la rénovation des stades pour l'EURO 2016*.

169 European Commission, *United Kingdom regional stadia development in Northern Ireland*.

170 European Commission, *Slovakia National football stadium*.

Back to issues of state aid to sport clubs, though, Article 165 TFEU was just barely mentioned in the decisions regarding illegal state aid to three Valencian clubs, where the European Commission<sup>171</sup> acknowledges Article 165 but does not refer to it thereafter. In the case of tax incentives given through the Spanish national sports act to four clubs, the European Commission<sup>172</sup> referenced Article 165 again. However, the Commission declared that 'in the sense described by Article 165 of the Treaty. It is obvious that the general support of sport is not an objective of the measure at state'.<sup>173</sup> The Commission uses Article 165 against the defendants, implying the fortunate circumstances were contrary to Article 165 as it promoted 'selective support to certain strong actors',<sup>174</sup> rather than promoting fairness and openness, as Article 165 requires. Importantly, this European Commission<sup>175</sup> decision shows that Article 165 can also have a *negative* impact, working against sports clubs claiming the specificity of sport; something which has not been seen before. The implication is that Article 165 reinforces the socio-cultural elements of sport. Hence, it might act as a magnifying glass on the economic side of sport as the Commission can possibly separate the socio-cultural and economic elements in an easier way. Therefore, the Commission might use Article 165 to determine if professional football clubs (in these cases, but can apply to other commercialised sports) are acting in the interest of sports specificity or acting as commercial operators in the interest of economic gain. Article 165 TFEU, therefore, whilst supporting the specific nature of sport, could also be used to be more strict, coherent and robust in identifying what *is not* part of the specificity of sport. This, in the long term, might present difficulties for those sports organisation that perform both sporting and economic or commercial functions. It is, we would argue, one of the unintended consequences of the adoption of Article 165 TFEU and the current policy frame that drives EU sport policy.

## 5. DISCUSSION AND CONCLUSION

In this article we have identified that the EU consider sports specificity to mean the distinct characteristics of sport that separate it from other economic activities.<sup>176 177 178</sup> There are several sporting rules that have been categorised as sporting exceptions, as they protect some of these sports-specific characteristics. However, the EU recognition of sport specific rules cannot be widely generalised to all sports because of the heterogeneity of sport structures. This can complicate EU sport regulation. Finally, a limited list of specific characteristics implies that the EU does not consider all aspects of sport to be unique, because some are heavily commercial.<sup>179</sup> Therefore, in the eyes of the EU, the specificity of sport allows for the recognition of sport's special features, but it does not warrant a general exception for sport from EU law.

171 European Commission Decision of 4 July 2016, Case SA.36387, (Implemented by Spain for Valencia Club de Fútbol Sociedad Anónima Deportiva, Hércules Club de Fútbol Sociedad Anónima Deportiva and Elche Club de Fútbol Sociedad Anónima Deportiva), <http://data.europa.eu/eli/dec/2017/365/oj>.

172 European Commission Decision of 4 July 2016, Case SA.29769, (Implemented by Spain for certain football clubs), <http://data.europa.eu/eli/dec/2016/2391/oj>.

173 European Commission, *Implemented by Spain for certain football club*, para 88.

174 European Commission, *Implemented by Spain for certain football club*, para 89.

175 European Commission *Implemented by Spain for certain football club*.

176 White Paper on Sport.

177 Commission Staff Working Document - Accompanying document to the White Paper on Sport.

178 European Commission, *Developing the European dimension of sport*, COM (2011) 12 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0012:FIN:en:PDF>.

179 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.



The inclusion of Article 165 TFEU has had some impact on the application of EU law to sport and on the recognition of the specificity of sport, but this has been mostly limited to the application of state aid provisions. However, if focusing on free movement and other competition policy provisions, then Article 165 has affected it to a very minimal extent. It has just provided confirmation to pre-Lisbon practice.<sup>180 181 182</sup> Similarities between cases pre and post-Lisbon suggest that the same verdicts may have been reached even in the absence of Article 165 TFEU.

This study also focused on the understanding of sports specificity from the perspective of the EU. The findings show that there is only a handful of rules considered as inherent to sport. Therefore, the implication that can be drawn for sports bodies is they cannot rely on sporting exceptions being granted without due analysis. However, sports bodies that can demonstrate their rules protect sports specificity have a stronger defence. This is because the research implies sporting exceptions have been granted when they protect the special characteristics of sport.

In the analysis it was highlighted that the Commission seems willing to take a cooperative approach to sports specificity as shown with UEFA, resulting in the favourable backing of UEFA rules more recently. The implication of this finding is that should other sports bodies follow suit, they could see similar benefits. As Hill<sup>183</sup> suggests and this paper discusses, working alongside the Commission could see sports specificity applied more generously in sports regulators favour as seen with UEFA.

One important implication of the findings is that the existing case-by-case approach is unlikely to change. So, there will be continued uncertainty for sports organisations regarding compatibility with EU law. Our analysis, however, suggests that it is possible to elaborate a categorisation of sporting rules and their correspondence to the specificity of sport. This can help sporting organisations in their policy-making, and certainly future decisions will only add to that categorisation. One of the contributions of our article, therefore, is not only the inductive identification of definitions of sport specificity, but the way in which these can be linked to sporting rules that operationalise such specific characteristics. One of the main implications of that analysis is that public authorities or sports organisations need to demonstrate that their decisions have positive socio-cultural benefits through sport to have a higher possibility of being recognised as part of the specificity of sport.

Our research has presented in-depth analysis of the legal approach of the EU to sport. Although some policy or soft-law documents were analysed, our conceptual framework was socio-legal, and the sample of documents analysed focused on legal decisions. Therefore, we need to acknowledge that our study comes with some limitations, especially in relation to not exploring the policy side of EU sport regulation. Therefore, further research may benefit from taking a wider scope to incorporate the policy approach to offer a more holistic view. This can be achieved through analysing more documentation from the Council of the EU and the

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180 Weatherill, "EU Sports Law: The Effect of the Lisbon Treaty", 507-525.

181 Weatherill, "Is there such a thing as EU Sports Law?", 543-553.

182 García et al, "A new Horizon in European Sports Law", 28-61.

183 Hill, "The European Commission's White Paper on Sport", 253-266.



European Parliament alongside the Commission and CJEU.

Finally, further research will need to be done to build on the empirical effort presented in this paper. There is a number of cases pending the CJEU with relevance to the definition of the specificity of sport, and especially to the nature of open competitions and the pyramidal governance of sport. Inevitably any research comes with time limits, as it is necessary to draw a line at some point. However, this paper hopefully provides a framework to build on and develop future and continuous critical analysis of the concept of the specificity of sport in the development of EU sports law and policy.

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78. Opinion of 24 October 1974, *Walrave and Koch v. Association Union Cycliste Internationale* C-36/74, EU:C:1974:111.

## **FIGHT AGAINST DOPING, GOOD GOVERNANCE, AND EDUCATION: WHAT ARE THE ROLES AND RESPONSIBILITIES OF THE CZECH OLYMPIC COMMITTEE?**

JAN EXNER\*

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*"An athlete's first experience with anti-doping should be through education rather than doping control." <sup>1</sup>*

### **Abstract**

This paper researches the roles and responsibilities of National Olympic Committees (NOC), especially the Czech Olympic Committee (Czech NOC), in anti-doping education. Good governance is an increasingly important condition of the self-regulatory autonomy of anti-doping organizations (ADO) in the European Union (EU). Moreover, the principles of good governance identified by both, the EU bodies and institutions, and the IOC, cover education. In this context, the World Anti-Doping Code (WADC) outlines the educational roles and responsibilities of NOCs. Nevertheless, concrete form and implementation of such roles and responsibilities remain vague and unclear, which may jeopardize NOC's good governance, integrity, and management in the fight against doping. Therefore, the research objective of this paper is to clarify and establish concrete roles, responsibilities, and strengths of NOCs, particularly the Czech NOC, in anti-doping education. This paper initially reviews the social science research and the existing knowledge on the concrete roles and responsibilities of NOCs. Consequently, it presents the conducted empirical research, employing three main data collection techniques: surveys, interviews, and focus groups. Finally, this paper formulates recommendations and an action plan on how the Czech NOC, and similarly all NOCs, should use their strengths to exercise their roles and responsibilities in anti-doping education effectively and sustainably. It simultaneously suggests how the Czech NOC and other NOCs should plan, implement, and evaluate their education programs to prevent doping in sports and strengthen their good governance in and beyond the EU.

**Keywords:** Good governance, Doping, Fight against doping, Anti-doping Education, Czech Olympic Committee, National Olympic Committee, World Anti-Doping Agency, World Anti-Doping Code

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\* Assistant Professor at the Charles University, Faculty of Law, Department of European Law, Czech Republic.  <https://orcid.org/0000-0002-8904-2914>. ✉ [exnerj@prf.cuni.cz](mailto:exnerj@prf.cuni.cz).

1 World Anti-Doping Code (WADC), International Standard for Education (ISE), Art. 1.0., [https://www.wada-ama.org/sites/default/files/resources/files/ise\\_draft2.0\\_december\\_2018.pdf](https://www.wada-ama.org/sites/default/files/resources/files/ise_draft2.0_december_2018.pdf).

## 1. INTRODUCTION

“Are you educated on why it is important to fight doping and what your rights and responsibilities in this area are?” Only 50% of elite Czech athletes responded affirmatively.<sup>2</sup> As such, the survey pointed out imperfect anti-doping education in the Czech Republic, as is the case in other countries.<sup>3</sup> Many athletes’ first experience with anti-doping comes through doping control rather than education, which contradicts the World Anti-Doping Code (“WADC”), particularly the International Standard for Education (“ISE”). Nevertheless, the athletes feel that education is necessary for the effectiveness of anti-doping programs.<sup>4</sup> Moreover, effective anti-doping education is an important prevention and deterrence strategy. In particular, raising awareness and disseminating information helps prevent inadvertent doping, while the combination with values-based education contributes to the prevention of intentional doping. Moreover, anti-doping education raises awareness about athletes’ and other persons’ rights and responsibilities, including robust rules and sanctions, enabling their deterrence effect. Therefore, an effective anti-doping education leads to less doping and fewer imposed sanctions. Moreover, the level of anti-doping education is one of the elements that determine athletes’ or another persons’ fault, and influences the length of the final sanction for doping.<sup>5</sup> Therefore, anti-doping education is an essential element of the fight against doping.

On top of that, education interacts with good governance, which has become a condition of the autonomy and self-regulation of the sporting governing bodies (“SGB”) particularly in the European Union (“EU”). The EU bodies and institutions accentuate good governance of the sporting governing bodies.<sup>6</sup> In *MOTOE*, the Court of Justice (“ECJ”) condemned a national ruling which provided organisers of motorcycling competitions with the power to approve applications for authorization to organise such competitions without restrictions, obligations, and review. The ECJ ruled that the organiser abused its dominant position, particularly because of the conflict of regulatory and commercial interests of the organizer that also

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- 2 Appendix 6: Survey amongst Czech athletes at the Top Camp: Questions; also available online: [https://docs.google.com/forms/d/e/1FAIpQLSfdGgpxu4o2Z5MaonizQXvL5nyk59CN7dyRiUwe\\_Lz2SY-lTw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSfdGgpxu4o2Z5MaonizQXvL5nyk59CN7dyRiUwe_Lz2SY-lTw/viewform?usp=sf_link) (in Czech). The author’s translation from Czech into English; Appendix 7: Survey amongst Czech Athletes at the Top Camp: All Results; also available online: <https://docs.google.com/spreadsheets/d/1RSI41dNla3FDzj-81Ab8vf6l7SlSsCRYuHrsPs3xu1fc/edit?usp=sharing>
  - 3 Matthew A. Masucci, Ted M. Butryn, and Jay A. Johnson, “Knowledge and perceptions of doping practices and anti-doping education among elite North American female triathletes”, *Performance Enhancement & Health* 6, no. 3–4 (2019): 121–128, <https://doi.org/10.1016/j.peh.2019.02.001>; Ted M. Butryn, Jay A. Johnson, and Matthey A. Masucci, “A Qualitative Examination of Knowledge of Doping and Anti-Doping Education among Elite US and Canadian Female Triathletes”, *World Anti-Doping Agency*, (June 2012): 1–33; Anna Efverström, et. al., “Contexts and conditions for a level playing field: Elite athletes’ perspectives on anti-doping in practice”, *Performance Enhancement & Health* 5, no. 2 (December 2016): 82, <https://doi.org/10.1016/j.peh.2016.08.001>.
  - 4 April Henning and Paul Dimeo, “Perceptions of Legitimacy, Attitudes and Buy-in Among Athlete Groups: a Cross-National Qualitative Investigation Providing Practical Solutions”, *World Anti-Doping Agency* (2019): 21–23.
  - 5 Jan Exner, “The Fight against Doping in Sport in Interaction with European Union Law. Proportionality of Ineligibility and Anti-Doping Education” (PhD diss., Charles University, Faculty of Law, 2022), 9–13.
  - 6 Council of the EU, Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model, ST/14430/21, para. 15, p. 5, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42021Y1213%2801%29>, European Commission, *White Paper on Sport*, COM (2007) 391 final, p. 13, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391>; European Commission, Developing the European dimension of sport, COM (2011) 12 final, p. 10, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0012:FIN:en:PDF>



concluded sponsorship, advertising and insurance contracts related to the competition.<sup>7</sup> In 2020, the General Court ruled that eligibility rules and sanctions of the International Skating Union (“ISU”) breach the prohibition of cartel agreements.<sup>8</sup> The General Court criticized the rules partially because the ISU did not follow the principles of good governance, namely a clear definition of rules, objectivity, transparency, non-discrimination, verifiability and reviewability.<sup>9</sup> Therefore, non-compliance with the principles of good governance endangers the sporting governing bodies’ autonomy and contributes to the violation of EU law.

Furthermore, the EU bodies and institutions consider education the essential part of good governance of anti-doping organizations (ADO). On 23 November 2021, the European Parliament adopted a resolution on EU sports policy. Under the section “Renewing good governance and integrity”, the European Parliament highlighted “the need for capacity building to strengthen prevention and anti-doping measures in sport” and “the need for information and educational campaigns on the prevention of doping.”<sup>10</sup> On 30 November 2021, the Council of the EU also emphasized that access to information is essential in upholding the principles of good governance.<sup>11</sup> In 2013, the EU Expert Group “Good Governance” delivered the Principles for the Good Governance of Sport in the EU, as a recommendation for sports organizations in the EU. The document provides that sporting bodies and governments should seek to develop a culture of trust and “good governance based on education.”<sup>12</sup> Moreover, the first principle states that all sports bodies should “commit to the fight against doping.”<sup>13</sup> They should particularly continue to develop and apply “educational programmes for its participants.”<sup>14</sup> Therefore, bodies and institutions of the EU emphasize anti-doping education as one of the principles of ADO’s good governance.

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7 Judgment of 1 July 2008, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, C-49/07, EU:C:2008:376, see especially para 48.

8 Judgment of 16 December 2020, *International Skating Union v. Commission*, CJEU, T-93/18, EU:T:2020:610. The ISU appealed the General Court’s judgment to the ECJ, see CJEU, C-124/21 P *International Skating Union v. Commission*.

9 Judgment of 16 December 2020, *International Skating Union*, T-93/18, especially para. 88, 118, 129. For comprehensive works on the principles of good governance in sport see especially Jens Alm, *Action for Good Governance in International Sports Organisations* (Danish Institute for Sports Studies, 2013), 239; De Dyckers 2019; Arnout Geeraert, *The EU in international sports governance: a principal-agent perspective of EU control of FIFA and UEFA* (Palgrave Macmillan UK, 2016), 208; Arnout Geeraert, Frank van Eekeren (eds.), *Good Governance in Sport. Critical Reflections* (Routledge, 2022), 290; Mary A. Hums, Joanne C. MacLean, *Governance and Policy in Sport Organizations* (Routledge, 2018), 406; Michaël Mrkonjic, “A Review of Good Governance Principles and Indicators in Sport,” *Enlarged Partial Agreement on Sport (EPAS) – Council of Europe*, 14; Souvik Naha, David Hassan (eds.), *Ethical Concerns in Sport Governance* (Routledge, 2020), 116; David Shilbury, Lesley Ferkins, Liz Smythe, “Sport Governance Encounters: Insights from Lived Experiences,” *Sport Management Review* 16, no. 3 (2013): 349-363, <http://dx.doi.org/10.1016/j.smr.2012.12.001>; Mathieu Winand, Christos Anagnostopoulos, *Research Handbook on Sport Governance* (Edward Elgar Publishing, 2019), 1-496; or James J. Zhang, Euisoo Kim, (eds.), *Sport Governance and Operations. Global Perspectives* (Routledge, 2021), 1-320.

10 European Parliament resolution of 23 November 2021 on EU sports policy: assessment and possible ways forward (2021/2058(INI)), P9\_TA(2021)0463, p. 7, [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0463\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0463_EN.html).

11 Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council of 30 November 2021, para. 12, p. 4.

12 Principles for the Good Governance of Sport in the EU, Expert Group “Good Governance”, EU Work Plan for Sport 2011-2014, p. 15.

13 Principles for the Good Governance of Sport in the EU, Expert Group “Good Governance”, Principle 1: Clarity of purpose/objectives, b) Goals and principles, p. 6.

14 Principles for the Good Governance of Sport in the EU, Expert Group “Good Governance”, p. 15.

Moreover, SGBs themselves accentuate education as a part of good governance of ADOs. In 2009, the International Olympic Committee (“IOC”) adopted the Basic Universal Principles of Good Governance of the Olympic and Sports Movement. Principle 6.4, entitled “Fight against doping”, provides that “sports organizations shall protect the athletes from doping in particular through prevention and education.”<sup>15</sup> Consequently, the Czech Olympic Committee (“Czech NOC”), with which the author has been working for six years, has engaged in the project As Sustainable As Possible (“ASAP”), which is co-funded by the Erasmus+ Programme of the EU.<sup>16</sup> The project focuses on sustainability of sporting governing bodies, especially National Olympic Committees (“NOC”).<sup>17</sup> Importantly, sustainability strategies of the participating NOCs cover the principles of good governance, which include anti-doping education. Therefore, anti-doping education belongs amongst the principles of good governance that are pre-conditions of ADOs’ regulatory autonomy under EU law.

Therefore, the WADC correctly streamlines anti-doping education, especially through the ISE. The ISE is a principles-based document that provides ADOs with frameworks and guidelines. Consequently, ADOs must map their environments and cooperate with other stakeholders in promoting anti-doping education to do the best for the athletes.<sup>18</sup> Therefore, the clarification of the roles and responsibilities of anti-doping stakeholders and their cooperation are key to effective education. Consequently, the WADC, and particularly the ISE, aims at providing clarity on the roles and responsibilities of ADOs in charge of planning, implementing, monitoring, and evaluating education programs.<sup>19</sup> In this regard, the World Anti-Doping Agency (“WADA”) plays a primary role in facilitating education and capacity building for athletes and other anti-doping stakeholders.<sup>20</sup>

Consequently, ADOs implement the principles of anti-doping education on international and national levels within their education programs. In this regard, the IOC, the International Paralympic Committee, international federations, regional anti-doping organizations (“RADOs”), major event organizations and the International Testing Agency (“ITA”) perform their educational responsibilities on the international level.<sup>21</sup> On the national level, national anti-doping organizations (“NADO”) play a key role in anti-doping education,<sup>22</sup> and they cooperate with national federations, NOCs, and other national SGBs. In the Czech Republic, the governmental National Sports Agency (“NSA”) establishes the Czech Anti-Doping Committee (“Czech NADO”),<sup>23</sup> which is the primary authority on anti-doping education in the Czech Republic.<sup>24</sup> The Czech NADO cooperates with the Czech national federations (“Czech

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15 IOC, Basic Universal Principles of Good Governance of the Olympic and Sports Movement, principle 6.4, p. 10.

16 ASAP, About (online).

17 The term NOC also includes National Sports Confederations (“NSC”) in those countries where the NSC assumes typical responsibilities of the NOC in the anti-doping area. See WADC, Annex 1 (Definitions): NOC; ISE, Art. 3.1.

18 WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 31–33; Tony Cunningham, 14 January 2020.

19 Ibid.

20 WADC, Comment to Art. 18.2, Art. 20.7; WADA Strategic Plan 2020–2024, p. 5, 11.

21 WADC, Art. 20.1.10, 20.2.9, 20.3.13, 20.6.8, 21.4.7.

22 International Convention against Doping in Sport, Art. 19, 22, 23; Council of Europe’s Anti-Doping Convention, Art. 6.

23 Law No. 115/2001 Coll. Law on the Promotion of Sport, §3d(1)(f).

24 WADC, ISE, Art. 7.2.

NF”) and other anti-doping stakeholders in the Czech Republic, including the Czech NOC. The clarification of the roles and responsibilities of these ADOs and their cooperation is essential for effective anti-doping education.

This paper examines educational roles, responsibilities and cooperation of ADOs, especially NOCs, using the case study of the Czech NOC. While the paper focuses on the Czech NOC, all NOCs may benefit from its outcomes, since the WADC and the ISE provide them with the same educational roles and responsibilities. The Czech NOC plays an important role in anti-doping education, even though it is not their primary mission. The Czech NOC is an integral part of the Olympic Movement.<sup>25</sup> As such, it should comply with the WADC and perform related roles,<sup>26</sup> including those in anti-doping education. Moreover, protecting athletes from doping through prevention and education aligns with the vision, mission, values, and strategy of the Czech NOC. The vision of the Czech NOC is to build a healthier Czech society through sport,<sup>27</sup> which follows the vision of the Olympic Movement to build a better world through sport.<sup>28</sup> Moreover, the mission of the Czech NOC is to develop and disseminate Olympic ideals, thus contributing to the physical and spiritual education of citizens, especially the youth, in the spirit of Olympism.<sup>29</sup> Consequently, the strategy of the Czech NOC includes a wide range of roles and responsibilities stipulated in the Olympic Charter and the Czech NOC’s Statutes,<sup>30</sup> among which are those concerning anti-doping education.<sup>31</sup>

The Czech NOC has been carrying out a few activities concerning anti-doping education. They have engaged in the ASAP project focusing on sustainability, which covers the principles of good governance including anti-doping education.<sup>32</sup> In the course of the project, the Czech NOC and the Czech NADO prepared an educational video for athletes participating in the Games of the XXXII Olympiad in Tokyo held in 2021.<sup>33</sup> Moreover, the Czech NOC required athletes and their support personnel to confirm that they had the basic information about the fight against doping, according to the Article 18.2 of the WADC, as a condition to participate in the XXIV Olympic Winter Games in Beijing 2022.<sup>34</sup> Second, they had to confirm that they were familiar with the WADC, the IOC Anti-Doping Rules, and the Regulations for Doping Control and Sanctions in Sports in the Czech Republic.<sup>35</sup> Third, the athletes and their support personnel had to complete the online course ADEL course for Olympic Winter Games Beijing 2022.<sup>36</sup>

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25 Olympic Charter, Rule 1.2, <https://olympics.com/ioc/olympic-charter>.

26 Olympic Charter, Rule 43; Statutes of the Czech NOC, Art. 2.15.

27 Appendix 1: Czech NOC: Vision, Mission, Values.

28 Vision of the Olympic Movement, IOC (online).

29 Statutes of the Czech NOC, Art. 2.1.

30 Statutes of the Czech NOC, Art. 2.2.

31 Basic Universal Principles of Good Governance of the Olympic and Sports Movement, Principle 6.4: Anti-doping education is one of the basic universal principles of good governance, which the Czech NOC shall respect.

32 ASAP, About (online); also available online: <https://www.asap-sport.com/>.

33 Tokyo 2020: How Anti-Doping Rules Work, Czech NOC (online), 30 June 2021; also available online: [https://www.youtube.com/supported\\_browsers?next\\_url=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DPFkq8W7fHP0](https://www.youtube.com/supported_browsers?next_url=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DPFkq8W7fHP0).

34 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete’s Commitment, Athlete Support Personnel’s Commitment.

35 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete’s Commitment, Athlete Support Personnel’s Commitment.

36 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete’s Commitment, Athlete Support Personnel’s Commitment. See also WADA, Anti-Doping Education and Learning Platform („ADEL”), ADEL for Olympic Winter Games Beijing 2022 (online); WADA launches new e-learning course

Clearly, the Czech NOC has conducted some activities in anti-doping education.

On the other hand, the WADC provides the Czech NOC with broader roles and responsibilities in anti-doping education. On top of its existing activities, the Czech NOC should implement further educational responsibilities stemming from the WADC and adapt the principles of the WADC and the ISE to the Czech environment. However, the Czech NOC lacks a clear definition of its roles and responsibilities in anti-doping education, which prevents it from conducting its educational responsibilities in an effective and sustainable manner. The research question of this paper, thus, follows: what are the roles and responsibilities of the Czech NOC in anti-doping education? This paper builds on the author's research project within the Executive Masters in Sport Organizations Management ("MEMOS") program from 2020<sup>37</sup> and related working paper from 2021.<sup>38</sup> Its initially reviews and comments on the existing knowledge on the roles and responsibilities of NOCs, particularly the Czech NOC in anti-doping education (1). Second, it presents the findings of the conducted empirical research (2). Finally, it formulates recommendations and proposes an action plan on how the Czech NOC should effectively and sustainably fulfil its roles and responsibilities in anti-doping education (3).

## 2. REVIEW OF THE EXISTING KNOWLEDGE

The existing knowledge of the roles and responsibilities of the Czech NOC in anti-doping education is very limited. First, this chapter maps the state of the art on the concrete educational roles and responsibilities of the Czech NOC, which stem especially from primary sources. They include the Olympic Charter and the Statutes of the Czech NOC, the WADC, the ISE, and related documents. The primary sources outline the overall role of the Czech NOC in anti-doping education but lack specific actions that it should implement (1.1). Second, this chapter reviews the secondary sources on the topic which includes non-mandatory guidelines, educational materials, studies, and academic literature that provide examples of the Czech NOCs' possible involvement in anti-doping education (1.2). This chapter presents the findings stemming from the review of the existing knowledge, and comments on them. The third chapter analyses these findings in more detail while formulating recommendations and proposing an action plan that the Czech NOC should implement.

### 2.1. PRIMARY SOURCES OF THE ROLES AND RESPONSIBILITIES OF THE CZECH OLYMPIC COMMITTEE IN THE ANTI-DOPING EDUCATION

#### 2.1.1. *Olympic Charter and Statutes of the Czech Olympic Committee*

The Olympic Charter is the principal document providing the roles and responsibilities of NOCs, including the Czech NOC, within the Olympic Movement. According to the Olympic Charter, the

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for athletes and coaches heading to the Olympic Winter Games Beijing 2022, WADA (online), 29 September 2022.

37 Jan Exner, "Roles and Responsibilities of the Czech Olympic Committee in Anti-Doping Education," (Research project within the Executive Masters in Sport Organisations Management, Université catholique de Louvain, 2021), 1-43.

38 Jan Exner, "Between Prevention and Repression: Roles and Responsibilities of the Czech Olympic Committee in Anti-Doping Education," *Charles University in Prague Faculty of Law Research Paper*, 2021/II/5, 1-21, <https://dx.doi.org/10.2139/ssrn.3849247>.

role of the Czech NOC includes adopting and implementing the WADC.<sup>39</sup> The Olympic Charter further provides that “compliance with (the WADC) (...) is mandatory for the whole Olympic Movement.”<sup>40</sup> Moreover, any competitor, team official or other team personnel must respect and comply with the WADC to participate in the Olympic Games.<sup>41</sup> Finally, only sports which comply with the WADC are eligible to be in the program of the Olympic Games.<sup>42</sup> On top of that, the Statutes of the Czech NOC provide that the main roles of the Czech NOC include adopting and implementing the WADC based on a guarantee that the anti-doping policy and rules of the Czech NOC, the membership in the Czech NOC, the management system, and requirements for financing comply with the WADC. Moreover, the Czech NOC performs roles under the WADC.<sup>43</sup> Therefore, the WADC is the principal document defining roles and responsibilities of the Czech NOC in the anti-doping education.

### **2.1.2. World Anti-Doping Code 2021 and the International Standard for Education**

Moreover, the WADC and the ISE are the most comprehensive primary sources of the roles and responsibilities of NOCs, including the Czech NOC, in anti-doping education. WADC and the ISE make it clear that education is a very important part of each signatory’s anti-doping program.<sup>44</sup> Moreover, the WADC provides that all signatories shall “plan, implement, monitor, evaluate and promote education programs in line with the requirements set out in (the ISE) (...) within their scope of responsibility and in cooperation with each other.”<sup>45</sup> In this regard, the ISE describes the minimum requirements of education programs of all signatories and several key processes that the signatories should follow while developing and implementing their education programs.<sup>46</sup> Moreover, it outlines how cooperation can minimize duplication, maximize efforts to enhance the effectiveness of education programs, and summarizes the requirements upon which signatories are accountable for.<sup>47</sup>

WADC and the ISE endow NOCs with three primary responsibilities related to education. First, NOCs shall cooperate with their NADOs. Where a NADO does not exist, NOCs shall work with their government to establish one, provided that, in the interim, the NOC or its designee shall fulfil its responsibilities,<sup>48</sup> including being the authority on education in the country.<sup>49</sup> Moreover, NOCs shall cooperate with their government to maintain an active and supportive role with their RADOs.<sup>50</sup> Second, NOCs “shall cooperate with their (NADO) to ensure that athletes and athlete support personnel selected to participate in the Olympic (...) Games, or

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39 Olympic Charter, Rule 27.2.6.

40 Olympic Charter, Rule 43.

41 Olympic Charter, Rule 40, By-law to Rule 44.6.

42 Olympic Charter, Rule 45.3.

43 Statutes of the Czech NOC, Art. 2.15.

44 WADC, Purpose, Scope and Organization of the World Anti-Doping Program and WADC. See also WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 16.

45 WADC, Art. 18.1.

46 WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32: Such requirements should be achievable for every signatory, regardless of resources and capacity.

47 WADC, ISE, Arts. 7.1.1, 9.1.

48 WADC, Art. 20.4.6.

49 WADC, ISE, Art. 7.5.1.

50 WADC, Art. 20.4.6.

any event where the (NOC) (...) participates or hosts shall receive education in advance of the event as per article 5 (of the ISE).<sup>51</sup> Third, NOCs should require national federations to conduct anti-doping education in coordination with the applicable (NADO).<sup>52</sup> In addition, the WADC and the ISE provide signatories and ADOs, including the Czech NOC, with other educational responsibilities.<sup>53</sup> WADC and the ISE particularly emphasize the importance of cooperation of all stakeholders for the success of anti-doping education.<sup>54</sup>

## 2.2. SECONDARY SOURCES OF ROLES AND RESPONSIBILITIES OF THE CZECH OLYMPIC COMMITTEE IN THE ANTI-DOPING EDUCATION

WADA provides anti-doping stakeholders with a wide range of guides and guidelines, educational tools and programs, using its Anti-Doping Education and Learning Platform (“ADEL”).<sup>55</sup> In particular, the Code Implementation Support Program (“CISP”)<sup>56</sup> includes the Guidelines for the International Standard for Education (“ISE Guidelines”). This is a third-level, non-mandatory document that supports the ISE.<sup>57</sup> The ISE Guidelines provide insight into ADOs in several areas, including the Czech NOC, such as planning and development of education programs,<sup>58</sup> human resources,<sup>59</sup> or financial resources.<sup>60</sup> Moreover, the ISE Guidelines provide several examples of educational objectives and activities related to the Olympic Games.<sup>61</sup> On top of that, the related Development and Implementation Guide for Stakeholders summarizes and explains the main requirements of WADC and the ISE concerning education.<sup>62</sup> WADA has also helped ADOs with anti-doping education during the COVID-19 pandemic, primarily through the Guidance for Remote Education Programs. It encourages ADOs to widen and extend the channels for dissemination of educational materials particularly through cooperation with their key stakeholders, including NOCs.<sup>63</sup> Moreover, WADA assists anti-doping stakeholders in educating athletes and their support personnel heading to the Olympic Games. Most recently, the e-learning course ADEL for Olympic Winter Games Beijing 2022 provided athletes and

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51 WADC, ISE, Art. 7.5.2.

52 WADC, Art. 20.4.12, ISE, Art. 7.5.3; WADA, Declaration for the 2021 World Anti-Doping WADC; WADA, 2021 Model Rules for National Olympic Committees, Art. 2.2.14.

53 WADC, Arts. 18.2, 18.2.1, ISE, Art. 4-6.

54 WADC, Art. 18, 20, ISE, Art. 8. WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32-33. The cooperation of stakeholders in anti-doping education includes especially consultations, acknowledgements, and recognition of education programs, developing and implementing codes of conduct, or the delegation of anti-doping education to third parties.

55 WADA, ADEL (online).

56 WADA, CISP (online).

57 ISE Guidelines, p. 6. The ISE Guidelines are for those persons in ADOs who are responsible for developing and implementing an education program described in the ISE. Where the ISE gives a minimum of what to do, the ISE Guidelines aim to help the responsible persons to understand how to do it, giving examples and suggestions, and showing how to go beyond where possible.

58 ISE Guidelines, p. 14-15, 137.

59 ISE Guidelines, p. 12-13, 24-25.

60 ISE Guidelines, p. 17-18.

61 ISE Guidelines, p. 38, 55, 56, 85-86, 101-102. The guidelines provide examples of the Canadian Centre for Ethics in Sports (“CCES”), the Australian Sports Anti-Doping Authority (“ASADA”) and the United States Anti-Doping Agency (“USADA”), which prepare customized eLearning modules for athletes participating in major events, such as the Olympic, Paralympic and Pan American Games.

62 WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 16, 31-33.

63 WADA, COVID-19: ADO Guidance for Remote Education Programs, p. 4.



coaches with an understanding of the Beijing 2022 anti-doping rules, procedures, and requirements.<sup>64</sup> On top of the WADA tools, the IOC issues the Olympic Values Education Programme (“OVEP”), which provides NOCs with guidance on how to disseminate Olympic values, including fair play.<sup>65</sup>

Academic literature on the roles and responsibilities of NOCs in anti-doping education is scarce. While many authors have researched the roles and responsibilities of ADOs in anti-doping education, the specific roles and responsibilities of NOCs remain an essentially unexplored topic.<sup>66</sup> Two sources have particular geographical relevance for this paper. Slepíčka edited the Proceedings from the VIII Conference on Sociology of Sport in 2016, which call for deepening and improving of anti-doping education for the children and the youth in the Czech Republic.<sup>67</sup> In 2019, Rudová analysed anti-doping education within 42 Czech NFs governing Olympic sports. She concluded that Czech NFs provide information on anti-doping in a very limited manner, and made several suggestions for improvement.<sup>68</sup> On the other hand, the only academic literature on the roles and responsibilities of the Czech NOC in anti-doping education is the author’s research project within the MEMOS program from 2020<sup>69</sup> and related working paper from 2021.<sup>70</sup> Since the existing knowledge is limited, I conducted empirical research to clarify the roles and responsibilities of NOCs, particularly the Czech NOC in the anti-doping education.

64 WADA, ADEL, ADEL for Olympic Winter Games Beijing 2022 (online); See also WADA launches new e-learning course for athletes and coaches heading to the Olympic Winter Games Beijing 2022, WADA (online), 29 September 2022.

65 OVEP, Fundamentals of Olympic Values Education, p. 1-124.

66 For the limited research, see especially Andrea Petróczi, Paul Norman, and Sebastian Brueckner, “Can We Better Integrate the Role of Anti-Doping in Sports and Society? A Psychological Approach to Contemporary Value-Based Prevention,” *Med Sport Sci.*, (2017): 62, 160-176, <https://doi.org/10.1159/000460726>; Miran Kondric, et. al., “Is There a Danger for Myopia in Anti-Doping Education? Comparative Analysis of Substance Use and Misuse in Olympic Racket Sports Calls for a Broader Approach,” *Substance Abuse Treatment, Prevention, and Policy* 6, (2011): 1-27; Aleksandar Ignjatović, et. al., “Anti-Doping through the Pedagogical Approach,” *Physical Education and Sport through the Centuries* 4, no. 1 (2017): 24-37, <http://dx.doi.org/10.1515/spes-2016-0019>; Pia-Maria Wippert and Michael Fließer, “National Doping Prevention Guidelines: Intent, Efficacy and Lessons Learned - A 4 Year Evaluation,” *Substance Abuse Treatment, Prevention, and Policy* 11, (2016): 1-35, <https://doi.org/10.1186/s13011-016-0079-9>; Sophie C. Turfus, et. al., “Supplementation Practices, Perceptions and Knowledge About Anti-Doping Among Jamaican High School Athletes,” *Performance Enhancement & Health* 7, no. 1-2 (September–December 2019): 1-9, <https://doi.org/10.1016/j.peh.2019.07.001>; Diwakar Lal Amaty, “Anti-Doping Education for Nepalese National and International Athletes,” *ICSSPE Bulletin* (17285909), no. 56 (2008): 1-32; Léa Cléret, “The Role of Anti-Doping Education in Delivering WADA’s Mission,” *International Journal of Sport Policy and Politics* 3, no. 2 (2011): 271-277, <https://doi.org/10.1080/19406940.2011.577084>; Laurie B. Patterson, Patrick J. Duffy, and Susan H. Backhouse, “Are Coaches Anti-Doping? Exploring Issues of Engagement with Education and Research,” *Substance Use & Misuse* 49, no. 9 (2014): 1182-1185, <https://doi.org/10.3109/10826084.2014.912469>; Simon J. Somerville, Martyn Lewis, and Helma Kuipers, “Accidental Breaches of the Doping Regulations in Sport: Is There a Need to Improve the Education of Sportspeople?” *Br J Sports Med* 39, no. 8 (2005): 512–516, <https://doi.org/10.1136/bjism.2004.013839>.

67 Pavel Slepíčka (ed.), *Problems of Doping Focusing on Children’s and Youth Sport. Proceedings of VIII Sport Sociology Conference* (Charles University, Faculty of Physical Education and Sport, 2016), 1-158.

68 Lenka Rudová, “Anti-Doping Education,” (Thesis, University of Economics and Business, Czech Olympic Committee, 2019), 1-26.

69 Exner, “Roles and Responsibilities of the Czech Olympic Committee in Anti-Doping Education,” 1-43.

70 Exner, “Between Prevention and Repression: Roles and Responsibilities of the Czech Olympic Committee in Anti-Doping Education,” 1-21.

### 3. RESEARCH

This chapter presents the author's empirical research on the roles and responsibilities of NOCs, particularly the Czech NOC, in the anti-doping education. The research employed three main data collection techniques gathering both quantitative and qualitative data. First, surveys aimed at obtaining primarily quantitative data on the role of NOCs, especially the Czech NOC, in the anti-doping education (2.1). Second, interviews sought to obtain qualitative data regarding the interviewees' perceptions and opinions (2.2). Third, focus groups aimed at gathering qualitative data through informal discussions within small homogenous groups (2.3).

#### 3.1. SURVEYS

The author conducted the following four surveys:

- The first survey addressed all 206 NOCs to research their roles and responsibilities in the anti-doping education in their countries. 50 NOCs responded (24.27%).
- The second survey focused on Czech NFs to find out how they perceive the role of the Czech NOC in the anti-doping education, and how the Czech NOC could help to foster their educational activities. The survey questionnaire addressed 61 Czech NFs that are members of the Czech NOC. Twenty Czech NFs (32.79%) completed the questionnaire, fifteen of which represented Olympic sports.
- The third survey questionnaire addressed sixteen Czech elite athletes participating in the Czech NOC's event Top Camp organized between the 26th and 28th October, 2019, designed to facilitate their preparation for the Olympic Games in Tokyo 2020, eventually held in 2021. Ten athletes answered (62.5%), representing eight different summer Olympic sports. The small number of athletes made their answers indicative, but still important since athletes are the primary subjects of anti-doping rules and activities, including education. Unfortunately, there was no "Top Camp" for the Winter Olympics in Beijing in 2022, largely due to the COVID-19 pandemic.
- The fourth survey addressed the members of the Czech NADO Athletes Commission.<sup>71</sup> The questionnaire addressed seven members of the Czech NADO Athletes Commission, out of which five of whom members answered (71.4%), representing five different sports.

The author implements the results of the surveys in the third chapter, and formulates recommendations on the roles and responsibilities of the Czech NOC in the anti-doping education. The complete questionnaires, answers and graphs are available as appendices to this paper.

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<sup>71</sup> The author originally aimed at conducting a focus group with members of the Czech NADO Athletes Commission. In the end, however, the author conducted a survey, primarily because of the members' availability in the COVID-19 pandemic. Since the original MEMOS project, the Czech NADO appointed new members of its Athletes Commission, who the Czech NOC should cooperate with regarding the implementation of the project's findings and recommendations formulated in the third chapter.



### **3.2. INTERVIEWS**

The goal of the interviews was to obtain the personal perception of representatives of selected ADOs regarding the roles and responsibilities of NOCs, particularly the Czech NOC, in the anti-doping education. In particular, the interviews focused on possible forms of the Czech NOC's educational activities and its target groups. The interviewees represented the IOC, the Czech NOC, the NSA, WADA, the ITA and the Canadian Centre for Ethics in Sport ("CCES"). Therefore, the interviews focused on the Czech environment but also sought perspectives of international anti-doping stakeholders. The interviewees were:

- Jiří Kejval, a Member of the IOC and of the WADA Foundation Board and Executive Committee. In the interview conducted on 10 September, 2020 in person at the seat of the Czech NOC, he spoke primarily from his position as the President of the Czech NOC,
- Alexander Károlyi, the Ombudsman of the Czech NOC. He was also the Vice-President of the National Council for Sport, an advisory body to the President of the NSA, with responsibility for sports legislation and negative influences in sport, including the fight against doping. He was also the President of the Board of Experts of the Czech NADO, an advisory body to the President of the Czech NADO. The interview was conducted on 6 April, 2020 via email,
- Petr Graclík, the Secretary General of the Czech NOC. The interview was conducted on 3 April, 2020 in person at the seat of the Czech NOC,
- Martin Doktor, the Sports Director of the Czech NOC. The interview was conducted on 3 April, 2020 in person at the seat of the Czech NOC,
- Mayumi Yaya Yamamoto, a Member of the WADA Education Committee. The interview was conducted on 5 November, 2019 in person at the World Conference on Doping in Sport in Katowice, Poland,
- Tony Cunningham, a senior manager in the WADA education team. The interview was conducted on 14 January, 2020 via Skype,
- Olya Abasolo, the ITA Education Manager who also used to work for the Canadian NOC. The interview was conducted on 4 November, 2019 in person at the World Conference on Doping in Sport in Katowice, Poland,
- Trevor La Force, the manager of education in the Canadian NADO, the CCES. The interview was conducted on 19 December, 2019 via Skype.

The author interviewed the mentioned and transcribed their answers. The author chooses those that are most relevant for clarifying and establishing the roles and responsibilities of the Czech NOC in the anti-doping education. The author implemented the answers in the third chapter, while formulating recommendations on the roles and responsibilities of the Czech NOC in the anti-doping education.

### **3.3. FOCUS GROUPS**

The focus groups were small and homogenous groups with the goal of obtaining qualitative data through informal discussions:

- The first focus group assembled the members of the Czech NOC Athletes Commission. Their opinion is important since they represent athletes who are the primary subjects of anti-doping rules and education. The focus group was held on 23 July, 2020. Nine out of thirteen members of the commission attended the meeting, while all members had the

opportunity to express their views later via email.

- The second focus group gathered representatives of the Czech NADO at the time when the author researched the original MEMOS project. The focus group included the Czech NADO's director, the deputy director and secretary, and the head of education. It was held on 26 August, 2020 at the Czech NADO's seat.
- The third focus group assembled representatives of the Czech NADO at the time of drafting this paper to increase its relevance. The focus group included the Czech NADO's director, the head of education, and an employee from the education department. It was held on 1 August, 2022 at the Czech NADO's seat.

The author implemented selected parts of these informal discussions in the third chapter, while establishing and clarifying the roles and responsibilities of the Czech NOC in the anti-doping education. The complete minutes from these meetings are available as appendices to this paper.

## **4. DISCUSSION AND RECOMMENDATIONS**

This chapter analyses and discusses the findings from the review of existing knowledge, and the empirical research to clarify and establish the roles of the Czech NOC in the anti-doping education. It also seeks to recommend how the Czech NOC should effectively and sustainably implement its educational responsibilities. First, this chapter highlights the Czech NOC's main strengths related to the anti-doping education, identifies its educational responsibilities, and formulates general recommendations on how the Czech NOC should exercise them in cooperation with other anti-doping stakeholders (3.1). Second, it provides special recommendations as to how the Czech NOC should simultaneously plan, implement, and evaluate its education program (3.2). Finally, this chapter proposes a sustainable action plan recommending concrete steps forward that the Czech NOC should take, including their lead, potential resources, time scale and critical success factors (3.3).

### **4.1. STRENGTHS, RESPONSIBILITIES AND GENERAL RECOMMENDATIONS**

The Czech NOC has four main aces up its sleeve regarding the anti-doping education. The main strength of the Czech NOC is its good relationships with top athletes, the possibility to involve them in planning and delivering education, and the potential to effectively influence target groups. The Czech NOC also has a unique position within the sporting environment, the power of the Olympic brand and properties, and the possibility to make education culturally relevant. The Czech NOC should make use of these strengths while exercising all its educational responsibilities, as this chapter further illustrates. In this regard, the Czech NOC should primarily cooperate with the Czech NADO, mainly to ensure that athletes and athlete support personnel receive education in advance of participation in the Olympic Games, or any event where the Czech NOC participates or hosts.<sup>72</sup> The Czech NOC should also cooperate with the Czech NFs and require them to conduct education in coordination with the Czech NADO.<sup>73</sup>

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72 WADC, ISE, Art. 7.5.2.

73 WADC, Art. 20.4.12, ISE, Art. 7.5.3; WADA, Declaration for the 2021 World Anti-Doping WADC; WADA, 2021 Model Rules for National Olympic Committees, Art. 2.2.14.

On top of these primary responsibilities, the WADC endows the Czech NOC with further obligations related to education, which the Czech NOC should exercise in cooperation with other anti-doping stakeholders. The Czech NOC should cooperate primarily with the Czech NADO, which coordinates education programs in the Czech Republic (3.1.a).<sup>74</sup> It should also work with Czech NFs as its members and performance partners (3.1.b).<sup>75</sup> Moreover, the Czech NOC should cooperate with the IOC, WADA, international federations, the Czech Paralympic Committee ("Czech NPC"), the Czech government,<sup>76</sup> including the NSA,<sup>77</sup> and other stakeholders.<sup>78</sup> The Czech NOC should consult with these stakeholders when planning education.<sup>79</sup> Moreover, the Czech NOC should agree with them in advance on the roles and responsibilities of event-based education. On top of that, the Czech NOC should share its education plans with them upon request.<sup>80</sup> Finally, the Czech NOC should acknowledge education programs of other stakeholders and could recognise their completion by learners in its education pool, if such programs comply with the ISE.<sup>81</sup> Therefore, cooperation with other anti-doping stakeholders is an essential part of the Czech NOC's responsibilities in the anti-doping education.

#### **4.1.1. Cooperation with the Czech Anti-Doping Committee**

The Czech NOC should cooperate particularly with the Czech NADO. While doing so, it should respect its autonomy and scope of responsibilities as the main authority on the anti-doping education in the Czech Republic.<sup>82</sup> Therefore, the Czech NOC and the Czech NADO should initially

74 WADC, Art. 18.2.3, 20.4.12, ISE, Art. 7.5.3; WADA, Declaration for the 2021 World Anti-Doping WADC; WADA, 2021 Model Rules for National Olympic Committees, Art. 2.2.14; Survey amongst NOCs: For eighteen NOCs (37.5% of those that answered), their main role in anti-doping education is the cooperation with their country's NADO. Most NOCs (n = 35 | 72.9%) cooperate with their NADO in anti-doping education; Jiří Kejval, 10 September 2020; Alexander Károlyi, 6 April 2020; Petr Graclík, 3 April 2020; Martin Doktor, 3 April 2020; Mayumi Yaya Yamamoto, 5 November 2019; Tony Cunningham, 14 January 2020; Olya Abasolo, 4 November 2019; Trevor LaForce, 19 December 2019; Czech NADO (1), 26 August 2020; Czech NADO (2), 1 August 2022.

