# Action for Good Governance in International Sports Organisations

Final report • April 2013

JENS ALM (ed.)

Play the Game/
Danish Institute for Sports Studies
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Danish Institute for Sports Studies
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Action for Good Governance in International Sports Organisations. Final report

The Action for Good Governance in International Sports Organisations final report is developed by Play the Game/Danish Institute for Sports Studies, University of Leuven, Loughborough University, German Sport University Cologne, Utrecht University, Swiss Graduate School of Public Administration (IDHEAP), University of Ljubljana and European Journalism Centre.

Published by: Play the Game/Danish Institute for Sports Studies, Copenhagen, Denmark, 2013

The AGGIS project has received funding from the European Commission under the framework of the Preparatory Actions in Sport. The Commission is not responsible for any communication and publication by AGGIS or any use that may be made from information contained therein.

ISBN: 978-87-92120-60-1 (printed edition); 978-87-92120-61-8 (PDF edition)

Photos: Periskop

Layout: Anne von Holck, Tegnestuen Trojka

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# Content

# A step towards better governance in sport

**Preface by Play the Game/Danish Institute for Sports Studies**

Over several decades serious questions about the governance standards of sport have surfaced in the public with irregular intervals. In the past couple of years, however, the accumulation of scandals in sport has grown so intensely that the credibility of sport and its organisations is shaken fundamentally, threatening the public trust in sport as a lever of positive social and cultural values in democratic societies.

Since 1997 Play the Game has worked to raise awareness about governance in sport, mainly by creating a conference and a communication platform (www.playthegame.org.) on which investigative journalists, academic experts and daring sports officials could present and discuss evidence of corruption, doping, match fixing and other fraudulent ways of behaviour in sport.

In the course of the years the need for not only pointing to the obvious problems, but also to search for solutions, became ever more urgent.

So when the European Commission's Sports Unit in 2011 launched a call for a preparatory action in the field of the organisation of sport under the framework of the Preparatory Actions in Sport, it was a most welcomed chance for Play the Game – now merged with the Danish Institute for Sports Studies – to widen and deepen the search for solutions.

In partnership with six European universities and the European Journalism Centre we were so fortunate to get a 198,000 Euro grant for our project which we dubbed Action for Good Governance in International Sports Organisations (AGGIS).

This action instantly developed beyond our expectations. Originally, we only set out to produce some reports on concepts of good governance, adding a set of guidelines to inspire sport.

But from the first very intense meeting with our partners in Copenhagen in January 2012 we decided to raise the stakes and the ambitions. This is why we were able to develop a new measuring tool in the world of sports governance:

The Sports Governance Observer.

This tool will enable not only Play the Game and our AGGIS partners, but any person with a serious commitment to sports governance, including people in charge of sports organisations, to register and analyse the quality of governance in the international or major national sports organisation they are related to.

The Sports Governance Observer is based on the best theory in the field, but adapted so it is not for academic use only. In the course of sometime it will reach its final form,

where each indicator will be equipped with a fiche that explains the criteria for giving grades and the rationale for including the indicator.

From today and some months ahead, the AGGIS group has committed itself to further test the tool, applying it on a large number of international sports organisations, and present the results at the next Play the Game conference in Aarhus, Denmark, 28-31 October 2013.

We welcome you to follow the testing phase and submit your comments via www.aggis.eu.

On this site, we also invite you to submit your papers, surveys, reports, proposals and thoughts about good governance, so we can have a common platform for the continued work.

On the following pages, you will find a number of scientific articles that explain the theoretical basis of the Sports Governance Observer by taking a closer look at the definitions of concepts like transparency, accountability, compliance, democracy – and, of course, governance itself.

In the course of the project, the group was also inspired to produce a variety of articles on issues related to the current situation in international sport. You will find two articles on the interaction between the EU and the sports organisations, an analysis of the prevailing one-nation, one-vote principle in sport, and an article of the highly topical issue of how Swiss legislation affect the international federations and the IOC.

As one of its first steps, the AGGIS project furthermore carried out a survey on various parameters in sports governance in the international federations – such as the gender balance in the top leadership, the existence (or not) of independent ethical committees, duration of leadership terms and geographical distribution of leaderships.

Last, but not least, you will find a review over existing literature in the field.

With this report our EU Preparatory Action has come to an end. However, all project partners are as committed as ever to continue the cooperation which, we hope, has delivered a product that will contribute to reforming sport, making it more transparent, accountable and democratic in the years to come.

We would like to give our warmest thanks to the European Commission's Sport Unit for its support and advice along the way, and to those experts outside the project who have contributed with corrections and advice.

First and foremost, we owe a lot of gratitude to the staff of the Play the Game/Danish Institute for Sports Studies and all our project partners – University of Leuven, Utrecht University, German Sport University Cologne, University of Loughborough, University of Ljubljana, Swiss Graduate School of Public Administration (IDHEAP) and the European

Journalism Centre – for their engagement in a process that has been inspiring, enriching and fun all the way through.

On behalf of Play the Game and the Danish Institute for Sports Studies,

**Jens Sejer Andersen**
**International Director**

**Henrik H. Brandt**
**Director**

# The governance agenda and its relevance for sport: introducing the four dimensions of the AGGIS sports governance observer

**By Arnout Geeraert, HIVA - Research Institute for Work and Society; Institute for International and European Policy; Policy in Sports & Physical Activity Research Group, KU Leuven, Leuven, Belgium**

## Conceptualisations of governance and their relevance for International Non-Governmental Sports Organisations

### Governance: too many meanings to be useful?

In the last two decades, a significant body of governance literature has emerged. This has led to some considerable theoretical and conceptual confusion and therefore, "govern-ance" is often used very loosely to refer to rather different conceptual meanings. Van Kersbergen and van Waarden (2004), for example, distinguish no less than nine different meanings regarding "governance", which may lead to the conclusion that the term simply has "too many meanings to be useful" (Rhodes, 1997, p. 653).

Definitions on governance depend largely on the respective research agendas of scholars or on the phenomenon that is being studied. Perhaps the best way to find a useful clarification on the concept is by distinguishing it from, at least at first sight, similar concepts. For instance, Kooiman (1993) differentiates governance from "governing", defining the latter as those societal activities which make a "purposeful effort to guide, steer, control, or manage (sectors or facets of) societies" (p. 2). Governance, then, is mainly concerned with describing "the patterns that emerge from the governing activities of social, political and administrative actors" (p. 3). Another commonly described distinction is that between governance and "government": while government usually refers to the formal and institutional top-down processes which mostly operate at the nation state level (Stoker, 1998), governance is widely regarded as "a more encompassing phenomenon" (Rosenau, 1992, p.4). Indeed, in addition to state authorities, governance also subsumes informal, non-governmental mechanisms and thus allows non-state actors to be brought into the analysis of societal steering (Rosenau, 1992, p. 4, Lemos and Agrawal, 2006, p. 298). In that regard, the notion of governance through so-called "governance networks", used to describe public policy making and implementation through a web of relationships between state, market and civil society actors, has gained prominence in governance literature in recent years (Klijn, 2008, p. 511).

### The governance of sports: from hierarchic self-governance to networked governance

Governing networks in sport, safe for those in North America, are based on a model created in the last few decades of the 19th century by the Football Association (FA), the governing body of the game in England to this day (Szymanski and Zimbalist, 2005, p. 3). This implies that International Non-Governmental Sports Organisations (INGSOs) are

the supreme governing bodies of sport since they stand at the apex of a vertical chain of commands, running from continental, to national, to local organisations (Croci and Forster, 2004). In other words, "the stance taken by a governing body will influence decisions made in any organisation under that governing body's umbrella" (Hums and MacLean, 2004, p. 69). This hierarchic structure is said to be undemocratic since those at the very bottom of the chain of commands, i.e. clubs and players who want to take part in the competitions of the network, are subject to the rules and regulations of the governing bodies, often without being able to influence them to their benefit (Geeraert *et al.*, 2012).

In addition, INGSOs have traditionally known a large autonomy and in that sense, they were subject to almost complete self-governance. Hence, public authorities at national level, and even less so at the international level, have had very little impact on their functioning. For almost a century, the sporting network was even able to exercise its self-governance without any significant interference from states or other actors[1] and, cherishing its political autonomy, the sports world generally eschews state intervention in its activities. This situation was further enforced by the fact that, like many multinational corporations operating on a global playing field, INGSOs are able to choose the optimal regulatory context for their operations and as such they pick a favourable environment as the home base for their international activities (Forster and Pope, 2004, p. 9; Scherer and Palazzo, 2011, p. 905). This is mostly Switzerland, where they are embedded into a legal system that gives them enormous protection against internal and external examination (Forster and Pope, 2004, p. 112). All this has led to a strong feeling and practices of exceptionalism for sports, which we would probably not accept from other forms of social activities and organisation (Bruyninckx, 2012).

Currently, the self-governed hierarchic networks that traditionally constitute the sports world are increasingly facing attempts by governments –mostly due to the commercialisation of sport- and increasingly empowered stakeholder organisations to interfere in their policy processes (Bruyninckx, 2012; Geeraert *et al*, 2012). At the European level, for instance, the 'Bosman ruling' assured for a definitive but forced EU involvement in sport (García, 2007). The 'governmentalisation of sport' (Bergsgard *et al.*, 2007, p. 46) might seem paradoxical in a time when most academic literature speaks of a retreat of the state from the governance of society. However, when we regard INGSOs as the main regulatory bodies of the sports world, their erosion -or rather delegation- of power mirrors the recent evolutions in societal governance quite perfectly (Geeraert *et al.*, 2012). At the same time we witnessed an increasing influence of stakeholder organisations in sports governance. All those developments have led to the emergence of a more networked governance in sport to the detriment of the traditional hierarchic self-governance (Croci and Forster, 2004; Holt, 2007). Thus, there is a shift from the classic unilateral vertical channels of authority towards new, horizontal forms of networked governance.

1 This was primarily due to the fact that, for the largest part of the 20th century, the commercial side of sport was of marginal importance. On the European continent, governments have also been reluctant to intervene in the sports sector as, even now, they tend to regard it more as a cultural industry or leisure activity rather than a business (Halgreen, 2004, p. 79). Finally, since sport is very attractive to politicians, as patriotic sentiments might come into play, governments often grant the sports industry special treatment and even exemptions.

## Governance as a normative concept: Good governance

The governance debate has been increasingly normative and prescriptive, hence the current global quest for so-called "good governance". In the national realm, we witnessed the passing of absolute and exclusive sovereignty, as with the end of the cold war, it became politically more correct to question the quality of a country's political and economic governance system in international fora (Weiss, 2000, pp. 796-806). Thus, what has been described as a "chorus of voices" has been urging governments "to heed higher standards of democratic representation, accountability and transparency" (Woods 1999, p. 39). Hence, according to the World Bank, good governance is "epitomised by predictable, open and enlightened policy making; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; and all behaving under the rule of law" (World Bank, 1994).

In the corporate world, good governance is usually referred to as "corporate governance" or "good corporate governance", which relates to the various ways in which private or public held companies are governed in ways which are accountable to their internal and external stakeholders (OECD, 2004, p. 11; Jordan, 2008, p. 24). Its origins derive from the early stages of capital investment and it regained prominence out of scepticism that product market competition alone can solve the problems of corporate failures (Shleifer and Vishny, 1997, p. 738).

International institutions have issued checklists of factors that, in their experience, are useful indicators of good governance for a wide array of actors in both the private and the public sphere at national and international level (e.g. UNDP, 1997; European Commission 2001a; OECD, 2004; WB 2005; IMF, 2007). Such checklists serve as a yardstick for good governance and are oriented towards core features of governance structures and processes that are especially to be found in OECD countries (Hyden, Court and Mease, 2004). They comprise factors that include key principles such as accountability, efficiency, effectiveness, predictability, sound financial management, fighting corruption and transparency. In addition, when they refer to the political area, they may also include participation and democratisation, since a democratic environment is seen as a key background variable for good governance (e.g. Santiso, 2001).

## Good governance in International Non-Governmental Sports Organisations

Only recently, the call for good governance has finally reached the traditionally closed sporting world (e.g. Sugden and Tomlinson 1998; Katwala, 2000; IOC, 2008; Pieth, 2011; Council of Europe, 2012; European Commission, 2012). That this happened in sport much more slowly than in other sectors has to do with the traditional closed hierarchic self-governance of the sporting world. Nevertheless, in recent years, the quality of the self-governance of INGSOs has been increasingly questioned due to the commercialisation of sport, which painfully exposed governance failures such as corruption and bribery, but also made sport subject to the more avaricious and predatory ways of global capitalism (Andreff, 2000; 2008; Sugden, 2002; Henry and Lee, 2004). Indeed, a long list of rule or norm transgressions and scandals in the sports world has prompted the debate for more public oversight and control over the world of sports. It is at the highest level of

sports organisations that these practices seem to coalesce in their most visible and blatant form. In the last decade, civil society as well as public authorities has asked legitimate questions about rule and norm setting, compliance and sanctioning, as well as about the distribution of costs and benefits of (professional) sports. The large autonomy, the global dimension and the scandals, together with the ever more visible and explicit linkages between sports and other policy domains have laid the basis for the calls for good governance in the world of sport (Bruyninckx, 2012).

The importance of good governance in INGSOs cannot be underestimated. Analogous with the business world, economic sustainability ensures that INGSOs can achieve their long-term objectives as it ensures that they continue to operate in the long run (Bonollo De Zwart and Gilligan, 2009). Complying with good governance is also a means for making sure that an INGSO is capable to steer its sport in an increasingly complex sporting world (Geeraert *et al.* 2012). Moreover, in addition to enhancing public health through physical activity, sport has the potential to convey values, contribute to integration, and economic and social cohesion, and to provide recreation (European Commission, 2007). It has been argued that those important sociocultural values of sport are seriously undermined by corruption (Schenk, 2011, p. 1). Also, as sports commercialised significantly, particularly during the last two decades, the socioeconomic impacts on the wider society of rules devised and issued by sports bodies have increased accordingly (Katwala, 2000, p. 3). This evolution, which mirrors the growing influence from international non-governmental organisations on what once had been almost exclusively matters of state policy (Weiss, 2000, p. 800), also has as a consequence that the lack of good governance in INGSOs has the potential to have substantial negative repercussions on the wider society. Finally, since INGSOs are charged with taking care of a public good, it is paramount that they take care of their sports in a responsible and transparent manner (Katwala, 2000, p. 3; Henry and Lee, 2004).

Notwithstanding the current internal and external efforts, the impression is that there still is inertia towards the achievement of better governance in the sports world (Katwala, 2000, p. 2-5; Play the Game, 2011). That can partly be attributed to the fact that, with regard to good governance in sports, there are important knowledge gaps, situated at two levels. First, there is no generally accepted good governance code for INGSOs. Good governance principles must always take account of the specificity of the relevant organisation (Edwards and Clough, 2005, p. 25). Therefore, codes from other sectors cannot be applied blindly to sports, since INGSOs are in fact a very peculiar kind of organisations. In their capacity as regulators/promoters of their sports, they in fact comprise elements of state, market and civil society actors, and this poses serious questions with regard to which elements from good governance checklists can and should be applied to them. Moreover, there are many different structures to be discerned within different INGSOs (Forster and Pope, 2004, p. 83-100), which only adds to the complexity of the issue. Hence, a set of core and homogeneous principles is still missing, despite efforts by a multitude of actors at different levels. Second, there is a clear lack of substantive empirical evidence on the internal workings of INGSOs (Forster and Pope, 2004, p. 102). High profile scandals related to corruption teach us that there probably is

something wrong, but we have no clear image of the magnitude of the structural organisational issues in the governance of INGSOs.[2]

Hence, it is clear that a set of core and homogenous principles of good governance in INGSOs is needed. In addition, a systemic review of the degree to which INGSOs adhere to such principles is necessary in order to evaluate the current state and future progress of these organisations. The AGGIS Sports Governance Observer provides a means to these ends. In particular, the tool is comprised of four dimensions, which are all of paramount importance in relation to good governance in INGSOs. In the remaining part of this paper, their importance is explained and demonstrated.

## The four dimensions of good governance of the Sports Governance Observer

### Transparency and public communication

Transparency is widely regarded as a nostrum for good governance (Hood and Heald, 2006). That notion can also be inversed, as failures of governance are often linked to the failure to disclose the whole picture (OECD, 2004, p. 50). Moreover, transparency is seen as a first line of defence against corruption (Schenk, 2011).

Conceptually, transparency is closely related and even connected to accountability. Indeed, in the narrow sense of the term, accountability requires institutions to inform their members of decisions and of the grounds on which decisions are taken. In order to achieve this practically, organisations must have procedures that ensure transparency and flows of information (Woods, 1999, p. 44). Nevertheless, the reality is that transparency is often more preached than practiced and also more invoked than defined (Hood, 2006, p. 3). According to Hood (2001),

> "in perhaps its commonest usage, transparency denotes government according to fixed and published rules, on the basis of information and procedures that are accessible to the public, and (in some usages) within clearly demarcated fields of activity" (p. 701).

It is however true that transparency, as a doctrine of governance, often has multiple characteristics. In fact, transparency has been figuring in numerous doctrines of governance which are for instance concerned with the way states should relate to one another and to inter- or supra-national bodies, but also at the level of individual states and at the level of business affairs (Hood, 2006). Doctrines of openness in dealings between executive governments and citizens at national level further developed and spread widely with the fall of the Soviet Union (Diamond, 1995). In the field of business, transparency often goes under the title of "disclosure". High-profile corporate failures

2 Another paper in this report, "Good governance in International Non-Governmental Sport Organisations: an analysis based on empirical data on accountability, participation and executive body members in Sport Governing Bodies", aims to present a first attempt to fill this knowledge gap and clearly demonstrates the sense of urgency with regard to the need for good governance in INGSOs.

that exposed certain information asymmetries provided windows of opportunity to introduce obligations on corporations to disclose and publish information on themselves (Hood, 2006, p. 17). Today, national and EU legislation imposes disclosure requirements on (public) companies, which includes financial reporting.

In general, professional sports lack transparency, not in the least with regard to money matters, and this allows for a business model that would be unacceptable in other parts of economic activity (Bruyninckx, 2012). The desire for transparency amongst the public following several ethical scandals in the sports world shows that it is no longer possible for sport organisations to be run as a "closed book" (Robinson, 2012). Consequently, transparency is regarded as one of the top level topics concerning good governance in INGSOs (European Commission, 2012). Since these organisations are charged with taking care of a public good, Henry and Lee (2004), argue that "their inner workings should as far as possible be open to public scrutiny" (p. 31). Moreover, since sport, both at amateur and at professional level, relies heavily on public sector support, INGSOs are also expected to demonstrate a high degree of accountability to their surrounding community (Katwala, 2000, p. 3; Henry and Lee, 2004, p. 31; Wyatt, 2004). In fact, a growing public anger at individuals and institutions that are supposed to pursue the public's interests but refuse to answer to their grievances exists not only with regard to state authorities (Elchardus and Smits, 2002; Mulgan, 2003, p. 1; Dalton, 2004), but increasingly as regards INGSOs.

Indeed, it is important that an INGSO is accountable to the citizens who are directly affected by its decisions, in particular when it is involved in decision making with repercussions for other policy areas and for large sections of the citizens (Torfing et al., 2009, p. 295). Therefore, it should produce regular narrative accounts that seek to justify its decisions, actions and results in the eyes of the broader citizenry and engage in a constructive dialogue with those who are publicly contesting their decisions, actions and results (Sørensen and Torfing, 2005). That way, INGSOs will not become closed and secret clubs, "operating in the dark" (Fox and Miller, 1995; Dryzek, 2000; Newman, 2005). Thus, in order to be transparent, INGSOs should adhere to disclosure requirements, including financial reporting, and adequately communicate their activities to the general public.

## Democratic process

INGSOs can be defined as "private authorities", in the sense that they are private institutions that exercise what is perceived as "legitimate authority" at a global level (Hall and Biersteker, 2002). In many ways, INGSOs are taking care of a public good but their legitimacy to do so is undermined by their lack of internal democratic processes. Hence, democratic legitimacy can be obtained if INGSOs and the actors within them follow rules and norms inherent to a democratic grammar of conduct (Mouffe, 1993). Furthermore on that note, it must be clear that INGOs are a particular breed of global organisations. It is true that especially the biggest INGSOs are increasingly resembling multinational corporations, often making vast sums of money through the marketing of their main events. However, within their sphere of private authority, INGSOs also share many state-like institutional characteristics, which resemble the traditional statist top-

down system of government. Many sports organisations operate under a sort of constitution, and have a government or executive committee, while mostly lacking a legislative branch (i.e. a forum for participation and legitimate decision making), thus *de facto* operating as an authoritarian system of rule-setting and regulation. Even the most typical of state characteristics, namely sovereignty -referring to the fact that there is no power above the state- is claimed by the largest and most dominant sports organisations (Bruyninckx, 2012). In addition, most sports federations also have a legal system, including an internal compliance and sanctioning system. Therefore, principles of good governance for INGSOs should also include concepts usually applicable to the political sphere, such as participation and democratisation (e.g. Santiso, 2001). The high degree of autonomy has however allowed the world of sports to function according to its own priorities and this has had repercussions for the internal democratic functioning of INGSOs. Finally, the primary function of INGSOs, according to their statutes, is to be the "custodian" of their sports. Consequently, it should not focus on the (commercial) interests of a limited (elite) group of stakeholders, nor should its executive body members be guided by personal gains. It is clear that an organisation which has an internal democratic functioning will be less prone to such practices.

Internal democratic procedures that are relevant for INGSOs can be derived from many different currents of democratic theory. The interweaving of theoretical discussions of how to define democracy and the political discussions of how to institutionalise democratic forms of governance in the present societies means that democratic procedures are in fact subject to endless political contestations and therefore, it is extremely difficult to draw up a complete or unbiased list of democratic procedures that should be present in INGSOs (Sorensen and Torfing, 2005, p. 212). Nevertheless, drawing from generally accepted democratic practices in the public sector, it is possible to draw up an open-ended list of relevant indicators for this dimension.

One of the main issues with regard to democratic processes in INGSOs is the lack of stakeholder participation. According to Arnstein (1969), "participation of the governed in their government is, in theory, the cornerstone of democracy -a revered idea that is vigorously applauded by virtually everyone" (261). In INGSOs, however, their main constituencies have traditionally been kept out of the policy processes that are decisive to the rules that govern their activities. Indeed, due to the traditional hierarchic governance in sports, sports policy is rarely carried out in consultation with athletes, and almost never in partnership with athletes (Houlihan, 2004, pp. 421-422). That seems paradoxical and somewhat ironic, as sporting rules and regulations often have a profound impact on athletes' professional and even personal lives. Moreover, hierarchic governance in sport is a major source of conflict, since those that are excluded from the decision making process may want to challenge the federation's regulations and decisions (Tomlinson, 1983, p. 173; García, 2007, p. 205; Parrish and McArdle, 2004, p. 411) and failure to consult stakeholders increases the potential for splits in sporting governance (Henry and Lee, 2004, p. 32).

Democratic processes can also be seen as accountability arrangements. Accountability is a cornerstone of both public and corporate governance because it constitutes the principle that informs the processes whereby those who hold and exercise authority are held to

account (Aucoin and Heintzman, 2000, p. 45). INGSOs are mostly membership organisations and the member federations of SGBs usually "own" the organisation since they have created it (Forster and Pope, 2004, p. 107).[3] In that regard, the relation between an INGSO and its members can be defined in accordance with the principal-agent model (Strøm, 2000). Member federations, the principals, have given away their sovereignty to their INGSO and expect its executive body members to behave in their best interest. Accountability arrangements and mechanisms then help to provide the principals with information about how their interests are represented and offer incentives to agents to commit themselves to the agenda of the principal (Przeworski, Stokes and Manin, 1999; Strøm, 2000; Bovens, 2007, p. 456).[4] The main way in which member federations can hold their INGSO accountable is through their statutory powers. Most notably, these relate to the election of the people that govern the organisation, i.e. the members of the executive body of the organisation, but also to the selection process of the INGSO's major event. Hence, if these are not organised according to democratic processes, this will result in a lack of accountability and thus constitute a breeding ground for corruption, the concentration of power and the lack of democracy and effectiveness (Aucoin and Heintzman, 2000; Mulgan, 2003, p. 8; Bovens, 2007, p. 462).

