

BRIEF REFLECTIONS ON THE PROCESS OF EUROPEAN INTEGRATION THROUGH THE EXAMPLE OF SPORTS LAW

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This article examines the process of European integration through the lens of EU sports law, using sport as a revealing case study of the Union's functionalist and progressive integration model. Although sport was traditionally regarded as a non-economic and socially autonomous activity, its growing economic significance has increasingly subjected it to the rules of the EU internal market and competition law. This paper demonstrates that European integration operates asymmetrically in this field: while the Union's competences remain limited to supporting actions in the non-economic dimension of sport, where sporting activities intersect with economic freedoms, integration is significantly more advanced. Through an analysis of Treaty provisions, EU policy instruments, and the Court of Justice's evolving case law, the study highlights the spillover effect and pragmatic balancing inherent in EU integration. Ultimately, the EU sports law illustrates how integration extends gradually and flexibly into areas initially outside the core competences of the Union.

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1 Introduction

What does integration mean? It is a process of continuous interpenetration, an endless rapprochement among the peoples of Europe; an “ever closer union,”¹ as the preambles of the treaties of the European Union recall. In his celebrated address at the *Salon de l’Horloge* in 1950, Robert Schuman articulated the defining features of this phenomenon: “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements that first create *de facto* solidarity.”² Everything lies therein: concrete achievements that cause factual solidarity among European nations. All the constituent elements of the internal market³ are those “concrete achievements” that contribute to advancing European integration as they develop.

Sport, *per se*, does not belong to any of these categories. This is entirely logical, for sport is, in principle, a non-market activity that responds to non-economic human needs, much like art, music, or culture. It fulfils essential social functions for diverse populations, particularly the disadvantaged and the youth. Therefore, it constitutes more an instrument of social integration than an economic service in itself and should not be reduced to the legal framework of a predominantly mercantile system established by Union law. Thus, it is unsurprising that the “*de facto* solidarity” generated by sporting activity among the European people developed largely outside the intervention of the European Union.

In the realm of football, for instance, a genuinely European and global sporting space has taken shape, beyond any binding Union regulation, with the FIFA and UEFA⁴, organs not belonging to the EU, as well as in other fields through the International Olympic Committee and a multitude of federations governing disciplines such as cycling, tennis, skating sports, and judo. Although sport produces a formidable integrative effect, it has never constituted a proper competence within the European integration project. Nevertheless, the duality of this activity, which must be viewed not only through its social and cultural dimensions but also through

¹ Treaty on European Union (TEU), consolidated version, 2016, Preamble, para. 13; Treaty on the Functioning of the European Union (TFEU), consolidated version, 2016, Preamble, para. 1.

² See for e.g., Fimister, 2008, p. 192; Palayret, 2022, p. 86; Liargovas & Papageorgiou, 2024, p. 52.

³ The free movement of goods, the freedom to provide services, the movement of capital, the economic freedom of workers, the free movement of persons, free competition, and ultimately European citizenship.

⁴ Kassimeris, 2024.

its economic and commercial aspects, calls for a more nuanced reflection. Indeed, although it is a non-economic activity in principle and theory, it is impossible to overlook the hundreds of billions of euros generated annually by sport, whether directly or indirectly, in the form of income obtained by clubs and athletes or through derivative products, advertising, betting, broadcasting rights, and the sale of accessories of every kind.⁵ Essentially and originally cultural, sport has also become a distinct economic activity, a source of considerable financial revenue that the internal market cannot ignore.⁶

Like many other spheres, such as defence, energy, education, family, childhood, maritime affairs or cinema, which occupy a sort of liminal zone between the economic and the non-economic, sport thus finds itself at the intersection of the competences of the Member States and those of the Union. It is particularly striking that this duality has not produced a dichotomy between a sport subject to the law of integration and a sport wholly immune to it. Quite the contrary: whether one considers sport an economic activity or a cultural and social phenomenon, Europe has taken hold of it in both instances. Much like the sun exerts its gravitational pull upon the Earth as a whole, the law of integration generates its force of attraction not only on sport as an economic activity but also on sport as a playful, non-market phenomenon.

However, the dual nature of sport implies that this Union's gravitational force operates at a differentiated rhythm and with varying intensity upon its two facets, economic and non-economic. Clearly, sport as an economic activity has entered far more rapidly into the orbit of the rules of the market, notably those concerning free movement and free competition, than "pure" sport. Moreover, being at the very core of European integration, the Single Market has produced upon sport-as-economic-activity an attraction effect transforming it into a form of work or a commercial service like any other. Despite its cultural and social specificities, integration has exerted on this matter a strong spillover effect whenever economic freedoms are at stake. As for sport with a capital "S", that is, sport in its non-economic dimension, integration has naturally remained more modest. Only with the Treaty of Lisbon did the Union expressly obtain competence in the field, not to

⁵ According to the latest Eurostat report published on the subject in 2025 (p. 10), in 2019 sport generated no less than 3.37% of GDP across the Union, which corresponds to a figure of 627.5 billion euros.

⁶ See for e.g., Gunther & Mathonnière, 2005, p. 431.

harmonise national regulations but merely to play a supporting role. Nonetheless, a certain number of advances have since emerged, and the European Commission, far from disengaging itself from the subject, has continued to actively involve itself in developing a European sport policy⁷, demonstrating that the process of integration has truly begun.

In sum, sport in all its dimensions has not escaped the reach of Union law in its economic or non-economic forms. This study demonstrates that, like many other domains, sport provides an opportunity to perceive the underlying features of the integration process itself through this constant balancing between the rules of the game and the rules of the Union. In other words, the study of European sports law makes it possible to bring to light the natural principles of that “ever closer union” announced in Schuman’s celebrated address, notably its gradualism and spillover effect. Furthermore, such analysis reveals the flexibility and varying intensity of these characteristics depending on the circumstances. In doing so, this study underscores the *pragmatism* and *functionalism* that animate the entire process of integration, which rests essentially upon “concrete achievements.” It illustrates that no field, by its very nature, escapes European integration, which is not a static reality but an evolving process that, advancing continuously at different speeds across policy areas, draws towards itself and with greater or lesser force depending on the case, all aspects of public life.

The first and most striking characteristic of the integration process is progressivity, which corresponds to the first principle articulated in the *speech at Salon de l’Horloge*, *that is*, “Europe will not be made all at once.” The very wording implies gradual, step-by-step advancement. The entire historical development of the European Communities, and subsequently of the Union, demonstrates that European integration cannot be conceived as a completed achievement but rather as a continuous, progressive, open-ended, and everchanging process evolving at different speeds across different fields.⁸ Sport is certainly not yet an integrated European policy, nor does it constitute the full-fledged competence of the European Union. However, it is unlikely that it will remain so for long. Though today classified

⁷ See the reports commissioned by the Commission, e.g., Helsinki Report on Sport, 1991, p. 6. In addition, on The European Sporting Model see for e.g., Sennett, Le Gall, Kelly et al., 2022, p. 162 where authors inventorie a list of academic work about emerging EU sport policy.

⁸ See for e.g.,a Dinan, 2025, p. 7.

merely as a supporting competence under the Treaties, it will undoubtedly become one of the new arenas for legislative activity at the Union level. In this field, the EU has already begun to generate a certain *acquis communautaire*, most notably through the formulation of a so-called “European Sport Model.”⁹ This constitutes only the preliminary stage of a process of political integration that will gradually take a clearer shape.¹⁰ Indeed, the very idea of a European legislative corpus on sport, whether sectoral or comprehensive, perhaps even a “European Sports Code” elaborated in coordination with the Council of Europe, continues to gain traction, and its realisation would necessarily presuppose that an integrated European policy in this domain will eventually be established.

