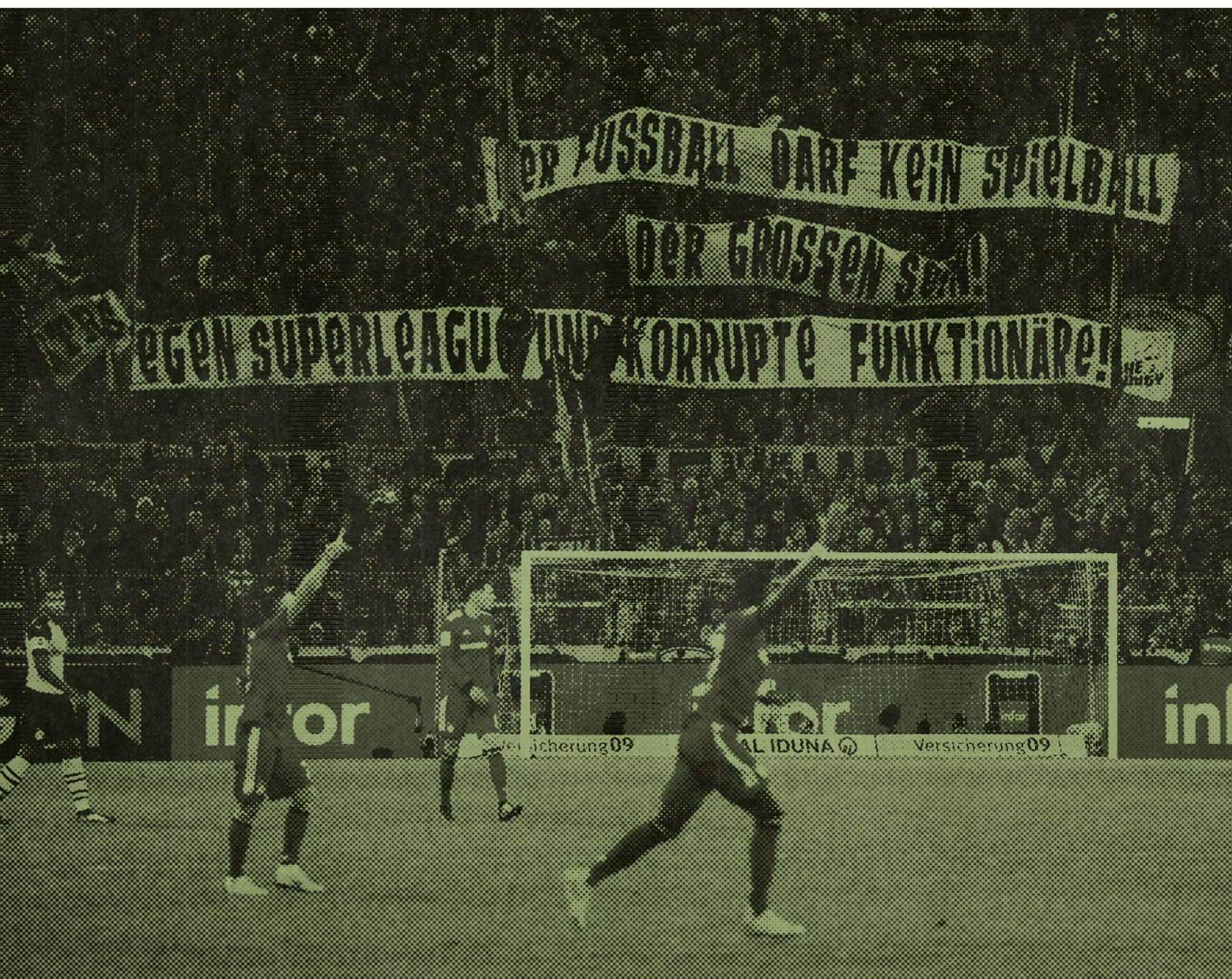


Policy Brief:

Laws for The Games: How the EU can reform sports governance



Cover photo shows Borussia Dortmund's ultra group, Unity, protesting proposals for a breakaway European super league in 2018. "Football must not be a plaything for the big boys. Against the Super League and corrupt officials."

FairSquare



The Case for Sports Regulation

This policy brief is a collaboration between FairSquare and Dr Jan Zglinski, an Associate Professor of Law at the London School of Economics. FairSquare is a research and advocacy non-profit organisation that promotes better governance in sporting institutions as a means of reducing social harms. Dr Zglinski's research focuses on sports law and regulation, as well as EU constitutional and internal market law. The purpose of the brief is to explain how the European Union (EU) could take a more proactive role in the regulation of sport. It has been written in such a way as to be accessible to readers who may not be familiar with the functioning of the EU, its competences, and the workings of its various institutions. The intended audience includes policymakers, sports administrators, and other groups and individuals with an interest in the reform of sports governance.

The policy brief lays out the advantages of EU regulation over national and international action, the legal basis for and form that this regulation could take, and the steps required to make it happen. We start from the position that greater public control of sport is needed, but it is worth briefly explaining why we believe that to be the case. In short, sport is too politically, economically, and socially important to govern itself, and sports governing bodies have repeatedly demonstrated that they are incapable of effective self-regulation.

