

ON LEGAL BASES AND VALUES UNDERPINNING EU COMPETENCE IN SPORT

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Sport occupies a unique position in European society. It is at once a cultural practice, an economic activity, a tool for social integration, and an increasingly globalised industry. Within the EU, this intersection raises complex questions regarding the scope of EU competence and the normative foundations of EU action in the field of sport. This article examines legal bases and values underpinning EU competence in sport through a three-step analytical framework. First, it sketches the constitutional foundations of EU competence in sport, focusing on the principle of conferral and Article 165 of the TFEU. Second, it clarifies what the EU can or could do in sport within the existing Treaty framework, paying particular attention to the role of internal market law and the jurisprudence of the CJEU. Third, it turns to the normative question of what the EU should do in this field, examining the values that could justify a more active European role in regulating sport.

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1 Introduction

Sport occupies a unique position in European society. It is at once a cultural practice, an economic activity, a tool for social integration, and an increasingly globalised industry. Over the past decade, EU policy makers have increasingly acknowledged the importance of sport, not only for its evident benefits for health and wellbeing reasons, but also for a number of key areas such as social cohesion, innovation and research, territorial regeneration, economic growth or tackling climate change.¹ At the same time, it is an important economic sector in the EU, “with a share in the national economies which is comparable to agriculture, forestry and fisheries combined” and expected to grow.² From grassroots amateur activities to elite professional competitions generating billions of euros annually, sport has become a domain where legal regulation, economic interests, and social values intersect.³ Within the EU, this intersection raises complex questions regarding the scope of EU competence and the normative foundations of EU action in the field of sport.

Unlike many other policy areas, sport entered the EU’s constitutional framework relatively late. For decades, the founding Treaties made no explicit reference to sport, reflecting the perception that sport was primarily a matter for national authorities and private sporting organisations.⁴ Nevertheless, the EU gradually became involved in sport by indirectly applying internal market law. Rules governing the free movement of workers, competition law, and the prohibition of nationality discrimination began to affect the organisation of professional sport across Europe.⁵ This process, driven largely by decisions of the Court of Justice of the European Union (CJEU), transformed the regulatory landscape of European sport long before sport acquired an explicit legal basis in the Treaties.⁶

The Treaty of Lisbon,⁷ which entered into force in 2009, marked a turning point by introducing Article 165 of the Treaty on the Functioning of the European Union (TFEU).⁸ For the first time, the Treaties recognised sport as an area in which the EU possesses competence. However, this competence was defined narrowly: the

¹ European Commission, 2020, p. 5.

² Ibid.

³ See also, e.g. EU Commission White Paper, 2007.

⁴ See e.g., Weatherill, 2018.

⁵ See Weatherill, 2022, p. 112.

⁶ Ibid.

⁷ Treaty of Lisbon, 2007.

⁸ Consolidated version of the Treaty on the Functioning of the European Union, 2013.

EU may only support, coordinate, and supplement the actions of Member States.⁹ The Treaty explicitly excludes harmonisation of national laws in the field of sport.¹⁰ As a result, EU competence remains limited and often ambiguous.

This article examines the legal bases and values underpinning EU competence in sport through a three-step analytical framework. First, it sketches the constitutional foundations of EU competence in sport, focusing on the principle of conferral and Article 165 of the TFEU. Second, it analyses what the EU can or could do in sport within the existing Treaty framework, considering the limits imposed by the principle of conferral, paying particular attention to the role of internal market law and the jurisprudence of the CJEU. Third, it turns to the normative question of what the EU should do in this field, examining values that could have a potential to justify a more active European role in regulating and supporting sport.

By addressing these questions, the article aims to demonstrate that EU involvement in sport is not merely a matter of technical competence. Rather, it should reflect a broader set of values that increasingly shape the European approach to sport governance. Values for the purpose of this contribution are understood as core principles as well as normative ideas governing sport in their ordinary sense, namely those ideals and objectives that individuals and communities generally regard as important in life.¹¹ Accordingly, the concept encompasses both institutional and regulatory principles specific to the sporting context (such as fairness, solidarity, integrity, inclusion, and equal opportunity), and broader social and ethical aspirations associated with sport as a human and cultural practice. Unless stated otherwise, the term “values” is not used here in the specific constitutional sense of Article 2 TEU, that is, the foundational values upon which the European Union is based and which are “common to the Member States”. Nevertheless, there is a significant degree of conceptual overlap between these categories, particularly where sporting values intersect with broader commitments to human dignity, equality, democracy, and the rule of law within the EU legal order.

⁹ See Weatherill, 2022.

¹⁰ Consolidated version of the Treaty on the Functioning of the European Union, 2013, Article 165(4).

¹¹ See e.g. Poel & Royakkers, 2011.

2 EU Competence in Sport

The starting point for understanding EU competence in any policy area is the principle of conferral. According to Article 5(2) of the Treaty on European Union (TEU),¹² the Union may “act only within the limits of the competences conferred upon it by the Member States in the Treaties”. Competences not conferred upon the Union remain with the Member States. This principle constitutes a cornerstone of the EU’s constitutional structure, ensuring that the Union does not extend its powers beyond those expressly granted by the Member States.¹³

EU competences are generally divided into three categories: exclusive competences, shared competences and supporting, coordinating, or complementary competences.¹⁴ Sport falls into the third category.¹⁵ In areas of supporting competence, the Union may undertake actions aimed at supporting, coordinating, or complementing the activities of the Member States, but it may not harmonise national laws or replace national regulatory authority.¹⁶

Determining whether the EU may act in a particular policy field therefore requires the identification of a Treaty provision conferring the relevant competence. In the field of sport, this task is relatively straightforward today, as the Treaty of Lisbon introduced an explicit legal basis in Article 165 of the TFEU.¹⁷ However, this was not always the case. For several decades, the EU engaged with sport in the absence of any explicit Treaty provision addressing the subject.