## Checks and balances

Checks and balances is one of the key elements of effective accountability arrangements. Indeed, one of the main rationales behind the importance of accountability is that it prevents the development of concentrations of power (Aucoin and Heintzman, 2000; Bovens, 2007, p. 462). As such, one of the cornerstones of democracy is the system of checks and balances in state authority, which limits the powers of the legislative, executive and judiciary branches of the state. For instance, the power to request that account be rendered over particular aspects is given to law courts or audit instances. A lack of such arrangements brings with it, and constitutes a breeding ground for, issues related to corruption, the concentration of power, and the lack of democracy and effectiveness (Aucoin and Heintzman, 2000; Mulgan, 2003, p. 8; Bovens, 2007, p. 462).

The separation of powers is also a good governance practice in non-governmental organisations or in the business world (OECD, 2004, p. 12; Enjolras, 2009). For instance, the separation of power between the management of an organisation and the board entails a system of checks and balances that entails the implementation of internal control procedures (Enjolras, 2009, p. 773). There seems to be growing agreement in the professional sports world that a system of checks and balances and control mechanisms are also needed in INGSOs and that it constitutes good governance (IOC, 2008, p. 4; Philips, 2011, p. 26). Indeed, a checks and balances system is paramount to prevent the concentration of power in an INGSO and it ensures that decision making is robust, independent and free from improper influence. In reality, the concept of separation of

3 In this context, it is important to note that, whereas most other INGSOs are the creations of groups of national associations that voluntarily gave up their autonomy, the International Olympic Committee was a top-down creation.
4 However, Forster and Pope (2004 p. 107-108) argue that a realistic interpretation of the relationship between SGBs and their members would be that SGBs operate independently of the national federations and not as their agent. Nevertheless, in fact, according to Mulgan (2003) "the principal who holds the rights of accountability is often in a position of weakness against his or her supposed agent" (p. 11). Such weakness indeed provides for the reason for accountability in the first place and underscores the importance of adequate arrangements.

powers in sports governance is underdeveloped and usually implies separating the disciplinary bodies from the political and executive arms of a sports body. That means that active officials are usually excluded from the disciplinary body and –if present- the appeal body of the SGB, thus separating the disciplinary bodies from the political and executive arms of the organisation.

Nevertheless, checks and balances should also apply to staff working in the different boards and departments of an organisation, since they usually ensure that no manager or board member or department has absolute control over decisions, and clearly define the assigned duties, which is in fact the very core of the concept. It seems like INGSOs have been pre-occupied with dealing with corruption and malpractice on the playing field rather than with the quality of their own internal functioning (Forster and Pope, 2004, p. 112). Consequently, they generally lack adequate internal checks and balances, which can be designated as one of the main causes of corruption, the concentration of power, and the lack of democracy and effectiveness in the sports world.

## Solidarity

In the corporate sphere, an increasing number of companies decide voluntarily to contribute to a better society and a cleaner environment by integrating social and environmental concerns in their business operations and in their interaction with their stakeholders. They promote so-called "corporate social responsibility strategies" as a response to a variety of social, environmental and economic pressures (European Commission, 2001b). This responsibility is expressed towards employees and more generally towards all the stakeholders affected by business. In turn, this can influence the success of a company, differentiating itself from competitors and building a better image and reputation and creating consumer goodwill and positive employee attitudes and behaviour, resulting in a 'win–win' scenario for the company and its community (Whetten, Rands, and Godfrey, 2002; Kotler and Lee, 2005; Valentine and Fleischman, 2008).

Increasingly, sports organisations at all levels are facing a higher demand for socially, ethically and environmentally responsible behaviour and are also being offered significant chances to establish themselves in that regard (Babiak, 2010; Davies, 2010). On that note, INGSO not only have a responsibility towards their stakeholders, such as their member federations, but also towards the general public. Given the sociocultural values of sport, they in fact have the potential to have a huge positive impact on the wider society (European Commission, 2007). It seems only fair that INGSOs "give something back", as they generally receive a lot from society. Indeed, historically, sport relies heavily on public financial support and even today, sports activities often rely on public funds (see Eurostrategies *et al*, 2011). The professional sports world is even increasingly asking for access to public funds, or expects governments to 'invest' in sports. Public money pays for the building of stadiums, public transport infrastructures, public television contracts for competition, investments in "training centres" for the next batch of professional competitors, *etc.*, not speak of some of the central tasks of the government which are solicited by the organisers of professional sports events such as security and traffic regulation (Bruyninckx, 2012).

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# Accountability and good governance

**By Professor Barrie Houlihan, Sport Policy and Management Group School of Sport, Exercise & Health Sciences Loughborough University, UK**

One of the central elements of good governance is the existence of effective accountability processes. Yet, as with so many aspects of good governance, the concept is hard to define and even harder to operationalize. Of particular importance is not to treat accountability in isolation from other elements of good governance. It may be argued that good governance is not only about openness/transparency and accountability, but also about:

- Efficiency in the pursuit of organisational objectives
- A culture of trust, honesty and professionalism and
- Organisational resilience

An exaggerated emphasis on accountability and 'the deification of accountability' (Flinders, 2011, p. 600) may undermine efficiency and suffocate capacity (see Anechiarico and Jacobs, 1996); the pursuit of efficiency might weaken trust, honesty and professionalism; or high levels of professionalism may reduce the need for extensive formal mechanisms of accountability. With the need for balance in mind and turning to the question of defining accountability Scott reflects a common view in arguing that the emphasis on traditional upwards, straight-line accountability has been replaced not by the neo-liberal 'downward' accountability of the market, but by 'extended accountability' within which 'traditional accountability is only part of a cluster of mechanisms through which public bodies are in fact held to account' (Scott, 2000, p. 245; Hill and Hupe, 2002; Considine, 2002; Wilkins, 2002). The concept of 'extended accountability' fits well with much good governance theory in relation to international sports federations as extended accountability anticipates a greater role for stakeholder groups and recognises the monopoly position of most IFs.

Although the concept of accountability is ubiquitous in much contemporary discussion of good governance of sports organisations a precise definition remains elusive. Stewart views accountability as involving 'both giving an account and … being held to account' (Stewart, 1994), Sir Robin Butler makes a distinction between accountability (providing an answer) and responsibility (liability or 'naming and blaming'), Romzek (1996) emphasises accountability as control while Thomas (1998) identifies preventing the potential abuse of power as the ultimate aim of accountability systems. There is also a debate about what organisations are being held accountable for with much of the current literature assuming an easy demarcation between the setting of strategic goals, the design of operational targets, the organisation of delivery, and delivery itself.

The starting point for the discussion of accountability in relation to international federations is the process of being called to account which locates, at the heart of accountability, a relationship that involves social interaction and exchange insofar as 'one side, that calling for the account, seeks answers and rectification while the other

side, that being held accountable, responds and accepts sanctions' (Mulgan, 2000, p.555; see also Thomas, 2003). At its simplest, mapping accountability entails identifying *who is accountable, for what, how, to whom and with what outcome*. These questions can be grouped into three themes, the first of which concerns the dominant character of the accountability relationship and the balance of emphasis between the provision of an explanation, the exercise of control, and the establishment of liability, as well as whether the primary focus is the organisation or the individual (Newman, 2004). The second theme relates to the attitude towards the accountability relationship and the extent to which it is seen as a legitimate obligation by the organisation being held to account. While some organisations may operate within a culture where the accountability relationship is accepted as normal and as a duty others, probably many, if not most, international federations, may see the relationship as an imposition to be resisted and, if possible, avoided (O'Loughlin, 1990; de Leon, 2003). The final theme concerns the mechanisms through which the relationship is operationalized and would include reporting mechanisms, establishment of transparency, and stakeholder representation on managing boards.

However, as indicated above each of these themes is shaped by the pattern of values and attitudes dominant within the sport policy field, among governments, and at a deeper level of institutionalized values within international federations and other international sports organisations such as the IOC.

## Key question

1. Who is accountable, for what, to whom, for whom, by what means and with what expected outcome?

## Other related questions

2. How much accountability is required to maintain and demonstrate integrity without impairing organisational capacity/efficiency?
3. How do we avoid accountability being seen solely as adversarial and a punishment? How do we make accountability processes a set of activities that international federations want to be involved in?
4. How do we design an accountability system (and monitoring system) that does not simply encourage 'blame avoidance', but rather as a positive and welcome management resource?
5. Should the adoption of a relevant ISO be part of the good governance checklist?

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# The role of the EU in better governance in international sports organisations

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## Introduction

Since the entry into force of the Lisbon Treaty in 2009, article 165 of the Treaty on the Functioning of the European Union (TFEU) grants the EU an express role in the field of sport. However, the Member States only granted the EU a supporting competence, the weakest type of the three principal types of EU competence. In the areas where the EU has a supporting competence, it can only coordinate or supplement the actions of the Member States, who retain the primary authority. Thus, the impact of article 165 TFEU will remain limited, but nevertheless not insignificant. Sport is now brought within the explicit reach of the founding Treaties for the first time and obviously this is profoundly significant. Moreover, Article 165 TFEU definitely stimulates the further development of a coherent and direct sports policy.[5] Also, from a legal point of view, the EU's role in sports, which gradually increased over the years, is now legitimated in a legal and financial basis which means that sporting bodies can no longer claim that the EU should not be interfering in the sports sector. Furthermore, the newly adopted budget for sport enables the European Commission to support (mobility) projects, while article 165 TFEU grants the EU the competence, in consultation with the Member States, to coordinate projects among Member States.

However, because of its limited legal competences regarding sports and because of the recognised autonomous status of sports governing bodies at the European level, the EU does not have the power to intervene strongly in the sector. That means that at the EU level, a difficult balance has to be found between allowing total autonomy and establishing an extensive framework for government intervention.

Before the Lisbon Treaty, EU policymaking in sport was limited to raising awareness, collecting information and/or the exchange of best practices through the use of 'soft' instruments, such as communications, conclusions, resolutions, reports or declarations. Now that the EU has an explicit competence in the field of sport, this approach will most likely not change. Besides, the European Commission's 2007 White Paper on Sport and 2011 Communication on the European dimension in sport clearly indicate that the Commission's main policy tool in sport is dialogue: structured dialogue with leading international and European sport organisations and other sport stakeholders; and political dialogue with Member States and other concerned parties.

Given its limited sporting competence, which role can or should the EU play in the quest for better governance in international sports organisations (ISOs)? This paper draws

5 For instance, the inclusion of sport within the Treaty required both the Commission and the Parliament to review their approach to sport and the EU institutions no longer work on a mere informal basis on sport. Thus, article 165 certainly creates "institutional momentum" (Weatherill, 2011, p. 12).

from new governance theories in order to demonstrate the benefits of EU interference in professional sports and to define the desired role for the EU therein. Finally, these findings are applied to the case of good governance in international sports organisations. In this way, we formulate answers to two highly pertinent questions: should the EU interfere in professional sports with regard to the need for better governance in ISOs; and, what form should such intervention take?

## Conceptual background: governance networks

The classical view of a direct and almost exclusive connection between state and the governing of society is less and less consistent with reality. Today, political systems and activities are no longer exclusively connected to –or even the prerogative of- states (Bruyninckx and Scheerder, 2009). Many reasons have been suggested to explain this phenomenon, but it is clear that the role of governments is changing. Governments are gradually managing society through self-governing networks. Within these networks, different non-state actors, such as citizens, professionals, voluntary organisations, unions and private actors are involved in policy-making, and more general processes of rule and norm formulation. This allows authorities to govern 'at a distance' (Rose, 1996, p. 43), but it does not mean that central and local governments are being hollowed out (Hirst, 1994). The role of states is increasingly changing into that of an 'activator' and 'facilitator' (Kooiman, 1993) but they still play a key role in local, national and transnational policy. Yet at the same time, their powers are steadily eroding, since they no longer monopolise the governing of the general well-being of the population (Rose, 1996; Sørensen and Torfing, 2005).

According to many policy analysts, the public sector has seen this erosion of government in order to deal with today's multi-layered society (Mayntz, 1991, 1999; Kickert 1991; Rhodes, 1996, p. 662). Government policies have evolved from a centralist, top-down model (labelled 'government') to a 'governance' model (Rose, 1996). Such new forms of governance also emerge at the international level. In order to compensate for the loss of governance capabilities of nation-states and to fill gaps in global regulation of global public goods, new forms of global governance are emerging (Zacher, 1999; Weiss, 2000; Keohane, 2006). Thus, at both international and domestic level, society is increasingly being governed by an interplay between the state, business and civil society. As such, private actors are increasingly engaging in activities that have traditionally been regarded as governmental activities and the clear line between the public and the private sector is blurring.

The term 'governance network', then, is used to describe public policy making and implementation through a web of relationships between state, business and civil society actors (Klijn, 2008, p. 511). In recent years, a second generation body of governance network literature has emerged, focusing on the democratic performance of governance networks (see e.g. Bogason and Musso 2006; Skelcher, Mathur and Smith, 2004; Sørensen and Torfing, 2005; Leach, 2006; Klijn and Skelcher, 2007; Papadopoulos, 2007).

Mostly due to the commercialisation of sport, the self-governed networks that traditionally constitute the sports world are currently facing attempts by governments and

increasingly empowered stakeholder organisations to interfere in their policy processes. Hence, policy in European professional sport is more and more made by a multi-level, multi actor network of intertwined stakeholder organisations, state authorities such as the EU and the relevant ISOs (Geeraert *et al*, 2012). The increased involvement of public authorities in sports might seem paradoxical in a time when most academic literature speaks of a retreat of the state from the governance of society. However, when we regard ISOs as the main regulatory bodies of the sports world, their erosion, or rather delegation, of power mirrors the recent evolutions in societal governance quite perfectly.

## The benefits of EU interference in professional sports

The EU has limited legal competences regarding sports and it recognises the autonomous status of sports governing bodies (European Council, 1997, 2000; Treaty of the functioning of the European Union, Article 165). So, what exactly is the desired role for the EU in high-level sports? Should the European Commission limit itself to its role in the past: pointing in the general direction indicated by the CJEU rulings and waiting for all the involved actors to move along while trying to achieve a compromise between them (Croci, 2009, p. 150)? We contend that the EU should assume a more pro-active role and that this would contribute to more efficient and democratically legitimate governance. Basically, we can summarise our argumentation in three points (see Geeraert *et al*, 2012; Geeraert, 2013, forthcoming).

### The need for democratic control on international sport organisations

The process of globalization leads to growing transnational interdependence of economic and social actors. Consequently, at the national level, globalisation has caused a loss of the regulatory powers of state institutions due to the fragmentation of authority and the increasing ambiguity of borders and jurisdictions (Cerny, 1995; Kobrin, 2009, p. 350). The modern welfare state has to cope with a 'regulatory overstretch' in the sense that it is no longer able to provide public goods or to prevent public bads in such fields as macroeconomic planning or social safety (Wolf, 2008, p. 227). On this note, Kooiman (2000, p. 139) points to the 'limitations of traditional public command-and-control as a governing mechanism', while Habermas (2001), in the same context, speaks of a 'postnational constellation'. In this new constellation, two traditional and best-understood modes of coordination, namely hierarchies (through regulative law) and markets (through financial incentives) are not appropriate media of political steering in this new constellation and thus, new forms of global governance are emerging, which mirror the increased delegation of authority to non-state actors we witnessed in the national realm. In addition, at the international level, a regulatory vacuum exists in which powerful transnational actors often have powers that dwarf those of many governments (Scherer and Palazzo, 2011, p. 900). Hence, the general worry with regard to globalization is that, in a globalized world, powerful actors are not accountable (Baylis, Smith and Owens, 2008, p. 11). Obviously, this goes for multinational companies, but the argument also applies to SGBs.

In the world of sports, SGBs, like many multinational corporations operating on a global playing field, are able to choose the optimal regulatory context for their operations and as such they pick a favourable environment as the home base for their international

activities (Forster and Pope, 2004, p. 9; Scherer and Palazzo, 2011, p. 905). This is mostly Switzerland, where they are embedded into a legal system that gives them extensive protection against internal and external examination (Forster and Pope, 2004, p. 112). The fact that there is no state actor imposing sound organisational rules on these private organisations is not without danger to the decency of their internal functioning since, in the absence of a 'whip in the window', the expectation is that the reliability of voluntary self-commitments suffers (Scharpf, 1994; Wolf 2008, p. 239). It is assumed that the potential threat that stricter regulations will be enacted unless the potentially affected actors adapt their behaviour to the expectations of the legislator, pushes those organisations which operate 'in the shadow of hierarchy' towards compliance. According to Wolf (2008, p. 244), 'even the most prominent functional equivalents to the checks and balances institutionalised within the political systems of democratic states (…) cannot be provided by private actors alone'. On the contrary, some authors even go so far as to suggest that hierarchical organisations which are not subject to (local) democratic control cannot be expected to have internal practices conductive to democratic manners (Hirst 2000, p. 21).

If SGBs need to be put under some kind of democratic control, which authority can fulfil this role? In theory, this could be the country where their headquarters are based. In practice, we see that SGBs are almost never subject to stringent requirements or external examination, while other national governments are clearly faced with a 'regulatory overstretch' with regard to these organisations. The EU seems to be the only actor capable of fulfilling this role and evidence suggests that its involvement in professional football has certainly contributed to more democracy in the sector (Geeraert, Scheerder and Bruyninckx, 2012). Although the EU does not have a strong sporting competence, in principle it does possess the ability to intervene much stronger in the sports sector on the basis of its internal market powers. While that is currently not at all politically desirable, such form of latent pressure is ever present in sport matters and hence, sport officials generally acknowledge that 'it is important to have good relations with the EU' (Interview: sports official, August 2012). As such, the EU has been able to influence the governance of sport at the highest level with consequences for multiple and various actors and sectors at the underlying levels (Colucci and Geeraert 2012; Geeraert, Scheerder and Bruyninckx, 2012). It would certainly be better if other regional organisations could contribute to a more global approach in sport, but the reality is that they hardly exist (Bruyninckx, 2012).

## A more effective governance of a complex environment

Economic driving forces have transformed professional sports in Europe, football in particular, into a complex micro-economy consisting of a set of interdependent markets. Teams buy players; fans buy tickets, merchandising and subscriptions to sports broadcasting channels; media companies buy broadcasting rights; and big businesses buy corporate suites and sponsorship opportunities. Teams themselves have even become commodities to be bought and sold (Gerrard, 2004, p. 247). Indeed, sport in Europe has become increasingly commercial and more and more the target of, and integrated with, transnational business interests (Holt, 2007, p. 51). This has resulted in a complex network with growing interdependence between business interests and the sports world,

which raises the question whether ISOs can continue to govern their sport unilaterally through their self-governing networks. State authorities are not able to deal with an increasingly complex society unilaterally and have started to integrate civil society and market actors in new, more horizontal, governance methods. Considering the governance failures in many ISOs and the unpleasant side-effects of the sports business, it seems as though sport governing bodies are also not capable of dealing with the increasingly complex reality unilaterally (Geeraert *et al,.* 2012). Those issues call for a constructive collaboration between different authorities, industry and football bodies (multi-actor) at international, national and local level (multi-level).

## The involvement of democratically elected politicians in the networked governance

From a networked governance perspective, the involvement of democratically elected politicians in the steering of the sports world has the advantage that a resourceful, collectively oriented and democratically committed group is involved in the governance of the sport (Woods, 1999, p. 45; Sorensen and Torfing, 2005, p. 215). This contributes to the democratic legitimacy of decisions made by the ISO and legitimises the role of ISOs in society (Geeraert *et al.*, 2012). Administrators in ISOs cannot be expected to take account of the larger environment, beyond their sport, yet at the same time, the rules and regulations they devise and the decisions they take often have a significant global socioeconomic impact.

According to Sørensen and Torfing, (2005, p. 202), the involvement of democratically elected politicians in the steering of a governance network also helps to make sure that public policy and governance produced by those networks is in line with the popular will expressed by the political majority of the elected assemblies. That so-called 'participatory rhetoric' is however somewhat problematic in EU policy-making, as the distance between the directly affected citizens and their representatives is quite large here (Sharpf, 1999, p. 9).[6] According to Sharpf (1999, p. 9-10), majority rule will only be accepted in polities with a 'thick' collective identity, that is, in polities based on pre-existing commonalities of history, language, culture, and ethnicity. That is not the case with regard to the EU, although processes of Union-wide political communication and opinion formation could eventually arise, facilitated by European political parties, European associations, and European media.[7] As that is currently not yet the case, a more modest form of legitimisation must have to uphold the Union. Sharpf therefore introduces the concept of 'output-oriented legitimacy', where political choices are legitimate if and because they effectively promote the common welfare of the constituency in question: 'government for the people' (Scharpf, 1999, p. 6-10).[8] According to Scharpf (1999, p. 11-12), output-oriented legitima-

6 This is in fact a common problem with international collective action. As transnational issues increasingly call for transnational interventions, the distance between policy-makers and the citizens that are affected by those policies increases.

7 In that regard, the notion of EU citizenship, as introduced by the Treaty of Amsterdam, currently primarily is a legal concept rather than a political reality.

8 It must be noted that the democratic quality of Schapf's notion of "output-oriented legitimacy" seems doubtful, since such a legitimacy might just as well be provided by any dictatorship. On this note, we refer to Schumpeter (1942), who observed: "And even the good of the people may be, and in many historical instances have been, served just as well or better by governments that cannot be described as democratic according to any accepted usage of the term" (p. 269-270).

cy requires no more than the perception of a range of common interests that is sufficiently broad and stable to justify institutional arrangements for collective action. In that regard, it is true that EU citizens tend to allocate the responsibility to the EU for those policy domains which are characterised by an endogenous internationalisation (Niedermayer and Sinnott, 1995; De Winter and Swyngedouw, 1999). Moreover, according to a Eurobarometer Survey from 2004, a majority of EU citizens are in favour of a greater EU intervention in sports (European Commission, 2004).

## A democratically legitimate role for the European Union in professional sports

### The limits to European Union intervention in professional sports

For all above indicated reasons, we clearly oppose to some kind of blanket self-governance of the sports world. It is however very important to stress that we do not advocate a strong interventionist role for the EU. From a legal and political perspective, that is not feasible. From a democratic networked governance perspective, it would undermine the self-regulatory capacity of the governance network and drastically reduce the motivation from the network actors to participate and encourage them to play safe and avoid risks (Mayntz, 1991; Sørensen and Torfing, 2009, p. 286).

SGBs were originally founded by a class of people who believed in the separation of sport and state as a sacred principle because they claimed that politicians could only violate sport's integrity (Tomlinson, 2000; Chappelet, 2010). Hence, political autonomy is still the aim of the sports world and therefore, state intervention is still a very sensitive and even controversial topic. Thus, it must be clear that the above advocated involvement of democratically elected politicians in the steering of the sports world also has its clear limitations. In that regard, the EU certainly must not be involved in every issue related to sport. According to Sørensen and Torfing (2009, p. 295), public interference is important and warranted only if and when the issue at hand is of 'great importance to the wider community'. In the case of EU interference in sport, the concept of the wider community should certainly comprise the EU territory. In every other case, EU interference is not legitimate.

### The meta-governance of sport governance networks

At this point, the question remains what role the EU can or should fulfil in networked arrangements in sports, taking account of its limited sporting competence. In fact, the general lack of a strong EU competence in sport is not problematic from a governance network point of view. As governance networks are defined in term of their capacity for self-regulation, they cannot be controlled through the exercise of sovereign power (Mayntz, 1991, p. 10). Hence, the governance network literature has redefined the notion of political control in terms of 'meta-governance' (Kooiman, 1993; Jessop, 2002; Bogason and Musso, 2006; Peters, 2006; Sørensen and Torfing, 2005, 2009). Meta-governance holds that the most appropriate way of controlling governance networks is by 'steering'. That means that, via a series of more or less subtle and indirect forms of governance, politicians should seek to shape the free actions of the network actors in accordance with a number of pre-defined general procedural standards and substantial goals. Thus, the

conditions for interaction of relatively free and self-responsible actors within governance networks are structured in order to ensure conformity with some generally defined objectives (Sørensen and Torfing, 2005, p. 202). The attempts of the public authorities to steer the self-regulating governance networks are ultimately backed by the threat of replacing the horizontal network governance with hierarchical rule. Hence, the effectiveness of steering is ensured when governance networks operate 'in the shadow of hierarchy' (Sharpf, 1994, p. 40; Wolf, 2008, p. 239). However, if the actual attempts at regulating a self-regulating network become too tight, the network will cease to be a network, instead becoming reduced to an order-taking bureaucracy (Sørensen and Torfing, 2005). Given the limited EU competence in sports, that is certainly not an issue here.