75 WADC, Art. 18.2.3, 20.4.12, ISE, Art. 7.5.3; WADA, Declaration for the 2021 World Anti-Doping WADC; WADA, 2021 Model Rules for National Olympic Committees, Art. 2.2.14; WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 33; Survey amongst NOCs: Six NOCs (12.5% of those that answered) cooperate with their NFs and support their educational activities. In total, most NOCs (n = 32 | 74.4%) cooperate with their NFs in anti-doping education; Alexander Károlyi, 6 April 2020; Olya Abasolo, 4 November 2019.

76 WADC, Art. 18.2.3.

77 Alexander Károlyi, 6 April 2020. See also WADC, ISE, Art. 8.1, 8.2; ISE Guidelines, p. 14-15, 137: Such cooperation should include encouraging the integration of education into governmental funding policies for Czech NFs, the Czech NOC and the Czech NPCs as well as partnerships between these national bodies.

78 WADC, Art. 18.2.3, ISE, Art. 8.1, 8.2; ISE Guidelines, p. 14-15, 137; WADA: COVID-19: ADO Guidance for Remote Education Programs, p. 4; Petróczi, Norman, Brueckner, "Can We Better Integrate the Role of Anti-Doping in Sports and Society? A Psychological Approach to Contemporary Value-Based Prevention," 160-176. Other stakeholders include the Ministry of Education, Youth and Sport, educational institutions, or media.

79 Czech NADO (2), 1 August 2022.

80 WADC, Art. 18.2.3, ISE, Art. 8.

81 WADC, ISE, Art. 8.2: Signatories should make their education activities available to other signatories through the publication of their education plan in English or in French. The recognition process will minimize duplication of education to athletes and athlete support personnel. It can also help signatories to prioritize and focus the efforts of their education programs more effectively and to concentrate on under-served target groups.

82 WADC, ISE, Art. 7.2.1.

84 WADC, Introduction, Art. 20, Comment to Art. 20. The Czech NOC would nevertheless remain fully responsible for ensuring that the Czech NADO performs any delegated aspect of anti-doping education in compliance with WADC. See also WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development

agree on the division of competences. In this regard, the Czech NOC may delegate certain aspects of the anti-doping education to the Czech NADO,<sup>84</sup> including the implementation of the Czech NOC's education program.<sup>85</sup> The Czech NOC and the Czech NADO should conclude a memorandum or a cooperation agreement establishing their competences and the principles of their cooperation in the anti-doping education.<sup>83</sup> In addition, the Czech NOC should have a person responsible for the anti-doping education and the cooperation with the Czech NADO.<sup>84</sup> The Czech NOC and the Czech NADO should also create a working group consisting of representatives of both organizations to facilitate and coordinate their cooperation and joint external communication towards athletes, Czech NFs and other entities.<sup>85</sup>

The Czech NADO educates, and the Czech NOC supports it. The Czech NADO is the main deliverer of the anti-doping education in the Czech Republic and the Czech NOC should support its educational activities.<sup>86</sup> In this regard, the Czech NOC and the Czech NADO should primarily cooperate on the education of participants in the Olympic Games and other events in which the Czech NOC participates or hosts,<sup>87</sup> as they did with the XXIV Olympic Winter Games in Beijing 2022.<sup>88</sup> On top of that, the Czech NOC should support the activities of the Czech NADO towards other athletes and their support personnel. The Czech NOC should specifically include the Czech NADO into its events and projects, as specified further in recommendations regarding the Czech NOC's education program. Moreover, the Czech NADO and the Czech NOC can cooperate on the creation of a national anti-doping plan,<sup>89</sup> education plan,<sup>90</sup> and education programs.<sup>91</sup> On top of that, the Czech NOC should work with the Central European Anti-Doping Organization ("CEADO"), the Czech NADO, the Czech government and the ITA to provide support for coordination and delivery of education programs in the Czech Republic.<sup>92</sup>

Moreover, the Czech NOC can help the Czech NADO to access athletes. The Czech NOC can in particular be a mediator between the Czech NADO and the athletes.<sup>93</sup> The Czech NOC supports Czech athletes and maintains good relationships with them.<sup>94</sup> Therefore, the Czech NOC has a positive rapport with athletes, which allows it to involve them in the anti-doping education and better target persons within its education pool.<sup>95</sup> The Czech NOC has a particularly great influence over athletes and their entourage participating in the Olympic Games<sup>96</sup> and other events. Therefore, the Czech NOC can open these gates for the Czech NADO and give it access

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and Implementation Guide for Stakeholders, p. 6.

85 Tony Cunningham, 1 September 2020.

83 Czech NADO (1), 26 August 2020; Survey amongst NOCs: Slovenian NOC.

84 Czech NADO (2), 1 August 2022.

85 Jiří Kejval, 10 September 2020; Czech NADO (1), 26 August 2020.

86 Tony Cunningham, 1 September 2020; Survey amongst Czech athletes at the Top Camp; Czech NADO (2), 1 August 2022.

87 WADC, ISE, Art. 7.5.2; Czech NADO (1), 26 August 2020; Czech NADO (2), 1 August 2022.

88 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete's Commitment, Athlete Support Personnel's Commitment.

89 Survey amongst NOCs: French NOC.

90 Czech NADO (2), 1 August 2022.

91 Czech NADO (1), 26 August 2020.

92 WADC, Art. 20.4.6.

93 ISE Guidelines, p. 14; Czech NOC Athletes Commission, 23 July 2020.

94 Czech NADO (2), 1 August 2022.

95 Czech NOC Athletes Commission, 23 July 2020.

96 Mayumi Yaya Yamamoto, 5 November 2019.

to athletes and their support personnel at key times.<sup>97</sup> The Czech NOC can also help the Czech NADO with communication towards children and other young athletes.<sup>98</sup> Therefore, the Czech NADO should work closely with the Czech NOC to attract athletes to the anti-doping education.<sup>99</sup> As such, the Czech NOC can also help to improve the long-term relationship between the Czech NADO and the athletes.<sup>100</sup>

The cooperation between the Czech NOC and the Czech NADO should also focus on leveraging the anti-doping education in Czech NFs. The Czech NOC is a gatekeeper to the Olympic Games and other events in which it participates or hosts. Therefore, the Czech NOC has a great reach inside the Czech NFs who nominate athletes and their support personnel to the Czech Olympic team.<sup>101</sup> The Czech NOC should use this influence to help the Czech NADO to better promote the anti-doping education within the Czech NFs.<sup>102</sup> In particular, the Czech NADO and the Czech NOC should work together to harmonise the education systems within the Czech NFs, which vary greatly nowadays. In this regard, the Czech NADO and the Czech NOC can co-organise a comprehensive large-scale training of the Czech NFs on anti-doping issues once a year.<sup>103</sup> Overall, the Czech NOC should cooperate with the Czech NADO to streamline the anti-doping education within the Czech NFs.

#### **4.1.2. Cooperation with the Czech National Federations**

The Czech NFs are key partners of the Czech NOC, therefore, the Czech NOC should cooperate with them in the anti-doping education.<sup>104</sup> Moreover, the Czech NFs that are members of the Czech NOC should comply with its Statutes and consequently with the WADC.<sup>105</sup> Consequently, the Czech NOC should require the Czech NFs to conduct education in coordination with the Czech NADO.<sup>106</sup> In this regard, the Czech NOC has great influence over the Czech NFs, especially in regard to events where it participates or which it hosts. Therefore, the Czech NOC should use the influence to make sure that athletes from its education pool receive access to education.<sup>107</sup> In particular, the Czech NOC should ensure that the Czech NFs cooperate with the Czech NADO in providing education to their athletes and support personnel regarding all events where the Czech NOC participates or which it hosts,<sup>108</sup> such as the Olympic Games, the World Games, the European Games, the European Youth Olympic Festival (“EYOF”) and the Youth Olympic Games (“YOG”).<sup>109</sup> Moreover, the Czech NOC should require all athletes and their support personnel, whom the Czech NFs nominated to these events, to complete the

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97 Tony Cunningham, 14 January 2020; Czech NADO (2), 1 August 2022.

98 Jiří Kejval, 10 September 2020.

99 ISE Guidelines, p. 15; Czech NOC Athletes Commission, 23 July 2020.

100 Jiří Kejval, 10 September 2020.

101 Martin Doktor, 3 April 2020; Tony Cunningham, 14 January 2020; Tony Cunningham, e-mail to author, 1 September 2020.

102 Survey amongst Czech athletes at the Top Camp; Czech NADO (2), 1 August 2022.

103 Czech NADO (1), 26 August 2020.

104 Rudová, “Anti-Doping Education,” 1-26.

105 Statutes of Czech NOC, Arts. IV.2.1, II.2.14; Mayumi Yaya Yamamoto, 5 November 2019.

106 WADC, Art. 20.4.12, ISE, Art. 7.5.3; WADA, Declaration for the 2021 World Anti-Doping WADC; WADA, 2021 Model Rules for National Olympic Committees, Art. 2.2.14; Survey amongst NOCs.

107 Tony Cunningham, email to author, 1 September 2020.

108 Mayumi Yaya Yamamoto, 5 November 2019.

109 Petr Graclík, 3 April 2020; Martin Doktor, 3 April 2020.

anti-doping education, as it did before the XXIV Olympic Winter Games in Beijing 2022.<sup>110</sup>

Furthermore, the Czech NOC should actively communicate with the Czech NFs to further support their educational activities.<sup>111</sup> The Czech NOC and the Czech NFs are performance partners. The Czech NFs support the athletes through day-to-day operations, training systems, and financial support.<sup>112</sup> As such, the Czech NFs are primarily responsible for educating athletes and their support personnel in anti-doping matters.<sup>113</sup> Consequently, the Czech NOC should fill the gaps and provide resources to the Czech NFs when and where they are lacking.<sup>114</sup> The vast majority of the Czech NFs<sup>115</sup> would appreciate an active support from the Czech NOC. Such support should include the creation of new educational activities,<sup>116</sup> and the support of existing and future educational activities of the Czech NADO<sup>117</sup> and Czech NFs.<sup>118</sup> The Czech NOC should conclude a corresponding memorandum or a contract with the Czech NFs and document the cooperation in the education plan within its education program.

## **4.2. SPECIAL RECOMMENDATIONS: THE EDUCATION PROGRAM OF THE CZECH OLYMPIC COMMITTEE**

Following the general recommendations, this section formulates special recommendations on how the Czech NOC should simultaneously plan, implement, monitor, evaluate, and promote its anti-doping education program, within its scope of responsibilities and in cooperation with other signatories.<sup>119</sup> The Czech NOC should reflect on the role of education in the organization and be clear on its educational vision and the desired outcome. Such an educational role, vision and outcome should be a part of the overall vision, mission, general strategy, and action plan of the Czech NOC. Moreover, the role of education, the related vision and its desired outcome should be clearly communicated through the Czech NOC's education plan. Therefore, the Czech NOC should develop and implement an education program that incorporates and aligns values-based education, awareness-raising, information provision and anti-doping education.<sup>120</sup> While doing so, the Czech NOC should follow three basic stages of its education program: planning (3.2.a), implementing (3.2.b), and evaluating (3.2.c).<sup>121</sup>

### **4.2.1. Planning the Education Program of the Czech Olympic Committee**

Planning of an education program starts with an education plan. The Czech NOC should initially

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110 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete's Commitment, Athlete Support Personnel's Commitment.

111 Survey amongst Czech athletes at the Top Camp; Petr Graclík, 3 April 2020.

112 Abasolo, 4 November 2019.

113 Mayumi Yaya Yamamoto, 5 November 2019.

114 Abasolo, 4 November 2019.

115 Survey amongst Czech NFs: Sixteen Czech NFs (80% of those that answered).

116 Survey amongst Czech NFs: Thirteen Czech NFs (48.15% of those that answered).

117 Survey amongst Czech NFs: Nine Czech NFs (33.33% of those that answered).

118 Survey amongst Czech NFs: Four Czech NFs (14.81% of those that answered).

119 WADC, Art. 18.1, 18.2; WADA, Declaration for the 2021 World Anti-Doping WADC.

120 WADC, ISE, Part Two: Standard for Education, Overview. See also WADC, ISE, Art. 4.0: Moreover, the education program of the Czech NOC should be evidence based, informed by education theory, and where possible, by social science research.

121 WADC, ISE, Art. 4-6.

document its education activities in an education plan.<sup>122</sup> To do so, the Czech NOC should assess the current situation, establish an education pool, set clear objectives and related activities, and outline monitoring procedures.<sup>123</sup> Moreover, the Czech NOC should consult the planning of its education program with the Czech NADO<sup>124</sup> and other relevant signatories.<sup>125</sup> While assessing the current situation, the Czech NOC should describe the environment in which it operates, including the sports system and structures, as well as the national and international contexts.<sup>126</sup> The Czech NOC should also describe all of its current educational activities.<sup>127</sup>

Second, the Czech NOC should create an education pool. In particular, they should identify its target groups.<sup>128</sup> In the first step, the Czech NOC should list all potential target groups for its education program, primarily athletes, and their support personnel.<sup>129</sup> In this regard, the education pool should not be limited to national or international quality level athletes. On the contrary, it should include all persons, including the youth, who participate in sports under the authority of the Czech NOC.<sup>130</sup> Therefore, the target groups of the Czech NOC could also include the children and youth,<sup>131</sup> sports administrators, commercial sponsors, media personnel, students, teachers, university staff, pharmacists,<sup>132</sup> and any other persons that the Czech NOC considers appropriate.<sup>133</sup> The Czech NOC should also identify other agencies and organizations that may be responsible for delivering or have the potential to deliver education.<sup>134</sup> The list of such agencies or organizations should include primarily the Czech NADO,<sup>135</sup> Czech NFs, and also other anti-doping stakeholders in the Czech Republic.

An effective education program requires resources. To that end, the Czech NOC should consequently identify human, financial and material resources available or potentially available to support its education program.<sup>136</sup> In this regard, the Czech NOC should include its current human resources in the anti-doping education. They should include members of the Czech NOC Athletes Commission,<sup>137</sup> other athletes,<sup>138</sup> the Sports Director,<sup>139</sup> members of the Czech Club of Fair Play ("CCFP"), the Czech Olympic Academy ("COA"), and the Czech Coaching

122 WADC, ISE, Art. 4.1.1.

123 WADC, ISE, Art. 4.1.2, 9.1. See also WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32.

124 Czech NADO (2), 1 August 2022.

125 WADC, ISE, Art. 8.1.

126 WADC, ISE, Art. 4.2.1.

127 WADC, ISE, Art. 4.2.4.

128 WADC, Art. 18.2.1.

129 WADC, ISE, Art. 4.2.2.

130 WADC, Comment to Art. 18.2.1.

131 Slepíčka, *Problems of Doping Focusing on Children's and Youth Sport. Proceedings of VIII Sport Sociology Conference*, 158; Ignjatović, Marković, Stanković, and Janković, "Anti-Doping through the Pedagogical Approach," 24-37.

132 Somerville, Lewis, Kuipers, "Accidental Breaches of the Doping Regulations in Sport: Is There a Need to Improve the Education of Sportspeople?" 512-516.; Cléret, "The Role of Anti-Doping Education in Delivering WADA's Mission," 271-277; Wippert and Fließer 2016, p. 1-35; Turfus, Smith, Mansingh, Alexander-Lindo, Roopchand-Martin, "Supplementation Practices, Perceptions and Knowledge About Anti-Doping Among Jamaican High School Athletes," 1-9; Tony Cunningham, 14 January 2020.

133 WADC, ISE, Art. 4.3.5.

134 WADC, ISE, Art. 4.2.2.

135 Tony Cunningham, email to author, 1 September 2020; Czech NADO (2), 1 August 2022.

136 WADC, ISE, Art. 4.2.3.

137 Petr Graclík, 3 April 2020.

138 WADC, ISE, Art. 5.9.

139 Czech NADO (1), 26 August 2020.



Academy ("CCA"). Moreover, the Czech NOC should also engage members of its Medical Commission and other cooperating doctors,<sup>140</sup> and a person responsible for education in the Olympic Festival. As such, the Czech NOC can also provide human resources to its partner organizations, mainly for the Czech NADO.<sup>141</sup>

On top of the existing human rights resources, the Czech NOC should have a person responsible for the anti-doping education. This person would coordinate educational activities and cooperation with the Czech NADO, Czech NFs and other anti-doping stakeholders.<sup>142</sup> It can be a person or, if possible, an education team, department, or commission. The Czech NOC should either hire a qualified education professional, transfer someone to lead education from within the Czech NOC, or look for volunteers with education experience from its partner organizations.<sup>143</sup> On top of that, other Czech NOC human resources may include full-time team members and staff, possible cross-team collaborations, part-time staff, established volunteers, people within the Czech NFs, or retiring athletes with experience in education. The Czech NOC may also facilitate the inclusion of people from other sports organizations or athletes into its anti-doping education.<sup>144</sup> In addition to human resources, the Czech NOC should also identify financial and material resources for the anti-doping education. The sources of funding may include the Czech NOC's own resources,<sup>145</sup> educational resources of the Czech NADO,<sup>146</sup> governmental subsidies from the NSA,<sup>147</sup> or contributions from the Olympic Solidarity.<sup>148</sup>

Having identified its resources, the Czech NOC should continue establishing its education pool by prioritising its target groups.<sup>149</sup> The Czech NOC should include into its education pool primarily those athletes who are subject to its anti-doping rules. As a result, the Czech NOC should preferably target athletes taking part in events where the Czech NOC participates or which it hosts,<sup>150</sup> including those in youth and junior categories.<sup>151</sup> In this regard, the Czech NOC should require every athlete participating in such an event to complete a pre-event education as a mandatory condition for participation,<sup>152</sup> as was the case with the XXIV

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140 Martin Doktor, 3 April 2020; Czech NADO (2), 1 August 2022.

141 ISE Guidelines, p. 12-13; Czech NADO (2), 1 August 2022.

142 Czech NADO (2), 1 August 2022.

143 Czech NADO (2), 1 August 2022.

144 ISE Guidelines, p. 24-25.

145 Czech NOC Athletes Commission, 23 July 2020.

146 Czech NOC Athletes Commission, 23 July 2020.

147 Czech NOC Athletes Commission, 23 July 2020.

148 Survey amongst NOCs: Moldovian NOC.

149 WADC, Art. 18.2, 18.2.1, ISE, Art. 4.3.1; WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32.

150 Survey amongst NOCs: 47 NOCs (97.92% of those that answered); Survey amongst Czech NFs: four Czech NFs (20% of those that answered); Survey amongst members of the Czech NADO Athletes Commission: two members (40% of those that answered); Mayumi Yaya Yamamoto, 5 November 2019; Tony Cunningham, 14 January 2020; Olya Abasolo, 4 November 2019.

151 Survey amongst NOCs: Greek NOC; Survey amongst Czech NFs: five Czech NFs (25% of those that answered); Survey amongst Czech athletes at the Top Camp: All Czech elite athletes; Survey amongst members of the Czech NADO Athletes Commission: four members (80% of those that answered); Jiří Kejval, 10 September 2020; Alexander Károlyi, 6 April 2020; Martin Doktor, 3 April 2020; Mayumi Yaya Yamamoto, 5 November 2019; Šlepička, *Problems of Doping Focusing on Children's and Youth Sport. Proceedings of VIII Sport Sociology Conference*, 158.

152 Survey amongst NOCs: Austrian NOC.



Olympic Winter Games in Beijing 2022.<sup>153</sup> The Czech NOC could also include other athletes from the Czech Republic,<sup>154</sup> especially those associated with the Czech NFs,<sup>155</sup> youth and junior athletes,<sup>156</sup> lower level athletes,<sup>157</sup> or semi-professional athletes.<sup>158</sup> The Czech NOC should always ensure that its education pool includes a broader group of athletes, or provide a rationale for not including certain groups of athletes and explain how they will address this issue in the future.<sup>159</sup>

On top of the athletes, the Czech NOC should also include their support personnel into its education pool. In doing so, it should prioritise the most influential entourage.<sup>160</sup> The Czech NOC should make sure to include the athlete support personnel taking part in events where the Czech NOC participates or which it hosts,<sup>161</sup> including the Czech NOC administrators.<sup>162</sup> Moreover, the Czech NOC should include coaches and trainers<sup>163</sup> in its education pool, managers, agents, team staff, officials, medical and paramedical personnel,<sup>164</sup> parents<sup>165</sup> and any other person working with, treating or assisting an athlete.<sup>166</sup> Again, the Czech NOC should require the completion of the education as a condition for participation in the event,<sup>167</sup> as before the XXIV Olympic Winter Games in Beijing 2022.<sup>168</sup> Secondly, the Czech NOC could also target other athlete support personnel in the Czech Republic.<sup>169</sup> The Czech NOC should also provide a rationale for the non-inclusion of certain groups of athlete support personnel, and explain how they will address this in the future.<sup>170</sup>

Having identified and prioritised the target groups, the Czech NOC should include them in its

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153 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete's Commitment.

154 Survey amongst NOCs: 30 NOCs (62.5% of those that answered); Survey amongst Czech NFs: eleven NFs (55% of those that answered); Survey amongst members of the Czech NADO Athletes Commission: two members (40% of those that answered).

155 Petr Graclík, 3 April 2020.

156 Survey amongst NOCs: Greek NOC; Survey amongst Czech NFs: twelve Czech NFs (60% of those that answered); Survey amongst members of the Czech NADO Athletes Commission: 3 members (60% of those that answered); Jiří Kejval, 10 September 2020; Alexander Károlyi, 6 April 2020; Czech NOC Athletes Commission, 23 July 2020; Slepíčka 2016, p. 1-158.

157 Czech NOC Athletes Commission, 23 July 2020.

158 Jiří Kejval, 10 September 2020.

159 WADC, ISE, Art. 4.3.2, 4.3.4; WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32.

160 WADC, ISE, Art. 4.3.3: The Czech NOC should ensure that athlete support personnel have access to the information required to understand their roles and responsibilities and positively influence their athletes.

161 Survey amongst NOCs: 47 NOCs (97.92% of those that answered); Mayumi Yaya Yamamoto, 5 November 2019.

162 ISE Guidelines, p. 101-102.

163 Czech NOC Athletes Commission, 23 July 2020; Patterson, Duffy, and Backhouse, "Are Coaches Anti-Doping? Exploring Issues of Engagement with Education and Research." 1182-1185.

164 Somerville, Lewis, Kuipers, "Accidental Breaches of the Doping Regulations in Sport: Is There a Need to Improve the Education of Sportspeople?" 512-516.

165 Jiří Kejval, 10 September 2020.

166 WADC, ISE, Art. 4.3.3.

167 Survey amongst NOCs: Austrian NOC.

168 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athletes Support Personnel's Commitment.

169 Survey amongst NOCs: 30 NOCs (62.5% of those that answered).

170 WADC, ISE, Art. 4.3.4; WADA, 2021 World Anti-Doping WADC and International Standard Framework: Development and Implementation Guide for Stakeholders, p. 32.

education pool.<sup>171</sup> On top of the athletes and their support personnel, the Czech NOC should also consider including other target groups, such as children,<sup>172</sup> and the broader public.<sup>173</sup> Consequently, the Czech NOC should document its preferred target groups in its education plan.<sup>174</sup> Such a plan should further state the overall aims of the education program. Moreover, the education plan should list measurable and specific objectives and timelines related to activities for the target groups in the education pool. Finally, the education plan of the Czech NOC should include monitoring procedures for the activities in the education program to help with reporting and evaluation, and to foster continuous improvement.<sup>175</sup> Having planned its education program, the Czech NOC should implement it according to the recommendations that follow.

#### **4.2.2. Implementing the Education Program of the Czech Olympic Committee**

The implementation of the Czech NOC's education program should cover at least the basic awareness, information, values-based and education components. These components include the following topics: the principles and values associated with clean sport; the athletes', athlete support personnel's and other groups' rights and responsibilities under the WADC; the principle of strict liability; consequences of doping, such as on physical and mental health, social and economic effects, and sanctions; anti-doping rule violations; substances and methods on the Prohibited List; risks of the supplements use; use of medications and therapeutic use exemptions ("TUE"); testing procedures, including urine, blood and the athlete biological passport; requirements of the registered testing pool, including the whereabouts and the use of Anti-Doping Administration and Management System; and speaking up on concerns about doping.<sup>176</sup> The Czech NOC should make this information publicly available,<sup>177</sup> at least on its website.<sup>178</sup> Moreover, the Czech NOC should adapt and tailor the abovementioned topics and their content to meet the needs of the target audience. In particular, the Czech NOC should identify the learning objectives for each target group and state what the learner should be "aware of," "understand" and "be capable of doing" regarding each topic. The learners should in return demonstrate competencies and skills at each stage of their development.<sup>179</sup>

Furthermore, the Czech NOC should select appropriate education activities and delivery methods to achieve the objectives of the education plan,<sup>180</sup> which should also provide a clear rationale to justify the prioritization of such activities and methods.<sup>181</sup> Moreover, the Czech NOC should involve athletes in the planning and development of the education plan to ensure

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171 WADC, ISE, Art. 4.3.6.

172 Jiří Kejval, 10 September 2020.

173 Survey amongst NOCs: seven NOCs (14.58% of those that answered); Survey amongst Czech NFs: two Czech NFs (10% of those that answered); Mayumi Yaya Yamamoto, 5 November 2019; Olya Abasolo, 4 November 2019.

174 WADC, ISE, Art. 4.3.6.

175 WADC, ISE, Arts. 4.4., 4.5, 9: The Czech NOC shall also be accountable through objectives, related activities and monitoring procedures.

176 WADC, Art. 18.2.

177 WADC, ISE, Arts. 5.2, 5.3: Education on the abovementioned topics should be provided for the registered testing pool in full.

178 WADC, Art. 18.2.

179 WADC, ISE, Art. 5.4.

180 WADC, ISE, Art. 5.7.

181 WADC, Art. 18.2.

that activities are appropriate for their stage of development.<sup>182</sup> Furthermore, the Czech NOC should tailor education activities to learners with impairments or specific needs,<sup>183</sup> and to minors in regard to their stage of development, and all applicable legal requirements.<sup>184</sup> While designing education activities and methods, the Czech NOC should use its ability to unite athletes from different sports and different parts of the Czech Republic and make the anti-doping education culturally relevant to them.<sup>185</sup> Moreover, the Czech NOC should use the power of the Olympic brand and properties to leverage the anti-doping values.<sup>186</sup> In this case, the Czech NOC could, merely by attaching its name to it, give further credibility to the existing educational activities of the Czech NADO<sup>187</sup> and Czech NFs.<sup>188</sup>

In the context of the current digital age and constraints of the Covid-19 pandemic, the Czech NOC should emphasise online education.<sup>189</sup> On top of the existing tools,<sup>190</sup> the Czech NOC should co-prepare and require completion of an eLearning course from all athletes and their support personnel attending not only the Olympic Games,<sup>191</sup> but also other events.<sup>192</sup> Moreover, the Czech NOC should use its online media power. It should specifically engage its Media House, including its website<sup>193</sup> and social networks,<sup>194</sup> covering Facebook,<sup>195</sup> Instagram,<sup>196</sup> YouTube,<sup>197</sup> Twitter,<sup>198</sup> and LinkedIn,<sup>199</sup> for posting videos<sup>200</sup> and using other online tools. For example, the Czech NOC could launch a social media campaign in cooperation with the Czech NADO before the Olympic Games or other events where the Czech NOC participates or which it hosts.<sup>201</sup>

Moreover, the strategy of the Czech NOC covers various units and projects with the potential of including activities related to anti-doping education. The particular units are the CCFP, the COA and the CCA.<sup>202</sup> The projects cover the Symposium of Sports Medicine,<sup>203</sup> Olympic All-

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182 WADC, ISE, Art. 5.9.

183 WADC, ISE, Art. 5.5.

184 WADC, ISE, Art. 5.6; Czech NOC Athletes Commission, 23 July 2020.

185 Olya Abasolo, 4 November 2019.

186 Mayumi Yaya Yamamoto, 5 November 2019; Trevor LaForce, 19 December 2019.

187 Czech NADO (2), 1 August 2022.

188 Czech NOC Athletes Commission, 23 July 2020.

189 Survey amongst NOCs: nine NOCs (18.75% of those that answered).

190 Tokyo 2020: How Anti-Doping Rules Work, Czech NOC (online), 30 June 2021; also available online here; Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete's Commitment, Athlete Support Personnel's Commitment; WADA, ADEL, ADEL for Olympic Winter Games Beijing 2022 (online).

191 ISE Guidelines, p. 38, 55-56. The Czech NOC can draw inspiration from examples of the CCES, the ASADA or the USADA, which prepare customized eLearning modules for athletes participating in, amongst others, the Olympic Games.

192 ISE Guidelines, p. 85-86.

193 Available at: [www.olympijskytym.cz](http://www.olympijskytym.cz).

194 Survey amongst NOCs: NOC of Aruba; Czech NOC Athletes Commission, 23 July 2020.

195 Available at: [www.facebook.com/olympijskytym](http://www.facebook.com/olympijskytym).

196 Available at: [www.instagram.com/olympijskytym](http://www.instagram.com/olympijskytym).

197 Available at: [www.youtube.com/user/czecholympic](http://www.youtube.com/user/czecholympic).

198 Available at: [www.twitter.com/olympijskytym](http://www.twitter.com/olympijskytym).

199 Available at: [www.linkedin.com/company/olympijskytym/mycompany](http://www.linkedin.com/company/olympijskytym/mycompany).

200 Survey amongst members of the Czech NADO Athletes Commission; Czech NOC Athletes Commission, 23 July 2020.

201 ISE Guidelines, p. 38, 55-56.

202 Survey amongst members of the Czech NADO Athletes Commission; Czech NOC Athletes Commission, 23 July 2020.

203 Czech NADO, 1 August 2022.

Round Sports,<sup>204</sup> the Olympic Festivals with their educational and fair-play zone, the Olympic Run, the National Youth Sports Festival (“NYSF”),<sup>205</sup> the Sports Diplomacy, and the Dual Career.<sup>206</sup> On top of the online education, the activities and delivery methods may include face-to-face sessions, lectures, workshops, seminars, discussions, and conferences.<sup>207</sup> In this regard, the Czech NOC should cooperate with its stakeholders and help organise educational activities at events, including outreach booths,<sup>208</sup> stands at competitions,<sup>209</sup> and interviews.<sup>210</sup> To be more specific, the Czech NOC should help organize activities at elite camps,<sup>211</sup> including a workshop at the Top Camp.<sup>212</sup> Moreover, the Czech NOC should consider including educational activities in kick-off events and uniform collection.<sup>213</sup> The Czech NOC should also focus on young athletes participating in youth Olympic events, including the EYOF and the YOG,<sup>214</sup> and include educational activities in these events,<sup>215</sup> using, the Moyobo application, for example. Moreover, the Czech NOC should also organise a workshop for its staff responsible for taking the athletes and their support personnel to the Olympic events.<sup>216</sup>

Finally, the Czech NOC should identify people who will be responsible for delivering education,<sup>217</sup> including athletes where appropriate.<sup>218</sup> The involvement of famous and experienced athletes, including Olympic athletes,<sup>219</sup> may help leverage the anti-doping education.<sup>220</sup> The Czech NOC can do this thanks to good mutual relationships. Czech athletes want to participate in the anti-doping education and prevention, similar to athletes in other countries.<sup>221</sup> For example, the Czech NOC should for example organise panels with athletes at the Top Camp or other events

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204 Jiří Kejval, 10 September 2020.

205 Czech NOC Athletes Commission, 23 July 2020; Czech NADO (1), 26 August 2020; Jiří Kejval, 10 September 2020.

206 Olya Abasolo, 4 November 2019.

207 Survey amongst NOCs: Most NOCs (n = 28 | 58.33%) organise workshops or seminars; Czech NADO Athletes Commission; Alexander Károlyi, 6 April 2020.

208 WADC, ISE, Art. 5.7; Austrian NOC.

209 Survey amongst NOCs.

210 Survey amongst members of the Czech NADO Athletes Commission.

211 Survey amongst NOCs.

212 Survey amongst Czech athletes at the Top Camp; Olya Abasolo, 4 November 2019.

213 Survey amongst NOCs: Austrian NOC; Survey amongst Czech athletes at the Top Camp; Martin Doktor, 3 April 2020.

214 Czech NOC Athletes Commission, 23 July 2020.

215 Survey amongst NOCs: Austrian NOC; Survey amongst Czech athletes at the Top Camp; Martin Doktor, 3 April 2020.

216 ISE Guidelines, p. 101-10. Other educational activities and delivery methods that the Czech NOC should consider while implementing its education program include sport fairs and days of clean sport, school events, open or city events, consultations, sending information by e-mail, publishing articles, special education activities for children, including games, application, videos, or the OVEP, preparing ten “commandments” on what to do when athletes hesitate, publishing a list of prohibited and permitted drugs, or promotion of clean sport in the media. See Survey amongst NOCs; Survey amongst Czech athletes at the Top Camp; Czech NOC Athletes Commission, 23 July 2020; OVEP, Fundamentals of Olympic Values Education, p. 1-124.

217 WADC, Comment to Art. 18.2.2, ISE, Art. 5.8: Educators should be competent in values-based education and on all topics outlined in WADC, the ISE and the ISE Guidelines; see also Survey amongst Czech athletes at the Top Camp.

218 WADC, ISE, Art. 5.9; Survey amongst Czech athletes at the Top Camp; Czech NOC Athletes Commission, 23 July 2020; Olya Abasolo, 4 November 2019.

219 Survey amongst NOCs; Survey amongst members of the Czech NADO Athletes Commission.

220 Survey amongst members of the Czech NADO Athletes Commission; Martin Doktor, 3 April 2020.

221 Czech NOC Athletes Commission, 23 July 2020; Amatya, “Anti-Doping Education for Nepalese National and International Athletes,” 1-32.

where they can share their anti-doping experience.<sup>222</sup> The Czech NOC should also make videos with one or more athletes speaking about the basic anti-doping rules and common mistakes, post them on social networks and promote them,<sup>223</sup> as they did before the Games of the XXXII Olympiad in Tokyo.<sup>224</sup> Moreover, the Athletes Commissions of both the Czech NOC and the Czech NADO should play a role and cooperate in the anti-doping education.<sup>225</sup> In particular, the Czech NOC should engage its Athletes Commission, which can serve as a communication channel towards the athletes through videos or other tools. It can also serve as an intermediary between the athletes and the management of the Czech NOC.<sup>226</sup> In addition, the Czech NOC could also select young athletes as ambassadors of the clean sport.<sup>227</sup>

### **4.2.3. Evaluating the Education Program of the Czech Olympic Committee**

Having implemented its education program, the Czech NOC should evaluate it annually. The Czech NOC should particularly report the status of all objectives set in the education plan.<sup>228</sup> The Czech NOC should base the evaluation on all available information and data related to the specific objectives in the education plan. Moreover, the Czech NOC should determine to what extent it has met these objectives.<sup>229</sup> The Czech NOC should work with the Czech NADO and the Czech NFs on evaluating the effectiveness of its education program.<sup>230</sup> Moreover, the Czech NOC should seek partnerships in the academic field or with other research institutions to provide support for evaluation and research purposes where possible. On top of that, the Czech NOC can also use social science research to inform about the evaluation procedures.<sup>231</sup> The Czech NOC can do this through the COA. Finally, the evaluation of the education program of the Czech NOC should be used in the following year's education plan.<sup>232</sup>

## **4.3. ACTION PLAN**

After clarifying and establishing the roles and responsibilities of the Czech NOC in the anti-doping education, this section proposes an action plan with concrete steps that the Czech NOC should take to fulfil its roles and responsibilities effectively and sustainably. The Czech NOC took the first steps towards streamlining the anti-doping education in 2021 within the ASAP project. It prepared an educational video for athletes participating in the Games of the XXXII Olympiad in Tokyo.<sup>233</sup> It also required all participating athletes and their support personnel to educate themselves before the Olympic Winter Games Beijing 2022.<sup>234</sup> While

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222 Olya Abasolo, 4 November 2019.

223 Czech NOC Athletes Commission, 23 July 2020.

224 Tokyo 2020: How Anti-Doping Rules Work, Czech NOC (online), 30 June 2021; also available online here.

225 Olya Abasolo, 4 November 2019; Czech NADO, 1 August 2022.

226 Czech NOC Athletes Commission, 23 July 2020.

227 Survey amongst members of the Czech NADO Athletes Commission.

228 WADC, ISE, Art. 6.1: The evaluation report shall be provided to the WADA upon request with an overview or summary in English or French. See also WADC, ISE, Art. 9.1.

229 WADC, ISE, Art. 6.2.

230 Tony Cunningham, email to author, 1 September 2020.

231 WADC, ISE, Art. 6.3: The WADA offers social science research evidence to inform both evaluation of programs and design of education activities.

232 WADC, ISE, Art. 6.1.

233 Tokyo 2020: How Anti-Doping Rules Work, Czech NOC (online), 30 June 2021; also available online here.

234 Set of Documents for Participants in the XXIV Olympic Winter Games in Beijing 2022, Clean Sport, Athlete's Commitment, Athlete Support Personnel's Commitment; WADA, ADEL, ADEL for Olympic Winter Games Beijing

these activities are steps forward, they are only the beginning of the journey. The Czech NOC should primarily adjust its vision, mission, strategy, and action plan to include the anti-doping education. Moreover, it should designate a person or a group of people responsible for the anti-doping education. Furthermore, the Czech NOC should streamline its cooperation with the Czech NADO, the Czech NFs, athletes, and other stakeholders. Moreover, the Czech NOC should prepare a comprehensive education program and start implementing it in cooperation with its stakeholders. Finally, it should evaluate its education program annually and use the results of such evaluations for adjusting its education plan in the following years.

Priority	Recommendation	Action	Lead	Resources	Timescale	Critical Success Factor
1	Vision, mission, strategy and an action plan that includes the anti-doping education	Adjusting: vision mission strategy action plan Including the anti-doping education	Management Secretary General ASAP Team	Human Material Time	3 months	Agreement on the vision, mission, strategy, and action plan within the Czech NOC, including the priority of the anti-doping education
2	Person/department/ commission responsible for the anti-doping education ("ADE Responsible")	Appointing: person / department / commission Determining competences	Management Secretary General ASAP Team	Human Material Time	3 months	Commitment of leadership Integration into functioning of the Czech NOC
3	Working group with the Czech NADO	Negotiating the composition of the working group and its competences	Management ADE Responsible	Human Material Time	4 months	Commitment of the Czech NOC Commitment of the Czech NADO
4	Memorandum with the Czech NADO	Negotiating the terms of the memorandum	Management ADE Responsible	Human Material Time	4 months	Commitment of the Czech NOC Commitment of the Czech NADO
6	Education Program: Planning	Assessing the current situation	ADE Responsible	Human Material Time	1 month	Correct and timely planning Cooperation with the Czech NADO
		Establishing an education pool	ADE Responsible	Human Material Time	2 months	Correct and timely planning Cooperation with the Czech NADO
		Setting objectives and activities	ADE Responsible	Human Material Time	3 months	Correct and timely planning Cooperation with the Czech NADO
		Setting monitoring procedures	ADE Responsible	Human Material Time	4 months	Correct and timely planning Cooperation with the Czech NADO
7	Education Program: Implementation	Identifying the educational activities and delivery methods	ADE Responsible	Human Material Time	5 months	Correct and timely implementation Cooperation with the Czech NADO
		Identifying projects for the anti-doping education	ADE Responsible	Human Material Time	5 months	Correct and timely implementation Cooperation with the Czech NADO

		Assigning educators	ADE Responsible	Human Material Time	6 months	Correct and timely implementation Cooperation with Bthe Czech NADO
8	Education Program: Evaluation	Report on the status of all objectives Create the basis for the next year's education plan	ADE Responsible	Human Material Time	Annually	Correct and timely evaluation Cooperation with the Czech NADO

## 5. CONCLUSION

The anti-doping education is an essential element of the fight against doping. Moreover, it belongs amongst principles of good governance as a condition of the self-regulatory autonomy of ADOs in the EU. Therefore, ADOs should streamline the anti-doping education to strengthen their good governance and autonomy. In this regard, clarification of the educational roles and responsibilities of ADOs and their cooperation are the keys to effective education. This paper examined the educational roles, responsibilities and cooperation of ADOs, in particular the NOCs, using the case study of the Czech NOC. This paper focused on clarifying and establishing the role of the Czech NOC in the anti-doping education and recommended how the Czech NOC should effectively and sustainably exercise its educational responsibilities. Nevertheless, all NOCs may benefit from the outcomes of this paper since the WADC provides them with the same educational roles and responsibilities.

The Czech NOC plays an important role in the anti-doping education that is based on cooperation with the Czech NADO, the Czech NFs, and other anti-doping stakeholders. The primary responsibility of the Czech NOC is cooperation with the Czech NADO, particularly in ensuring that all athletes and their support personnel receive the anti-doping education before participating in the Olympic Games, or any event in which the Czech NOC participates or that it hosts. Moreover, the Czech NOC should cooperate with the Czech NFs and require them to conduct education in coordination with the Czech NADO. While exercising its educational responsibilities under the WADC, the Czech NOC should use its four main strengths related to education: (1) good relationships with athletes resulting in a possibility to involve them in planning and delivering education, thus making education more attractive for its target groups; (2) a unique position in the sporting environment; (3) the power and properties of the Olympic brand; and (4) the cultural context.

Cooperation with the Czech NADO is a key part of the Czech NOC's role in the anti-doping education. The Czech NOC and the Czech NADO should primarily cooperate on the education of participants in events where the Czech NOC participates or which it hosts. On top of that, the Czech NOC should use its strengths to support other educational activities of the Czech NADO, which is the main deliverer of education. The Czech NOC has the potential to increase value of the Czech NADO's educational activities thanks to its relationships with athletes, the Olympic brand and properties, its activities and projects, and its position in the sporting environment. Therefore, the Czech NOC should help the Czech NADO to access athletes and their support personnel.

Moreover, the Czech NOC should cooperate in the anti-doping education with the Czech NFs,



as its members and performance partners. The Czech NFs are primarily responsible for educating athletes and their support personnel in clean sport. The Czech NOC should primarily require the Czech NFs to cooperate with the Czech NADO so that all athletes and their support personnel nominated by the Czech NFs receive education in advance of events where the Czech NOC participates or which it hosts. Such events include the Olympic Games, the World Games, the European Games, the EYOF, and the YOG. Moreover, the Czech NOC should support the effort of the Czech NFs and the Czech NADO by boosting the anti-doping education within these events and within other activities and projects. On top of that, the Czech NOC should further support the existing or future educational activities of the Czech NFs. Simultaneously, the Czech NOC should also support the Czech NADO in promoting education within the Czech NFs.

The Czech NOC should simultaneously plan, implement, and evaluate its education program in cooperation with athletes, the Czech NADO, the Czech NFs, and other stakeholders. First, the Czech NOC should develop its education plan. While doing so, it should assess its current situation, environment, and existing activities. It is important that the Czech NOC identifies its human, financial, and material resources. Furthermore, the Czech NOC should establish an education pool by first listing and then prioritising athletes, their support personnel and other target groups. Moreover, the Czech NOC should set clear objectives and identify related activities, delivery methods and projects for implementing its education program. Furthermore, the Czech NOC should assign educators, including athletes. Finally, the Czech NOC should regularly monitor and annually evaluate its education program to improve its future editions.

This paper laid the groundwork for the effective and sustainable exercise of the roles and responsibilities of the Czech NOC in the anti-doping education to strengthen its governance in the fight against doping. It particularly suggested ways of cooperation between the anti-doping stakeholders. Nevertheless, such groundwork is only the first step on a journey toward streamlining the anti-doping education. Now comes the time for the Czech NOC and its partners to start acting according to this paper's recommendations. The Czech NOC should plan, implement, and evaluate its education program within the ASAP project. Simultaneously, the Czech NOC should streamline its cooperation with athletes, the Czech NADO, the Czech NFs, and other stakeholders. Only then can the Czech NOC fulfil its roles and responsibilities in the anti-doping education. Only then can it contribute to the clean sport through a more effective and sustainable prevention and deterrence of athletes and other persons from doping. Only then can it strengthen its governance and autonomy in the fight against doping.

## **Abbreviations**

ADE Responsible	Person/department/commission on anti-doping education
ADEL	Anti-Doping eLearning Platform
ADO	Anti-Doping Organization
ALPHA	Athlete Learning Program about Health and Anti-Doping
ASADA	Australian Sports Anti-Doping Authority
CCA	Czech Coaching Academy
CCES	Canadian Centre for Ethics in Sport
CCFP	Czech Club of Fair Play
CEADO	Central European Anti-Doping Organisation
CISP	WADC Implementation Support Program
WADC	World Anti-Doping Code
CSF	Critical success factor
Czech NADO	Czech Anti-Doping Committee
Czech NF	Czech National Federation
Czech NOC	Czech Olympic Committee
Czech NPC	Czech Paralympic Committee
EYOF	European Youth Olympic Festival
IOC	International Olympic Committee
ISE	The 2021 International Standard for Education
ISE Guidelines	Guidelines for the 2021 International Standard for Education
MEMOS	Executive Masters in Sport Organizations Management
NADO	National Anti-Doping Organisation
NOC	National Olympic Committee
NSA	National Sports Agency (Czech Republic)
NSC	National Sport Confederation
NYSF	National Youth Sport Festival
OVEP	Olympic Values Education Programme
RADO	Regional Anti-Doping Organisation
TUE	Therapeutic Use Exemption
USADA	United States Anti-Doping Agency
YOG	Youth Olympic Games
WADA	World Anti-Doping Agency

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## Appendices

### Appendix 1: The Czech Olympic Committee: Vision, Mission, Values

#### Czech Olympic Committee Vision, Mission, Values



VISION	Healthier Czech society thanks to sport	
MISSION	Inspire Czechs, and in particular children, to experience a daily feeling of pride thanks to sport (active and passive)	
BENEFIT	Everyone can experience pride and joy from their own efforts, from pushing their limits and from the performance of national representatives	
ESSENCE	Pride from sport	
VALUES CHARACTER	Pride and joy, fairness and respect, efforts and success	Friendship, open, leadership, modern
EMOTIONAL REASONS	Inspired, Motivated, Proud, Content	
RATIONAL REASONS	Sport transforms the lives of individuals and society for the better. Inspiring international performances of our Olympians. Czech Team as a team of people sharing the same thought.	

## Appendix 2: Survey: The National Olympic Committees: Questions<sup>235</sup>

To Whom It May Concern,

I am writing on behalf of (the Czech NOC) concerning a research project focusing on the roles and responsibilities of (NOCs) in the anti-doping education. As part of the course Executive Masters in Sport Organizations Management (MEMOS), I have been developing a project seeking the roles and responsibilities of (the Czech NOC) in clean sport education in the Czech Republic.

Article 20.4.11 (of the World Anti-Doping Code 2015) provides that all NOCs shall “promote the anti-doping education, including requiring (NFs) to conduct the anti-doping education in coordination with the applicable (NADO).” Nevertheless, there is no uniform standard specifying how exactly should the NOCs implement this obligation and what should they do.

During the course of my research, I have been trying to find out how various NOCs promote the anti-doping education in their countries. With that said, I would appreciate it if you could take time to answer the questions below on behalf of your NOC. I would be more than happy to share the results of my research with you. If there are any questions, please do not hesitate to contact me: [exner@olympic.cz](mailto:exner@olympic.cz). Thank you very much for your time and responses.

Kind regards, Jan Exner

The Czech Olympic Committee

### Questions

- 1) What NOC or other organisation do you represent? (\* = required)
- 2) What is the role of your NOC in the anti-doping education in your country?\*
- 3) What target groups does your NOC focus on (athletes and their support personnel participating in the Olympic events; all athletes and their support personnel; the public, etc.)?\*
- 4) Does your NOC directly educate the target groups in the clean sport area? If yes, what activities does your NOC organize?\*
- 5) Does your NOC cooperate with NADO regarding the anti-doping education? If yes, how does such cooperation look like? Is there any formal document describing the cooperation?\*
- 6) Does your NOC cooperate with NFs in the anti-doping education? If yes, how does such cooperation look like? Is there any formal document describing the cooperation?\*
- 7) Is there anything else that you consider important when it comes to your NOC's roles and responsibilities in the clean sport education in your country?
- 8) Can I additionally contact you with more specific questions? If yes, please provide your e-mail.