Sport was entirely absent from the founding Treaties of the 1950s. The Treaty of Rome, which established the European Economic Community in 1957, focused primarily on economic integration and the creation of a common market. Activities such as sport, culture, and education were generally regarded as matters falling within the competence of the Member States and therefore outside the scope of European integration.¹⁸

¹² Consolidated version of the Treaty on European Union, 2016.

¹³ For a general discussion on the competence issue in the EU, see eg Craig de Búrca, 2024, Ch 4.

¹⁴ See Consolidated version of the Treaty on the Functioning of the European Union, 2013 (TFEU), Article 2 et seq.

¹⁵ Consolidated version of the Treaty on the Functioning of the European Union, 2013, Article 6.

¹⁶ Article 2(5) of the TFEU.

¹⁷ For a commentary of this Article, see e.g. Garben, 2024, p. 1987.

¹⁸ See Weatherill, 2018, Ch. 3, p. 51 *et seq.*

Nevertheless, the growing professionalisation and commercialisation of sport gradually brought it within the ambit of EU law. Professional sport became increasingly intertwined with economic activities such as employment relationships, broadcasting rights, sponsorship agreements, and merchandising. As a result, sporting rules began to intersect with EU internal market law, particularly through the jurisprudence of the CJEU, which examined the compatibility of certain sporting regulations with the fundamental principles of the internal market.¹⁹

The important role of sport in European society and its specific nature were recognised in December 2000 in the European Council's Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies (the 'Nice Declaration').²⁰ The Nice Declaration acknowledged the significant "social, educational, and cultural functions" of sport within European society.²¹ It clarified that sporting organisations must exercise their role in organising and promoting sport with due regard to both national and EU law.²² At the same time, it recognises that, "[e]ven though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured."²³ The Nice Declaration thus reflected the recognition by European institutions that sport occupies a distinctive position in society, often characterised by volunteer-based organisational structures and significant contributions to public health, education, social integration, and cultural life.²⁴

The introduction of Article 165 of the TFEU now provides the primary legal foundation for EU action in the field of sport. The provision establishes that the Union shall contribute to the promotion of European sporting issues while taking into account "the specific nature of sport, its structures based on voluntary activity, and its social and educational functions". Article 165 identifies several objectives for EU action, including promoting fairness and openness in sporting competitions, encouraging cooperation between bodies responsible for sport, and protecting the

¹⁹ Ibid.

²⁰ European Council, 2000.

²¹ Ibid, para. 1.

²² Ibid, para. 7.

²³ Ibid, para. 1.

²⁴ European Commission, 2007, pp. 2-3.

physical and moral integrity of sportsmen and sportswomen, particularly young athletes.

Furthermore, Article 165(2) emphasises the development of the European dimension in sport. However, Article 165(4) clearly limits the EU's regulatory powers. While the EU may adopt incentive measures and recommendations, the Treaty explicitly excludes the harmonisation of national laws in the field of sport. Consequently, the EU's role is primarily facilitative rather than regulatory. Examples of EU action within this framework include funding programmes such as Erasmus+ Sport, initiatives supporting cooperation among sports organisations, and platforms promoting policy dialogue among relevant stakeholders. In practice, this means that national governments and private sporting organisations remain the principal regulators of sport.²⁵

The limited scope of EU competence in this field reflects a deliberate political choice.²⁶ Member States have traditionally been reluctant to transfer regulatory authority over sport to the European level. Sporting organisations, including international federations such as FIFA and UEFA, likewise place considerable value on their regulatory autonomy.²⁷ The relatively narrow scope of Article 165 of the TFEU can therefore be understood as the outcome of a political compromise. Sporting bodies gradually recognised that complete autonomy from EU law was not feasible. Rather than seeking full exclusion from the EU legal order, they accepted their inclusion within it while emphasising the distinctive characteristics of sport and the need for a degree of special treatment.²⁸ As a consequence, the EU cannot directly regulate many core aspects of professional sport, including transfer systems, competition structures, or the governance arrangements of sporting federations.

Nevertheless, the Treaty framework does not provide the complete picture of EU involvement in sport. Although Article 165 of the TFEU confers only limited competence, other areas of EU law continue to apply to sporting activities. In particular, internal market law and EU competition law have had a significant impact on the organisation of sport in Europe. Their rules apply to sport insofar as sporting

²⁵ See e.g. García & Weatherill, 2012, p. 238

²⁶ See e.g. García & Weatherill, 2012, p. 238

²⁷ García & Weatherill, 2012, p. 238. See also García, 2007.

²⁸ García & Weatherill, 2012, p. 238. See also García, 2007.

activities constitute an economic activity.²⁹ In addition, sport is subject to other important aspects of EU law, including “the prohibition of discrimination on grounds of nationality, provisions relating to Union citizenship, and the principle of equality between men and women in employment.”³⁰

This observation leads to the second dimension of the analysis: examining what the EU can, and potentially could, do within the broader framework of the Treaties in relation to sport.