Short-term executive authority in the 'government' of the EU is delegated to the European Commission (Hix, 1998, p. 41) and therefore that institution will mostly be involved in meta-governing tasks at EU level. The delegation of power to public administrators is a familiar issue with governance networks (Kingdon, 1984; Kickert *et al.* 1997; Sørensen 2002; Skelcher *et al.* 2005). Sørensen (2002, p. 710) points to the question of the democratic legitimacy of active public administrators. She concludes that a democratically legitimised meta-governor should perform the task of drawing a line between politics and administration (Sørensen, 2002, p. 711). At the EU level, the European Parliament and the Council could fulfil this role. They could set out the 'overall direction' (Klijn and Skelcher, 2007, p. 604) for the Commission, for instance through Resolutions. The Commission can then undertake the 'detailed design and implementation processes' (Klijn and Skelcher, 2007, p. 605). In the case of sport and EU freedom of movement and especially in its role as public enforcer of EU competition law, the Commission however has clearly defined and strong competences. These competences have been given to the Commission in a democratically legitimate way and as such, in these fields, the Commission can act freely.

So, it is very important that whatever action the Commission undertakes in sport must be explicitly, but broadly, legitimised and backed by the European Parliament and the Council of the EU. In addition to contributing to legitimacy, that would also enforce the EU's role as 'whip in the window'. Events from the past have also demonstrated that, even when the Commission acts within its predefined competence as public enforcers of EU (competition) law, political pressure can severely influence and even undermine its actions, and this happened in particular in sport (Niemann and Brand, 2008; García 2011; García and Meier, 2012; Geeraert, Bruyninckx and Scheerder, 2012). Thus, it is very important that the 'decision-making triangle' of the EU, i.e. Council, Commission and Parliament, are on the same line with regard to the content and scope of interventions in the professional sports sector and that they coordinate their messages, since inconsistent and conflicting messages will seriously undermine the effects of meta-governance (Torfing, Sørensen and Fotel, 2009, p. 287).

In order to steer sport governance networks effectively, the EU must combine 'hands-off' and 'hands-on' forms of meta-governance (Sørensen and Torfing, 2009, p. 247). Hands-off forms of meta-governance, that means, at a distance from the self-regulating governance networks, are adequate in the initial phase of the steering of the governance network.

The term comprises network design and network framing as meta-governance methods. Network design involves the shaping and structuring of governance networks, either by encouraging the formation of particular forms of networks, or by relying on pre-established networks. During this process, meta-governors influence inclusion and exclusion of certain actors and the empowerment of weaker actors and determine the scope of the network (Sørensen and Torfing, 2005, p. 204). Network framing involves the formulation of the political goals and objectives, which can be broadly defined, to be pursued by the network and the allocation of resources. Sometimes, a legal framework that facilitates and constraints the network may even be drawn. Network framing must always be backed by the continuous monitoring and critical evaluation of the output of the network (Sørensen and Torfing, 2005, p. 204).

Hands-on forms of meta-governance are recommended when the governance network shows signs of failure and close interaction between the meta-governors and the governance network is needed. That is for instance the case when conflicts arise between network actors, when deadlocks occur, when key actors are excluded from the policy deliberations, or when policy output stays too far from what is deemed acceptable by the meta-governors (Sørensen and Torfing, 2009, p. 247). The first hands-on form of meta-governance is network management, which includes attempts by meta-governors to reduce tensions through conflict management, promoting favourable conditions and providing inputs and resources for joint action, and empowering certain actors (Kickert and Koppenjan, 1997, p. 47-51; Sørensen and Torfing, 2009, p. 247). The second hands-on form of meta-governance is network participation, which requires the participation of the democratically elected politicians in the networks. That way, they can get first-hand knowledge of the policy processes and exert their political authority in order to influence the network (Sørensen and Torfing, 2005, p. 204-205; 2009, p. 247). Hands-on forms of meta-governance are not only appropriate in the case of governance network failures, as it is also quite common in policy areas closely related to the core functions of the state (Sørensen and Torfing, 2009, p. 247). However, if the relative autonomy of the network is a key political goal, as is the case with sports at the EU level, hands-on forms of meta-governance may be avoided by elected politicians and public administrators (see Marcussen, 2007; Geeraert, Scheerder and Bruyninckx, 2012). Nevertheless, in those areas were change is very much needed, the EU should wield hands-on meta-governance in order to actively influence policy.

## Conclusion

It is clear that the issue of enhancing the governance quality of ISOs is an issue of great importance to the wider EU community. This can be explained broadly from two angles. First, it is clear that sport is a public good that fulfils important social, educational, cultural and health-related functions in society. Indeed, in addition to enhancing public health through physical activity, sport has the potential to convey values, contribute to integration, and economic and social cohesion, and to provide recreation (European Commission, 2007). As such, sport allows millions of Europeans to learn the value of fair play and the importance of rules, and to develop respect for others. ISOs, which still largely depend on public funding, need to set a positive example by taking steps to build

integrity as the positive impact of their example reverberates globally (Schenk, 2011, p. 1). If not, they threaten to jeopardise the positive impact their sports can have on society.

Second, as sports commercialised significantly, particularly during the last two decades, the socioeconomic impacts on the wider society of rules devised and issued by sports bodies increased accordingly. This also means that bad governance in ISOs has the potential to have substantial negative repercussions on the wider society, and thus, on the wider EU community.

Thus, it is clear that EU interference on the matter is legitimate. Based on governance network theories, such interference should take the form of 'steering'. In order to ensure democratic legitimacy, the European Parliament and the Council should set out the 'overall direction' for the Commission, for instance through Resolutions. The Commission, which exercises short-term authority in the governance of the EU, can then undertake the detailed design and implementation processes. Practically, this means that the Parliament and the Council should express their firm support for better governance in ISOs. Solid reference in those institutions' Resolutions would legitimise the Commission's role, which is certainly desirable given the political goal of sporting autonomy,[9] but could also act as a form of light pressure on ISOs to take the necessary steps towards better governance. Although the EU does not have a strong sporting competence, in principle it does possess the ability to intervene much stronger in the sport sector on the basis of its internal market powers. Although that is currently not at all politically desirable, such form of latent pressure is ever present in sport matters. That means that stronger support from EU-level politicians for better governance in ISOs could certainly act as some sort of whip in the window.

The Commission then gently has to steer ISOs into the direction of better governance through subtle and indirect forms of governance, such as coordinating collaboration between ISOs on better governance, providing knowledge and resources, promoting favourable conditions and providing inputs and resources for joint action. In that regard, it is very important that Council, Commission and Parliament, are on the same line as regards interventions in the professional sports sector and that they coordinate their messages since inconsistent and conflicting messages will seriously undermine the effects of the Commission's meta-governance efforts.

9 On that note, it is important to stress that networked governance in sport does not at all entail that the autonomy of ISOs should be hollowed-out, nor does it seek to undermine the concept. Esmark and Triantafillou (2007) clarify this notion by stating that 'network governance [...] is characterised by its attempt to provide an answer to the question of how (and by what means) it is possible to facilitate, adjust and coordinate the self-governing capacities of actors in a way that does not encroach on their autonomy' (p. 101). However, it is of course true that, as the governing models in sport evolve towards a more networked form of governance, the hierarchical top-down governing by ISOs of the stakeholder environment clearly is eroding. Thus, while horizontal networked governance is not at all respectful for the pyramid governing model in sport, it very much is for the autonomy of sport bodies.

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# Implementation and compliance of good governance in international sports organisations

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## *Part I:*
## Implementation

> Sports organizations and their members and events are often dependent on a mix of revenues including public and private subsidies. Therefore, it is in the clear interest of European tax payers, corporate companies and sports fans that sports organizations govern their affairs in an efficient, transparent, accountable and democratic manner.
> (…)
> To achieve better governance in sport, many sports organizations need to revise their internal and external mechanisms to cope with the on-going commercialization, professionalization and globalization of sport."
>
> (Source: Play the Game (2011), Grant application form 2011, Project proposal 'Action for good governance in sport').

According to this quote, a number of actors and agents have the goal or objective to improve the current governance in international sport federations (IF's). One of the issues is: How can the desired situation (i.e. the adoption and compliance of good governance policy and code(s) in IF's) be realised? Or, in other words, how can the process between the establishment of a goal/ objective and the final elaboration in practice be achieved?

This issue is about policy implementation (O'Toole, 2000). Implementing policy seems simple: One sets political-administrative ambitions, translates these to concrete policy goals and measures, organizes the necessary resources, chooses the right role as policy maker, mobilises stakeholders and achieves implementation. These are the standard ingredients of an attractive implementation strategy. But, actual implementation processes are often more stubborn.

This contribution focuses on existing implementation theory, in order to draw a picture of the unruly practice in general and that of IF's in particular. We will discuss possible implementation and control strategies for adoption of good governance in the specific contexts of IF's.

## Investigating implementation

The implementation theory, which arose mainly from the 70s, is substantial. Inside this theory, there are different views about what implementation is or what it should be. Overall, three generations of implementation research can be distinguished (DeLeon and DeLeon, 2006; Fitz, 1994):

1. The first generation of implementation research is almost invariably associated with the authors Pressman and Wildavsky (1973) and their study of the Oakland project. These and other authors examine case studies in which they decompose the problems in the implementation processes. Ultimately, the researchers did not succeed in developing a generic theory, but their analysis remains limited to drawing lessons learned about actual policy implementation in the light of original goals (which are translated and deformed through execution).

2. In the late '70s, early '80s, academics mainly thought about implementation from the top-down perspective (see e.g. Sabatier and Mazmanian, 1979; Hoogerwerf 2003). The leading question is: how can one ensure that centrally developed plans can be implemented in practice as intended by its makers? One of the clearest illustrations of the dominant top-down model of implementation is that produced by Lewis Gunn (1978) who argued that, for effective policy implementation, the following ten criteria would have to be met. Table 1 summarises Gunn's ideal type of top-down implementation.

Table 1: An ideal model of perfect policy implementation

| |
|---|
| 1 - Circumstances external to the implementing agency do not impose crippling constraint. |
| 2 - Adequate time and sufficient resources are made available to the program. |
| 3 - Not only are there no constraints in terms of overall resources but also that, at each stage in the implementation process, the required combination of resources is actually available. |
| 4 - Policy implemented is based upon a valid theory of cause and effect. |
| 5 - The relationship between cause and effect is direct and that there are few, if any, intervening links. |
| 6 - There is a single implementing agency which need not depend upon other agencies for success or, if other agencies must be involved, that the dependency relationships are minimal in number and importance. |
| 7 - There is complete understanding of, and agreement upon, the objectives to be achieved; and that these conditions persist throughout the implementation process. |
| 8 - In moving towards agreed objectives it is possible to specify, in complete detail and perfect sequence, the tasks to be performed by each participant. |
| 9 - There is perfect communication among, and co-ordination of, the various elements or agencies involved in the program. |
| 10 - Those in authority can demand and obtain perfect obedience |

Source: Gunn 1978

3. As an ideal type Gunn's list of criteria are valuable in understanding why policies such as good governance might not be implemented fully or indeed at all. For example, the fourth criterion (a valid theory of cause and effect) is open to much debate regarding the likely effect of 'good governance' on a range of stakeholder groups and whether those groups perceive the 'effect' as a desirable or beneficial one.

4. In the early 80s, simultaneously with this top-down approach, a strong focus on bottom-up processes arises (see e.g. Lipsky, 1980). So-called street level bureau-

crats are seen as key to implementation; they are decisive for the successful or failed execution of policy. From this perspective, implementation cannot be separated from policy making; implementation is part of policy making, because the performer helps shape policy. Others, e.g. Yanow (1989) further encouraged this approach: policy especially is 'made', where it is executed. Within IFs those charged with responsibility for implementing good governance policy and practices will, it is argued, of necessity have to adapt policy to suit the particular circumstances of the federation (money, staff expertise, requirements of commercial partners, legal context etc.). While often 'street level bureaucrats are seen as conservatives resisting change on the basis of self-interest, a more sympathetic view is that they are simply pragmatists – doing their best to achieve implementation in accordance with constraining local circumstances. What they lack is not commitment but rather capacity.

Overall, existing literature on implementation roughly brings forward two basic dimensions, which are important to distinguish implementation types:

5. The extent to which implementation is a top-down (vertical) or bottom up (horizontal) phenomenon;
6. The extent to which implementation emanates from a 'design' or blueprint of a steering actor (schedule), or from an arena with several actors (interactions).

Table 2: Implementation and control

| | | **Control via:** | |
|---|---|---|---|
| | | Schedule/design | Arena/actors |
| Primate of control | Vertical | **Control model**<br>Control by hierarchy | **Decentralisation model**<br>Control by frameworks, conditions |
| | Horizontal | **Participation model**<br>Cooperation, focus on plan making | **Interaction model**<br>Evolution of policy execution |

(Based on, among others: Hoogerwerf, 2003; Smith, 1973; Sabatier and Mazmanian, 1979; Pressman and Wildasky, 1973; Hill and Hupe, 2002; DeLeon and DeLeon, 2002; Majone and Wildavsky, 1979)

DeLeon and DeLeon (2002) conclude, when they overlook the implementation theory up to now, that no single implementation strategy can be formulated. There is no 'one size fits all' strategy possible, the context is decisive for the success of a chosen implementation strategy. Thus, in some cases a bottom-up approach is suitable, but in other cases a top-down approach is appropriate.

Also, Matland (1995) indicates for example that the degree to which there is:

- Ambiguity: discussion on the policy objectives, and
- Conflict: discussion of the means to achieve goals determines the gradient of the implementation. Actors should adopt their implementation strategy accordingly.

Policy implementation is about the relationship (s) and coordination of policy in a specific context. This context is – to elaborate on the degree of ambiguity and conflict – by definition multi-level (different layers within the government and society are involved in policy), distributed (the various actors are spread and different), path dependent (previous decisions framing the possibilities for the future) and politicised.

## Achieving implementation

The stakeholders that want to implement good governance in IFs face the following question: What implementation strategy is appropriate in the specific contexts of IFs? We define implementation strategy as how implementation is formed by one of the actors involved in implementation, aimed at realizing and optimizing policy impact. In essence, an implementation strategy - within each type of relationship – is about the creation of some form of coordinated action. The way coordination (and thus the implementation strategy) is designed, can vary and depends partly on the relationship and the context in which policy should take place. There are several possible coordination mechanisms, both directly and indirectly more (freely derived from Mintzberg, 1983):

- Approximation: for small projects involving close contact between the actors involved.
- Direct supervision
- Standardisation of work, through rules, procedures
- Standardisation of results, focusing on output / performance
- Standardisation of knowledge and skills through professional development of workers in the field or be the implementers of policy

If we sell the coordination mechanisms at the different implementation strategies, we get the following diagram.

Table 3: Coordination alternatives per implementation type

| | | **Control via:** | |
|---|---|---|---|
| | | Schedule/design | Arena/actors |
| Primate of control: | Vertical | • Supervision<br>• Standardisation through rules | • Standardisation of output |
| | Horizontal | • Intensive cooperation in planning phase<br>• Creation of commitment | • Standardisation of skills<br>• Mutual, but non-participatory adaptation |

## Strategies to implement good governance in international federations

The promotion of good governance in international sport federations differs from international conventions in three important ways: first, good governance is mainly a set of principles rather than a set of definite requirements; second, there is no single internationally agreed set of good governance principles against which the behaviour of IFs can be measured; and third, there is no generally recognised international organisation which is acknowledged as the 'guardian' of good governance.

In the case of IFs, it can be argued that the context for implementation of good governance is mainly characterized by a high degree of ambiguity about the policy objectives, both within and between the IFs and between IFs and a large number of stakeholders. The extent to which a coherent and publicly accepted model of good governance exists is low. There are also different views on how good governance can best be achieved. Much of the debate about implementation of good governance policies and practices is underpinned by a top-down model of policy implementation. Within AGGIS, it is important to look at how control within IFs occurs or may occur, and to what extent a top-down approach is appropriate within the context of good governance and IFs. To control good governance is very complex and within IFs opposition may exist.

If we consider the total playing field, an interaction approach seems – according to the implementation theory – most appropriate in a context of various and inequitable actors, without clear hierarchy and power to control. This would argue for a strategy of standardisation of skills and mutual, but non-participatory adoption.

# *Part II:*
# Compliance

## Introduction

The study of compliance draws upon a number of related themes in academic research most notably the literature on policy change, policy implementation and the monitoring and assessment of compliance.

Questions such as 'What would encourage the adoption of good governance principles by IFs?' and 'Why do some IFs adopt principles of good governance while others do not?' can best be answered by reference to the rich research literature on policy stability and change. Table 1 summarises some of the main explanations of policy stability and change and makes clear the wide range of possible processes ranging from informal processes to legally imposed international agreements. Selected explanations/processes are discussed below in a little more detail.

## Investigating compliance

### Policy learning, lesson-drawing and policy transfer

Implicit in much of the discussion of the development of public policy is the assumption that countries learn from each other and that a process of policy transfer is in operation: such assumptions can also be applied to non-governmental organisations. At a common sense level policy learning and policy transfer are attractive. All IFs are in competition with each other for scarce resources such as talented athletes, commercial sponsorship, broadcasting opportunities and access to major multi-sport events such as the Olympic and Paralympic Games. Some IFs are also in competition with commercial providers, for example triathlon and marathon, or player organised events (such as in golf and tennis).

Table 1: Good governance, international sport federations and selected mechanisms of policy change

| Dimension | Policy learning | Policy transfer | Path dependency | Mimetic isomor-phism | Engineered normative convergence | Imposition through policy regimes |
|---|---|---|---|---|---|---|
| Likely locus of initiative | International arena | International | International | International | International/ national governmental | International |
| Likely lead actor/ organisation | International federations, governments, interest groups | International federation | International federation | International federation or other ISO e.g. IOC | International sport organisations (IOC, CGF); governmental organisation (CoE, EU, UNESCO); and/or lobby organisations (Play the Game) | International policy regime |
| Basis of engagement | Voluntary | Voluntary | Constrained | Uncertainty | Voluntary, but also social pressure | Compulsion |
| Key relationships | Bi-lateral | Bi-lateral i.e. one IF transferring practices from an exemplar | None | Multi-lateral | Multi-lateral; role for weak (non-legal) policy regime | Multi-lateral/ policy regime lead agency, but can be bi-lateral |
| Nature of power (explicit, agenda setting, ideological) | Both overt and ideological | Ideological | Agenda control | Ideological | Normative, socialisation, ideological | Explicit, usually based on international law or quasi-legal agreement |
| Good governance | Pattern of regular contact through ASOIF, ANOC, AIOWF, IOC; decisions by CAS; meetings with domestic federations | Need to understand the pattern of relationships between IFs. Are there 'families' of IFs which tend to transfer 'lessons between each other? | Acceptance of key aspects of good governance makes it difficult to avoid the extension of good governance practices in the IF | Adoption of many policies and management practices from major IFs or the IOC | Accumulation of pressure through engineering social expectations | World Anti-Doping Agency |

Source: adapted from Houlihan 2009

The cluster of related concepts of 'policy learning', 'lesson-drawing' and 'policy transfer' has featured prominently in much recent analysis of policy change. Policy-learning is

rooted in an Eastonian systems model of the policy process where the policy-making cycle is regularly energised by feedback on the impact of existing policy. While the process of policy learning within IFs can be largely confined to learning from its more innovative national members it is accepted that policy learning can, and increasingly does, involve analyses of policy and practice in similar organisations. More recent conceptualisations of governmental policy learning have emphasised the intentional aspect of the process which moves beyond feedback on existing policy and involves the systematic scanning of the environment for policy ideas (see Yamamoto, 2008). While it is to be expected that IFs would engage in intentional scanning of the governance policies and practices of their competitors and also of the the governance expectations of their existing or potential partners (corporate sponsors, event organising bodies and host governments for example).

Policy transfer refers to the process by which the lessons learnt (see Rose 2005, for a fuller discussion of lesson-drawing) are transferred: how lessons are internalised, how lessons are recorded and described and how they are incorporated into a different organisational infrastructure and value system in the importing organisation. Bearing in mind that organisational policy can be variously conceptualised as aspiration, action (involving the commitment of resources) or inaction (Hogwood, 1987; Jenkins, 1978; Heclo, 1972) Rose (2005, p. 16) defines policy transfer as 'action-oriented intentional activity'. An awareness of the extent to which the transfer mechanism facilitates or constrains transfer is crucial. For example, in many IFs the governing board may inhibit the transfer of good governance lessons (because they challenge the interests of board members) even though the lesson is clearly understood and the potential benefits to the federation are acknowledged. As should be clear the analysis of the transfer process is as important as an understanding of the process of policy learning and lesson drawing. Lessons may well be accurately learned but be imperfectly transferred or transferred to an unsupportive organizational infrastructure or an unsympathetic value system.

The attractiveness of the concepts of policy-learning and transfer are not without problems, the most obvious of which are the difficulty of explaining how policy makers learn (Oliver, 1997), what constitutes learning (Bennett and Howlett, 1992), how learning might be quantified (Pierson, 1993) and what motivates organisations to learn. This last point is especially relevant in relation to good governance as for many IFs the costs will be more apparent than the benefits. In addition there are substantial concerns relating to the process by which lessons are communicated and transferred policies are recreated in the receiving organisation. These concerns notwithstanding, it is clear that policy learning and transfer are well established practices within many organisations in the sport subsector.

## International policy regimes: organisational power or the power of ideas?

Krasner defines regimes as 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (1983, p. 2). While Krasner was referring explicitly to governmental international policy regimes his definition can be easily applied to non-governmental regimes or to hybrid regimes (of which the nascent 'good governance'

regime might be an example). In attempting to operationalize this concept it is argued that successful regimes possess some or all of the following characteristics: first, they exhibit a degree of stability in the pattern of relationships between actors and, by implication possess some process by which voices/interests can be acknowledged or ignored; second, regimes possess the organisational capacity to fulfil maintenance functions, such as agenda setting, policy monitoring and review, verification of compliance and, in some, the enforcement of compliance; and third, regimes actively defend and promote their values.

Many regimes therefore have an identifiable organisational capacity, such as a permanent secretariat, while others fulfil regime maintenance functions through the actions of one or more member states or organisations as, for example, does the United States in maintaining the regimes associated with the GATT agreement and WADA and CAS do in relation to the World Anti-Doping Code. The organisational significance of the non-governmental organisations such as IFs, the IOC and Play the Game in relation to good governance may be complemented, augmented or replaced by state organisations such as the Council of Europe, EU or individual governments. It has also been suggested that direction and organisational capacity can be provided by an epistemic community which Haas has described as 'a network of professionals with recognised expertise and competence in a particular ... issue area' (1992, p. 3). Arguing that 'control over knowledge and information is an important dimension of power', Haas suggests that the potential of epistemic communities to exercise influence increases with uncertainty and with inter-organisational resource dependence. Uncertainty and dependence are characteristics of aspects of governance relations.

The most common explanation for the formation of regimes and the mechanisms by which they exert influence is that they are the creatures, if not the products, of hegemonic self-interest, where ‘stronger states [or organisations] in the policy sector will dominate the weaker ones and determine the rules of the game’ (Keohane and Nye, 1977). It is possible to argue that the putative good governance regime fits this analysis as the policy could be interpreted as seeking to reform IFs in order to make them more suitable partners for corporate and governmental interests.

An alternative, and less state-centred, explanation for the formation of regimes assumes that ideas matter, first, in creating a predisposition to co-operate and comply, and second, in explaining the content of regime rules and how they evolve. According to Nadelmann, in his study of global prohibition regimes, ‘moral and emotional factors related neither to political nor economic advantage but instead involving religious beliefs, humanitarian sentiments ... conscience, paternalism, fear, prejudice and the compulsion to proselytise can and do play important roles in the creation and the evolution of international regimes’ (1990, p. 480). Checkel (see also Risse et al 1999) also emphasises the importance of ideas as a source of influence and argues that international institutions are often effective in shaping policy due to a process of socialisation of key domestic policy actors in government such that ‘sustained compliance [is] based on the internalisation of new norms’ (Checkel, 2005, p. 804). Checkel argues that ‘There is growing empirical evidence to suggest that what starts as strategic incentivebased

cooperation within international institutions often leads at later points to preference shifts' (*Ibid.,* 2005, p. 814).