The spillover effect, the second major feature of integration, is expressed in the subsequent part of Schuman’s discourse by the notion of “*de facto* solidarity”. In Schuman’s sense, transnational integration in the field of sport, considered one of those “concrete achievements,” already exists outside the Union, notably through the actions of the Council of Europe and the sports committees and federations’ regulatory frameworks. However, as the Court of Justice (CJEU) jurisprudence reveals, European integration could not remain entirely indifferent to such a socio-economic phenomenon. By the natural dynamics of integration, the Union’s competences gradually draw sport into their orbit, as they have done with many other domains that once lay outside the Treaties’ scope.

Having begun with the economy, the Union progressively extended its reach to almost every sphere of public life: yesterday to civil law and public finance, today, health and immigration, and tomorrow, sport. No branch of public life escapes the centrifugal movement of European integration, for the very idea of integration implies not a fixed endpoint but a shared, collective, and continuous advancement of societies seeking to establish an ever-closer union in all economic, political, and cultural dimensions. Just as it is impossible to separate politics from economics or culture, it is also inconceivable to compartmentalise Union competences indefinitely. There exists, by nature, no area forever immune from European competences: those fields in which the Union currently has no formal attributions must progressively

⁹ Bourzat-Alaphilippe & Brocard, 2023, p. 41. See also, Sennett, Le Gall, Kelly et al., 2022, pp. 158-174 for an inventory of academic researches on EU Sport Model. On the same topic find also EU resolutions: Council Resolution, 2021/C 501/01, 2021; European Parliament Resolution, 2021/2058(INI) and subsequent Report, Mittag & Naul, 2021.

¹⁰ In that sense see also Arduin, 2024, p. 10; Miège, 2022, p. 38.

enter its regulatory domain as integration advances. This is precisely the hallmark of this socio-political phenomenon: its capacity to exert a spillover effect on every aspect of public life.¹¹

Accordingly, the CJEU, the judge of integration, encountered sports law issues before the European legislature. Insofar as sport could also be characterised as an “economic activity,” it inevitably became a field of labour for the CJEU. From *Walrave* (1974) to *Bosman* (1995), and most recently *Diarra* (2024)¹², cases that resounded far beyond the judicial sphere into the world of football itself, the CJEU has consistently condemned infringements of Union law arising from state or federation regulations. While recognising the specificities inherent in sporting activity, the CJEU nevertheless drew clear limits to the regulatory autonomy of sports organisations¹³, particularly major federations, which cannot obstruct free movement or undermine the principle of undistorted competition. Thus, the internal market emerged as a normative universe with which the sporting world must be reconciled. As the title of this symposium aptly suggests, the EU law has always required a delicate balance between the rules of the sporting game and those of European integration.

A clear analytical framework emerges from this confrontation between sport and EU law. The balancing exercise between the sport as a socio-economic and cultural activity and European integration is not uniform across contexts. In non-economic settings, where sport is considered in its social dimension or as a field of public policy, its intrinsic characteristics and specific nature are more prominent. Consequently, EU law intervention remains limited, and the progressive dynamic of European integration operates with greater restraint (2). In contrast, when sport is examined at the very core of integration, namely within the economic sphere, its specific character becomes far less visible. On the contrary, sport is subject to a form of normalisation: like any other activity capable of generating economic effects, it is treated as an integral component of the internal market and does not escape the

¹¹ Even if the United States of Europe were ever created, the question of European integration would still persist. Just as it arises within a state, whether federal or unitary, integration will remain the eternal subject of civilized human societies.

¹² *FIFA v. Bg*, 2025; For a commentary see e.g., Ianc & Hömann, 2025, p. 1.

¹³ Geeraert, Alm & Groll, 2014, pp. 282-283. See also Benhammouda, 2024a, p. 18, where the author calls for a clear distinction to be drawn between the concepts of autonomy and independence.

Treaties' requirements. The spillover effect of European integration on sport is significantly more pronounced in this context (3).

2 Moderated Progressivity of European Integration in Non-Economic Sport Regulation

When sport is considered a public policy field, the spillover effect of European integration remains limited and its progressive development is comparatively restrained. In this non-economic context, the balance between sport and the rules of integration tends to favour the Member States. Therefore, sport remains, by its very nature, a predominantly national competence, with the European Union endowed only with a supporting competence designed to assist Member States in the pursuit of their respective policies (2.1). At this stage, the integration process in this field is still in its early phases and has so far resulted in tangible yet cautious advances. Nevertheless, even in its limited form, the continuous progress of this dynamic, combined with the growing interconnection between sport and economic activity, is likely to strengthen the Union's competences in this area, as has occurred in many other policy fields over the course of European integration (2.2).

2.1 The Limited Nature of the European Union's Supporting Competences in Sports

Originally, the Treaties contained no reference to sport¹⁴. It was only with the Treaty of Lisbon in 2007 that Article 165 TFEU expressly acknowledged sport as part of the Union's internal policies and actions.¹⁵ However, even today, the Treaties do not devote a specific title exclusively to sport¹⁶; instead, it is addressed within Title XII, *Education, Vocational Training, Youth and Sport*. Thus, the drafters of the Treaties relegated sport to a set of ancillary or secondary considerations within the integration process, without attributing any particular prominence to it. Therefore, Article 6(e) of the TFEU classifies sport within the Union's supporting or complementary competences, alongside areas such as the "protection and improvement of human health," "industry," "culture," "tourism," "civil protection," and "administrative cooperation." Under this provision, in these fields, "the Union shall have

¹⁴ Blin, 2025, p. 173.

¹⁵ Garben, 2024, p. 1987 and p. 1989.

¹⁶ Blin, 2025, p. 184.

competence to carry out actions to support, coordinate or supplement the actions of the Member States.” Article 2(5) of the TFEU further specifies the scope of such action by stating that the Union support on Member States is exercised, “without thereby superseding their competence in these areas.”

EU law specialists are well aware that the “competence” at issue here, namely, the competence “to support, coordinate, or supplement,”¹⁷ falls within a residual and particularly limited category of Union powers. It is neither an exclusive competence within the meaning of Article 3 of the TFEU, nor even a genuinely shared competence as defined in Article 4 of the TFEU. This merely supportive power does not confer upon the Union the capacity to undertake substantial or far-reaching legislative action. Therefore, it is clear that the Union cannot itself impose a straightforward regulatory framework on the Member States in this field. It is precluded from pursuing any form of harmonisation and, in other words, does not enjoy a positive integration competence.¹⁸ Moreover, leaving no room for doubt on this point, Article 165(4) of the TFEU expressly provides, with regard to sport, that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure [...] shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States.” The same provision merely authorises the Council of the European Union, acting on a proposal from the Commission, to adopt “recommendations,” which Article 288 of the TFEU expressly classifies among acts devoid of binding legal force. Therefore, from the perspective of EU law, sport as a field of public policy remains primarily a matter of State competence, with the Union limited to assisting Member States in the conduct of their respective actions. This assessment has also been approved by the CJEU. In its recent *European Superleague Company* judgement, the CJEU observed, based on a combined reading of Articles 165 and 6(e) of the TFEU, that “by those provisions, the drafters of the Treaties intended to confer a supporting competence on the Union, allowing it to pursue not a ‘policy’, as provided for by other provisions of the FEU Treaty, but [simply] an ‘action’ in a number of specific areas, including sport.”¹⁹

¹⁷ TFEU, Article 2(5). See e.g., Thiery, 2020, p. 69.