3 What the EU Can or Could Do in Relation to Sport

3.1 Sport and the Free Movement Law

Although the EU’s explicit competence in the field of sport is limited, sporting activities have long been influenced by EU law through the application of internal market principles. These include, in particular, the free movement of workers, the freedom to provide services, EU competition law, and the prohibition of discrimination on grounds of nationality.³¹ As professional sport increasingly developed into an economic activity, sporting rules began to intersect with these fundamental principles of EU law, bringing sport within the scope of judicial scrutiny.

One of the earliest cases in which the relationship between EU law and sport was addressed was *Walrave and Koch*.³² In this judgment, the CJEU held that EU law applies to sport insofar as it constitutes an economic activity. Concurrently, the CJEU recognised that certain rules of a “purely sporting”³³ nature may fall outside the scope of EU law where they lack an economic dimension. This distinction between rules governing economic activity and those considered “purely sporting” became an important conceptual framework in early EU sports law. For example, rules relating to the composition of national teams have generally been regarded as purely sporting and therefore outside the scope of EU law.³⁴ By contrast, rules that

²⁹ European Commission, 2007, p. 13.

³⁰ Ibid.

³¹ Weatherill, 2018, Ch 3.

³² *Walrave and Koch v Association Union Cycliste Internationale and Others*, 1974.

³³ Ibid, para. 8.

³⁴ Ibid, para. 8.

affect the employment conditions or mobility of professional athletes may fall within the scope of the Treaties.³⁵

A second landmark judgment that profoundly transformed the relationship between EU law and sport is *Bosman*.³⁶ In this case, Belgian footballer Jean-Marc Bosman challenged rules requiring the payment of a transfer fee for players whose contracts had expired, as well as rules limiting the number of foreign players that clubs could field in European competitions. The CJEU held that these rules were incompatible with the principle of the free movement of workers under (what is now) Article 45 of the TFEU.³⁷ The judgment significantly expanded the CJEU's examination of the relationship between EU law and sport by addressing not only restrictions on free movement but also discrimination on grounds of nationality.³⁸

The consequences of the *Bosman* ruling were far-reaching. First, the requirement to pay transfer fees for players whose contracts had expired was effectively abolished.³⁹ Second, professional footballers who are nationals of EU Member States obtained the right to move freely between clubs within the Union.⁴⁰ In addition, nationality quotas restricting the number of EU players in club competitions were removed.⁴¹ The judgment therefore fundamentally reshaped the organisation of professional football in Europe and demonstrated the significant impact that EU law can have on sporting structures and practices. As has been widely observed in the literature, the *Bosman* ruling effectively 'made EU sports law a live discipline with real practical impact in litigation.'⁴²

While these two judgments constitute landmark decisions in the development of EU sports law, they represent only part of a broader body of jurisprudence addressing the interaction between sporting regulations and EU law. A number of subsequent cases have further clarified the scope and limits of EU law in the sporting context. However, a detailed examination of these additional judgments falls beyond the scope of the present article.

³⁵ See e.g. *ibid*, para. 5.

³⁶ *Union royale belge des sociétés de football association and Others v Bosman and Others*, 1995.

³⁷ *Ibid*, para. 104.

³⁸ Weatherill, 2022, pp. 112 – 140.

³⁹ See e.g. Ericson, 2000.

⁴⁰ See *Union royale belge des sociétés de football association and Others v Bosman and Others*, para. 104.

⁴¹ Gardiner & Welch, 2016.

⁴² Weatherill, 2018, p. 6.

3.2 Sport and Competition Law

Competition law also plays a significant role in the regulation of sport. Sporting organisations frequently operate as monopolistic regulators within their respective disciplines.⁴³ As a result, the rules adopted by such bodies may restrict competition or affect market access for athletes, clubs, and organisers of sporting events.⁴⁴ Consequently, these rules may fall within the scope of EU competition law.

The CJEU addressed this issue in *Meca-Medina and Majcen v Commission*.⁴⁵ The case concerned professional swimmers who challenged anti-doping rules as incompatible with EU competition law. The CJEU held that the mere fact that a rule pursues a legitimate sporting objective does not automatically remove it from the scope of EU competition law. Instead, sporting rules must be assessed in light of their context and effects.⁴⁶ Restrictions may be considered compatible with EU law where they are inherent in the pursuit of legitimate sporting objectives and proportionate to achieving those objectives, such as ensuring fair competition or safeguarding the integrity of sport.⁴⁷

This judgment introduced a more nuanced balancing approach that recognises both the economic and social dimensions of sport. Moving beyond the earlier abstract notion of “purely sporting rules,” the CJEU adopted a more realistic approach, acknowledging that sporting regulations frequently produce economic effects. Accordingly, it emphasised the importance of conducting a case-by-case assessment of the compatibility of sporting practices with EU law.⁴⁸

More recently, the CJEU further clarified the application of EU competition law to sports governance in *European Superleague Company*.⁴⁹ In this judgment, the CJEU examined rules adopted by FIFA and UEFA that granted these organisations exclusive authority to approve new international football competitions. The CJEU found that such regulatory frameworks must comply with principles of transparency,

⁴³ Typical examples are e.g. FIFA and UEFA in football, FIBA in basketball, Union Cycliste Internationale in cycling, International Skating Union etc.