Two examples of regimes are first, the promotion of Olympism generally and gender equity more specifically and second, the increasing concern with athletes' rights and particularly their post-competition careers prospects. Although there is considerable justifiable debate about the sincerity and significance of value systems such as Olympism it is arguable, at least, that they have had some influence on the policies of governments and IFs in areas such as the treatment of young athletes, gender equity and post-career support. Ascribing influence to international policy regimes is, however, rarely straightforward, as evidence of a high degree of actor compliance may only indicate an association rather than a causal relationship. Furthermore, there is considerable disagreement whether regimes as international institutions are more than simply a camouflage for state power operating through the medium of IFs (for example China engineered IF rule changes in table tennis and badminton to protect its national advantage).

## Path dependency

Underlying much of the discussion about policy learning is the assumption that policy change will be affected by both past experience and new information. As Greener notes, policy learning 'considers policy legacies to be one of the most significant elements in determining present and future policy' (Greener, 2002, p.162). As such, policy learning has much in common with the concept of path dependency which suggests that initial policy decisions can determine future policy choices: that 'the trajectory of change up to a certain point constrains the trajectory after that point' (Kay, 2005, p. 553). Path dependency is also connected to the broader policy analysis literature on the importance of institutions which, for Thelen and Steinmo, are seen as significant constraints and mediating factors in politics, which 'leave their own imprint' (Thelen and Steinmo, 1992, p. 8). Whether the emphasis is on institutions as organisations or as sets of values and beliefs (culture) there is a strong historical dimension which emphasises the "relative autonomy of political institutions from the society in which they exist; … and the unique patterns of historical development and the constraints they impose on future choices" (Howlett and Ramesh, 1995, p. 27).

The relevance of institutionalism for the analysis of good governance in IFs is clear. Past decisions need to be seen as institutions in relation to current policy choices with path dependency capturing the insight that 'policy decisions accumulate over time; a process of accretion can occur in a policy area that restricts options for future policy-makers' (Kay 2005, p. 558). In a hard application of the concept of path dependency one would argue that early decisions in a policy area result in current policy being 'locked in' and also, perhaps, locked on to a particular policy trajectory. For example, early decisions about the composition of boards, the location of IF headquarters within particular domestic legal frameworks and the relationship between the board and the president may establish and progressively reinforce a culture of secrecy and oligarchic decision-making.

In summary, it may be hypothesised that once an IF takes its initial decisions about governance it is locked on to a predictable policy path. For example, initial governance

decisions, which might have been taken in order to protect the sport from governmental interference, might well lead to increasing secrecy and the development of a self-perpetuating leadership clique.

## Achieving compliance

Compliance rests, conceptually, between implementation and impact, and may be defined as the day to day, routine, behaviour of an organisation which conforms to the rules and expectations of an agreement, of the Code. As Jacobson and Weiss point out in relation to intergovernmental agreements 'Measuring compliance is more difficult than measuring implementation. It involves assessing the extent to which governments [or other policy actors] follow through on the steps they have taken to implement international accords' (Jacobson and Weiss, 1997, p.123). One problem in relation to good governance is the uncertainty of what it is that is being implemented as there is no good governance formal agreement or convention: good governance is closer to a set of expectations of ethical behaviour.

The likelihood of achieving compliance depends in part on the structure of the particular problem and the strength of the incentives for individual international federations to defect. The incentives to defect are generally stronger in collaboration situations than co-operation situations. Collaboration situations, such as the classic prisoners' dilemma, are those where joint compliance is preferable to joint violation, but where individual parties to an agreement gain more from an agreement if they defect while others continue to comply. By contrast in co-ordination situations or co-operation games, such as the allocation of satellite orbits or short wave radio frequencies, the incentive is for individual actors to comply as long as a sufficient proportion of other parties to the agreement also comply. Within the literature of regime theory the dominant assumption is that most agreements exist in collaboration situations and that consequently compliance is best achieved through the adoption of a coercive strategy where resources are invested in extensive monitoring and where sanctions are applied to those in non-compliance. Good governance is closer to a collaboration problem, but is far from being a good fit insofar as it is not clear whether complying or not complying with the requirements of good governance provides any significant relative advantage between IFs.

In considering whether reliance on monitoring and sanctions are the optimal instruments for ensuring compliance it is useful to examine the reasons for compliance and types of non-compliance, partly because compliance may have little to do with the design of an agreement or set of ethical guidelines and equally non-compliance may be due to factors beyond the scope of sanctions. The most obvious explanation of compliance is perceived self-interest either because the agreement on good governance will enshrine a beneficial balance of advantage or will protect existing gains from erosion. For example, the major IFs might see an agreement as reinforcing the security of their relationship with sponsors and broadcasters. Second, actors may also comply because the agreement requires no change in their existing policy and practice: compliance is simply coincidental. Consequently, the lower the thresholds, for example in relation to frequency of elections, maximum length of terms of office and reporting of meetings the easier it is to

achieve a high level of compliance. It is easier for the Swiss to comply with the ban on whaling than it is for the Norwegians.

Just as compliance has multiple causes so too does non-compliance. As table 2 indicates there are three primary causes of non-compliance – choice, inability, and inadvertence – and within each category there is a further sub-set of causes. The test of a sophisticated and successful policy regime is that it has a repertoire of instruments tailored to the range of sources of possible non-compliance in a particular policy area.

Table 2: Causes of non-compliance

**Choice, for example due to:**

- a desire to retain the benefits of the 'badge' of good governance, but avoid the obligations
- objective is partial/selective compliance
- free-rider strategy (benefit from the compliance of others, but avoid those costs themselves)
- resources needed for compliance have been knowingly diverted elsewhere
- benefits of compliance have low organisational salience

**Inability, due to:**

- lack of necessary financial or administrative resources
- lack of expertise/knowledge

**Inadvertence, due to:**

- inadequate, but sincere, attempt at implementation
- incompetence i.e. poor understanding of requirements

What conditions foster the actual compliance? Rule compliance in general (although empirical evidence is limited) and code compliance in particular turn out to be dependent on:[10]

10 Appendix 1 provides a literature overview of 'code compliance'.

Table 3: Conditions to encourage code compliance

**1. Moral disapproval**
Overall, not the objective part, but the perception, the moral evaluation of norms and maintenance is crucial. For example, when it comes to general rule compliance, the subjective risk of being caught influences rule compliant behaviour. Compliance is best reached by responsive and context specific models (Huiman and Beukelman, 2007). In other words: there is an external pressure and the fear of reputational damage (Wymeersch, 2006). Judicial enforcement is not favored (Huisman and Beukelman, 2007, Wymeersch, 2006).

**2. Inside-outside interaction**
Seidl (2007) argues that the interaction between the focal organisation and external actors is a condition for the effectiveness of governance codes (Seidl, 2007). Especially the interaction of an organisations' director stimulates the *adoption of and compliance to* corporate governance codes (Aguilera and Cuervo-Cazurra, 2009).

**3. External scrutiny**
In general, the extent of compliance is positively associated with *company size*. However, underlying principles are that larger companies – listed in the different stock market indices – get more attention and are more closely scrutinised by the media and the investor community (Akkermans et al. 2007; Talaulicar and Werder, 2008; Werder et al. 2005).

**4. Positive leadership behavior**
Code compliance is insured by a board of directors and management taking responsibility for applying the code, under the overall guidance of the shareholders (Wymeersch, 2006). There is a need of an ethical tone at the top (Mintz, 2005). Generally, an integral approach is needed, which is necessary for the implementation of high standards of ethical behaviour throughout the organisation (Bon and Fisher, 2005). The practical implementation of a governance code cannot be realised by a compliance program alone and needs to be accompanied by relevance in everyday business, that is: by moral values of the company culture (Wieland, 2005).

**5. Realistic contents**
Another aspect of complying to codes is that internal norms and values do not deviate too much from the code to be adopted (Huiman and Beukelman, 2007). The code ambitions have to be achievable.

**6. Relatively low compliance costs**
The positive relation between company size and compliance is also based on relatively lower compliance costs (Talaulicar and Werder, 2008).

## Strategies to encourage good governance codes compliance in international federations

Organisations generally rely on a limited and often crude range of instruments to achieve compliance the most common of which are inducements, information and sanctions. Inducements and information are most effective when the causes of non-compliance arise from either inability or inadvertence and include educational efforts and financial transfers. Sanctions, the most common tool of implementation in most international policy regimes must be credible and potent if they are to be effective. Significantly, inducements, education and sanctions tend to be reactive tools, dealing with breaches of

an agreement after they have occurred. The third approach to enhancing compliance attempts to be proactive by placing an emphasis on the design of the compliance system. It thus seeks to move away from explanations of compliance that rely solely on the calculation of interests or the exercise of power and to treat agreement design as an independent variable in compliance.

The focus on systems design is based on assumptions that are in marked contrast to those of the enforcement school. The central assumption is that there is a general propensity to comply among actors and that non-compliance is more often the result of ambiguity and resource limitations rather than choice (Haas, Keohane and Levy, 1993; Chayes and Chayes, 1995; Chayes, Chayes and Mitchell, 1998). As a result 'non-compliance is best addressed through a problem solving strategy of capacity building, rule interpretation, and transparency, rather than through coercive enforcement' (Tallberg, 2002, p.613). Within this perspective a central focus is on the capacity – administrative, economic and legal and – of organisations to ensure the compliance of other actors. Chayes and Chayes argue that if the assumption that non-compliance is primarily due to inadvertence or lack of capacity 'then coercive enforcement is as misguided as it is costly' (Chayes and Chayes, 1995, p.22). The energy of the supporters of an agreement would be better directed towards ensuring that the compliance system provides for the necessary capacity building, rule interpretation mechanisms and transparency rather than investing in elaborate sanctions infrastructures.

The attraction of designing a variety of means for achieving policy compliance needs to be balanced with the general view that, other things being equal, compliance increases with the greater specificity and transparency of rules. A high level of specificity and transparency enhances compliance because those predisposed to comply have clearer guidance about what they need to do and can be confident that their compliance is visible to others, and non-compliers are easily identified and find it more difficult to argue that their failure to comply is due to inadvertence. However, the cost of clarity of specification and transparency is often a loss of subtlety and depth which frequently shifts the focus away from policy impact to the less valuable monitoring of policy outputs.

The primary purpose of a compliance information system is to ensure maximum transparency, but also to ensure that the data collected is relevant and of high quality, and is analysed thoroughly and disseminated widely. As Mitchell notes 'To make the threat of a retaliatory violation – or linkage via sanctions or inducements – credible, the regulated actors must know that their choices will not go unnoticed' (Mitchell, 1994, p.19). An effective compliance monitoring systems is deemed essential.

The final element in the compliance system is the non-compliance response system. First there needs to be a structure which enables and facilitates compliance through the provision of advice, administrative support and possibly financial support. A supportive response to non-compliance is important when the applications of sanctions may be 'politically' difficult. The availability of an inducement-based response system might alter the cost-benefit calculation of potential non-compliers. However, inducements are normally more expensive than sanctions. The second requirement is that sanctions must have a clear source. Too many international regimes construct elaborate sanctions, but

lack an organisational focus for their application particularly as interested actors have little incentive to act independently to apply sanctions.

## Starting points for change strategies

The compliance conditions are changes more easily than the preconditions for the adoption of codes. The six conditions as presented in Table 3 are taken as a starting point for building stones of a change strategy:

*Building stone 1*

The first condition shows the importance of moral disapproval. Reputational damage turns out to be more effective than judicial enforcement. The naming and shaming strategy can be applied (condition 1).

*Building stone 2*

Intense communication between the focal organizations and external actors, including the media and investors or members, can be fruitful. The discourse on good governance then should at first be focused on positive leadership behavior (conditions 2, 3 and 4).

*Building stone 3*

Codes need to be sector specific, taking one step at a time. This lowers the compliance costs. Once codes are adopted, next steps will be taken more smoothly. A 'muddling through' strategy, making small progress each team, is recommended (conditions 5 and 6).

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# Compliance systems: WADA

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## The fight against doping

The phenomenon of doping has always occurred in sports (Wadler and Heinline, 1989).[11] However, in particular in the period spanning from the end of 1980s to the 1990s, several scandals concerning the issue of doping in sport have received extensive media coverage. In recent years, an increasing numbers of elite athletes from sports such as cycling, baseball, boxing, and track and field have been convicted or accused of using performance enhancing drugs.

Following peaks in doping abuse in the 1960s, the International Olympic Committee (IOC) established a Medical Commission responsible for developing a list of prohibited substances and methods in 1967. One year later, drug tests were introduced for the first time at the Olympic winter games in Grenoble and at the summer games in Mexico City (Fraser, 2004; Todd and Todd, 2001). Meanwhile, the European continent played a leading role in the fight against doping.[12] The Council of Europe promoted co-operation in this field and in 1989, it adopted the Anti-Doping Convention (Council of Europe, 1989). The Convention focused on the need for harmonisation of anti-doping efforts across countries and sports and was also open to non-members of the Council of Europe. It also recognised the IOC doping list as a reference document. However, as each country could define the scope for action of its public authorities in accordance with its own 'constitution, sports legislation and tradition', in practice states retained a large discretionary power to fill in the concrete commitments (Vermeersch, 2006). Altogether, prior to 1999, the global anti-doping campaign was characterised by fragmentation, in particular between the IOC, the international sports federations and the national governments who adopted anti-doping legislation and this left loopholes for drug abusing athletes to evade penalties (Houlihan, 2004). Moreover, there was mutual suspicion among key actors, a general lack of momentum and a severe lack of resources (Houlihan, 2002).

In the 1998 Tour de France, French police revealed systematic doping abuse among several professional teams. The massive criticism following the scandal prompted renewed efforts to tackle the issue and commitment to the fight against doping shifted to international fora. In February 1999, the IOC convened the First World Conference on Doping in Sport in Lausanne, Switzerland. The Conference produced the Lausanne Declaration on Doping in Sport, which provided for the creation of an International Anti-Doping Agency (WADA) to be operational for the Games of the XXVII Olympiad in Sydney in 2000 (World Conference on Doping in Sport, 1999). The IOC's initiative to launch the Agency can be seen as an attempt to consolidate its own role. Indeed, the

11 For an overview of the history of doping in sport, see Yesalis and Bahrke (2002).
12 For instance, Italy, France and Belgium adopted anti-doping legislation as early as the 1950s and 1960s (Chaker 1999).

public outrage following the 1998 Tour de France, challenged the IOC to prove its commitment to the anti-doping policy (Houlihan, 1999).

WADA was formed on the basis of equal representation from the Olympic movement and public authorities. One of its mandates was to harmonise the Olympic anti-doping code and develop a single code applicable and acceptable for all stakeholders which would achieve closer harmonization between sports organizations and public anti-doping authorities in important areas of anti-doping policy (WADA Statutes: article 4). During the second World Conference on Doping in Sport in March 2003, representatives of the sports world and of governments agreed on the adoption of the first World Anti-Doping Code (WADA, 2004). The Code, its most recent version being adopted in 2009, basically outlines the procedures for the legal implementation of a globally harmonized set of rules for future doping controls, testing procedures, a compulsory two-year ban on first-time positive tests, and the establishment of national anti-doping agencies (Houlihan, 2004). It can be regarded as WADA's most significant contribution to the anti-doping campaign.

## What is WADA?

WADA is an independent organisation, namely a private Swiss Foundation incorporated under Swiss Law (WADA Statutes: art. 1.). It defines itself as a 'unique hybrid organisation' governed and funded equally by the Sports Movement and Governments. It has been set up under the initiative of the IOC, with the support and participation of intergovernmental organisations, governments, public authorities, and other public and private bodies fighting against doping in sport, following the World Conference on Doping in Sport in Lausanne, Switzerland. The Conference produced the Lausanne Declaration on Doping in Sport, which provided for the creation of WADA.

The IOC essentially transferred its anti-doping enforcement wing to the newly created WADA in 1999. The hybrid nature of the organisation is a result of the protests by public governments following the IOC's initial proposal at the Conference. This was rejected because of a too close link between the agency and the IOC and the absence of representatives of governments on the board. Public authorities requested a more significant role and they were also sceptical about the IOC, after the episodes of corruptions related to the awarding of the 2002 Winter games in Salt Lake City (Houlihan, 2000, p. 125).

The IOC is a full partner in the on-going efforts of WADA. The Agency consists of equal representatives from the Olympic Movement and public authorities and it may be defined as a sort of international organisation with the scope to promote, coordinate and monitor the fight against doping in sports. For the first two full years of operation, it was entirely funded by the Olympic Movement. Therefore, WADA may be considered as an appendix of the IOC, to which the Olympic Movement *de facto* has delegated the fight against doping.

WADA is composed of a Foundation Board, Executive Committee and several other Committees. The Foundation Board is WADA's supreme decision-making body and it is composed equally of representatives from the Olympic Movements and governments (WADA Statutes: article 6). WADA's Foundation Board delegates the actual manage-

ment and running of the Agency, including the performance of activities and the administration of assets, to the Executive Committee, WADA's ultimate policy-making body (WADA Statutes: article 11).

In its activities, WADA coordinates the development and implementation of the Anti-doping Code, the document harmonising anti-doping policies in all sport and all countries (WADA, 2012a). The Code is the core document that provides the framework for harmonised anti-doping policies, rules and regulations within sport organisations and among public authorities. It works in conjunction with five International Standards aimed at bringing harmonisation among anti-doping organisations in various areas: Testing, Laboratories, Therapeutic Use Exemptions (TUEs),[13] the List of Prohibited Substances and Methods and for the protection of privacy and personal information.

More specifically, the Agency furthermore carries out the following activities (WADA, 2012b):

- Code compliance monitoring: facilitating sport and government acceptance of the Code and its principles to ensure a harmonized approach to anti-doping in all sports and all countries; monitoring implementation of and compliance with the Code; working for the proper adjudication of results.
- Cooperation with law enforcement: developing protocols to ensure evidence gathering and information sharing between the sports movement and governments; cooperating with Interpol; in collaboration with UNESCO, working with individual governments to persuade them to have laws in place that allow to combat manufacturing, supply and possession of doping substances on their territories.
- Science and medicine: promoting global research to identify and detect doping substances and methods; exploring new models for enhanced detection; developing and maintaining the annual List of Prohibited Substances and Methods; accrediting anti-doping laboratories worldwide; monitoring Therapeutic Use Exemptions granted by stakeholders.
- Anti-doping coordination: developing and maintaining the Anti-doping Development Management System (ADAMS), the web-based database management system to help stakeholders coordinate anti-doping activities and comply with the Code.
- Anti-Doping development: facilitating the coordination of Regional Anti-Doping Organisations by bringing together countries in regions where there are no or limited anti-doping activities so that they can pool resources to implement anti-doping activities.
- Education: leading and coordinating effective doping prevention strategies and education; assisting stakeholders in their implementation of anti-doping education programs.
- Athlete outreach: educating athletes at major international and multi-sport events through direct one-on-one interaction with anti-doping experts, answering their questions about the dangers and consequences of doping; empowering stakeholders to implement high-impact athlete outreach programs.

13 The WADA code (2009) defines a TUE as 'permission to use, for therapeutic purposes, a drug or drugs which are otherwise prohibited in sporting competition'.

- WADA drafts Model Rules for NOCs, IFs and National anti-Doping organisations in order to assist these organizations in drafting anti-Doping rules in line with the Code.

## Compliance

### Who?

Signatories: All signatories of the WADA Code must comply with the Code. Pursuant Article 23.2.1 of the Code: "The signatories shall implement applicable Code provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility". The Code sums up the entities that shall be Signatories: WADA, The International Olympic Committee, International Federations, The International Paralympic Committee, National Olympic Committees, National Paralympic Committees, Major Event Organisations, and National Anti-Doping Organisations (WADA Code: article 23.1.1).

By accepting the Code, signatories agree to the principles of the Code and agree to implement and comply with the Code. Consequently, they must implement the Code by amending their rules and policies to include mandatory articles and principles of the Code. These anti-doping rules must be submitted to WADA for review, in order for the rules to be pronounced in line with the Code. Finally, the Signatories must enforce its amended rules and policies in accordance with the Code.

States: Since the WADA Code is drafted by a non-governmental organisation, governments cannot be Signatories of the Code. Public authorities however declared their support for the Code as the foundation in the worldwide fight against doping in the Copenhagen Declaration on Anti-Doping in Sport (2003; David, 2008, p. 5). The Declaration is a political document that allows states to signal their intention to formally recognise and implement the Code. Following extensive lobbying by WADA, it was also agreed that an International Anti-Doping Convention under the auspices of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) would be created (Ravjani, 2009, p. 267). The International Convention against Doping in Sport (UNESCO, 2005) was adopted unanimously by the 33rd UNESCO General Conference on October 19, 2005, and went into force on February 1, 2007, following the 30th ratification. The Convention is available for UNESCO member states to ratify according to their respective constitutional jurisdictions. It is expected that those states that signed the Copenhagen Declaration, now 192 (WADA, 2012c), will also ratify the UNESCO Convention.

Athletes: The WADA Code explicitly requires athletes to: "*Comply with all applicable anti-doping policies and rules adopted pursuant to the Code"* (WADA Code: article 21.1.1).

## How is compliance achieved?

The Olympic Movement: The IOC is an international, non-governmental, non-profit organisation, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000. Since its creation in 1894, it has been the 'supreme authority' on all questions surrounding the Olympic movement, an incredibly complex system created to regulate the Olympic Games (Chappelet and Kübler-Mabbott, 2008).

The IOC draws on the Olympic Charter to form its very own 'Constitution', which sets forth not only the fundamental principles and rules of the Olympic Games, but also the organisational and procedural rules governing the Olympic movement (Casini, 2009, p. 4). The Charter serves as statute for the International Olympic Committee, and defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement: IOC, the International Federations (IF's) and the National Olympic Committees (NOC's). The Olympic Movement also includes other organisations and institutions as recognised by the IOC.[14]

The IOC is composed of NOCs, whose mission is to develop, promote and protect the Olympic Movement in their respective countries in accordance with the Olympic Charter. The Olympic Charter states that '*any person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC'* (Olympic Charter: Rule 1.2). The Charter was amended in 2003 to state that *'The World Anti-Doping Code is mandatory for the whole Olympic Movement'* (Olympic Charter: Rule 43). Only sports that adopt and implement the Code can be included and remain in the program of the Olympic Games. Therefore, sports federations and NOC's, which may be public authorities, are obliged to fully comply with the code. Thus, to date, more than 630 sport organisations, including the IOC, the IPC, all Olympic Sport International Federations (IFs) and all IOC-recognised IFs, National Olympic and Paralympic Committees have accepted the World Anti-Doping Code (WADA, 2012d).

States: WADA rules generally only apply and are legally binding to those States which have ratified the UNESCO Convention. Currently, 110 States have ratified the Convention, among which 18 EU Member States (UNESCO 2012). These States are, by international law, bound to the terms of the Convention. However, in order for the Convention to have direct effect on citizens, it must first be incorporated into national law. Some countries have implemented the rules of the Code fully and literally, so the National Anti-Doping Rules as adopted by Member States may be assessed as a mirror transposition of the Code.

The Convention outlines clear obligations required of governments. States Parties undertake to:

14 In that respect, Rule1 of the Olympic Charter (IOC 2011)states that 'under the supreme authority of the International Olympic Committee, the Olympic Movement encompasses organisations, athletes and other persons who agree to be guided by the Olympic Charter. The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practiced in accordance with Olympism and its values'.

- adopt appropriate measures at the national and international level consistent with the principles of the Code;
- encourage all forms of international cooperation aimed at protecting athletes and ethics in sport and sharing the results of research, and;
- foster international cooperation between States Parties and with WADA in particular.

The Convention however is a permissive document. It provides flexibility in the approach governments can take to implementation, either by way of legislation, regulation, policies or administrative practices.