¹⁸ For this notion, see van den Brink, Dawson & Zgliniski, 2025, p. 221.

¹⁹ *European Superleague Company (ESLC) v. FIFA & UEFA*, 2025, para. 99, added in brackets. For a commentary, see e.g., Duboc, 2024, p. 34.

Moreover, this restrictive interpretation of the Union's competences reflects the existing reality at the national level, where, in the field of sports regulation, normative and supervisory powers are primarily exercised by the Member States or by associative and federative bodies. Likewise, at the international level, it is the Council of Europe, rather than the European Union, that has exercised genuine normative authority in the field of sport by establishing a European framework for cooperation in this area: *European Sport for All Charter*²⁰, *European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches*²¹, *Anti-doping Convention*²² and its *Additional Protocols*²³, *Macolin Convention* about the manipulation²⁴, *Saint-Denis Convention* on safety²⁵, are some of the many examples of the Council of Europe's coordination measures on sport law²⁶. Moreover, in 2007 the Council of Europe, through its Committee of Ministers, established the Enlarged Partial Agreement on Sport (EPAS)²⁷, whose institutional structures ensure ongoing and active European intergovernmental cooperation across the various aspects of sports law and contribute to the necessary reforms in this field. In light of this particular dynamism of the Council of Europe in matters relating to sport, Article 165(3) of the TFEU takes care to emphasise that "the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe." This is precisely the approach adopted by the Union institutions, which have taken the Council of Europe's measures in this field as their primary reference to develop what is commonly described as a "European Sports Model."²⁸ However, even this "Model" has not conferred any genuine supervisory authority in this field upon the Union.²⁹ Therefore, sport has not become an area of autonomous EU competence, even though the Union is not entirely devoid of any powers in this

²⁰ Council of Europe, Committee of Ministers, Res(76)41.

²¹ ETS n° 120.

²² ETS n° 135.

²³ ETS / CETS n° 188.

²⁴ CETS n° 215.

²⁵ CETS n° 218.

²⁶ Many non-mandatory but important other interventions of the Council should be considered, such as the European Sports Charter adopted by the Committee of Ministers in 1992 (Recommendation n R (92) 13 and the Recommendation of the Committee of Ministers on the Revised European Sport Charter, CM/Rec(2021)5, 13 October 2021) and completed by the *Code of Sports Ethics* (Recommendation n R (92) 14 and the Recommendation of the Committee of Ministers to Member States on the revised Code of Sports Ethics, CM/Rec(2010)9, 16 June 2010), or the recent Declaration by the Committee of Ministers on Sport Integrity (Declaration of 27 September 2023, <https://search.coe.int/cm?i=0900001680acb64b>).

²⁷ See <https://www.coe.int/en/web/sport/epas>.

²⁸ Council of the European Union, Resolution, 2023.

²⁹ See <https://www.coe.int/en/web/sport/epas>

respect. Indeed, the absence of a transfer of competences from the Member States to the Union in the field of sport has not prevented the Union from launching a significant number of initiatives. Thus, a genuinely integrated sports action plan has been set in motion by the Union institutions, even though, textually, they are not endowed with any harmonising competence in this area.

2.2 Exercise of the European Union's Supporting Competences in Sport

Article 165 of the TFEU rests on a deliberate compromise between two contradictory considerations. Member States have wished to ensure that the Union does not possess genuine regulatory power in the field of sports. They seek to preserve the existing framework under which national and international sports federations determine the applicable rules within the normative limits fixed by national legislators and international conventions. However, an undeniable need exists for greater integration in a domain that is by nature supranational and particularly vulnerable to social, financial, and moral deviations such as doping, racism, sexism, violence, or corruption. The values intrinsic to sport, fairness, integrity, and equality of opportunity, can be better safeguarded through collective action at the Union level than through individual Member States' fragmentary efforts. Moreover, the various international instruments designed to combat these pathologies are only strengthened when they are supported by a normative and juridical framework as robust as that of Union law. The current European sports policy has positioned itself precisely in this in-between space, between respect for national sovereignty and the necessity of a more integrated regulatory framework.

Although it does not constitute an integrated policy of the Union, a genuine policy of EU in the field of sport exists, and this has been the case for some time. Despite the absence of any harmonising power in the strict sense, the institutions of the Union have unceasingly elaborated a general framework and undertaken concrete initiatives that are shaping a coherent European sports policy.

As early as the 1980s, European principles of sport, such as mutual respect, social equity, integrity, and fair play, began to appear in a series of resolutions of the European Parliament.³⁰ These early parliamentary acts affirmed and promoted

³⁰ European Parliament, 1984, p. 142. See also, the "Adonnino Report", SN/2536/3/85.

questions relating to the fight against racism, violence, doping, corruption, protecting women's rights, and equality of opportunity, which anticipated nearly all of the political orientations later developed at the Union level³¹. At the invitation of the Parliament, the European Commission issued its first Communication on *The European Community and Sport*³² in 1991, which laid the initial groundwork for a Union approach to this sector. However, following the *Declaration on Sport* in 1997³³, the conclusions of the European Council of Nice in 2000 provided the decisive political impetus for the deepening of European action in this area.³⁴ While acknowledging the Union's lack of legislative competence, the Council Presidency invited the institutions to assume a leading role in promoting the social dimension of sport. Subsequently, the Treaty of Lisbon codified this aspiration for "more Europe" in sport. Paragraph 1 of Article 165 of the TFEU now states 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 function."³⁵ The same provision urges the institutions "to develop the European dimension of sport by promoting fairness and openness in sporting competitions and cooperation between the bodies responsible for sport, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest of them."³⁶

The Commission had anticipated such developments through its 2007 *White Paper on Sport*, accompanied by the *Pierre de Coubertin Action Plan*³⁷, even before the Treaty provisions entered into force. This white paper proposed concrete measures to establish a European sport framework built on three pillars: strengthening the social

³¹ E.g., *EU Community and Sport* (1984 and 1994), *Measures Needed to Combat Vandalism and Violence in Sport* (1985 and 1988), *Women in Sport* (1987), *Sport in the European Community and a People's Europe* (1989), *Poor Snow Conditions in Winter Sports Resorts in Europe* (1990), *Sport and Doping* (1994), *Hooliganism and the Free Movement of Football Supporters* (1996), *Role of the European Union in the field of sport* (1997), *Urgent Measures To Be Taken Against Doping in Sport* (1999).

³² EU Commission, Communication, SEC(91)1438 final, 1991. See also EU Commission, Communication, SEC(89)407, 1989.

³³ Declaration n° 29 annexed to the Final Act of the Treaty of Amsterdam: "The Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport."

³⁴ Conclusions of the European Council of Nice, 7-10 December 2000: "Even 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."

³⁵ TFEU, Article. 165, §1, al. 2.

³⁶ Ibidem, §2 last sentence.