⁴⁴ E.g. *International Skating Union v. European Commission*, 2023.

⁴⁵ *Meca-Medina and Majcen v Commission*, 2006.

⁴⁶ *Ibid*, para. 42.

⁴⁷ *Ibid*, para. 42 et seq.

⁴⁸ Weatherill, 2018, p. 6.

⁴⁹ *European Superleague Company*, 2023.

objectivity, non-discrimination, and proportionality.⁵⁰ In the absence of such safeguards, the exercise of regulatory powers by sporting bodies may infringe EU competition law. Similarly, in *Diarra*⁵¹ the CJEU examined aspects of the international transfer system governing professional footballers. The case challenged certain rules adopted by FIFA that restricted player mobility following the termination of employment contracts. The CJEU held that some of these regulatory mechanisms were incompatible with EU law, as they unjustifiably restricted both competition and the free movement of workers within the internal market.⁵²

Collectively, these judgments illustrate the increasingly significant role played by EU competition law in shaping the regulatory framework of professional sport. While recognising the specific characteristics of sport, the CJEU has consistently emphasised that sporting organisations exercising regulatory powers must comply with the fundamental principles of EU law.

3.3 The “Specificity of Sport”

As Steve Weatherill wrote, ‘sport is special’ – both from the supply and the demand side.⁵³ From the supply perspective, sport depends fundamentally on competition. A central element of its appeal lies in the uncertainty of outcome, which constitutes one of the essential attractions of sporting contests.⁵⁴ Moreover, sports clubs are characterised by a degree of mutual interdependence that differs significantly from the dynamics of ordinary industries.⁵⁵ Clubs must cooperate in order to organise competitions, yet they simultaneously compete against one another within those same structures. This dual relationship of cooperation and competition distinguishes sport from most conventional economic sectors.⁵⁶ On the demand side, a fan cannot just change a club like a supermarket – ‘[s]upporting a club is not consumption, it is passion and it is commitment’.⁵⁷ Moreover, sport is special in its patterns of governance.⁵⁸ Most sports are regulated by a single governing body, which

⁵⁰ Ibid, para. 257.

⁵¹ *FIFA v BZ*, 2024.

⁵² Ibid, para. 159.

⁵³ Weatherill, 2017, Ch 1.

⁵⁴ White Paper, 2007, p. 13.

⁵⁵ See e.g., *European Superleague Company*, para. 235; Weatherill, 2017, Ch 1.

⁵⁶ Weatherill, 2017, Ch 1.

⁵⁷ Weatherill, 2017, p. 1.

⁵⁸ Weatherill, 2017, p. 1.

frequently exercises authority over the organisation of competitions and the adoption of rules, often claiming regulatory competence at a global level.⁵⁹

EU institutions have increasingly acknowledged these unique characteristics. This recognition is commonly expressed through the concept of the “specificity of sport,” which reflects the idea that sport may require certain regulatory arrangements that differ from those found in other economic sectors.

In its 2007 White Paper on Sport, the European Commission distinguished between two dimensions through which the specificity of European sport may be understood.⁶⁰ The first concerns the specificity of sporting activities and sporting rules.⁶¹ This includes features such as separate competitions for men and women, limitations on the number of participants in competitions, and regulatory mechanisms designed to preserve “uncertainty” of results and maintain “competitive balance between clubs” participating in the same competitions.⁶² The second dimension relates to “the specificity of the structure of sport”.⁶³ This encompasses “the autonomy and diversity of sporting organisations, (the) pyramidal structure of competitions (linking) grassroots (and) elite levels, (...) solidarity mechanisms between (...) different (tiers) (...) of sport, the organisation of sport on a national basis, and the principle of a single federation (governing each) sport”.⁶⁴

At the same time, it is important to recognise that ‘sport is not *that* special’.⁶⁵ Despite its distinctive characteristics, sport still shares many features with ordinary economic sectors, particularly where professional sport involves significant commercial activities. The central question therefore concerns how special sport truly is and to what extent it should be granted regulatory autonomy, the so-called ‘sporting autonomy’, within the EU legal order.⁶⁶ Even after the introduction of Article 165 of the TFEU, the concept of the specificity of sport remains somewhat indeterminate. The Treaty refers to the specific nature of sport, yet it does not

⁵⁹ Weatherill, 2017, p. 1.

⁶⁰ European Commission, 2007, p. 13.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Weatherill, 2017, p. 2.

⁶⁶ Weatherill, 2017, p. 7.

provide a precise definition, leaving the concept as a relatively open and evolving notion within EU law.⁶⁷

3.4 The Practical Reality

In practice, the EU's engagement with sport has been driven primarily by applying internal market rules rather than by the explicit competence introduced by Article 165 of the TFEU. Consequently, the development of sports governance in Europe has largely occurred under the "shadow" of EU law.⁶⁸ Sporting organisations are therefore required to ensure that their regulatory frameworks comply with fundamental principles of EU law, particularly those relating to the free movement of workers, the freedom to provide services, and EU competition law.

Concurrently, the influence of the EU in the field of sport has gradually expanded, particularly in response to the increasing commercialisation and globalisation of the sports sector. This evolution is also reflected in the growing number of policy initiatives adopted by EU institutions. One of the most significant policy documents in this area is the 2007 White Paper on Sport⁶⁹ adopted by the European Commission. In its societal chapter, the White Paper emphasised the importance of mobilising specific EU programmes and financial instruments to support initiatives in the field of sport, thereby recognising the broader social and economic role of sporting activities.