Athletes: When an athlete signs a sport employment contract (or performs his activity as a self-employed worker), National Anti-Doping Rules require an authorisation form to be signed in order to be registered before the NFs or the IFs. In case the athlete refuses to sign this form, the athlete may not freely practise sport or participate in any official competitions organised by the NOCs, the NFs or the IFs. Thus, athletes are to accept the rules of the WADA Code as a condition of participation. They are bound by anti-doping by virtue of their agreements for membership, accreditation, or participation in sports organisations or sports events subject to the Code.

CAS: The Court of Arbitration for Sport (CAS) is an arbitral institution created by the IOC in 1983 devoted to resolve disputes directly or indirectly related to sport. It is based in Lausanne, Switzerland, and has two permanent branches in Sydney, Australia, and New York, USA. The Court of Arbitration for Sport is competent to resolve all types of disputes of a private nature relating to sport. Although CAS supposedly is an institution independent of any sports organisation (WADA, 2012e), the IOC has always played a major part in its funding and governing.

It can be said that CAS forms an integral part of the world-wide fight against doping (Oschütz, 2002). As a condition of participating in international sporting competition, athletes generally agree to mandatory arbitration of disputes to CAS. Trough compliance with the WADA Code, all Olympic International Federations have recognised the jurisdiction of CAS for anti-doping rule violations. Besides, WADA has a right of appeal to CAS for doping cases under the jurisdiction of organisations that have implemented the Code (WADA Code: article 13.2.3).

Through its overarching jurisdiction in doping issues, CAS strengthens the application of anti-doping sanctions, ensuring punishment of athletes from individual countries that do not act independently to apply sanctions and overcoming the traditional multiplication of legal disputes before the state courts of various jurisdictions. Moreover, through the treatment of a large number of doping cases over the past years, CAS has developed a certain expertise in the field of doping (Oschütz, 2002). The jurisprudence of CAS in doping cases is said to contribute to the development of a body of sport law/lex sportive which can give greater authority to the decisions and administrative actions of those responsible for anti-doping policy (Foster, 2003).

## Monitoring compliance

In order to be fully compliant with the Code, Signatories must undertake three steps: acceptance, implementation, and enforcement. Once a sport organisation has accepted the Code, it then needs to implement it. The latter means that the organisation needs to amend its rules and policies in order for them to be in line with the articles and principles of the Code.

Implementation: WADA is involved from the implementation stage on. As models of best practice (WADA Code: Article 20.7.5) it has developed so-called Model Rules for International Federations (WADA, 2012f), National Olympic Committees (WADA, 2012g) and National Anti-Doping Organisations (WADA, 2012h). In order for anti-doping rules to be pronounced in line with the Code, they must be submitted to WADA for review. If needed, WADA can provide further guidance in order for a particular organisation to achieve complete compliance.

WADA also helps countries and organisations develop anti-doping programs that are compliant with the World Anti-Doping Code in regions of the world where there are little or no quality anti-doping activities through Regional Anti-Doping Organisations (RADOs). Currently, there are 15 established RADOs bringing together 117 countries (WADA 2012i).

RADOs are composed of government and sport representatives. Their purpose is to establish effective anti-doping programmes among countries in a distinct geographical region through the coordination of testing as well as the training and funding of doping control officers. RADOs are also responsible for results management and appeals, as well as the dissemination of education and information materials. Small or less developed countries are allowed to develop testing programmes whilst maximising economies of scale and the sharing of expertise and costs.

In order to facilitate the fulfilment of the reporting obligations of the Signatories, WADA has developed an online anti-doping survey: 'Code Compliance Assessment Survey' (WADA 2012j). The survey consists of multiple-choice questions which refer to requirements and stipulations within the rules adopted by the Anti-Doping Organization or to the actions taken or not taken by the same organization. The online tool also assists WADA in evaluating the status of each signatory as regards Code compliance and enables WADA to provide guidance, if needed, to achieve complete compliance.

Compliance: By virtue of the WADA Code, compliance with the Code shall be monitored by WADA (WADA Code: article 23.4.1). WADA has committed significant resources to follow up with every signatory with the objective of assisting each of them achieve Code compliance. To facilitate monitoring, each Signatory has to report to WADA on its compliance with the Code every second year and has to explain reasons for non-compliance (WADA Code: Article 23.4.2). Failure by a Signatory to provide compliance information requested by WADA may be considered noncompliance with the Code (WADA Code: Article 23.4.3).

The first way WADA monitors compliance is by closely monitoring doping cases on a daily basis. If appropriate, WADA exercises its right of appeal to CAS for cases under the jurisdiction of organizations that have implemented the Code.

Secondly, WADA formally reports on stakeholder compliance with the Code every two years. The first official report was released in November 2008. WADA makes reports on compliance to the International Olympic Committee, the International Paralympic Committee, International Federations, and Major Event Organisations. The reports are also made publicly available. All WADA compliance reports have to be approved by the WADA Foundation Board. Before reporting that it is non-compliant, WADA engages in a dialogue with the Signatory. The Signatory also has the opportunity to submit its written arguments to the Foundation Board (WADA Code 23.4.4). The final decision that a Signatory is noncompliant is made by the Foundation Board. This decision may however be appealed by the Signatory to CAS (WADA Code: Article 13.5).

There are two situations in which a Signatory will be deemed to be non-compliant. Firstly, when it has failed to provide compliance information requested by WADA (WADA Code: Article 23.4.3). Secondly, when it has sent WADA the required information and/or all sources of information have been considered, however, after analysis they are considered to be not in compliance with the Code.

Sanctions for noncompliants: The organisations to which WADA reports non-compliance all have the jurisdiction to impose sanctions. For example, since 2003, the adoption and implementation of the Code by the Olympic Movement is mandatory by virtue of the Olympic Charter and only Code compliant sports can be part of the Olympic program. Pursuant to the WADA Code, noncompliance with the Code by any Signatory may result in consequences in addition to ineligibility to bid for Events (WADA Code: Articles 20.1.8; 20.3.10; and 20.6.6). These can be, for example, forfeiture of offices and positions within WADA, ineligibility or non-admission of any candidature to hold any International Event in a country, cancellation of International Events, symbolic consequences and other consequences pursuant to the Olympic Charter (WADA Code: Article 23.5). The imposition of such consequences may however be appealed to CAS by the affected Signatory (WADA Code: Article 13.5).

The above sanctions also count as regards governments who have failed to ratify, accept, approve or accede to the UNESCO Convention or to comply with the UNESCO Convention (WADA Code: Article 22.6). However, the overall responsibility for the implementation of and the monitoring of compliance with the Convention lies with the Conference of Parties which is held every two years at UNESCO headquarters in Paris (WADA Code: Article 23.4.1). Governments are required to provide a report which outlines all the measures they have taken to comply with the provisions of the Convention (including the development of anti-doping programmes). WADA is invited as an advisory organisation to the Conference (UNESCO, 2012b).

## Statistics on compliance

According to the WADA Compliance Report of 20 November 2011 (WADA, 2012k):

### Countries

*Africa*
Compliant Signatories (31) Non-Compliant Signatories (22)
*Americas*
Compliant Signatories (34) Non-Compliant Signatories (7)
*Asia*
Compliant Signatories (35) Non-Compliant Signatories (9)
*Europe*
Compliant Signatories (41.5) Non-Compliant Signatories (7.5)
*Oceania*
Compliant Signatories (14) Non-Compliant Signatories (3)

### Olympic International Federations

– ASOIF/AIOWF (35)
Olympic Summer IFs (28)
Olympic Winter IFs (7)

### IOC Recognised International Federations

- ARISF (32)
Compliant Signatories (32)

### Paralympic International Federations (8)

Compliant Signatories (6) Non-Compliant Signatories (2)

### Non-IOC Recognised Sportaccord Members (24)

Compliant Signatories (19) Non-Compliant Signatories (5)

### National Olympic Committees (NOC)

All NOCs are Code-compliant except the British Olympic Association (BOA). The BOA's non-compliance is based on the Court of Arbitration for Sport (CAS) decision of October 4, 2011 that advised the International Olympic Committee (IOC) that its Rule 45 was non-compliant because it was, in effect, a double sanction. In light of this ruling, the BOA's byelaw number 74 renders the BOA non-compliant.

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# Monitoring systems of good governance

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The aim of this first draft report on the role of monitoring and indicators, prepared by the research team from the University of Ljubljana, Faculty of Social Sciences is three-fold:

1. To give a general theoretical overview of the role of monitoring and monitoring systems, on the basis of which it will be possible to tailor the monitoring alternative for the AGGIS project's purposes;
2. To present the EU's so-called soft law tool, the open method of coordination (OMC), in which the monitoring-like approaches, as described in the theoretical introduction of this report, can be traced in practice;
3. To present a general overview of the three system broad approaches for monitoring governance issues that are already established and applied worldwide, with a future aim of selecting those indicators/variables that could possibly be directly used for AGGIS monitoring purposes.

## Theoretical insight

### Why monitor?

Each organisation, institution, as well as the state and all the sub-systems that embody them, strive for feedback about their making. This feedback represents the basis for their future attitudes and orientations, as well as the attitudes and orientations of the environments around them. This is why the public's pursuit of existing and implemented practices and patterns in democratic societies and institutions is of fundamental importance.

Monitoring is a special analytical procedure used to produce information about the results of the work of organisations or policies that they implement – either in the private or the public sector. As such monitoring is regarded to be one of the crucial procedures that is supposed to provide information about an organisation's performance or policy, be it from the perspective of the organisation's resources, processes (actions and activities) or the perceptions of the wider environment in which it operates.

Based on the described broader mission, monitoring performs at least four major functions: explanation, accounting, auditing and compliance (Dunn, 2004, p. 355-356):

1. Explanation: The explanatory function of monitoring yields information about the outcomes of the implementation and it can help explain why the outcomes differ or not;

2. Accounting: The accounting function of the monitoring process is important for delivering information that can help in accounting various changes that follow the implementation of a process or policy (e.g. social, economic, environmental);
3. Auditing: The auditing function of monitoring enables it to be determined whether resources and services that have been targeted to the beneficiaries or certain target groups have actually reached them;
4. Compliance: Monitoring in the case of the function of compliance helps to determine if the processes, activities and resources, staff, and others involved are in compliance with the standards and procedures that are defined in advance either by the organisation itself or the external environment.[15]

Due to the functions outlined above, the specific aims and expectations for monitoring the implementation of work of organisations and their policies can vary, and as such be synthesised into three aims that can either have 1) internal organisational motives 2) external environmental motives or 3) each of these motives:

1. Monitoring as the operational, managerial procedure which through information and evidence provides feedback on the performance;
2. Monitoring as a necessary prerequisite procedure that enables further assessment of the impacts of implementation for the past and future state of the affairs, and further on the platforms for policy learning and potential introduction of policy changes;
3. Monitoring as the procedure that provides information about the impacts that the implementation of one organisation and its making have on system's wider governance practices, norms and values, such as democracy, transparency, human rights and wellbeing.

According to the exposed monitoring of organisations' implementation is supposed to have two main missions:

1. To give ex-post or feedback information about the characteristics of already or currently implemented work and activities that have been developed and undertaken in previous periods;
2. To give ex-ante platforms for the planning of future implementation activities, which fundamentally refers to the need to evaluate past implementation practices in order to make decisions about their future direction.

## What to monitor

Parallel to the points addressed above, it is especially important that a set of fundamental issues that need to be covered and monitored on the basis of the monitoring motives, mission and applied procedures is clearly established. Usually the framework and monitoring of each implementation is supposed to give answers to the following sets of questions (Chase 1979), and hence information about the organisations' democratic, transparent, accountable governance outlooks:

15 Here we need to differentiate between policy and legal compliance, where the former relates to the question of how extensively the normative standards are being considered in the actual, day-to-day policy implementation, while the latter relates most often to the question of the formal acceptance of the agreements/ standards.

- Who are the people to be served and who are serving?
- What is the nature of the services to be delivered?
- What are the potential distortions and irregularities?
- Is the implementation controllable (e.g. can the implementation be measured)?

Based on the abovementioned functions, expectations, motives and aims for the application of monitoring procedures, the next crucial challenge is to decide which type of data needs to be collected and which methods and procedures are applicable to the reasons for applying a monitoring system. In this sense the crucial task is to decide which type of data is needed for those purposes and how to contextually define the issues that need to be monitored. Mostly the authors of implementation studies (see Hogwood and Gunn, 1984; Parsons, 1999; Hill and Hupe, 2002; Dunn 2004) classify the content of the data needed to monitor the implementation practices into two crucial categories which relate to at least one of the four types of indicators according to their relevance:

1. Input,
2. Process,
3. Output and
4. Impact indicators.

The macro data category relates to the characteristics of the wider system, e.g. to the broader context of political, social and economic environment(s) in which individual international sport organisations are established and operate. This category partly covers/overlaps with input and impact indicators and represents a necessary precondition for in-depth monitoring of good governance. This category mainly relates to the data on:

- Regime/Legal type and status of the state: type of democracy or type of legal status, legal basis/origins, elections and election rules,
- Economy of the state,
- Social welfare index,
- Perception of corruption and transparency.

The micro category relates to the prevailing characteristics of the individual organisation, its processes and work. This category again consists of a combination of all four types of indicators (input, process, output and impact) and relates mainly to the following:

- Institutional structure characteristics: legal status, elections and election rules for the organisation's leadership, structure of the leadership, structure of the membership, yearly budget, number of employees in the organisation etc.
- Process characteristics: general internal decision-making rules, procedures and practices
- Project and policy characteristics: data on the implementation of the concrete programs, projects

a. Cadre resources: number and profiles of the employees (full-time, part-time, voluntary, gender)
b. Financial resources: data that relates to the relevant budget aspects, including both the operation of the organisation itself as well as the implementation of concrete programs and activities
c. Other relevant data: sources of knowledge, etc.

### Who and how to monitor

The data gathered for the purposes of monitoring performance mostly come from two sources:

1. Some data already exist and are either: a) already available as they have been gathered for other purposes (like the monitoring of the profiles of the states) and can thus be extracted from existing data-sets or indexes (like Transparency International, World Governance Index and Global Reporting Initiative); or b) being gathered for the internal organisational purposes and are not publically available although they exist;
2. Data are not yet gathered. In this case data collection needs to be conducted, mostly through applying the following methods:

- Review of relevant existing documentation and data: statistics, financial records, policy documents
- Surveys
- Interviews
- Focus groups, panels and similar methods of gathering perspectives on the implementation practices

Subsequently the data that are relevant for the implementation and from which performance can be monitored are defined in the so called codes of conducts, organisational/policy guidance, guidelines, standards, etc. (see for example IFAC at www.ifac.org).

## The case of the open method of coordination (OMC) as the selected monitoring practice of the EU

Within the European Union, the so-called open method of coordination was introduced as a part of a broader movement toward "new governance" and democratic experimentalism in the EU. For advocates of the OMC and other "new governance" approaches, traditional forms of "command and control governance" are viewed as exclusive, incapable of addressing societal complexity, static and unable to adapt well to changing circumstances, and limited in their production of the knowledge needed to solve problems. They cite the need to move from a centralised command and control regulation, consisting of rigid and uniform rules and hard law, toward a system of governance that promotes flexibility

and learning through the use of soft law[16] (Trubek et al. 2006: 12). One of the claims put forward by policymakers and academics that supports and promotes the use of the OMC is the claim that the OMC represents the "architecture of policy learning" (Ferrera et al. 2002; Knill and Lenschow, 2003; Eberlein and Kerwer, 2004). Seen in this way, the OMC is an institutional arrangement which organises policy learning processes among member states. The process of policy learning with its elements, policy diffusion, transfer, change and convergence, is thus often used for describing new modes of governance like the OMC. The OMC operates through iterative processes, aiming to:

- Share best practices,
- Organise peer learning/reviews,
- Set benchmarks and
- Monitor policy-making processes/implementation.

Two most prominent policy fields where the OMC had been introduced so far are employment and education. On the one hand, in relation to employment, the OMC was introduced to encourage the exchange of information and joint discussion between member states, and to attempt to find joint solutions and best practices for creating a greater number of better jobs in all member states. The OMC requires that member states coordinate among themselves in order to define the guidelines, recommendations and a set of common indicators as measurable employment targets. The OMC also encourages mutual learning among the various stakeholders regarding the European Employment Strategy (EES) and its implementation (Casey and Gold, 2004; Nedergaard, 2006). According to Nedergaard (2006, p. 311), the purpose of the EU's employment policy is to foster mutual learning between member states through three strands of activities: a) twice-yearly EU-wide thematic review seminars on key challenges or policy priorities; b) a peer review in individual member states, focusing on specific policies and measures within the broader policy priority; c) follow-up and dissemination activities to involve a broader group of national stakeholders and to further the cooperation and exchange of good practices between member states (Lajh and Silaj, 2010, p. 7).

On the other hand, in relation to education policy field, as part of the OMC process (with the working programme Education and Training 2010) 13 common objectives were defined and a work organisation was set up around these objectives to include the following: diversified clusters and working groups which bring together national experts and the partners concerned (eight clusters and one working group were established); the sharing of practices and experiences on common objectives adopted by ministers (peer learning activities were organised by clusters and the working group); defining indicators for monitoring progress (16 indicators were defined in accordance with 13 common objectives); producing European references for supporting national reforms (five benchmarks were agreed); and monitoring common progress (with annual quantitative and biannual qualitative reports). Every two years, the Ministers of Education from the

16 The term "soft law" characterises texts which are on the one hand not legally binding in an ordinary sense, but are on the other hand not completely devoid of legal effects either (Peters and Pagotto 2006). In the EU context specifically, soft law refers to action rules which are not legally binding but which are intended to influence member state policies, such as recommendations, resolutions, or codes of conduct (Snyder 1993; Kenner 1995).

member states publish a joint report with the European Commission on the overall situation in education and training across the EU and assess what progress has been made towards the common objectives. This report uses data from the EC's annual progress reports, but adopts a strategic view, delivering a series of key messages and recommendations for future approaches.

## Review of the relevant existing wider system governance monitoring systems

In this chapter we synthesise the 'whys', 'whos', 'whats' and 'hows' of the three selected worldwide-referred monitoring systems. The main aims of the chapter are twofold:

1. To apply the usefulness and sensitiveness of the above presented approaches and aims of monitoring practices to the concrete cases of the monitoring systems of: a) Transparency International, b) World Governance Index and c) Global Reporting Initiative;
2. To select the indicators that could potentially, either directly or indirectly, be used for the purpose of preparing guidelines for monitoring good governance in sport organisations – to be done when an agreement about the indicators is achieved within the project team.

What we know so far is that many examples of monitoring practices and systems can be detected all over the world. Their aims are either to monitor their implementation or their attitudes towards the sets of wider system norms, standards and values, like democracy, governance and transparency, or their own internal ones. As a result of these activities methodological indicators and indexes are being defined and calculated, and many guidelines, codes of conduct and good practices are being published.

The following examples of challenges that arise when organisations decide to monitor, be it from their own individual organisations' or wider system perspective should be addressed:

1. *Why* monitor: what are the aims/expectations of monitoring the work? Is it an internal need in the organisation or is it in response to expectations from the external environment (clients, international organisation's demands, etc.) to:

    a. Review existing performance,
    b. Assess performance,
    c. Introduce policy changes,
    d. Learn,
    e. Fulfill the obligations,
    f. Something else.

2. *What* to monitor: this relates to the concrete information that can be used to describe the processes and activities that comprise an organisation's work and can be communicated transparently. The process of selecting the content that

needs to be monitored during the implementation is determined by the specific questions that need to be answered, e.g. which types of data are needed if we want to describe our own work? Generally those data relate to the following information:

a. General external environmental regime structures (e.g. the state where the organisation has its official seat):

- Type of authority: type of political system, government structures and division of powers, membership in key international organisations (UN, OECD, EU, etc.)
- Elections: electoral rules and procedures, mandates
- Economy: yearly GDP, structure, growth, income and expenditure, TI corruption index
- Society: population, poverty rate

b. Organisational structure specifics:

- Type of organisation: type of organisation, governance structures of the organisation and its members (by gender, geographics), number of organisational units (organisational charter)
- Membership: number of members, share/continental coverage, inclusion of disabled sport federations, organisation's membership in other organisations
- Elections: electoral rules and procedures, mandates
- Regulation: number and type of basic organisational rules
- Economy: yearly GDP, structure, growth, income and expenditure, final yearly accounts
- Employees: number of employees, gender balance, type of their position
- Experts: number of employed internal/external experts, fields of expertise

c. Organisation process specifics:

- Policy-making procedures: who, how, when it is allowed to initiate what

d. Organisation resource specifics:

- Policy: number/types of on-going projects, programs
- Finances/individual organisation's projects and programs: yearly budget, share of financial sources, final account
- Staff/individual organisation's projects and programs: number of employees, gender balance, type of their position
- Knowledge and expertise/individual organisation's projects and programs: number of employed internal/external experts, fields of expertise
- Other resources /individual organisation's projects and programs

3. *How* to monitor: how to gather and analyse the data and what types of data are to be used – e.g. statistics, qualitative assessments:

    a. Application of existing monitoring data, indicators, indexes, systems;
    b. Benchmarking, peer-reviews, compliance reports, etc.;
    c. Collection and application of the monitoring system and data the organisation has either newly acquired or not already gathered for purposes a) and b).

In the coming sections of this report analyses of the selected three governance systems are made according to the frameworks outlined in the table below. Each of the three systems is first described in general and then the main 'why', 'who', 'what', 'how' characteristics for each are shown in the table.

In all three cases the monitoring system relates to the so-called macro or system monitoring perspective, while the micro, organisationally relevant ones can be traced indirectly, tailored according to our project definitions and needs.

Table 1

| | **Why?** | **Who?** | **What?** | **Who?** |
|---|---|---|---|---|
| **Macro** | Monitoring governance, democracy and transparency practices of the wider political-economic-social circumstances in which international sport organisations operate | A combination of internal organisations, existing external data-sets + additional expert assessments | General external environmental regime structures:<br>• Authority<br>• Elections<br>• Economy<br>• Society | Primary data collection<br>Secondary sources from the existing datasets<br>Benchmarking type of reports<br>+ ???? |

## Transparency International[17]

"Transparency International (TI) is the global civil society organisation leading the fight against corruption. TI brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. TI's mission is to create change towards a world free of corruption. TI challenges the inevitability of corruption, and offers hope to its victims. Since its founding in 1993, TI has played a lead role in improving the lives of millions around the world by building momentum for the anti-corruption movement. TI raises awareness and diminishes apathy and tolerance of corruption, and devises and implements practical actions to address it" (Transparency International, 2012).

17 More on Tranparency international (2012): Homepage. Available at: http://www.transparency.org/, March, 2012.

"Through more than 90 chapters worldwide and an International Secretariat in Berlin, they raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it" (Transparency International, 2011).

Key elements of TI's work include analysing and diagnosing corruption, measuring its scope, frequency and manifestations through surveys and indices, as well as other research. TI has developed particular indexes and other measurement tools to assess corruption[18] in general.

Table 2

| **Index (name)** | **Why?** | **Who?** | **What?** | **How?** |
|---|---|---|---|---|
| Corruption Perception Index (CPI) | Because of political (major obstacle to democracy and the rule of law), economic (depletion of national wealth), social (undermining trust in the political system) and environmental (environmental degradation) corruption costs. | External organisations for TI's purposes: e.g. 2011: 17 sources from 13 independent institutions – emphasis on governance. | Measuring perceptions of corruption in the public sector (183 countries included worldwide). | Annually conducting a mixture of:<br><br>a) Opinion surveys among business people and<br><br>b) Assessments provided by country experts or analysts from international institutions. |
| Global Corruption Barometer (GCB) | As a pool of the general public, it provides an indication of how corruption is viewed at the national level and how efforts to curb corruption around the world are assessed on the ground. | Gallup International Association on behalf of TI. | Public opinion survey on views and experiences of corruption and bribery (86 countries worldwide). | Annually carrying out interviews either<br>a) Face-to-face using self-administered questionnaires;<br>b) By telephone, internet or<br>c) Computer-assisted telephone interviewing. |
| Bribe Payers Index (BPI) | Because of the role both public and private sectors can play in tackling corruption. It also | Data for the BPI is drawn from Bribe Payers Survey. Furthermore, Bribe Payers Survey was | Unique tool capturing the supply side of international bribery – focusing on bribes paid by | Interviews are carried out by common survey questionnaires either through<br>a) Telephone; |

18 3 TI defines corruption as: "the abuse of entrusted power for private gain".

| | | | | |
|---|---|---|---|---|
| | makes actionable recommenda-tions on how businesses and governments can strengthen their efforts to make substantial progress in reducing the prevalence of foreign bribery around the world. | carried out on TI's behalf by Ipsos MORI. | the private sector (i.e. the likelihood of firms from included countries to bribe when doing business abroad) (28 countries worldwide). | b) Face-to-face or c) Online. Interviewers were business executives from particular countries. |
| National Integrity System (NIS) | A framework anti-corruption organisations can use to analyse the extent and causes of corruption in a given country as well as the effectiveness of national anti-corruption efforts –building momentum, political will and civic pressure for relevant reform initiatives. | Assessments are conducted by local in-country organisations, generally TI's national chapters comprising individual researchers or/and groups of researchers and advisory group. | Comprehensive evaluations of integrity systems in given countries including key public institutions and non-state actors in a country's governance system – since its inception more than 70 national integrity assess-ments were carried out in different countries. | Analysis of laws, policies and existing research studies, Inter-views with experts in certain fields/pillars of assessment; Field test (when possible). |

Source: Transparency International, 2012.