³⁷ EU Commission, Communication, COM(2007) 391 final, 2007, p. 3 and 19.

role of sport, recognising its economic dimension, and reflecting on the organisational structure. The accompanying *Staff Working Document* further elaborated five axes of what it later termed the “European Sport Model”: a pyramidal structure where elite professional and amateur sports mutually reinforce one another; open competitions, accessible to small clubs and resistant to monopolisation by large clubs; the self-governance of sporting movements within balanced public-private partnerships; a voluntary-based system that fosters civic participation; and a dialogue platform, enhancing solidarity among organisers, players and supporters.³⁸

Thus, the Lisbon Treaty’s entry into force consolidated pre-existing European initiatives and endowed them with an explicit legal basis. Since then, the European Parliament, the Commission, the Committee of the Regions³⁹, and the European Economic and Social Committee⁴⁰ have continuously developed a general framework for a European sport policy. Concerning the fight against corruption⁴¹, promoting an integrated governance⁴², or the idea of a “green” European sporting mobility⁴³, the Parliament has repeatedly underlined the need to construct a coherent and integrated European approach.⁴⁴ On diverse societal topics, such as the COVID-19 pandemic⁴⁵, digitalisation⁴⁶, video games⁴⁷, and anti-racism⁴⁸, it has consistently invited institutions, member states, and civil society to coordinate their actions for a virtuous European sports policy. Functioning as a *forum deliberandum*, it has even commissioned in-depth studies to assess the field’s desirable evolutions.⁴⁹

³⁸ EU Commission, Staff Working Document, SEC/2007/0935 final, see §4.1.

³⁹ Committee of the Regions, Opinion, 96/C 337/11, 1996; Opinion 1999/C 374/14, 1999; Opinion 2000/C 317/20, 2000; C/2024/1044, 2024.

⁴⁰ European Economic and Social Committee, 2022/C 290/02, 2022.

⁴¹ Corruption in sport, 2013; FIFA, 2015.

⁴² An integrated approach to Sport Policy: good governance, accessibility and integrity (2017).

⁴³ Effective measures to ‘green’ Erasmus+, Creative Europe and the European Solidarity Corps, 2020. See also European Commission, Sport’s contribution to the European Green Deal, 2023.

⁴⁴ In 2012, the Parliament adopted the Resolution on European dimension in sport, 2012. However, its most notable contribution in this field is its Resolution on EU sports policy: assessment and possible ways forward, 2021.

⁴⁵ The impact of Covid-19 on youth and on sport, 2021.

⁴⁶ Challenges of sports events organisers in the digital environment, 2021.

⁴⁷ Esports and video games, 2022.

⁴⁸ The role of culture, education, media and sport in the fight against racism, 2022.

⁴⁹ Mittag & Naul, 2021. After this study the European Parliament has adopted its Resolution 2021/2058(INI), 2021.

For its part, the European Commission, fortified by the new legal bases introduced by the Lisbon Treaty, announced a comprehensive action programme⁵⁰ reflecting the three pillars identified in the 2007 White Paper: the societal role, the economic dimension and the organisation of sport. Within this framework, numerous concrete actions have been implemented on the basis of successive four-year *Work Plans* initiated in 2011 as well as the Resolutions and Conclusions of the Council and of the Representatives of Member State governments.⁵¹ Under the first pillar, examples include Union acts addressing the fight against doping⁵²; measures concerning online gaming and betting that threaten the integrity of sport⁵³; initiatives for education through sport⁵⁴; mobility programmes such as *Erasmus+ Sport*⁵⁵; and instruments facilitating athletes' career transitions.⁵⁶ Actions to prevent violence in sport⁵⁷, promote physical activity within Member States⁵⁸, encourage volunteering⁵⁹, and fight discrimination against women⁶⁰ and persons with

⁵⁰ Commission Communication, COM(2011) 12 final, 2011.

⁵¹ For each period of Working Plan see, Resolution for 2011-2014 (OJ C 162, 1.06.2011, p. 1.), Resolution for 2014-2017 (OJ C 183, 14.06.2014, p. 12), Resolution for 2017-2020 (OJ C 189, 15.06.2017, p. 5), Resolution for 2021-2024 (OJ C 419, 4.12.2020, p. 1), Resolution for 2024-2027 (9771/24).

⁵² Council and representatives of the Governments of the Member States Resolution on a Code of Conduct against Doping in Sports, 1992. The concrete actions of the EU are numerous in this field as it is shown for example by EU technological development framework programme (1994-98) which promotes funding for a research project aimed at developing new methods to detect the use of growth hormones by athletes. However, EU initiatives are currently limited to participation in the legislative and regulatory preparatory work of national and international bodies. See e.g., Council of the European Union Resolution on EU Member States' representation on the WADA Foundation Board and coordination of positions, 2023; Council of the European Union Resolution on the EU Work Plan for Sport (2024-2027), 2024.

⁵³ EU Commission Communication, Towards a comprehensive European framework for online gambling, 2012.

⁵⁴ European Parliament and Council Decision 291/2003/EC, 2003. EU Commission Communication, COM/2005/0680 final.

⁵⁵ Regulation (EU) 2021/817, 2021.

⁵⁶ Council of the European Union and Representatives of the Governments of the Member States, Conclusions, 2013. Also, EU Commission, EU Guidelines on Dual Careers of Athletes, 2012.

⁵⁷ Council Decision 2002/348/JHA, 2002. Council Resolution on the use by Member States of bans on access to venues of football matches with an international dimension (2003). See also, Council Resolution concerning a handbook with recommendations for international police cooperation (2002).

⁵⁸ In addition to The European Week of Sport (<https://sport.ec.europa.eu/european-week-of-sport>) and the EU Sport Awards (<https://sport.ec.europa.eu/initiatives/beactive-eu-sport-awards>), biannual programmes as HealthyLifestyle4All (<https://sport.ec.europa.eu/healthylifestyle4all>) are also available. In the same vein, see Council Recommendation on promoting health-enhancing physical activity across sectors (2013); EU Commission, European Union Work Plan for Sport 2021-2024, COM/2024/73 final, 2024.

⁵⁹ European Parliament and Council Regulation (EU) 2021/888, 2021.

⁶⁰ Council and Representatives of the Governments, Conclusions on women and equality in the field of sport, 2023; High Level Group on Gender Equality in Sport, Towards more gender equality in sport – Recommendations and action plan, 2022. See also, Expert Group on Good Governance, Recommendations on Gender Equality in Sport, 2016: https://ec.europa.eu/assets/eac/sport/library/policy_documents/expert-group-gender-equality_en.pdf. For an early initiative on that matter, see, the 1987 Charter of Women's Rights in Sports adopted by the European Parliament in 1987 (Resolution on Women and Sport doc. A 2-32/87/rev).

disabilities⁶¹ are equally notable. Under the second pillar, oriented towards “evidence-based policy-making”, concrete actions⁶² have involved considering the specificities of sport when assessing anti-competitive practices, State aid regimes, sports betting, and issues linked to the intellectual property.⁶³ Finally, under the third pillar, the Commission established a framework for dialogue and exchange of good practices among Member States⁶⁴, relating to the organisation and governance of sport, while acknowledging the autonomy and independence of national structures.⁶⁵ Under Article 17(1) of the TEU, it has also concluded cooperation agreements with various international sporting organisations.⁶⁶ This European dynamism continues unabated, and initiatives aimed at deepening soft and non-normative integration are multiplying.⁶⁷

Thus, the European Union has succeeded in developing a general political framework and undertaking concrete actions in the field of sport even in the absence of any formal harmonising competence. The issue, of course, transcends the European level: integration through sport concerns civil society at large, national, international, and transnational alike.⁶⁸ However, Europe indisputably occupies a place within this process, and the multiplication of initiatives since the 2010s, alongside the intensification of practical actions across a broad spectrum, reinforces the case for “more Europe” in this domain. The attractive force of integration, even if it has not yet resulted in a complete Europeanisation of the field, continuously calls for new and increasingly significant concrete measures. This is especially so because the moderate progressivity of political integration with respect to sport,

⁶¹ Council of the European Union and Representatives of the Member States meeting within the Council, Conclusions, 2019.