### Information on the personal data processing

I acknowledge that the Czech NOC, with its registered office at Benešovská 6, 101 00 Prague 10, IČ: 48546607 (Czech NOC), will process my email to participate in the Jan Exner research project as part of the MEMOS educational program, to whom I give my consent by providing this email. I understand that this consent, which is granted until its withdrawal, is voluntary and can be revoked at any time by sending an email to [exner@olympic.cz](mailto:exner@olympic.cz). Further information on the rights of data subjects and the personal data processing by the Czech NOC is available on the Czech NOC's website.

<sup>235</sup> Appendix 2: Survey amongst NOCs: Questions; also available online: [https://docs.google.com/forms/d/e/1FAIpQLSeLmE6qO9KVw6VoN9LxhWmGftppxTfGZVNQ2aoCCfTh\\_68SA/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSeLmE6qO9KVw6VoN9LxhWmGftppxTfGZVNQ2aoCCfTh_68SA/viewform?usp=sf_link).

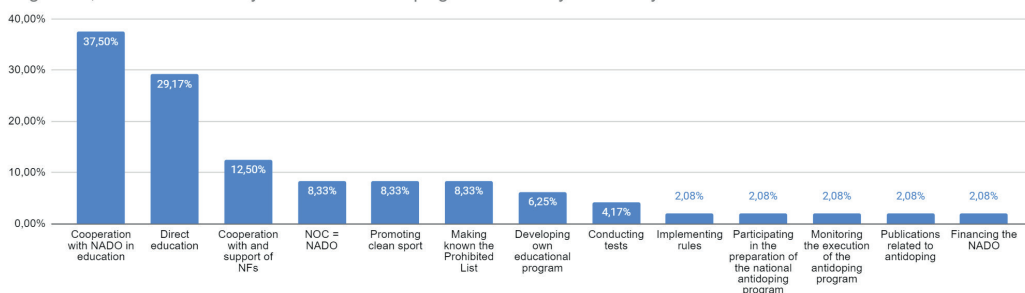
### Appendix 3: Survey: The National Olympic Committees: All Results<sup>236</sup>

50 NOCs out of 206 responded (24.27%).

*Question 2: What is the role of your NOC in the anti-doping education in your country?*

• Cooperation with NADO in education	18
• Direct education	14
• NFs' cooperation and support	6
• NOC = NADO	4
• Clean sport promotion	4
• Informing about the Prohibited List	4
• Developing own educational program	3
• Conducting tests	2
• Implementing rules	1
• Participating in the preparation of the national anti-doping program	1
• Monitoring the execution of the anti-doping program	1
• Publications related to anti-doping	1
• Financing NADO	1

In general, what is the role of your NOC in anti-doping education in your country?



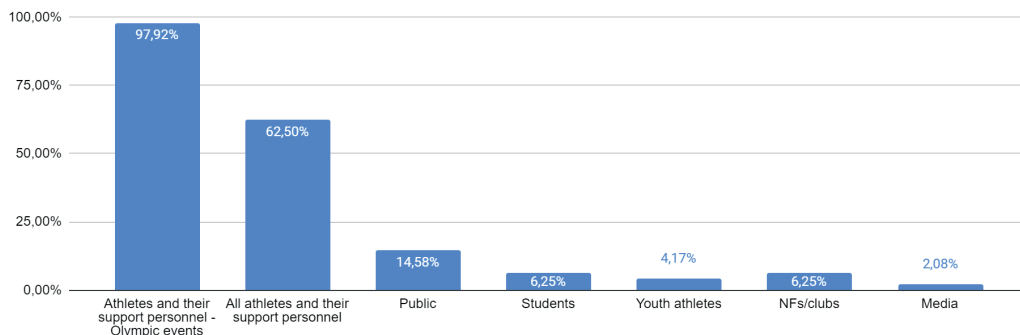
*Question 3: What target groups does your NOC focus on (athletes and their support personnel participating in the Olympic events; all athletes and their support personnel; the public etc.)?*

• Athletes and their support personnel participating in the Olympic events	47
• All athletes and their support personnel	30
• Public	7
• Students of sport schools	3
• Youth athletes	2
• National federations/clubs	3
• Media	1

<sup>236</sup> Appendix 3: Survey amongst NOCs: All Results; also available online: [https://docs.google.com/spreadsheets/d/1JW1kx2rmzv43zXY\\_mL2NAHlxoodvbcTDzDTgmo3Cigw/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1JW1kx2rmzv43zXY_mL2NAHlxoodvbcTDzDTgmo3Cigw/edit?usp=sharing).



What target groups does your NOC focus on?



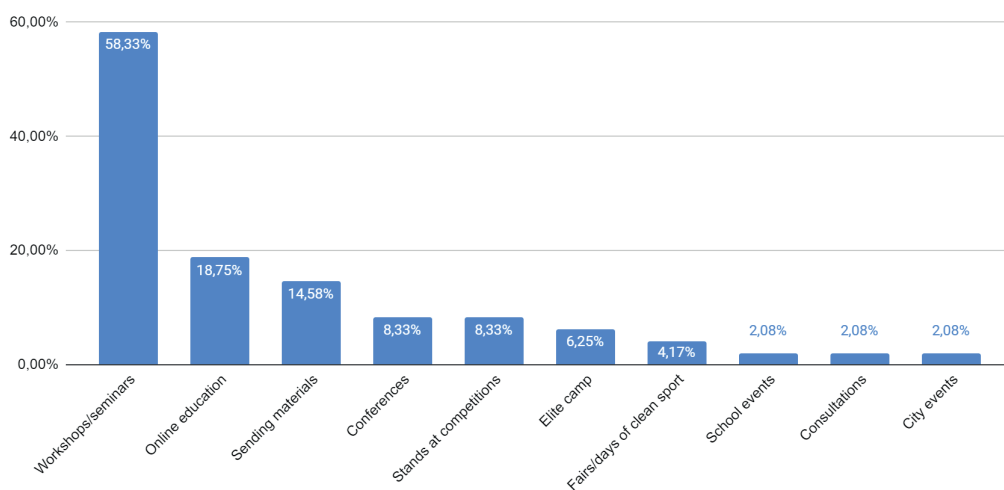
Question 4a: Does your NOC directly educate the target groups in the clean sport area?

- Yes 36
- No 12

Question 4b: If so, what activities does your NOC organize?

- Workshops/seminars 28
- Online education 9
- Sending materials 7
- Conferences 4
- Stands at competitions 4
- Elite camp 3
- Sport fairs/Days of clean sport 2
- School events 1
- Consultations 1
- City events 1

If yes, what activities does your NOC organize?



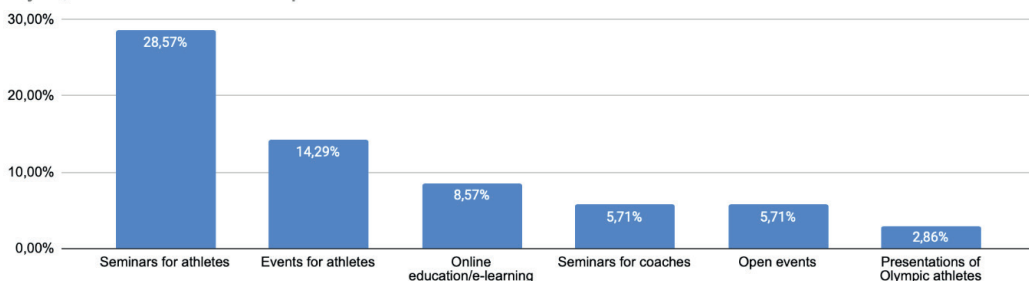
**Question 5a: Does your NOC cooperate with NADO regarding the anti-doping education?**

- Yes 35
- No 13

**Question 5b: If yes, how does such a cooperation look like?**

- Seminars for athletes 10
- Events for athletes 5
- Online education/e-learning 3
- Seminars for coaches 2
- Open events 2
- Olympic athletes' presentations 1

If yes, how does such a cooperation look like?



**Question 5c: Is there any formal document describing the cooperation?**

- Yes 5
- No 30

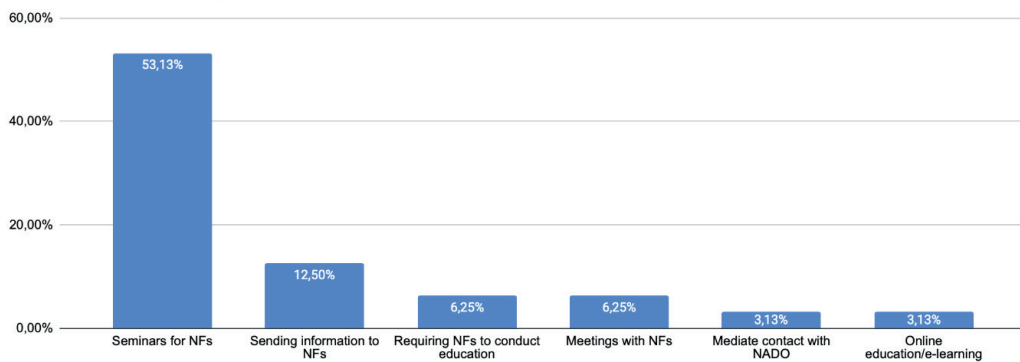
**Question 6a: Does your NOC cooperate with NFs regarding the anti-doping education?**

- Yes 32
- No 11

**Question 6b: If yes, how does such a cooperation look like?**

- Seminars for national federations 17
- Sending information to national federations 4
- Requiring national federations to conduct the anti-doping education 2
- Meetings with national federations 2
- Mediate contact with NADO 1
- Online education/e-learning 1

How does such a cooperation look like?



Question 6c: Is there any formal document describing the cooperation?

- Yes 0
- No 9

#### Appendix 4: Survey: The Czech National Federations: Questions<sup>237</sup>

The Czech NFs are members and main partners of the Czech NOC. The goal of the Czech NOC is to support all activities of the Czech NFs. This also applies to the fight against doping, including related education. According to the WADC, the role of the Czech NOC is to cooperate with the Czech NADO and to support the anti-doping education run by the Czech NFs.

The Czech NOC sends athletes and their support personnel to the Olympic Games, YOG, EYOFs, the World Games, the European Games, and the Beach Games. The Czech NOC is obliged to ensure, in cooperation with the Czech NFs and the Czech NADO, that all athletes and their support personnel participating in these events know the basic information on the fight against doping.

We would like to know in what specific way, in your opinion, the Czech NOC could contribute to improving awareness of the fight against doping among athletes, coaches, and other members and persons within your Czech NF. Thank you in advance for your answers to the questions below. They will help us to better fight doping together.

The specific answers provided by the Czech NF's representatives will not be published anywhere. The answers will only statistically be evaluated for the research project.

In case of any questions, please do not hesitate to contact Jan Exner: [exner@olympic.cz](mailto:exner@olympic.cz).

The Czech Olympic Committee

#### Questions

Czech NF: (\* = required)

1) Does your Czech NF represent a sport that had at least one discipline included in the program of the following Olympic Games (Tokyo 2020, Beijing 2022)? \*

- Yes
- No

2a) Does the Czech NF that you represent educate athletes, coaches, and other persons on the importance of fighting doping and their rights and responsibilities in this area are? \*

- Yes
- No

2b) If so, how is the education carried out?

2c) If not, why?

3a) Does the Czech NF that you represent cooperate in the anti-doping education of your athletes, coaches, and other persons with the Czech NADO? \*

- Yes
- No

3b) If so, how does the cooperation look like?

3c) If not, why?

4a) Would the Czech NF that you represent appreciate the Czech NOC actively supporting the anti-doping education of your athletes, coaches, and other persons?

- Yes
- No

4b) If so, how can the Czech NOC specifically help your Czech NF? (more answers are possible)

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237 Appendix 4: Survey amongst the Czech NFs: Questions; also available online: [https://docs.google.com/forms/d/e/1FAIpQLSeaVA8IsFSPwTGih48eZbwjMcKe5RcYIGi5p77ybR59rz7ADg/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSeaVA8IsFSPwTGih48eZbwjMcKe5RcYIGi5p77ybR59rz7ADg/viewform?usp=sf_link) (in Czech). The author's translation from Czech into English.

- Support the existing educational activities of the Czech NADO
- Support the existing educational activities of the Czech NFs
- Organize or create new educational activities
- Other

4c) Please expand your previous answer.

5) According to the Czech NF that you represent, what target groups should the Czech NOC focus on supporting? (more answers are possible)

- Athletes and their support personnel participating in the events where the Czech NOC participates or hosts
- Athletes participating in the events where the Czech NOC participates or hosts, particularly for the youth or junior age
- Athletes, coaches, and other persons outside the events where the Czech NOC participates or hosts
- Athletes even outside the events where the Czech NOC participates or hosts, particularly for the youth or junior age
- Wider public
- Other

6) Is there any other way how the Czech NOC could support your Czech NF's anti-doping educational activities?

7) Do you have another suggestion regarding the role of the Czech NOC in the anti-doping education?

Can we contact you with further questions? If yes, please enter your e-mail.

#### *Consent to the personal data processing*

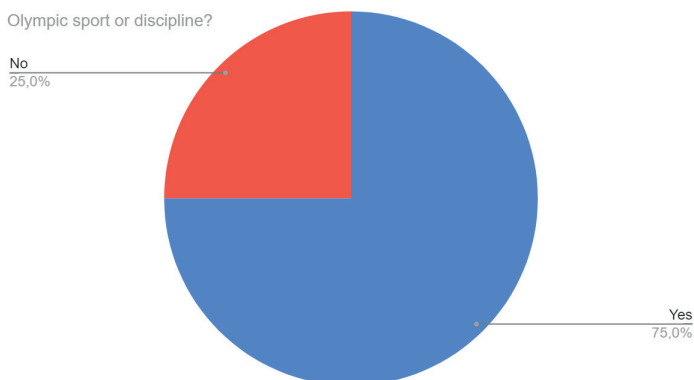
By providing your email, you agree for the Czech NOC, with its registered office at Benešovská 1925/6, 101 00 Prague 10, ID: 48546607 ("Czech NOC"), to process your e-mail for possible further contact as part of the research project concerning the role of the Czech NOC in the anti-doping education. This consent for the processing of your email for the stated purpose, which is granted until its withdrawal, is voluntary and can be revoked at any time by sending an e-mail to [exner@olympic.cz](mailto:exner@olympic.cz). Additional information on the rights of data subjects and the personal data processing by the Czech NOC is available at [www.olympic.cz](http://www.olympic.cz).

## Appendix 5: Survey: The Czech National Federations: All Results<sup>238</sup>

20 out of 61 Czech NFs responded (32.79%).

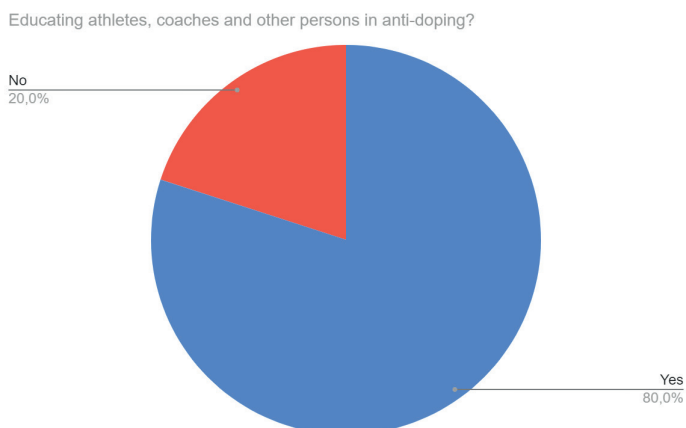
*Question 1: Does your NF represent a sport that has at least one discipline included in the program of the following Olympic Games (Tokyo 2020, Beijing 2022)?*

- Yes 15
- No 5



*Question 2a: Does the Czech NF that you represent educate athletes, coaches, and other persons on the importance of fighting doping and their rights and responsibilities in this area?*

- Yes 16
- No 4



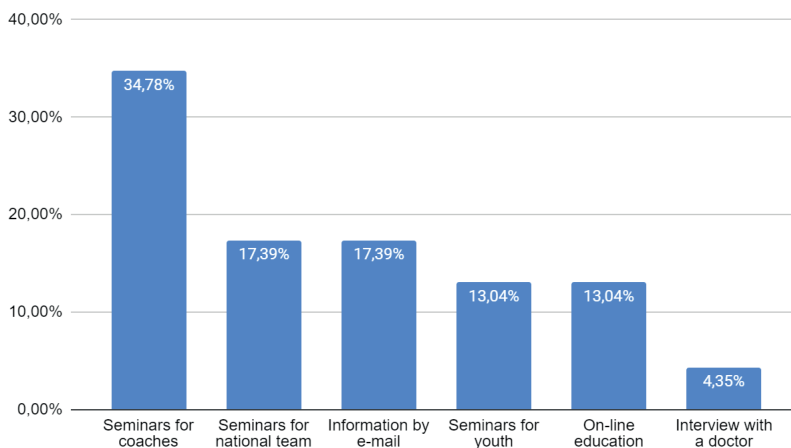
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238 Appendix 5: Survey amongst the Czech NFs: All Results; also available: <https://docs.google.com/spreadsheets/d/1S804oDo404jWjKA0ym0gKhytx9udme22JMZHpuRYCB4/edit?usp=sharing> (in English).

**Question 2b: If so, how is the education carried out?**

- Seminars for coaches 8
- Seminars at sports camps for the national team 4
- Information by e-mail 4
- Seminars for talented youth 3
- Online education/e-learning 3
- Interview with a doctor 1

If so, how is the education carried out?



**Question 2c: If not, why?**

- Lack of lecturers with knowledge on the issue 2
- No time left for systematic education 1

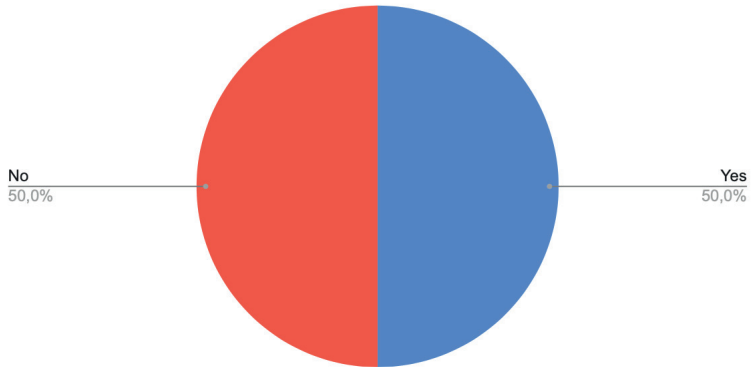
**Question 3a: Does the Czech NF that you represent cooperate with the Czech NADO in the anti-doping education of your athletes, coaches, and other persons?**

- Yes 10
- No 10



**Question 3a**

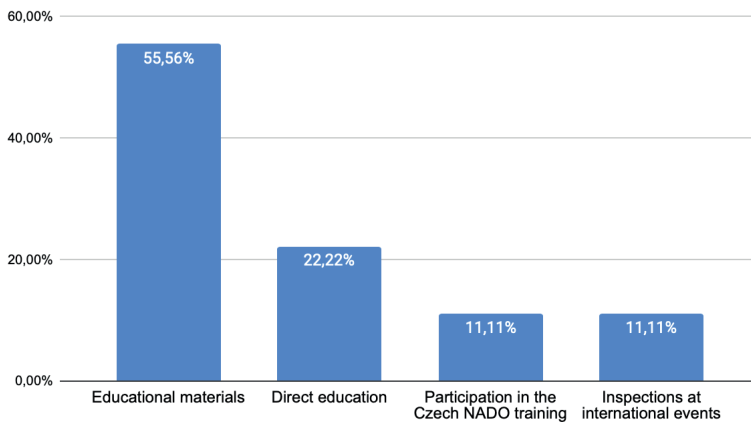
Cooperation with the Czech NADO?



*Questions 3b: If so, how does the cooperation look like?*

- Receiving educational materials 5
- Direct education 2
- Participation of a Czech NF's representative in the Czech NADO's education 1
- Requesting inspections when organizing international events 1

If so, how does the cooperation looks like?:

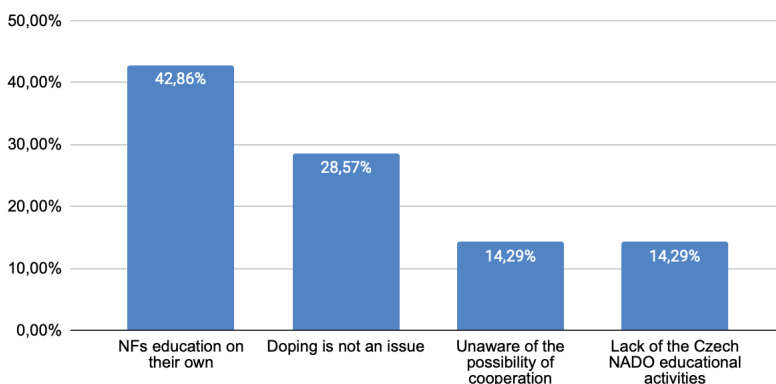


*Questions 3c: If not, why?*

- The Czech NFs' education is on its own 3
- The issue of doping is not considered important 2
- Unaware of the possibility of cooperation 1
- The Czech NADO did not undertake many educational activities 1

### Question 3c

If not, why?

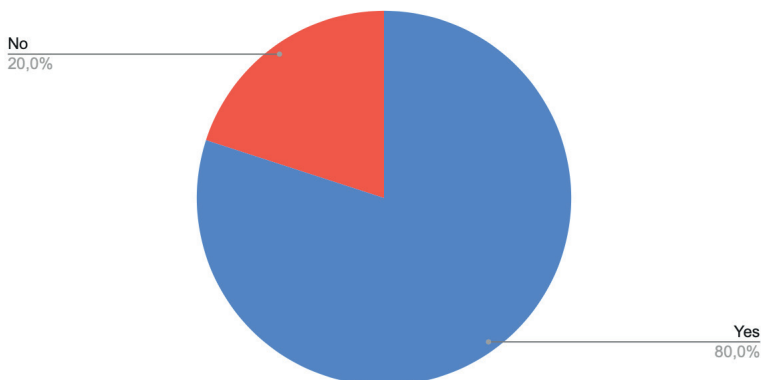


*Question 4a: Would the Czech NF that you represent appreciate the Czech NOC actively supporting the anti-doping education of your athletes, coaches, and other persons?*

- Yes 16
- No 4

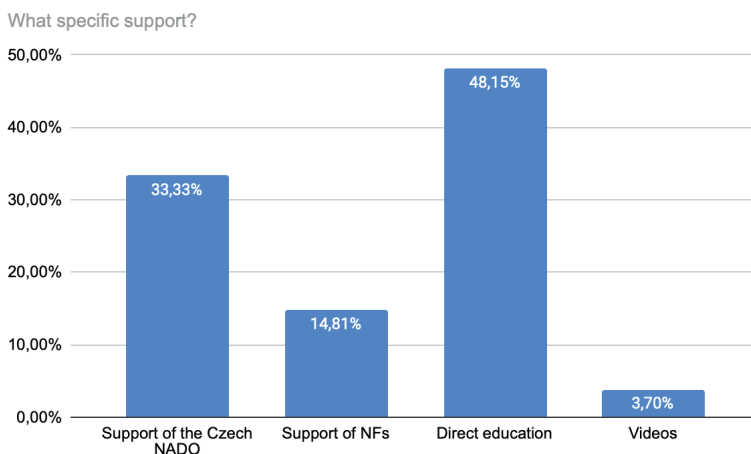
### Question 4a

Support of the Czech NOC?



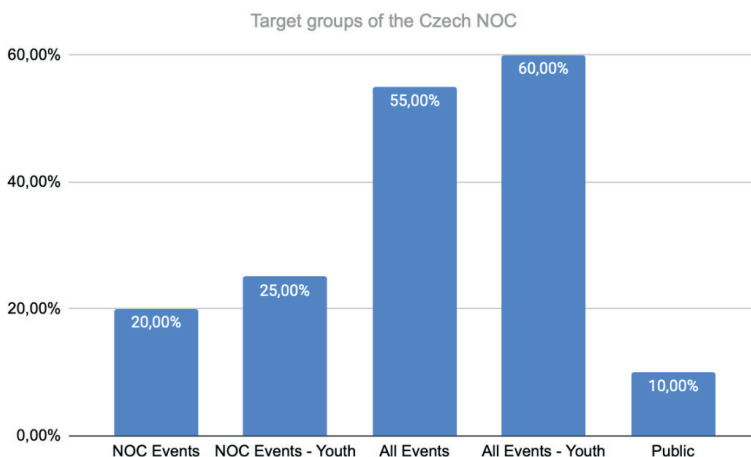
*Question 4b: If so, how can the Czech NOC specifically help your Czech NF?*

- Organize or create new educational activities 13
- Support the existing educational activities of the Czech NADO 9
- Support the existing educational activities of the Czech NFs 4
- Create videos in cooperation with YouTubers 1



Question 5: According to the Czech NF that you represent, what target groups should the Czech NOC focus on supporting?

- Athletes participating not only in the Czech NOC events (youth or junior categories) 12
- Athletes and their support personnel participating not only in the Czech NOC events 11
- Athletes participating in the Czech NOC events (youth or junior categories) 5
- Athletes and their support personnel participating in the Czech NOC events 4
- Public 2



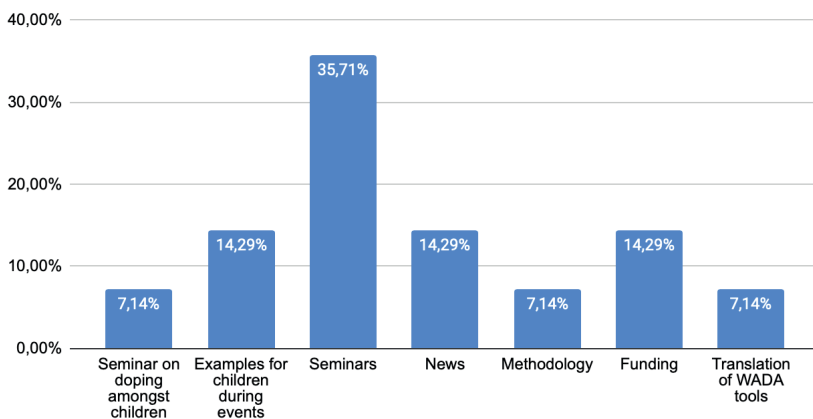
Question 6: Is there any other way how the Czech NOC could support your Czech NF's anti-doping educational activities?

- Seminars 5
- Illustrative examples for children during events 2
- Sending news and information 2
- Funding for the Czech NF or the Czech NADO 2

- Seminar focusing on the doping amongst children and the influence of coaches 1
- Creating a methodology on education 1
- Translation of the WADA e-learning tools 1

### Question 6

Other ways to support the NF's anti-doping educational activities



*Question 7: Do you have another suggestion regarding the role of the Czech NOC in the anti-doping education?*

- Media House 1
- Reminders 1
- Special doping-disputes resolution body 1

## Appendix 6: Survey: The Czech Athletes at the Top Camp: Questions<sup>239</sup>

Dear (name),

I'm glad to meet you at the Top Camp, and I hope you are doing well in sports and beyond (...). Thank you very much for your willingness to participate in my research (...). I am looking at how (the Czech NOC) could contribute to education of the Czech athletes in the clean sport area. I believe that athletes' first experience regarding the fight against doping should be through education rather than doping control. Athletes' opinions are valued the most for all activities of (the Czech NOC), and for this reason I would like to obtain your opinion on this matter as well. I would be grateful if you answer a few questions in the following questionnaire.

If you have any questions, please let me know.

Thank you in advance!

Honza Exner

### Questions

- 1) What is your sport? (\* = required)
- 2) Are you educated on the importance of fighting doping and your rights and obligations in this area? \*
  - Yes
  - No
- 3a) Where do you get information on the fight against doping? \* (more answers are possible)
  - From my Czech NF
  - From the Czech NADO
  - From my international federation
  - From my coach
  - Self-study
  - Other
- 3b) If you had chosen "other," please explain.
- 4) Please check those areas in which you have received the information. \* (more answers are possible)
  - Substances and methods on the Prohibited List
  - Anti-doping rule violations
  - Consequences of doping, including sanctions, health, and social consequences
  - Doping control procedures
  - Athletes' and athlete support personnel's rights and responsibilities
  - Therapeutic use exemptions
  - Managing the risks of nutritional supplements
  - Harm of doping to the spirit of sport
  - Applicable whereabouts requirements
- 5a) Do you know enough regarding anti-doping and your sporting activity? \*
  - Yes, I have enough information.
  - I have some information, but I do not know if it is enough.
  - No, I do not have enough information.

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239 Appendix 6: Survey amongst Czech athletes at the Top Camp: Questions; also available online: [https://docs.google.com/forms/d/e/1FAIpQLSfdGgpxu4o2Z5MaonizQXvL5nyk59CN7dyRiUwe\\_Lz2SY-lTw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSfdGgpxu4o2Z5MaonizQXvL5nyk59CN7dyRiUwe_Lz2SY-lTw/viewform?usp=sf_link) (in Czech). The author's translation from Czech into English.

5b) If not, what areas (question 4) would you like to know more about? (more answers possible)

6a) The Czech NOC should ensure that athletes and athlete support personnel selected to participate in any event where the Czech NOC participates or hosts, receive basic anti-doping information. Could the Czech NOC do anything else so that you have enough information for your Olympic event? \*

- Yes, the Czech NOC could send the information more in advance.
- Yes, but I do not know what exactly.
- No, I have enough information, or I will get it differently.
- Yes, I have an idea of what the Czech NOC could do and I will make suggestions.

6b) If you have any suggestions, please write them down.

7a) Would you appreciate it if the Czech NOC supported the anti-doping education more within your Czech NF or the Czech NADO? \*

- No, the Czech NOC has other tasks.
- Yes, but I cannot think of what the Czech NOC should do.
- Yes. I have a specific idea of what the Czech NOC could do.

7b) If you have any suggestions, please write them down.

8a) Would you like to have a workshop on anti-doping at the next TOP Camp? \*

- Yes, sure. It is a great idea.
- No. Other workshops are more interesting. I will get the information differently.
- I do not have an opinion.

8b) What should such a workshop ideally be about?

- Discussion about the meaning of sport without doping
- An overview of the basic information on the fight against doping according to the questions above (question 4)
- Something else

8c) If you had chosen "something else," what should it be about?

8d) Who should lead such a workshop?

- One of us - an athlete who knows the area
- Someone who knows all the rules and can tell us what we can and cannot do.
- Someone else: If so, who?

9a) In your experience, would you appreciate it if the Czech NOC promoted the anti-doping education also amongst youth athletes participating in the youth Olympic events? \*

- Yes, sure. The sooner athletes get informed about clean sport, the better.
- No, I do not think it is necessary. These athletes have information from the Czech NFs or they obtain it otherwise.
- I do not know.

9b) Other ideas on how the Czech NOC should help in promoting the anti-doping education in the Czech Republic.

**Appendix 7: Survey: The Czech Athletes at the Top Camp: All Results<sup>240</sup>**

10 out of 16 athletes responded (62.5%).

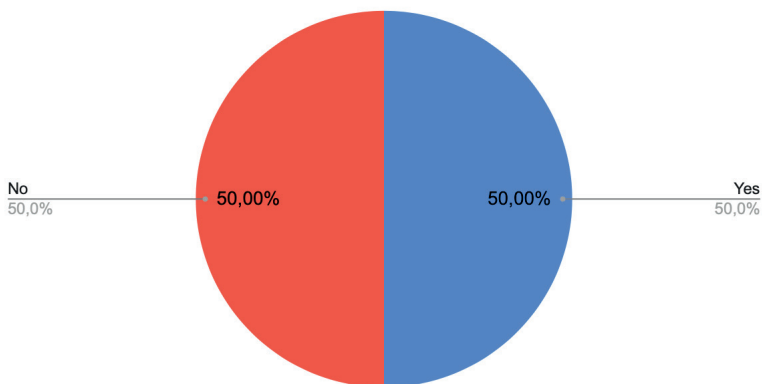
*Question 1: What is your sport?*

• Canoe slalom	3
• Hammer throw	1
• Ski cross	1
• Fencing	1
• Canoe sprint	1
• Swimming	1
• Table tennis	1
• Beach volleyball	1

*Question 2: Are you educated on the importance of fighting doping and your rights and obligations in this area?*

• Yes	5
• No	5

Are you educated on why it is important to fight doping and what are your rights and obligations in this area?



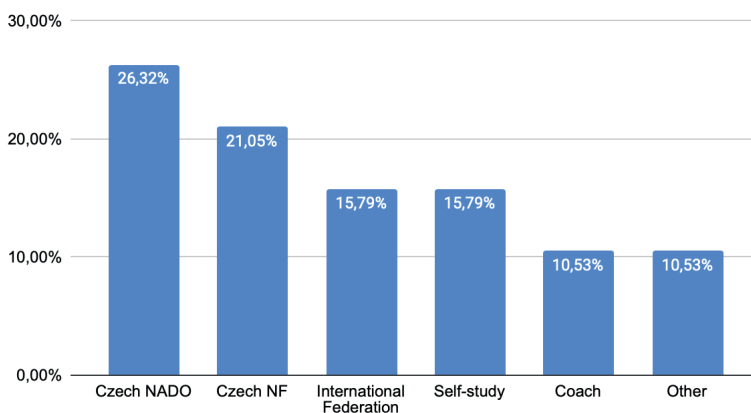
*Question 3a: Where do you get information on the fight against doping?*

• From the Czech NADO	5
• From my Czech NF	4
• From my international federation	3
• Self-study	3
• From my coach	2
• Other	2

<sup>240</sup> Appendix 7: Survey amongst Czech Athletes at the Top Camp: All Results; also available online: <https://docs.google.com/spreadsheets/d/1RSI41dNla3FDzj-81Ab8vf6l7SIsCRYuHrsPs3xu1fc/edit?usp=sharing>.



Where do you get information about the fight against doping?



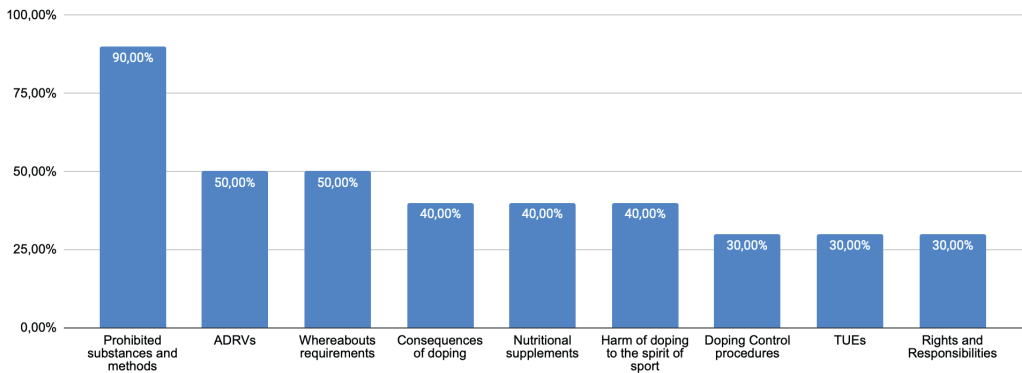
Question 3b: If you chose "other," please specify.

- Mandatory questionnaire "I Run Clean" 1
- Asking the Czech NADO and from the WADA website 1
- Jan Exner: lawyer of the Czech NOC 1
- Fellow athletes, articles, Internet, commissioners (during the doping control), consultations with doctor 1

Question 4: Please check those areas in which you have received the information.

- Substances and methods on the Prohibited List 9
- Anti-doping rule violations 5
- Applicable whereabouts requirements 5
- Consequences of doping, including sanctions, health and social consequences 4
- Managing the risks of nutritional supplements 4
- Harm of doping to the spirit of sport 4
- Doping control procedures 3
- Therapeutic use exemptions 3
- Athletes' and athlete support personnel's rights and responsibilities 3

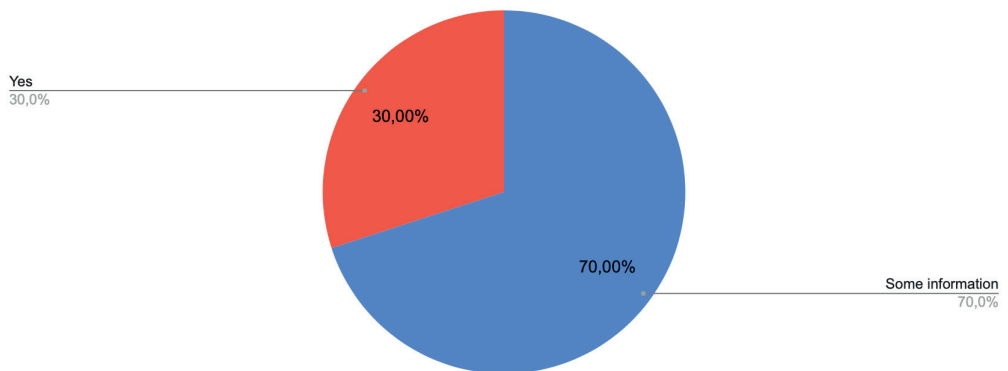
Please check those areas you get the information about.



*Question 5a: Do you know enough regarding the anti-doping and your sporting activity?*

- I have some information, but I do not know if it is enough. 7
- Yes, I have enough information. 3
- No, I do not have enough information. 0

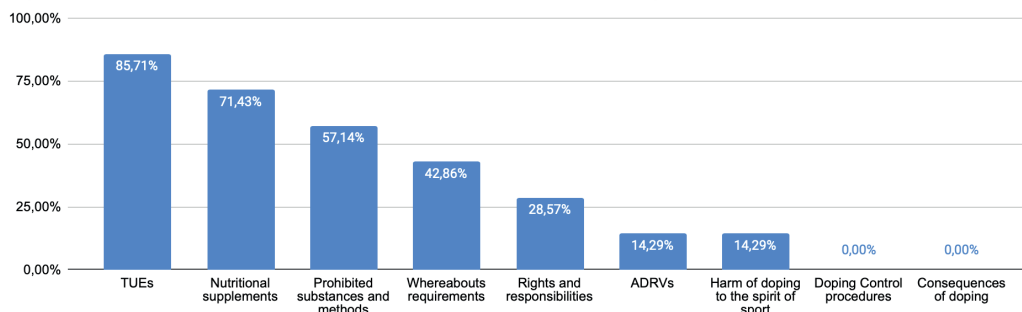
Regarding anti-doping and your sporting activity, do you know all that you need to know?



*Question 5b: If not, what areas (question 4) would you like to know more about?*

- Therapeutic use exemptions 6
- Managing the risks of nutritional supplements 5
- Substances and methods on the Prohibited List 4
- Applicable whereabouts requirements 3
- Athletes' and athlete support personnel's rights and responsibilities 2
- Anti-doping rule violations 1
- Harm of doping to the spirit of sport 1

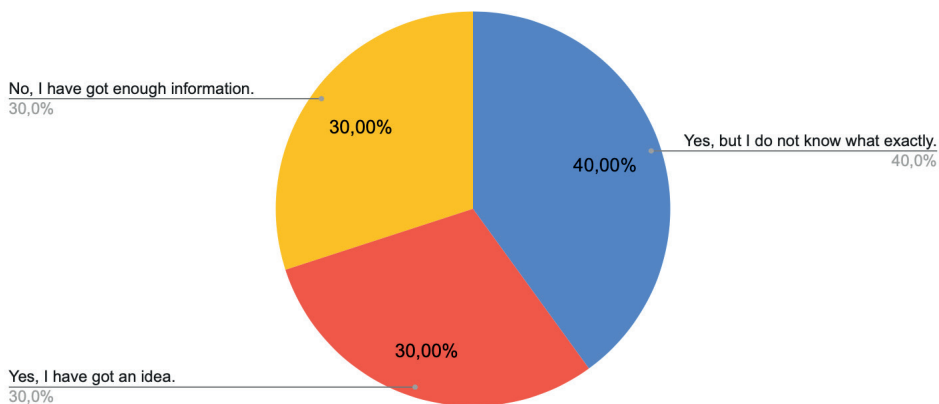
If you chose the second or the third answer, in which areas would you like to know more information?



*Question 6a: The Czech NOC should ensure that athletes and athlete support personnel selected to participate in any event where the Czech NOC participates or hosts, receive basic anti-doping information. Could the Czech NOC do anything else so that you have enough information for your Olympic event?*

- Yes, but I do not know what exactly. 4
- Yes. I have an idea of what the Czech NOC could do and I will make suggestions. 3
- No, I have enough information, or I will get it differently. 3

Could the Czech NOC do anything else so that you have got enough information ahead of your Olympic event?



*Question 6b: If you have any suggestions, please write them down.*

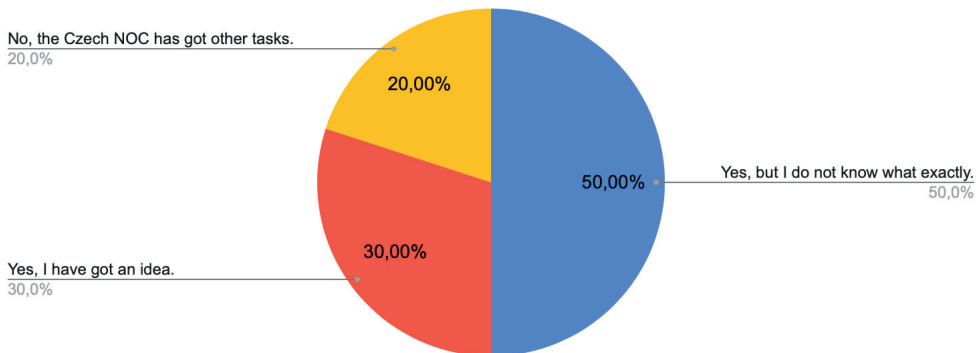
- Information e-mail or short article, updated list of permitted drugs 1
- Ten things to do when I do not know 1
- Prohibited and permitted drugs 1

**Question 7a:** *Would you appreciate it if the Czech NOC supported the anti-doping education more within your Czech NF or the Czech NADO?*

- Yes, but I cannot think of what the Czech NOC should do. 5
- Yes. I have a specific idea of what the Czech NOC could do. 3
- No, the Czech NOC has other tasks. 2

Would you appreciate if the Czech NOC supports more anti-doping education within your Czech NF or the Czech NADO?

Question 7a



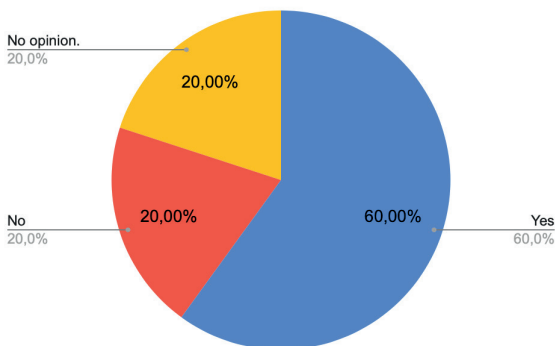
**Question 7b:** *If you have any suggestions, please write them down.*

- Sending information through the Czech NFs 1
- Ensure that the Czech NFs educate people on the anti-doping 1
- Seminars primarily for youth athletes 1
- List of permitted drugs 1

**Question 8a:** *Would you like to have a workshop on the anti-doping at the next TOP Camp?*

- Yes, sure. It is a great idea. 6
- No. Other workshops are more interesting. I will get the information differently. 2
- I do not have an opinion. 2

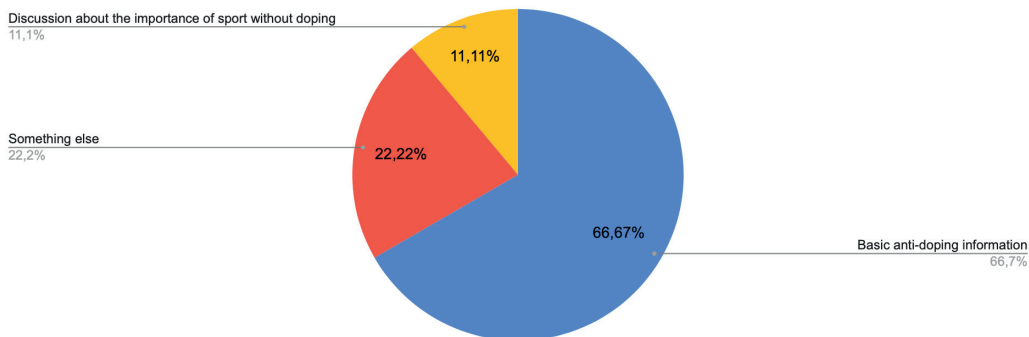
Would you like to have a workshop on anti-doping at the next TOP Camp?



**Question 8b: What should such a workshop ideally be about?**

- An overview of the basic information on the fight against doping (question 4) 6
- Something else 2
- Discussion about the meaning of sport without doping 1

What should such a workshop ideally be about?



**Question 8c: If you had chosen "something else," what should it be about?**

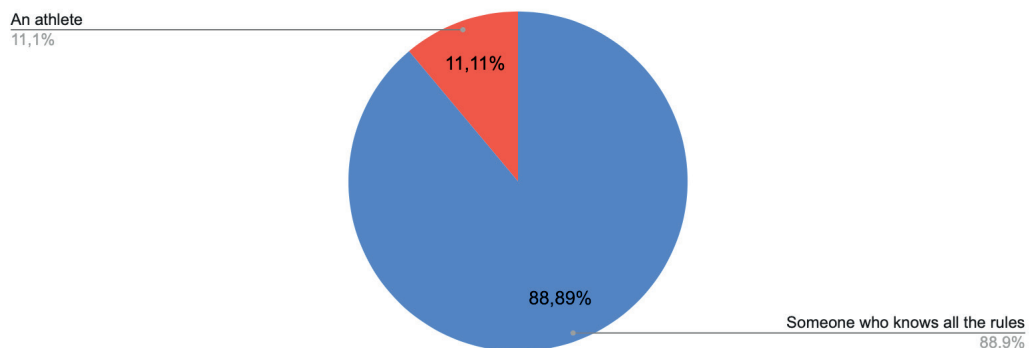
- Overview and discussion 1
- Lecture covering all risks of doping, nutritional supplements, permitted drugs, etc. 1

**Question 8d: Who should lead such a workshop?**

- Someone who knows all the rules and can tell us what we can and cannot do 8
- One of us - an athlete who knows the area 1

Who should lead such a workshop?

Question 8d



**Question 9a: In your experience, would you appreciate it if the Czech NOC promoted the anti-doping education also amongst youth athletes participating in the youth Olympic events?**

- Yes, sure. The sooner athletes get informed about clean sport, the better. 10

*Question 9b: Other ideas on how the Czech NOC should help in promoting the anti-doping education in the Czech Republic*

- Target youth athletes 1
- Video with basic anti-doping information 1
- Target parents 1
- Use elite athletes to educate parents, children, and recreational athletes 1
- Target the Czech NFs and youth athletes 1

## Appendix 8: Survey: The Czech Anti-Doping Committee Athletes Commission: Questions<sup>241</sup>

For the Czech NOC, athletes come first. Athletes' opinions are most valued in everything we do. This also applies to the fight against doping, which includes necessary education. According to (the WADC), the role of the Czech NOC is to cooperate with (the Czech NADO) and support the anti-doping education within the (Czech NFs). The Czech NOC sends athletes and their support personnel to the Olympic Games, (YOG), (EYOFs), the World Games, the European Games, and the Beach Games. The Czech NOC must ensure, in cooperation with (the Czech NADO) and (Czech NFs), that all athletes and their support personnel participating in these events know the basic information on the fight against doping.

As part of the MEMOS program, (...) I have been researching how the Czech NOC could contribute to improving awareness of the fight against doping among athletes, coaches, and other persons in the Czech Republic. Your opinion, as the athletes' representatives, is crucial for the project. Thank you in advance for your responses. They will help us to better fight doping together.

Your specific answers will not be published anywhere. The answers will only statistically be evaluated for the research project.