Nowhere is this more obvious than in the case of the world's most popular sport, football, described by historian David Goldblatt as "the most universal cultural phenomenon in the world".¹ FIFA, its international governing body, has come to epitomise much of what is wrong with sports governance. It is not the only football federation beset by governance issues; UEFA, for example, has been mired in allegations of cronyism under the Presidency of Aleksander Čeferin. Nor are problems in sports governance limited to football, as exemplified by the International Olympic Committee, where the much vaunted reforms under the presidency of Thomas Bach have not stemmed allegations of systematic misgovernance.² But football's governance deficits provide us with the most obvious and best-known example of a broader phenomenon: self-regulation in sport consistently and regularly yields harmful results.

1 David Goldblatt, *The Ball is Round: A global history of football* (Penguin Books 2006).

2 David Conn, "I had to leave": concerns raised over state of UEFA amidst cronyism claims, *The Guardian* (22 September 2022); Jules Boykoff, *What are the Olympics For* (Bristol University Press 2024).

FIFA was set up more than a century ago to regulate and develop international football, but since the 1970s it has been transformed into a commercial behemoth which has been the subject of multiple corruption scandals, due in large part to the fact that its most senior officials control what is effectively a global patronage network.³ Its misgovernance has come at the cost of the sustainable and ethical development of the game, and has resulted in its operations causing a wide range of serious social harms, which extend beyond the serious human rights violations that have accompanied men's World Cups in the last 15 years.

Internal reform attempts have repeatedly failed. Rudimentary reforms proposed by an Internal Governance Committee in 2012, 2013, and 2014 largely foundered in the face of opposition from senior officials.⁴ US Department of Justice criminal prosecutions of senior FIFA officials in 2015 prompted a much-publicised overhaul of the organisation that was meant to raise governance standards, but were almost instantly undermined by the removal of independent members of a new ethics and governance committee.⁵ The adoption of a human rights policy in 2017 did not mitigate the human rights abuses that accompanied the Qatar 2022 World Cup, arguably the most egregious abuses to taint the federation's already tattered reputation, and FIFA has manipulated supposedly improved World Cup bidding guidelines to ensure that Saudi Arabia will host the 2034 men's World Cup.⁶ FIFA remains accountable to nobody but itself. External intervention is therefore needed.

This policy brief explains how the EU might provide that external intervention. Football provides the most compelling and persuasive case study for proponents of reform, but the benefits of EU regulation would accrue to all sports.

-
- 3 Ken Bensinger, *Red Card: FIFA and the Fall of the Most Powerful Men in Sports* (Profile Books 2018); Andrew Jennings, *Foul! The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals* (HarperSport 2007).
 - 4 Alexandra Wrage, 'FIFA Governance Recommendations: Not a Close Call', *Forbes* (12 February 2013). See also Independent Governance Committee, 'Final Report by the Independent Governance Committee to the Executive Committee of FIFA' (22 April 2014).
 - 5 Andrew Das, 'FIFA Moves to Replace Ethics Committee Leaders' *New York Times* (9 May 2017). Navi Pillay, Miguel Poyares Maduro and Joseph Weiler, 'Our sin? We appeared to take our task at Fifa too seriously', *The Guardian* (22 December 2017).
 - 6 Antoine Duval, 'How Qatar's Migrant Workers Became FIFA's Problem: A Transnational Struggle for Responsibility' (2021) 12 *Transnational Legal Theory* 473; Megan Corrarino, "'Law Exclusion Zones": Mega-Events as Sites of Procedural and Substantive Human Rights Violations' (2014) 17 *Yale Human Rights & Development Law Journal* 180; Amnesty International, 'Playing a Dangerous Game: Human rights risks linked to the 2030 and 2034 FIFA World Cups', (5 June 2024).

The Case for EU Action

External intervention can, in principle, come from three sources of law: national, European (or regional) and international. While valuable initiatives have emerged at all levels, we argue here that EU action presents distinct advantages in terms of its scope and effectiveness.

States have historically been the primary actor responsible for regulating sport, and a variety of national laws have emerged in recent years as governments across the world seek to improve sports governance. The impact of these laws is necessarily limited because they only apply in the country where they are in force. Sport, by contrast, has become a transnational phenomenon. Football illustrates this neatly. International competitions have been added to the domestic league systems and gained in importance over time. Clubs from all the countries of Europe now play, or aspire to play, in the UEFA Champions League, Europa League, and Conference League, and a group of elite clubs will participate in the expanded FIFA Club World Cup, which kicks off in June 2025 in the United States. The cross-border movement of players has increased dramatically in recent decades, in large part due to the 1995 *Bosman* ruling which has made it easier for footballers to sign for teams outside their home country. Even fandom has acquired more international traits; watching games in and supporting teams from other countries is more popular than ever. A transnational phenomenon of such critical social, political and economic importance calls for a transnational regulatory response, one which the EU can deliver.