Building upon this initiative, the Commission published in 2011 the Communication on Developing the European Dimension in Sport,⁷⁰ which further elaborated the EU's policy approach in this field. The communication highlighted the importance of integrating sport into a range of other policy areas, including education, health, social inclusion, and regional development. It also emphasised that the EU's Structural Funds could support investments related to sport, provided that such investments were consistent with the broader objectives and priorities of the respective funding instruments.

⁶⁷ Weatherill, 2014, pp. 507-525; Meredith & García, 2023, pp. 17 – 44.

⁶⁸ Weatherill, 2022, p. 114.

⁶⁹ European Commission, 2007.

⁷⁰ Opinion of the European Economic and Social Committee, 2011.

Subsequent EU policy initiatives have continued to reinforce the role of sport within the broader framework of EU action. The EU Work Plan for Sport 2011–2014⁷¹ identified several priority areas aimed at strengthening the sports sector, including the sustainable financing of grassroots sport and improved governance structures. Later, the Council adopted conclusions in 2018 acknowledging the socio-economic benefits generated by the sports sector and inviting the European Commission, together with the Member States and other EU institutions, to enhance cooperation in order to maximise the potential of sport to contribute to regional development.⁷²

More recent policy initiatives have also addressed the concept of the European Sport Model. In a 2021 resolution, the European Parliament observed that the EU Work Plan for Sport 2021–2024 placed the European Sport Model within the priority area of protecting integrity and values in sport.⁷³ Continuing this policy trajectory, the EU Work Plan for Sport 2024–2027 identifies as one of its objectives the support and further exploration of the key features of the European Sport Model, while encouraging ongoing discussions among stakeholders regarding its future development.⁷⁴

Taken together, these initiatives illustrate the gradual expansion of EU engagement with sport. Although the Union's formal competence remains limited, EU institutions have increasingly utilised policy coordination, funding programmes, and regulatory oversight through internal market law to shape the development of sport within the EU.

4 What the EU Should Do

4.1 Recent EU Initiatives

The limited competence conferred on the EU by Article 165 of the TFEU raises an important normative question: whether the Union should assume a more active role in the regulation and governance of sport. One of the strongest arguments for greater involvement of the EU in the governance of sport concerns the limitations

⁷¹ Resolution of the Council and of Representatives of the Governments of the Member States, 2011.

⁷² Conclusions of the Council and the Representatives of the Governments of the Member States, 2018.

⁷³ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 January 2021 – 30 June 2024), 2020.

⁷⁴ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 July 2024 – 31 December 2027), 2024, para 15.

and the failure of self-regulation within the sports sector.⁷⁵ Traditionally, sport has been governed by private sporting organisations that exercise significant regulatory autonomy over competitions, disciplinary procedures, and commercial arrangements. However, this model of governance has increasingly been criticised for insufficient transparency and weak accountability mechanisms.⁷⁶ Scholars and policy-makers have therefore characterised aspects of contemporary sports governance as reflecting a model of “poor governance.”⁷⁷

A number of recent controversies have highlighted these concerns. Allegations of corruption within international sporting federations,⁷⁸ instances of financial mismanagement, and opaque procedures surrounding the selection of host cities for major sporting events have drawn attention to structural deficiencies in sports governance.⁷⁹ Broader societal concerns also have emerged. Major sporting events have raised questions relating to the protection of human rights, the welfare of athletes is often inadequately safeguarded, and women remain significantly underrepresented in decision-making positions within many sports organisations.⁸⁰

Against this background, public authorities may need to assume a more active role in ensuring that sport operates in accordance with fundamental principles of fairness, integrity, and good governance. Reflecting these concerns, the Council reaffirmed in 2021 the importance of safeguarding the European Sports Model, highlighting persistent governance shortcomings such as limited financial transparency, increasing commercial influence, and insufficient stakeholder representation within sports organisations.⁸¹

These concerns have continued to shape policy discussions at the European level. In February 2024, European sports ministers adopted a declaration supporting stronger governance standards in sport, emphasising the need for enhanced transparency, democratic accountability, integrity, and broader stakeholder

⁷⁵ Exner, Weatherill & Zgliniski, 2025, p. 4.

⁷⁶ See Exner, Weatherill & Zgliniski, 2025, p. 1.

⁷⁷ See Exner, Weatherill & Zgliniski, 2025.

⁷⁸ Conclusions of the Council and of the Representatives of the Governments of the Member States Meeting within the Council on Combating Corruption in Sport, 2019.

⁷⁹ See e.g., European Parliament, 2022.

⁸⁰ See Exner, Weatherill & Zgliniski, 2025, p. 1.