⁶² For example, the creation of the Sport Satellite Account, designed to collect available sports data in Member States.

⁶³ EU Commission, Mapping and Analysis of the Specificity of Sport, 2016. For EU competition rules and sport see e.g., Van der Burg, 2020, p. 135.

⁶⁴ For an interesting example of EU support in this field see e.g., SDE Pro Sport Project and its study by Aumeran, 2024, p. 24.

⁶⁵ See The EU Sport Forum (<https://sport.ec.europa.eu/initiatives/eu-sport-forum>) and The Share Initiative (<https://sport.ec.europa.eu/initiatives/share-20-initiative>). The first European Forum was established in 1991 (Trova, Alexandrakis, & Skouris, 2011, p. 183). For another illustration of the concrete actions of the EU in this field, see Decision 291/2003/EC of the European Parliament and Council, 2003.

⁶⁶ See e.g., EU Commission, Decision C(2022) 257 (final), 2022, p. 1. For a list of cooperations and joint actions on the fields of sport to enhance EU values, see e.g., the *Per Call Evaluation Report* for 2025 of the European Education and Culture Executive Agency. See also many arrangements of the EU with international organizations as UEFA, e.g. EU Commission, Decision C(2022) 3721 final, 2022.

⁶⁷ See e.g., Commission Call for Evidence: Reinforcing European Sports Model (2026).

⁶⁸ An example of the contribution of civil society is The Brighthon Declaration on Women and Sport (2014). For a study: Kluka, 2009, p. 17. See also Jedlicka, 2018, p. 287.

considered in its ludic and non-economic dimension, leaves ample room for a much swifter and deeper integration insofar as sport constitutes an economic activity.

3 Strengthened Spillover Effect of European Integration on Sport as an Economic Activity

Sport, as an economic activity, namely, “an activity consisting in offering goods or services on a given market,”⁶⁹ or one that gives rise to “gainful employment or remunerated service,”⁷⁰ falls within the Treaties’ material scope of application. The rules governing economic freedoms within the internal market, as well as those relating to undistorted competition, apply fully in this context.⁷¹ Moreover, through a spillover effect and as a result of evolving case law in this field, even sport as such, that is, sport in its non-economic dimension⁷², has not been able to escape the normative framework of economic law (3.1). Against this background, the CJEU has refused to infer from Article 165 of the TFEU any special treatment for sport with regard to either the rules on free movement or those on competition, while nevertheless accepting that the specific characteristics of sport may be taken into account on a case-by-case basis.⁷³ Through its review powers, the CJEU has thus retained control over the balancing exercise between, on the one hand, the requirements of economic integration and, on the other hand, the social and cultural functions of sport (3.2).

3.1 Extensive Regulation of Sports through Dynamic Case Law

In its early case law, the CJEU appeared to accept the possibility of entirely excluding any “question of puerly sporting interest and as such has nothing to do with economic activity” from the scope of the Treaties.⁷⁴ Moreover, in its *Delière* judgment of 2000, somewhat echoing the logic underpinning its *Keck and Mithouard* case law of 1993⁷⁵, the CJEU appeared inclined to exclude entirely from the scope

⁶⁹ *MOTOE v. Elliniko Dimosio*, 2008, para. 22.

⁷⁰ *Donà v. Mantero*, 1976, para. 12.

⁷¹ See e.g., Durand & Templé, 2024, p. 258.

⁷² Only the French version of *Donà* case (para. 14) clearly refers to that concept, with the formula “*le sport en tant que tel*” (sport as such). Such a formula does not exist in the English version of the case.

⁷³ On that interpretation of the Article 165 TFEU see above, European Superleague Company, p. 8.

⁷⁴ *Walrave and Koch*, 1974, para. 8. Accordingly, the composition of “national teams” (*ibidem*, loc. cit.), exclusively by athletes holding the nationality of the concerned Member State, was regarded as falling outside the scope of the Treaties.

⁷⁵ *Keck and Mithouard*, 1993.

of the Treaties certain decisions that “naturally”⁷⁶ fall within the competence of sporting bodies, such as the selection of athletes for competitions.⁷⁷ However, the CJEU’s genuine reasoning on this matter is far more nuanced.⁷⁸ As early as the landmark *Bosman* judgement of 1995, the CJEU began to move away from this position by emphasising “the difficulty of severing the economic aspects from the sporting aspects”⁷⁹ of a given sport. It held that the specific characteristics of sport could not justify “to exclude the whole of a sporting activity from the scope of the Treaty.”⁸⁰ Furthermore, the CJEU has never repeated the line of reasoning developed in *Deliège* in its subsequent case law. On the contrary, *Meca-Medina* (2006) decisively confirmed the shift initiated in *Bosman* by setting aside the judgement of the first instance Court holding that, in the strict line of *Walrave and Koch*⁸¹, “purely sporting rules”⁸² such as doping ban in swimming, “cannot (...) fall within the scope (...) of the economic freedoms.”⁸³ Instead, the CJEU opted for a different approach, highlighting that “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down.”⁸⁴ Following this evolution in the case law, sport “as such,”⁸⁵ including its non-economic aspects, has become an activity that remains potentially subject to the Treaties’ scope of application. In other words, the barrier erected by the *Walrave* and *Donà* has been dismantled: the criterion of “economic activity” has lost much of its distinctive function, and sport has, as a whole, become a field fully subject to the scope of economic integration, encompassing both the free movement provisions and competition law. Accordingly, and adopting a formulation even more far-reaching than that articulated in *Meca-Medina*, the CJEU now holds that “the mere

⁷⁶ *Deliège*, 2000, para. 67.

⁷⁷ In the present case, the CJEU held that the refusal to select a judoka resulted from the exercise of its attributions by a national federation and that “delegation of such a task” was “the arrangement adopted in most sporting disciplines” (para. 68), stemming from “a necessity inherent in the organisation of such a competition” (para. 69). Therefore, it did not constitute, “in itself,” a restriction on the freedom to provide services “in itself” (*ibidem*).

⁷⁸ See also, Benhamouda, 2024b, p. 30.

⁷⁹ In particular, “of football” in that case: *Bosman*, 1995, para. 76.

⁸⁰ *Ibidem*, loc. cit.

⁸¹ *David Meca Medina et Igor Majcen*, 2004 and see note 74. In its judgement, the CJEU of First Instance also refers to para. 14 of *Donà*, see note 72.

⁸² *David Meca Medina et Igor Majcen*, 2004, para. 41.

⁸³ *Ibidem*, loc. cit.

⁸⁴ *Meca-Medina*, 2006, para. 27. On that basis, the CJEU found that sporting regulations establishing an excessively low tolerance threshold for nandrolone in a swimmer’s blood, combined with excessively severe disciplinary sanctions, were capable of producing “negative effects on competition” (*ibidem*, para. 47) in breach of Articles 101 and 102 TFEU. For a critical comment, see Auneau, 2007, p. 361. See also, Podszun & Kirk, 2024, p. 466.