## Global reporting initiative [19](GRI)

The GRI Reporting Framework is intended to serve as a generally accepted framework for reporting on an organisation's economic, environmental and social performance. It is designed for use by organisations of any size, sector, or location. It takes into account the practical considerations faced by a diverse range of organisations – from small enterpris-es to those with extensive and geographically dispersed operations. The GRI Reporting Framework contains general and sector specific content that has been agreed by a wide range of stakeholders around the world to be generally applicable for reporting an organisation's sustainability performance (Global Reporting Initiative, 2012).

19 More on Global Reporting Initiative (2012): Homepage. Available at: https://www.globalreporting.org/Pages/default.aspx , March, 2012

Table 3: GRI Indicators Matrix

| Indicator type | Indicator name | Aspect |
|---|---|---|
| Economic | Economic performance indicators | Economic performance |
| | | Market presence |
| | | Indirect economic impacts |
| Environmental | Environmental performance indicators | Materials |
| | | Energy |
| | | Water |
| | | Biodiversity |
| | | Emissions, effluents and waste |
| | | Products and services |
| | | Compliance |
| | | Transport |
| | | Overall |
| Social | Labour practices and decent work performance indicators | Employment |
| | | Labour/management relations |
| | | Occupational health and safety |
| | | Training and education |
| | | Diversity and equal opportunity |
| | | Equal remuneration for women and men |
| | Human rights performance indicators | Investment and procurement practices |
| | | Non-discrimination |
| | | Freedom of association and collective bargaining |
| | | Child labour |
| | | Forced and compulsory labour |
| | | Security practices |
| | | Indigenous rights |
| | | Assessment |
| | | Remediation |
| | Society performance indicators | Local communities |
| | | Corruption |
| | | Public policy |
| | | Anti-competitive behaviour |
| | | Compliance |
| | Product responsibility performance indicators | Customer health and safety |
| | | Product and service labelling |
| | | Marketing communications |
| | | Customer privacy |
| | | Compliance |

Source: Global Reporting Initiative (2011).

## World governance index[20] (WGI)

A survey of these objectives and these basic texts has made it possible to determine and select five large fields, called indicators, which, aggregated, constitute the WGI:

20 More on Forum for a New World Governance (2012): Homepage. Available at: http://www.world-governance.org/, March, 2012.

- Peace and security
- Rule of law
- Human rights and participation
- Sustainable development
- Human development

Each of these indicators is broken down into several sub-indicators. A total of 13 sub-indicators are used and each of these sub-indicators is the result of the aggregation of several indexes (41 in all). Finally, the data used to calculate the indexes and determine the WGI is taken from the databases published annually by the main international organisations and by NGOs specialising in the area of governance (New World Governance, 2012).

WGI Composition:

- 5 main indicators
- 13 sub-indicators
- 41 indexes

## Usefulness of the WGI

The WGI has a twofold dimension: a) an analytical dimension which tries to provide as true a reflection as possible of the state of world governance and b) an operational dimension which must enable players to act or to react in the direction of a more efficient, more democratic world governance more in phase with the environment. The WGI was designed mainly to offer political decision makers, whatever their level (national, regional or international), companies and NGOs reliable, independent and scrutinised information that will allow them to evaluate the state's degree of governance and to identify its strengths and weaknesses in governance to monitor its evolution over time (New World Governance, 2012).

Basic indicators that constitute the WGI are (New World Governance, 2012):

a. Peace and security: Broken down into two sub-indicators: the national security sub-indicator and the public security sub-indicator. The national security sub-indicator comprises conflicts, refugees and asylum seekers, and displaced persons. The public security sub-indicator comprises political climate, degree of trust among citizens, violent crime, and homicides per 100,000 inhabitants;
b. Rule of law: Refers exclusively to how laws are designed, formulated and implemented by a country's legal authorities;
c. Human rights and participation: This indicator is broken down into three sub-indicators: the civil and political rights sub-indicator, the participation sub-indicator, and the gender discrimination/inequality sub-indicator;
d. Sustainable development: The concept of sustainable development is based on two core principles: on the one hand, intergenerational solidarity (seeking improvement of the wellbeing of future generations); on the other, intergenerational solidarity (sharing wellbeing or the conditions for wellbeing within the same generation). These two principles are expressed in the normative statement of the goals

that make up the different dimensions of sustainability: the economic sphere, the social dimension (inequality and poverty), and the environmental sphere;

e. Human development: In the realm of human development, the most fundamental of an individual's possibilities consists of leading a long and healthy life, being well-informed, having access to the resources necessary for a decent standard of living, and being able to take part in the life of the community.

Table 4 represents WGI as a whole – covering main indicators, sub-indicators and indexes.

Table 4: WGI Indicators Matrix

| **Indicator** | **Sub-indicator** | **Index** |
|---|---|---|
| Peace and security | National security | 1. Conflicts (number and types – latent, manifest, crisis, severe crisis, war – of conflicts documented in the previous year) |
| | | 2. Refugees and asylum seekers |
| | | 3. Displaced persons |
| | Public security | 4. Political climate (level of political violence) |
| | | 5. Degree of trust among citizens |
| | | 6. Violent crime (rate of violent crime) |
| | | 7. Homicides per 100,000 inhabitants |
| Rule of law | Body of laws | 8. Ratification of treaties (degree of ratification of particular international treaties and conventions currently in force[21]) |
| | | 9. Property rights (country's degree of commitment to the protection of private property and the way in which the authorities apply this right) |
| | Juridical system | 10. Independence (assessment of judicial system independence, the bodies that oversee the police force, legal protection, and the guarantee for equal treatment for all) |
| | | 11. Effectiveness (ratio of remain prisoners to convicted prisoners) |
| | | 12. Settlement of contractual disputes (average time that national judicial institutions use to settle disputes related to commercial contracts) |
| | Corruption | 13. Corruption Perception Index |
| Human rights and participation | Civil and political rights | 14. Respect of civil rights (freedom of movement, political participation, worker's rights, freedom of speech, freedom of religion, freedom of assembly and association) |
| | | 15. Respect for physical integrity rights (Torture, disappearance or political abductions, extrajudicial killing and political imprisonment) |
| | | 16. Freedom of the press |
| | | 17. Violence against the press (number of murders, abductions and disappearances of journalists and media workers as well as the number of imprisoned journalists) |
| | Participation | 18. Participation in political life (degree of participation in political life) |
| | | 19. Electoral process and pluralism (effective share of pluralism in the different electoral processes) |
| | | 20. Political culture (political culture of citizens degree) |
| | Gender | 21. Women's political rights (number of internationally recognised |

21 Convention names are available online at: http://www.world-governance.org/IMG/pdf_WGI_full_version_EN-2.pdf.

| | | |
|---|---|---|
| | discrimina-tion/inequality | rights: voting rights, the right to run for political office and the right to hold elected and appointed government) |
| | | 22. Women's social rights (right to equal inheritance, the right to enter into marriage on a basis of equality with men, the right to travel abroad, the right to initiate a divorce) |
| | | 23. Women's economic rights |
| | | 24. Rate of presentation in national parliaments |
| Sustainable development | Economic sector | 25. GDP per capita |
| | | 26. GDP growth rate |
| | | 27. Degree/level of economic openness |
| | | 28. Cover rate |
| | | 29. Inflation rate |
| | | 30. Ease in starting a business (bureaucratic and legal hurdles an entrepreneur must overcome to start a commercial or industrial business – number of procedures, cost and time expressed in days) |
| | Social dimension | 31. GINI coefficient (poverty and inequality) |
| | | 32. Unemployment rate |
| | | 33. Ratification of international labour rights texts |
| | Environmental dimension | 34. Ecological footprint (1) and Biocapacity ((1): necessary per capita surface area (terrestrial, marine and freshwater) to meet humankind's needs and to eliminate waste; (2): per capita surface area (in terms of agriculture, breeding, forest and fish resources) available to meet humankind's needs |
| | | 35. Environmental sustainability (ability of nations to protect the environment over the next several decades) |
| | | 36. CO2 emission rate per capita |
| | | 37. Environmental performance (environmental health, air pollution, aquifer resources, biodiversity and habitat, natural resources and climate change) |
| Human development | Development | 38. Human development |
| | Wellbeing and happiness | 39. Subjective wellbeing (result of a combination of economic wellbeing, environmental wellbeing and social wellbeing) |
| | | 40. Happiness (result of combination of satisfaction index, life expectancy at birth, and the environmental impact) |
| | | 41. Quality of life (cost of living, culture and leisure, economy, environment, health, freedom, infrastructure, safety and risk, climate). |

Source: Forum for a New World Governance (2011).

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# Reassessing the Democracy Debate in Sport Alternatives to the One-Association-One-Vote-Principle?

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## The Challenge: Improving Democratic Structures in International Sport Organisations

Democracy is considered as one of the Western world's most salient success stories. Generally defined as "Government by the people" democracy constitutes a type of political system in which the sovereign powers reside in the people (as a whole) while political decisions are exercised either directly by them or by representatives elected by them. As a general principle, democracies are based on autonomous individuals, who are all deemed equal and who vote to declare and register "one's opinion" which is then duly weighted within the relevant democratic institutions. Based on this general principle the question of the best electoral system is an ongoing debate among both politicians and political science (Boix, 1999; Lijphart, 1985; Farrell, 2001; Colomer, 2004; Gallagher and Mitchell, 2005; Klingemann, 2009; especially in view of the "effects and determinants of electoral systems" (Taagapera and Shugart, 1989).

Though the international system is considered as anarchic its voting procedures are based on principles that are similar to those in national democratic systems. As such, individual states are considered as autonomous individuals by both international law, and political science. This perspective was at first explicitly expressed by the "Law of Nations" published by the political philosopher Emerich de Vattel in 1758: "Since men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally proceeding from nature – Nations composed of men (…) are naturally equal, and inherit from nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom." Based on this approach, the general principle that is applied to in international organisations – independent from competencies or policy fields –, allocates each country (or respectively each federation) one vote to exercise in democratic decisions – disregarding its size, financial contributions or influence in the world. As such, the equality of voting is broadly accepted as general rule,[22] though from the beginning on there has been a debate on different modes of representation (Wehberg 1944), on the relation of smaller an larger states (Rusett, 1955) and more recently on democracy in general (Zweifel, 2006).

This general principal is also anchored in international sport organisations. Democratic decision-making in most international governing bodies of sport is based on the current

22 Exceptions are for example the World Bank or the IMF, specifically due to the formal voting powers allotted to donors that are given more votes than receivers. For instance the US has about fifteen per cent of the vote.

one-nation (one-association/federation-), one-vote principle. Although this ideal has a strong appeal, it has been realized with increasing frequency and severity that decision-making based on equal voting embraces democratic limits and may cause corruption of unscrupulous players (Kistner and Weinreich, 2000; Chappelet and Kübler-Mabbott, 2008; MacAloona, 2011). Allegations of vote buying in particular have arisen in the international governing bodies of sport in the last two decades. Starting with the bid scandal of the Olympic Games in Salt Lake City 2002 and reaching up to the foundation of new national federations in countries without any clubs and players these allegations have led to ongoing debates on a reform of voting procedures in international sport organisations. The arguments have shown a recurring pattern, with rich or larger federations demanding more power due to their greater financial support, while poor or smaller federations arguing for sovereign equality.

Against this backdrop this paper takes a closer look at 13 international sports organisations at the European and International level in view of their democratic quality. In its first part the papers displays the empirical ground by investigating the statutes of international sport organizations. The second part contributes to reform options and develops potential alternatives to the existing one-association-one vote-principle. The last part of this paper draws some preliminary conclusions and recommendations by offering some food for thoughts for further considerations and debates.

## The Current Situation: Imbalanced Voting Procedures in International Sport Organisations

The object of this chapter is to outline the voting procedures of 13 selected international sport federations. Part one is about general information, the selection of federations, founding years, legal conditions and headquarters of all 13 international sport federations. In part two the Legislative and the Congress as well as distributions of votes, elections and decisions will be analysed. In part three the Executive, its members and the voting procedures will be in the focus.

### General information:

*Selection of federations (see below table 1)*

The empirical basis of the analysis of voting procedures is focused on 13 international sport federations. Eleven of them can be allocated to the sports Basketball, Football, Ski, Rowing, Biathlon, Handball, Ice-Hockey, Judo, Rugby, Tennis, and Wheelchair-Basketball. In addition, the international umbrella associations of the Olympic and Paralympic Committees will be part of this investigation. Three of the eleven sports federations are counted among winter sports (Ski, Biathlon, Ice-Hockey). Six of them are obvious team sports (Basketball, Football, Handball, Ice-Hockey, Rugby, Wheelchair-Basketball), two of them can be considered both as team sports and individual sports (Rowing, Tennis).

Concerning the selection of federations under consideration it was regarded to consider team and individual sports as well as winter and summer sports. Moreover, Rugby is a non-Olympic and one of the oldest federations. The number of national member federa-

tions of each international sport federation varies from over 200 of Basketball, Football, Judo and the Olympic Committee and below 100 of Biathlon, Ice-Hockey, Rugby and Wheelchair Rugby.

*Founding years, legal conditions and headquarters (see below table 1)*
The oldest sport federation is Rugby founded in 1886, followed by Rowing founded in 1892. The youngest sport federations are Biathlon and Wheelchair-Rugby founded in 1993. Independent of the founding years eleven federations are non-profit organizations, nine of them have their headquarters in Swiss (IPC seated in Germany, IBU seated in Austria). Two federations have the legal condition of a private company limited (Rugby, Tennis).

Table 1: Selection of federations, founding years, legal conditions and headquarters

| | **FIBA** | **FIFA** | **FIS** | **FISA** | **IBU** | **IHF** | **IIHF** | **IJF** | **IRB** | **ITF** | **IWRF** | **IOC** | **IPC** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Member federations | 213 | 209 | 110 | 137 | 61 | 167 | 72 | 201 | 97 | 145 | 26 | 204 | 170 |
| Summer (S) Winter (W) | S | S | W | S | W | S | W | S | S | S | S | S+W | S+W |
| Team (T) Individual (I) | T | T | I | T+I | I | T | T | I | T | T+I | T | T+I | T+I |
| Founding year | 1932 | 1904 | 1924 | 1892 | 1993 | 1946 | 1908 | 1951 | 1886 | 1913 | 1993 | 1894 | 1989 |
| Legal condition | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ● | ● | ■ | ■ | ■ |
| Legend | ■ non-profit organization<br>● private company limited<br>○ n/a | | | | | | | | | | | | |
| Headquarter | CH | CH | CH | CH | A | CH | CH | CH | IRL | BAH | CH | CH | GER |

Source: Own representation

## Legislative Congress

*Term and significance of the Congress*
The term 'Congress' is not used uniformly: In the IRB and the IPC the legislative organ is referred to as the 'General Assembly' instead of the Congress; the ITF names it 'Council' and the IOC uses the term 'Session'. In the following the term Congress is the generic term for General Assembly, Council and Session. The great majority characterises the Congress as the 'supreme authority' respectively 'highest body'.

One feature can be observed: Beyond the General Assembly of IRB there is the Council which comprises representatives of Unions and Associations who comprise the committee that has the ultimate and supreme legislative authority with respect to the affairs of the Board. The Council consists of a chairman, a vice-chairman and 26 members (composition by continental zones, cf. bye-law 1.1, p. 19).

*Delegates and distribution of votes (see below table 2)*
The great majority of the federations allow their national member federations to send a maximum of two up to three delegates as representatives, but only one delegate of each federation is entitled to vote. In general the following applies: Each national member federation has one vote. Three federations, FIS, FISA and IIHF, have special features, because each of their member federation has at least one vote and at most three votes:

The member federations of FIS get up to three votes if they have a particular number of members. In the Statutes it is stated that "each member association has at least one vote. There shall be one additional vote (in all two votes) for each Member Association having at least 10.000 members and fulfilling one of the following conditions:

- to have participated with competitors in the last World Ski Championships (Nordic or alpine) or
- to have organized during the preceding two years at least one international event each year, included in the FIS Calendar.

There shall be two additional votes (in all three votes) for each Member Association having at least 50.000 members and fulfilling both of the above conditions" (A.17.2, p. 5).

At FISA members get up to three votes if they participate at World Rowing Championships:

> "If a member federation fulfills the following conditions, it shall instead be entitled to three votes for a period of four years commencing 1st January of the year following the Olympic Games:
>
> 1. it has been a member of FISA for at least three years, and
> 2. it has competed at any of the following regattas:
>
> a. World Rowing Championships;
> b. World Rowing Junior Championships;
> c. World Rowing Under 23 Championships;
> d. Olympic or Paralympic qualification regattas;
> e. Continental Games regattas with a total of at least 12 boats during the previous four year Olympic period.

The Council will notify all member federations of the voting entitlements of member federations by 31st December in the year of an Olympic Games (starting from 2009 and to be applied to voting from 2013)" (Part III.A. Article 35, p. 19).

Similar to the FISA members of the IIHF can get up to two votes if they participate at Ice Hockey World Championships:

"Full member national associations are entitled to a maximum of two votes.
A full member national association in good standing is entitled to one vote.

A full member national association in good standing, whose national team has competed in three consecutive IIHF Ice Hockey World Championships (Senior Men category) immediately preceding or taking place concurrently with the Congress, is entitled to two votes" (34.1, pp.18-19).

Table 2: Delegates and distribution of votes

| | FIBA | FIFA | FIS | FISA | IBU | IHF | IIHF | IJF | IRB | ITF | IWRF | IOC | IPC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Delegates (max.) | 2 | 3 | 3 | 3 | o | 3 | 2 | 2 | o | 3 | 2 | o | o |
| | o n/a | | | | | | | | | | | | |
| Vote(s) | ■ | ■ | ■ * | ■ ** | ■ | ■ | ■ *** | ■ | ■ | ■ | ■ | ■ | ■ |
| Legend | ■ each member (federation) has one vote<br>* FIS: up to three votes, depending on the number of members of each national member federation and depending on participation at particular Championships<br>** FISA: up to three votes, depending on participation at World Rowing Championships<br>*** IIHF: up to two votes, depending on participation at World Championships | | | | | | | | | | | | |

Source: Own representation

## Ordinary and extraordinary Congresses and quorums for a session (see below table 3)

Ordinary Congresses take place either every year or once every two years. The IIHF distinguishes between a General Congress (June 2012 and every fourth year thereafter), an annual Congress (every year during the IIHF Ice Hockey World Championship or where applicable at the time of the General Congress) and a semi-annual Congress (every year in autumn, cf. A.30, p. 17). In every federation an extraordinary Congress may be called on request.

*Quorums for session of the Congress (see below table 3)*

Only three of the selected federations specifically state that they do not have a quorum. The IHF, IIHF, IRB, ITF, IWRF and IOC have general quorums for their sessions of their respective Congresses which require at least 50 per cent attendance. Four federations feature only limited quorums: The FIFA-Statutes proclaim that "for a vote on an amendment to the Statutes to be valid, an absolute majority (half of the Members plus one Member) of the Members eligible to vote must be present" (26.3, p. 25). At FIS it is formulated: "The decision to dissolve the FIS requires a two-thirds majority of the valid votes and a quorum of at least two-thirds of the member associations" (21.4, p. 7). The IJF mentions a further restriction: "The Chairperson of the Congress may only declare the official opening of the Congress when at least one-third (1/3) of the Member National Federations are present or represented, and when at least three (3) different Continental Union representatives are present" (8.15, p. 9). And the Congress of the IPC "shall be competent to pass a resolution if at least one-third (1/3) of the members with voting rights are present. Should the number not be reached, a new Assembly may be called which shall be competent to make decisions regardless of the number of members present" (8.1, p. 7).

Table 3: Ordinary Congresses and quorums for a session of the Congress

| | FIBA | FIFA | FIS | FISA | IBU | IHF | IIHF | IJF | IRB | ITF | IWRF | IOC | IPC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ordinary Congress | ■ | ► | ► | ► | ■ | ■ | ► * | ■ | ■ | ► | ■ | ► | ■ |
| Legend | ■ once every two years<br>► every year<br>* IIHF: annual Congress, semi-annual Congress, quadrennial General Congress | | | | | | | | | | | | |
| Quorums for a session | ● | ■ * | ■ ** | ● | ● | ■ | ■ | ■ *** | ■ | ■ | ■ | ■ | ■ **** |
| At least | | 51%* | 2/3* | | | 51% | 75% | 1/3*** | 51% | 50% | 51% | 51% | 1/3**** |
| Legend | ■ yes<br>● no quorum<br>* FIFA: For a valid vote on an amendment to the Statutes<br>** FIS: For the decision to dissolve the FIS<br>*** IJF: at least one-third of the member federations are present or represented, and when at least three different Continental Union representatives are present.<br>**** IPC: Should the number not be reached, a new Assembly may be called which shall be competent to make decisions regardless of the number of members present. | | | | | | | | | | | | |

Source: Own representation

*Votes, elections and decisions (see below table 4)*
Almost all federations take their votes openly by show of hands or by show of cards. Only the IOC has votes by secret ballot. The majority of the federations offer a secret ballot if a voting member (the administrative committee or the chairman) requests to do so.

Six federations conduct ballots of elections secretly (FIBA, FIFA, FIS, IHF, IJF, IOC). The IBU and the ITF initially feature an open vote of elections. It is only on request that a secret ballot can be granted. There is one special regulation at the IHF: "If the number of nominations exceeds the number of offices, voting shall be by secret ballot" (12.5.5, p. 18).

Eleven of 13 federations demand that a majority of two-thirds respectively three-quarters of the votes cast are necessary to amend the Statutes. Regarding other decisions it is standardised that a simple majority of the votes cast are necessary.

The election of the President through the Congress is the same in every federation. The great majority stipulate that the Executive is elected by the Congress. But there are some exceptions: The members of the executive organ of the FIBA respectively of the FIFA are elected respectively appointed by the continental zones (15.1.6, p. 17; B.30.4, 28). The executive organ of the IRB is appointed by the Congress (respectively Council).

Table 4: Votes, elections and decisions

| | FIBA | FIFA | FIS | FISA | IBU | IHF | IIHF | IJF | IRB | ITF | IWRF | IOC | IPC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Votes | ■ | ■ | ■* | ■* | ■* | ■* | ■* | ○ | ○ | ■* | ○ | ● | ○ |
| | ■ Votes are taken openly (by show of hands, by show of cards)<br>● Votes are taken by secret ballot<br>* FIS, FISA, IBU, IGF, IHF, IIHF, ITF: secret ballot on request<br>○ n/a | | | | | | | | | | | | |
| Elections | ■ | ■ | ■ | ○ | ● | ■ * | ○ | ■ | ○ | ● | ○ | ■ | ○ |
| | ■ secret ballot<br>● open ballot, secret ballot on request<br>* IHF: secret ballot if the number of nominations exceeds the number of offices.<br>○ n/a | | | | | | | | | | | | |
| Amendments of Statutes | ■ | ● | ■ | ■ | ■ | ■ | ● | ■ * | ○ | ■ | ○ | ■ | ■ |
| | ■ a majority of two-thirds of the votes cast is necessary<br>● a majority of three-quarters of the votes cast is necessary<br>○ n/a<br>* IJF: delegates come from at least three different Continental Unions | | | | | | | | | | | | |
| Other decisions | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ○ | ■ | ■ |
| | ■ Unless otherwise specified in the Statutes, decisions are taken by a simple majority of the votes cast. | | | | | | | | | | | | |
| Election president | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ■ | ○ | ■ | ■ | ■ | ■ |
| | ■ Elected by the Congress<br>○ n/a | | | | | | | | | | | | |
| Election "Executive" | ● | ● | ■ | ■ | ■ | ■ | ■ | ■ | ● | ■ | ■ | ■ | ■ |
| | ■ Elected by the Congress<br>● Elected/ appointed by the continental Confederation/ Union/ Association | | | | | | | | | | | | |

Source: Own representation

## Executive committees

### Terms of executive

Similar to the Congress it is necessary to introduce the different terms for the 'Executive'. The FIS, FISA, IHF and IIHF names the Executive 'council and executive committee'. The FIFA, IJF and IRB have an 'executive committee'. The FIBA has a 'central board', the IBU an 'executive board', the IOC an 'executive board', the IPC a 'governing board', the IWRF and ITF have a 'board of directors'.