In addition to its wider geographic scope, the EU has a second advantage over state-led solutions: it is more immune to pressure exercised by sports governing bodies. Sports federations around the world have rules that prohibit undue political interference as a means of protecting their autonomy. Increasingly these are deployed as a means of fending off any attempts at regulatory intervention.⁷ Associations considered to have been compromised by government action can be stopped from hosting or participating in major sporting events, a threat that frequently proves effective. Greece, Poland, Spain and, most recently, Italy are among the European countries that were forced into submission as a result of FIFA pressure, abandoning policy measures aimed at fighting corruption in or otherwise reforming domestic football.⁸ In September 2024 UEFA warned the

7 Henk Erik Meier and Borja García, 'Protecting Private Transnational Authority against Public Intervention: FIFA's Power over National Governments' (2015) 93 *Public Administration* 890.

8 *Ibid.* See also Luke Brown, 'Fifa Threaten to Expel Spain from 2018 World Cup', *The Independent* (15 December 2017); Susy Campanale, 'Italian football at risk from UEFA and FIFA after passing

UK that the plans to introduce legislation to provide for an independent football regulator could amount to government interference, emphasising that it has the power to exclude teams from competition in such circumstances.⁹ Were the EU to intervene in the regulation of football, it could not be punished with the same ease as it does not have its own association and team. Sanctioning all Member States is not a realistic option since no major international tournament would be commercially viable without European participation. Whereas no single country can effectively regulate FIFA and UEFA, the EU could.

International agreements would be an alternative to EU regulation. States would sign up to the same set of legal obligations to achieve certain aims and objectives, and examples of successful international cooperation already exist in fields such as anti-doping and match-fixing.¹⁰ However, getting a meaningful number of countries to coalesce around a meaningful set of regulatory requirements is extremely difficult. Even the Convention on the Manipulation of Sports Competitions, one of the bright spots in this area, has only been signed by 30 countries and has been ratified by a mere seven. While it is true that it can also be difficult for the EU to arrive at consensus, it has well-established legislative and political structures to facilitate collective decision-making. In addition, international treaties lack the hard enforcement mechanisms on which the EU can rely. EU rules create binding obligations that must be and are implemented by national governments, agencies, and courts in all 27 member states. If rules are endowed with what is known as direct effect they can immediately be invoked by individuals in judicial and administrative proceedings, and the rates of compliance with EU rules among the Member States are generally high, comparable to those found in countries like the US, Germany, or Australia.¹¹ The absence of enforcement mechanisms in international law means many states flout the responsibilities imposed on them when they ratify international treaties. European law, by contrast, has an array of legal, political, and financial enforcement tools at its disposal, making it less dependent on the goodwill of states.

EU action also has the potential to have a positive impact on sports governance beyond the boundaries of Europe. This is partly due to the way EU regulations are designed. Legislative measures can be formulated so that they apply to actors located outside the Union, as exemplified by the Digital Services and Markets

controversial law', *Football Italia* (11 July 2024).

9 Sean Ingle, 'England will not face Euros expulsion for having regulator, key officials say', *The Guardian* (15 September 2024).

10 International Convention Against Doping in Sport (2005); Convention on the Manipulation of Sports Competitions (2014).

11 Lisa Conant, 'Compliance and What EU Member States Make of It' in M. Cremona (ed), *Compliance and the Enforcement of EU Law* (Oxford University Press 2012).

Act. Businesses and regulators across the world frequently choose to abide by EU rules, even if these are more demanding than their local regulations, to facilitate access to the EU market, the world's largest trading bloc. This voluntary compliance of non-European stakeholders with European laws is called the "Brussels Effect", and it has been felt in the fields of environmental protection, competition law, digital rights, and, to some extent, football.¹² The overhaul of the transfer regime after *Bosman* is a well-known example. Although the Court of Justice's ruling formally only applied to the (then) 15 Member States, UEFA ended up - following pressure from the European Commission - changing the transfer rules for all of its over 50 national associations. EU sports regulation could, in the same way, nudge federations outside its borders towards improving governance standards.

Reforming sports governance through EU regulation is not a perfect solution, but it is in all likelihood the least imperfect one. Stephen Weatherill from the University of Oxford puts it pointedly: "By some distance the strongest argument in favour of placing faith in the EU as a source of governance reform in sport is – if not the EU, then who?"¹³ Football federations have, time and again, shown to be unwilling to implement serious reforms. States have largely felt impotent to demand them. Switzerland, where many sports governing bodies are located, has a notoriously *laissez-faire* approach to sports regulation,¹⁴ and international initiatives have low chances of success. In this situation, the EU offers the most promising avenue for effecting change.

12 Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020).

13 Stephen Weatherill, 'Saving Football from Itself: Why and How to Re-make EU Sports Law', (2022) 24 *Cambridge Yearbook of European Legal Studies* 4, 17.

14 Margareta Baddeley, '*The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn*', (2020) 20 *International Sports Law Journal* 3; Mark Pieth, 'The Responsibility of the Host Country' in M. Pieth (ed), *Reforming FIFA* (Nomos 2014).