In case of any questions, please do not hesitate to contact me at any time: [exner@olympic.cz](mailto:exner@olympic.cz).  
Jan Exner

The Czech Olympic Committee

### *Questions*

1) What is your sport? (\* = required)

2) In your opinion, how can the Czech NOC help in the anti-doping education of the Czech athletes and others? \* (more answers are possible)

- Cooperate with (the Czech NADO) and support its educational activities (personnel, financially, etc.).
- Cooperate with (Czech NFs) and support their educational activities (personnel, financially, etc.).
- Organize or create their own educational activities (lectures, materials, videos, applications, etc.).
- Other

3) Who do you think should the support or educational activities of the Czech NOC focus on? (more answers are possible)

- Athletes and their support personnel participating in the events where the Czech NOC participates or hosts
- Athletes participating in the events where the Czech NOC participates or hosts (youth or junior categories)
- Athletes and their support personnel not only participating in the Czech NOC events
- Athletes not only participating in the Czech NOC events (youth or junior categories)
- Public
- Other

4a) If you believe that the Czech NOC should primarily cooperate with the Czech NADO, what

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<sup>241</sup> Appendix 8: Survey amongst Members of the Czech NADO Athletes Commission: Questions; also available online: [https://docs.google.com/forms/d/e/1FAIpQLSeq2Ss8rkrbr2JOUafYbCqBlx\\_eg9kx\\_z41oSml5mUSmjlpHQ/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSeq2Ss8rkrbr2JOUafYbCqBlx_eg9kx_z41oSml5mUSmjlpHQ/viewform?usp=sf_link) (in Czech). The author's translation from Czech into English.



should such a cooperation look like?

4b) If you believe that the Czech NOC should primarily cooperate with the Czech NFs, what should such a cooperation look like?

5) If you believe that the Czech NOC should create their own educational activities, what activities do you have in mind?

6) Can you think of other ways in which the Czech NOC could help Czech athletes and others in obtaining information on the fight against doping?

7) Can I contact you with further questions? If so, please enter your e-mail.

*Consent to the personal data processing*

By providing your e-mail, you agree for (the Czech NOC), with its registered office at Benešovská 1925/6, 101 00 Prague 10, IČ: 48546607 ("Czech NOC"), to process your email for possible further contact as part of the research project concerning the role of the Czech NOC in the anti-doping education. This consent for the processing of your email for the stated purpose, which is granted until its withdrawal, is voluntary and can be revoked it at any time by sending an e-mail to [exner@olympic.cz](mailto:exner@olympic.cz). Additional information on the rights of data subjects and the personal data processing by the Czech NOC are available at [www.olympic.cz](http://www.olympic.cz).

Appendix 9: Survey: The Czech Anti-Doping Committee Athletes Commission: All Results<sup>242</sup>

5 out of 7 members responded (71.4%).

*Question 1: What is your sport?*

- |              |   |
|--------------|---|
| • Ice hockey | 1 |
| • Football   | 1 |
| • Basketball | 1 |
| • Tennis     | 1 |
| • Athletics  | 1 |

*Question 2: In your opinion, how can the Czech NOC help in the anti-doping education of Czech athletes and others?*

- |   |   |
|---|---|
| • Cooperate with (the Czech NFs) and support their educational activities (personnel, financially, etc.)  | 3 |
| • Cooperate with (the Czech NADO) and support their educational activities (personnel, financially, etc.) | 2 |
| • Cooperate with (Czech NFs) and support their educational activities (personnel, financially, etc.)      | 2 |

*Question 3: Who do you think should the support or educational activities of the Czech NOC focus on?*

- |   |   |
|---|---|
| • Athletes participating in the events where the Czech NOC participates or hosts (youth or junior categories) | 4 |
| • Athletes not only participating in the Czech NOC events (youth or junior categories)                        | 3 |
| • Athletes and their support personnel participating in the events where the Czech NOC participates or hosts  | 2 |
| • Athletes and their support personnel not only participating in the Czech NOC events                         | 2 |

*Question 4a: If you believe that the Czech NOC should primarily cooperate with the Czech NADO, what should such a cooperation look like?*

- |   |   |
|---|---|
| • Choose young athletes as ambassadors of clean sport | 1 |
| • Better promotion of clean sport in the media        | 1 |
| • Cooperation with the CCA                            | 1 |
| • Poll for the best commissioner                      | 1 |
| • Involvement of athletes                             | 1 |

*Question 4b: If you believe that the Czech NOC should primarily cooperate with Czech NFs, what should such a cooperation look like?*

- |  |   |
|--|---|
| • Financial support of the education within the Czech NFs            | 1 |
| • Education programs under the Czech NADO and the Czech NOC          | 1 |
| • Lectures for young athletes with participation of former Olympians | 1 |

<sup>242</sup> Appendix 9: Survey amongst Members of the Czech NADO Athletes Commission: All Results; also available online <https://docs.google.com/spreadsheets/d/1J10rMF-0hf0mkOQREQ5NEojWTPpPVXhBl-4m50mSNYc/edit?usp=sharing> (in English).

Question 5: If you believe that the Czech NOC should create its own educational activities, what activities do you have in mind?

- Lectures 2
- Videos 2
- Interviews during events 1
- Involvement of famous athletes 1
- Discussions 1

Question 6: *Can you think of other ways in which the Czech NOC could help Czech athletes and others in obtaining information on the fight against doping?*

- Information on the Czech NOC website 1
- Videos 1

## Appendix 10: Focus Group: The Czech Olympic Committee Athletes Commission: Minutes<sup>243</sup>

*Prague, 23 July, 2020*

- The greatest benefit of the Czech NOC lies in the possibility of including athletes.
- The Czech NOC has the opportunity to involve athletes in the anti-doping education using the benefits of good interrelationships and the fact that the Czech NOC and athletes are mutually supportive. This is why the Czech NOC can involve the big names in sports in their educational activities, who often appear on television or on social networks, and in turn motivate other athletes, especially young ones.
- The Czech NOC has a positive reputation and a greater potential to reach the athletes, making it possible to easier target the selected groups (athletes, coaches) in comparison to the Czech NADO, which is currently perceived neutrally or negatively by the athletes. The Czech NOC has a greater ability than the Czech NADO to reach athletes as possible faces of educational campaigns making it easier to draw attention to the target groups, such as children. The Czech NADO's good relationship with athletes can attract other athletes to the anti-doping education, which should serve as a good reason to work closely with the Czech NOC.
- At the same time, the Czech NOC also has a greater potential to reach the target groups in comparison to the Czech NFs, which usually do not offer the anti-doping prevention and education as one of their priorities. If there are problems with their athletes, the Czech NFs usually approach these cases rather passively or distance themselves directly from the athletes. It is then very difficult for the athletes to seek support, regardless of whether they have committed an anti-doping rule violation.
- The involvement of the Czech NOC can help the existing educational activities of the Czech NADO and the Czech NFs. It can give them a different and better mark.
- The Czech NOC is globally recognised. It has got good athletes, a president as a member of the IOC, etc. The Czech NOC shouldn't lag in the anti-doping education.
- The Czech NOC can act as an impartial mediator towards the athletes.
- Athletes need to be offered a service, not just told what they can and cannot do. They shouldn't be dictated, but offered something in return.
- The Czech NOC Athletes Commission, an advisory body to the Czech NOC management, may recommend for the Czech NOC to invest more resources in education. The Czech NADO Athletes Commission can do the same towards the Czech NADO leadership.
- Information on the fight against doping could come from the Czech NOC Athletes Commission. The Czech NOC Athletes Commission invites athletes to various events. They could also pass on the anti-doping information to them. This could have a greater effect than if the information is sent to them by the Czech NADO.
- The Czech NOC Athletes Commission's job is to pass the information from athletes to the Czech NOC management and vice versa. Thanks to this, the Czech NOC Athletes Commission could also serve as an information channel for information on the fight against doping.
- The Czech NOC Athletes Commission wants to make educational videos and pass on information to athletes. The fight against doping can serve as the content of this information. Since it will be communicated by the athletes, it will be more authentic for

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243 Appendix 10: Focus Group: Czech Olympic Committee Athletes Commission: Minutes; also available online: <https://drive.google.com/file/d/1FSVzMEszo5XgkFCLK-Wh6J44uM3kruF3/view>.

other athletes.

- The Czech NOC may include the anti-doping education and its awareness in all its activities and projects, both the main and complementary ones, for example, social networks, Media House, and projects for the children and youth – NYSF, EYOF, YOG.
- The main activity of the Czech NOC is ensuring the representation of the Czech Republic at the Olympic Games and other events under the auspices of the Czech NOC. The athletes participating in these events are usually well-educated on the fight against doping. They have doctors, physiotherapists, and experience in the fight against doping. A bigger problem is encountered with the lower-level athletes, even in the Olympic sports. There is a need for raising the anti-doping awareness, especially in football and ice hockey.
- There is a need to focus on the lower-level athletes and younger athletes with less anti-doping experience than the top adult athletes. It is important for athletes to have the necessary information from the beginning of their sporting career so that they can be prepared to refuse doping when offered.
- The Czech NOC may include an anti-doping training program within the NYSF program. The Czech NADO had a stand at the 2019 NYSF in Liberec, but it didn't receive much attention. The children were not interested in reading the brochures. It is better to educate children through games, videos, or applications which is more entertaining. That was the first step. There was not an ideal location, content, or promotion, but it is a part of the progress that needs to be appreciated.
- The Czech NOC could help with the modern electronic methods of education (social networks, videos, etc.). The Czech NOC has a certain budget for social networks, the contents of which should not only be entertaining but also educational. The Czech NOC itself could allocate money for the educational content on social networks.
- The Czech NOC could make videos with one or more athletes that contain basic anti-doping rules and common mistakes, and post them on the social networks and promote them, even for a financial amount. However, the Czech NOC would need funding for this, which can be obtained from the Czech NADO. The Czech NADO can order the promotion of the anti-doping information from the Czech NOC.
- Financing of the Czech NOC educational activities can be achieved: partly from the educational part of the Czech NADO budget, partly from the Czech NOC's resources for education, marketing, and social networks. The Czech NOC can request subsidies from the NSA.
- The Czech NOC could also contribute to the training of coaches and other persons within the Czech NFs, which is very important. The Czech NOC could provide information through the CCA, which offers good educational activities.
- The Czech NOCs could involve, as part of education, the stories of people with doping experiences and present the consequences of the use of the prohibited substances and methods (example: Christian Schenk, the Olympic Games 1988 - decathlon - gold - doping ruined his life, and in 2018 he published a book about it).
- Specific programs: inspiration in athletics - I RUN CLEAN (videos with the athletes).

## Appendix 11: Focus Group: the Czech Anti-Doping Committee (1): Minutes<sup>244</sup>

*Prague, 26 August, 2020*

- The Czech NOC has a key and irreplaceable role in the field of education, which follows from the Olympic Charter and the fact that the Czech NOC is a signatory to the WADC.
- The Czech NADO cooperates with the Czech NOC in the field of anti-doping education while respecting the autonomy of the Czech NADO and the Czech NOC.
- The position of the Czech NADO and the Czech NOCs is also based on their different legal forms. The Czech NADO is a state-subsidized organisation. The Czech NOC is a sports association. Within its scope, the Czech NOC cooperates with the Czech NADO and supports its educational activities in all representational categories.
- The Czech NADO and the Czech NOC have a common goal and interest in the anti-doping education. The Czech NADO and the Czech NOC may conclude a memorandum of cooperation as part of the anti-doping education.
- The main roles and responsibilities of the Czech NOC in the field of anti-doping education are listed in Article 7.5 of the ISE, which is part of the WADC. Other obligations of the Czech NOC arising from the WADC are to be ensured by the Czech NOC in cooperation with the Czech NADO. The Czech NOC should focus its attention on the existing or future activities of the Czech NADO towards the Czech NFs, athletes and other entities.
- Mutual communication between the Czech NADO and the Czech NOC is important, as well as a joint external communication with the Czech NFs and other entities.
- The Czech NADO and the Czech NOC can work together to unify the education system within the Czech NFs, within which the level of the anti-doping education varies greatly.
- The Czech NADO, in cooperation with the Czech NOC, should carry out at least once a year a large-scale training of the Czech NFs in the fight against doping field. It would be comprehensive training for all Czech NFs. The composition of the participants will be specified.
- The Czech NADO and the Czech NOC will cooperate more intensively in the Olympic participants' education.
- The Czech NADO will be the guarantor of educational activities towards participants in the Olympic Games and other events organized by the Czech NOC or events to which the Czech NOC sends participants.
- The Czech NADO may use the Czech NOC's representatives in the implementation of individual educational activities - for example, members of the Czech NOC Athletes' Commission, other athletes - Olympians, members of the Czech NOC Medical Commission, the Sports Director, and others.
- The Czech NADO plans educational videos, short spots, and other electronic educational activities in the future. The aim is to prepare activities that will be educational and attractive for individual target groups. The Czech NADO and the Czech NOC can cooperate in creating an electronic training program, similar to the Athlete Learning Program about Health and Anti-Doping ("ALPHA").
- The Czech NOC can cooperate with the Czech NADO and involve them in their projects, such as the NYSF or the Olympic festivals, where suitable conditions for education are possible. The Czech NADO wants to involve athletes in education. The Czech NADO also aims to involve the anti-doping commissioners in prevention.

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<sup>244</sup> Appendix 11: Focus Group: Czech Anti-Doping Committee (1): Minutes; also available online: [https://drive.google.com/file/d/1\\_XXx6QouB2alffcWpHS4W1PU3S5ntDxt/view](https://drive.google.com/file/d/1_XXx6QouB2alffcWpHS4W1PU3S5ntDxt/view).

## Appendix 12: Focus Group: The Czech Anti-Doping Committee (2): Minutes<sup>245</sup>

*Prague, 1 August, 2022*

### Introduction:

- The Czech NADO's representatives were familiar with the findings of the original project, which this discussion followed up on.
- The Czech NOC is well-perceived by athletes and has a good reach toward them. Therefore, the Czech NOC should help strengthen the name and importance of the Czech NADO and their activities. The Czech NOC could serve as a bridge for the Czech NADO to better reach athletes, the Czech NFs, and resort centres.
- The Czech NOC should cooperate with the Czech NADO, for example on the creation and implementation of the education plan. They should agree that the education plan covers all necessary groups of athletes, who will be doing what, and in what timeframe.
- Regarding the timing of cooperation, anti-doping is a daily work of the Czech NADO, while the heart of the Czech NOC's activities is related to the Olympic events. Therefore, the Czech NOC and the Czech NADO should intensify their cooperation toward the Olympic events.
- There should be a continuous anti-doping education done by the Czech NADO and the Czech NFs, possibly supported by the Czech NOC. The Czech NOC should intensify its cooperation toward the Olympic events.
- The Czech NOC should approach the Czech NADO and ask them to educate participants in the Olympic events.
- We should be careful about the duplicity of education. The Czech NADO educates members of the Czech NFs, some of whom are also Olympians. The educational activities should not overlap.

### Ideas for cooperation:

- Athletes first. The Czech NOC and the Czech NADO should focus on what is best for the athletes. There should be intensified cooperation between the Czech NADO and the Czech NOC.
- They could, for example, cooperate regarding campaigns, the good name of the Czech sport, joint events, or presentations.
- There is a cooperation regarding the Sports Medicine Symposium organized by the Czech NOC, in which the Czech NADO participates.
- The Czech NOC's experts would be helpful: e. g. members of the Czech NOC Medical Commission. There could be a joint meeting with the members of the Czech NADO TUE Commission – sharing experience, creating documents for athletes, etc.
- A cooperation could be established between the Athletes Commissions of the Czech NADO and the Czech NOC.
- There should be a contact person at the Czech NOC responsible for the anti-doping matters and cooperation with the Czech NADO.

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<sup>245</sup> Appendix 12: Focus Group: Czech Anti-Doping Committee (2): Minutes; also available online: <https://drive.google.com/file/d/1ZqnPDDsphFOUuoGQ5chwAD-jjiKWTi-P/view>.



## **WHERE GOOD INTENTIONS FAIL: THE LIMITS OF SPORT DIPLOMACY WITH THE PEOPLE'S REPUBLIC OF CHINA UNDER THE LEADERSHIP OF XI JINPING**

ILKER GÜNDOĞAN\*

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Preliminary communication

### **Abstract**

Sport diplomatic relations between high-ranking party-state actors in the People's Republic of China and foreign actors in sport have intensified significantly in recent years. The Chinese political centre under the leadership of Xi Jinping wants to transform the country into a "powerful sports nation" (体育强国, *tiyu qiangguo*). At the same time, China is seen as an important (future) market by many international actors in sport. The purpose of this research article is to retrospectively trace, understand and explain the interactions between Chinese political and foreign socio-economic actors with regard to the policy field of sport in the Xi Jinping era. Drawing on the interaction-oriented policy research of Renate Mayntz and Fritz W. Scharpf, it is argued that the analytical concept of political steering is suitable for examining such reactions and interactions between actors. The case-centred qualitative research method of "explaining-outcome process tracing" was chosen for this study to investigate interactions between the Chinese party-state and the German Football Association with regard to the thematic focus on Tibet.

**Keywords:** China, Sport Diplomacy, Political Steering, Xi Jinping, DFB, Tibet.

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\* PhD at the Ruhr University Bochum (Germany) and a research fellow at the ESSCA School of Management – EU\*Asia Institute (France).  <https://orcid.org/0000-0003-0189-6905>. ✉ [Ilker.Guendogan@ruhr-uni-bochum.de](mailto:Ilker.Guendogan@ruhr-uni-bochum.de). This article is based on a section of the author's dissertation entitled "The Politics of Football in the People's Republic of China: Institutional Change and Political Steering Under the Leadership of Xi Jinping, 2012-2021".

## 1. INTRODUCTION AND METHOD

After Xi Jinping took office as General Secretary of the Chinese Communist Party (CCP) in 2012, and as President of the People's Republic of China (PRC) in 2013, political reform and development efforts in Chinese sports have increased significantly. Between 2014 and 2016, for example, a far-reaching strategy for the development of national football was launched, comprising four so-called comprehensive reform programmes.<sup>1</sup> Furthermore, after the successful bid for the 2022 Winter Olympics in Beijing, enormous political efforts were made to establish and develop winter sports in the country.<sup>2</sup> In the wake of these political endeavours by high-ranking party-state actors in China to transform the country into a "powerful sports nation" (体育强国, *tiyu qiangguo*),<sup>3</sup> and the fact that the PRC is seen as an important (future) market by many international stakeholders in sport,<sup>4</sup> relations and interactions between various Chinese and foreign sporting authorities have intensified considerably in recent years.

These developments in the Xi Jinping era, however, have been accompanied by a series of emotionally charged and contentious interactions between Chinese political and foreign sport actors that have attracted a relatively high level of attention both inside and outside the PRC in recent years. Some of these incidents were being quickly censored by Chinese regulatory authorities, such as the sexual assault allegations on the Weibo account of former tennis star Peng Shuai against a retired Chinese vice-premier.<sup>5</sup> Other sport-related political conflicts on the international stage with the PRC were, in turn, largely aired publicly, such as when Daryl Morey, the then general manager of the NBA team Houston Rockets, voiced his support for the Hong Kong protests in a tweet in 2019,<sup>6</sup> or when internationally well-known football players, such as former German international Mesut Özil, have publicly criticised the treatment of the Uyghurs, a Muslim minority group in China, leading to prompt responses from central party-

- 1 State Council of the PRC, "国务院关于加快发展体育产业促进体育消费的若干意见" (The State Council's Opinion on How to Accelerate the Development of the Sports Industry to Promote Sports Consumption, *guowuyuan guanyu jiaokuai fazhan tiyu chanye cujin tiyu xiaofei de ruogan yijian*), 2014, [http://www.gov.cn/zhengce/content/2014-10/20/content\\_9152.htm](http://www.gov.cn/zhengce/content/2014-10/20/content_9152.htm). State Council of the PRC, "中国足球改革发展总体方案" (The Overall Chinese Football Reform and Development Programme, *zhongguo zuqiu gaige fazhan zongti fang'an*), 2015, [http://www.gov.cn/zhengce/content/2015-03/16/content\\_9537.htm](http://www.gov.cn/zhengce/content/2015-03/16/content_9537.htm). National Development and Reform Commission of the PRC, "中国足球中长期发展规划 (2016—2050年)" (The Medium- and Long-Term Development Plan of Chinese Football (2016-2050), *zhongguo zuqiu zhong chang qi fazhan guihua (2016-2050 nian)*), 2016a, [http://www.gov.cn/xinwen/2016-04/11/content\\_5062954.htm](http://www.gov.cn/xinwen/2016-04/11/content_5062954.htm). National Development and Reform Commission of the PRC, "全国足球场地设施建设规划 (2016—2020年)" (The National Construction Plan for Football Pitches and Facilities (2016-2020), *quanguo zuqiu changdi sheshi jianshe guihua (2016—2020 nian)*), 2016b, [https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/201706/t20170614\\_1196795.html](https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/201706/t20170614_1196795.html).
- 2 State Council of the PRC, "冰雪运动发展规划 (2016—2025年)" (Ice and Snow Sports Development Plan (2016-2025), *bingxue yundong fazhan guihua (2016—2025 nian)*), 2016c, [http://www.gov.cn/xinwen/2016-11/25/content\\_5137611.htm](http://www.gov.cn/xinwen/2016-11/25/content_5137611.htm).
- 3 State Council of the PRC, "国务院办公厅关于印发体育强国建设纲要的通知" (Notice of the General Office of the State Council on the Issuance of the Outline for the Construction of a Powerful Sports Nation, *guowuyuan bangong ting guanyu yinfa tiyu qiangguo jianshe gangyao de tongzhi*), 2019, [http://www.gov.cn/zhengce/content/2019-09/02/content\\_5426485.htm](http://www.gov.cn/zhengce/content/2019-09/02/content_5426485.htm).
- 4 Karim Lakhani, Sascha L. Schmidt, Michael Norris and Kerry Herman, "Bayern Munich in China", *Harvard Business School Case*, 617-025, November 2016.
- 5 Paul Mozur, Muye Xiao, Jeff Kao and Gray Beltran, "Beijing Silenced Peng Shuai in 20 Minutes, Then Spent Weeks on Damage Control", *The New York Times*, December 8, 2021, <https://www.nytimes.com/interactive/2021/12/08/world/asia/peng-shuai-china-censorship.html>.
- 6 Christopher J. Escobar, "The Billion Dollar Tweet: Assessing the Impact of the Fallout Between the NBA and China", *The Sports Lawyers Journal* 28, no. 1 (Spring 2021).

state actors in China.<sup>7</sup>

The research interest of this article is to retrospectively trace, understand and explain exactly such interactions between Chinese political and foreign socio-economic actors with regard to the policy field of Chinese sport in the Xi Jinping era. In this context, the selected policy field is considered a “strategic action field” that “delimit[s] a social space in which state actors interact with a multitude of non-state (i.e., corporate, collective and individual) actors, striving to set up political alliances that often cut across the state-society divide”.<sup>8</sup> Drawing on the interaction-oriented policy research of Renate Mayntz and Fritz W. Scharpf,<sup>9</sup> it is argued that the analytical concept of political steering is suitable for examining such formal hierarchical reactions and interactions between actors.<sup>10</sup> For this purpose, a specific case study was selected to examine the interactions between high-level Chinese political actors and the German Football Association (DFB) after a football cooperation agreement between the PRC and Germany was initiated at the highest diplomatic level.<sup>11</sup> This particular case study was chosen because 1) it involves “top-down” political steering actions on the part of Chinese party-state actors, 2) Chinese football is a policy field that has received a higher political priority than most other sporting disciplines in China after Xi Jinping assumed office as General Secretary of the CCP, and 3) there was sufficient publicly available and accessible material to conduct an empirical study.

The case-centred qualitative research method of “explaining-outcome process tracing” was chosen for this study as it aims at reproducing the causal relationships in political processes and behaviours through a *within-case analysis*.<sup>12</sup> Due to travel restrictions and other preventive measures and regulations to contain the COVID-19 pandemic in both the PRC and Europe (where I am based), and the corresponding uncertainty about the feasibility of face-to-face expert interviews on the ground, which require some predictable lead time, it was decided that this research would rely mainly on an extensive document analysis and supplementary expert interviews. The four comprehensive football reforms were translated and analysed in detail. The expert interviews had to be conducted by telephone or via digital communication channels such as Zoom meetings, as it was not possible to carry out the empirical fieldwork in the PRC during the study period. Experts are considered to be individuals who have been actively participating in the decision-making processes and responsive behaviour, who have an intrinsic interest in these actor-centred behavioural interactions, or who have a special

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7 Chris Buckley, “An Arsenal Star Criticized China’s Detention Camps. Fury Soon Followed”, *The New York Times*, 14 December, 2019, <https://www.nytimes.com/2019/12/14/world/asia/mesut-ozil-arsenal-china.html>.

8 Gunter Schubert and Björn Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”, *Journal of Chinese Political Science* 24, no. 2 (2019): 211, <http://dx.doi.org/10.1007/s11366-018-09594-8>. See also: Neil Fligstein and Doug McAdam, *A Theory of Fields* (Oxford University Press, 2012).

9 Renate Mayntz and Fritz W. Scharpf, *Gesellschaftliche Selbstregulung und politische Steuerung* (Frankfurt a. M.: Campus Verlag, 1995).

10 Renate Mayntz, “Steering”, in *Handbook on Theories of Governance*, eds. Christopher Ansell and Jacob Torfing (Cheltenham, UK: Edward Elgar Publishing, 2016). Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”.

11 DFB stands for the German designation “Deutscher Fußball-Bund” (German Football Association).

12 Derek Beach and Rasmus B. Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (University of Michigan Press, 2013). Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2005). Andrew Bennett and Jeffrey T. Checkel, *Process Tracing: From Metaphor to Analytic Tool* (Cambridge University Press, 2015).

relationship with the interacting actors involved.<sup>13</sup>

Researchers have an ethical obligation to protect the well-being of their interviewees. For reasons of research ethics, it was decided to anonymise the names of the experts interviewed (only their professional designation is mentioned), as their statements could have negative personal and occupational consequences for them. Chinese football is not *per se* a sensitive research topic. However, this research article deals with attempts at political steering by central governing agencies in the PRC in relation to the thematic focus on Tibet, which is considered sensitive by many researchers, international actors in sport, as well as by the Chinese party-state itself.

## 2. SPORT DIPLOMACY AND THE PRC

The link between sport and politics is a frequently addressed and recurring topic, particularly in the research literature on football.<sup>14</sup> Although international sports organisations such as the International Olympic Committee or the Fédération internationale de Football Association often emphasise that sport and politics should not be “mixed”, studies have repeatedly demonstrated that sporting activities and (major) sports events frequently serve as a projection screen for political ideas and representations.<sup>15</sup> The intertwining of sport, policy and politics has contributed to the development of the research discipline of sport diplomacy in recent decades.<sup>16</sup>

Sport diplomacy is a relatively young research discipline that deals with a very old phenomenon. Stuart Murray’s work represents one of the first comprehensive and compelling conceptualisations of sport diplomacy as an academic field of research.<sup>17</sup> Murray explains that “sports diplomacy is a new term which describes and reconceptualises an old practice: the use of sport to realise goals, minimise friction and – generally – bring strangers closer together”.<sup>18</sup> Sport diplomacy, then, is a deliberate attempt to use sport, athletes and sporting events by state and non-state actors to address foreign actors and audiences with the intention of strengthening international relations and/or overcoming conflicts that have arisen through dialogue, preferably with an outcome that is (more) in line with one’s own normative (pre-)

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13 Oliver Treib, “Methodische Spezifika der Policy-Forschung”, in *Lehrbuch der Politikfeldanalyse*, eds. Klaus Schubert and Nils C. Bandelow (München: De Gruyter Oldenbourg, 2014).

14 Alan Tomlinson and Christopher Young, *National identity and global sports events: Culture, Politics, and Spectacle in the Olympics and the Football World Cup* (State University of New York Press: Albany, 2006). Paul Darby, *Africa, football and FIFA: Politics, colonialism and resistance* (London: Routledge, 2013). Jean-Michel De Waele, et. al., *The Palgrave International Handbook of Football and Politics* (Palgrave Macmillan, 2018). Martin J. Power, et. al., “Football and politics: the politics of football”, *Managing Sport and Leisure* 25, no. 1-2 (2020): 1-5, <http://dx.doi.org/10.1080/23750472.2020.1723437>.

15 Wolfram Manzenreiter and Georg Spitaler, *Governance, Citizenship and the New European Football Championships: The European Spectacle* (London: Routledge, 2011). Stefan Rinke and Kay Schiller, *The FIFA World Cup 1930-2010: Politics, Commerce, Spectacle and Identities* (Göttingen: Wallstein, 2014). Başak Alpan, Alexandra Schwel and Albrecht Sonntag, *The European Football Championship: Mega-Event and Vanity Fair* (London: Palgrave Macmillan, 2015).

16 Barrie Houlihan, *Sport, Policy and Politics* (London: Routledge, 1997). Richard Parrish, “The politics of sports regulation in the European Union”, *Journal of European Public Policy* 10, no. 2 (2003): 246-262, <https://doi.org/10.1080/1350176032000059026>.

17 Stuart Murray, *Sports Diplomacy: Origins, Theory and Practice* (London: Routledge, 2018).

18 Murray, *Sports Diplomacy: Origins, Theory and Practice*, 3.

conceptions, or at least to establish and deepen an understanding of the problem or position of the other side.<sup>19</sup>

Especially when conventional forms of public diplomacy have failed and have not led to the desired outcomes and changes, sport-diplomatic means have often been resorted to.<sup>20</sup> However, it can be noted that the interactions between the various international actors that take place within the framework of sport diplomacy can also have the opposite effect to the intended goals and expectations and, for example, trigger and/or exacerbate international conflicts instead of defusing and resolving them. In the literature, international sport diplomacy is therefore seen as having “two halves”,<sup>21</sup> which, in addition to the benefits, also entails dangers, even if these risks (and costs) are considered to be “generally low, but significant”.<sup>22</sup>

A well-known example of sport diplomacy often associated with the PRC is “ping-pong diplomacy” (乒乓外交, *pingpang waijiao*). In the early 1970s, during the Cold War, personal contacts and exchanges between table tennis players from the PRC and the United States at an international tournament in Japan paved the way for a political rapprochement between the two countries.<sup>23</sup> Such diplomatic efforts are retrospectively attributed by Murray to “traditional sports diplomacy”, characterised as “sporadic, opportunistic and, arguably, somewhat clumsy”, taking place at short notice before, during or just after a major sporting event.<sup>24</sup> Murray contrasts this traditional approach with the “modern” or “new” sport diplomacy of the 21st century, which is defined “as the *conscious, strategic and regular* use of sport, sportspeople, sporting events and non-state sporting actors by [foreign ministries] and their diplomatic staffs [...] to create collaborative, long-term and mutually beneficial partnerships which, ideally, ‘maximize people-to-people links, development, cultural, trade, investment, education and tourism opportunities’ for governments”.<sup>25</sup>

From the perspective of the literature on international sport diplomacy, two aspects stand out with regard to China: 1) Chinese stadium diplomacy, especially in Africa, and 2) the immense domestic and foreign investments of Chinese companies in international sport markets, most

19 Steven J. Jackson, “The contested terrain of sport diplomacy in a globalizing world”, *International Area Studies Review* 16, no. 3 (2013): 274-284, <http://dx.doi.org/10.1177/2233865913498867>. Stuart Murray and Geoffrey Allen Pigman, “Mapping the relationship between international sport and diplomacy”, *Sport in Society* 17, no. 9 (2014): 1098-1118, <https://doi.org/10.1080/17430437.2013.856616>. Stuart Murray, “Sports diplomacy in the Australian context: Theory into strategy”, *Politics & Policy* 45, no. 5 (2017): 841-861, <http://dx.doi.org/10.1111/polp.12218>.

20 J. Simon Rofe, *Sport and Diplomacy: Games Within Games* (Manchester University Press, 2018).

21 Stuart Murray, “The two halves of sports-diplomacy”, *Diplomacy & Statecraft* 23, no. 3 (2012): 576-592, <http://dx.doi.org/10.1080/09592296.2012.706544>.

22 Richard Parrish and Thierry Zintz, “EU Sport Diplomacy: Background and Context”, in *Promoting a Strategic Approach to EU Sport Diplomacy*, eds. Richard Parrish, Antoine Duval, Silvija Mitevska, Carmen Perez-Gonzalez, Vanja Smokvina, Albrecht Sonntag, Thierry Zintz and Andrea Cattaneo (University of Rijeka, European Commission Representation in Croatia, 2022), 16.

23 Ruth Eckstein, “Ping pong diplomacy: A view from behind the scenes”, *Journal of American-East Asian Relations* 2, no. 3 (1993): 327-342. Hong Zhaohui and Sun Yi, “The Butterfly Effect and the Making of ‘Ping-Pong Diplomacy’”, *Journal of Contemporary China* 9, no. 25 (2000): 429-448. Jeffrey N. Wasserstrom, “Beyond Ping-Pong diplomacy: China and human rights”, *World Policy Journal* 17, no. 4 (2000): 61-66, <https://doi.org/10.1215/07402775-2001-1003>. Nicholas Griffin, *Ping-Pong Diplomacy: The Secret History behind the Game that Changed the World* (New York: Scribner, 2014).

24 Murray, *Sports Diplomacy: Origins, Theory and Practice*, 61.

25 Murray, *Sports Diplomacy: Origins, Theory and Practice*, 94.

notably in European football. Over the past 60 years, Chinese party-state and socio-economic actors have made significant investments in the construction of sports stadiums overseas, especially on the African continent. Such investments not only promote the development of sport in the respective countries, but also a positive image of the PRC abroad, and are also a means of tapping into the natural resources there, as well as securing diplomatic recognition of the “one China principle”.<sup>26</sup> It can also be observed in the recent past that the political reform and development efforts in Chinese sport in the Xi Jinping era and the associated commercialisation tendencies, especially in Chinese football, have led to an intensification of sport diplomatic relations between the PRC and other countries, such as the German federal government.<sup>27</sup>

The next section introduces the concept of political steering, which can be applied very well to sport-diplomatic interactions between actors, as this case involves the study of deliberate attempts at behavioural changes on the part of political actors.

## 2.1. POLITICAL STEERING

The conceptual approach of political steering was mainly elaborated and developed by Renate Mayntz in collaboration with Fritz W. Scharpf.<sup>28</sup> Mayntz defines political steering with reference to interaction-oriented policy research “as the deliberate political attempt to steer, guide or direct (parts of) society, including the economy”.<sup>29</sup> The interpretation of the term “steering” in this context is therefore limited to the social coordination efforts of political actors who, within an institutionalised hierarchy of governing, undertake responsive steering actions in order to achieve conformity of conduct with their respective preconceived normative action orientations.<sup>30</sup> A political steering attempt thus involves a behavioural response by an actor, mostly aimed at steering the behaviour of another actor, which is perceived as non-compliant,

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26 Yu Junwei, “China’s foreign policy in sport: The primacy of national security and territorial integrity concerning the Taiwan question”, *The China Quarterly* 194 (2008): 294–308. Rachel Will, “China’s stadium diplomacy”, *World Policy Journal* 29, no. 2 (2012): 36–44. Zhang Qingmin, “Sports diplomacy: The Chinese experience and perspective”, *The Hague Journal of Diplomacy* 8, no. 3–4 (2013): 211–233, <https://doi.org/10.1163/1871191X-12341257>. Hugh Vondracek, “China’s Stadium Diplomacy and its Determinants: a typological investigation of soft power”, *Journal of China and International Relations* 7, no. 1 (2019): 62–86. Itamar Dubinsky, “China’s Stadium Diplomacy in Africa”, *Journal of Global Sport Management* (2021): 1–19, <https://doi.org/10.1080/24704067.2021.1885101>.

27 Federal Government of Germany, “Fußballkooperation mit China”, November 25, 2016, <https://www.bundesregierung.de/breg-de/suche/fussballkooperation-mit-china-392758>.

28 Renate Mayntz, “Politische Steuerung und gesellschaftliche Steuerungsprobleme: Anmerkungen zu einem theoretischen Paradigma”, in *Jahrbuch zur Staats- und Verwaltungswissenschaft* 1 (1987): 89–110. Renate Mayntz, “Politische Steuerung: Aufstieg, Niedergang und Transformation einer Theorie”, in *Politische Theorien in der Ära der Transformation*, eds. Klaus von Beyme and Claus Offe (Opladen: Westdeutscher Verlag, 1996). Renate Mayntz, *Soziale Dynamik und politische Steuerung: Theoretische und methodologische Überlegungen* (Frankfurt a. M.: Campus Verlag, 1997). Renate Mayntz, “Governance Theory als fortentwickelte Steuerungstheorie?”, *MPfG Working Paper 04/1* (Köln: Max-Planck-Institut für Gesellschaftsforschung, 2004). Renate Mayntz, “Governance theory als fortentwickelte Steuerungstheorie”, in *Über Governance: Institutionen und Prozesse politischer Regelung*, ed. Renate Mayntz (Campus Verlag: Frankfurt, 2009). Fritz W. Scharpf, “Politische Steuerung und politische Institutionen”, in *Macht und Ohnmacht politischer Institutionen*, ed. Hans-Hermann Hartwich (Opladen: Westdeutscher Verlag, 1989). Mayntz and Scharpf, *Gesellschaftliche Selbstregelung und politische Steuerung*. Renate Mayntz and Fritz W. Scharpf, “Politische Steuerung—Heute?”, *Zeitschrift für Soziologie* 34, no.3 (2005): 236–243, <https://doi.org/10.1515/zfsoz-2005-0305>.

29 Mayntz, “Steering”, 260.

30 Mayntz and Scharpf, *Gesellschaftliche Selbstregelung und politische Steuerung*. Fritz W. Scharpf, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research* (Boulder: Westview Press, 1997).



in a particular “direction” so that it (again) conforms to its normative (pre-)conception.<sup>31</sup>

In such studies, it is often considered that the formal hierarchical structure of governing determines which actor steers whose behaviour. For example, Mayntz points out that, especially in actor-centred juxtapositions, there is a superordinate steering subject, which is “typically the government, the state or some public authority”, and a hierarchically subordinate steering object such as local state jurisdictions and bureaucracies, corporate business enterprises and social collective actors.<sup>32</sup> The concept of political steering is thus not only actor-centred, but also “state-centered and employs [therefore] a top-down perspective”.<sup>33</sup>

Some recent studies depart from this strict “top-down” approach. Schubert and Alpermann, for instance, who explicitly apply the concept of political steering to the PRC, refer to the governance debate and therefore consider not only “vertical” but also “horizontal” forms of social coordination.<sup>34</sup> Already in recent decades, the relatively rigid state-centred “top-down” approach of political steering has been criticised for its lack of explanatory power with respect to the behaviour and relevance of formally subordinate actors in political decision-making processes, especially in implementation research and in studies on social movements.<sup>35</sup> However, since this study is exclusively concerned with hierarchical “top-down” steering attempts by high-ranking party-state actors in China in the sense of Mayntz’s original theoretical reflections,<sup>36</sup> only the hierarchical steering modes of Schubert and Alpermann’s typology are considered here.<sup>37</sup>

Schubert and Alpermann make a distinction between vertical “hard” and “soft” (semi-) hierarchical modes of steering.<sup>38</sup> While “hard” steering involves authoritative decision-making by superordinate actors that is implemented through “command and control”, “soft” steering is understood as a discursive practice that is ultimately meant to lead to “self-enforced” implementation by the subordinate actors. Another mode of steering that is relevant to this study, which Schubert and Alpermann take up with reference to governance studies,<sup>39</sup> and apply to the PRC, is “meta-steering” or “steering of steering”, where by steering one actor, another actor is steered.<sup>40</sup> Or, as Schubert and Alpermann put it: “‘meta-steering’ is the mode

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31 Mayntz, “Politische Steuerung und gesellschaftliche Steuerungsprobleme: Anmerkungen zu einem theoretischen Paradigma”, 90.

32 Mayntz, “Steering”, 260.

33 Mayntz, “Steering”, 260.

34 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”.

35 Mayntz, “Politische Steuerung: Aufstieg, Niedergang und Transformation einer Theorie”. Niklas Luhmann, “Limits of steering,” *Theory, culture & society* 14, no. 1 (1997): 41-57, <https://doi.org/10.1177/026327697014001003>.

36 Mayntz, “Steering”.

37 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”.

38 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”.

39 Bob Jessop, “Multi-level Governance and Multi-level Metagovernance: Changes in the European Union as Integral Moments in the Transformation and Reorientation of Contemporary Statehood”, in *Multi-level Governance*, eds. Ian Bache and Matthew Flinders (Oxford University Press, 2004).

40 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”, 207, 210.

by which all steering is steered by the [Chinese] political center".<sup>41</sup>

Political steering attempts by actors are not always successful, but can also fail. Mayntz therefore makes a strict categorical distinction between the responsive "steering action" (Steuerungshandlung) of actors and the ultimate "steering effect" (Steuerungswirkung).<sup>42</sup> An essential factor that constitutes a responsive steering action and thus conditions the realisation of a particular steering effect is, for example, the use of a specific *steering instrument* by the steering subject.<sup>43</sup> Steering instruments are means that can be used by actors in a targeted and strategic manner to change the behaviour (or normative action orientation) of the steering object(s) in such a way so that it (again) corresponds to a preconceived norm or expectation of the steering subject.

The possible selection, application and corresponding effectiveness of a steering instrument may depend on the *steering resources* available to the respective actors.<sup>44</sup> Mayntz and Scharpf, for example, distinguish between financial, legal, human, technical and natural resources provided to or withheld from certain actors by the existing environmental and socially constructed institutional settings.<sup>45</sup> The formal categorical attributions of actors, such as whether or not they are considered to be part of the official hierarchically organised administrative structures of a political system, can therefore be decisive in determining which steering resources are available to the respective actors and can be instrumentalised accordingly.<sup>46</sup>

After discussing the conceptual perspective of political steering, the next step is to apply these theoretical considerations to the object of investigation of the interactions between high-level party-state actors in the PRC and international actors in sport.

#### 4. DFB AND THE TIBET FLAG SCANDAL

The economic potential that the Chinese market offers for business operations has aroused the zeal of international actors in sport in recent years. In particular, the political reform and development efforts in Chinese football in the Xi Jinping era and the accompanying increased commercial activities seem to have attracted the interest of business-oriented international

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41 Schubert and Alpermann, "Studying the Chinese policy process in the era of 'top-level design': The contribution of 'political steering' theory", 210.

42 Mayntz, "Politische Steuerung und gesellschaftliche Steuerungsprobleme: Anmerkungen zu einem theoretischen Paradigma", 91 ff.

43 Mayntz, "Politische Steuerung und gesellschaftliche Steuerungsprobleme: Anmerkungen zu einem theoretischen Paradigma". Mayntz, "Politische Steuerung: Aufstieg, Niedergang und Transformation einer Theorie". Renate Mayntz, "Von der Steuerungstheorie zu Global Governance", in *Governance in einer sich wandelnden Welt*, eds. Gunnar Folke Schuppert and Michael Zürn, PVS Sonderheft 41, (Wiesbaden: VS Verlag für Sozialwissenschaften, 2008). Mayntz and Scharpf, *Gesellschaftliche Selbstregulung und politische Steuerung*.

44 Renate Mayntz, "Die gesellschaftliche Dynamik als theoretische Herausforderung", in *Soziologie und gesellschaftliche Entwicklung: Verhandlungen des 22. Deutschen Soziologentages in Dortmund 1984*, ed. Burkart Lutz (Frankfurt a.M.: Campus Verlag, 1985). Mayntz and Scharpf, *Gesellschaftliche Selbstregulung und politische Steuerung*.

45 Mayntz, "Die gesellschaftliche Dynamik als theoretische Herausforderung".

46 Scharpf, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Mayntz, "Von der Steuerungstheorie zu Global Governance".



football leagues, clubs, agents and players. Karl-Heinz Rummenigge, former football player and then chairman of the board of FC Bayern München AG, for example, stated in an interview a few years ago: "When the government of China is starting such an ambitious development program, you do not have to be a prophet to foresee that football will be the dominant sport in China for the foreseeable future".<sup>47</sup>

In contrast to the international football actors mentioned above, it is often considered that national football federations are not primarily profit-oriented, but that their activities are mainly focused on the selection and promotion of talents so that they can successfully participate in international football tournaments.<sup>48</sup> However, in recent years, cooperation efforts between national football associations and the PRC have increased significantly.<sup>49</sup> One of these national football federations that has expanded its operational dealings with China is the DFB.

With over seven million members, the DFB is one of the largest national sports associations in the world.<sup>50</sup> In its function, it organises and coordinates, among other things, the German national football teams that represent Germany in international competitions against other national selections. The German national football teams, especially the men's teams, are very popular in the PRC. In 2014, a survey among some 16,000 Chinese football fans found that respondents considered the German men's national team to be the most popular football team at national level in China.<sup>51</sup> The DFB therefore seemed to be in a rather favourable position compared to many other international football actors to expand its operational business activities in the PRC in a relatively straightforward manner.

#### 4.1. ENTERING THE SPORT DIPLOMATIC ARENA

This assumption seemed to be promptly confirmed. In 2016, high-ranking political representatives of the PRC and the German Federal Government signed a far-reaching

47 Lakhani, Schmidt, Norris and Herman, "Bayern Munich in China".

48 Ilker Gündoğan and Albrecht Sonntag, "Chinese football in the era of Xi Jinping: What do supporters think?", *Journal of Current Chinese Affairs* 47, no. 1 (2018): 103-141.

49 Pu Yang, "French Football Federation Deputy CEO: we want long-term partnerships in China", *Yutang Sports*, June 17, 2016, [http://en.ytports.cn/news-2651.html?cid=len=19style=searchaction=newindex\\_newslistpage=33eid=newsListstr=associationorder=1](http://en.ytports.cn/news-2651.html?cid=len=19style=searchaction=newindex_newslistpage=33eid=newsListstr=associationorder=1). George Dudley, "FFF and LFP open new shared office in Beijing", *SportsPro*, February 16, 2017, <https://www.sportspromedia.com/news/french-soccer-expands-its-presence-in-china>. Du Jiajing, "发展青训，中国与阿根廷足球合作计划启动," (Development of youth training, China-Argentina football cooperation plan launched, fazhan qing xun, zhongguo yu agenting zuqiu hezuo jihua qidong) 懒熊体育 (*Lanxiong Sports*), April 8, 2018, <http://www.lanxionsports.com/posts/view/id/9898.html>. Royal Dutch Football Association, "KNVB renews cooperation agreement with Chinese Football Association", July 24, 2019, <https://www.knvb.com/news/knvb/international-projects/973/knvb-renews-cooperation-agreement-chinese-football-association>. Royal Spanish Football Federation, "La RFEF acuerda con China asesoramiento y formación para desarrollar el fútbol en el país asiático durante los próximos 10 años", June 9, 2020, <https://www.rfef.es/noticias/rfef-acuerda-china-asesoramiento-y-formacion-desarrollar-futbol-pais-asiatico-durante>.

50 DFB, "2020: Mehr Mitglieder, weniger Vereine und Mannschaften", June 15, 2020a, <https://www.dfb.de/news/detail/2020-mehr-mitglieder-weniger-vereine-und-mannschaften-216498/>.