*Members, vote and composition (see below table 5)*

The lowest numbers of members of the Executive are eight of the IWRF and nine of the IRB. 25 members belong to the FIFA, followed by the FIBA with 20 members and the IJF

with 19 to 22 members. For every federation the following applies: Each member of the executive organ has one vote.

The great majority of the federations have the same structure: There is a president, up to eight vice-presidents and 'other members'. One exception is the IRB because this federation has, instead of a president and a vice-president, a chief-officer and an officer.

Differences appear in the composition of the 'other members': The federations of FIBA, FIFA, FISA, IHF, IIHF, IRB and ITF demand that at least one of their members comes from every continental zones (Africa, America, Asia, Europe and Oceania).
The FIBA and FIFA order to have at least one woman in the Executive: The FIBA-Statutes state that "both genders must be represented on the Central Board and each Zone must designate at least one person of each gender" (15.1.5, p. 17).

The two federations responsible for disabled people, the IWRF and the IPC, require one athlete representative. The IPC-governing board consists of "the Chairperson of the Athletes' Council, ex-officio member with vote, elected by the Athletes' Council" (5.1, p. 4). In the IWRF the athlete representative must be an active player.

The Statutes of the IJF allow the president to compose "a list of ten to twelve members who are authorized by their National Federations to be on list" (11.2, p. 12). The FIS and the IOC show no specific features.

Table 5: Members, vote and composition

| | FIBA | FIFA | FIS | FISA | IBU | IHF | IIHF | IJF | IRB | ITF | IWRF | IOC | IPC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Members total | 20 | 25 | 17 | 11 | 9 | 19 | 13 | 19-22 | 9 | 14 | 8 | 15 | 13 |
| President | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | (1) | 1 | 1 | 1 | 1 |
| Vice-president | 7 | 8 | 4 | 1 | 8 | 6 | 3 | 5 | (1) | 0 | 1 | 4 | 1 |
| Other members | 12 | 16 | 12 | 9 | 0 | 12 | 9 | 13-16 | 7 | 13 | 6 | 10 | 11 |
| Composition | ■ ► | ■ ► | ○ | ■ | * | ■ | ■ | ** | ■ | ■ | ● | ○ | ● |
| Legend | ■ representatives of continental zones<br>► representative(s) of both genders<br>● representative(s) of athletes<br>○ n/a<br>* IBU: 7 vice-presidents for finances, sport, marketing, information, development, medical issues, special projects)<br>** IJF: president composes a list of members | | | | | | | | | | | | |

Source: Own representation

This status quo provides an overview about the 13 international federations with regard to the legislative and the executive organ. With the help of several categories especially the distributions of votes, elections, decisions and the composition of each organ has been

described. This leads to the following questions: How valuable are additional votes in the Congress of federations of FIS, FISA and IIHF? Which topics do the Congress and the Executive vote on? Are the votes consensual or majority-oriented? Further investigations can build on this empirical work.

## The alternatives? Scenarios for democratic reform in decision-making in international sport organizations

### Weighting of votes: Lessons from the European Union and the IMF

Egalitarianism and power come into conflict in all types of political interactions but international bodies face it most severely. Considering sport differences become apparent when comparing the number of registered players in football. While there are 6,3 million registered players in the German Football Association and 4,18 million in the US Soccer Federation, the British Virgin Island counts just 435 registered players and Montserrat not more than 200 players. However, each association has one vote in the FIFA Congress.

In view of the tremendous differences in size (and financial support) it has been demanded to establish a system that recognizes the greater power and contribution of larger members while preserving some influence for smaller ones by a weighting of votes.[23] A particularly important and timely example for the weighting of votes is the Council of Ministers of the European Union, the most decisive decision-making body of the European Union. The EU Council consists of a single representative from each country in the European Union. While usually every member has one vote in ordinary voting procedures in international organisations, the EU Council of Ministers has established with the Nice Treaty a new system with weighted votes. For instance, Germany holds in the Council currently 29 votes while the Netherlands have 13 and Malta has 3 votes. The weights are less than proportional to population size and the threshold is relatively high (73.9 percent).

The scale of the system has implications on the formal and informal workings of the system what has been broadly considered by academic literature on the European Union. Based on academic approaches measuring power, such as the Shapley-Shubik (1954) or the Banzhaf (1965) indices have been discussed. In addition of measuring things such as the relative probabilities that different voters are essential also the democratic impact of the weighing of votes has been considered.

Transferring the approach of weighting of votes to international sport organisations may improve their democratic quality as well as reducing such dark sides as corruption and vote buying. While the representation of smaller member associations is still guaranteed their voting power will be (slightly) reduced. One important conclusion of academic analysis is that the optimal weighting of votes and the thresholds can be derived separately. The optimal weight of a country's vote depends on the size of the population

23 A weighted voting system is characterized by the number of voters, the weights (the number of votes under control) and the quota (the threshold to pass a motion).

and the distribution of preferences within a country relative to other countries while the threshold depends on the bias of preferences in terms of the intensity in favor of the status quo compared to change (Baberà and Jackson, 2006, p. 318).

### Voting by count and account (double majority)

Voting by count and account is defined as follows: When a decision is taken, two calculations will be made: The first one is based on the number of (individual) voters/supporters while the second one is the sum of their weights. A country's or association's "weight" is some pre-agreed-upon objective quantity, most likely its number of members or "account", but possibly its contribution to the organisation's resources. A motion passes only if it attains a majority by *both* count and account.

This system takes account of some advantages but also disadvantages: An advantage is the simplicity of the procedure: in general it is easy to negotiate. Another advantage is that it avoids many of the unintended consequences of other methods, which, in spite of their purpose, sometimes may increase the inequity. A disadvantage can been seen in the efficiency of decision-making. Though decisions might easily be negotiated it will take higher costs to achieve the threshold required due to the two standards.

### New distribution of competences: Participation in executive committees

Participation and representation have become core issues in political debates on democracy not just because of the growing attractiveness of the concept but also due to the awareness that projects are more successful when those most affected by the political decisions participate directly in its design and operation. The logic behind this approach is that participation in decision-making leads to a sense of "ownership" and "accountability". Participation requires more than formal involvement in an international institution. It requires that affected parties have access to decision-making procedures in order to contribute meaningful to the work of the institution. By doing so, they will be made (more) accountable and realise the direct effects of the decisions – both in terms of success and failure.

Based on this logic, the participation of national associations has to be enhanced. For instance every FIFA member should have a right to vote on the major decisions affecting the international game, in particular the decision on where the FIFA World Cup is held. At the moment this decision is just given to a handful of members represented in the Executive Committee (or the respective Councils) while the vast majority is not represented yet.

### Incorporating the logics of a two chamber-system

Usually international organisations consist just of one chamber. Multi-cameral institutions combine the representation of diverse interests in groups or 'chambers' with the unanimous aggregation of chambers' majority votes. In order to make use of the advantages of a two chamber system a system of checks and balances is considered as an adequate alternative to a single chamber system. In addition to this, a new balance might enhance the representation of the individual stake holders of each association. he representation in a second chamber might include stake holders such as:

- leagues
- clubs
- athletes or players
- supporters

## Conclusions

Summing up the various aspects discussed in this chapter gives an idea about severe consequences that to be expected. Substantial reforms may lead to a less coherent system even a less efficient one but also to sport organisations that will act on a basis that is more fair and democratic and that might also contribute to an improved way of representation. In any democratic organisation in which the members are of different sizes and compositions, it makes sense to weight the votes of the representatives. The optimal weight of a country's vote depends on the size of the population and the distribution of preferences within a country relative to other countries. Conflicting negotiations and bargaining processes might be necessary until such a new system will be implemented.

## Summary of recommendations

1. International sport organisations should establish a system of weighting of votes that becomes the regular procedure in decision-making.
2. In order to find a compromise between transparency, democracy and efficiency international sport organisations should institute a double majority system at both the level of the Congress and the Executive Committees. Decisions would require the requisite majorities of both the number of individual members (associations) and their voting weight. The thresholds for decision should be equal for both types of majorities. The respective quorum should be a matter of further discussions. While some decisions may be taken by simple majority other decisions – in particular those with financial implications might need a super majority referring to 70% or 80% of (weighted) votes.
3. A change of the voting systems should be accompanied by other modifications such as enhancing the competencies of the assemblies/parliaments of international sport organisations e.g. Congress and Session.
4. Academic studies on international sport organisations should be increased. There is an urgent need for more empirical evidence in order to addresses the following questions: Does international sport organisations' formal decision-making rules matter? Do they constrain, or simply reflect, power? And if they do matter and if they do have effects: what kind of changes is necessary in order to assure democracy in international sport organisations.

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# Transparency

**By Aline Bos and Frank van Eekeren, Senior Consultant, Utrecht University, the Netherlands**

## Introduction

During their meeting on 5-6 June 2012, the EU Expert Group on Good Governance (XG GG) concluded that 'transparency' is, next to 'democracy' and 'accountability', one of the top level topics concerning good governance in international sport federations. In this paper we give meaning to the concept of 'transparency'. We focus on the different approaches that are visible in the good governance and transparency literature. From this theoretical perspective, we look at the specific context of International Sport Federations (IFs).

## Defining transparency

Transparency has been trumpeted as the key to good governance (Grimmelikhuijsen 2012, p. 17). Transparency will lead to an open culture, that will benefit us all (Hood, 2006). The focus in transparency literature is on governments. Government failures are blamed on a 'culture of secrecy' (Roberts, 2006). Transparency can be conceived as an intrinsic value of democratic, accountable organisations – and thus a value in itself – or it can be seen as a means to achieve other important goals, such as less corruption. (Grimmelikhuijsen, 2012, p. 52).

In this paper, we consider transparency as an aspect of good governance of sports federations, and thus a value in itself. However, it is not 'the more, the better'. As we further define transparency, it can be argued that overloading external actors with a high number of inaccurate reports might be conceived as less transparent than providing less, but accurate content. Not more, but the way it is offered is important (Grimmelikhuijsen, 2012, p. 58).

Definitions on transparency are often quite broad and linked to government transparency. Most definitions are about the extent to which an organisation/institution reveals relevant information about its own decisions processes, procedures, functioning and performance (e.g. Curtin and Meijer, 2006). Grimmelikhuijsen (2012, p. 55) defines transparency as '*the availability of information about an organisation or actor allowing external actors to monitor the internal workings or performance of that organisation*.'

## Approaches to transparency

Grimmelikhuijsen (2012) distinguishes three strands of literature when it comes to approaches to transparency: the optimists, the pessimists and the skeptics.

- The optimists describe highly positive connotations of transparency (e.g. Brin, 1998; Oliver, 2004). It helps holding organization accountable and stimulates a culture of openness (Grimmelikhuijsen, 2012, p. 70). Due to optimists, any negative or perverse effect can be mitigated by proper implementation. Transparency is ultimately something good (Hood 2006).

- On the other hand, the pessimist approach states that perverse effects are inherent. More transparency leads to increased just *and* unjust blaming – the so-called 'blame games' (Hood, 2007; Worthy, 2010). Transparency is overrated; for transparency to work, it needs receptors capable of processing it (Heald, 2006). However, information can be too complex. Or, the real proceedings of negotiations are pushed to other, less transparent levels (Stasavage, 2006). In short, transparency can lead to misinformation, information overload and increased unjust blaming (Grimmelikhuijsen, 2012, p. 71).
- Finally, the skeptics argue there is no effect of transparency. The importance of transparency is overstated (Grimmelikhuijsen, 2012, p. 73).

## Operationalising transparency

### Dimensions of transparency

Information is a central element of this definition, at which Grimmelikhuijsen (2012) distinguishes three characteristics: (a) the completeness of information, (b) the colouring of information and (c) the usability of information, including its timeliness. In the case of *real time transparency,* there is continuous surveillance by external actors, while with *retrospective transparency;* information on policies of proceedings is released afterwards in a reporting cycle.

### Objects of transparency

Linked to the 'internal workings' component of the definition, Grimmelikhuijsen (2012, p. 64) differentiates among three sorts of internal workings, leading to three types of transparency: (a) *decision making transparency*, which is about the openness about steps taken for a decision, (b) *policy transparency*, which is focused on transparency about the content of policies/ measures/ decisions and (c) *policy outcome transparency*: provisions and timeliness of information about policy effects.

When operationalising transparency in sports federations, choices have to be made about which of the nine junctions between dimensions and objects are most relevant.

Table 1 (based on Grimmelikhuijsen 2012, p. 66)

| | | Dimensions of transparency | | |
|---|---|---|---|---|
| | | **Completeness** | **Colour** | **Usability** |
| Objects of transparency | Decision making | Complete information on the process | Reflecting all values and opinions in the process | Timely and understandable information on the process |
| | Content | All relevant information is available | Reflecting negative and positive sights | Timely and understandable information on the content |
| | Outcomes | All data about outcomes are available | Effects are determined objectively | Timely and understandable information on the outcomes |

## The debate on transparency in international federations

A quick analysis of the concept of transparency in good governance codes, rules or principles of five IFs (see Appendix 1) shows that IFs:

- Mainly speak about 'key aspects of communication';
- Set very general guidelines for this communication ('making public all information about its organisation and leaders');
- See transparency as the disclosure of information on procedures, particularly in the areas of decision making process and finance;
- Sometimes provide no further description of transparency.

At the one hand, such an approach of the IFs, i.e. firmly focused on their own autonomy, contains the danger of permissiveness and, as a consequence, (too) little transparency. Actors in and around IFs seem not always to define and interpret the concept of transparency in the same way. While IFs do not always show their need for transparency a lack clear transparency rules, other actors, including EU, media and critical citizens, seem increasingly aware of value transparency and want to draw clearer guidelines. At the same time, such an approach, i.e. focused on the realisation of transparency and on 'open' and – accordingly – corruption-free organisations, contains the danger of too much "faith" in transparency. Transparency can become a goal instead of a means, while more transparency does not automatically lead towards better performing organisations.

## Key questions

With regard to transparency in IFs, the concept has to be clear – what do we mean exactly by transparency? – as well as the approach to implementation. The following questions therefore have to be answered:

1. What is/are the main object(s) of transparency? Process, content and/or outcomes? Which of these objects are most relevant for IF's?
2. When is the transparency level seen as adequate, with regard to completeness, colour and usability?
3. In which areas and to what extent does the IF have to be actively transparent, by providing information itself? And on which terrains is passive transparency – in which information is only disclosed on demand – adequate (Grimmelikhuijsen, 2012, p. 48)?
4. Are context-specific codes needed or are standardised codes for all IF's recommended?

Appendix 1

| International and European sports associations | Title | Transparency |
|---|---|---|
| European Olympic Committees and Fédération Internationale de l'Automobile | Statement of Good governance principles | How a governing body communicates with its members is a key indicator of the quality of its governance processes. Key aspects of communications include:<br><br>A clear statement of the governing body's approach to governance and the articulation of its responsibilities to members; regular **communication** with members on policy decisions, elections and other matters (executive, legislative, judicial, commercial); two-way communication. Providing channels for communication of feedback from the membership.<br><br>The governing body shall regularly report formally to its membership about its activities, including a summary of the governing body's finances and financial activities. |
| Union Cycliste Internationale | UCI Rules of Good governance | To respect its policy of transparency, the UCI is committed to making public all **information about its organisation and leaders**.<br><br>Detailed information on the UCI's structure (**election procedure, decision-making process and, in greater detail, its constitution and regulations**) are available, either on request or on its website.<br><br>Information is given on the **persons** occupying leading positions within UCI bodies and their biographies are |

| | | |
|---|---|---|
| | | available. Their involvement in any other body (sports organizations and commercial companies) is also clearly stipulated, as well as their date of election (or re-election) and their term of office. |
| International Olympic Committee | Basic Universal Principles of Good Governance of the Olympic and Sports Movement | Transparency and **communication**:<br><br>Financial information should be disclosed gradually and in appropriate form to members, stakeholders and the public, Disclosure of financial information should be done on an annual basis.<br><br>The **financial statements** of sports organisations should be presented in a consistent way in order to be easily understood. |
| European Team Sports Association | Good governance by sports federations | - |
| Union of European Football Associations | Good governance and autonomy | - |

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# Transparent and accurate public communication in sports

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## Introduction

The need to review sports organisations' public communication policies arises from the recent wave of public scandals to have tainted various sports events in the past few years, including a succession of doping and mismanagement cases in the cycling world,[24] instances of bribery in the selection process of hosting nations for the FIFA World Cup,[25] corruption in numerous international federations and a growing concern about how sport can effectively fight match fixing. These cases of bad governance and opaque practices have damaged the image of sport, its federations, and its representatives. They have also marred the values long associated with sports and with the Olympic spirit.

And yet, the task of analysing the public communication strategy of sports organisations such as Fédération Internationale de Football Association (FIFA) is made difficult by the fact that many of them are both non-governmental and non-profit, but also companies with colossal revenues, unprecedented global reach, political clout, and tremendous social influence. This unique status, setting sports organisations apart from both NGOs and commercial corporations, constitutes a challenge for pinpointing the exact best governance practices applicable to them.

Moreover, the international head organisation gets its governing mandate from the national member organisations, represented by officials (presidents, delegates, etc.) who are themselves elected by the base. Thus, the head organisation is accountable to its own member organisations, but those, in turn, are dependent on it for part of their funds. This mutual dependency and lack of mandatory accountability to the outside world makes the prospect of reform highly unlikely.

However, the organisations' stakeholders, i.e. the supporters, the teams, the athletes, the sponsors, the general public, and the media, are pressuring sports organisations to implement change. Given their exposed position and the current crisis of trust, the EJC argues that it is essential for them to augment transparency and accuracy in their public communication, adopt more detailed public reporting practices of financial information, and define disclosure policies for the processes that shape the decision making procedures governing the action of these bodies. We also argue that it is essential for sports organisations to understand that democratic proceedings can only be implemented by taking into account the interests of the various stakeholder groups, and by trying to

24 Hart, S. (2010). Road to ruin: how relentless scandals have cast a depressing shadow over cycling. The Telegraph. Retrieved August 8, 2012, from http://www.telegraph.co.uk/sport/othersports/cycling/7746437/Road-to-ruin-how-relentless-scandals-have-cast-a-depressing-shadow-over-cycling.html

25 The Telegraph (n.d.). FIFA corruption: the men at the centre of the bribery scandal. Retrieved August 8, 2012, from http://www.telegraph.co.uk/sport/football/international/8657400/Fifa-corruption-the-men-at-the-centre-of-the-bribery-scandal.html

bridge the gap between the international organisation and between the stakeholders and the national member organisations.

The purpose of this report is to recommend a number of basic criteria for accurate and transparent public communication for international sports organisations. Transparency in communication is key to organisational transparency in governance, and is essential in particular for the good reputation of the sports organisation among its main stakeholders. It is also a sine qua non for gaining the general public's trust and support, and for rehabilitating the values of sport.

The first part of this report will discuss the basic criteria for transparent public communication and provide examples of best practice elaborated and implemented by non-governmental organisations and corporations. It will also give an overview and evaluate the public communication policies of the three international sports organisations, in light of the criteria presented earlier. The second part of the report focuses on social media as an efficient tool for sports public communication. Although their arrival in the media sphere presents many challenges in the field of communication, we contend that they represent a golden opportunity for sports organisations to build and maintain strong and fruitful relationships with their stakeholders.

## *Part I:*
## Criteria of transparent and accurate public communication practices

While transparency is a general managerial concern, guaranteeing operational efficiency and control, it is also an important principle in contemporary public relations, where it is often regarded as a precondition for trust, collaboration, dialogue, insight, accountability, and rational governance (Kent and Taylor, 2002).

Transparency has become a prominent value and a powerful signifier in today's organisational world, as internal and external stakeholders have grown to expect unrestricted access to corporate information. The principle of transparency can also have legal provisions, in countries where organisations are bound by law to disclose information concerning their actions and plans, including annual reports and financial data. Additionally, business practices are routinely scrutinised by media and business analysts, while institutions are increasingly held accountable for their strategic choices. The growing pressure for increased transparency is also driven by the new communication technologies, i.e. the Internet and social media, which allow for a greater flow of information and an increased public participation.

Transparency is also becoming a conscious corporate and institutional strategy for the gain of respectability and social accreditation. Contemporary organisations not only describe their communication environment in terms of transparency but also prescribe it as a proper managerial response. Hood (2006) claims that the notion of transparency has attained "quasi-religious significance" in contemporary society, where debates over

corporate governance and organisational design are increasingly shaped by references to openness and transparency as the ultimate goal of modern management. Still, as Hood points out, like other semi-religious terms, "transparency is more often preached than practiced, more often invoked than defined" (p. 3). This is also true in the field of sport public communication.

There are typically two modes of transparency. In the liberal sense, transparency is obtained by the very democratic principle of power through representation. In this case, powerful state institutions, which concentrate power, are accountable to the public. Forfeiting the public's approval, these institutions also lose their mandate. This model of transparency functions according to a 'top-down', or vertical visibility.

The second transparency paradigm is horizontal. It enables organisations to distribute and spread their social engagement to a wide audience. When combining 'top-down' visibility with the wide sociality of an organisation, it is crucial to maintain a dialogue between the organisation and the public.

## The building blocks of transparency

There are a number of criteria that need to be taken into account for public communication to be recognised as truly transparent. When looking at these "building blocks" of transparency, it is also insightful to see how a number of international non-governmental organisations and corporations deal with such concerns. Given sports organisations' specific status, we have chosen examples from both the commercial and the non-profit areas.

The examples that appear here concern organisations that have gone to great lengths to put into effect best practices in their daily governance activities. This selection is motivated by our belief that any measure undertaken for the future improvement of transparency in sports organisations could profit from understanding how the most successful approaches are implemented.

### Accountability

The concept of accountability is seen as a pledge, a moral and legal responsibility to fulfil the interests of the other concerned parties. Accountability can be translated into actions on the condition that the organisation has a two-way communication with its partners and stakeholders. For a sports organisation, the principle of accountability towards their stakeholders concerns financial and moral matters. But beyond questions of morality, the principle of accountability also requires practical means that enable the stakeholders to monitor the organisation's actions and evaluate them in this light (Brown and Moore, 2001, pp. 570-571).

The subject of accountability, for one specific organisation, can differ from one stakeholder to another. The scope of information, given to one stakeholder, could be smaller or greater from that given to the other. Similarly, the content an organisation shares with different stakeholders can vary: some may require one kind of information, such as a report concerning its activities, and the other may wish to retrieve financial information.

It is therefore important to distinguish between different key stakeholders in order to establish correctly the substance and scope of accountability.

The manner in which an organisation is accountable to a particular group of stakeholders can be set by contract, grant or substantive terms. However, it is recommended to base the relationship on trust, rather than to bind it legally. In any case, this requires regular reporting on behalf of the organisation, the frequency of which is to be determined according to the issues the organisation is accountable for (ibid).

Accountability can and should change over time, adapting itself to the organisation's evolving activities and actions, and to the requirements of the stakeholders. The main benefit of accountability is the establishment of a relationship based on trust, the result of a transparent and open contact.