A European Sports Act

It would not be a radical step for the EU to take the regulation of sport more seriously - it has been active in this regard for decades. The Court of Justice of the European Union (CJEU) has reviewed decisions of sports governing bodies on a number of occasions, perhaps most famously in the aforementioned *Bosman* case.¹⁵ The European Commission has conducted several investigations based on EU antitrust rules which prohibit agreements between commercial operators restricting competition, for instance in relation to the sale of football broadcasting rights, and enacted a variety of softer policy measures, such as a 2007 White Paper on Sport.¹⁶ These actions have subjected national sports federations to the discipline of EU law and policy, but a combination of factors has limited their impact on sports governance: the low number of proceedings brought against governing bodies; the deferential stance of EU institutions towards sports governance bodies; and the reliance on non-binding instruments, such as resolutions and recommendations, as regulatory tools. A more proactive approach is therefore necessary.

Several options are, in theory, available. One would be to exercise greater control over the sector through adjudication, which is to say using the decisions of the Court of Justice (CJEU) - the highest court of EU law - to shape the regulation of sport. Sports governing bodies, like all corporate entities in the EU, must comply with European free movement and competition rules. Although this is a palpable constraint on their autonomy, the respective legal requirements have often been interpreted in a relatively lenient manner by the European Court and the Commission. This is a reflection of the EU's recognition of the specific nature of sport, which it accepts requires a particular legal and regulatory approach.¹⁷ More recently, there seems to have been a change of tack, with the CJEU giving less latitude to sports governance bodies. The *European Superleague* and *International Skating Union* judgments have intensified the level of scrutiny under EU law, requiring that federations adopt transparent, precise and non-discriminatory criteria in relation to the authorisation of third-party events.¹⁸ These precedents have already been used strategically

15 Case C-415/93 *Bosman* ECLI:EU:C:1995:463.

16 COMP/C.2-37.398 —Joint selling of the commercial rights of the UEFA Champions League (2003); COMP/C-2/37.214 – Joint selling of the media rights to the German Bundesliga (2005); COMP/C-2/381.73 – Joint selling of the media rights to the FA Premier League (2006); White Paper on Sport (2007).

17 See Antoine Duval, Alexander Kruger, Johan Lindholm, *The European Roots of the Lex Sportiva* (Bloomsbury 2024); An Vermeersch, 'Specificity of Sport' in J. Anderson, R. Parrish and B. Garcia, *Research Handbook on EU Sports Law and Policy* (Edward Elgar 2018).

18 Case C-333/21 *European Superleague Company* ECLI:EU:C:2023:1011; Case C-124/21 P

by private litigants and competition authorities to challenge other aspects of football governance, including transfer rules, solidarity payments, and the new FIFA Club World Cup.¹⁹ However, while the CJEU may render judgments that contribute to raising governance standards in sports, it can only rule on the specific issues brought to its attention and has no control over which issues end up on being litigated.²⁰

Another option lies in re-thinking the EU's approach towards sports policy. EU institutions have produced a wealth of communications, recommendations, and similar documents in which they have outlined a positive vision for sport.²¹ Unfortunately, none of these establish effective compliance mechanisms. The Commission's Cooperation Arrangement with UEFA, initially concluded in 2014 and now in its third edition, is emblematic in this context.²² Although both parties express their strong commitment to laudable principles such as good governance, human rights, and gender equality, none of the obligations are legally binding. The agreement does not even establish monitoring instruments that would allow either party to evaluate progress. Concrete commitments and benchmarks should be an indispensable component of the EU's strategy going forward, but soft policies alone are insufficient to tackle the deep-seated structural issues that affect an organisation like FIFA.

Dedicated EU legislation - in the form of, for example, a European Sports Act - would have the potential to impose the most consequential and transformational reforms on sports governing bodies.²³ It would create a coherent, predictable, and binding set of rules for the sector. Recent sport-related legislative initiatives

International Skating Union ECLI:EU:C:2023:1012.

19 Case C-650/22 *FIFA v BZ* ECLI:EU:C:2024:375, Opinion of AG Szpunar; Bundeskartellamt, Vorsitzendenschreiben – Zentralvermarktung der Medienrechte an Spielen der Bundesliga und der 2. Bundesliga (26 February 2024); FIFPRO Europe Statement: Legal claim against FIFA (13 June 2024), available at <https://fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa>.

20 Jan Zgliniski, 'Can EU competition law save sports governance?' (2024) 23 *International Sports Law Journal* 475.

21 For a small selection, see Amsterdam Declaration on Sport [1997] C340/136; Nice Declaration on incorporating the specific characteristics of sport and its social functions into the implementation of common policies (2000); European Parliament, Resolution on the future of professional football in Europe (2006/2130(INI)); European Parliament, Resolution on recent revelations on high-level corruption cases in FIFA (2015/2730(RSP)); European Parliament, Resolution on EU sports policy: assessment and possible ways forward (2021/2058(INI)); Council and Member State Governments, Resolution on the key features of a European Sport Model (2021/C 501/01).

22 Arrangement for Cooperation between the European Commission and UEFA (2022).

23 Weatherill (n 14); Miguel Poyares Maduro, 'EU Law and Sports: A Match Made in Hell or in Heaven?' in J. Adams-Prassl et al (Eds.), *The Internal Market Ideal* (Oxford University Press 2024); Jan Zgliniski, 'Who Owns Football? The Future of Sports Governance and Regulation after *European Superleague*' (2024) LSE Legal Studies Working Paper No. 9/2024.

on sport in several Member States, including France, Spain, and Poland, as well as former members like the UK could serve as sources of inspiration here.²⁴ The EU could adopt rules concerning the institutional structure, decision-making processes, and social responsibilities of sports governing bodies, without dictating a specific model of governance across all sports. The organisation of football differs, and could continue to differ, from that of rugby, boxing, and tennis, for example. The legislation would simply establish minimum good governance standards that all governing bodies must follow.