⁸⁵ See note 72 above.

fact that an activity is connected with sport does not preclude the application of the Treaty's rules."⁸⁶ Moreover, it is of little relevance that the activity at issue is performed by a mere non-profit association governed by private law, even where the contested measure results from the exercise of regulatory powers resembling a public authority prerogative. Thus, the refusal by a non-profit motorcycling association – which the CJEU did not hesitate to characterise as an “undertaking”⁸⁷ – to issue a mandatory prior approval, legally required for the organisation of a competition on the roads of a Member State, may constitute either an abuse of a dominant position within the meaning of Article 102 of the TFEU or, alternatively, a breach by the Member State of Article 106 of the TFEU concerning special or exclusive rights, where that consultative power is not subject to any limitation, obligation or effective State control.⁸⁸

It is undoubtedly with the *TopFit* judgement that a further threshold was crossed.⁸⁹ Recalling, in the context of the rights and freedoms attached to the “fundamental”⁹⁰ status of Union citizenship, “the role of sport as a factor of integration in the society of the host Member State,”⁹¹ and relying on a combined reading of Articles 21 and 165 of the TFEU, the CJEU emphasised that “participation in sporting competitions at all levels”⁹² enables a Union citizen “to create bonds with the society”⁹³ of the host State or “to consolidate them.”⁹⁴ Accordingly, regulations adopted by a national athletics federation restricting a Union citizen who has been resident in Germany for a long period from participating in the national long-distance running championships, legitimately to ensure that the national champion is not a foreign national⁹⁵, do indeed fall within the material scope of the Treaties and must be

⁸⁶ MOTOE, 2008, para. 22.

⁸⁷ Ibidem, para 27: “the fact that the offer of goods or services is made without profit motive does not prevent the entity which carries out those operations on the market from being considered an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit.”

⁸⁸ Ibidem, para. 53.

⁸⁹ *TopFit eV*, 2019, para. 53: according to the CJEU’s statement, “the fact that a rule applies solely to sport does not mean that it is automatically excluded from the scope of the Treaty.”

⁹⁰ Ibidem, para. 28. See the CJEU’s reference to its important *Grzelezyk* case of 2001.

⁹¹ Ibidem, para. 33.

⁹² Ibidem, para. 34.

⁹³ Ibidem, loc. cit.

⁹⁴ Ibidem, loc. cit.

⁹⁵ Ibidem, para. 50: “as has been held with regard to the composition of national teams, it appears to be legitimate to limit the award of the title of national champion in a particular sporting discipline to a national of the relevant Member State and consider that nationality requirement to be a characteristic of the title of national champion itself.”

subjected to a proportionality review to assess whether they are compatible with the non-economic rights of that Union citizen.⁹⁶

Even though the classic formulations of *Walrave* and *Donà* are⁹⁷, in absolute terms and as a matter of principle, are still formally maintained in the CJEU's recent case law⁹⁸, and the two examples concerning the composition of national teams and the criteria for selecting athletes continue to be reiterated⁹⁹, no aspect of sporting activity, whether economic or non-economic, now escapes "straightaway"¹⁰⁰ the CJEU's scrutiny under the economic law of integration.

This reinforced spillover effect, developed under the dynamic CJEU case law, can be observed particularly clearly across the various fields of European harmonisation. Across highly diverse areas of European integrated fields of actions, such as trade mark law¹⁰¹, the protection of databases¹⁰², value added tax¹⁰³, exclusive television broadcasting rights¹⁰⁴, and even across public procurement law¹⁰⁵ or consumer protection¹⁰⁶ sport, falls within the Union's normative framework. Its various dimensions, and at times even its very definition, are subsumed within the CJEU's interpretative authority. Thus, in the *Žamberk* judgement, notably the European judge adopted a "strict interpretation"¹⁰⁷ of the concept of "sporting activity" to justify exemptions to VAT.¹⁰⁸ Accordingly, under the VAT directive and as

⁹⁶ In the present case, that review was referred back to the national court, albeit with the clear indication that a total exclusion of Union citizens from the national long-distance running championship would, "in any event, be disproportionate" in light of the specific circumstances of the case. (*Ibidem*, para. 66).

⁹⁷ See notes 72 and 74 above.

⁹⁸ See e.g., *International Skating Union (ISU)*, 2023, para. 92; *European SuperLeague Company (ESLC)*, 2023, para. 84; *Royal Antwerp Football Club*, 2023, para. 54.

⁹⁹ *ISU*, 2023, para. 92; *ESLC*, para. 84.

¹⁰⁰ *Meca-Medina*, 2006, para. 33.

¹⁰¹ See the interpretation of the First Council Directive 89/104 in *Arsenal FC v. Reed*, 2002, para. 62.

¹⁰² See e.g., the application of Directive 96/9 in *The British Horseracing Board*, 2004, paras. 42, 67, and 82, and in *Football Dataco*, 2012, para. 47.

¹⁰³ *Canterbury Hockey Club*, 2008; *Město Žamberk*, 2013; *English Bridge Union*, 2017.

¹⁰⁴ *Šký Österreich*, 2013, para. 42-68, interpreting the Directive 2010/13 on Audiovisual Media Services. See also, on the application of Directive 89/552 (repealed by Directive 2010/13 cited above) concerning the pursuit of television broadcasting activities and Directive 97/36, *UEFA vs. Commission*, 2013, para. 42-45 and 38; *FIFA vs. Commission*, para. 32-39 and 105.

¹⁰⁵ *Federazione Italiana Giuoco Calcio*, 2021, para. 48, on the interpretation of the Directive 2014/24/EU on public procurement.

¹⁰⁶ See *Ave*, 2025, paras. 53, 69-70, 87, paras. 93-95 and 102, interpreting Directive 93/13/EEC on unfair terms in consumer contracts. For a commentary, see e.g. Lagarde, 2025, p. 8.

¹⁰⁷ *Město Žamberk*, 2013, para. 19.

¹⁰⁸ *Ibidem*, para. 17. According to the CJEU, under Directive 2006/112/EC, "The terms used to specify those exemptions are to be interpreted strictly, since the exemptions constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person" (para. 19).

interpreted by the CJEU, while such an activity may be conducted in an amateur context and therefore does not presuppose either “a particular level”¹⁰⁹ or a practice “in a particular way”¹¹⁰ to benefit from the tax exemption, it must not be performed “in a context of pure rest and of amusement.”¹¹¹ Similarly, in the *English Bridge Union* case, the Court held that “the fact that an activity promotes physical and mental health is not, in itself, sufficient to conclude that it falls within the concept of ‘sport’”¹¹² for the purposes of that directive. It is, of course, not a matter of laying down a general definition of sport as such, but rather of a contextual application limited to the VAT Directive’s framework. Nevertheless, the accumulation of this type of litigation concerning the various components of sport will gradually lead the Court to develop an increasingly precise legal framework in this specific area.

Recent case law concerning the mechanism of international arbitration provides a particularly striking illustration of the phenomenon of “Europeanisation” of sports law. Following the path opened by the case law of the European Court of Human Rights¹¹³ and invoking “legitimate interests linked to the specific nature of sport,”¹¹⁴ the General Court had accepted the Court of Arbitration for Sport’s mandatory and exclusive jurisdiction. However, the CJEU set that judgement aside on the ground of an “error of law.”¹¹⁵ According to the CJEU, neither the “specific nature of sport”¹¹⁶ nor the “legal autonomy”¹¹⁷ of international sporting authorities allows one to disregard compliance with the “public policy provisions that EU law contains”¹¹⁸ or with the “principles underlying the judicial architecture of the European Union.”¹¹⁹ Similarly, less than one month after the *Caster Semenya* judgement, in which the European Court of Human Rights held that the proportionality review carried out by the Swiss Federal Tribunal over an award of

¹⁰⁹ Ibidem, para. 22.