⁸¹ 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, 2021.

participation.⁸² They emphasised that they ‘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’.⁸³ The ministers also invited the European Commission “to reflect on appropriate ways to pursue the 2021 Council Resolution regarding the safeguarding of the openness of competitions, sporting merit, integrity, solidarity and values in sport”.⁸⁴

In this context, several scholars have argued that the time may be ripe for a more comprehensive EU regulatory framework. In particular, Jan Exner, Steve Weatherill, and Jan Zgliniski contend that the current momentum for reform presents an opportunity to strengthen EU involvement in the governance of sport. They have proposed the adoption of a European Sports Act, arguing that the EU may represent ‘the best available actor to regulate the sector,’ given its capacity to coordinate regulatory standards across Member States and to address cross-border issues affecting professional sport.⁸⁵

As it is well known by now, such harmonisation measures are expressly banned by Article 165 TFEU. In exploring potential legal bases for such initiatives, however, these authors suggest that Article 114 of the TFEU could serve as a possible foundation for the European Sports Act. Article 114 of the TFEU, which enables the adoption of measures aimed at the approximation of laws necessary for the functioning of the internal market, has previously been used to regulate sectors characterised by significant cross-border economic activity. Similarly, also the European Parliament, in its 2025 Resolution on the Role of EU Policies in Shaping the European Sport Model, suggests that Article 114 of the TFEU could potentially serve as a legal basis for certain regulatory measures affecting sport.⁸⁶ The following section explores whether there is normative case for such legislative activity underpinned by values governing sport.

⁸² Déclaration des ministres des sports européens pour un modèle sportif basé sur la solidarité, le mérite sportif et l’impact sociétal du sport (8 February 2024). Retrieved from: <https://www.sports.gouv.fr/declaration-des-ministres-des-sports-europeens-pour-un-modele-sportif-base-sur-la-solidarite-le> (accessed: March 8, 2026).

⁸³ Ibid, pt. 1.

⁸⁴ Ibid, pt. 7.

⁸⁵ See Exner, Weatherill & Zgliniski, p. 1.

⁸⁶ European Parliament Resolution on the Role of EU Policies in Shaping the European Sport Model, 2025.

4.2 Values Underpinning EU Competence in Sport

Although the Treaty framework assigns the EU primarily a supporting and coordinating role in the field of sport, the sector nonetheless contributes significantly to the Union's broader strategic objectives, including solidarity, social cohesion, and economic prosperity.⁸⁷ The European Commission has repeatedly emphasised this societal dimension, noting that sport promotes values such as team spirit, solidarity, tolerance, and fair play.⁸⁸ In this way, sport contributes to individual development and fulfilment while encouraging the active participation of EU citizens in society, thereby fostering active citizenship.⁸⁹ At the same time, the Commission has recognised that contemporary sport faces a number of significant challenges, including increasing commercial pressures, the exploitation of young athletes, doping, racism, violence, corruption, and money laundering.⁹⁰

It is agreed that reliance on soft-law instruments alone is unlikely to be sufficient to address these challenges effectively. While policy coordination, recommendations, and funding initiatives remain important tools of EU action, the increasing complexity and commercialisation of modern sport may require more structured regulatory responses. Concurrently, any potential regulatory measures adopted at the European level must remain firmly grounded in the values reflected in the Treaty framework, which emphasise the social and educational functions of sport, fairness and openness in competitions, and the protection of athletes. These Treaty-inspired values therefore provide an essential normative framework for guiding the development of EU action in the field of sport.

These values are reflected in recent EU policy initiatives, including the EU Work Plan for Sport 2024–2027 and the broader concept of the European Sport Model. In 2021, the Council, under the Slovenian Presidency, adopted a resolution on the key features of a European Sport Model. In this resolution, the Council emphasised the importance of a “values-based sport model”, calling for the promotion of solidarity, openness of competitions, priority for sporting merit, and respect for fundamental and human rights. The resolution further highlighted that sport should

⁸⁷ European Commission, 2007, p. 2.

⁸⁸ European Commission, 2007, p. 2.

⁸⁹ See also *TopFit*, paras. 32–34.

⁹⁰ European Commission, 2007, p. 2.

be grounded in values such as good governance, integrity, solidarity, safety, and the health and well-being of athletes.⁹¹

The European Parliament has also addressed the role of the Union in shaping and safeguarding this model. In its resolution on the European Sport Model, the Parliament emphasised several priorities, including strengthening financial solidarity within sport, ensuring transparency and accountability in governance structures, promoting gender equality, particularly in leadership positions,⁹² and safeguarding the health, safety, and welfare of athletes. It further stressed that it is ‘of overriding importance that values-based organised sport preserves the integrity of sport, adheres to good governance principles, respects national, EU and international law and maintains the level-playing field necessary to effectively implement the solidarity values between all actors’.⁹³

Collectively, these initiatives demonstrate that EU engagement with sport, although limited in formal competence, is increasingly guided by a comprehensive framework of normative values reflecting the social significance and growing economic and political importance of sport within the Union. Any expansion of EU involvement in this field must therefore remain grounded in the values reflected in the Treaty framework. As emphasised in the EU Work Plan for Sport 2021–2024, a central objective of EU policy is to strengthen an integrity- and values-based approach to sport within the Union.⁹⁴

A commitment to a broad set of values underpinning European sport has also been reaffirmed within the framework of the Council of Europe, which is another regional organisation in Europe, different from the EU. However, all EU Member States are also members of the Council of Europe. In September 2023, the Committee of Ministers adopted the Declaration on Sport Integrity, which recognises the importance of sport for society and its contribution to promoting the organisation’s core values: human rights, democracy, and the rule of law.⁹⁵ With regard to sports

⁹¹ Press release available at: <https://www.consilium.europa.eu/en/press/press-releases/2021/11/30/sport-council-resolution-stresses-key-features-of-values-based-sport-model/> (accessed: March 8, 2026).

⁹² Equality between women and men is promoted in accordance with Article 157(3) of the TFEU and the Charter of Fundamental Rights.