Much has been written about the application of principles of good governance to sport, in response to the various corruption scandals that have engulfed organisations like FIFA and the IOC.²⁵ There are some common themes that emerge from this body of work that could guide EU action, including transparency, democracy, accountability, and the social function of sport.²⁶

With regard to **transparency**, EU law could oblige governing bodies to publish key information on their operations, such as board minutes, financial statements, and remuneration of high-level officials. In relation to **democracy**, the legislation could impose rules requiring regular and free elections in federations, alongside setting term limits for executive positions, following the example of countries like France (which limits the maximum number of terms for presidents of sports federations to three), and ensuring providing for the representation of stakeholders who currently have no, or limited, voice in decision-making processes.²⁷ This includes women who remain under-represented at all levels of sports governance, a situation that could be improved by mandatory quotas, which already exist under French law and will soon exist under Polish law - 50% and 30%, respectively - and would be consistent with the EU Directive

24 For France, see Loi du 2 mars 2022 visant à démocratiser le sport en France. For Spain, see Ley 39/2022, de 30 de diciembre, del Deporte. For the UK, see Football Governance Bill 2024. For Poland, see the new legislation aimed at improving gender balance in sports governing bodies as proposed by the Ministry of Sport and Tourism, press release available at <https://www.gov.pl/web/sport/czas-na-kobiety-w-sporcie-ministerstwo-sportu-i-turystyki-zapowiada-nowelizacje-ustawy-o-sporcie>.

25 André-Noël Chaker, *Good governance in sport - A European survey* (Council of Europe 2004); Jean-Loup Chappelet and Michaël Mrkonjic, 'Basic Indicators for Better Governance in International Sport (BIBGIS): An assessment tool for international sport governing bodies' (2013) IDHEAP Working Paper 1/2013; Arnout Geeraert and Frank van Eekeren (Eds.), *Good Governance in Sport: Critical Reflections* (Routledge 2022); .

26 See Geeraert, *National Sports Governance Observer: Indicators and instructions for assessing good governance in national sports federations* (2018) ; Council of Europe, 'Promotion of Good Governance in Sport' (2018) Recommendation CM/Rec(2018)12; EU Expert Group on Good Governance, 'Principles of Good Governance in Sport' (2013).

27 France, Code du sport.

on improving the gender balance among directors of listed companies.²⁸ EU law could also give formal standing within governance structures to athletes, clubs, and supporters - key stakeholders who are currently absent from most governance structures. The Spanish requirement of proportionate representation of all major stakeholders in sports governing bodies and the recommendations of the UK Fan-Led Review of Football Governance, which has suggested the creation of “golden shares” and “boards” for supporters, could provide blueprints.²⁹

With regard to **accountability**, a European Sport Act could lay down robust rules to mitigate the risk of corruption and prevent conflicts of interests, instituting checks and balances and requiring effective auditing mechanisms. Rules should prevent members of executive committees from sitting on disciplinary committees, to take one simple example. Following the *Superleague* and *International Skating Union* rulings, which recognise the dangers stemming from the dual regulatory and commercial role exercised by sports governing bodies, the legislation could also be helpfully used to elaborate how these can avoid conflicts of interest while discharging their functions. Similarly, and in light of the fact that many of the governance problems at FIFA relate to the manner in which the organisation’s most senior officials control and distribute development funds to its member associations in return for their political support, EU regulation could impose rules that prevent such harmful patronage networks.³⁰

In addition, EU law could impose substantive requirements relating to the **social function** of sport. This would, at a minimum, entail human rights obligations for sports governing bodies and could, beyond that, address issues such as enshrining the openness of sporting competitions; strengthening athletes’ rights surrounding health and access to justice; ensuring effective safeguarding procedures to prevent physical and sexual abuse, notably among women and girls; stipulating expectations towards financial solidarity between elite and lower-tier levels, and establishing environmental standards to prevent sporting activities from exacerbating the climate crisis.

While some of these requirements would be new for some sports governing bodies, others may already exist in their statutes. However, it would be wrong

28 Directive 2022/2381 on improving the gender balance among directors of listed companies and related measures [2022] OJ L315/44.

29 Ley 39/2022, de 30 de diciembre, del Deporte; Independent Report, Fan-Led Review of Football Governance: Securing the Game’s Future (2021).

30 Dan Hough and William R. Heaston, ‘The Art of Missing the Point: FIFA and the Control of Corruption’ in I. Kubbe and A. Englebert (EDS.), *Corruption and Norms: Why Informal Rules Matter* (Palgrave Macmillan 2018).

to see EU rules as duplication in this regard.³¹ The step from self-regulation to regulation entails a shift from internal to external oversight. Much of what is problematic about present-day sports governance is not that there is a lack of sensible rules, but that they are not properly enforced for a wide range of reasons. EU legislation would overcome this problem by enabling public scrutiny.