51 Song Jiajia and Simon Chadwick, "Study reveals Chinese football fans favour English clubs and German team", *Coventry University*, February 5, 2014, <https://www.coventry.ac.uk/primary-news/research-reveals-chinese-football-fans-favour-english-clubs-and-german-national-team/>.

memorandum of understanding on cooperation in football.<sup>52</sup> As part of this cooperation, an official agreement was signed between the DFB and the German Football League (DFL) with the Chinese Ministry of Education (MoE) and the Chinese Football Association (CFA) on the development of “campus football” (校园足球, *xiaoyuan zuqiu*) in China.<sup>53</sup> Campus football is an umbrella term for various initiatives to promote youth football in the PRC, the organisation and supervision of which is mainly the responsibility of the Chinese MoE.<sup>54</sup>

The objective of the football cooperation, according to the official announcement of the German Federal Government, is to strengthen the already existing mutual exchange and relations between the two countries.<sup>55</sup> The development of Chinese football is to be supported, for example, through the training of players, coaches and referees as well as through the transfer of know-how in the organisation of football leagues.<sup>56</sup> According to the DFB website, one of the key elements of this cooperation is the development of a football curriculum for schools and universities as part of the campus football scheme and the corresponding training of staff.<sup>57</sup>

It is not clear who exactly was the initiator of this international football cooperation. The official website of the German Federal Government states that the cooperation between the two countries in football stems from a proposal made by Chancellor Angela Merkel to President Xi Jinping during her state visit to the PRC in June 2016.<sup>58</sup> On the other hand, according to the DFB website, the Chinese ambassador to Germany and the CFA approached the DFB as early as 2014 after a meeting between German Chancellor Angela Merkel and Chinese Premier Li Keqiang to seek support for the development of Chinese football.<sup>59</sup>

After the official signing of the documents, then DFB President Reinhard Grindel noted that “the fact that the German-Chinese agreement is also accompanied at such a high-ranking political level shows that it has a very great significance”.<sup>60</sup> Friedrich Curtius, the DFB General Secretary at the time, added: “We are entering a bit of uncharted territory with the signing of the agreement. Normally, partnerships of this kind take place between two football associations, but this time there is a political framing. This is another reason why the agreement has a special significance for the DFB. As World Cup winners as well as Olympic champions in women’s football, we are absolutely in a position to help a big country like China to build up and develop football structures”.<sup>61</sup> Christian Seifert, managing director of the DFL and in this function also Vice-President of the DFB, held the view that “both sides will benefit

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52 Federal Government of Germany, “Fußballkooperation mit China”.

53 The German designation for German Football League is “Deutsche Fußball Liga”.

54 State Council of the PRC, “中国足球改革发展总体方案.” (The Overall Chinese Football Reform and Development Programme, *zhongguo zuqiu gaige fazhan zongti fang'an*)

55 Federal Government of Germany, “Fußballkooperation mit China”.

56 Federal Government of Germany, “Fußballkooperation mit China”.

57 DFB, “Große Kooperation mit China”, December 23, 2016a, <https://www.dfb.de/internationales/news-detail/grosse-kooperation-mit-china-159690/full/1/>.

58 Federal Government of Germany, “Fußballkooperation mit China”.

59 DFB, “DFB unterstützt Fußball in China”, October 6, 2015, [https://www.dfb.de/news/detail/dfb-unterstuetzt-fussball-in-china-132141/?no\\_cache=1](https://www.dfb.de/news/detail/dfb-unterstuetzt-fussball-in-china-132141/?no_cache=1).

60 DFB, “Deutschland und China signieren weitreichendes Fußballabkommen”, November 25, 2016b, [https://www.dfb.de/news/detail/deutschland-und-china-signieren-weitreichendes-fussballabkommen-158428/?no\\_cache=1](https://www.dfb.de/news/detail/deutschland-und-china-signieren-weitreichendes-fussballabkommen-158428/?no_cache=1).

61 DFB, “Deutschland und China signieren weitreichendes Fußballabkommen”.

from this partnership”.<sup>62</sup>

On the part of the Chinese delegation, Liu Yandong, then Vice Premier of the PRC, also expressed her confidence in this cooperation: “We hope that China and Germany will establish a stable and lasting strategic partnership in football, strengthen exchanges between the national teams and professional football clubs of the two countries, work together to expand and strengthen the mutually beneficial and win-win cooperation of the football industry between the two countries, and improve the exchange and cooperation mechanism between the youth football of the two countries. I believe that with the joint efforts of both sides, Sino-German football cooperation will definitely achieve fruitful results, which will not only benefit the people of both countries, but also contribute to the development of football in the world”.<sup>63</sup>

One year after the signing of the official cooperation agreement between the two countries, the Chinese-German Football Summit took place in Frankfurt in June 2017. In addition to high-ranking representatives of the DFB, the DFL and a number of German professional football clubs, around 100 guests from China attended the event.<sup>64</sup> Friedrich Curtius stated that the first Chinese-German football summit represented a “milestone” in the football partnership between the two countries. “The purpose of the summit was to provide a forum for both sides to get to know each other more closely and to strengthen ties but also to develop specific measures for promoting football in China”, explained Curtius.<sup>65</sup> Christian Seifert noted that the Sino-German football cooperation “is the most far-reaching football alliance between a European country and China, thus giving it a special dimension. [...] Both sides stand to benefit from it. For DFL and Bundesliga, it provides an opportunity of gaining a better understanding of the Chinese football market. In addition, it became evident over the two days of the summit that German [football] clubs have already stepped up their activities in China substantially”.<sup>66</sup> One month after the hosting of the football summit in Frankfurt, the G20 summit took place in Hamburg. The Chinese delegation led by President Xi Jinping arrived in Germany a few days before the summit and, as part of their state visit, attended a football match between a Chinese and a German U12 youth team in Berlin together with then Chancellor Angela Merkel and representatives of the DFB and the DFL.<sup>67</sup> On this occasion, the representatives of the DFB and the DFL informed President Xi and Chancellor Merkel about the status of the various joint Sino-German football projects.<sup>68</sup> During the briefing, Chancellor Merkel recalled her state visit to the PRC in 2014 and the extraordinary popularity of the German men’s national football team that she experienced there. She explained what great ambassadors the German footballers were for the country in the PRC: “There was only one thing there every second - Germany, Die Mannschaft”.<sup>69</sup>

62 DFB, “Deutschland und China signieren weitreichendes Fußballabkommen”.

63 Hu Xiaobing and Shen Zhonghao, “刘延东：中德足球合作前景广阔”，(Liu Yandong: China-Germany football cooperation has a bright future, liuyandong: zhong de zuqiu hezuo qianjing guangkuo) 新华社 (*Xinhua News Agency*), 26 November, 2016, [http://www.xinhuanet.com//politics/2016-11/26/c\\_1119996514.htm](http://www.xinhuanet.com//politics/2016-11/26/c_1119996514.htm).

64 Bundesliga, “First Chinese-German Football Summit held in Frankfurt”, June, 2017, <https://www.bundesliga.com/en/news/Bundesliga/first-chinese-german-football-summit-held-in-frankfurt-446245.jsp>.

65 Bundesliga, “First Chinese-German Football Summit held in Frankfurt”, Bundesliga, “First Chinese-German Football Summit held in Frankfurt”.

66 Bundesliga, “First Chinese-German Football Summit held in Frankfurt”.

67 DFB, “DFB und DFL: Austausch mit Merkel und Xi in Berlin”, July 5, 2017a, <https://www.dfb.de/news/detail/dfb-und-dfl-austausch-mit-merkel-und-xi-in-berlin-170310/>.

68 DFB, “DFB und DFL: Austausch mit Merkel und Xi in Berlin”.

69 DFB, “China: Große Kooperation”, October 10, 2019a, <https://www.dfb.de/internationales/internationale->

In an official press release, Chancellor Merkel stated: “Between Europe and Asia, we want to continue working on new lighthouse projects in the area of people-to-people exchanges. This applies in particular to the areas of culture, education, youth, think tanks, media, tourism, football and cooperation at local level”.<sup>70</sup> President Xi pointed out that “football cooperation between China and Germany is progressing continuously and deeply. Improving [Chinese] football is a systematic project, and China is willing to strengthen comprehensive exchanges and cooperation with the German side in the field of football. I am convinced that with the joint efforts of both sides, Sino-German football cooperation will definitely bear more fruits, and produce major achievements”.<sup>71</sup>

#### 4.2. CHINESE U20 MEN’S NATIONAL TEAM IN GERMANY

It was announced in 2017 that, as part of the Sino-German football cooperation, the DFB and the CFA had reached an agreement that the Chinese U20 men’s national team would come to Germany to prepare for the 2020 Olympic Games in Tokyo.<sup>72</sup> The Chinese national youth team was to play regularly against teams from the Regionalliga Southwest, one of the five regional fourth-tier leagues in Germany managed by the DFB. The Regionalliga Southwest was chosen mainly because a total of 19 teams compete in this league competition and thus one team would always be available on match days as a sparring partner for the Chinese U20 national team. In return, the German football clubs that played against the Chinese national selection were to receive a reward of around €15,000.<sup>73</sup> Friedrich Curtius stated after the signing of the cooperation agreement with the CFA that “[t]he matches are friendlies in their nature, but we will make sure they are competitive. I am sure that the Chinese team will get something out of every match. I can assure the Chinese team that every player who comes to Germany will experience a very professional attitude and treatment during the matches”.<sup>74</sup>

Some German football clubs from the Regionalliga Southwest, however, refused to play against the Chinese U20 men’s national team.<sup>75</sup> For example, the club management of SV Waldhof Mannheim announced in a press release that they are saying “No” to the matches

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beziehungen/china/.

- 70 Federal Government of Germany, “Pressestatements von Bundeskanzlerin Merkel und dem chinesischen Staatspräsidenten Xi Jinping”, July 5, 2017, <https://www.bundesregierung.de/breg-de/aktuelles/pressestatements-von-bundeskanzlerin-merkel-und-dem-chinesischen-staatspraesidenten-xi-jinping-844138>.
- 71 Shang, Yang and Hao, Weiwei, “习近平同德国总理默克尔共同观看中德青少年足球友谊赛”, (Xi Jinping and German Chancellor Angela Merkel watch a friendly football match between Chinese and German youths, xijinping tong deguo zongli mokeer gongtong guankan zhong de qingshaonian zuqiu youyisai) 新华社 (Xinhua News Agency), July 6, 2017, [http://www.xinhuanet.com/world/2017-07/06/c\\_1121270812.htm](http://www.xinhuanet.com/world/2017-07/06/c_1121270812.htm).
- 72 Yue, Dongxing, Bing Gong and Daojin Zheng, “中国男足U20选拔队将参加德国第四级联赛”, (Chinese men’s U20 selection team to play in German fourth tier league, zhongguo nan zu U20 xuanba dui jiang canjia deguo di si ji liansai) 新华社 (Xinhua News Agency), 16 August, 2017, <http://news.sina.com.cn/o/2017-08-16/docifykcirz2357787.shtml>.
- 73 Michael Ebert and Martin Gruener, “Regionalliga Südwest: Team Nummer 20 kommt aus China”, *Kicker*, June 21, 2017, [https://www.kicker.de/regionalliga-suedwest\\_team-nummer-20-kommt-aus-china-700120/artikel](https://www.kicker.de/regionalliga-suedwest_team-nummer-20-kommt-aus-china-700120/artikel).
- 74 Yue, Dongxing, Bing Gong and Daojin Zheng, “中国男足U20选拔队将参加德国第四级联赛”, (Chinese men’s U20 selection team to play in German fourth tier league, zhongguo nan zu U20 xuanba dui jiang canjia deguo di si ji liansai).
- 75 Sebastian Fischer, “Drei Klubs verweigern Spiele gegen Chinas U20”, *Süddeutsche Zeitung*, July 12, 2017a, <https://www.sueddeutsche.de/sport/regionalliga-gegen-uhl-worms-und-chinas-u20-1.3584752>.

against China's U20 national team planned by the DFB.<sup>76</sup> Markus Kompp, the managing director of SV Waldhof Mannheim, explained that he had "already expressed his concerns to the [DFB] during the first phone call and asked for clarification of detailed questions in advance. A written consent to participate has not been given. Even if such a game offers a good marketing opportunity, one should not completely lose the regional reference. There are more important problems in the Regionalliga and with the clubs, which in our opinion should be clarified as a matter of priority".<sup>77</sup> Kompp is referring here to a dispute between some German fourth-division football clubs and the DFB, because the champions of the five regional fourth-tier leagues in Germany cannot be promoted directly to the next higher league, but have to go through a relegation process, at the hurdle of which SV Waldhof Mannheim had failed the previous season. In addition, organised football supporters from several German football clubs have joined forces and expressed their concerns about the hosting of matches between the teams of the Regionalliga Southwest and the Chinese U20 men's national football team in an open letter to the responsible DFB officials.<sup>78</sup>

Reinhard Grindel, the DFB president at the time, responded to such reactions from German football clubs and supporters that they "did not understand what [the cooperation] was all about".<sup>79</sup> It was about lucrative friendly matches for all football actors involved and offered a financial incentive for the German fourth-division clubs.<sup>80</sup> Already after the official cooperation agreement was signed, the then DFB General Secretary Friedrich Curtius assured the then CFA Deputy Director Zhang Jian that matches with other football clubs would be arranged if some German teams in the Regionalliga Southwest refused to play against the Chinese national selection so that "this gap would be filled".<sup>81</sup>

### 4.3. CONTENTIOUS INTERACTIONS BETWEEN THE CHINESE PARTY-STATE AND THE DFB

The Chinese U20 men's national team arrived in Germany in November 2017 to play their first matches against teams from the Regionalliga Southwest. For the Chinese authorities, the friendly matches in Germany were considered an excellent opportunity to expose the Chinese youth national players to a high level of football competition. Lin Xiaohua, a member of the CFA executive committee, for instance, stated that "the CFA hopes to use this opportunity to build a platform for young players to learn from the valuable experience of German football and to improve their skills by playing against high-level teams, which will in turn promote the

76 *SV Waldhof Mannheim 07*, "SV Waldhof sagt ‚Nein‘ zum Spiel gegen Chinas U20", Facebook Page of SV Waldhof Mannheim, June 23, 2017, <https://www.facebook.com/sv.waldhof.mannheim/posts/sv-waldhof-sagt-nein-zum-spiel-gegen-chinas-u20der-sv-waldhof-hat-die-meldung-un/10154478650366510/>.

77 *SV Waldhof Mannheim 07*, "SV Waldhof sagt ‚Nein‘ zum Spiel gegen Chinas U20".

78 *ProWaldhof*, "Offener Brief an Herrn Ronny Zimmermann, Vizepräsident des Deutschen Fußball-Bundes", July 7, 2017, <https://www.pro-waldhof.de/8537/offener-brief-an-herrn-ronny-zimmermann-vizepraesident-des-deutschen-fussball-bundes>.

79 *Süddeutsche Zeitung*, "Merkel und Chinas Präsident Xi Jinping als Fußballfans", July 5, 2017, <https://www.sueddeutsche.de/sport/fussball-merkel-und-chinas-praesident-xi-jinping-als-fussballfans-dpa.urn-newsml-dpa-com-20090101-170705-99-124199>.

80 *Süddeutsche Zeitung*, "Merkel und Chinas Präsident Xi Jinping als Fußballfans".

81 Yue, Dongxing, Bing Gong and Daojin Zheng, "中国男足U20选拔队将参加德国第四级联赛", (Chinese men's U20 selection team to play in German fourth tier league, zhongguo nan zu U20 xuanba dui jiang canjia deguo di si ji liansai).

overall development of Chinese football”.<sup>82</sup>

However, the first match already saw contentious interactions between the various actors, which subsequently caused lasting damage to the Sino-German football cooperation. Shortly after the kick-off of the match between TSV Schott Mainz and the Chinese U20 men's national team, six activists placed Tibetan flags on the sidelines of the football pitch.<sup>83</sup> Tibet's status is disputed under international law. The Tibetan government in exile considers itself independent and refers to the occupation of Tibet in 1949/50 by Chinese military forces. From the perspective of the Chinese party-state, Tibet is an inseparable part of the territory and sovereignty of the PRC.

After the Tibetan flags had been hoisted, one person from the Chinese delegation gesticulated wildly and all Chinese football players immediately left the pitch, so that the game had to be interrupted.<sup>84</sup> There was a small scuffle when a person tried to snatch a Tibet flag from the protesters. The Chinese team refused to continue to play the match as long as the perceived political provocations continued.<sup>85</sup> After a while, one of the activists said that they could provoke a stoppage of the match here, but they did not want to deprive other people of the pleasure of football. They folded their flags and the match continued.<sup>86</sup>

The Chinese national selection lost the game against the then second-last team of the league table in the Regionalliga Southwest with 0-3. The result of the match, however, was only of secondary concern, if at all, to the involved actors and observers of this event. Sun Jihai, the coach of the Chinese team, for example, stated that he “was expecting people to talk about football, but now it's something else”.<sup>87</sup>

It was reported that the political activists on the sidelines were members of the Tibet Initiative Deutschland e.V. in Berlin and Tibetans in exile who reside in Germany.<sup>88</sup> In an open letter to Chancellor Merkel, Wolfgang Grader chairman and Nadine Baumann managing director of the Tibet Initiative Deutschland e.V. stated that their members “were merely exercising their right to freedom of expression. [...] We urge you [Chancellor Merkel] to make it clear that the federal government will not tolerate any behaviour that goes beyond the law, even from Chinese guests, and that freedom of expression is a valuable asset that you will defend and not negotiate”.<sup>89</sup>

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82 Wang Xi, “中国足协U20选拔队出征未来一年赴德集训”, (CFA U20 selection to travel to Germany for training in the coming year, *zhongguo xuzie U20 xuanba dui chuzheng weilai yi nian fu de jixun*) 中新社北京 (*China News Agency Beijing*), November 7, 2017, <http://news.sina.com.cn/o/2017-11-07/doc-ifynmvuq9254582.shtml>.

83 Christian Helms, “Eklat um Chinas U20 in der Regionalliga: Unter falscher Flagge”, *Der Spiegel*, November 19, 2017, <https://www.spiegel.de/sport/fussball/fussball-eklat-um-chinas-u20-in-der-regionalliga-unter-falscher-flagge-a-1179011.html>.

84 Helms, “Eklat um Chinas U20 in der Regionalliga: Unter falscher Flagge”.

85 Helms, “Eklat um Chinas U20 in der Regionalliga: Unter falscher Flagge”.

86 Helms, “Eklat um Chinas U20 in der Regionalliga: Unter falscher Flagge”.

87 *Guancha*, “中国U20德国比赛现“藏独”旗帜，中国队员离场抗议”，(Chinese U20 match in Germany shows “Tibetan independence” flag, Chinese players leave the pitch in protest, *hongguo U20 deguo bisai xian “cangdu” qizhi*, *zhongguo duiyuan li chang kangyi*) 观察 (*The Observer*), November 20, 2017, [https://www.guancha.cn/sports/2017\\_11\\_20\\_435652.shtml](https://www.guancha.cn/sports/2017_11_20_435652.shtml).

88 Sebastian Fischer, “Chinas Fahnen-Flucht”, *Süddeutsche Zeitung*, November 19, 2017b, <https://www.sueddeutsche.de/sport/chinas-u20-in-deutschland-chinas-fahnen-flucht-1.3755479>.

89 *Tibet Initiative Deutschland e.V.*, “Offener Brief der Tibet Initiative Deutschland e.V. an Bundeskanzlerin Merkel



Many German media representatives and the DFB itself also referred to the existing rights of freedom of expression in Germany.<sup>90</sup> Immediately after the match, for instance, DFB Vice-President Ronny Zimmermann stated: "We [the DFB] cannot prohibit the protests, there is the right to freedom of expression [in Germany]. But we also want to be good hosts. In that respect, we are not happy about these incidents".<sup>91</sup> Zimmermann also emphasised: "We [the DFB] had repeatedly pointed out to our interlocutors on the Chinese side in the run-up to the games that they were taking place within the framework of the freedom of expression that applies in Germany. We are of the opinion that this also includes the hanging of such a flag in the stadium".<sup>92</sup> However, the DFB's official press release did not mention freedom of expression.<sup>93</sup> It was merely noted that the friendly matches of the Chinese U20 men's national team in Germany are only "one of numerous joint undertakings" within the framework of the Sino-German football cooperation.<sup>94</sup>

Prior to this official press release by the DFB, the Chinese Foreign Ministry had issued a statement on this incident.<sup>95</sup> At a regular press conference, a spokesperson of the Chinese Ministry of Foreign Affairs, stated that "Tibet-related issues involve China's core interests and the national feelings of the Chinese people. As we all know, Tibet has been Chinese territory since ancient times. China is firmly opposed to any country, organisation or individual providing support to the anti-China separatist activities of Tibetan independence in any form and for any reason. I must emphasise here that mutual respect is the proper way for a host to treat its guests. Moreover, respect is mutual among all countries".<sup>96</sup> This statement illustrates that the DFB's behaviour represented a strong deviation from the normative action orientation prevalent in China's political centre, according to which Tibet is an integral part of the Chinese territory and therefore such protests should not be tolerated.

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zum Abbruch der Freundschaftsspiele gegen die China U20", November 27, 2017, <https://www.tibet-initiative.de/offener-brief-an-die-bundeskanzlerin-zum-abbruch-der-freundschaftsspiele-gegen-die-china-u20/>.

- 90 Christoph Cöln, "Und dann greift der dunkel gekleidete Chinese die Tibeterin an", *Die Welt*, November 19, 2017, <https://www.welt.de/sport/fussball/article170740315/Und-dann-greift-der-dunkel-gekleidete-Chinese-die-Tibeterin-an.html>. Christian Helms, "Eklat um Chinas U20 in der Regionalliga: Unter falscher Flagge". *Kicker*, "DFB-Präsident appelliert an Chinesen: Grindel zu China-Protest: ‚Meinungsfreiheit gilt‘", November 21, 2017a, [https://www.kicker.de/grindel-zu-china-protest\\_meinungsfreiheit-gilt-711225/artikel](https://www.kicker.de/grindel-zu-china-protest_meinungsfreiheit-gilt-711225/artikel). Christian Spiller, "China und der DFB: Auswärtssieg für Tibet", *Die Zeit*, November 24, 2017, <https://www.zeit.de/sport/2017-11/china-u20-dfb-tibet/komplettansicht>. Peter Sturm, "Chinas U 20 lernt Meinungsfreiheit kennen: Wer auf diese Weise ‚Respekt‘ einfordert, handelt respektlos". *Frankfurter Allgemeine Zeitung*, November 20, 2017, <https://www.faz.net/aktuell/sport/chinas-u-20-lernt-meinungsfreiheit-kennen-respektlos-15301808.html>. Markus Völker, "You'll never Wok alone: Jetzt mischt auch der DFB im Tibet-Konflikt um die U20-Nationalelf Chinas mit – als Hüter der Meinungsfreiheit. Echt jetzt?", *Die Tageszeitung*, November 22, 2017, <https://taz.de/Kolumne-Pressschlag/!5465784/>.
- 91 *Deutsche Welle*, "Chinas Führung reagiert auf Tibet-Eklat", November 20, 2017, <https://www.dw.com/de/chinas-f%C3%BChrung-reagiert-auf-tibet-eklat/a-41456999>.
- 92 *Kicker*, "Zwischenfall beim Spiel bei Schott Mainz: Unterbrechung bei Testpremiere von Chinas U 20", November 18, 2017b, <https://www.kicker.de/unterbrechung-bei-testpremiere-von-chinas-u-20-710965/artikel>.
- 93 DFB, "Chinas U 20: Freundschaftsspiele bis zur Winterpause ausgesetzt", November 24, 2017b, <https://www.dfb.de/news/detail/chinas-u-20-freundschaftsspiele-bis-zur-winterpause-ausgesetzt-178605/>.
- 94 DFB, "Chinas U 20: Freundschaftsspiele bis zur Winterpause ausgesetzt".
- 95 Ministry of Foreign Affairs of the PRC, "2017年11月20日外交部发言人陆慷主持例行记者会", (Foreign Ministry spokesman Lu Kang hosts regular press conference on November 20, 2017, 2017 nian 11 yue 20 ri wajijiao bu fayan ren lu kang zhuchi li xing zijhe hui) November 20, 2017, <https://www.fmprc.gov.cn/ce/ceae/chn/wjbfyrth/t1512312.htm>.
- 96 Ministry of Foreign Affairs of the PRC, "2017年11月20日外交部发言人陆慷主持例行记者会".

Several actors from the PRC reacted with anger to the DFB's handling of the Tibet demonstrators and the comments made by German media representatives. For example, the Chinese newspaper *People's Daily* commented these interactions during the football match that "no political provocation[s] [are] allowed in sports".<sup>97</sup> It is noted that "the Chinese men's U20 selection team encountered a series of unsportsmanlike interference in a friendly match in Germany. In what should have been a relaxed and friendly football match, there were 'Tibetan independence' flags. What is even more incredible is that the legitimate actions of Chinese players and spectators in defence of national interests were interpreted by some German media representatives as 'infringing on freedom of expression' and 'preventing democratic rights'. The responsible DFB official even absurdly threatened that the 'Tibetan independence' flag would continue to be displayed in the stadium. Where is the flavour of friendship in a friendly match? Who can tolerate the transformation of a sporting arena into a platform for political provocation that attacks the sovereignty of a country?".<sup>98</sup>

Some German media representatives were also explicitly addressed and criticised in this commentary: "Unfortunately, instead of reflecting on the situation, some German media [representatives] have been putting the blame on the victims and accusing the Chinese side of protesting. The German newspaper *Frankfurter Allgemeine Zeitung* said that it was disrespectful of China to demand respect in this way. The *Süddeutsche Zeitung* even wrote: 'This kind of support for 'Tibetan independence' on the [football] pitch is freedom of expression in Germany and is recognised by the German constitution'. These words, which are full of ignorance and prejudice, completely deny the fact that freedom of expression has a bottom line in any country and are completely devoid of an objective and fair position. Anyone with a discerning eye can see that they are engaging in self-contradictory sophistry. Is freedom of expression allowed to pass in Germany today in support of the Nazis?". Accordingly, the article points out that such political provocations by groups and individuals using, for example, Nazi symbols such as gestures and flags at matches against German football teams have previously been sanctioned with fines by the UEFA, the governing body of European football.<sup>99</sup> The Chinese journalists therefore suggest that "[i]n the light of these facts, the German media, which boasts of its so-called 'freedom of expression', is slapping itself in the face".<sup>100</sup>

After the Tibet incident, the CFA had announced in an official press release that the Chinese U20 selection team would return to China.<sup>101</sup> A spokesperson of the CFA explained that "the CFA had sent the U20 men's national football team to Germany for training and competition in order to strengthen the exchange and cooperation between China and Germany and to select talents for the Tokyo Olympics. The CFA believes that sporting events should not be interfered with by non-sporting factors and that the occurrence of such a matter is neither in line with the basic principles of developing friendly relationships between the two countries nor with the relevant FIFA regulations. After repeated consultations, the [DFB] has indicated that it is unable to control the occurrence of such incidents and the CFA regrets this, but the

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97 Feng Li and Wang Qian, "人民日报钟声：体育赛场容不得政治挑衅", (People's Daily Opinion: No political provocation allowed in sports, renmin ribao zhong sheng: Tiyu saichang rong bude zhengzhi tiaoxin) 人民日报 (*People's Daily*), November 27, 2017, <http://opinion.people.com.cn/n1/2017/1127/c1003-29668304.html>.

98 Feng Li and Wang Qian, "人民日报钟声：体育赛场容不得政治挑衅".

99 Feng Li and Wang Qian, "人民日报钟声：体育赛场容不得政治挑衅".

100 Feng Li and Wang Qian, "人民日报钟声：体育赛场容不得政治挑衅".

101 CFA, "中国U20男子足球队启程回国", (China U20 men's football team departs for home, zhongguo U20 nanzi zuqiu dui qicheng huiguo) November 26, 2017a, <http://www.thecfa.cn/nzu20xw/20171126/22474.html>.



core interests of the country cannot be compromised for any reason. The CFA has therefore decided to discontinue its cooperation with the U20 programme and has arranged for the team to return to China. The CFA will sum up the lessons learned and continue to vigorously promote international exchanges and cooperation to continuously improve the standard of football in China".<sup>102</sup>

The DFB, however, did not benefit from these international cooperation efforts of the CFA in the following years. In a financial report of the DFB for the year 2018, it is noted that the football federation's operational China activities "contrary to planning, the expenses have not been offset by any significant revenue to date, which means that the DFB's commitment must be reviewed on an ongoing basis".<sup>103</sup> Between the years 2017 and 2019, a loss of almost one million euros was made with the football association's so-called China activities and projects.<sup>104</sup> The absence of these expected financial revenues can already be seen as a political steering action, which represents the "hard" mode of steering. Not receiving anticipated financial earnings as a sanctioning measure can also be understood as a warning to other international football actors who have entered into business relationships with Chinese political and socio-economic actors to behave in accordance with the norms and expectations of the Chinese political centre, especially when it comes to perceived sensitive political issues such as Tibet, Taiwan, Hongkong or Xinjiang.

In addition, as a result of the Tibet incident involving the DFB, it can be noted that other German football actors either faced difficulties in concluding contract negotiations that had already begun, such as the DFL trying to sell the Bundesliga's media and broadcasting rights to the PRC, or were threatened with the termination of existing cooperation agreements and lucrative contracts, as was apparently the case with some Bundesliga clubs, if the DFB did not apologise for its behaviour.<sup>105</sup> A former DFL employee explained in an expert interview, for example, that due to the negative impact of the Tibet flag scandal involving the DFB, many negotiations and existing cooperation agreements in football between German and Chinese actors were "put on hold". As a result, some Bundesliga clubs were alarmed and quite nervous and joined forces with the DFL to talk to the DFB about this issue. It was also explained that it was quite common for contracts between Chinese and foreign football partners to contain a "political (exit) clause", allowing the Chinese side to unilaterally terminate the contract in case of political controversy or repercussions. German football actors such as the DFL and several Bundesliga clubs therefore seem to have put pressure on the DFB to apologise to its Chinese cooperation partners in order to allow the respective German football actors to continue to access and penetrate the lucrative Chinese market.

These concerted "hard" political steering efforts by Chinese business enterprises can be interpreted as an expression of compliant behaviour towards the norms and expectations of the Chinese political centre, as public criticism by central party-state agencies in the PRC,

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102 CFA, "中国U20男子足球队启程回国".

103 DFB, "DFB Finanzbericht 2018", July 18, 2019b, [https://www.dfb.de/fileadmin/\\_dfbdam/203369-Finanzbericht\\_DFB\\_2018\\_RZ\\_lay2\\_einzel.pdf](https://www.dfb.de/fileadmin/_dfbdam/203369-Finanzbericht_DFB_2018_RZ_lay2_einzel.pdf).

104 DFB, "DFB Finanzbericht 2019" July 3, 2020b, [https://www.dfb.de/fileadmin/\\_dfbdam/224318-Finanzbericht\\_DFB\\_2019\\_final.pdf](https://www.dfb.de/fileadmin/_dfbdam/224318-Finanzbericht_DFB_2019_final.pdf).

105 *WirtschaftsWoche*, "Unklare Hintergründe einer DFB-Reise nach China" March 8, 2018, <https://www.wiwo.de/unternehmen/dienstleister/deutscher-fussballbund-unklare-hintergruende-einer-dfb-reise-nach-china/21048238.html>.

such as the Chinese Ministry of Foreign Affairs, implicitly signalled to formally subordinate Chinese entrepreneurs which football cooperation partners were desired, and which were not. It can therefore be argued that the reaction of Chinese socio-economic actors to public criticism from high-ranking party-state actors illustrates the conformist striving of formally subordinate actors in the PRC with the normative action orientations of the Chinese political centre. The case study thus shows that, by means of communicative and discursive practices, which constitute the “soft” mode of steering,<sup>106</sup> Chinese economic actors can be consciously or unconsciously instrumentalised by central party-state authorities in China to exert a sanctioning effect on certain foreign actors, with the aim of steering these deviant behaviours in a particular “direction”, so that it (again) corresponds to the normative action orientation of the Chinese political centre.<sup>107</sup> As Chinese entrepreneurs introduced “hard” steering measures and thus exerted financial pressure on German football actors close to the DFB, such as the DFL and some influential Bundesliga clubs seeking financial gains, these foreign football actors could in turn be instrumentalised to put pressure on the DFB to comply with the norms and expectations of the Chinese central party-state and apologise for its behaviour. It therefore seems appropriate to refer to “meta-steering” or “steering of steering” in this context.<sup>108</sup>

When it comes to the steering effect, there are different, partly contradictory statements from various actors. According to German media reports,<sup>109</sup> the DFB has apologised to its Chinese cooperation partners, but the DFB denies this.<sup>110</sup> Due to these conflicting statements, it is therefore not possible to make a final judgement on whether these “hard” political steering actions were successful or not. What is certain, however, is that after the Tibet incident, the DFB was not able to maintain its financial revenues through the China cooperation, while other German football actors such as the DFL resumed and expanded their China-related business activities after a relatively short period of time.<sup>111</sup>

#### 4. CONCLUSION: THE LIMITS OF SPORT DIPLOMACY WITH THE PRC

The case study presented in this research article highlights the limits of sport diplomacy between the DFB and the Chinese party-state. Instead of bringing the various Chinese and German football actors closer together, defusing and at best resolving existing conflicts between the two countries, and promoting mutual understanding of the respective positions of the two countries, the Sino-German football cooperation initiated by the highest diplomatic levels of both countries has achieved exactly the opposite. Neither the foreign policy goals

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106 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”. See also: Gerhard Göhler, Ulrike Höppner and Sybille De La Rosa, *Weiche Steuerung: Studien zur Steuerung durch diskursive Praktiken, Argumente und Symbole* (Baden-Baden: Nomos, 2009).

107 Mayntz, “Politische Steuerung und gesellschaftliche Steuerungsprobleme: Anmerkungen zu einem theoretischen Paradigma”, 90.

108 Schubert and Alpermann, “Studying the Chinese policy process in the era of ‘top-level design’: The contribution of ‘political steering’ theory”, 207.

109 *WirtschaftsWoche*, “Unklare Hintergründe einer DFB-Reise nach China”.

110 DFB, “DFB korrigiert Falschmeldung der WirtschaftsWoche”, March 9, 2018, <https://www.dfb.de/news/detail/dfb-korrigiert-falschmeldung-der-wirtschaftswoche-182895/>.

111 DFL, “Medienrechte für China vergeben: PP Sports und Bundesliga International schließen Kooperation über fünf Jahre”, July 9, 2018, <https://www.dfl.de/de/aktuelles/medienrechte-fuer-china-vergeben-pp-sports-und-bundesliga-international-schliessen-kooperation/>.

intended by the football cooperation nor the sport-specific development initiatives of the two countries could be realised. In addition, the DFB has not been able to benefit financially from this exclusive cooperation with the Chinese party-state actors, although there were corresponding expectations on the part of the DFB. Due to contentious interactions and subsequent political steering actions following the Tibet flag scandal at a friendly match of the Chinese U20 men's national football team in Germany, the collaboration between the DFB and its Chinese cooperation partners was discontinued.

The decision to end this cooperation was not made by mutual agreement, but came unilaterally from the Chinese side, even if the DFB announced it otherwise on its website.<sup>112</sup> The CFA responded to this public announcement by the DFB, calling it a "release of false information on the official website of the [DFB]".<sup>113</sup> A spokesperson of the CFA stated that then "DFB General Secretary Friedrich Curtius was not invited by the CFA to China recently. The CFA did not contact him during his stay in China, and the content of the statement of the [DFB] was not the result of consultations between the two sides. The CFA regrets that the German side has published inaccurate information".<sup>114</sup> Earlier, Chinese media representatives had reported that a DFB delegation had travelled to the PRC to discuss the further course of Sino-German football cooperation following the Tibet flag scandal.<sup>115</sup> An employee of the DFB confirmed in an expert interview that the DFB delegation led by Curtius was not received by the CFA despite their journey to Beijing.

The case study illustrates that sport itself has become an arena for playing out political conflicts. In this case, the use of sport as a tool to overcome and mediate divisions between different societal and state actors failed because the DFB displayed behaviour that was perceived as unacceptable by high-level party-state actors from the PRC. Beyond this case study, there are a number of other contentious interactions between Chinese political and international actors in sport that have not yet been examined by sport diplomacy research,<sup>116</sup> and could therefore be a future research topic. In this context, the conceptual approach of political steering might provide an alternative to the concept of "soft power", which is prevalent in the relevant literature on sport diplomacy, in order to examine the interactions between different actors aimed at changing the behaviour (or normative action orientations) of other actors. In conclusion, it can be said that research on sport diplomacy cannot only demonstrate how the deliberate use of sport can strengthen international relations, especially when it comes to addressing particularly "estranged relations between peoples, nations and states",

112 DFB, „Freundschaftsspiele mit chinesischer U 20 werden nicht fortgesetzt,“ December 22, 2017c, <https://www.dfb.de/news/detail/freundschaftsspiele-mit-chinesischer-u-20-werden-nicht-fortgesetzt-180109/>.

113 CFA, „中国足协发言人就德国足协官网发布不实消息接受采访,“ (CFA spokesperson interviewed on the release of false news on the official website of the German Football Association, zhongguo zuxie fayan ren jiu deguo zuxie guanwang fabu bu shi xiaoxi jieshou caifang) December 27, 2017b, <http://www.thecca.cn/xhwx/20171227/22626.html>.

114 CFA, „中国足协发言人就德国足协官网发布不实消息接受采访“.

115 Zhang, Yan „德国足协来中国献上一计只为把U20国足请回去,“ (German football federation came to China to offer a plan just to bring back the U20 national football team, deguozuxie lai zhongguo xianshang yi ji zhi wei ba U20 guo zu qing huiqu) 环球时报 (*Global Times*), December 12, 2017, <http://news.sina.com.cn/c/nd/2017-12-12/doc-ifypnqvn3393524.shtml>. Sohu, „有钱就是爷? 德球队曾对中德U20合作装逼我们撤了以后立马怂了,“ (Money is the master? The German team had pretended to the Sino-German U20 cooperation we withdrew immediately after the wimp, you qian jiushi ye? de qiu dui ceng dui zhong de U20 hezuo zhuang bi women chele yihou lima songle) December 12, 2017, [https://www.sohu.com/a/209879890\\_550934](https://www.sohu.com/a/209879890_550934).

116 See introduction section.

but also that corresponding interactions between different actors at the international level can shed light on how far this “estrangement” has already progressed, leaving the actors involved rather perplexed.<sup>117</sup>

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117 Murray, *Sports Diplomacy: Origins, Theory and Practice*.

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## RESEARCHING FOOTBALL, IDENTITY AND COHESION IN EUROPE

TOBIAS FINGER\*  
JENNIFER AMANN\*\*  
JONAS BIEL\*\*\*  
ARNE NIEMANN\*\*\*\*  
VINCENT REINKE\*\*\*\*\*


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### Abstract


Multiple crises are endangering the project of European integration, increasingly threatening social cohesion in Europe. Countering these dangers is necessary for the persistence of the European project. While international cooperation continues, it regularly remains in the sphere of political institutions, and interpersonal contact and exchange across Europe is often reserved for socio-economic elites. This conceptual paper argues that football, as a highly Europeanised mass leisure activity with fandom from socially diverse audiences all over Europe, has a strong potential to supplement existing exchange and cooperation, thus strengthening social cohesion in Europe. Based on a secondary analysis of the existing literature, the central concepts of football, (European) identity, and social cohesion are discussed, and their causalities and potential effects are described. A draft research strategy is outlined to analyse concrete football-based European stimuli, European expressions of fandom, and international practices of exchange. We conclude that football leads to the emergence of European identities among fans by exposing them to Europe and strengthens social cohesion through the establishment of international social relations utilised for reciprocal cooperation and action. Football could further be used as a blueprint for similarly Europeanised cultural phenomena, and the outlined research agenda adjusted accordingly to examine them.


**Keywords:** Football, Fandom, Europe, Europeanisation, Identity, European identity, Social cohesion.


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\* Department of Political Science, Johannes Gutenberg University Mainz, Germany.  <https://orcid.org/0000-0003-3426-1682>. ✉ [tfinger@uni-mainz.de](mailto:tfinger@uni-mainz.de).

\*\* School of Sport and Health Sciences, Brighton University, UK.  <https://orcid.org/0000-0003-4201-4075>.  
✉ [j.amann2@brighton.ac.uk](mailto:j.amann2@brighton.ac.uk).

\*\*\* Department of Political Science, Johannes Gutenberg University Mainz, Germany.  <https://orcid.org/0000-0002-3288-2226>. ✉ [jobiel@uni-mainz.de](mailto:jobiel@uni-mainz.de).

\*\*\*\* Professor, Department of Political Science, Johannes Gutenberg University Mainz, Germany.  <https://orcid.org/0000-0003-2602-6201>. ✉ [arne.niemann@uni-mainz.de](mailto:arne.niemann@uni-mainz.de).

\*\*\*\*\* Department of Political Science, Johannes Gutenberg University Mainz, Germany.  <https://orcid.org/0000-0001-6541-0746>. ✉ [reinkevi@uni-mainz.de](mailto:reinkevi@uni-mainz.de).

## 1. INTRODUCTION

Over the past years and decades, multiple crises and developments have put enormous pressure on the project of European integration and stability. Challenges of political, social, economic, cultural, and ecological nature are increasingly threatening cohesion, peace, and prosperity in Europe. Anti-European attitudes and tendencies continue to grow, and their representatives are scoring wins all over the continent.<sup>1,2</sup> Rising Euroscepticism, Brexit, the indecisive fight against climate change, and conflicting positions on migration have exposed the fault lines of European unity. While Russia's invasion of Ukraine in February 2022 has provided a valuable opportunity to demonstrate unity and stability in the face of external aggression, it has, at the same time, put additional strain on the European project by amplifying existing crises.

Various challenges faced by the European community might sometimes result in prioritisation of national interests, but highlight the importance of political cooperation, both in the scope of the European Union (EU) as well as bi- and multilateral coordination. In fact, with the high degree of economic interdependence between European countries, there remains an extensive ongoing cooperation and interaction among European countries as well as their citizens in a variety of fields, including education, science and research, arts and culture, tourism, and employment. Such forms of transnational exchange are essential as they can curb the divisive effects of anti-European tendencies and the reversion to the national frame through fostering a shared understanding of Europe and being European, which represents an important precondition for European cohesion. Still, there are decisive gaps in these networks of exchange. Firstly, while institutional(ised) cooperation remains a key dimension of mutually beneficial exchange and European integration, it rarely includes interpersonal exchange and contact on the individual level of regular citizens. Secondly, while such individual cross-border contact and mobility have proven to be decisive factors for European identification, they often remain limited to groups of higher formal education and socio-economic status,<sup>3</sup> exemplified by the Erasmus program<sup>4,5</sup> or touristic mobility,<sup>6,7</sup> or specific social groups as shown by the Eurovision Song Contest.<sup>8</sup> We propose that sports, and especially football, can serve to fill these gaps in the network of transnational exchange and cooperation, since it complements the institutional(ised), 'official' as well as more 'elitist' individual modes of exchange.

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1 Catherine E. de Vries, *Euroscepticism and the Future of European Integration* (Oxford, New York, NY: Oxford University Press, 2018). <https://doi.org/10.1093/oso/9780198793380.001.0001>.

2 Marco Baldarassi et al., eds., *Anti-Europeanism* (Springer, 2020).

3 Justyna Salamonska and Ettore Recchi, "The Social Structure of Transnational Practices," in *Everyday Europe: Social Transnationalism in an Unsettled Continent*, ed. Ettore Recchi et al. (Bristol, Chicago, Ill.: Policy Press, 2019).

4 Adrian Favell, *Eurostars and Eurocities: Free Movement and Mobility in an Integrating Europe*, Studies in Urban and Social Change (Malden, Mass.: Blackwell, 2008).

5 Theresa Kuhn, *Experiencing European Integration: Transnational Lives and European Identity* (Oxford: Oxford University Press, 2015).

6 Per Gustafson, "Place Attachment and Mobility," in *Multiple Dwelling and Tourism: Negotiating Place, Home and Identity*, ed. N. McIntyre, D. R. Williams and K. E. McHugh (UK: CABI, 2006).

7 Per Gustafson, "Mobility and Territorial Belonging," *Environment and Behavior* 41, no. 4 (2009), <https://doi.org/10.1177/0013916508314478>.

8 Catherine Baker, "The 'Gay Olympics'? The Eurovision Song Contest and the Politics of LGBT/European Belonging," *European Journal of International Relations* 23, no. 1 (2017), <https://doi.org/10.1177/1354066116633278>.

As a widely popular cultural phenomenon and a mass leisure activity, football<sup>9</sup> reaches a broad, socially diverse audience across Europe. Additionally, football has well-researched effects on identification and identities spanning across the local, regional, national, and – especially relevant here – European level.<sup>10,11,12,13,14,15,16</sup> These European identity effects emerge from a structural and administrative Europeanisation of football over the past decades, stemming from the intersection of its sporting and economic development with processes of European integration.<sup>17</sup> Due to its Europeanised nature, football promotes cross-border exchange and pan-European practices between individuals and collectives and thus enables regular and reliable connection and interaction between European citizens of all social strata. Based on football fans' strong emotional involvement and identification<sup>18</sup> with this highly Europeanised sport, football can potentially serve as a vehicle for European identification and directly impact cohesion across the continent. The relationship between identity and cohesion is a reciprocal one. While strengthened identifications positively affect social cohesion, active practices of cohesion can have a positive influence on shared identities. Football as both a carrier of identities and a field of action for practices of cohesion has the potential to positively influence both sides of a causal relationship. As such, it can complement governmental and other institutional programs or interactions taking place in segmented social contexts.

This paper aims to describe football's potentials in these respects, based on an analysis of the interrelations of fandom, European identity, and social cohesion. This football-identity-cohesion nexus will be analysed based on a literature review of the existing research on (European) identity and social cohesion, combined with an examination of the status quo of football's Europeanisation to identify the potentials of fandom and fan culture for shaping identities and promoting practices of social cohesion. The central questions the paper seeks to answer are therefore: How does football shape European identities? What European practices of cohesion does it promote? And how can the interrelations between football, identities, and cohesion, as well as their consequences be purposefully researched? To answer these questions, the paper firstly covers football and fandom as an identificatory phenomenon, describes the state of European football and how it shapes contemporary expressions of

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9 Our focus here is exclusively on men's professional club football in Europe since the characteristics of a European mass leisure activity can mainly be ascribed to this dimension of the sport.

10 Anthony King, "Football Fandom and Post-National Identity in the New Europe," *The British Journal of Sociology* 51, no. 3 (2000), <https://doi.org/10.1111/j.1468-4446.2000.00419.x>.

11 Anthony King, "The New Symbols of European Football," *International Review for the Sociology of Sport* 39, no. 3 (2004), <https://doi.org/10.1177/1012690204045599>.

12 Roger Levermore and Peter Millward, "Official Policies and Informal Transversal Networks: Creating 'Pan-European Identifications' Through Sport?," *The Sociological Review* 55, no. 1 (2007), <https://doi.org/10.1111/j.1467-954X.2007.00686.x>.

13 Henk E. Meier et al., "Fan Identification and National Identity," *Sport in Society* 22, no. 3 (2019), <https://doi.org/10.1080/17430437.2018.1504771>.

14 Ramón Llopis Goig, "Identity, Nation State and Football in Spain: The Evolution of Nationalist Feelings in Spanish Football," *Soccer & Society* 9, no. 1 (2008), <https://doi.org/10.1080/14660970701616738>.

15 Regina Weber, "Banal Europeanism? Europeanisation of Football and the Enhabitation of a Europeanised Football Fandom," *Sport in Society* 24, no. 11 (2021), <https://doi.org/10.1080/17430437.2021.1893697>.

16 Regina Weber et al., "A European Mind? Europeanisation of Football Fan Discussions in Online Message Boards," *European Journal for Sport and Society* 19, no. 4 (2022), <https://doi.org/10.1080/16138171.2021.1974220>.

17 Arne Niemann, Regina Weber, and Alexander Brand, "Football and European Integration(s)," in *The Routledge Handbook of European Integrations*, ed. Thomas Hörber, Gabriel Weber and Ignazio Cabras, Routledge International Handbooks (Abingdon, Oxon, New York, NY: Routledge, 2021).

18 Jamie Cleland et al., *Collective Action and Football Fandom: A Relational Sociological Approach* (Cham: Springer, 2018). <https://doi.org/10.1007/978-3-319-73141-4>.

fan culture. A subsequent secondary analysis based on a literature review of the concepts of identity and social cohesion provides the basis for a description of the causal connections between the three aspects. Based on the footballing context, the paper ends with an outline for a research agenda, highlighting relevant aspects of examination and providing starting points for a broader research program that might be applicable to Europeanised mass leisure activities beyond football.