¹¹⁰ Ibidem, loc. cit.

¹¹¹ Ibidem loc. cit. Nevertheless, the CJEU softened this strict interpretation, stating that the scope of the VAT exemptions must not be limited to “sporting activities which are engaged in in an organised or systematic manner or aimed at participation in sports competitions” (para. 24).

¹¹² *English Bridge Union*, 2017, para. 24.

¹¹³ *Mutu and Pechstein vs. Switzerland*, 2018; See also, (dec.) *Platini vs. Switzerland*, 2020.

¹¹⁴ *International Skating Union (ISU)*, 2020, T-93/18, para. 156. For a commentary see, Cattaneo, 2021, p. 318. Echoing the reasoning of the *Mutu and Pechstein* judgement of the European Court of Human Rights, the General Court noted that this arbitral body ensured a “quickly and economically” resolution of disputes, as well as “a certain procedural uniformity and (...) legal certainty” (para. 156).

¹¹⁵ *ISU*, 2023, para. 199.

¹¹⁶ Ibidem, para. 188.

¹¹⁷ Ibidem, loc. cit.

¹¹⁸ Ibidem, loc. cit.

¹¹⁹ Ibidem, loc. cit. See also, Blanke, 2024, p. 309.

the Court of Arbitration for Sport failed to meet the “requirement of particular rigour,”¹²⁰ the CJEU ruled in *Seraing*¹²¹ that such a closed arbitral mechanism could not undermine individuals’ right to effective judicial protection as guaranteed by Articles 19 and 267 of the TFEU and by Article 47 of the Charter of Fundamental Rights of the European Union. Accordingly, although the specific characteristics of sport have been recognised both in Article 165 of the TFEU since the Treaty of Lisbon and in the CJEU’s case law since *Walrave* and *Donà*, they have not resulted in the exclusion of this field from the scope of the rules of economic integration. On the contrary, through the succession of cases brought before it, the CJEU has progressively established an increasingly extensive regulatory framework for sport under EU integration law.

3.2 Consideration of the Specific Characteristics of Sport by the CJEU

The spillover effect of European integration on sport should not be understood as implying that the EU courts disregarded the specific characteristics of this field. Undoubtedly, the CJEU has expressly refused to derive any form of jurisdictional immunity for sport from Article 165 of the TFEU in relation to either the free movement provisions or competition law.¹²² As stated in *European Superleague Company* and *Royal Antwerp Football Club*, that provision “is not a cross-cutting provision having general application”¹²³ nor does it amount to “a special rule exempting sport from all or some of the other provisions of primary EU law (...)”.¹²⁴ Accordingly, the rights and freedoms enshrined in economic integration govern sports law in the same way as any other field, without “requiring special treatment”¹²⁵ for it. Nevertheless, from its very earliest judgements the CJEU has consistently acknowledged the specific characteristics of sport when interpreting and applying those rules.

¹²⁰ *Caster Semenya*, 2025, §210-238. For a commentary see e.g., Shahlaci, 2024, p. 871.

¹²¹ *Royal Football Club Seraing*, 2025, para. 95-125. For a first reference to the principle of effective judicial protection in the field of Sports Law, see *Heylens*, 1987, para. 14. For a commentary on *Seraing* see e.g., Bastianon, 2025, p. 38, and cf. Livolsi, 2025, p. 1.

¹²² *European Superleague Company* (ESLC), 2023, para. 100-101; *Royal Antwerp Football Club*, 2023, para. 68-69. See also, *Blin*, 2025, pp. 186-187; Pataut, 2024, p. 3.

¹²³ ESLC, 2023, para. 100; *Royal Antwerp Football Club*, 2023, para. 68.

¹²⁴ ESLC, 2023, para. 101. *Royal Antwerp Football Club*, 2023, para. 69.

¹²⁵ *Ibidem*, loc. cit.

First, after recognising in *Walrave* and *Donà* the specific nature of national teams, whose composition based exclusively on nationality cannot be regarded as contrary to the principle of non-discrimination¹²⁶, the CJEU accepted, in *Bosman*, that the maintenance of “a balance between clubs by preserving a certain degree of equality and uncertainty as to results”¹²⁷ and the encouragement of “the recruitment and training of young players”¹²⁸ may constitute overriding reasons in the public interest. It adopted the same approach in *Lehtonen*, recognising as legitimate the objectives of “ensuring the regularity of sporting competitions,”¹²⁹ “the comparability of results between the teams taking part in [a] championship,”¹³⁰ and “the proper functioning of the championship as a whole.”¹³¹ In *Bwin*, the CJEU likewise accepted that “combating fraud and crime”¹³² could be taken into account, while in *Premier League*, the aim of encouraging “attendance of stadiums by the public” was recognised as a legitimate objective.¹³³

Subsequently, the CJEU has effectively relied on Article 165 of TFEU in the very construction of certain sporting public-interest justifications. Thus, in its first reference to that provision in *Olympique Lyonnais*, it relied on the “educational and social function” of sport, as recalled by Article 165 of the TFEU, to substantiate the legitimacy of measures adopted to promote “young players”.¹³⁴ Similarly, in *Premier League*, relying on the “promotion of the European dimension of sport” referred to in Article 165 of the TFEU, the CJEU accepted that sporting events could be protected, where appropriate, under the heading of intellectual property protection¹³⁵, even though those events themselves could not, according to the CJEU, be regarded as “works” within the meaning of intellectual property law.¹³⁶ The Court’s reliance on Article 165 of the TFEU appears even more forcefully in *TopFit eV*, where, by combining it with Article 21(1) of the TFEU on the free

¹²⁶ *Donà*, 1976, para. 14 see note 72.

¹²⁷ *Bosman*, 1995, para. 106. For a commentary see, Auneau, 1996, p. 101; Weatherill, 2010, p. 480.

¹²⁸ *Ibidem*, loc. cit.

¹²⁹ *Lehtonen*, 2000, para. 53.

¹³⁰ *Ibidem*, para. 54.

¹³¹ *Ibidem*, loc. cit.

¹³² *Liga Portuguesa*, 2009, para. 63.

¹³³ *Premier League*, 2011, para. 123.

¹³⁴ *Olympique Lyonnais vs. Olivier Bernard*, 2010, para. 39-40. For a commentary see e.g., Collucci & Forti, 2010, p. 573. See also *Royal Antwerp Football Club*, 2023, para. 144.

¹³⁵ *Premier League*, 2011, para. 102.