Enforcement of the legislative requirements could be placed in the hands either of the European Commission (together with additional human and financial resources to discharge the responsibilities) or a specialised European Sports Agency (modelled on national counterparts or already existing EU agencies). This would allow EU institutions to review and, if necessary, correct the actions of sport authorities. The world would no longer be powerless if a FIFA President were to unlawfully extend their tenure, if officials were appointed despite lacking the requisite integrity, or if the hosting of a World Cup was likely to result in serious and widespread human rights violations.

Good governance is the key to unlocking sport's transformative potential and would provide the institutional foundations that would enable the realisation of lofty, but entirely realisable, aims.

31 FIFA adopted a human rights policy in 2017. The IOC established a human rights strategic framework in 2022.

Legal Foundations

The EU has had, since the 2007 Lisbon Treaty, an explicit competence to adopt measures relating to sport. Article 165 of the Treaty of the Functioning of the European Union (TFEU) establishes the EU's mandate to develop the European dimension in sport, with a view to promoting values such as fairness and openness in sporting competitions and protecting the physical and moral integrity of athletes, as well as fostering cooperation with other countries and sport organisations.

Although the provision confirms that sport falls into the EU's remit, it would not be an appropriate legal basis for the type of sports legislation discussed above. Article 165 establishes what is referred to as a supporting competence, which allows the EU to enact incentive measures and recommendations.³² Therefore, binding legal rules for sport governing bodies could not be adopted through this route, but would have to be based on norms establishing exclusive or shared EU competences.

In this regard, Article 114 TFEU, which gives the EU the authority to adopt internal market legislation, is a better option.³³ It supports policies that are aimed at improving the conditions for the 'establishment and functioning of the internal market' and allows to harmonise the legal rules in a given domain. The existence of differences in the laws of the Member States can be a sign that European intervention is warranted but is, in and of itself, not sufficient. The divergences must have a direct effect on the functioning of the single market or cause significant distortions of competition. This can, in particular, be the case where restrictions on free movement arise or are likely to arise in the future, for instance due to new national legislation.

The Court of Justice has interpreted these criteria generously - and there is no doubt that a European Sports Act would fulfil them.³⁴ Sport is a significant element of the internal market, accounting for over 2% of the EU's GDP and 3% of its employment.³⁵ The Court of Justice accepts that sports, if exercised

³² For a brief explanation of EU competences, see Eur-lex, 'Division of competences within the European Union', (accessed 30 September 2024).

³³ It could be used jointly with more specific provisions from free movement law, such as Articles 53(1) and 62 TFEU.

³⁴ *Case C-376/98 Germany v European Parliament and Council (Tobacco Advertising I)* ECLI:EU:C:2000:544; *Case C-491/01 British American Tobacco* ECLI:EU:C:2002:741; *Case C-58/08 Vodafone* ECLI:EU:C:2010:321; *Case C-547/14 Philip Morris* ECLI:EU:C:2016:325.

³⁵ European Commission, *Study on the economic impact of sport through sport satellite accounts* (2018).

at professional level, constitute an economic activity and, as such, fall into the scope of the European Treaties.³⁶ This means that legislation aimed at governing sports could also legitimately be designed as an instrument of internal market law, as long as it is directed at professional sports. Amateur activities would need to be excluded to comply with the EU's constitutional constraints (or addressed through Article 165 TFEU). There are already considerable differences in how sports are regulated across Europe, a result of both public and self-regulation. The sports legislation which France, Spain, Italy, Poland, and Germany have or are planning to adopt show that member states' laws may diverge further.³⁷ These disparities create trade barriers which directly affect market integration, by making it less attractive and, at times, impossible for players, clubs, agents, owners and commercial partners to provide services, establish themselves, or invest capital abroad. By the same token, they affect competition in a tangible way, by creating different conditions for economic activity across sports, leagues, and associations.

The scope of application of an EU law in this area would need to be delineated in a way that responds to the geographical particularities of sports governance. The majority of international sports governing bodies, including FIFA and UEFA, are headquartered outside the EU, with many based in Switzerland. In order for it to be effective, any form of European sports regulation must apply to their actions. An important lesson can be drawn in this respect from the Digital Services and Markets Acts, which the EU enacted in 2023 to regulate the conduct of big tech and social media companies such as Alphabet, Apple, Meta, and Tik-Tok.³⁸ Both pieces of legislation faced a similar challenge, namely they were seeking to regulate providers of platform and intermediary services that are, for the most part, located in non-EU countries. The problem was solved by shifting the focus from providers to recipients, or put another way, from 'source' to 'impact'. The laws apply to services offered to individuals and businesses inside the European Union, irrespective of where the providers of those services are established. Similarly, the European Sports Act could govern the activities of sports governing bodies that, although originating outside

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

37 For France, Spain and Italy, see *supra*. For Italy, see DL 71/2024: Disposizioni urgenti in materia di sport, di sostegno didattico agli alunni con disabilità, per il regolare avvio dell'anno scolastico 2024/2025 e in materia di università e ricerca. C. 1902 Governo. For Germany, see Gesetz zur Regelung der Förderung des Spitzensports und zur Errichtung der Sportagentur - Referentenentwurf (2024), available at https://www.bmi.bund.de/SharedDocs/gesetzgebungsverfahren/DE/Downloads/referentenentwuerfe/SP1/spofoeg-ref1.pdf?__blob=publicationFile&v=3 (accessed 30 September 2024).