## 2. FOOTBALL FAN CULTURE AND FAN IDENTITIES

Football fandom constitutes one of the largest forms of collective behaviour in contemporary society<sup>19,20</sup> with people from different backgrounds coming together on a regular basis to jointly engage with football. Being a leisure and lifeworld activity, many socially diverse Europeans participate in, the identification with a football club and fellow fans “often contributes to an individual’s sense of identity with or belonging to a group or collectivity.”<sup>21</sup> For many, “being a supporter is key part of their ‘real’ lives: a regular *structuring* part of their existence that enables them to feel belonging in the relative disorder of contemporary social formations.”<sup>22</sup> Doidge et al. go even further and view football fandom “as an extension of the self”, arguing that “[o]ntologically, the team becomes an extension of the individual”,<sup>23</sup> indicating a high level of identification and emotional involvement – potentially not only with the club, but other fans as well, since “individuals create emotional and highly valued connections with their identified group.”<sup>24</sup>

Inherent to football fandom as a leisure activity are many social (inter)actions, particularly among fans of the same club, fans from rival clubs, but also football fans more generally: “football fans identify themselves with similar members of a football community by attending matches, wearing club colours, and chanting alongside other fans.”<sup>25</sup> Cleland et al. also stress the significance of the social aspect accompanying football, namely the meeting with “friends, acquaintances, combined with passionate atmosphere”,<sup>26</sup> contributing to a sense of belonging among the individual supporters and keeping the group together. Football often becomes a part of everyday life through its discussions at people’s homes and workplaces as well as social media and other online spaces. It is this extension of football into people’s everyday lives and their relationships that is considered crucial for football culture’s perpetuation, expression, and experience.<sup>27</sup> Football fandom connects “supporters within and across spatial

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19 Cleland et al., *Collective Action and Football Fandom*.

20 Ludovic Lestrelin, “Entering Into, Staying, and Being Active in a Group of Football Supporters: A Procedural Analysis of Engagement. The Case of Supporters of a French Football Club,” *International Review of Sociology* 22, no. 3 (2012), <https://doi.org/10.1080/03906701.2012.730831>.

21 Tony Mason, *Sport in Britain: A Social History* (Cambridge: Cambridge University Press, 1989), 118.

22 Adam Brown, Tim Crabbe, and Gavin Mellor, “Introduction: Football and Community – Practical and Theoretical Considerations,” *Soccer & Society* 9, no. 3 (2008): 308, <https://doi.org/10.1080/14660970802008934>.

23 Mark Doidge, Radostaw Kossakowski and Svenja Mintert, *Ultras: The Passion and Performance of Contemporary Football Fandom* (Manchester: Manchester University Press, 2020). <https://doi.org/10.7765/9781526127631>.

24 Mathieu Winand et al., “Sports Fans and Innovation: An Analysis of Football Fans’ Satisfaction with Video Assistant Refereeing Through Social Identity and Argumentative Theories,” *Journal of Business Research* 136 (2021): 100, <https://doi.org/10.1016/j.jbusres.2021.07.029>.

25 Winand et al., “Sports Fans and Innovation,” 100.

26 Cleland et al., *Collective Action and Football Fandom*, 86.

27 Chris Stone, “The Role of Football in Everyday Life,” *Soccer & Society* 8, no. 2-3 (2007), <https://doi.org/10.1080/14660970701224319>.



boundaries to one another, to the products, images and discursive renderings of football culture and to collective memories of embodied experiences across space and time”,<sup>28</sup> as well as to other actors of the sport like players or coaches through para-social relationships.<sup>29</sup>

This further underlines the potential of identification or a sense of belonging to a broader transnational community of football fans that transcends shared allegiance to a particular club. It is in this way that football fandom and the resulting exposure to related stimuli, interactions, relationships, and connections create group delineations, sense of belonging and identification, thus potentially connecting football fans *across* local, regional, and even national contexts. Following the concept of “transnationalization from below”,<sup>30</sup> we maintain that football provides an arena for the formation of a European identity away from the political context of consciously identifying with Europe or the European Union. The well-documented Europeanisation of men’s club football along various dimensions<sup>31,32,33</sup> provides opportunities to increase *identification with Europe* among fans and results in *Europeanisation of identities*, since football fans are increasingly exposed to European stimuli. While the transnational and European dimensions do not need to be congruent, the Europeanisation of professional men’s club football discussed below provides the backdrop for most transnational contact and therefore stimuli. Borrowing from Risse’s terminology, we can distinguish between two dimensions of contact with Europe: while the *vertical* dimension covers the distinctly European level, such as the participation in European competitions or the UEFA as the governing body of European football, the *horizontal* dimension represents contact with other countries in Europe, such as following a foreign national league or travelling to an international friendly match.<sup>34</sup> Both dimensions are transnational by their very nature. European identity, relevant European stimuli or even Europeanisation dynamics are oftentimes dependent on transnationalising processes. *Horizontal* European stimuli are necessarily transnational. An emerging European identity cannot be thought without the underlying transnational connections. However, after making these differentiations and clarifications, building upon existing works relating to transnational phenomena in European football,<sup>35,36</sup> and since the Europeanisation of club football affects the entirety of the transnational European football sphere (see below), we are confident to refer to *European* stimuli, identities,<sup>37,38</sup> or practices, while clearly recognising their transnational foundation and underlying processes.

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28 Stone, “The Role of Football in Everyday Life,” 181.

29 Niemann, Weber and Brand, “Football and European Integration(s).”

30 Steffen Mau, *Social Transnationalism: Lifeworlds Beyond the Nation-State* (London: Routledge, 2010).

31 Niemann, Weber and Brand, “Football and European Integration(s).”

32 Alexander Brand, Arne Niemann, and Georg Spitaler, “The Two-Track Europeanization of Football: EU-Level Pressures, Transnational Dynamics and Their Repercussions Within Different National Contexts,” *International Journal of Sport Policy and Politics* 5, no. 1 (2013), <https://doi.org/10.1080/19406940.2012.665381>.

33 Arne Niemann, Borja García and Wyn Grant, eds., *The Transformation of European Football: Towards the Europeanisation of the National Game* (Manchester: Manchester University Press, 2011).

34 Thomas Risse, *A Community of Europeans? Transnational Identities and Public Spheres* (Ithaca, NY: Cornell University Press, 2015).

35 Michael Mutz, “Transnational Public Attention in European Club Football: Current Trends and Driving Forces,” *European Societies* 17, no. 5 (2015), <https://doi.org/10.1080/14616696.2015.1118519>.

36 Regina Weber et al., “Non-Elite Conceptions of Europe: Europe as a Reference Frame in English Football Fan Discussions,” *Journal of Contemporary European Research* 16, no. 3 (2020), <https://doi.org/10.30950/jcer.v16i3.1089>.

37 Richard K. Herrmann, Thomas Risse and Marilyn B. Brewer, eds., *Transnational Identities: Becoming European in the EU, Governance in Europe* (Lanham, Md.: Rowman & Littlefield, 2004).

38 Kuhn, *Experiencing European Integration*.

### 3. THE STATE OF EUROPEAN CLUB FOOTBALL AND ITS EFFECTS ON FANDOM

Professional men's club football in Europe has been subject to an increasing Europeanisation, that is adjustments and transformations of its administrative structures, economic power, and cultural impact resulting from or taking place within the process of European integration. This includes pressures from regulatory bodies, the use of scopes of actions by private stakeholders, as well as cooperation and coordination between actors from the public and private sectors.<sup>39</sup> Four main developments can be observed:

1. the internationalisation of player markets. In 1995, the so-called "Bosman ruling"<sup>40</sup> of the European Court of Justice transformed the European player market by asserting that free movement of workers also applied to football players. Consequently, regulations that limited foreign players on teams' rosters were deemed discriminatory and were abolished. At the same time, the ruling allowed players to change clubs for free after their contract with their former clubs expired.<sup>41,42</sup>
2. the emergence and professionalisation of European competitions. The UEFA Champions League, the UEFA Europa League and the UEFA Europa Conference League represent an interconnected, multi-tier system of European competitions which are theoretically accessible for clubs from all 55 UEFA member associations. The emergence of the three competitions reflects the broader professionalisation and economic development of the game through its clubs and governing bodies.<sup>43,44</sup>
3. increased transnational cooperation between relevant stakeholders. Reacting to an increasingly professional and European orientation of the sport, different stakeholders have formed institutionalised advocacy coalitions to jointly represent their interests. This happened both on the level of clubs, originally with the G-14 and later with the European Club Association (ECA), as well as among fans, most famously Football Supporters Europe (FSE).<sup>45,46</sup>
4. economic and regulatory pressures affecting the distribution of broadcasting rights. These rights became increasingly important, and consequently expensive, through technical progress and rising interest in the game. Consequently, their distribution was partly regulated on the European level, resulting in partial exceptions from EU competition regulations for this domain.<sup>47,48</sup>

39 Niemann, Weber and Brand, "Football and European Integration(s)."

40 Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, EU:C:1995:463

41 Richard Parrish, *Sports Law and Policy in the European Union* (Manchester: Manchester University Press, 2003). <https://doi.org/10.7228/manchester/9780719066061.001.0001>.

42 Antoine Duval and Ben van Rompuy, eds., *The Legacy of Bosman: Revisiting the Relationship Between EU Law and Sport*, ASSER International Sports Law Series (The Hague: T.M.C. Asser Press, 2016).

43 Arne Niemann and Alexander Brand, "The UEFA Champions League: A Political Myth?," *Soccer & Society* 21, no. 3 (2020), <https://doi.org/10.1080/14660970.2019.1653859>.

44 Diána I. Fűrész and Pongrác Ács, "The Relation Between National Competition and International Competitiveness," *Problemy Zarządzania - Management Issues* 18, no. 1 (2020), <https://doi.org/10.7172/1644-9584.87.1>.

45 Cleland et al., *Collective Action and Football Fandom*.

46 Jürgen Mittag, "Aufstieg und Auflösung der G14: Episode oder Paradebeispiel der Konfliktregulierung Europäischer Sportpolitik?," in *Europäische Sportpolitik: Zugänge - Akteure - Problemfelder*, ed. Jürgen Mittag (Baden-Baden: Nomos, 2018).

47 Niemann, Weber and Brand, "Football and European Integration(s)."

48 Wladimir Andreff and Jean-François Bourg, "Broadcasting Rights and Competition in European Football," in *The Economics of Sport and the Media*, ed. Claude Jeanrenaud and Stefan Kesenne, New Horizons in the Economics



All four developments continue to have decisive impacts on men's professional club football in Europe. The liberalisation of player markets resulted in the internationalisation of player squads, with more and more Europeans joining teams in leagues outside of their home country. This Europeanisation is a two-way dynamic: foreign players coming to a specific league represent the outside-in perspective, while players from a specific country moving to leagues abroad can be regarded as the inside-out counterpart. This internationalisation has also reached the level of other personnel, such as coaches or club officials. The establishment and expansion of European competitions provide a great number of matches on a regular basis between European clubs that are widely broadcasted across the continent, while the barriers to access games of foreign national leagues have been dismantled due to the expansion of streaming services and the allocation of broadcasting rights. Additionally, the inception and professionalisation of actors' networks and increased international cooperation among stakeholders led to concerted lobbying efforts as well as collective action by interest groups across national borders and on the European level. Taken together, these developments have led to the establishment of a distinctly European football sphere.

Outside of football, developments of progressing European integration have transformed experiences and expressions of football fandom in Europe. Facilitation of cross-border mobility by the Schengen Convention, the introduction of a common currency with the Euro, the European single market guaranteeing 'four freedoms' (movement of goods, movement of capital, movement of persons, to establish and provide services), and other changes like the increase in internet-based communication, or the introduction of European Health Insurance Cards, played a role in making many European countries within and outside of the EU more accessible to football fans. This, in turn, provides opportunities for travel and exchange across Europe, turning football fans more 'European' in the process.

In their engagement with football, fans are regularly exposed to increasingly European influences. This holds true for players and coaching staff of their favourite club (outside-in) as well as other clubs they are exposed to. Additionally, home-grown players and other personnel might move abroad to a foreign national league (inside-out), drawing attention towards them. The emergence of the system of European competitions means that football fans can watch games between clubs from different European countries, either including their own club, or independently of club affiliation. Furthermore, qualifying for European competitions might become a benchmark for success.<sup>49</sup> Not only are matches between teams from different European countries a regular occurrence, but international live broadcasts are easily accessible, and information on football is virtually ubiquitous – a result of Europeanisation and mediatisation of the sport. This provides continued mediated exposure to European stimuli for fans. The expansion of the European match calendar through introduction of additional competitions, or widening the existing ones, extends travel opportunities to international away games, while travelling itself is simplified through lesser restrictions. This enables more fans to experience international away games and provides points of contact with Europe through other countries and local fans abroad.

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of Sports (Cheltenham: Edward Elgar Publishing, 2006).

49 Weber et al., "Non-Elite Conceptions of Europe."

Consequently, it is now possible to become a fan of a foreign club and intensively follow it. This enables a previously uncommon decoupling of club fandom and location, additionally highlighting the change from place-based sports audiences towards dispersed national or international audiences that the mediatisation of football and the changes in the allocation of broadcasting rights have mandated.<sup>50,51</sup>

Lastly, the Europeanisation of club football has vastly increased opportunities for establishing coalitions and international networks. Intensified international exchange uncovered shared interests of fans from different national contexts, while the growing importance of the European level and greater frequency of international matches highlighted new, distinctly European issues. Increasingly professionalised networks represent fan interests on a broad range of issues<sup>52</sup> and serve as counterparts to the Europeanised cooperation of other stakeholders like the ECA. Fan friendships between two clubs might be formed around shared political, cultural, or religious traits, the sharing of which only became apparent through international contact.<sup>53</sup>

While the EU, its increased cooperation, enlargement, and policies have been both decisive drivers and the most salient results of the process of European integration, this process transcends the scope of the EU and encompasses states in geographic Europe that are not EU members or associated countries that are affected by the EU's foreign, economic, or cultural policy, as well as economic and social ties. In the realm of football, this is further amplified through UEFA, which consists of 55 member states that are not all EU members or necessarily even located on the European continent (e.g., Israel). However, EU legislation or regulatory measures that are binding for the EU member states do impact associated states. The union's trade policy and its market power might induce changes in other countries' production chains or their agriculture regulations to maintain positive trade relations with the EU. Regarding football, the ECJ's Bosman ruling prohibited UEFA and the associations in the EU countries from regulating the number of EU foreigners in its associated leagues. However, the regulations for UEFA competitions also directly affect the participating clubs from outside the EU, potentially impacting football-specific regulations in non-EU countries and, thus, fans' experiences.

This is just one example of EU policy affecting non-EU states' football leagues because of the multi-faceted cooperation with associated countries. In the case of football, these are especially influential, as UEFA governs associations from both the EU and non-EU countries. Since they are bound by common regulations, especially because they might face each other in UEFA club competitions and should, in theory, have equal access and opportunity, UEFA needs to implement EU regulations to avoid a breach of or conflict with EU legislation. This has contributed to the evolution of EU-UEFA relations from confrontation to a strategic

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50 David Rowe, "Sport and Its Audiences," in *The Handbook of Media Audiences*, ed. Virginia Nightingale (Chichester: Wiley, 2011).

51 FREE, "Football Research in an Enlarged Europe: Project Final Report" (2015), <https://cordis.europa.eu/project/id/290805/reporting/de>.

52 Cleland et al., *Collective Action and Football Fandom*.

53 Weber, "Banal Europeanism?"

partnership.<sup>54,55</sup> It is in this sense that UEFA's increasing engagement in EU policy cooperation has led to a furthering of EU policies' influence on non-EU UEFA members – and European integration of the footballing sphere includes more than the EU. This also applies to the concept of Europe employed throughout this paper, which is not limited to the scope of the EU. While football-related EU developments reach beyond the EU borders in the ways ascribed above, Europeanising identity effects can rebound on the EU: when it is positively connected to Europe, increased identification with Europe can strengthen trust in EU institutions,<sup>56</sup> although the strengthened identification might originate from the footballing context that is not congruent with the EU. However, this hinges upon fans' perceptions and definitions of Europe and their relation to the EU (uncovering which is part of the research agenda we propose).

Contrary to research that described football as a field of action for the performance of national or regional identities that reproduce exclusions and delineations,<sup>57,58</sup> other works have shone a light on the effects of football's Europeanisation on fan identities. In his research among fans of English Premier League club Manchester United, King found significant evidence for increased European identification, which is related to the results of football's Europeanisation in the sense of European competitions and resulting travels.<sup>59</sup> He also examined the effects of media coverage of foreign leagues, showing that its consumption leads to a decline in stereotypes and more positive connotations of foreign national entities.<sup>60</sup> Additionally, comparative research has proven that fans of those clubs who regularly participate in European competitions identify with European values and ideals more strongly than those of lower-league teams with a heavily regional focus.<sup>61</sup> Regarding European belonging, fans have proven to positively relate to Europe when they are accustomed to participation in European competitions. Also, club-related in-group definitions have shown to neglect national categories. Weber et al., therefore, conclude that while local connectedness remains important for identification, Europe is increasingly important for fan identities. The results of the interdisciplinary multi-national project Football Research in an Enlarged Europe (FREE) also delivered a variety of indications that changes in footballing structures towards a Europeanisation of the game generate a vast potential for identifying with Europe and the emergence of European identities among fans.<sup>62</sup> Levermore and Millward suggest that football fandom has a strong potential to contribute to a sense of belonging across national borders<sup>63</sup> – already hinting at the causalities at the centre of this paper.

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54 Borja García, "UEFA and the European Union: From Confrontation to Co-Operation?," *Journal of Contemporary European Research* 3, no. 3 (2007), <https://doi.org/10.30950/jcer.v3i3.52>.

55 Arnout Geeraert and Edith Drieskens, "The EU Controls FIFA and UEFA: A Principal-Agent Perspective," *Journal of European Public Policy* 22, no. 10 (2015), <https://doi.org/10.1080/13501763.2015.1022206>.

56 Soetkin Verhaegen, "The Relationship Between National and European Identification, and Trust in EU Institutions," *CERGU's Working Paper Series* 2018, no. 4 (2018).

57 Meier et al., "Fan Identification and National Identity."

58 Mateusz Grodecki, "Performative Nationalism in Polish Football Stadiums and Fans' Views and Attitudes: Evidence from Quantitative Research," *International Review for the Sociology of Sport*, 2022, <https://doi.org/10.1177/10126902221121499>.

59 Anthony King, *The European Ritual: Football in the New Europe* (Aldershot: Ashgate, 2003).

60 King, "Football Fandom and Post-National Identity in the New Europe."

61 Peter Millward, "We've All Got the Bug for Euro-Aways': What Fans Say About European Football Club Competition," *International Review for the Sociology of Sport* 41, no. 3-4 (2006), <https://doi.org/10.1177/1012690207077706>.

62 FREE, "Football Research in an Enlarged Europe."

63 Levermore and Millward, "Official Policies and Informal Transversal Networks."

Based on the above, we can maintain that European integration in general, and its football-specific developments and regulatory measures, have affected Europeanised men's professional club football, and – consequently – its fandom and fan culture. It has increased exposure to and points of contact with Europe and European stimuli, as well as opportunities for interpersonal contact, informal and formal cooperation, and coordinated action. As such, both the lived experience of fandom, as well as its individual and collective practices have been reoriented towards Europe. This reorientation entails significant consequences for processes of identity formation and dynamics of social cohesion associated with football.

#### 4. IDENTIFICATION WITH EUROPE & EUROPEANISATION OF IDENTITIES

Identity is a complex phenomenon, entailing various aspects of self-understanding, belonging, selfhood, similarity and difference, or interactivity, finding expression on levels of the individual and the collective.<sup>64,65</sup> Furthermore, identity is never fixed, it always remains processual and must be negotiated, as it “can only be understood as a process of ‘being’ or ‘becoming.’”<sup>66</sup> This is described by ‘identification’, the “systematic establishment and signification, between individuals, between collectivities, and between individuals and collectivities, of relationships of similarity and difference.”<sup>67</sup> Identity thus serves the purpose of distinguishing oneself from others. The internal and the external are crucial dimensions of understanding and analysing identity: “identifications are to be found and negotiated at their boundaries, in the encounter between internal and external.”<sup>68</sup> This distinction is mirrored by Brubaker and Cooper, who maintain that “self-identification takes place in dialectical interplay with external identification, and the two need not converge.”<sup>69</sup> In addition to the differentiation of in- and outside, we can distinguish between *nominal* and *lived*<sup>70</sup> identity, that is: “between the *name* and the *experience* of an identity.”<sup>71</sup> For example, while two individuals can share the *nominal* identity as a ‘football fan’, the meaning they ascribe to ‘being a football fan’ as well as the consequences for their lives can differ vastly.

All these distinctions and comparisons apply to the parallel importance of *in-* and *out-*groups for identification processes.<sup>72,73</sup> Not only does the sense of belonging to a group affect individual identity, but group membership represents an explicitly social form of belonging: when distinguishing one's own group from another, a *collective* identity represents the link between individuals and social groups, since it presupposes a sameness among members of one group in comparison to another. The development of an individual's sense of belonging to a collective signals the transition from a personal identity towards a social or collective identity. The perception of oneself, as well as connections to collectives, is additionally important to examine processes of group identification, i.e., the internal sense of one's collective belonging,

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64 Rogers Brubaker and Frederick Cooper, “Beyond ‘Identity,’” *Theory and Society* 29, no. 1 (2000).

65 Richard Jenkins, *Social Identity*, 3. ed. (London: Routledge, 2008).

66 Jenkins, *Social Identity*, 17.

67 Jenkins, *Social Identity*, 17.

68 Jenkins, *Social Identity*, 44.

69 Brubaker and Cooper, “Beyond ‘Identity,’” 15.

70 Jenkins (2008, 44) distinguishes between *nominal* and *virtual* identity. For definitional clarity especially regarding the study of football fans' identification and identity, we employ the terms suggested here.

71 Jenkins, *Social Identity*, 44 (emphasis original).

72 Jenkins, *Social Identity*.

73 Winand et al., “Sports Fans and Innovation.”

and categorisation, the externally ascribed belonging.<sup>74</sup> Risse views “collective identities as the psychological link between individuals and social groups”,<sup>75</sup> drawing on Tajfel’s understanding of social identity as “that part of the individual’s self-concept which derives from his [or her] knowledge of his [or her] membership of a social group (or groups) together with the value and emotional significance attached to that membership.”<sup>76</sup> Arguably, these concepts cannot be completely separated as an individual does not exist independently of their social context, yet while “collective identity is explicitly connected to a[n] experience of belonging to a group of people outside the self, personal identity typically refers to characteristics of the self.”<sup>77</sup> In other words, “[t]he private self contains knowledge of one’s own attitudes, traits, feelings, and behaviour. The collective self contains affiliations, group memberships, and connections to collectives of all types.”<sup>78</sup> It is worth highlighting the emotional component of a collective identity, since it adds an additional layer of positive evaluation of one’s membership in a group.<sup>79</sup> However, it is not just sameness regarding individual attributes or emotional attachment that create connections among an in-group. Shared narratives and experiences are furthermore central to the formation of collective identities, a “particular we”,<sup>80</sup> and to bind individuals together through sharing of the resulting identity, strengthening their sense of belonging. Narratives in this regard are “generalized emotions that are built into the object, into images or texts”,<sup>81</sup> which replace social interactions where they become less tangible or possible – for example, on the scale of Europe.

In the case of Europe, European integration and the resulting emergence of transnational networks, shared symbols of identification and narratives, sense of belonging, and attachment to Europe have contributed to the possibility of identification with Europe and the emergence of European identities. Identification with Europe by its citizens has been described as essential for structural European integration’s maintenance.<sup>82</sup> Since individuals always belong to more than one social group, this identification can exist in parallel to local, regional, or national identities, while it complements and sometimes contradicts them, as survey data shows.<sup>83</sup> Bringing together these insights with the deliberations on football fandom and the Europeanisation of club football, we maintain that the Europeanisation of club football, through its consequences for fandom and fan experiences, can effectively contribute to the formation of European identities and identification with Europe. We can understand a European identity based on (individual) identification with Europe as “citizens’ self-categorisation as

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74 Jenkins, *Social Identity*, 43.

75 Risse, *A Community of Europeans?*, 22.

76 Henri Tajfel, *Human Groups and Social Categories: Studies in Social Psychology* (Cambridge: Cambridge University Press, 1981), 255.

77 Richard D. Ashmore, Kay Deaux, and Tracy McLaughlin-Volpe, “An Organizing Framework for Collective Identity: Articulation and Significance of Multidimensionality,” *Psychological Bulletin* 130, no. 1 (2004): 82, <https://doi.org/10.1037/0033-2909.130.1.80>.

78 Dominic Abrams and Michael A. Hogg, “Collective Identity: Group Membership and Self Conception,” in *Blackwell Handbook of Social Psychology Group Processes*, ed. Michael A. Hogg and Scott Tindale, Blackwell Handbook of Social Psychology (Malden, Mass: Wiley, 2001), 432.

79 Risse, *A Community of Europeans?*, 22.

80 Klaus Eder, “A Theory of Collective Identity: Making Sense of the Debate on a ‘European Identity,’” *European Journal of Social Theory* 12, no. 4 (2009): 432.

81 Eder, “A Theory of Collective Identity,” 431.

82 Valeria Camia, “Normative Discussions on European Identity: A Puzzle for Social Science?,” *Perspectives on European Politics and Society* 11, no. 1 (2010), <https://doi.org/10.1080/15705850903553737>.

83 Risse, *A Community of Europeans?*

European together with their evaluations of their membership in the European collective and their affective attachment to Europe and other Europeans.”<sup>84</sup> This can be understood as the emergence of a ‘sense of belonging’ to Europe and a European collective. Levermore and Millward suggest that “it is increasing interaction on unofficial, informal, and transnational levels (...) that is helping shape and strengthen transversal dimensions of ‘belonging’ within Europe.”<sup>85</sup> And a strong sense of belonging or community is said to positively impact a group’s cohesion by promoting “mutual sympathy and loyalty.”<sup>86</sup>

Several empirical studies have examined the effects of different aspects of Europeanised football on identity formation. The evidence found for the emergence of increasingly European identities, identification with Europe, and a sense of belonging, ranges from European competitions as the main frame of reference for success among fans of Manchester United,<sup>87</sup> to football as the foundation for a shared communicative European public sphere<sup>88</sup> and proving subconscious effects of Europeanised football for the Europeanisation of identities.<sup>89</sup> These empirical results can serve as a point of departure for intensified and continued research into the connection between football, Europeanisation, and formation of identities. However, the mechanisms and effects identified in this paper reach beyond existing empirical research, and therefore, require further scrutiny and systematic examination: while some aspects’ impact on identity formation has been proven, others remain conceptual for the time being.

Arguably, there are two ways of identification with Europe: “first, identification based on exposure to Europe-related information; second, identification based on personal contacts and direct experiences with the European community and other Europeans.”<sup>90</sup> Identification based on exposure to Europe-related information represents what we want to call (continued) subconscious *exposure to European stimuli* through fans navigating the sphere of football as an objectively highly Europeanised mass cultural phenomenon. This exposure results in what Weber et al. have defined as “subjective Europeanisation”, which describes the process of “subconscious identity work among football fans within this increasingly Europeanised setting”,<sup>91</sup> leading to changes in perceptions, imaginations, and values, since “subtle and subliminal identification opportunities for fans are ubiquitous.”<sup>92</sup> Thus, fans are exposed to European stimuli independent of their conscious choices. This process becomes especially relevant since exposure to European stimuli happens continuously and over long periods of time. Even if the degree of exposure is small, based on football’s extension into fans’ everyday lives, it might lead to significant Europeanisation effects in identification processes.

Identification based on personal contacts and direct experiences “holds that citizens will identify with Europe to the extent that they come into contact with other Europeans and/or European institutions and directly perceive the consequences of EU integration and

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84 Stephanie Bergbauer, *Explaining European Identity Formation: Citizens’ Attachment from Maastricht Treaty to Crisis* (Cham: Springer, 2018). <https://doi.org/10.1007/978-3-319-67708-8>.

85 Levermore and Millward, “Official Policies and Informal Transversal Networks,” 149.

86 Bergbauer, *Explaining European Identity Formation*, 24.

87 Weber et al., “Non-Elite Conceptions of Europe.”

88 FREE, “Football Research in an Enlarged Europe.”

89 Weber, “Banal Europeanism?”

90 Bergbauer, *Explaining European Identity Formation*, 26.

91 Weber et al., “Non-Elite Conceptions of Europe,” 296.

92 Weber, “Banal Europeanism?,” 1904.

European communalities in their daily lives.”<sup>93</sup> This second way depends on fans’ individual agency since it requires deliberate choices to act. It represents a more active Europeanisation through intentionally seeking contact with(in) the European context, for example, travelling to international away games. The two ways to increased identification with Europe and potentially European identities can be distinguished conceptually, while acknowledging that they are interrelated, as changes in each might be consequential to the other.<sup>94</sup>

To sum up, we assume a two-fold route to potentially Europeanising effects of football on fans’ identities: (1) a *subjective* Europeanisation through continuous, everyday exposure to European(ised) elements and dimensions of the sport, subconsciously shaping identities and (2) a more active way of Europeanisation of identification and identities through intentional contact with and practices aiming at the European dimensions of the sport. Both result in a (re)alignment of interpretation frames, perceptions, and values towards a more European perspective.

Building on this, we maintain that fans’ exposure to Europeanised football happens not only around the match day. This holds true for both processes of Europeanisation. While matchday experience includes fans’ identification with their team, but also with fellow fans, thus socialising with other fans of their own or the opposition club, exposure to European stimuli is virtually ubiquitous, and the active practices transcend matchday experience in socialising, contacts, exchanges and more.

A central point of contact for fans with structurally Europeanised football in their everyday life, outside of matchday experience, is represented through what Rowe described as the *media sports cultural complex*.<sup>95</sup> Football and its consumption have experienced an increasing medialisation, which has placed media coverage of the sport at the centre of the informational context of fans. It shapes their perceptions, knowledge, and experience of football.<sup>96,97</sup> Since the media puts fans into contact with the highly Europeanised cultural space of football,<sup>98</sup> i.e., exposes them to European stimuli in the footballing sphere, it contributes to their identification related to the sport in the scope of the subconscious, subjective Europeanisation.

However, fans’ exposure to European stimuli is obviously not limited to atomised and locally dispersed media consumption. Fans’ contact with Europe transpires in a variety of ways besides that and can include, among others, European travel, live match experience abroad or with European away teams, contact with other European fans in the scope of their international travels to away games, or participation and exchange in European fan networks.

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93 Bergbauer, *Explaining European Identity Formation*, 30.

94 Bergbauer, *Explaining European Identity Formation*, 30.

95 David Rowe, *Sport, Culture & Media* (Maidenhead: McGraw-Hill Education, 2003).

96 Jamie Cleland, “The Media and Football Supporters: A Changing Relationship,” *Media, Culture & Society* 33, no. 2 (2011), <https://doi.org/10.1177/0163443710393866>.

97 Walter Gantz and Nicky Lewis, “Fanship Differences Between Traditional and Newer Media,” in *Routledge Handbook of Sport and New Media*, ed. Andrew Billings and Marie Hardin (Routledge, 2014).

98 FREE, “Football Research in an Enlarged Europe.”



These represent the practices, active expressions of football fandom or being a fan.<sup>99,100,101</sup> Since fans not only identify themselves with other fans by matchday experience, wearing of certain distinguishable markers or mutual cultural practices,<sup>102</sup> but football is “such a part of the current Zeitgeist that it pervades institutions, cultural practices and personal interactions across many different domains”,<sup>103</sup> it is vital to include both in an analysis of football’s potential to foster European identities.

We can thus contend that the transformation of many aspects of football towards Europe, through its Europeanisation, has transformed all aspects of fans’ reality when engaging with football. Exposure to European stimuli that contributes to subconscious Europeanisation has increased since the European level of football has become more and more important for the sport. Likewise, the opportunities of international contact and interactions that enable potentials for active Europeanisation have increased. In- and out-group definitions and demarcations can also be realigned with the European level. Transnational contact between fans might lead to a widening of perceptions of in-groups. Fans might categorise international players, coaches, or officials from teams they follow as being ‘one of us’ based on European or national markers<sup>104</sup> stemming from increasingly European teams due to the Europeanisation of player markets – all affecting identification and identities. While the levels of exposure and exchange vary between fans based on the intensity and frequency with which they engage with football, even ‘passive’, consumption-oriented fans receive at least some European stimuli because the European level has permeated football as a mass leisure activity. Thus, football in its Europeanised state has vast potential to affect fans’ identification with Europe and foster European identities.

## 5. SOCIAL COHESION AND PRACTICES OF EXCHANGE

Much like identity, social cohesion is a multifaceted phenomenon. We follow the definition of social cohesion as “the strength of social relations, networks and associations; a sense of belonging to the same community and the ties that bind, in terms of shared values, a common identity and trust among members; equal opportunities; the extent of disparities, social cleavages and social exclusion in a society”.<sup>105</sup> Two things become clear in this broad definition. First, social cohesion is comprised of a variety of different but potentially interconnected elements. Second, social cohesion partly hinges upon a sense of belonging and a shared identity, resulting in complex interrelations between the concepts of cohesion and identity. Drawing on the theorised impact of Europeanised football structures on football fans’ identities and identification with Europe, it follows that football can function as a tool to foster cohesion in Europe. For this, we will identify three main components, or dimensions, of cohesion, and describe them in closer detail below, namely values, identification (and

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99 Richard Giulianotti, “Supporters, Followers, Fans, and Flaneurs: A Taxonomy of Spectator Identities in Football,” *Journal of Sport and Social Issues* 26, no. 1 (2002), <https://doi.org/10.1177/0193723502261003>.

100 Amir B. Porat, “Football Fandom: A Bounded Identification,” *Soccer & Society* 11, no. 3 (2010), <https://doi.org/10.1080/14660971003619594>.

101 Stone, “The Role of Football in Everyday Life.”

102 Winand et al., “Sports Fans and Innovation.”

103 Stone, “The Role of Football in Everyday Life,” 177.

104 Niemann, Weber and Brand, “Football and European Integration(s).”

105 Regina Berger-Schmitt, “Considering Social Cohesion in Quality of Life Assessments: Concept and Measurement,” *Social Indicators Research* 58, no. 1-3 (2002): 406, <https://doi.org/10.1023/A:1015752320935>.



belonging), and social relations or social capital. These allow us to examine football, identities and identifications with Europe, and European social cohesion as interconnected and partially interdependent phenomena. Values and identification can be located on the individual level, but they collectively amount to expressions of cohesion, while social relations and social capital manifest on the interpersonal level. We will also address the intersection of cohesion with the concept of identity laid out in Chapter 4, detailing identities' impact on social cohesion and vice versa.

## 5.1. VALUES AND IDENTIFICATION

Investigating the effects of identity on social cohesion, Holtug calls the assertion "that sharing an identity tends to promote social cohesion"<sup>106</sup> the identity thesis. In this understanding, shared identity as fostering social cohesion is focused on the sharing of values, which includes both explicit values that are "accepted as such",<sup>107</sup> but also those that are implicitly expressed through practices. Holtug demonstrates that sharing of values can not only strengthen social cohesion, but the content of certain values and their impact on an individual's behaviour as well:

Indeed, suppose it turns out that it has a positive impact on, say, trust if people share a commitment to equality of opportunity. This may be because sharing this value has a causal impact, where causal efficacy is attributed to the very fact of sharing, say because it generates positive identification with members of the in-group. But it may also simply be because people become more trusting insofar as they have this value, and so if many people share it this will increase the overall level of trust.<sup>108</sup>

A similar perspective to that of Holtug is reflected in Schiefer and Noll's<sup>109</sup> review of prior research on the dimensions of social cohesion. The authors describe communities of shared values as an essential part of social cohesion, and, in turn, define a cohesive society as dependent on the degree of shared common values among its members. Potentially, football and fandom provide a mutual basis for these communities of shared values. Any consequences for social cohesion originating from football then depend on the sharing of values among football fans, as well as the content of those values. Therefore, if football fans in Europe are aligned regarding accepted sets of explicit values based on them being football fans (i.e., football as a sport mediating certain values), or based on their continued contact with Europe through football (i.e., shared European values), this will strengthen social cohesion. And, if football fans value solidarity, equal opportunity, or a level playing field based on their football fandom, it also strengthens cohesion because these values, in turn, find implicit expression in their practices and behaviour.

Secondly, and in line with the identity thesis, identification and belonging positively affect social cohesion because of the "importance of feeling attached to or identify with the social entity (a

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106 Nils Holtug, "Identity, Causality and Social Cohesion," *Journal of Ethnic and Migration Studies* 43, no. 7 (2017): 1084, <https://doi.org/10.1080/1369183X.2016.1227697>.

107 Holtug, "Identity, Causality and Social Cohesion," 1085.

108 Holtug, "Identity, Causality and Social Cohesion," 1086.

109 David Schiefer and Jolanda van der Noll, "The Essentials of Social Cohesion: A Literature Review," *Social Indicators Research* 132, no. 2 (2017), <https://doi.org/10.1007/s11205-016-1314-5>.

group, region, country, or a trans-national entity such as the European Union)".<sup>110</sup> As values can also serve as a basis for identifications and identities, these two aspects are intrinsically linked. At the same time, identity and identifications go beyond the value dimension, and are thus distinct parts of social cohesion. Identification can delineate the boundaries of cohesion, provide security, and induce participation.<sup>111</sup> Consequently, the various identity-forming elements of football, such as exposure to European stimuli, mutual emotional involvement with the sport, or shared narratives and experiences, would directly contribute to stronger social cohesion, which in turn creates new points of contact with Europe and provides additional opportunities for interpersonal and intergroup connections, which can serve as new references for European identification.

Based on the Common Ingroup Identity model,<sup>112,113</sup> we maintain that social cohesion in Europe is additionally strengthened when members of different smaller in-groups consider themselves parts of the same larger group. A common in-group contributes to a shared identity and thus social cohesion. Given the "fluidity of social categorisation processes and the reality that people simultaneously can conceive of themselves as belonging to multiple groups",<sup>114</sup> the continued contact with European stimuli and other Europeans can lead to identification with a superordinate common in-group that is less exclusive than the original in-group. Football fans of a local or regional club, therefore, do not have to abandon their fan identity, but instead widen their in-group perception to potentially include other European fans, creating a superordinate, common in-group of European football fans. Shared identification within this in-group then contributes to social cohesion based on in-group bias that favours other members of a respective in-group, leading to more positive attitudes and behaviours towards them.

## 5.2. SOCIAL RELATIONS AND SOCIAL CAPITAL

The third component of social cohesion to be considered is that of social relations. In contrast to values or identification and belonging, social relations and social capital are found on a collective, supra-individual level and manifest in concrete, observable practices of interactions between individuals. Still, both, shared values as well as generalised identification patterns, can facilitate manifest social relations. Consequently, these aspects of cohesion are also linked and partly interdependent. Social capital is the dimension of cohesion that "concerns the goal of strengthening social relations, interactions and ties."<sup>115</sup> It represents the practical, manifest side of cohesion by maintaining and strengthening relations through development of and exchange in social networks, as well as active participation in public life reflecting "sense of belonging, solidarity and the readiness for mutual cooperation in the pursuit of common goals."<sup>116</sup> Social capital describes the extent and intensity of social relations and the norms of

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110 Schiefer and van der Noll, "The Essentials of Social Cohesion," 588.

111 Schiefer and van der Noll, "The Essentials of Social Cohesion," 588.

112 Samuel L. Gaertner and John F. Dovidio, "The Common Ingroup Identity Model," in *Handbook of Theories of Social Psychology*, ed. Paul van Lange, Arie Kruglanski and E. Higgins (London: SAGE Publications Ltd, 2012).

113 We use the original spelling of the model's name here, while the rest of the paper employs hyphenation for 'in-group' and 'out-group'. In our opinion, the latter spelling, which has also been employed by other authors referring to the same concepts, provides a clearer distinction and conceptual clarity.

114 Gaertner and Dovidio, "The Common Ingroup Identity Model," 4.

115 Berger-Schmitt, "Considering Social Cohesion in Quality of Life Assessments," 406.

116 Schiefer and van der Noll, "The Essentials of Social Cohesion," 588.

reciprocity and trust embedded in them,<sup>117</sup> from which concrete resources and opportunities for individual and collective action emerge. In this sense, manifest interpersonal relations are further strengthened through shared values, like trust and solidarity provide social capital to the respective community. Crucially, while shared values and trust positively impact social relations and social capital, they are not a precondition for them. Rather, there is a potential for “commitment to common values and norms, a common identity, a sense of belonging and, finally, the trust between people growing out of” social capital.<sup>118</sup>

So, while shared values, identification and identity require some degree of sameness or common traits between individuals, social relations and social capital allow for construction of cohesion from diversity. Social cohesion therefore does not necessarily require assimilation, which is in line with our conception that considers football as a common denominator and a connecting element among socially diverse and nationally dispersed audiences in Europe. Providing a mutual basis for concrete practices of connections, football strengthens cohesion through interpersonal relations among fans and could, in turn, contribute to the emergence of shared values or more general collective identities. While the full realisation of this potential might remain elusive, Europeanisation of football has increased the number of opportunities for active practices of exchange and interaction between fans.

The regularity, intensity, and degree of professionalisation of such social relations manifest in institutionalised exchange in the shape of fan friendships between fan groups of clubs from different countries, or international fan networks such as FSE.

## **6. (RESEARCHING) THE FOOTBALL-IDENTITY-COHESION-NEXUS**

In the following section, we will highlight the relevant overlap and interrelations between (Europeanised) football, identity, and cohesion. Additionally, we will map out possibilities and approaches for a broad research strategy that aims to examine concrete manifestations and potentials of football’s impact on identification with Europe, European identities, and social cohesion in Europe. The foundation of the agenda rests partly on existing empirical research into the impact of certain aspects of Europeanised club football on identity formation (as described above). However, the empirical evidence so far does not cover the extent of the effects, mechanisms and interrelations laid out in this paper, which, therefore, require a systematic examination to provide an empirical basis for the conceptualised causal relations in the scope of the paper.

As we have shown, football fandom and fan culture entail both subconscious and conscious contact with Europe, as well as practices in the field of action that is European football, flowing from Europeanisation of men’s professional club football. Both, contact and active practices affect the emergence of European identities and maintenance of social cohesion in Europe. Regarding identities and cohesion, we have demonstrated that some components of identity and cohesion are closely related. Namely, in- and out-group evaluations and belonging are central elements of identities, with values and identification as dimensions of cohesion.

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117 Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, 1st ed. (London: Simon & Schuster, 2001).

118 Berger-Schmitt, “Considering Social Cohesion in Quality of Life Assessments,” 409.

Looking at the component of identification, its effects on cohesion and identity are conceptually overlapping. As identification with a certain social entity is itself an aspect of social cohesion, any European identification emanating from football and its fandom consequently strengthens social cohesion. Football thus becomes a basis of social cohesion in Europe. Similarly, values can be a central object of positive identification with an entity based on sharing a specific set of values as well as their content. This leads to positive identification with an in-group, while at the same time increasing in-group cohesion. As such, values are a precursor for both, cohesion and identity. Any values derived from football fandom thus strengthen cohesion and identities simultaneously. In turn, this leads to a further convergence and amplification of values through a realignment of individual perceptions and values within an in-group of European football fans.

Lived experiences of Europe can be regarded as practices that foster European identities and consequently social cohesion. This happens through participation and exchange between socially diverse groups across Europe, the experience of which then has secondary effects on identification with Europe. The performance of football fan identity on a European level (international match attendance, occupation with European competitions, re-orientation towards the European level of the sport as a point of reference for success) fosters social cohesion through the sharing of football fan identities and respective values. These, in turn, can increase identification with Europe through further exposure to European stimuli, a transnational re-definition of in- and out-groups, and further construction of shared narratives and experiences on a European level. When the ensuing social relations are employed for regular exchange, collective action, and recurring interactions among fans and between fans or fan groups from different national contexts in Europe, they represent reciprocal or mutual practices of cohesion. These strengthen social cohesion among fans and have the potential to transcend the footballing sphere in two ways.

First, through football's nature of a mass leisure activity for many socially diverse audiences that are not only football fans but also Europeans (multiple identities), Europeanisation through football permeates into their life even outside of it. Second, when (intentionally or unintentionally) European activities and practices of cohesion among fans are viewed positively by others who do not have a relation to football, they serve as an example of the upsides of European interaction. Social relations thus entail a complementary dynamic between identity and cohesion, since the establishment of such networks of exchange and cooperation results in increased contact with other Europeans, again reifying shared identifications. At the same time, shared identifications, and perceived membership in the sense of belonging to the same in-group could serve as a catalyst for the establishment of manifest relations, for example, mutual efforts aimed towards the realisation of common interests or goals within a broader community of European fans. The resulting reciprocal, mutual practices of cohesion intentionally draw upon resources in the form of social relations and social capital, with the aim of strengthening interactions and ties to serve common goals. The element of intentional cooperation under the premise of existing relations and networks, and for the sake of shared interests, is what delineates these practices of cohesion from conscious practices of exposure, like travelling to away games, with the latter being a precondition for the emergence of networks based on the necessity of international contacts between fans.

We, therefore, employ an understanding of social cohesion that focuses not on the aspect

of assimilation as the primary means and effect of cohesion. Instead, we emphasise values, identifications, and concrete practices in the scope of social relations as constitutive elements of social cohesion. In this sense, Europeanised football does not simply carry the potential for bridging cleavages between socially (and nationally) diverse publics, but also serves as the basis for distinct manifestations of social cohesion in the shape of transnational networks, actors' coalitions, and other institutionalised relationships. If strong cohesion in Europe results from strong networks across national (and other) boundaries, we can draw conclusions about social cohesion by analysing these networks.

Adding to the "strong conceptual overlap between [the identification] dimension and the dimension of social relations"<sup>119</sup> and based on the deliberations of European identities and (European) identification processes, we propose that there are mutual effects between identification and social relations regarding their role for social cohesion. According to this understanding, there are two co-existing causal relations between football fandom, European identity, and social cohesion that we can examine:

First, football fandom leads to increased identification with Europe and the emergence of European identities, thus fostering social cohesion. Fans are exposed to European stimuli which shape their knowledge, perception, and experience of Europe, leading them to realign their values, as well as self-identification. This increases the identification with Europe, creating in-group belonging among European football fans. Sharing of this identification with Europe and the values associated with it serve as bonding agents for social cohesion in Europe.

Second, football fandom affects social cohesion in Europe and, thus, leads to identification with Europe and the emergence of European identities. Because fans experience and create active practices of social cohesion in Europe across national borders by performing their fan identity through intentional and reciprocal exchanges, networks, or solidarity, they are, in turn, exposed to more European stimuli, generate shared narratives and experiences which strengthens their identification with Europe and a shared European identity.

If one were to research the above interrelations and causalities to analyse the potential and concrete effects that football as a European mass leisure activity has on social cohesion in Europe, it is necessary to examine the observable, manifest elements, underlying the different components of the causal relations presented above. Broadly summarised, these consist of

1. football-related European stimuli. These provide the basis for any effects of subconscious and active Europeanisation and are a result of the Europeanisation of football.
2. exposure to these stimuli. The stimuli themselves do not have a Europeanising effect by their mere existence. Instead, fans need to be exposed to them in one way or another.
3. existing exchange relations. As manifestations of social relations, mutual exchange, interaction, and cooperation represent active practices of social cohesion in Europe.
4. Europeanisation effects. They are a measure of the actual realisation of football's potential to affect European identity and social cohesion in Europe.

The examination of football-related European stimuli refers to the effects of football's

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119 Schiefer and van der Noll, "The Essentials of Social Cohesion," 589.

structural Europeanisation and expressions found in football-specific information that fans are potentially exposed to. While some consequences, like the expansion of European competitions, more international encounters between clubs, an internationalisation of squads and coaching staff, are more obvious and salient for fans, all parts of the Europeanisation of the game can have effects of subconscious Europeanisation, potentially leading to a realignment of in-group definition, adoption of values, and identification with Europe – resulting in European identities. As such, studying the nature and presence of symbols, narratives, and persons that represent Europeanisation of football is beneficial to establish which European stimuli exist in football and its surroundings.