¹³⁶ *Premier League*, 2011, para. 98: “sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive. That applies in particular to football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright”.

movement and residence of EU citizens, the CJEU relies on the role of sport as a “factor for integration” in order to extend the Treaties’ application to the non-economic freedoms of movement.¹³⁷

Finally, although the CJEU refuses to confer upon Article 165 of the TFEU the function of a safeguard clause, particularly concerning the freedoms of movement and EU competition law, it does not hesitate to rely on the core idea of the specificity of sport underlying that provision. Thus, in *European Superleague Company* and *Royal Antwerp Club*, immediately after emphasising the non-transversal nature of Article 165 TFEU, the CJEU recalls, in accordance with its settled case-law, that “sporting activity carries considerable social and educational importance, henceforth reflected in Article 165 of the TFEU, for the Union and for its citizens,”¹³⁸ that it “undeniably has specific characteristics,”¹³⁹ and that “such specific characteristics may potentially be taken into account along with other elements”¹⁴⁰ in the assessment carried out under the freedoms of movement and competition law. Therefore, the CJEU assesses the restrictive rule considering the specific context of the sport concerned, taking into account, *inter alia*, various elements.¹⁴¹ Accordingly, both identifying a restriction on economic freedoms or competition and assessing that restriction in the light of the principle of proportionality, are grounded in an empirical analysis of the concrete circumstances in which the sport concerned is organised or practised, a feature that has characterised the CJEU’s approach from the outset. This was the case, for example, in *Lehtonen*, where the CJEU was required to assess the risk to the proper conduct of a basketball championship posed by strategically timed player transfers liable to alter a team’s competitive strength at the final stage of the season, thereby distorting the “comparability of results.”¹⁴² This *in-context* analysis is particularly evident in *European Superleague*, where the CJEU examines whether the

¹³⁷ *TopFit e. V. and Biffi*, 2019, para. 33–34. See note 89 above.

¹³⁸ *ESLC*, 2023, para. 102. *Royal Antwerp Football Club*, 2023, para. 70.

¹³⁹ *ESLC*, 2023, para. 103. *Royal Antwerp Football Club*, 2023, para. 71.

¹⁴⁰ *ESLC*, 2023, para. 104. *Royal Antwerp Football Club*, 2023, para. 72.

¹⁴¹ *ESLC*, 2023, para. 105. *Royal Antwerp Football Club*, 2023, para. 73: “the nature, organisation or functioning of the sport concerned and, more specifically, how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it at all levels, with which the Union is to foster cooperation, in accordance with Article 165(3) of the TFEU.”

¹⁴² *Lehtonen*, 2000, para. 54–55. In the present case, however, the timetable adopted by the authorities did not appear to satisfy the proportionality test because, according to the CJEU, although the final assessment is left to the national court, the application of two different transfer deadlines to players from the European zone and those from outside did not appear to be justified (para. 58–59). This concrete, context-sensitive analysis is also evident in *Deliege*, where sporting authorities exercised selection power for an international judo competition, which was regarded as “a need inherent in the organisation of such a competition” (para. 69).

FIFA and UEFA statutes, which confer on those associations the power to authorise both the organisation of football competitions and the participation of clubs and players therein, subject to the risk of sanctions, may lead those bodies to an abuse of a dominant position prohibited by Article 102 of the TFEU. In addressing this issue, the CJEU begins by emphasising that football “is not only of considerable social and cultural importance in the European Union (...), but also generates great media interest.”¹⁴³ It then enumerates its “specific characteristics”¹⁴⁴ as the multitude of competitions at the national and European levels involving “the participation of very many clubs and also that of large numbers of players.”¹⁴⁵ The CJEU further recalls the knockout nature of matches and the central role played by “sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.”¹⁴⁶ For all these reasons, and “in the specific context of professional football,”¹⁴⁷ the CJEU concludes that neither the rules at issue nor their implementation by FIFA or UEFA can be regarded, “in terms of their principle or generally,”¹⁴⁸ as constituting an “abuse of a dominant position.”¹⁴⁹ In the same vein, when reviewing the exploitation of rights linked to sporting competitions by FIFA and UEFA,¹⁵⁰ while referring back to the national court the task of assessing the “efficiency gains”¹⁵¹ capable of justifying a derogation from Articles 101 and 102 of the TFEU, the CJEU considers that the specific arguments advanced by the intervening governments and the European Commission “appear, at first sight, to be convincing in the light of the essential characteristics of interclub football competitions organised at global or European level”.¹⁵² In that regard, a wide range of concrete elements linked to the specific nature of interclub football

¹⁴³ *ESLC*, 2023, para. 143.

¹⁴⁴ *Ibidem*, loc. cit.

¹⁴⁵ *Ibidem*, loc. cit.

¹⁴⁶ *Ibidem*, loc. cit.

¹⁴⁷ *Ibidem*, para. 145.

¹⁴⁸ *Ibidem*, loc. cit.

¹⁴⁹ *Ibidem*, loc. cit. The same reasoning applies to the sanctions attached to those rules (para. 146).

¹⁵⁰ *Ibidem*, para. 217. As the CJEU recalls, such rights may cover a wide range of benefits, including, for example, proprietary rights, rights of recording, reproduction, audiovisual broadcasting of matches, multimedia rights, marketing and promotional rights, and intellectual property rights (para. 221).

¹⁵¹ *Ibidem*, para. 232-233.

¹⁵² *Ibidem*, para. 235. In the present case, the interveners referred to the importance of the objective of “social redistribution within football” and to the benefits derived from the centralisation of property rights linked to competitions for the benefit of “various actors within football,” such as “amateur clubs, professional players, women’s football and young players,” as well as “supporters” and “consumers, namely television viewers” (para. 234).

are considered, such as “the interdependence”¹⁵³ binding professional football clubs to one another, the importance of “smaller professional football clubs and amateur football clubs”¹⁵⁴ in contributing to the emergence of talent, as well as the “the solidarity role of football”¹⁵⁵ which contributes to “its educational and social function within the European Union”.¹⁵⁶ In the present case, the judgement expresses reservations to the national court concerning the compatibility of all the rules examined with the Treaties – primarily due to the absence of substantive criteria and procedural safeguards governing them¹⁵⁷ – the consideration given by the CJEU to the specific characteristics of sport in the exercise of its review is therefore beyond doubt. Thus, those specificities play only a limited role as a matter of principle in excluding sporting activity from the material scope of EU law. In most cases, they are merely considered when concretely assessing the compatibility of national, international, public or private sporting regulations with the rules of European integration.

4 Conclusion

The law of European integration remains limited at the level of the Union’s internal policies and actions because of the lack of sufficient legislative competence and the fact that the Union is confined to a supporting competence in this field. Its effect is more substantial concerning the substantive rules governing free movement and undistorted competition, in so far as sport, whether regarded as an economic activity or “as such,”¹⁵⁸ does not escape compliance with EU law. This binary presentation is neither exhaustive nor definitive. First, it fails to account for the variations in the degree of integration within each EU sport law issue group. For instance, with regard to the so-called reduced effect, this characterisation should not obscure the fact that the level of political integration has reached a far more advanced state in certain areas of sporting interest including health, the prevention of violence and racism, gender equality, digitalisation, corruption and anti-doping.¹⁵⁹ Second, both the

¹⁵³ Ibidem, para. 235.

¹⁵⁴ Ibidem, loc. cit.

¹⁵⁵ Ibidem, loc. cit.

¹⁵⁶ Ibidem, loc. cit.

¹⁵⁷ Ibidem, para. 147-152, 178 and for free movement of services see para. 224-255.

¹⁵⁸ See Durand & Templé, 2024, p. 258.

¹⁵⁹ By way of illustration of areas that have not yet been genuinely Europeanised, reference may be made to the regulation of sporting competitions as such, the organisation of the competent authorities and generally rules related to the determination of their respective composition and powers.

Union's competences and the CJEU of Justice's analyses are evolving, the former through Treaty revision or legislative reforms, the latter through shifts in case law. Therefore, sport is not immune to a moving spillover effect, the intensity of which may vary depending on future developments. The analytical framework proposed in this study already highlights that the idea of an "ever closer union" is taking shape with considerable consistency in the field of sport within the EU law. The remaining question is whether, in other areas such as foreign policy or military defence, Europe will be able to progress with the same certainty.

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