38 Regulation 2022/1925 on contestable and fair markets in the digital sector and amending Directives 2019/1937 and 2020/1828 (Digital Markets Act) [2022] OJ L265/1; Regulation 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1.

the EU, take place or exert effects inside of it, such as staging competitions, broadcasting matches, and concluding sponsorship deals. In addition, rules could be included stipulating that actors located in Europe (e.g. club and national teams) can only participate in sporting events organised by federations complying with the standards set out in the Act, including where these events take place outside of the EU.

How to Get There

It is clear that the EU has the power to impose and effectively enforce rules that would improve the governance of international sporting bodies - yet, so far, it has made too little use of this power. Against this backdrop, it is useful to outline the steps that might convince the EU to regulate sport more proactively and the ways in which a piece of legislation like an EU Sports Act could be implemented.

A first step on what is likely to be a long path is intensified coalition building. A multiplicity of actors need to be convinced of the benefits of European regulation. This includes EU institutions, national governments, and, crucially, a critical mass of stakeholders from within the world of sport. Sports reform advocates, experts in sports law and policy, as well as progressive administrators, officials, and federations will be critical to any such coalition. So will the many stakeholders who are currently under-represented in existing sport structures and, thus, stand to gain most from the reform: clubs and leagues at Europe's periphery, fans not given a voice in decision-making processes, and female athletes, to name a few. Another important constituency is the general public. Many citizens are deeply frustrated with what they perceive as widespread misgovernance and corruption within organisations like FIFA. This frustration must be transformed into strong public support for external reform, which is vital to the success of any regulatory endeavour but particularly important in a sector which has successfully resisted public intervention to a greater extent than most others.

In this context, the Danish organisation Play The Game has been a key player not only in proposing possible solutions on how to reform sports governing bodies but in bringing together key stakeholders. In June 2023, it published the results of a detailed consultation process that involved nearly 200 investigators, policymakers, sports officials and athletes, investigative journalists, academics, members of nongovernmental organisations, and consultants with the aim of setting up a World Anti-Corruption Agency "to protect sport from its own excesses and the threats from outside."³⁹ The Agency would - in relation to the issue of corruption - complement and reinforce EU regulation, and vice versa. Through their initiative, Play The Game have provided a blueprint for the type of coalition building that will be necessary if either is to become a reality.

However, coalition building alone will, in all likelihood, be insufficient to prompt

39 Grit Hartmann, 'ClearingSport - Towards an agency countering crime and protecting integrity in world sport', Play The Game (June 2023).

change. Regulation usually requires “focusing events”, with ethical wrongdoings and scandals acting as a catalyst for government intervention.⁴⁰ We have seen this in the past in fields like insurance, finance, and banking, but there is also evidence specifically from sport. Most examples of ambitious sport regulation have occurred in the aftermath of major governance failures. The International Olympic Committee’s most serious reforms took place after a legislative response in the US to the Salt Lake City scandal of 2002, and the FIFA reforms of 2016 took place after the US Department of Justice prosecuted many of its most senior officials for racketeering.⁴¹ Crises are consequential because they, simultaneously, increase the demand for regulation and decrease the ability of sports governing bodies to push back against it.⁴² Given the extent of misgovernance in sports like football, further crises are, unfortunately, inevitable and could be sparked by anything from further evidence of institutionalised corruption at FIFA, to more reports of abuses suffered by women and girls, to the collapse of football clubs or even leagues. The esteemed professor of government, Michael Moran, once noted that “we regulate when we cease to trust”.⁴³ It could be argued that a critical lack of trust in sports governing bodies already exists. If an effective coalition is in place when the next crisis hits football or any other sport, EU policymakers may find themselves under strong pressure to act.

In terms of the actual lawmaking process, the European Commission has the right of initiative to propose new legislation in the EU, and it would therefore have to be convinced to table the European Sports Act.⁴⁴ The Council of the EU and the European Parliament, as the EU’s legislative bodies, would then need to adopt the law. If they cannot agree, in theory, a conciliation committee can be convened to draft a text that both the Council and the Parliament approve. If a legislative proposal is rejected at any stage of the procedure, or the Parliament and Council cannot reach a compromise, the proposal is not adopted and the procedure ends. In practice, differences are typically sorted out at the early stages of the lawmaking process through so-called ‘trilogues’, an informal interinstitutional negotiation between representatives of the three institutions. Either way, the Parliament, Commission and, importantly, national

40 John W. Kingdon, *Agendas, Alternatives, and Public Policies* (Pearson 2nd ed. 2013).

41 Jules Boykoff, *Power Games: A political history of the Olympics* (Vers 2016); FIFA, ‘2016 FIFA Reform Committee Report’ (2 December 2015)

42 Arnout Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA* (Palgrave Macmillan 2016).

43 Michael Moran, *From Command State to Regulatory State?* (2000) 15 *Public Policy and Administration* 1, 10.

44 For a description of the EU lawmaking process see Council of the European Union website at <https://www.consilium.europa.eu/en/council-eu/decision-making/ordinary-legislative-procedure/> (accessed 30 September 2024).

governments which, through their presence in the Council, must approve European legislation would all need to be persuaded of the importance of this legislation.