Due to the increasing availability of live broadcasts and football news, contemporary experiences of fandom go far beyond matchday. When the actual, regular live experience of games in the stadium is reserved for a minority of football fans, Rowe's media sports cultural complex<sup>120</sup> takes centre stage. Since a lot of information on (Europeanised) football is mediated through news outlets, examining patterns and mechanisms of news coverage on football sheds light on the type and intensity of European stimuli presented to fans. This could be done through a media content analysis of football coverage focussing on its European references. Additionally, since representations of Europe might vary from country to country based on the national footballing context, a comparative analysis might provide deeper insight and uncover differences or similarities in reporting, the latter of which can be assumed to have additional effects on cohesion through a potential emergence of *European public spheres*.<sup>121,122</sup> Since the media coverage of football is a low barrier to entry phenomenon and provides the informational context for fans and since information on football is virtually ubiquitous, we can assume broad exposure to European stimuli through football media.

In contrast to simple exposure through mere consumption of matches and football-related media, there are other components of exposure that cannot simply be assumed as applicable to all fans, namely variations of lived experiences of football fandom. Although the Europeanisation of football in combination with eased travel restrictions in Europe has increased opportunities to travel to international fixtures, not all fans have the resources or wish to do so. Also, fans might not pay attention to European competitions at all, so this aspect of Europeanised football does not primarily affect them. Therefore, when looking at the exposure to European stimuli, we are suggesting an examination of the mode, intensity, and frequency of contact with Europe induced by football fandom. This includes lived experiences and the generation of shared European narratives, what we call the active way of Europeanisation, intentionally seeking out exposure to Europe, resulting in realignments of in-group definitions and out-group demarcations, increased identification with Europe, and an adoption of values. An analysis of the actual exposure to European stimuli, also through intentional action, could be conducted in the scope of a survey study among fans to gain data on the prevalence of, e.g., international travel to away games of one's favourite club, to understand what expressions of fandom lead to the exposure to Europe, and their frequency and intensity. Potentially, depending on the sample size, this would also allow for a deeper analysis of certain types of fans based on their practices and behaviours. And, related to

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120 Rowe, *Sport, Culture & Media*.

121 Thomas Risse, ed., *European Public Spheres: Politics Is Back*, Contemporary European Politics (Cambridge: Cambridge University Press, 2014).

122 Risse, *A Community of Europeans?*

mediated exposure, it would allow for checking the fans' media consumption. Importantly, it is necessary to study not only the externally provided stimuli (tangible empirical markers of Europeanisation such as the number and distribution of foreign players, viewership numbers for international matches, data on travel and mobility related to football), but also their processing and internalisation by fans to examine the actual degree of exposure and consequent identity and cohesion effects.

The next step is the analysis of existing exchange relations, the basis for which is provided by the original contact between fans. Mutual relations of exchange, reciprocal action, and intentional practices are viewed as practices of social cohesion. To inquire about their potential to strengthen social cohesion, it is essential to examine the existing structures and dynamics of international exchange based on football, and the coordinated efforts originating from it. We suggest that expert interviews with fan representatives are an effective way of doing this. It might be important to cover the extent of the existing networks, contrast the involvement of grassroots members with that of the institutional elites, ask about self-efficacy in these networks, or how in- or exclusive the existing structures and networks are regarding fans from different leagues and clubs of competitive levels. This approach would enable researchers to analyse manifestations of practices of social cohesion and their effects. Additionally, it opens possibilities to identify shortcomings of these networks and their realisation in practices, which might be another insightful subject for further research.

Lastly, to complete the transfer from the assumption of football's potential to foster European identities and strengthen social cohesion in Europe to social reality, it is imperative to cover the actual Europeanisation effects, that is the effect of football-based contact with Europe and European relations on European identities. For this step, we suggest the expansion of the survey study proposed above to a comparative survey among fans and non-fans. Only from this comparison can we draw conclusions on football's distinct effects. When football fans display differing perceptions of Europe, values, in- and out-group definitions, and identification with Europe, compared to those who are not fans, under otherwise equal conditions, we can attribute the differences to football fandom. One obstacle to this approach, or virtually any approach aiming at analysing identities, needs to be addressed. While identity might be temporarily stable, it is never essential or fixed, but remains mutable and continually negotiated. Therefore, while identity can be used to describe (inter)relations with football and social cohesion, it can hardly be observed in full. Identity remains a black box that we never manage to fully open. It is thus important to resort to the factors mentioned above that contribute to identity formation processes, allowing to describe and subsequently measure concrete and observable objects, elements, or attitudes.

## **7. CONCLUSION**

Based on the deliberations and the outlined causalities above, we conclude that football and football fandom have the potential to address some of the crises and challenges facing the EU and the whole European community. This is because football provides an avenue for regular, peaceful, rule-bound contact, interaction, and exchange between socially diverse European citizens. The intersection of football's sporting and economic development with the dynamics of European and EU integration has led to the emergence of a somewhat homogenous, interconnected football sphere, with international matches and competitions,



cross-border mobility of personnel, broad media coverage, and increasingly institutionalised and professionalised transnational cooperation. This highly Europeanised cultural space has the potential to fill the gaps and reach citizens that other, more formal political, social, and economic exchanges cannot. Football promotes both conscious and unconscious exposure to European stimuli (e.g., symbols, narratives, persons) as well as active practices of exchange (e.g., football-related travel, fan friendships, interest coalitions). As a result, football leads to the emergence of European identities among fans by exposing them to Europe, while also directly strengthening social cohesion through the establishment of social relations across borders that are intentionally drawn upon for reciprocal cooperation and action. Consequently, Europeanisation of fan identities impacts cohesion, since it can itself be considered a cohesive property, by aligning values and perceptions, and by fostering potentials for cohesive practices. The latter, in turn, not only strengthen social cohesion by establishing regular exchange and interaction in the scope of social relations, but ensuing interpersonal contacts lead to the Europeanisation of identities. This interconnected, partly interdependent football-identity-cohesion nexus is at the heart of the theorised impact football can have on Europe, its citizens and cohesion in the face of multiple crises.

To analyse football's potentials to affect identities and social cohesion in Europe, we propose examining four aspects: (1) which explicit and implicit, salient and concealed European stimuli follow from the Europeanisation of football; (2) how are fans consciously and unconsciously exposed to these stimuli, and how are they processed and internalised; (3) which exchange relations and practices of cohesion exist in the scope of European football; (4) how these factors impact European identity and social cohesion in Europe. This could include, among other approaches, an analysis of football media, surveys of fans and non-fans and interviews with experts, which would examine the football-identity-cohesion nexus with variation, both on the side of research methods, as well as regarding the subjects of the research. Such research based on the conceptual framework laid out in this paper might provide starting points to develop concrete pathways towards purposefully employing football as a basis for social cohesion in Europe and strengthening its positive effects on the stated phenomenon. In a first step towards this, we conducted a quantitative text analysis of the German football news media to assess how European football is covered and, in turn, perceived and internalised by football fans.<sup>123</sup> In a large dataset of online news texts, we found extensive, but selective coverage of European football. Media discourses were focused almost exclusively on high profile leagues and competitions from Central and Western Europe, as well as the Champions League, while leaving other leagues and countries on the margins. This limited scope of media attention is especially relevant regarding the connection between transnational and European identities of fans, since contact with a broad concept of Europe becomes elusive when its exposure is limited to an exclusive set of countries.

It is important to notice that the proposed agenda has its limitations. On the football-specific side, an important question is where to draw the line between professional and amateur club football. Moreover, not all professional football reaches the level of European competitions. On the contrary, the increasing stratification of European club football and more exclusive qualification rules for European competitions limit the variety of teams and, therefore,

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123 Jonas Biel et al., "Becoming European Through Football Media? Representations of Europe in German Football News Coverage," *International Journal of Sport Communication* 16 (forthcoming).



fanbases that have the opportunity to experience Europe and all the resulting phenomena outlined on this level. It remains important not to lose sight of expressions of the sport apart from the minority at the top of the men's game: football as a recreational game that enables mutual experiences, grassroots clubs transporting values of solidarity and trust, or women's football gaining increasing attention and potentially developing a different type of fan culture. All of these are not accounted for in the outlined agenda, and it poses an interesting and valuable challenge to incorporate them or to find additional ways to research these fields. Also, and this might apply to other Europeanised cultural phenomena, contact with Europe does not necessarily translate to positive images. Coverage of football or other phenomena might transport prejudice and negative stereotypes that are potentially adopted into individual perceptions. Furthermore, clearly delineating football-specific effects in identification with Europe of individuals that relate to Europe in a variety of ways, and through a variety of phenomena, poses an additional difficulty. However, while it is important to keep these reflections on limitations in mind when applying the conceptual propositions of this paper, they do not diminish the relevance of the agenda that puts social research of mass leisure activities at the centre of European studies. Football could be regarded as a blueprint for a variety of Europeanised cultural phenomena, the potentials of which might be analysed based on slightly adapted versions of the research agenda suggested.

To close on a critical contemporary observation that potentially has vast ramifications for the research outlined in this paper, we acknowledge that the postulated causalities and interrelations hinge upon the status quo of the European footballing sphere. Ongoing developments in men's club football – increased stratification within and across European leagues,<sup>124,125</sup> commodification and commercialisation, exclusive European competitions culminating in the plans for a European Super League<sup>126,127</sup> – might silence fan voices and eliminate opportunities for international exchange and contact by providing more selective representations and contacts with Europe. It is, therefore, unabatedly important to monitor developments in the European footballing sphere that influence the mechanisms outlined in this paper at the same time as those in the political sphere. Interestingly, while recent developments on the political level have been hypothesised as a 're-nationalisation', their footballing counterparts are largely connected to a shift in focus from the European to a global scale, with relevant actors in the sport seeking out fast-growing and valuable markets abroad, away from the long-standing connection with locally based fans and towards an easily consumable product for a globalised public. In this sense, these pressures are metaphorically tearing the European dimension apart because their forces work in diametrically opposite directions, thus endangering European cohesion, cooperation, and unity in all areas, thwarting the tapping of the full cohesive potentials of – not just, but also – football.

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124 Steve Bullough, "UEFA Champions League Revenues, Performance and Participation 2003–2004 to 2016–2017," *Managing Sport and Leisure* 23, no. 1–2 (2018), <https://doi.org/10.1080/23750472.2018.1513341>.

125 Girish Ramchandani et al., "A Longitudinal and Comparative Analysis of Competitive Balance in Five European Football Leagues," *Team Performance Management* 24, no. 5–6 (2018), <https://doi.org/10.1108/TPM-09-2017-0055>.

126 Paul M. Brannagan et al., "The 2021 European Super League Attempt: Motivation, Outcome, and the Future of Football," *International Journal of Sport Policy and Politics* 14, no. 1 (2022), <https://doi.org/10.1080/19406940.2021.2013926>.

127 Henk E. Meier et al., "The Short Life of the European Super League: A Case Study on Institutional Tensions in Sport Industries," *Managing Sport and Leisure*, 2022, <https://doi.org/10.1080/23750472.2022.2058071>.

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## FOOTBALL TRANSFER FEES: ANTICOMPETITIVE?

ADAM SUBHAN\*

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### Abstract

This contribution considers the compliance of transfer fees as a part of the football transfer system with EU Competition law. Transfer fees were supposed to undergo an amendment after *Bosman*, based on the 2001 Agreement between FIFA and the European Commission. In the Agreement, objectives to pursue were set out, most notably stability of contract, pursuit of competitive balance, and promotion of youth development. This contribution aims to build on the existing literature to examine the transfer system under the current regulatory framework. The system is analysed based on Article 101 TFEU and alternatively justified by the *Wouters* test as established by *Meca-Medina*, or Article 101(3) TFEU. The pursuit of contract stability and of youth development was found inherent, but disproportional. The pursuit of competitive balance was not found effective. However, the culprit is not any single element of the transfer system, but rather their interaction that creates anti-competitive environment. The contribution discusses what elements of the regulation are most problematic and provides alternatives. The climate of necessity of football governance overhaul as a reaction to the impact caused by the Covid-19 pandemic provides a good opportunity for stakeholders to reform it accordingly.

**Keywords:** Article 101 TFEU, Football Governance, Football Transfers, Transfer Fee, Bosman, MecaMedina.

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\*  <https://orcid.org/0000-0001-8276-2209>. ✉ [subhan.adam@seznam.cz](mailto:subhan.adam@seznam.cz).

## 1. INTRODUCTION

Transfer fees are not a natural employment phenomenon. A transfer fee is a payment which enables a player otherwise held to his temporary contract to buy out the contract and let their registration be transferred in order to become employed by another employer. In this context, the football transfer system is fittingly described as a no-poaching agreement.<sup>1</sup>

15<sup>th</sup> December, 2020 marked 25 years from when *Bosman* dramatically changed the landscape of professional sports by stating that the practice of demanding transfer fees for players out of contract was unlawful.<sup>2</sup> However, fees for transfers of players still under contract were left untouched by the European Court. *The European Commission* (“the Commission”) believed that transfer fees for incontract players were infringing EU competition law, and Commissioner Monti went as far as stating that transfer fees should be prohibited.<sup>3</sup> The new system was agreed on as a compromise between the football’s stakeholders and the Commission in 2001.<sup>4</sup>

And yet, data shows increasingly more money being spent on transfer fees, even adjusted for growth of the football market. This suggests that football governance has failed in limiting “arbitrarily calculated fees that bear no relationship to training costs.”<sup>5</sup> Whereas football revenues in Europe grew from €16.2 billion in the 2010/11 season<sup>6</sup> to €28.9 billion in the 2018/19 season,<sup>7</sup> representing a 71% increase, transfer fees for only international transfers in that same period grew from €3 billion<sup>8</sup> to €6.25 billion,<sup>9</sup> a 108.3% increase. The results represent a 52% difference between transfer fees growth and football market growth, showing that transfer fees did not grow proportionally to revenues. That is not including the transfer fees for domestic transfers, which would represent a substantial figure. This supports the sentiment in literature that something is wrong. For instance, doubts were voiced by Pearson.<sup>10</sup> Egger and Stix-Hackl were suspicious about the new system from the

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- 1 For example by Sam Hoey, Thomas Peeters, and Francesco Principe. “The Transfer System in European Football: A Pro-Competitive No-Poaching Agreement?”, *International Journal of Industrial Organization* 75 (March 2021): <https://doi.org/10.1016/j.ijindorg.2020.102695>.
  - 2 Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, Case C-415/93, EU:C:1995:463.
  - 3 Andrew Caiger and John O’Leary, ‘The End of the Affair: The Anelka Doctrine - The Problem of Contractual Stability in English Professional Football’, in Andrew Caiger and Simon Gardiner (eds), *Professional Sport in the EU: Regulation and Re-regulation* (TMC Asser, 2000), 204, cited in Geoff Pearson. “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football ‘Transfer System’”, *European Law Journal* 21, no. 2 (2014): 238–220, 228.
  - 4 For a detailed analysis of the 2001 agreement, see for example: Antoine Duval and Ben Van Rompuy. *The Legacy of Bosman Revisiting the Relationship between EU Law and Sport* (The Hague: T.M.C. Asser Press, 2016): 89 et seq.
  - 5 Communication CE 5 March, 2001 IP/01/824, cited in KEA and CDES, *The Economic and Legal Aspects of Transfer of Players, Report for the European Commission*, 2013. <https://ec.europa.eu/assets/eac/sport/library/documents/cons-study-transfers-final-rpt.pdf>, 89.
  - 6 Deloitte, Annual Review of Football Finance 2012, 8, “The European football market continued to show resistance to wider economic pressures, growing by 4% to €16.9 billion in 2010/11.”
  - 7 Deloitte, Annual Review of Football Finance 2020, 8, <https://www2.deloitte.com/ch/en/pages/technology-media-and-telecommunications/articles/annual-review-of-football-finance.html>, “European football market revenue for the 2018/19 season totalled €28.9 billion.”
  - 8 KEA and CDES, 2013 Report, 4.
  - 9 FIFA, Global Transfer Market Report 2019, 13.
  - 10 Pearson, “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football



start.<sup>11</sup> This contribution seeks to build on their work to examine compliance of the transfer rules in the regulatory environment of today.

As competition law increasingly becomes more preferred method of analysis of the *Court of Justice of the EU* (“the Court”), and the negative competition effect arising from increased spending on transfer fees is recognised by the Commission,<sup>12</sup> there is an increasing doubt whether the system would stand up to a challenge. The worldwide representative organization of players (“FIFPro”) lodged a complaint to the Commission in 2015. FIFPro alleged, among other things, that the new transfer system was anti-competitive.<sup>13</sup> After a period of negotiations, FIFPro agreed with the *Fédération Internationale de Football Association* (“FIFA”), the global governing body of association football, over modifications to the transfer system and withdrew the complaint. A six-year deadline was agreed upon, set to expire in 2023.<sup>14</sup> If FIFPro is not satisfied with the changes that FIFA will undertake, it could mark an opportunity for the Court to examine the system on competition grounds, after not having done so in *Bosman*.

## 2. BACKGROUND

### 2.1. DEVELOPMENT OF TRANSFER FEES

Employment and registration of footballers was traditionally governed by two sets of rules: transfer systems and nationality quotas.<sup>15</sup> The roots lie in the registration system employed in the English Football League in 1893, where the only players who could participate in matches were the ones registered with the league for a particular club.<sup>16</sup> The clubs in possession of a players’ registrations started to release them only against the payment of a compensation from the club that wished to employ them. If the valuation was not met, the current club would retain the registration and the player was not able to change employers.<sup>17</sup>

The system, characterized by a tendency to safeguard tradition, had to undergo substantial amendments in response to EU law concerns. The Commission launched an informal competition procedure to investigate the alterations made to the system, with a clear goal of limiting excessive transfer fees.<sup>18</sup> Finally in 2001, an agreement on the Transfer System between *Union of European Football Associations* (“UEFA”) and the Commission was reached (“the 2001 Agreement”). The key principles agreed upon are that “in the case of players aged

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“Transfer System”.

11 Alexander Egger and Christine Stix-Hackl, “Sports and Competition Law: A Never-Ending Story?”. *European Competition Law Review* 23, no. 2 (2002): 90-91.

12 KEA and CDES, 2013 Report, 255.

13 FIFPro Press Release 17/12/13, cited in Pearson, “Sporting Justifications under EU Free Movement and Competition Law: The Case of the Football ‘Transfer System’”, 274.

14 FIFPro drops bid to outlaw the transfer system as FIFA agrees to a review and gives players right to cancel contracts if clubs refuse to pay them. *Daily Mail*, [online] <https://www.dailymail.co.uk/sport/article-5055015/FIFPro-drops-bid-against-FIFA-outlaw-transfers.html> [Accessed 5 November, 2021].

15 Borja Garcia, “The 2001 Informal Agreement on the International Transfer System”, Loughborough University, January 1, 2011, 1, <https://hdl.handle.net/2134/9167>.

16 David McArdle, *From Boot Money to Bosman Football, Society and the Law* (London: Cavendish Pub, 2000): 19.

17 McArdle, *From Boot Money to Bosman Football, Society and the Law*, 20.

18 KEA and CDES, 2013 Report, 255.

under 23, a system of training compensation should be in place to encourage and reward the training effort of clubs, in particular small clubs,” and “that there should be the creation of solidarity mechanisms that would redistribute a significant proportion of income to clubs involved in the training and education of a player, including amateur clubs.” In addition, transfer windows and suspensions for players who breached their contract in the protected period were introduced as a mean to reinforce contract stability. Pearson observes that while the transfer fee system was at first sight abolished in the new system, in reality the transfer fee amounts rebounded after an initial brief reduction.<sup>19</sup>

## 2.1. NATURE AND REGULATION OF TRANSFER FEES

Interestingly, transfer fees are not mentioned anywhere in the applicable regulation. The fee itself is essentially a price of the player, or more accurately the price it takes to persuade a club to transfer the player’s registration. It comprises of sporting and economic value. The size of a transfer fee is uncertain and subject to negotiations, taking into consideration multiple factors.<sup>20</sup> There are two main approaches.

The costbased approach is based on the utility value of a player. However, it is recognised that application of economic analysis is difficult in sport and does not offer clear answers on how to measure such value in concrete terms.<sup>21</sup>

The talent-based approach, on the other hand, relies on quoted value of the player, like an artwork would.<sup>22</sup> The talent of the player can be estimated from the following factors of sporting and nonsporting nature, such as past performance, age, the existing contract and its conditions, but also the marketability of the player.

Adhering to the pyramidshaped European sports model, the regulation of transfers in football is imposed by FIFA in its regulatory capacity of a global governing body. It functions as an umbrella association, governing national associations, who are members of FIFA. The relevant regulation for the scope of this contribution is provided by the FIFA Regulations on the Status and Transfer of Players (“RSTP”), issued and amended by the FIFA executive committee, that has since transformed into the FIFA Council. The RSTP, introduced as a result of *Bosman*, is a set of rules that governs international transfers, that is, transfers between clubs of different national associations. Domestic transfers, which take place between clubs within the same national association, are governed by the rules of that national association.<sup>23</sup> Nevertheless, domestic rules must be in line with the RSTP, so that a minimal standard is maintained. All transfer rules, domestic and international, must therefore be consistent with the RSTP.<sup>24</sup>

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19 Garcia, “The 2001 Informal Agreement on the International Transfer System”, 5.

20 Unless a transfer fee is directly stipulated in the player’s contract. This is commonly referred to as a buyout clause.

21 KEA and CDES, 2013 Report, 141-142.

22 KEA and CDES, 2013 Report, 141-142.

23 There are exceptions to this rule, such as when a transfer takes place between two clubs of the same association, but the player is affiliated to a club from a different association, see FIFA, RSTP Annex 5, Article 1, para. 2.

24 FIFA, RSTP, Article 1.

### 3. THE METHOD OF TRANSFER FEE ANALYSIS

It is long established that sport falls within the scope of the Treaty in so far as it constitutes an economic activity.<sup>25</sup> Therefore, the first part of the analysis is performed under the standard anti-competitive provisions of Article 101 TFEU. However, regulatory rules may be justified on concerns which are peculiar to sports. One such concern is the competitive structure. Unlike in a regular market where competitors seek an increase in market share on account of other competitors, in sports, competitors are mutually dependent. It takes two teams to conduct a football match, and one cannot be without the other. In many sports, including football, the mutual dependency of competitors is maintained by some form of financial solidarity. The theme of mutual dependency is the main principle by which the legal analysis of transfer fees is guided.

The applicable framework for justification of sporting rules is the *Wouters* test, provided by *Meca-Medina*. First, an account must be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. Next, it must be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and if they are proportionate to them.<sup>26</sup>

It may appear that the rule examined in *Meca-Medina* differs from the rules on football transfers. The rule in question in *Meca-Medina* was an antidoping provision, a sporting rule. In contrast, the rules on football transfers govern the access of employers to workers. This difference is however irrelevant. In *Meca-Medina* the Court suggested that even if a rule was purely sporting, that would not remove it from the scope of the Treaty and would examine its objectives anyway.<sup>27</sup> As a sporting rule with an economic impact, it follows that the rules on football transfers are fit for the *Wouters* test justification.

Outside of the sporting context, the Court applies this balancing test in cases where public policy considerations stand in need of certain restrictions of competition.<sup>28</sup> In sporting context, it is the sporting objective instead of public policy consideration that might require, and therefore justify a restriction of competition. In case a rule does not pass the test, there is the traditional recourse of the efficiency exception in Article 101(3) TFEU still available. Therefore, the second part of the analysis, the justification, is performed under the *Wouters* test and alternatively under the provision of Article 101(3) TFEU.

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25 Judgment of 12 December 1974, *Walrave and Koch v. Association Union Cycliste Internationale*, C-36/74, EU:C:1974:140.

26 Judgment of 18 July 2006, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, Case C-519/04, EU:C:2006:492, para. 42.

27 Judgment of 18 July 2006, *Meca-Medina*, C-519/04, para. 27.

28 Moritz Lorenz, and Julia Dietrich. *An Introduction to EU Competition Law* (Cambridge: Cambridge University Press, 2013), 39.

## **4. RELEVANT MARKET, UNDERTAKINGS, AND NATURE OF TRANSFER RULES**

In this chapter, the elements for exploring the restriction of competition are examined. First, the relevant market would be examined, then the nature of FIFA and clubs as undertakings, and finally, the nature of transfer fees and the restriction they impose in the transfer regulation are all presented.

### **4.1. DETERMINATION OF RELEVANT MARKET**

To figure out if any anti-competitive behaviour is taking place, it is necessary to determine the market in which the competition takes place. The relevant market generally consists of two main parts: the geographic market and the product market.

#### **4.1.1. Geographic Market**

A geographic market in respect to transfer fees consists of an area where transfer rules are applied. The football transfer market is geographically interconnected. The transfer rules apply internationally and provide a minimal standard. As such, they are applied in all the territories where associations on all levels carry out a regulatory function. Following the rationale of the qualified effects test, the geographic market can be broader than the territory of Member States, as long as the agreement has immediate and substantial effect therein. The territory of UEFA includes all Member States. Regarding the volume of transfers, UEFA accounted for 68.1% of the total international transfers in 2019.<sup>29</sup> The data show that UEFA is impacted with a much greater magnitude than any other association, as in the same period only 5.3% of the total value of transfer fees did not involve a UEFA affiliated club.<sup>30</sup> Clearly, the transfer system has immediate and substantial effects in the territory of Member States. In addition, this effect is clearly appreciable since the total amount of transfer fees for international transfers within UEFA alone (excluding domestic transfers) accounted for almost €5 billion.<sup>31</sup>

#### **4.1.2. Product Market**

According to Egger and Stix-Hackl, there are three relevant interconnected product markets. The first is the exploitation market where performances of clubs and national and international associations are exploited, for example in a form of gate receipts or broadcasting rights for matches. In this market, the participating clubs do not have directly opposing interests. This can be well observed, for instance, in case of joint selling of broadcasting rights, which proved to be more beneficial for all the clubs involved.<sup>32</sup>

Further upstream is the contest market. There, the competing teams jointly produce performances in form of a sporting contest, which are exploited. The players are an essential production factor, albeit not an only one. The clubs here have directly opposing interests, that

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29 FIFA, Global Transfer Market Report 2019, 16.

30 FIFA, Global Transfer Market Report 2019, 26.

31 FIFA, Global Transfer Market Report 2019, 26.

32 Egger and Stix-Hackl, "Sports and Competition Law", 87.

is to perform well to the detriment of the opponent. While the exploitation market and the contest market are two separate markets, they tend to coincide in practice, in particular when the matches are either transmitted live or consumed at the venue.<sup>33</sup>

Even further upstream, we find the third market, the supply market. Players on the supply side are engaged by clubs on the demand side. As in the contest market, the clubs' interests are opposed, that is in getting the best players available. The demand is generally not restricted as players are found to be exchangeable. In practice, clubs which fail in engaging their target player frequently engage a different one instead.<sup>34</sup>

However, the player supply is not homogenous. Based on the players' ability, top-level players are more unique and therefore much less interchangeable than mid-level players. Since there are more mid-level players, the chance of finding an appropriate replacement is therefore greater. This is even more true for lowlevel players. Based on this consideration, the supply market can be further divided into three additional markets, where players are divided according to their skill: the higher primary market, the lower primary market, and the secondary market.

In the higher primary market, we find a small number of toplevel players with high market power face limited number of clubs. This market has a monopolistic structure. The highest transfer fees and wages are paid here. The toplevel players can negotiate higher wages based on their strong negotiating position. On the contrary, a high transfer fee may act to the player's detriment, as is shown further in *subchapter 5.2*. In addition, it is in players' interest to negotiate a buyout clause acting as a transfer fee cap so that the player maximises his chance to enter negotiations with other interested clubs in the future with whom he can negotiate higher wages. Due to the high financial cost of recruiting the top-level players, which consists of salary and a transfer fee for a player under contract, the top-level players may effectively only be engaged by a handful of clubs.<sup>35</sup>

In the lower primary market, there are upper midlevel players who face a great number of clubs. Here, the number of players is larger than in the higher primary market, but it is not a substantial part of all the markets for players. This market has an oligopolistic structure.

In the secondary market, the remaining players who are neither superstars nor uppermid level players, accounting for a vast majority of total players, face a limited number of clubs. While there is a great total number of football clubs that could in theory recruit the substantial number of the remaining players, this is in practice limited by scouting and mobility issues.<sup>36</sup> As a result, this market has an oligopsony structure, so it is the clubs who hold the market

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33 Egger and Stix-Hackl, "Sports and Competition Law", 87.

34 Egger and Stix-Hackl, "Sports and Competition Law", 87.

35 For example, Kylian Mbappé, one of the top-level players mentioned, commands a yearly salary of over €110 million according to Forbes. In addition, Paris Saint-Germain, the club which Mbappé plays for, paid €180 million in 2017 to purchase the player. It is unlikely that Paris would allow Mbappé leave for a fee that would be much lower. Therefore, it is estimated that only 4 clubs in the world can presently afford to sign the player.

36 For instance, German lowlevel clubs are more likely to develop their scouting networks in Germany and possibly a few neighboring associations, such as in Austria or Poland, rather than in Cyprus. Likewise, a lowlevel player is less likely to relocate significantly since the wage he could realistically secure is less likely to persuade the player to relocate. Therefore, the number of the clubs on the secondary market are limited.

power.<sup>37</sup>

In conclusion, the relevant market is the worldwide supply market, where players are engaged by clubs. It is worthy to observe the higher primary market in particular, since it is the toplevel players whose engagement is a necessary requirement for competitive success, which intensifies all effects of the transfer fee regulation.

## 4.2. THE NATURE OF ASSOCIATIONS AS UNDERTAKINGS

According to the Court, an undertaking is every entity engaged in an economic activity regardless of its legal status and the way it is financed.<sup>38</sup> In this sense, economic activity means any activity consisting of offering goods or services on the market.<sup>39</sup>

Even though FIFA and UEFA are private non-profit associations, that does not affect their status as undertakings since legal status is irrelevant in assessing whether the entity in question is undertaking or not. Instead, their economic activities are considered.

The economic activity of FIFA and UEFA can be derived from multiple channels. Both organizations engage in market activities, such as sales of broadcasting rights, marketing rights, and licensing rights related to the competitions they respectively organise. The magnitude of their market activity almost entirely overshadows the traditional methods of financing, such as membership contributions. While this activity is not directly linked to the supply market where transfers take place, the supply market itself is clearly linked enough to the exploitation market where the substantial part of economic activity of FIFA and UEFA takes place. The transfer rules are created and enforced by FIFA.<sup>40</sup> The conclusion therefore is that both FIFA and UEFA constitute an undertaking.

They may also be associations of undertakings to the extent of constituting groupings of clubs or athletes, who engage in sport as an economic activity.<sup>41</sup> As clubs clearly are undertakings, their economic activity consists of suppling sporting events, which are available against payment, such as against broadcasting rights or admission fees.<sup>42</sup> For that purpose, clubs recruit and remunerate players. Moreover, clubs compete for prize money, sell merchandise, and otherwise exploit their brand for economic profit.

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37 KEA and CDES, An update on change drivers and economic and legal implications of transfers of players. Final Report to the DG Education, Youth, Culture and Sport of the European Commission, 2018, <https://sport.ec.europa.eu/sites/default/files/report-transfer-of-players-2018-en.pdf>, 4-5.

38 Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macroton GmbH*, Case C-41/90, EU:C:1991:161, para. 21.

39 Judgment of 16 June 1987, *Commission v Italy*, Case C-118/85, EU:C:1987:283, para. 7.

40 Prior to *Bosman*, it was UEFA who created and enforced the transfer rules for international transfers within Europe. FIFA then retracted the power of confederations to create and enforce transfer rules, and presently maintains it itself.

41 Judgment of 26 January 2005, *Laurent Piau v Commission of the European Communities*, Case T-193/02, EU:T:2005:22, para. 69.

42 European Commission Decision of 27 June 2002, Comp/IV/37.806 (ENIC/UEFA). [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/37806/37806\\_7\\_3.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/37806/37806_7_3.pdf), para. 25.

### 4.3. THE NATURE OF TRANSFER RULES AS A DECISION OR AN AGREEMENT

The transfer rules are organizational rules governing transfers of players. Egger and StixHackl argue that it is not appropriate to analyse each individual component of a system, as the elements are connected and form a wider complex system. The examined rules are therefore, not strictly limited to transfer fees. Instead, the whole transfer system is examined with special consideration of the role of transfer fees and how they interact with different components of the transfer regulation.

In his opinion in *Bosman*, AG Lenz did not make a distinction whether transfer rules are a decision or an agreement. Indeed, beyond procedural law, there is little significance in distinguishing between a decision or an agreement, as long as the transfer rules fall within one of these categories.<sup>43</sup> For academic purposes, the transfer rules are considered to be a decision within the meaning of Article 101 TFEU.

The transfer rules are legally binding when it comes to international transfers. Regarding national transfers, according to the settled case law, it is not significant whether the rules are legally binding or a mere recommendation if followed by the substantial part of the market.<sup>44</sup> Nevertheless, international transfers constitute a substantial part of the transfer system. It therefore follows that any anticompetitive effects of international transfers would render the whole system anticompetitive, regardless of whether national rules were compliant or not.

### 5. RESTRICTIVE EFFECT

So far, it was established that on the player supply market, FIFA is an association of undertakings with respect to transfer rules, and the transfer rules are a decision of an association of undertakings. The regulation of transfers was also shown to have an appreciable effect on trade between Member States.

According to FIFA, the regulation aims to fulfil the principles of fairness and openness of the competition in the sporting sense. The specific objects of the transfer rules are mainly to ensure a fair and balanced competition, to promote youth development while protecting minors,<sup>45</sup> and to promote contractual stability.<sup>46</sup>

In this sense, a fair and balanced competition means “[...] a competition in which everyone that participates has an equal chance of winning and is treated in the same way without discrimination.”<sup>47</sup> The competition in this case means competition on the contest market, such as in a particular match or a tournament. As will be presented further, success in the contest market largely determines success in the supply market. As such, a fair competition on the contest market should translate to procompetitive effects in the supply market. Therefore, it does not seem that the transfer rules are restrictive by their very nature. As such, the transfer

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43 European Commission, *ENIC/UEFA*, para. 85.

44 Judgment of 29 October 1980, *Van Landewyck u. European Commission* [1980] EU:C:1980:248, joined cases 209-215 and 218/78, paras 86 and 89, cited in Egger and Stix-Hackl, “Sports and Competition Law”, 85.

45 KEA and CDES, 2013 Report, 2.

46 FIFA, RSTP Article 13.

47 KEA and CDES, 2013 Report, 2.



regulation does not seem to have restriction of competition as its object.

However, the system at first sight does impose a restriction by effect on the supply market, where clubs engage players. For the clubs, the system causes restriction in their access to players. This is particularly true at the higher primary market where elite players are recruited, and where transfer fees rise in a fashion that is more hyperbolic than linear.<sup>48</sup> Norbäck et al. observe that this rise of transfer fees for elite players can be attributed to the stronger bidding contest that was enabled by *Bosman* so far as it removed the nationality quotas.<sup>49</sup> It is players recruited at higher primary market who are essential for sporting success at European level and at domestic levels at the best European associations. Sporting success leads to prize money for clubs that participate and advance to latter stages of competitions, as well as associated revenues from broadcasting rights and other marketing opportunities. That makes sporting success a necessary requirement for improving the clubs' economic situation. This link is also observed by an updated KEA/CDES study, which notes a relation between money spent on transfers, sporting results, and economical revenues that shows an increasing gap between both, the clubs in top leagues and the different leagues.<sup>50</sup>

Consequently, smaller clubs are prevented from improving their sporting performance, and therefore their long-term economic level, since they cannot afford to engage good players due to the required transfer fees. On the one hand, it could be argued that clubs can engage players whose contracts run out and their engagement is not restricted by transfer fees. However, a significant number of transfers taking place on the higher primary market are not endofcontract transfers, since clubs are usually successful either in retaining their prized assets by contract extensions or in selling them for a transfer fee. A substantial number of players does not even reach the stage of their contract when other clubs can negotiate a free transfer with them, which starts six months before the expiry of a contract. Clubs who face losing their players on a free transfer are motivated to sell the player before their contract expires just to recoup a portion of the transfer fee previously paid for them.

## 5.1. THE IMPACT OF RULES ON SPENDING

This restrictive effect is amplified by additional regulation. This was most obvious for the Financial Fair Play ("FFP"), according to which clubs could not spend more than they earn over a three-year period ("Breakeven rule"). Due to the Break-even rule, clubs could not improve their competitive success by heavy investment anymore. The clubs were previously allowed to do that, and many did. In the past, for a midlevel club of the English Premier League, it cost at least £357 million spent on transfer fees and £390 million on wages to win the Premier League title. The club in this example happened to be Manchester City following Sheikh Mansour's acquisition of the club in September 2008, who after ending the season at

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48 In 2013, a new record was set by the transfer of Gareth Bale for a fee of €100 million. Only four years later, in 2017, a new transfer fee record was set for the transfer of Neymar at €222, more than double the amount. These examples are only available for players whose fee was 'affordable' enough to make the transfer happen. Many players were simply unattainable for all but a few clubs just because of the required transfer fee amount.

49 Pehr-Johan Norbäck, Martin Olsson, and Lars Persson. "Talent Development and Labour Market Integration in European Football", *The World Economy* 44, no. 2 (2021): 408–367, 401, <https://doi.org/10.1111/twec.13071>.

50 KEA and CDES, 2018 Updated Report, 56.



10th place in 2009 won the Premier League for the first time in 2012.<sup>51</sup>

The Covid19 pandemic caused an unprecedented hit to revenues of football clubs and rendered the Breakeven rule unenforceable. Consequently, in April 2022, UEFA introduced new regulation on spending which replaces FFP with the new UEFA Financial Sustainability Regulations (“FSR”). The FSR stands on three main pillars: no overdue payables, the stability and football earnings rule, and the squad cost rule. For the purpose of this article, the latter two are presented to the extent related to transfer spending.

The stability and football earnings rule is an evolved version of the Break-even rule. The three-year period remains, and the calculation is similar. The acceptable deviation increased from €30 mil. to €60 mil. with possible further deviation upon fulfilling additional criteria.

The squad cost rule restricts spending on transfers, wages, and intermediary fees to 70% of the club’s revenue. According to UEFA, “the requirement provides a direct measure between squad costs and income to encourage more performance-related costs and to limit the market inflation of wages and transfer costs of players.”<sup>52</sup>

The purpose of this section is not to analyse rules on spending with respect to their objectives, but to show how FFP affected the transfer market. It was suggested that FFP entrenched the clubs that secured their good financial standing before them, as new clubs cannot break into this elite level, as some of the clubs have done before.<sup>53</sup> FSR is likely to continue in the same footsteps, despite the overall positive effect they might have on financial health of the clubs as a whole. The increased acceptable deviation eases the restriction a little bit, providing clubs with a better opportunity for investments on the player market in the short term that could be leveraged into better economical standing in the long term.

## **5.2. THE IMPACT OF RULES ON CONTRACTUAL STABILITY**

The leading principle of contractual relationships between clubs and players is that contracts must be respected.<sup>54</sup> What makes transfer rules different from regular employment contracts is that their length is limited from a minimum of one year to a maximum of five years, or three years for players under 18.<sup>55</sup> Once the agreed period concludes and no extension is negotiated, the player becomes free agent, and no transfer fee may be demanded for the transfer of his registration. The player may even sign a new contract in his last 6 months of his current contract, provided that the new contract enters into force only in the nearest transfer window.<sup>56</sup>

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51 Stefan Szymanski, “The economic arguments supporting a competition law challenge to the transfer system”, 10, [http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2021/01/Szymanski\\_Transfer\\_System\\_Expert\\_Analysis\\_clean-1.pdf](http://www.soccernomics-agency.com/wordpress/wp-content/uploads/2021/01/Szymanski_Transfer_System_Expert_Analysis_clean-1.pdf).

52 UEFA.com. “Explainer: UEFA’s New Financial Sustainability Regulations: Inside UEFA,” published April 7, 2022, <https://www.uefa.com/returntoplay/news/0274-14da0ce4535d-fa5b130ae9b6-1000--explainer-uefa-s-new-financial-sustainability-regulations/>.

53 Szymanski, “The economic arguments supporting a competition law challenge to the transfer system”, 19.

54 FIFA, RSTP, Article 13.

55 FIFA, RSTP, Article 18.2.

56 FIFA, RSTP, Article 18.3.

While termination by mutual agreement is not prohibited, contracts may not be unilaterally terminated unless there is a just cause to do so. The RSTP provide that just cause may be established in case of an abusive conduct aimed forcing the other party to change or terminate the contract.<sup>57</sup> Eventually, just cause may be established when the outstanding salaries are not paid.<sup>58</sup> In addition to just cause, the RSTP recognise a special case of sporting just cause, which may be triggered if a player who is an “established professional” appears in fewer than 10% of the official matches his club was involved in.<sup>59</sup> If contracts are unilaterally terminated without just cause, there are compensations due to the party that suffered the breach of contract.

Within the duration of a contract, there is a special period in which stability is pursued with stronger intensity, a so called “protected period.” It is the first two seasons or years after a contract comes into force for players before their 28<sup>th</sup> birthday, and three seasons or years for players after their 28<sup>th</sup> birthday.<sup>60</sup> If a party breaches the contract within the protected period, sporting sanctions may also be introduced apart from compensation. For players, sporting sanction are a ban on playing matches for up to six months, and for clubs a ban on registering new players for up to two transfer windows.<sup>61</sup>

In addition to the general rules on contract stability presented above, there are particular rules protecting young players. International transfers are generally permitted only for players aged 18 or above.<sup>62</sup> However, the RSTP provides an exhaustive list of exceptions.<sup>63</sup>

Promotion of contract stability could potentially be qualified as a restriction of competition by object, particularly if interpreted strictly to the detriment of rights of football stakeholders, such as right of movement for players. For the appraisal of transfer fees, this issue is considered mostly of contextual importance. Both Parrish<sup>64</sup> and Pearson<sup>65</sup> convincingly find restrictions arising from the rules on contract stability not from construction of the provision itself and its object, but mainly in its interpretation and enforcement as its effects. Therefore, this contribution concludes that the transfer fee regulation is not a restriction by object.

The restrictive effects can be observed from the way CAS has calculated compensation in player induced breach of contract cases. In some of these, the transfer fee paid for the player in breach became a basis for the final compensation. In *Matuzalem*,<sup>66</sup> CAS considered the market value of the player, the calculation of which was based on transfer payments. That included costs of replacement, which essentially means a transfer fee for a player of equal market value. This resulted in a total amount of almost €12 million. Likewise, in *De Sanctis*,<sup>67</sup>

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57 FIFA, RSTP, Article 14.

58 FIFA, RSTP, Article 14bis, which provides further details.

59 FIFA, RSTP, Article 15.

60 FIFA, RSTP, Definition 7.

61 FIFA, RSTP, Article 17.

62 FIFA, RSTP, Article 19.

63 FIFA, RSTP, Article 19bis.

64 Richard Parrish, “Article 17 of the FIFA Regulations on the Status and Transfer of Players”, *Maastricht Journal of European and Comparative Law* 22, no. 2 (2015), 270, <https://doi.org/10.1177/1023263X1502200206>.

65 Pearson, “Sporting Justifications under EU Free Movement and Competition Law”, 245.

66 CAS Arbitration of 19 May 2009, *Shakhtar Donetsk v. Matuzalem*, CAS Decision: 2008/A/1519.

67 CAS Arbitration of 28 February 2011, *Udinese v. De Sanctis*, CAS Decision: 2010/A/2145–2147.

the replacement costs were a part of the calculation that resulted in €2.2 million. The impact of transfer fees can be well observed in comparison of *Matuzalem* and *De Sanctis* to an earlier case of *Webster*.<sup>68</sup> Therein, the compensation was determined solely on the residual salary of his contract and amounted to £150 000, even though the club claimed £4.9 million based on the estimated transfer value. In all three cases, the breach occurred outside of the protected period. Since then, the basis for compensation never came back to *Webster*.<sup>69</sup> In the current case law, CAS follows *Matuzalem* in referring to the principle of positive interest, according to which the compensation should put the injured party in the same position as if the breach had not occurred.<sup>70</sup> This means that replacement costs, such as a transfer fee for a replacement, or a loss of a reasonably expected transfer fee to receive for a player in breach,<sup>71</sup> are taken into account in order to establish the positive interest.

On the other hand, there are cases where CAS did not award any compensation, and therefore any loss of transfer fee. For instance, in *Mutu*,<sup>72</sup> the player was subjected to a unilateral termination of contract with just cause by his club Chelsea. After transferring to Juventus without any transfer fee paid, Chelsea claimed compensation including a transfer fee from the player and his new club. However, CAS decided that Chelsea were not entitled to any compensation since it unilaterally terminated the player's contract, and stability of the contract was therefore no longer an objective to be protected in that situation.

Proposing that transfer fees restrict access to higher and potentially lower primary market players, it follows that the compensation calculation makes the system even more restrictive. The reason is that any new club that would try to recruit a player who owes compensation is jointly liable together with the player.<sup>73</sup> In such cases, the compensation would include the market value of the player, which could be unknown to the recruiting club at the time. Therefore, players who breached or are about to breach their contract would be undesirable for any potential employer.

In addition, there are sporting sanctions to consider. These may be imposed in case a breach takes place within the protected period, or outside the protected period but not in conformity with the rules set in Article 17 of the RSTP. A recruiting club therefore faces a transfer ban, unless it can refute the presumption that it induced the player to breach the contract.<sup>74</sup> Or the club may recruit a player whom they may not field in any official matches as a result of a ban on playing matches on that player. In extreme cases, this could result in removing the players from the market altogether. This would in effect further shrink the supply in the market and

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68 CAS Arbitration of 24 July 2007, *Heart of Midlothian v. Webster and Wigan Athletic*, CAS Decision: 2007/A/1298–1300.

69 Pearson, "Sporting Justifications under EU Free Movement and Competition Law": 238.

70 Such as in the cases CAS Arbitration of 30 July 2018 *Ricardo Gabriel Álvarez v. Sunderland AFC*, CAS 2018/A/5925; CAS Arbitration of 8 December 2020 *Benjamin Acheampong v. Zamalek Sports Club*, CAS 2020/A/6727; CAS Arbitration of 20 November 2020 *Sabah Football Association v. Igor Cerina*, CAS 2020/A/6770; and CAS 2020/A/7231 *Nejmeh Club v. Issaka Abudu Diarra*, cited in FIFA, *Commentary for the Regulation on Status and Transfer of Players* (2021 edition).

71 Such as in CAS Arbitration of 7 October 2009, *Essam El-Hadary v. FIFA & Al-Ahly Sporting Club*, CAS 2009/A/1881, where the club was already negotiating a transfer fee at the time of the breach.

72 CAS Arbitrations of 21 January 2015, *Juventus Football Club S.p.A. v. Chelsea Football Club Ltd*, CAS 2013/A/3365 & *A.S. Livorno Calcio v. Chelsea Football Club Ltd.*, CAS 2013/A/3366.

73 FIFA, RSTP, Article 17.2.

74 FIFA, RSTP, Article 17.4.

increase prices accordingly.

Finally, for players, the application of the positive interest principle can lead to a substantial detriment if a player is found liable for a compensation. Worse yet, the skill of the player becomes detrimental to him, since better players have a higher transfer value, which will affect their compensation.

Based on the arguments presented above, this contribution contends that the transfer system presents a restriction to competition within the meaning of Article 101 TFEU as it restricts the clubs' access to player supply.

## 6. THE WOUTERS TEST - JUSTIFICATION

According to the *Wouters* test, let us reiterate that account must first be taken of the overall context in which the decision of the association of undertakings was taken or produces its effects and, more specifically, of its objectives. Then, it must be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them.

The overall context of the transfer regulation was already partially explored in *subchapters 5.1 and 5.2* as it pertained to the restrictive effects of rules on spending and stability of contract. The rest will be presented in this chapter as it regards the objectives that the regulation aims to fulfil.

The major sporting objectives that shape the transfer regulation are to promote contract stability and integrity of the sport, to maintain a competitive balance, and to promote youth development. While the need for integrity of sport was affirmed by the Court in *MecaMedina*,<sup>75</sup> the latter two objectives were affirmed by the Court in *Bosman* as legitimate.<sup>76</sup>

### 6.1. STABILITY OF CONTRACT – INHERENCY AND PROPORTIONALITY

It bears repeating that stability of contract is the leading principle behind the transfer regulation post-*Bosman*. The reason for the pursuit of contract stability is to ensure that clubs can field stable teams. In order to do so, multiple tools are employed in the RSTP. In examining inherency, let us consider whether the system would function without them.