⁹³ 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, 2021, para. 15.

⁹⁴ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (1 January 2021 – 30 June 2024), 2020, para. 9.

⁹⁵ Declaration by the Committee of Ministers on Sport Integrity, 2023.

governance, the declaration promotes ‘transparency, accountability, democracy and ethical behaviour in sport, including the establishment of robust governance systems, conflict-of-interest policies, whistle-blower protection mechanisms, effective investigation and prosecution of corruption, manipulation of competitions, violence and other infringements of human rights and the rule of law in the sport context.’⁹⁶ The declaration also recalls Recommendation CM/Rec(2021)5 on the Revised European Sports Charter, which promotes a values-based approach to sport and defines sport integrity as encompassing personal, competitive, and organisational integrity, the pursuit of which should involve all stakeholders.

A first core value underpinning European sport is fairness and openness. These ‘guiding principles of interpretation’⁹⁷ are already reflected in Article 165 of the TFEU, which emphasises promoting fairness and openness in sporting competitions (Article 165(2) of the TFEU). Sporting activities should therefore be conducted on fair and transparent terms, ensuring equal opportunities for participants and safeguarding the integrity of competitions. Openness also relates to the accessibility of sporting structures and competitions, including the mobility of athletes within the internal market. Measures designed to safeguard fairness include transparent disciplinary procedures, applying sporting regulations consistently, and protecting athletes’ rights.

In this respect, the jurisprudence of the CJEU has played a crucial role in clarifying the relationship between sporting rules and fundamental principles of EU law. The CJEU has emphasised that sporting rules which restrict economic freedoms may nevertheless be permissible where they are inherent in the organisation of sport and proportionate to legitimate objectives, as confirmed in *Meca-Medina and Majcen v Commission*. These principles closely align with the Union’s broader commitment to equality and prohibiting discrimination, including discrimination on grounds of nationality.

Closely linked to fairness and openness is the principle of cooperation. The governance of sport in Europe traditionally operates through a multi-level structure involving international federations, national sporting bodies, public authorities, and

⁹⁶ Ibid. Retrieved from: <https://www.coe.int/en/web/sport/-/the-committee-of-ministers-adopts-a-declaration-on-sport-integrity> (accessed: March 8, 2026).

⁹⁷ Weatherill, 2010, pp. 11 – 17.

European institutions. EU policy therefore emphasises cooperation among these actors, encouraging coordination between Member States and sporting organisations while respecting the autonomy of sport. This approach reflects the principle of subsidiarity, which seeks to balance national and organisational autonomy with the need for coordination at the European level in areas where common challenges arise.

Protecting athletes and safeguarding their welfare have also become increasingly prominent priorities within EU sports policy. Contemporary sport faces a range of integrity-related risks, including doping, match-fixing, trafficking of young athletes, and various forms of abuse or exploitation. Addressing these risks requires effective regulatory safeguards and coordinated policy responses. EU initiatives therefore increasingly emphasise athlete welfare, ethical governance, and the integrity of competitions.⁹⁸ These concerns are closely connected to the requirement to protect fundamental rights within the EU legal order, including respect for human dignity and the protection of the rights of the child as recognised in the EU Charter of Fundamental Rights (Articles 1 and 24 of the EU Charter). In this context, it has been argued that legal and policy developments in sport should also consider children's rights as articulated in the UN Convention on the Rights of the Child.⁹⁹

Sport also plays an important role in promoting social inclusion, integration, and equal opportunities. Participation in sport enables individuals and communities from diverse social and demographic backgrounds to interact and engage collectively, thereby contributing to social cohesion and well-being. EU policy emphasises that sport should be accessible to all citizens regardless of gender, race, age, disability, religion or belief, sexual orientation, or socio-economic background. The European Commission has repeatedly condemned manifestations of racism, xenophobia, and discrimination in sport, stressing that such practices are incompatible with the fundamental values on which the Union is founded.¹⁰⁰

The jurisprudence of the CJEU has also addressed discrimination in sport. In *Asociația ACCEPT*, statements made by the patron of a professional football club indicating that he would never employ a homosexual player were found capable of constituting discrimination under EU law.¹⁰¹ The CJEU held that discrimination

⁹⁸ European Commission, 2007, p. 7.

⁹⁹ Lee Ludvigsen & Byrne, 2026.

¹⁰⁰ European Commission, 2007, p. 7.

¹⁰¹ *Asociația ACCEPT*, 2013.

may be established even in the absence of an identifiable victim and confirmed that Directive 2000/78/EC applies to recruitment conditions in the field of sport in the same way as in other areas of employment.¹⁰² The CJEU further recognised that non-governmental organisations may have standing to challenge discriminatory practices even where no specific victim has been identified.¹⁰³

Accessibility and inclusion for persons with disabilities represent another important dimension of EU sports policy. Protection against disability discrimination forms part of the Union's broader equality framework. Article 21 of the EU Charter of Fundamental Rights prohibits discrimination on the basis of disability, while Article 26 recognises the right of persons with disabilities to benefit from measures designed to ensure independence, social and occupational integration, and participation in community life, including participation in sport. Moreover, the UN Convention on the Rights of Persons with Disabilities (CRPD),¹⁰⁴ to which both the EU and its Member States are parties, explicitly recognises the right of persons with disabilities to participate in cultural life, recreation, leisure, and sport on an equal basis with others.