One issue to be considered here is that there are different traditions across Europe when it comes to regulating sports. Countries can be broadly divided into two groups: interventionist and non-interventionist.⁴⁵ The former, which include many Southern European (e.g. France, Spain, Italy, Portugal) and Eastern European Member States (e.g. Poland, Bulgaria, Romania), have specific laws governing the organisation and powers of national sports. They are familiar with the idea of regulating sports through legislation and, therefore, would primarily need to embrace the prospects of extending this approach to the EU. The latter, including Denmark, Germany, and Sweden, do not have dedicated sports laws but influence the activities of federations through funding, for instance by tying it to compliance with good governance standards. They would need to be persuaded that their policy aims can be more effectively achieved through EU-wide legislation. Of course, the opposition from wealthy and powerful sports governing bodies, some of whom have already forged very strong links with EU and Member State institutions, would in all likelihood be significant.⁴⁶

Opponents of EU regulation may cast the proposal as an attempt by an institution of the Global North to wrest control and agency away from countries of the Global South. It is imperative that stakeholders from the Global South be involved at every stage of the regulatory process: from identifying problems, to drafting the rules, to applying and revising them.⁴⁷ Significant effort would need to be devoted to outlining the benefits of EU regulation to developing countries. To once again take the example of FIFA, its reform would yield obvious benefits. While Zurich-based FIFA claims to be a champion of the Global South, its business model has wreaked havoc on developing countries, and its failure to take its human rights responsibilities seriously has hit vulnerable stakeholders in these countries the hardest.⁴⁸ It led to the displacement of some of the poorest communities in South Africa and Brazil, the serious abuse and exploitation

45 Robert Siekmann and Janwillem Soek, *Models of Sport Governance in the European Union: The Relationship between State and Sport Authorities* (2010) *International Sports Law Journal* 93.

46 Henk Erik Meier and others, 'The Capture of EU Football Regulation by the Football Governing Bodies' (2023) 61 *Journal of Common Market Studies* 692.

47 This echoes the arguments of TWAIL scholars voiced in the context of international law, see Bhupinder S. Chimni, *Third World Approaches to International Law: A Manifesto* (2006) 8 *International Community Law Review* 3; Opeoluwa Adetoro Badaru, 'Examining the Utility of Third World Approaches to International Law for International Human Rights Law' (2008) 10 *International Community Law Review* 379.

48 Basil Ugochukwu, *Global Governance in All Its Discrete Forms: The Game, FIFA, and the Third World* (2016) 33 *Windsor Yearbook of Access to Justice* 199.

of hundreds of thousands of low-paid foreign workers deployed on Qatari infrastructure.⁴⁹ Likewise, its own failures on gender equality as well as those of its associated confederations like the AFC have led to women like Mariyam Mohamed, the former Head of Women's Football at the Football Association of Maldives, being denied the opportunity to take on executive roles in governance bodies.⁵⁰ So long as the EU listens to the voices and concerns of stakeholders in developing countries, and explains how its legislation can be a positive force for change in the Global South, it should be able to deal with criticism.

In summary, while the case for EU regulation is self-evident, and a path to regulation exists, the obstacles to reform should not be underestimated. Generating the requisite political momentum to overcome these obstacles will be difficult, but far from impossible. But it is similarly important to reiterate that the idea that sport should be externally regulated is not a radical one. Few economic sectors remain as under-regulated as sports and the EU has emphasised its commitment to value-based sports. In a declaration from February 2023, the majority of European sports ministers have expressed their intention to “promote values in sport and sport organisations, governed in compliance with the principles of democracy, transparency, integrity, solidarity, gender equality, openness, accountability, accessibility, social responsibility and respect for fundamental and human rights”.⁵¹ It is time to put this laudable ambition into action.

Creating a regulatory framework that facilitates compliance with good governance standards should not be seen as a burden, but an opportunity for sports governing bodies to effectively discharge their mission and make the EU the key player in ensuring that sport delivers on its vast transformative potential.

-
- 49 Ian Waldron, 'Brazil's Popular Committees Publish National Dossier on Mega-Events and Human Rights Violations', *RioOnWatch* (23 November 2014). Patrick Bond, 'South Africa was not a FIFA success story', *Rosa Luxemburg Foundation* (28 September 2014). Amnesty International, 'Predictable and Preventable: Why Qatar and FIFA should remedy abuses behind the Qatar 2022 World Cup' (19 May 2022).
- 50 CAS 2019/A/6310 *Mariyam Mohamed vs. Asian Football Confederation (AFC) election*, Media Release 25 January 2021; Graham Dunbar, 'Candidate in tainted Asian soccer election calls for re-run', *Associated Press* (26 January 2021).
- 51 Déclaration des ministres des sports européens pour un modèle sportif basé sur la solidarité, le mérite sportif et l'impact societal du sport (8 February 2024).