Some parts of the transfer system are indeed necessary, as without them clubs would be opting to put similar or harsher terms in their contracts. The Court already ruled on some elements of the transfer system before. The existence of transfer periods and windows as the only time within a season when a player may transfer was affirmed by the Court in *Lehtonen*.<sup>77</sup>

The maximum length of the contract is less straightforward. In football, it is conceivable that

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75 Judgment of 18 July 2006, *Meca-Medina and Majcen*, C-519/04 P, paras. 45-46.

76 Judgment of 15 December 1995, *Bosman*, C-415/93, para. 106.

77 Judgment of 13 April 2000, *Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, Case C-176/96, EU:C:2000:201, para. 60.

it would take multiple seasons to build a competitive team, and as such there is a reasonable necessity to have the players committed for at least multiple seasons. Whether the same objective could be accomplished with a different term is debatable, and there are arguments against having both longer and shorter permitted period. The issue with longer periods is that it could be argued that it would reduce the player supply, as fewer players would be able to seek a transfer. While players are free to negotiate a shorter contract, experience shows that clubs prefer to tie players to longer contracts.<sup>78</sup> On the other hand, a maximum contract period that is too short would hinder clubs from building competitive teams, and it could undermine players' economic security in case they wished to be tied down with longer contracts.

In a way, the protected period serves as a compromise between longer and shorter contract terms, as it divides a contract into a "protected" and an "unprotected" period. The minimal length of the protected period must always be maintained, shorter contracts therefore do not have any "unprotected" period. The original aim was to balance the interests of the clubs in the protected period of the contract and interests of the players with the unprotected period. Some argue that the application of the rules makes the system not balanced like it was intended, but onesided.<sup>79</sup> "A player is effectively tied to a contract during the protected period and then strongly discouraged from unilaterally terminating during the un-protected period whereas a club can at any point in the contract effect a transfer by forcing the player to agree to leave." As such, "the stability of teams, which is purportedly a prime consideration, is undermined by the fact that transfers are an easy way of making big money. The system has a counterproductive effect."<sup>80</sup>

In theory, a player cannot be forced to leave and may choose to sit out his contract. In practice, when a club forces a player to leave or to commit to an extension in order not to lose a player on a free transfer, clubs often opt not to field the player in matches. That causes players to lose performance bonuses and market value tied to any future salary, as well as losing match fitness and a decrease in likelihood of being nominated to play in international competitions. The player could invoke a just cause to break the contract if they proved an abusive conduct of the club. However, that does not happen very often. Even if the player qualifies for the sporting just cause by not being fielded enough, in that case the player would still be liable for compensation. The argument of onesidedness therefore carries some merit.

FIFA would have to prove that the liability for compensations even in case of unilateral terminations with sporting just cause together with the positive interest principle that is prevalent in current CAS case law is indispensable, and that other less restrictive rule would not suffice. This contribution contends that it would be difficult to successfully justify this part of the system. Furthermore, this issue also concerns freedom of movement, where it arguably carries more weight.

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78 Caiger, and O'Leary, "The End of the Affair: The Anelka Doctrine", cited in Pearson, "Sporting Justifications under EU Free Movement and Competition Law", 233.

79 Parrish, "Article 17", 273.

80 Roger Blanpain, quoted in Gabriele Coppo, "Contractual Stability and EU Competition Law", *1 European Sports Law and Policy Bulletin* (2011), 303, cited in Parrish, "Article 17", 273.

## 6.2. COMPETITIVE BALANCE – INHERENCY AND PROPORTIONALITY

Maintaining a competitive balance means in the language of *Bosman*, “preserving a certain degree of equality and uncertainty as to results.” While this speaks to competitive balance on the contest market rather than the supply market, where the key restriction lies, the markets are substantially connected. Better players are key to winning in a sporting contest, and the prize money awarded allows the clubs to buy better players. As such, profit redistribution is a key element in examining competitive balance. The redistributive effects of transfer fees are assessed in the context of other mechanisms. Together, they form the three main redistributive mechanisms in football.

The first mechanism is redistribution through various programs to support grassroots football. According to FIFA, 81% of its revenue was reinvested back to football through contributions to each member association and each confederation in the 2015-2018 cycle. Likewise, UEFA provides solidarity payments to national associations. This mode of redistribution is observed as particularly effective for youth development, as it provides the recipient clubs with 50-100% of their youth development budget.<sup>81</sup>

The second way takes place through tournament prize money. In European context, the most substantial tournament redistribution takes place in the European competitions. In particular, the UEFA Champions League, the premier tier competition, provides the most substantial prize money. Through tournament structuring and payout schemes, UEFA can substantially influence the way revenue is distributed to its participants. Regarding the impact of the Champions League redistributive effects, data show that the nonparticipating clubs, who competed for qualification but did not advance to the tournament itself, only received less than 7% of the total money received by the 32 participating clubs. This redistributive system is therefore skewed in favour of the elite clubs, which happen to be the most economically successful in their respective associations.<sup>82</sup> In addition, the system leads to an increased market concentration that can be observed in comparison to the Big Five Leagues<sup>83</sup> and all other association. Whereas between the years of 1985-1996, ten clubs from other leagues reached the semi-finals of the Champions League, in the subsequent decade it was only four. In the last observed decade between 2006-2017, no club from other league reached the semi-finals.<sup>84</sup>

On the other hand, the study does not include the monetary streams of the UEFA Europa League, the second tier competition, and the newly created third tier Europa Conference League. Despite the lower prize money, the redistributive effects can be presumed to be stronger since most of the participants are not as commercially and competitively strong as in a higher tier competition. It therefore remains to be seen how the tournament prize money redistributive system will affect competitive balance in the future. Presumably, competitive balance will improve.

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81 José Luis Arnaut, Rep. *Independent European Sport Review*, 2006, 148., cited in Katarina Pijetlovic, “EU Sports Law and Breakaway Leagues in Football” (The Hague: T.M.C. Asser Press, 2015), 275.

82 KEA and CDES, 2013 Report, 249.

83 The Big Five Leagues are a notorious collective term for the top tier leagues of England, Spain, Italy, Germany, and France.

84 KEA and CDES, 2018 Updated Report, 55.

Finally, the redistributive effects of transfer fees themselves can be categorised as either direct or indirect. The direct redistribution happens where the buying club pays a transfer fee to the selling club. The selling club is generally the only beneficiary of the direct redistribution.<sup>85</sup>

The indirect redistribution affects clubs other than the selling club, if there are any. The RSTP provides a solidarity mechanism as a tool for indirect redistribution.

The solidarity mechanism aims to redistribute income to clubs that train players and incur costs in doing so. The mechanism results in a 'trickle down' effect, as a fixed percentage of any contribution is distributed to the clubs that trained the player at a respective stage of his career, including amateur clubs.

The amount of solidarity contribution is set at 5% of any compensation paid for a transfer, such as a transfer fee, except for training compensation. This amount is then deduced from the total compensation and distributed to the clubs that the player was registered with between his 12<sup>th</sup> and 23<sup>rd</sup> birthday. For every calendar year where the player was registered to a club between 12 and 15 years, the training club is awarded with 5% out of 5% of the transfer fee and 10% of 5% of the transfer fee from 15 to 23. That results in 0.0025% of the transfer fee for the former category and 0.005% for the latter for each year.<sup>86</sup>

The system of transfer fees rests on two arguments. The first is that the profit redistribution effect of transfer fees should reward the clubs for training the players and act as an incentive to do so, thus fulfilling the objective of promoting youth development. This is discussed in detail in the next subchapter. The second is that the redistribution mechanisms either mitigate or neutralise the differences in economic situation of the clubs, thus fulfilling the objective of promoting competitive balance. If we assume that the redistribution mechanisms are efficient, it follows that they would discontinue the causality of commercial and competitive strength, where one is almost a requirement of the other. It is evident that the profit redistribution mechanisms should mitigate the natural financial polarization of competitors to level the playing field, as long as the substantial amount of transfers takes place from a relatively poor to relatively rich clubs. At this point, this contribution recognises that the profit redistribution mechanisms are inherently in pursuit of the legitimate objective of competitive balance.

To find out if transfer fees really achieve that, the monetary flows of transfers are considered. As for the direct redistributive effect of transfer fees, Hoey et al. found that the alleged effects between both, clubs and associations, are rather small. The only significant effect observed is one that takes place in the Champions League, where clubs with ambitions to win the cup are generally net spenders and other participating clubs are net gainers of the transfer system. The net gainers are generally the best of their national associations.<sup>87</sup> Since they frequently participate in European competitions, it seems unlikely that the redistributive effects from these clubs further down have a substantial effect. Otherwise, these clubs would not qualify

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85 Unless there is a sell on agreement with the preceding club to the selling club, which provides the preceding club with a percentage of a transfer fee in case of a future transfer. That is generally compensated by a lower immediate transfer fee. As it replaces a portion of the original preceding transfer fee, this contribution considers it as a form of a direct redistribution.

86 FIFA, RSTP Article 21, and Annex 5.

87 Hoey et al., "The Transfer System in European Football", 13.



for European competitions so frequently compared to opponents in their own national association.

As for the highest transfer fees, it is interesting to observe that a substantial part of them takes place between the clubs who are already elite. As observed by Szymanski, "Transactions among these twenty clubs [featured in the 2015 edition of Deloitte Football Money League] alone amounted to €1.7 billion – between 15% and 20% of all transfer transactions in Europe. These transactions related to just 131 players represented 58% of all sales by the top 20 clubs and 32% of all their purchases."<sup>88</sup> This is problematic, because redistribution contributes to competitive balance only when less commercially successful clubs are the beneficiaries. Instead, the elite clubs often are.

In addition to the elite clubs, we can observe another class of clubs that have a specific transfer interest. These clubs, so called the net gainers, are characteristic by being established enough in their respective national leagues and therefore compete every year in the Champions League, but they do not have an ambition to win.<sup>89</sup> Therefore, they do not particularly attempt to retain their star players, and instead choose to sell them. The fee that they can secure is higher due to the exposure the players receive in Champions League matches and the resulting bidding wars of the elite clubs. In an analogy where the elite clubs enjoy commercial and competitive success behind the barrier of entry that is constituted by the financial requirements to field a competitive team, these clubs would be the gatekeepers on the outside.<sup>90</sup>

In the matter of the indirect redistributive effect of transfer fees, the findings are equally unconvincing. The data show that solidarity compensations only account for 1.84% of the total agreed transfer fees within Europe.<sup>91</sup> Even though the source study is dated, there is nothing to indicate that solidarity compensations rose substantially since then. Although some redistribution does take place from higher to lower leagues of the same national association, and from higher ranked to lower ranked national associations, its magnitude is insufficient to make any difference.<sup>92</sup> The study concludes that the effects of the indirect redistribution do not have a sufficient positive impact on competitive balance.<sup>93</sup> Likewise, Hoey et al. argue that the redistributive effect of the transfer system is not strong enough to significantly reduce the gap between elite and other clubs.<sup>94</sup> This contribution finds their conclusions persuasive.

In conclusion, while the transfer system is in pursuit of improving competitive balance, it does not achieve it. The causal link between commercial and sporting success is not mitigated enough by the system. Therefore, even though some compensation is clearly necessary and inherent, the transfer fees in their current form do not seem to have the desired benefits.

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88 Szymanski, "The economic arguments supporting a competition law challenge to the transfer system", 10.

89 These are typically the best clubs from Portugal and the Netherlands.

90 Examples include Ajax Amsterdam, a publicly listed company, SL Benfica, a publicly listed company, and AS Monaco, a privately owned company with an owner seeking to make a commercial profit on his investment.

91 KEA and CDES, 2013 Report, 7.

92 KEA and CDES, 2013 Report, 247.

93 KEA and CDES, 2013 Report, 248.

94 Hoey et al., "The Transfer System in European Football", 17.



### **6.3. PROMOTION OF YOUTH DEVELOPMENT – INHERENCY AND PROPORTIONALITY**

The other major goal of promoting youth development should compensate clubs for the training costs incurred for players who leave, and thus incentivise clubs to continue train new talent. FIFA committed in the 2001 agreement to introduce mechanisms to support the training of players. Transfer fees are alleged to promote this objective. Additionally, the RSTP provide a mechanism of training compensation to promote youth development.

Training compensation is a financial amount that is paid to the club that trained the player in question. It is founded on the premise that the training and education of a player takes place between 12 and 23 years of age. This premise may be refuted by evidence to the contrary, in which case it might be concluded that a player terminated his training period even before the age of 21, even though this is rather the exception in practice. A training compensation is payable up to the age of 23 for any training that took place in this period up to the age of 21, or lower if training was terminated. The obligation to pay training compensation is triggered when the player registers as a professional or when he is transferred, both during and at the end of his contract. In the first case, the compensation is divided between all clubs that participated in the player's training, whereas in the latter the compensation is payable only to the club releasing the player.<sup>95</sup>

The amount is determined in the following manner. Based on the quality of training that clubs provide, national associations divide the clubs into four categories. For each category, training costs are set based on the necessary amount to train one player. This number is further multiplied by the 'player factor,' the ratio of players who need to be trained to produce one professional player. This calculation mechanism reflects that not all trained players will play professionally, but the club still incurred the cost of training them. Nevertheless, there are exceptions to the general rule. The obligation to pay compensation does not arise when a player's contract was terminated without just cause. No compensation is payable, among other situations, when the player transfers to the lowest category, or if the player regains his amateur status, or in other words, the investment into his training has not paid off. Finally, in Europe, no compensation is payable when an unwanted player's contract runs out, the club does not offer an extension, except in cases when the club can justify why would it be entitled to compensation.<sup>96</sup>

The solidarity mechanism as explained above contributes to promotion of youth development as well. The main difference between training compensation and solidarity mechanism is that solidarity mechanism is dependent on the transfer fee and is generally only triggered when a player under contract transfers for a fee. There are exceptions, such as in case of player exchanges. Conversely, the training compensation is in addition triggered when a player registers as a professional but may only be triggered up to the age of 23, and does not require a transfer fee, since it applies to outofcontract players as well.

In *Bernard*, the Court held that the system of training compensation can be justified based on the legitimate objective of training and education of young players, as long as it is calculated

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95 FIFA, RSTP, Article 20, and Annex 4.

96 FIFA, RSTP, Article 20, and Annex 4.

on the actual training costs. However, FIFA admitted through one of its officials that it does not know what kind of costs should be taken in account when establishing training compensation fees.<sup>97</sup> Therefore, the link that training compensation relates to actual cost cannot be established as required by *Bernard*.

So how does the transfer fee system compare to transfer fees in relation to promotion of youth development? As AG Sharpston observes in her opinion to *Bernard*,<sup>98</sup> this contribution too observes a difference between *not discouraging* and *encouraging* recruiting and training new players. Training compensation has the effect of *not discouraging*, and transfer fees, as they translate into solidarity compensation, as positively encouraging. The reason is that whereas training compensation merely compensates clubs with training players, transfer fees potentially reward them with a profit. As noted above, the solidarity mechanism is not large enough to have an impact on competitive balance. However, for promoting youth development, it may amount to an encouraging effect. Crucially, this scales with the transfer fee. Thus, a substantial amount trickles down in cases of higher primary market transfers where a transfer fee is paid. Hence, it serves as an argument against criticism of escalating transfer fees.

The update on the KEA/CDES study contends that an adequate and proportionate reward mechanism represents a fundamental incentive for clubs to foster development of young players and improve their training facilities,<sup>99</sup> although the report presents so in context of transparency and does not provide an opinion on whether this system presents adequate and especially proportionate rewards.

Norbäck et al. observe that the increased sale prices translate into a stronger incentive for clubs to train their own players. Accordingly, this explains the fact that whereas the competitive balance in the Champions League became worse, the competitive balance in international matches improved. The national teams of smaller Member states where the big clubs do not operate improved their performance. The authors attribute that to what they call a “spill over effect.” As a result of increased player mobility that is observed post-Bosman, players from smaller Member states get the benefits of playing in bigger and better leagues.

A category of clubs, described as “nursery clubs,” is induced to prioritise training of new players rather than directly challenge the elite clubs. Nursery clubs are clubs which do not have sufficient financial standing to compete in the Champions League. When they are therefore presented with an offer for their star player, often enhanced by the stronger bidding competition, they are more likely to sell the player as their chances to compete for prize money that is equal of better is slim.<sup>100</sup>

It follows that in the current system, maintaining competitive balance and promoting youth development are mutually exclusive goals for this category of clubs. In addition, this category

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97 Omar Ongaro, “The system of training compensation according to the FIFA Regulations on the Status and Transfer of Players”, *The Bernard Case: Sports and Training Compensation, European Sports Law and Policy Bulletin, Rome (2010)*, 80-78, cited by Richard Parrish in Antoine Duval and Ben Van Rompuy, *The Legacy of Bosman*, (The Hague: T.M.C. Asser Press, 2016), 204.

98 Opinion of 16 July 2009, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, Case C-325/08, EU:C:2010:143, para. 46.

99 KEA and CDES, 2018 Updated Report, 52.

100 Norbäck et al., “Talent Development and Labour Market Integration in European Football”, 371.

of clubs contains by far most clubs, as all clubs except those which regularly participate or even achieve results in the Champions League are in this category. It therefore brings up the question whether one transfer system can achieve both goals at the same time, and in case it cannot, which goal should it prioritise.

It seems that the transfer system has had a positive impact on youth development, as clubs are incentivised to train better players. This can be evidenced by the improved competitive balance in international competitions. It can be concluded that the system is in pursuit of promoting youth development and does achieve it.

Do the positive effects on promotion of youth development justify the restriction in access to the higher primary and lower primary supply market? Assuming that the restriction is intensified by the high transfer fees, it is necessary to find out to what extent are transfer fees based on objective criteria. Egger and Stix-Hackl contended that the main criterion should be cost of training,<sup>101</sup> which was later affirmed by the Court in *Bernard*.<sup>102</sup>

Applying the rationale of *Bernard* to transfer fees on the higher primary market, we can observe a discrepancy between cost of training and transfer fees. Even though the actual training costs are unknown, the mechanism of training compensation is based on a model that at least approximates the real cost based on the objective criteria. The training compensation provides a precise calculation based on a presumed quality of training that a player receives. Conversely, transfer fees contain a speculative dimension not related to the actual costs of training. To illustrate, a maximum amount of training compensation is €810 000,<sup>103</sup> whereas the transfer fee average ranged from €2.3 million to €2.5 million in the recent years,<sup>104</sup> and maximum transfer fee recorded so far is €222 million.<sup>105</sup>

Whereas common transfer fee amounts for elite players are lower than the transfer fee record, they still regularly amount to tens of millions. However, many transfers of higher primary market players take place just between the elite clubs that previously purchased the player and did not train him. Therefore, in a substantial number of transfers, the training club is not the one that benefits from this speculative dimension of transfer fees. In addition, in relation to cases of transfers that directly reward training clubs with a fee, Szymanski contends that training relies on many outside factors and does resemble a lottery, and therefore it does not make sense to reward particular clubs.<sup>106</sup> Finding out to what extent is youth training random would be a potential opportunity for further research, as it would clarify whether there is a sound foundation for rewarding particular clubs over a class of clubs as a whole, and to what extent.

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101 Egger and Stix-Hackl, "Sports and Competition Law", 89.

102 Judgment of 16 March 2010, *Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC*, C-325/08, EU:C:2010:143, para. 45.

103 For a player trained exclusively by clubs from the highest categories, which can be considered to amount to the most advanced training possible.

104 FIFA, *Global Transfer Market Report 2019*, 13.

105 For the transfer of Neymar from Barcelona to Paris Saint Germain in 2017.

106 Szymanski, "The economic arguments supporting a competition law challenge to the transfer system", 10.

## 6.4. THE WOUTERS TEST CONCLUSION

Based on these arguments, a clear disproportionality is revealed between transfer fees for higher primary market players and costs of their training. On the one hand, the settled case law suggests that some sort of compensation for training is permissible in order to attain sport specific goals. On the other hand, even if compensation rules pursued legitimate goals, they must not go beyond what is necessary to achieve these goals. In the case of transfer fees for higher primary market players, the regulation clearly goes beyond what is necessary to promote the training of young players, as there is little link between transfer fees and actual costs of training. In particular, the high transfer fees for higher market primary players are the core cause of the restriction, since access to their supply is essential for competitive success, and yet they bear no relation to actual costs. Furthermore, even if the regulation promotes youth development to some extent, it does not improve competitive balance. Arguably, data shows that competitive balance changed for the worse.

As for the stability of contract, the justification of the positive interest principle is doubtful. Especially since it is being applied even in cases of unilateral termination with sporting just cause.

For these reasons, this contribution contends that the current transfer regulation cannot be justified based on the *Wouters* test on the grounds that it is disproportional to promoting youth development and does not attain the goal of competitive balance.

## 7. THE EXCEPTION UNDER ARTICLE 101 (3) TFEU

The transfer rules did not pass the *Wouters* test. However, they can still qualify for the exemption provision of Article 101 (3) TFEU. The purpose of the efficiency exception in Article 101(3) is to permit a pursuit of agreements, which are overall beneficial despite their negative effect on competition.<sup>107</sup>

Four conditions must be satisfied to benefit from the efficiency exemption. First, the agreement must improve the production or distribution of goods or promote technical or economic progress. Second, consumers must get a fair share of the resulting benefits. Third, disproportionate restrictions, that is restrictions which are not essential to the attainment of the objectives of the agreement, are not allowed. Fourth, the agreement cannot lead to elimination of competition in substantial part of the product in question.<sup>108</sup>

In general, only economic efficiencies are considered in this provision. However, public policy objectives (such as environment protection, or more relevant for sports, culture) may be considered if they can be subsumed under one of the four conditions.<sup>109</sup>

This contribution employs an alternative approach by following the first step (improvement of

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107 Stephen Weatherill, *European Sports Law Collected Papers* (The Hague: T.M.C. Asser Press, 2014), 326.

108 European Commission, *Guidelines on the application of Article 81(3) of the Treaty*, 2004, OJ No. C 101, para. 34.

109 Pijetlovic, "EU Sports Law and Breakaway Leagues in Football", 155.

production or economic progress) with the third step (proportionality) instead of the second one (customer sharing benefits). As the regulation did not pass the *Wouters* test on the grounds of disproportionality, this becomes an obvious crucial point.

Regarding efficiency gains, none of the traditional concepts of cost efficiencies<sup>110</sup> or qualitative efficiencies<sup>111</sup> are applicable here. However, this contribution speculates that new sport specific efficiencies could be envisaged. In this case, it is conceivable that the restriction of the supply market has in fact led to better performing exploitation market. Or in other words, that the spectators enjoy this level of imbalance better than they would enjoy a more balanced competition. Since in this speculative hypothesis a better product is delivered, it would amount to a qualitative efficiency. This argument would be supported by the rising popularity of the game and the amount of revenues that are generated, some of which are further redistributed through the schemes presented above.

Of all club football competitions, the UEFA Champions League is the one that attracts the best broadcasting and sponsorship deals. That turns it into one of the most, if not the most popular competition in Europe, despite that it presents the starkest competitive imbalance.<sup>112</sup> However, it is necessary that the efficiency gain could not be achieved without the restriction. Whereas this contribution was not persuaded by this argument, let us assume that some degree of efficiency is indeed gained. This contribution leaves it to further research to verify this hypothesis.

The proportionality test consists of two steps. First is to find whether the restriction is necessary, or indispensable, to achieve the efficiency. Second is to find out if the restriction is proportionate to the efficiency gain. Or in other words, if there are no less restrictive alternatives which would also achieve the efficiency. The concept of proportionality<sup>113</sup> within the Article 101(3) TFEU is not equal to proportionality of the *Wouters* test. In the *Wouters* test, proportionality means whether the rule goes beyond what is necessary in pursuit of sporting objective. Here, efficiency gains irrespective of objectives are weighed against the restriction. Therefore, the fact that transfer fees were found to be disproportionate under the *Wouters* test does not automatically make them disproportionate within the meaning of Article 101(3) TFEU.

From the outset, it seems likely that some restriction to the player supply market is necessary to maintain the quality of competitive football so that it is more enjoyable. Aside from the transfer windows which present an obviously necessary restriction, some compensations are also necessary so that the clubs at least recover their costs of training a player. Transfer fees in their current state do not appear to be indispensable, as player training costs are recovered through the training compensation together with the solidarity mechanism. Even if transfer fees were necessary, they would also be very unlikely to be proportionate in their current state. That is because the restriction to player supply that transfer fees cause is of a far

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110 Such as synergies, economies of scale, economies of scope, development of new technologies, or production planning.

111 Such as R&D Agreements, License Agreements, Joint-Production Agreements, or Distribution agreements.

112 The same effect is observed by Norbäck et al., "Talent Development and Labour Market Integration in European Football", 401.

113 The application guidelines label the condition of "proportionality" as "indispensability".

greater magnitude than the improved consumer experience it could present in the exploitation market. For these reasons, this contribution concludes that the transfer fee system does not qualify for the exception under Article 101(3) TFEU.

## 8. DISCUSSION

The analysis showed that transfer fees as a part of the transfer system in its current form present a restriction by effect to the player supply market and as such breach Article 101 TFEU. The regulation did not qualify for the *Wouters* exception on the following grounds. While the regulation inherently pursues a legitimate sporting objective of maintaining competitive balance, its effect is not significant enough. The sporting objective of improving youth development is inherently pursued and achieved by the regulation but was found disproportionate. The training compensation and the solidarity mechanism already fulfil this objective without being unjustifiably restrictive in their effects. Transfer fees on the other hand are not linked to actual training costs, and as such do not satisfy the condition of *Bernard*.<sup>114</sup> We can observe a direct proportion between the size of a transfer fee and the barrier of entry it creates on the supply market, but the benefits of high transfer fees do not translate into promotion of competitive balance at all, and to promotion of youth development only in part. The size of the transfer fee also plays a role in rules seeking to maintain stability of contract, in particular in calculating compensation for a breach of contract. Therein, the amount of lost transfer fee is a substantial factor for establishing positive interest, even in cases of just cause. As such, it clearly goes above what is necessary to achieve contract stability. It would suffice to apply the positive interest principle only in cases without just cause.

However, this contribution emphasises that it does not find transfer fees anticompetitive as such. Instead, they currently produce a significant anticompetitive effect because of their place in the today's overall organization of competitive football. The objectives of maintaining competitive balance could be achieved by the transfer fee regulation in its current state if other mechanisms of revenue redistribution did not contribute to competitive imbalance in the magnitude that they do now. In that case, the gap between the successful and other clubs could conceivably be bridged by transfer fees. For instance, if clubs were not restricted in their transfer investments by rules on spending, it would allow other clubs to leverage investments to challenge the successful clubs for competitive success. This contribution does not suggest that the rules on spending are not justifiable. Instead, it is suggested that for the system to function properly, the transfer fee regulation needs to be modified to fit in the current football organization.

Possible modifications are unlikely to depart from the principles of openness and promotion and relegation of the European sports model. This assumption finds support in Article 165 TFEU, which includes openness as one of the key principles. In comparison, the Northern American system of closed leagues and franchise system openly pursues commercial profits but features redistributive mechanisms that aim to achieve competitive balance, such as salary caps and a draft system. And yet, the Northern American system is "plagued with the same disease."<sup>115</sup> It can serve as an inspiration for future development of football governance,

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114 Judgment of 2 June 2010, *Olympique Lyonnais*, C-325/08.

115 Pijetlovic, "EU Sports Law and Breakaway Leagues in Football", 41.

yet an adoption of its features seems unlikely. For a proper adoption of the Northern American system, the whole system of football regulation would have to be revised from the top of the pyramid to the grassroots. This seems unlikely, unless we see a major policy shift, since the EU has taken a firm stand in support of the open model of promotion and relegation on a constitutional level through Article 165 TFEU.

However, some elements could still be adopted while maintaining the European principles. One alternative could be to establish the transfer regulation on a collective bargaining agreement, in which players represented by a union agree to labour terms with other stakeholders. It would provide regulatory bodies with a strong shield against the interventions of EU law, as collective bargains fall outside the scope of Article 101 TFEU. However, a player union is unlikely to agree with the system unless the position of players is improved. Any collective bargaining agreement system would have to somewhat depart from the current one. This would be an elegant solution to the dispute of FIFA and FIFPro, as they would not yield control over the future to the Court and the European Commission. In addition, the increased participation of FIFPro as an important stakeholder would be beneficial for the legitimacy of the system.

Other alternative would be to strengthen the redistribution mechanisms to increase their impact. The estimation of likelihood follows from the level of institutional support that the principles of European sports model receive, especially mechanisms of solidarity and financial redistribution between the elite and the grassroots level.<sup>116</sup> This is the approach of the KEA/CDES study, which recommends increasing the percentage of solidarity contributions from 5% to 8%. Limiting transfer fees by linking them to salaries and establishing objective criteria for the use of buyout clauses form the backbone of the recommendation of the study.<sup>117</sup>

Another solution would be to introduce a transfer fee cap, a limit on a maximum transfer fee. The threshold would need to be fine-tuned so that the cap could function properly. A transfer fee cap should be clearly connected to the objective criteria in order to be compliant with the *Bernard* criteria. Compared to salary caps, transfer fee caps are more attractive and less restrictive to remuneration opportunities for players.

If transfer fees were limited in this fashion, the money not spent on other fees would likely find its way in players' salaries. That would affect the calculation of compensation in cases of a contract breach. In the extreme case of abolishing transfer fees altogether, the calculation of compensation could return to the formula used in *Webster*, that is to the remaining outstanding amount of the contract. Since the market value of the player would be recorded in the player's wages instead of being divided between wages and a transfer fee, this level of compensation would satisfy both, the club and the player. Both would know exactly what the cost of a breach would be. To be clear, this contribution does not argue for an abolishment of transfer fees. This argument is merely used to illustrate the effect of limiting the amounts of transfer fees.

Whereas some form of financial compensation, a transfer fee or otherwise, is clearly necessary, a formula that would balance the interests of both clubs and players is conceivable. One form

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116 See European Parliament, "Resolution of 29 March, 2007 on the future of professional football in Europe", 2007, [2006/2130(INI)], par. O, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007IP0100>.

117 KEA and CDES, 2013 Report, 8.



the formula could take is a multiple of the contract value. It could be argued that salary is the best market indicator of the market value. This would still present a total sum, from which a solidarity contribution may be drawn.

On the other hand, a fixed sum would be problematic for a few reasons. For instance, wealthy clubs could afford to overpay on salaries and effectively pricefix players away from their less wealthy competitors, as can sometimes be the case today. In this case, the squad cost rule would provide for a better competition on the player market, since no club could overpay so drastically on its players. Another possible issue with fixed sum would be that the market value of the player may change, for example due to consistent underperformance, disciplinary issues, or injuries. In this instance, the contract value multiple would better function acting as an upper limit, a cap, which would attract more opportunities for the transfer of a player.

The multiple assigned to the contract value could be a way to link the overall success of football with the money spent on transfers and allow the amounts to rise in proportion to it. This could be achieved with a formula determining the multiple as a percentage of revenues. In addition, this system would be selfcorrective. In a supposed case of a crisis, like the Covid19 pandemic, the revenue base would be lower than usual and so would transfer fees.

Aside from a transfer fee cap, proper balance may be found by introducing a luxury tax on transfer fees from a certain amount, ideally with the increase of solidarity contributions. The proceeds of the luxury tax could be used to finance youth programs and academies. This would slow down the rise of transfer fees and lower the average transfer fee for higher primary market player. At the same time, it would provide a link that is currently missing between high transfer fees and promotion of youth development, albeit the selling club would not be the sole beneficiary of the sale. This is a positive, as it would further strengthen competitive balance in the nursery leagues by allowing other clubs besides those that receive benefits from regularly playing European competitions to catch up. At the same time, it would accommodate the element of randomness that seems to be present to some extent in youth training.

However, in the author's view, any modification to the transfer fee system would depend on the interaction with other regulation, such as with the rules on spending. Likewise, it remains to be seen if and how other revenue redistribution schemes are adjusted, since they also substantially affect competitive balance, the lack of which transfer fees were supposed to correct. By including even more teams in the lucrative redistribution scheme of European competitions, namely expanding the UEFA Champions League and introducing a third-tiered European competition, UEFA seems to be going in the right direction as far as European football is concerned.



## 9. CONCLUSION

The transfer fee regulation continues to attract attention even 25 years from *Bosman*. Therein, the Court did not apply competition rules to the transfer regulation.<sup>118</sup> Even though the European Commission has given a green light for the new transfer system in the aftermath of *Bosman*, provided that the objectives of the 2001 Agreement were followed. However, the economic changes together with the new regulation caused the transfer system to depart from the one that was approved by the European Commission. The main goal of this contribution was to analyse transfer fees as a potentially problematic part of the transfer system in anticipation of a possible challenge on competition grounds.

In this contribution, the transfer system is analysed based on the hypothesis that the transfer fee regulation was not compliant with Article 101 TFEU. The analysis confirmed this hypothesis, finding that transfer fees restrict access to the supply market and as such undermine the competitive balance. Following the framework from *MecaMedina*,<sup>119</sup> the analysis sought justification of the transfer system using the *Wouters* test.

Accordingly, the transfer fee regulation was determined to be a decision taken by an association of undertakings, and as such fell within the scope of Article 101 TFEU. Following the test, account was then taken of the objectives of transfer fee regulations, (i) maintaining contract stability, (ii) maintaining a competitive balance, and (iii) promotion of youth development.

The system was then examined in the context with other redistributive schemes of competition prize money and rules affecting competitive balance, namely with rules on spending. As for the pursuit of contract stability, this contribution contends that the way transfer fees are used to calculate compensation in unilateral breaches of contract is problematic, as it restricts clubs' access to the player market in a manner that is difficult to justify on grounds of proportionality. Regarding the legitimate objective of promoting competitive balance to maintain degree of uncertainty to the results, the positive effects are not significant enough to achieve that objective.

With respect to youth development, the system does have a positive impact. However, transfer fees are not a proportionate mean to promote youth development, since the goal can be achieved with other, less restrictive means. These presently are the training compensation together with the solidarity contribution. Since the objective of maintaining competitive balance was not achieved and the objective of promoting youth development was achieved in disproportionate manner, the analysis concluded that the transfer system could not be justified by the *Wouters* test. Consequently, the transfer system did not qualify for the sporting exception under *MecaMedina*.

Since the regulation did not qualify for justification under the *Wouters* test, the exception under Article 101(3) TFEU was considered on the basis that some efficiency could be achieved to improve the product. This assumption was made in a speculative nature, and even as such would most likely be found disproportionate. Based on these arguments, this contribution

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118 Judgment of 15 December 1995, *Bosman*, C-415/93, para. 138.

119 Judgment of 18 July 2006, *Meca-Medina*, C-519/04 P.

showed that the transfer fee regulation is in breach of Article 101 TFEU and does not qualify for justification neither under *MecaMedina* nor the exemption under Article 101(3) TFEU.

The ongoing FIFPro challenge to the transfer system is currently on hold at least until 2023 following a successful negotiation with FIFA. It remains to be seen whether FIFA enacts changes to the transfer system to the satisfaction of both FIFPro and other stakeholders. Among those who stand to lose are the dominant clubs, which are currently unusually vulnerable, having lost some leverage after the failed breakaway attempt. FIFA, on the other hand, has arguably gathered a substantial momentum on the back of the Covid-19 pandemic and the resulting shock to football to enact significant changes that could deal with, among others, the concerns argued in this contribution. In the spirit of never letting a good crisis go to waste, the chances favour FIFA to use the mandate for football governance overhaul for good.

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# EVENTS





## 2023 Annual Conference 6-7 July | Lisbon, Portugal

### **EUROPE AND SPORT: What now and next?**

We are extremely glad to announce that the Sport&EU Board ratified the host city for the 17th annual conference. Lisbon will be the selected place for this next event of the European association, that unites scholars and practitioners interested in the relationship between sport and the EU and promotes comparative and interdisciplinary research on sport, Europe, and the European Union.

The goal will be to gather in Portugal, in July 2023, a wide network of people, from within Europe and outside, interested in these areas and promote dialogue and research through the staging of the conference. The commitment is to support the development of new generations of academics, researchers and practitioners, including PhD students and those at an early stage of their career.

**Vera Pedragosa, the local coordinator of the conference said on the decision to take the event to the Universidade Autonoma de Lisboa:** *“Portugal is a privileged place where policies to promote sport and physical activity in line with the European Union countries are concentrated. We recognise the social, economic and integrity benefits of sport. Sport is more than sport, it provokes emotion and mobility between countries that promote economies, tourism and diversity. It is an honour to host this conference and discuss the challenges of sport today and tomorrow in a European approach”.*

**Rui Alexandre Jesus, the Portuguese Member of the Sport&EU Board, comments:** *“Sport and the European Union has been a constant topic in evolution for many years. Several matters have aroused recently, new perspectives about old questions also emerged, and the debate about how the European nations should and must handle common issues, is as important as ever. In July 2023 we hope that all the attendees of the Conference can give their contribution to the challenges that will be addressed.”*

**Borja García, Sport&EU Executive Director said:** *“We are extremely glad to be taking our annual Sport&EU conference to Portugal and to Lisbon. We thank Rui Alexandre Jesus and the team at Universidade Autonoma de Lisboa for their enthusiasm and their commitment to our conference. I am sure we will have an excellent event in Lisbon next July, with plenty of EU and sport discussions.”*

More on the [Sport&EU.com](https://www.sport&eu.com)



# "THE ECONOMIC AND LEGAL ASPECTS OF THE ORGANISATION OF FOOTBALL IN EUROPE"



February, 21st, 2023  
Abbaye of Neimënster, Luxembourg





Livestream

CONFERENCE ORGANISED BY



- 🕒 13:00 Welcome coffee
- 🕒 13:30 Opening speech

- 🕒 13:45 **Setting the scene: What are the main legal and economic themes and dynamics?**

 **Jean-François Brocard**  
 Economist, associate Professor  
CDES, University of Limoges



 **Nathalie Alaphilippe**  
 Lawyer  
CDES

- 🕒 14:15 **PANEL 1: Moderated by Mehreen Khan - Economics Editor, The Times**

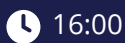
**The European football pyramid: what benefits go with it?**

 **Kenneth Cortsen**  
 Assistant Professor & Sports Business Strategist  
University College Nordjylland, Aalborg

 **Mark Doidge**  
 Sports Sociologist & Professor  
University of Brighton

 **Ian Forrester KC LLD**  
 Judge of the General Court of the  
European Union 2015-2020

- 🕒 15:15 Q&A session
- 🕒 15:30 Networking break



16:00 Presentation of the EU study "The European sport model: a report to the European Commission"



**Matteo Zacchetti**



Policy Officer  
European Commission, Sport Unit



16:15 PANEL 2: *Moderated by Mehreen Khan - Economics Editor, The Times*

What is the regime of the European football pyramid under EU law?



**Franck Latty**



Professor of International Law  
University of Paris Nanterre



**José Rivas**



Partner  
Bird & Bird



**Vanja Smokvina**



Associate Professor  
University of Rijeka, Faculty of Law, Croatia



**José Manuel Araujo**



Lawyer and Chair of the EU Commission  
European Olympic Committees



Jean Monnet Chair in EU Sports Law  
Policy & Diplomacy



17:15 Q&A session



17:30 Closing remarks



**José Luís Da Cruz Vilaça**



Managing Partner  
Cruz Vilaça Advogados



Judge of the Court of Justice of the European  
Union 2012-2018



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The Centre for Law and Economics of Sport (CDES) and the University of Luxembourg in partnership with the University of Limoges (FR), the University College Nordjylland (UCN, DK), the University of Rijeka (HR), Sport&EU Association and the International Association of Sport Economists are honored to invite you to "The legal and economic aspects of the organisation of football in Europe".



# PROJECTS

## **PROJECT SUMMARY: ERASMUS+ EMPLOYS “UNDERSTANDING, EVALUATING AND IMPROVING GOOD GOVERNANCE IN THE EMPLOYMENT RELATIONS OF ATHLETES IN OLYMPIC SPORTS IN EUROPE”**


MAXIMILIAN SELTMANN\*  
SÖNKE SCHADWINKEL\*\*

The dynamics of Olympic sports are currently in a period of change, and the field of athletes' employment and social relations is also facing fundamental challenges. While organised sport has traditionally been characterised by amateurism, voluntary commitment and prestige, the increasing professionalisation and commercialisation have transformed both the structures and the perceptions of Olympic sports.

Against this background, demands for an improvement of the conditions of the social and professional environment of Olympic athletes have become increasingly stronger from a growing number of athletes in recent years. This development can be explained by a contradiction: on the one hand, Olympic athletes are celebrated stars and public heroes; on the other hand, many of them may be exposed to difficult financial situations, precarious working conditions and a lack of social protection.

The Erasmus+ funded project EMPLOYS addressed the multi-faceted issues elite athletes face from the perspective of employment relations in a two-year process of interdisciplinary research and stakeholder exchange. The project was led by the German Sport University Cologne, Germany (Project Leader: Prof Dr Jürgen Mittag; Project Coordinator: Maximilian Seltmann; Researcher: Lorenz Fiege). Academic partners to the project were the Edge Hill University, United Kingdom (Manager Northern Europe: Dr Leanne O'Leary), the University of Rijeka, Faculty of Law, Croatia (Manager South-Eastern Europe: Associate Prof Dr Vanja Smokvina), the Universidade Europeia Lisbon, Portugal (Manager South-Western Europe: Luiz Haas) and the Institute for Sport Governance, Poland (Manager Eastern Europe: Dr Pawel Zembura). The project team was complemented by two umbrella organisations of sports stakeholders, namely EU Athletes (Manager Stakeholder Engagement: Paulina Tomczyk) and the European Olympic Academies (Manager Stakeholder Engagement: Sönke Schadwinkel).

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\* Institute of European Sport Development and Leisure Studies, German Sport University Cologne, Germany.  <https://orcid.org/0000-0001-5111-2772>. ✉ [m.seltmann@dshs-koeln.de](mailto:m.seltmann@dshs-koeln.de).

\*\* European Olympic Academies, Germany. ✉ [s.schadwinkel@eoalympic.org](mailto:s.schadwinkel@eoalympic.org).

## PROJECT PHASE 1: “UNDERSTANDING”

The objective of this first project phase was to conceptualise the employment relations of athletes in Olympic sports. Since not all athletes in Olympic sports outside of professional leagues are considered as employees under national law, this approach can appear somewhat controversial. Against this backdrop, a wide definition of employment relations was developed to encompass

“all legal, contractual, financial, and social relationships that enable an athlete to engage in and perform elite sport in their discipline and specific national context, and shape economic exchange relations and social conflict relations; this includes the networks, institutions and systems in which different actors are involved with regard to work related processes and economic activities.”<sup>1</sup>

To achieve this objective, data on the relationships of athletes in 29 European countries (27 EU members + UK + Norway) were collected with the support of national academic experts and practitioners. Following the completion of the first project phase (“Understanding”) from March to December 2021, the partners published a first “Fact Report” as an empirical evidence base of the legal and socio-political landscape defining the working and social relations of athletes in Olympic sports in Europe.<sup>2</sup>

## PROJECT PHASE 2: “EVALUATING”

In the second phase of the project (“Evaluating”) from January to June 2022, the project team focused on the evaluation and assessment of current practices and pursued the goal of developing context-specific dimensions and principles for Good Governance in the employment and social relations of athletes in Olympic sports in Europe. The project partners first developed a normative-value-based concept that describes the fulfilment of specific socio-political rights of athletes as “Good Governance”. Derived from legal and political frameworks and policy documents of the UN, EU and ILO, and relevant academic studies, the concept considers both context-specific and universally applicable political, social and civil rights of athletes from an ethical and moral perspective.

Based on this innovative conceptual approach and intensive communication with national, European and international stakeholders in sport during numerous so-called Multiplier Sport Events (MSEs) in Cologne, Lisbon, Ormskirk, Rijeka and Warsaw, the project team developed 27 principles of Good Governance of individual and collective working and social relations of athletes in Olympic sports in practice. The principles cover a total of six core dimensions (contract, income, commercial opportunities, occupational safety and health, social protection,

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1 Jürgen Mittag, Maximilian Seltmann, Lorenz Fiege, Leanne O’Leary, Pawel Zembura, Luiz Haas, Thiago Santos Vanja Smokvina, Paulina Tomczyk; Manfred Lämmer and Sönke Schadwinkel, *Good Governance in the Employment Relations of Athletes in Olympic Sports in Europe: Understanding – Evaluating – Improving* (Rijeka: University of Rijeka, Faculty of Law, 2022), 12, <https://repository.pravri.uniri.hr/en/islandora/object/pravri%3A3107>.

2 Jürgen Mittag, Maximilian Seltmann, Lorenz Fiege, Leanne O’Leary, Pawel Zembura, Luiz Haas, Thiago Santos and Vanja Smokvina, *Fact Report: Understanding the Employment Relations of Athletes in Olympic Sports in Europe* (Rijeka: University of Rijeka, Faculty of Law, 2022) <https://repository.pravri.uniri.hr/en/islandora/object/pravri%3A2369>.

participation and bargaining) and have been operationalised in different sub-principles.

Until the end of August 2022, the stakeholders identified by the project team (e.g. Ministries, National Olympic Committees, sports federations, athletes' associations) were able to share their perspectives and criticisms on the 27 Good Governance principles via a survey tool. Subsequently, the principles were finalised by the researchers of the project team after assessing the structures, mechanisms and programmes in the respective national settings, as well as identifying best practices.

### **PROJECT PHASE 3: "IMPROVING"**

In the third and final phase of the project ("Improving"), the academic partners evaluated the current practices and relationships shaping the employment and social relations of athletes against the concept and principles of Good Governance. The evaluation was carried out across the six dimensions and identified general trends and examples of good practice. In addition, a specific study on national, transnational and international legal and socio-political frameworks and their impact on athletes' employment relations was carried out. Through the stakeholder survey, the respondents were also asked which of the involved actors bear (or are supposed to bear) a particular responsibility for the fulfilment of the individual principles. Considering this systematic stakeholder feedback and the results of the evaluation, the project partners have formulated practical recommendations for action and policy for different groups of actors to improve the social situation of Olympic athletes in Europe in the short, medium and long term.

The final project results and practical implications and recommendations were aggregated in a third (final) report<sup>3</sup> at the end of 2022 and publicly discussed at a final conference in Brussels on 6 December 2022.

### **EIGHT ANALYTICAL THESES FOR GOOD GOVERNANCE IN THE EMPLOYMENT RELATIONS OF ATHLETES IN OLYMPIC SPORTS**

The conceptual and empirical analysis of the project can be summarised in the following eight theses:<sup>4</sup>

1. The elite performance of athletes in Olympic sports produces economic gain and is the reason for the spending of substantial amounts of public money.
2. Olympic elite athletes provide their services in an environment of subordination.
3. Sport Governing Bodies have a significant degree of control over the career of Olympic elite athletes.
4. The situation of athletes' employment and social relations can be precarious.
5. Good Governance in Olympic elite sport requires a systemic approach that places athletes' rights at its centre.
6. Athletes' employment relations rights can be fulfilled through different ways; while worker status is preferable, the actual practice (of the involved stakeholders) is important.
7. Contracts, social dialogue and collective bargaining are important tools of Good Governance in athletes' employment relations.

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<sup>3</sup> Mittag et al., "Good Governance".

<sup>4</sup> Mittag et al., „Good Governance“, 135-39.

8. Interaction and coordination between the national and trans/supranational levels remain a key challenge for effective athlete-centred policies.

## OUTLOOK

The project has provided an important initial step to conceptualise and analyse Olympic sports from the interdisciplinary perspective of employment and social relations. While many aspects uncovered by the different reports deserve the attention of academics and stakeholders, the project team will continue its work in a follow-up project, which will delve deeper into the topic of social protection of athletes. The SOPROS project “Assessing, Evaluating and Implementing Athletes’ Social Protection in Olympic Sports” will investigate the current situation regarding social protection of athletes and develop concrete solutions for current problems via a dialogue-oriented process. SOPROS is once again co-financed by the EU’s Erasmus+ Sport programme and will last three years (beginning in January 2023). Two new partners, the European Association of Sport Employers and the International Labour Organization, will join the existing project consortium. The project team invites everyone interested in this relevant topic to engage in the process and to support the work towards a governance of Olympic elite sports that ensures safe and sustainable careers for all elite athletes.



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