To this end, the European Commission encourages Member States and sporting organisations to adapt sports infrastructure and facilities to ensure accessibility for persons with disabilities.¹⁰⁵ Public authorities at national, regional, and local levels are therefore encouraged to ensure that sports venues, training facilities, and related infrastructure are designed in a manner that enables inclusive participation. Such initiatives reflect the EU's broader commitment to equality and social inclusion.

Transparency, accountability, and democratic participation in sports governance are equally essential for maintaining public trust in the organisation of sport. Concerns about financial mismanagement, corruption, and opaque decision-making processes have highlighted the need to strengthen good governance within sporting organisations. EU policy therefore places increasing emphasis on promoting transparency, accountability, and stakeholder participation in sports governance

¹⁰² *Asociația ACCEPT*, 2013, paras. 36-37.

¹⁰³ *Asociația ACCEPT*, 2013, para. 37.

¹⁰⁴ Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (accessed: March 8, 2026).

¹⁰⁵ European Commission, 2007, p. 7.

structures. These governance principles are widely regarded as essential components of a credible and sustainable European sports system.

Beyond its internal societal role, sport also has the potential to contribute to the Union's external relations.¹⁰⁶ Sport can function as an instrument of diplomatic engagement, development cooperation, and public diplomacy. Through concrete initiatives, sport can support education, public health, intercultural dialogue, development, and peace-building efforts.¹⁰⁷ The EU therefore seeks to integrate sport into broader development and cooperation policies, creating synergies with programmes implemented by international organisations, Member States, local authorities, and private actors. An illustrative example is the memorandum of understanding concluded in 2006 between the European Commission and FIFA, which aimed to promote football as a tool for development in African, Caribbean, and Pacific countries.¹⁰⁸

Environmental sustainability has also emerged as an increasingly important value in the governance of sport. Sporting activities, infrastructure, and major sporting events can generate significant environmental impacts, including greenhouse-gas emissions, energy consumption, waste generation, and pressure on land and water resources. EU policy therefore encourages the adoption of environmentally responsible practices in managing sports facilities and organizing sporting events. European sporting organisations and event organisers are increasingly expected to integrate environmental considerations into their operations in order to ensure that sport contributes to broader sustainability goals.¹⁰⁹

Finally, the CJEU has itself recognised the relevance of these underlying values in the interpretation of EU law as applied to sport. In *European Superleague Company*, for example, the CJEU acknowledged that rules designed to ensure that participation in competitions is based on sporting merit and equal opportunities may pursue legitimate objectives. Moreover, it accepted that rules on prior authorisation may be motivated by the pursuit of legitimate objectives including respect for the principles, values, and rules of the game which underpin professional football.¹¹⁰ Thus, "it may

¹⁰⁶ European Commission, 2007, p. 3.

¹⁰⁷ European Commission, 2007, p. 9.

¹⁰⁸ European Commission, 2007, p. 9.

¹⁰⁹ European Commission, 2007, p. 10. See also, Sport's contribution to the European Green Deal A sport sector playbook Green Sport Expert Group, 2023.

¹¹⁰ *European Superleague Company*, 2023, paras. 143, 144, 176; see also Exner, Weatherill & Zgliniski, 2025, p. 19.

be lawful to act to suppress a competition which is not based on access via sporting merit”¹¹¹, if this is done in a transparent, objective, and non-discriminatory manner.

These developments illustrate that the EU’s engagement with sport is increasingly structured around a coherent set of normative principles, reflecting both the social importance of sport and its growing economic and regulatory significance within the EU. They serve not merely as aspirational objectives but as essential guideposts for any intervention or regulatory measure in the sector.

5 Conclusion

The EU’s engagement with sport demonstrates a juxtaposition between its limited formal competence under Article 165 of the TFEU and the growing economic and societal significance of the sector. While soft-law instruments and funding programmes have traditionally guided EU action, contemporary challenges, including governance shortcomings, integrity risks, and the protection of athletes, highlight the need for a more structured approach that remains consistent with Treaty-inspired values.

These values, i.e. fairness, openness, cooperation, inclusion, and the safeguarding of athletes’ welfare, must underpin any future policy or regulatory measures. Embedding these principles ensures that sport not only contributes to economic and market objectives but also reinforces social cohesion, ethical governance, and the broader mission of the EU.

Legal Acts, Case-law

Asociația ACCEPT, case no. C-81/12, EU:C:2013:275.

Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, pp. 391–407.

Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, pp. 47–390.

Consolidated version of the Treaty on European Union, OJ C 202 7.6.2016, p. 13.

European Superleague Company, case no. C-333/21, ECLI:EU:C:2023:1011

FIFA v BZ, case no. C-650/22, ECLI:EU:C:2024:824.

International Skating Union v. European Commission. case no. C-124/21 P, ECLI:EU:C:2023:1012.

Meca-Medina and Majcen v Commission, case no. C-519/04 P, ECLI: EU:C:2006:492.

¹¹¹ Exner, Weatherill & Zgłinski, 2025; and Political Science, Law School (<https://researchonline.lse.ac.uk/id/eprint/128047/3/ssrn-5235136.pdf>) p. 19.

- Union royale belge des sociétés de football association and Others v Bosman and Others, case no. C-415/93, EU:C:1995:463.
- TopFit eV, Daniele Biffi v Deutscher Leichtathletikverband eV, case no. C-22/18, ECLI:EU:C:2019:497.
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