- The International Non-Governmental Organisations Accountability Charter
  Some of the best examples of accountability can be found among non-governmental organisations. Most of them, wishing to adopt principles of best practice in this area, use the International Non-Governmental Organisations Accountability Charter[26] (INGO Accountability Chart). The Charter´s founding members – all of them INGOs – wrote it in response to increasing pressure from media, businesses, and governmental bodies demanding they implement greater transparency. These organisations, among which Amnesty International, Oxfam International, Greenpeace International, and World Vision International, recognised the need for a global, cross-sectoral code of ethics that would reflect the core values and priorities of the NGO sector. The Charter was designed to cover all the major areas of NGO involvement and to be compatible with, and complimentary to, existing codes. It provides an excellent blueprint for any organisation wishing to implement principles of accountability.

The Charter codifies practices in a number of categories – respect for universal principles; independence; responsible advocacy; effective programmes; non-discrimination; transparency; good governance; ethical fundraising; and professional management – and pledges its members' commitment to their implementation, both internally and externally. It encourages communication with stakeholders and strives to improve the general performance and effectiveness of the organisations. Its signatories recognise that transparency and accountability are essential to good governance, whether by governments, businesses, or non-profit organisations. They vouch, therefore, to achieve the charter's mission effectively, in a manner consistent with their values. In this, they are first and foremost accountable to their stakeholders.

Further on, the signatories commit to openness, transparency, and honesty in communicating about their structures, missions, policies, and activities. They pursue active communication with the stakeholders about themselves, and make information publicly available.

26 See http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/INGO-Accountability-Charter.pdf

"We report at least once a year on our activities and achievements. Reports will describe each organisation's:

- Mission and values;
- Objectives and outcomes achieved in programme and advocacy;
- Environmental impact;
- Governance structure and processes, and main office bearers;
- Main sources of funding from corporations, foundations, governments, and individuals;
- Financial performance;
- Compliance with this Charter; and
- Contact details" (INGO Accountability Charter, p. 3).

*Board members accountability*

Board members are usually the least accountable elements in large organisations, their activities remaining mostly opaque. An example of best practice in this instance is Oxfam International's Board Accountability Policy,[27] providing guidelines ascertaining the board members' accountability. The document states that *"Oxfam enjoys high levels of public trust and this brings a responsibility to provide high quality, timely and relevant information about its work"* (Oxfam International Board Accountability Policy).

The board pledges to disclose any information pertaining to its accountability to stakeholders, beneficiaries, partners, allies, donors, supporters, institutions, media, and the general public. Additionally, as part of its accountability effort, Oxfam International vouches to consult with key partners and allies on this matter, as part of its strategic and operational planning cycles.

Finally, the Policy ensures the publication of key information online: the Strategic Plan, annual reports, campaign policy documents, programme reports, research results, evaluations, media releases, and campaign actions. The degree of detail presented varies among affiliates in their national context.

*Information disclosure*

Information disclosure refers to the right of the public and the stakeholders of an organisation to obtain important information relating to its financial matters, activities, and decisions. Financial reporting and disclosure are important means for the management to communicate on their performances and governance practices. Some organisations also engage in voluntary communication actions, such as the presentation of management forecasts, participation in conferences and fairs, publication of press releases, distribution of information via official websites, engagement through social media, and so forth. Information intermediaries, such as financial analysts, industry experts, and the specialised press, play an additional role, filling-in the remaining gaps.

Organisations should maintain an equilibrium in the type and scope of information they provide to different stakeholders. For instance, if some data is available to financial

27 See http://www.oxfam.org/sites/www.oxfam.org/files/oxfam-international-board-accountability-policies-2012.pdf

partners but not to the public or to the state, this discrepancy should be clearly laid out and regulated according to legitimate corporate practices. Favouring one stakeholder over others in terms of information disclosure should only occur when wider interests clearly demand it.

According to the Code of Ethics drawn up by The Public Relations Society of America (PRSA), disclosure of information is an essential element in the implementation of successful public relations, but the exact approach to this matter differs from one organisation to another. UNICEF, for example, considers public access to information a key component in its effective engagement with all its stakeholders, including the general public, in its efforts to achieve its goals. It recognises the positive correlation between transparency and public trust in UNICEF-supported development work and humanitarian responses.

The World Bank, in turn, bases its *Access to Information Policy*, on five principles:

- "Maximizing access to information
- Setting out a clear list of exceptions
- Safeguarding the deliberative process
- Providing clear procedures for making information available
- Recognising requesters' right to an appeals process." (World Bank, 2011).

As for the OECD (Organisation for Economic Co-operation and Development), it has developed an information disclosure strategy, which gives priority to the public's needs. It has set up information channels, through which it processes information, so that interested individuals and organisations can access data easily. These different channels are the OECD website, the media channel, and the OECD archive. These free channels ensure different groups of stakeholders can access information that is relevant to them and increase at the same time the organisation's visibility among the general public. The website, which is continuously updated, contains information relating to all its fields of activity, including the organisation's legal instruments and reports. There are also policy briefs, newsletters, working papers, statistical data, and information concerning the institution's history and working committees. Meeting agendas, their background documents, and conclusions also appear on the website. The OECD media is an important channel for disseminating and explaining OECD work to the public. In this section, the OECD also broadcasts news conferences, seminars, and interviews it sets up. Through the OECD archive, the public can access new and older official OECD documents.

The OECD has identified different groups of stakeholders it addresses its information to – civil society and parliamentarians, partner and/or member organisations. Taking into consideration these different groups, it manages its information disclosure process and tries to meet the needs of each of them accordingly.

*Financial reporting*
The issue of financial reporting is a particularly important element in the overall information disclosure policy of an organisation. Examples of best practice in this field also abound among non-governmental institutions, such as Oxfam International and Transparency International. These two NGOs publish online their original financial yearly reports and audit reports. These contain actual financial information and are signed by the organisations' top officials and accountants.

The financial reports of both NGOs detail the salaries of their employees, including their top-level executives. Oxfam, for instance, specifies the number of its employees and the exact budget allocated to the payment of salaries. It also presents separately those employees who earn the highest wages, enumerates them, and provides explicit data on their earnings.

Transparency International is even more rigorous in reporting about its finances. The organisation discloses the wages of each executive in the organisation, detailing their responsibilities. It also specifies the annual budget dedicated to the payment of its executives' salaries. In addition, it provides a comparison table, presenting the lowest and the highest salaries paid by the organisation, according to the qualification level of the employees.

*Reporting on decision-making processes*
L'Oréal, one of the world's largest beauty industry corporations, has also set good standards in terms of transparency. In 2012, the Ethisphere Institute, an international think-tank dedicated to the promotion of best practices in the corporate world, ranked it as one of the world's most ethical companies. L'Oréal has a strong corporate identity, which recognises accountability, reporting, and the fight against corruption as the business's core values.

In addition to its extensive financial reporting, L'Oréal makes matters of internal governance transparent to the public, providing a good blueprint for reporting on decision making processes. The reports of all board meetings are published online, as well as the general assembly's voting results, with a detailed description of the issues at hand and an account of the voting numbers.

## Openness, honesty, and accuracy

Organisations should seek the highest standards of accuracy and honesty in pursuing the interests of clients and employees. *"There should be a free flow of accurate and truthful information"*, states the PRSA (Dennis and Glen, 2009, p. 78). This implies that the information projected in the public sphere should be absolutely truthful and reflect reality.

In order to provide a coherent, accountable, and transparent frame of action, which also guarantees the organisation is respectful of the law and of core human principles, it needs to anchor its actions in a strong set of values that are made public. Thus, codes of conduct, ethical principles, and mission statements, made available to the stakeholders,

must be clear, with a focused presentation of the organisation's structuring values. Transparency International provides a good template on this account as well, reporting on its working standards and on the values guiding its action, namely transparency, accountability, integrity, solidarity, courage, justice, and democracy. Whether in its mission statements or in its internal documents, Transparency International incorporates the values elaborated in the INGO Accountability Charter and makes them the very ethical basis of its action.

An organisation's degree of openness is also a function of its officials' degree of accessibility, how likely they are to engage in discussion and respond to requests, and how likely they are to share information or provide requested materials. Ideally, any information relevant to the interests of stakeholders should be available online or by a request. Moreover, beyond merely sharing the requested information, organisations also need to show the will to make stakeholders aware of inside issues. Therefore, communication, in this sense, also means welcoming the stakeholders into the very heart of the organisation, allowing them to vision it in full.

With these principles in mind, Transparency International provides on its website the contact information of all its employees and departments, thus allowing different stakeholders to have a direct and immediate contact with the organisation´s officials best qualified to answer their demands. Transparency International also publishes the names and CVs of all its employees, so that stakeholders know whom they are approaching, distilling a sense of openness, transparency, and interpersonal connection with the organisation.

### Fairness

"Fairness is commonly understood as a moral obligation regarding rule adherence, or at least as a norm on adherence to a commonly agreed upon interpretation of the rules" (Tansjo, 2000, p. 158). Once an organisation has submitted itself to certain restrictions, it can expect its stakeholders, who benefited from its compliance, to submit themselves to similar demands.

In their communication practices, sports organisations should strive to maintain a fair compromise between public and private interests. In cases of scandal, conflict or crisis, organisations should be able to fairly communicate about it and present their stakeholders with balanced information.

### Relationship building

Public communication, as previously stated, allows organisations to establish and maintain a good relationship with its stakeholders. Oxfam International's approach is exemplary in this regard, making this issue a governance concern. Its communication plan is an integral part of its yearly work plan, accessible for public consultation online. Attentive to developments in the communication field, such as the increasing use of social media and new technologies, Oxfam International also included in its yearly report of 2011 a communication plan specifying a social media-targeted strategy. Oxfam's plans

are updated every year and modified according to outside developments and the needs of the organisation.

### Independent advisers

The implementation of reforms necessary for transparency in an existing organisation is all the more complex since it requires the adoption of vast, and sometimes painful changes. It also obliges members of the organisation, on all levels, to submit themselves to these changes and actively collaborate in their execution – an attitude without which the reforms are bound to fail. All these considerations make reforms difficult to carry out without an external impulse. This impulse can be provided by external advisers who specialise in the matters at hand and who are free from internal pressures and contrary interests.

The World Bank faced corruption scandals in the past,[28] which threatened to tarnish its reputation. Nevertheless, the organisation managed to maintain a good public image, in part through the establishment of the Integrity Advisory Board (2008) for corruption and bribery prevention. The board included members such as anti-corruption and governance adviser, Mark Pieth. Having an independent advisory board assist the organisation in dealing with such issues is helpful both in dealing with the governance issues and in providing a good communication response to the problem at hand. FIFA, as mentioned before, has started to adopt a similar practice. It remains to be seen what results these would yield.

## Implementing principles of transparency in the world of sports

Sports play an important role in society and allow billions of people – be they professional athletes, supporters or amateurs, playing for pleasure or for health – to experience great emotions, learn the value of fair-play and the importance of rules, and to develop respect for others. But athletes, amateur players, and fans are not the only ones to shape the image of sport. This role is played primarily by international sports organisations, which transmit the sports' values to the public.

We took a look at the current public communication practices of three international sports organisations – FIFA, IOC and Union Cycliste Internationale (UCI) – in order to identify the guiding communication principles they use and how these are implemented. FIFA is the leading governing body of the most popular sport in the world, this status conferring the organisation certain responsibilities. And yet, in the past years, FIFA has been involved in a number of scandals, surrounding the selection process of football championships' hosting nations. It has also been accused of perpetuating opaque financial practices and suspected of resorting to bribery.[29] Concerns of corruption were raised as well in relation to the attribution of television broadcast[30] and marketing

28 Cole, J. (2007). Paul Wolfowitz's Fatal Weakness. Spiegel. Retrieved September 25, 2012, from http://www.spiegel.de/international/world-bank-scandal-paul-wolfowitz-s-fatal-weakness-a-482945.html
29 Huffington Post (n.d.). Sepp Blatter Cleared, Two Senior FIFA Officials Suspended in Corruption Scandal. Retrieved September 25, 2012, from http://www.huffingtonpost.com/2011/05/29/sepp-blatter-fifa-cleared-officials-suspended_n_868656.html
30 Dunbar, G. (2012). Blatter defends role in FIFA kickbacks scandal. Yahoo! Finance. Retrieved September 25, 2012, from http://finance.yahoo.com/news/blatter-defends-role-fifa-kickbacks-scandal-160803437--sow.html

contracts,[31] as well as the manipulation of FIFA's presidential elections.[32] In July 2012, bribe suspicions were confirmed in a Swiss court ruling establishing the part played by a number of FIFA executives,[33] thus further tarnishing the image of the football organisation in the eyes of the public. In June 2011, as the scandals started mounting up, FIFA's president, Sepp Blatter, announced the organisation is committed to revising its Code of Ethics and creating a new Code of Conduct. It is in view of this that the Independent Governance Committee was created.

The IOC has also known its share of negative publicity. The Olympic Games have often been accompanied by doping scandals and stripped medals, problematic judges' decisions, and cases of corruption involving IOC executives. In 1998, the IOC was caught in its own bribes-for-votes scandal, concerning the 2002 Salt Lake City winter Olympics. Several IOC members, it was revealed, had received cash or gifts in exchange for their vote in favour for their support of the U.S. bid to stage the winter games. Although the IOC was pressured to launch a series of internal governance reforms and has administered these changes quite strictly, certain problems persist. Recent events also put the spotlight on the IOC's handling of problems such as athlete misconduct during the competitions, and allegations of a proliferating black market for the sale of tickets, which took place during the London Olympics this year.

The press published evidence linking 27 IOC officials, originally responsible for the control of tickets sales, to a traffic of tickets outside the authorised sales channels. This disregard for IOC regulations on behalf of the very IOC executives responsible for their implementation, and their subsequent refusal to take responsibility for their actions, caused public outcry.

A number of articles and researches, published ahead of this year's Games by BBC's investigative journalist, Andrew Jennings, present the IOC as an organisation "made up of an undemocratic secretly elected group of ultra-elite men and as noted, a few token athletes. There are 10 princes and princesses on the IOC and at least another 2 people from military ruling families […]. Most of these elites have zero work experience, zero athletic experience, and little if any sports experience".[34] Jennings' claims raise questions concerning the transparency and fairness of the organisation's election procedures and the efficiency of its governing structure.

Considering the IOC's prominent international position and the aura surrounding the Olympic Games, the organisation needs to assume responsibility and find a suitable answer for past and present problems, so that it may continue to uphold the moral values of sports as they are embodied in the Olympic spirit.

31 LittleJohn, R. (2011). You're corrupt and you know it. Mail Online. Retrieved September 25, 2012, from http://www.dailymail.co.uk/debate/article-1392526/FIFA-scandal-Youre-corrupt-know-are.html
32 Reuters (n.d.). Timeline: FIFA corruption scandal in the last year. Retrieved September 25, 2012, from http://www.reuters.com/article/2011/05/29/us-soccer-fifa-timeline-idUSTRE74S2CE20110529
33 See http://www.fifa.com/aboutfifa/organisation/news/newsid=1662804/
34 Dryden, N. and Jennings, A. (2012). Meet the Real International Olympic Committee. Play the Game. Retrieved September 25, 2012, from http://www.playthegame.org/news/detailed/meet-the-real-international-olympic-committee-5424.html

The world of cycling faces similar concerns. Notorious for the doping scandals that seem to have come to define it these past decades, the UCI, the largest cycling organisation in the world, is undergoing a major credibility crisis.

According to these organisations' own internal papers and regulations, no guidelines regulate their communication strategies, but there are certain standards they adhere to. Transparency and financial accountability are mentioned in most cases, together with the need to maintain a two-way communication. However, the findings show that these standards are not always upheld in practice.

The indicators pointing to a governance crisis in the sports sector have raised concerns on the governmental level, leading certain EU institutions to actively express their dissatisfaction at the current state of affairs. Both the European Commission and the Council of Europe state in official documents that this crisis must be addressed and dealt with. The major problems they identify include excessive commercial pressures, exploitation of young athletes, doping, racism, violence, corruption, and money laundering. The European Commission's White Paper on Sport from 2007 states that "Corruption in the sport sector may frequently be a reality and, given the sector's high degree of internationalism, is often likely to have cross-border aspects. Corruption problems which have a European dimension need to be tackled at European level".[35] The White Paper underlines that sports organisations are not capable of dealing with the problems on their own and that a dialogue, on the European level, must be engaged.

The Council of Europe's response came in the shape of a five-page resolution on "Good governance and ethics in sport", adopted in April 2012 and detailing its concerns. The Council's members noted that "in the globalized world of sport, high economic stakes and the uncontrolled incursion of purely financial considerations are seriously jeopardizing the ethics of sport and increasing the risk of abuses, or even criminal acts, either by individuals or by organized criminal. Not only are doping, corruption and match-fixing growing insidiously, but other problems are also undermining the world of sport and tarnishing it image".[36]

The sports ministers of the European Union have also taken an interest in the subject, setting-up an Expert Group on Good Governance in Sport, where stakeholders and governments are supposed to meet and engage in a dialogue that would hopefully lead to change.

## Defining sports organisations' stakeholders

As mentioned earlier, the first step in defining an organisation's public communication policies and the main principles that shape it is to identify its principle stakeholders - those individuals or groups of people, of varying influence and involvement, who can affect or be affected by the actions, decisions, and policies of the organisation.

35 See http://ec.europa.eu/sport/documents/wp_on_sport_en.pdf
36 See http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18258&Language=EN

Sports organisations have a number of stakeholders. These very distinct and different publics will require different public communication strategies. The key stakeholders (or key publics) of sports organisations are:

- players, athletes, members;
- leagues, clubs;
- supporters and fans;
- sponsors, business partners;
- partner organisations, member associations;
- government;
- general public.

In order to maintain quality relationships with strategic publics, organisations must design a range of communication strategies that cater for each stakeholder group, according to its desires and needs relative to certain issues. Information will need to be tailored to effectively communicate with, and sufficiently inform, different stakeholder groups. As we shall later see, sports organisations do not yet recognise this as an important consideration. Generally speaking, they use one single strategy to communicate to all, making it all the more difficult for them to satisfy the needs of all their publics.

## Sports organisations and accountability

All three sports organisations struggle with the principle of financial reporting. Although a number of financial documents can be found online, none of the organisations publish information concerning the remuneration, bonuses, benefits, and payments made to its officials.

The reporting of activities is done mostly through press releases, which are also published on the official websites of the organisations and sometimes quoted by the media. The official response to scandals also appears in the shape of press releases. Such was also FIFA's handling of Switzerland's supreme court decision from July 2012, ordering the release of documents identifying senior FIFA officials who took millions of dollars in bribery payments from ISL, FIFA's marketing partner until 2001 (at which point in time it went bankrupt).[37] The court also concluded that FIFA's president, Sepp Blatter, knew such transactions were taking place. Reacting to the scandal, the football organisation published official releases on its website, as well as an interview with its president, giving his own version of the events, a strategy FIFA replicates in most scandal cases, allegation, or condemnation relating to its activities. FIFA also uses social media to relay its position. On the day of the court's announcement, Sepp Blatter posted this tweet: "Pleased by the Swiss Fed. Court decision on ISL. It confirms, as I & the court in Zug said: I was not on the list". Blatter's posts have a personal note and he posts quite regularly.

37 Conn, D. (2012). Former FIFA President João Havelange 'received millions in bribes'. The Guardian. Retrieved September 25, 2012, from http://www.guardian.co.uk/football/2012/jul/11/fifa-joao-havelange-bribes-report

None of the organisations report with any regularity on internal meetings, decision-making processes, or other internal activities. These topics are sometimes mentioned in press releases and the IOC has even published a number of documents online, but these remain sporadic.

The corruption scandals have demonstrated that good financial accountability to stakeholders – sponsors in particular – is necessary if sports organisations are to maintain a good relationship with them. Sponsors of international sports organisations have certain expectations in extending their financial support, namely, they wish to relate their business to the sport, thereby winning the appreciation of the fans, who constitute themselves another stakeholder group. The good reputation of the sports organisations, as it is perceived by sports fans, is therefore an essential indicator for the sponsors. Ensuring the sponsors' satisfaction in this regard is only possible by implementing a policy of accountability, especially in the case of scandals and other cases of misconduct.

Looking at the practices of the three sports organisations treated in this report, it appears that their public image, damaged by a series of scandals, such as FIFA's opaque presidential election of June 2011 and corruption scandal of 2012, significantly impacted their relationship with their sponsors.

The scandals mentioned above, revolving around FIFA in the years 2011-2012, tainted by association the reputation of its sponsors. This led FIFA's top-tier partners – Adidas, Coca-Cola, Emirates, and VISA Inc – to attempt to repair the damage by publicly pressing the organisation to reform and by sounding out their disagreement with FIFA's treatment these problems.

Already in May 2011, following the concerns raised over FIFA's presidential elections, those four corporations tried to pressure the organisation into implementing reforms. They released to the media official statements in which they asserted that FIFA's practices are harming both the football giant and its partners. They expressed their discomfort at the face of the corruption allegations, which included claims of bribery in the presidential election campaign and in the hosting nations selection procedure.

Emirates' divisional senior vice-president and head of corporate communications, Boutros Boutros, said "Emirates, like all football fans around the world, are disappointed with the issues that are currently surrounding the administration of this sport". A VISA spokesperson noted that "The current situation is clearly not good for the game and we ask that FIFA take all necessary steps to resolve the concerns that have been raised".[38] Coca-Cola's representative, Petro Kacur, also weighed in the debate, saying "The current allegations being raised are distressing and bad for the sport". Later Coca-Cola added

38 Mail Online (n.d.). VISA and Emirates are the latest sponsors to voice concerns over FIFA debacle. Retrieved October 2, 2012, from http://www.dailymail.co.uk/sport/football/article-1392710/FIFA-sponsors-Emirates-VISA-voice-concerns-corruption.html

"We have every expectation that FIFA will resolve this situation in an expedient and thorough manner".[39]

In the same vein, an Adidas executive noted "The negative tenor of the public debate around FIFA at the moment is neither good for football nor for FIFA and its partners".[40] FIFA's response to the racist incidents that erupted in England in the course 2011 is another case in point. Following the notorious comment proffered by John Terry, captain of Chelsea, against Queens Park Rangers footballer Anton Ferdinand during a Premier League match at Loftus Road in October 2011,[41] Sepp Blatter suggested that "the one who is affected by that, he should say: 'This is a game. We are in a game, and at the end of the game, we shake hands".[42]

Blatter's response, deemed by many as an insufficient, lukewarm reaction, led sponsors to actively express their dissatisfaction and publicly demand FIFA provides clear measures to fight the problem of racism in the stadiums. A spokesperson of Adidas said the corporation "doesn't discuss its sponsorship arrangements as these are confidential. But our position is very clear. Adidas is totally opposed to racism in football and in fact any sport at any level". A Coca-Cola representative stated "We do not tolerate discrimination of any kind. We have also confirmed that we are not reconsidering our sponsorship with FIFA." A VISA spokesperson said "As a global company operating in more than 200 countries around the world, VISA is opposed to racism in any form".[43]

The sponsors' reaction, both to the corruption scandals and to FIFA's handling of the racist incidents, underlines on the one hand their discomfort at the face of FIFA's practices, and their incapacity, on the other hand, to bring in real change. The four stated clearly their dissatisfaction with FIFA, but hesitated when it came to reviewing their collaboration with the football organisation.[44] Ultimately, stopping the sponsorship was out of the question, considering these contracts were highly beneficial for both parties, regardless of the scandals tarnishing FIFA's image.[45] As Coca-Cola later mentioned to the media, its partnership with FIFA is its only chance to be associated with football, which it views as profitable.[46]

39 The Telegraph (n.d.). FIFA corruption claims: What the sponsors are saying. Retrieved October 2, 2012, from http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/8548440/Fifa-corruption-claims-What-the-sponsors-are-saying.html
40 Ibid.
41 Davies, C. (2012). John Terry's remarks were 'very hurtful', Anton Ferdinand tells court. The Guardian. Retrieved October 2, 2012, from http://www.guardian.co.uk/football/2012/jul/09/john-terry-anton-ferdinand-court
42 BBC Sport (n.d.). Sepp Blatter says on-pitch racism can be resolved with a handshake. Retrieved October 2, 2012, from http://www.bbc.co.uk/sport/0/football/15757165
43 Reynolds, J. (2011). Emirates to review FIFA sponsorship over Blatter race row. Marketing. Retrieved October 2, 2012, from http://www.marketingmagazine.co.uk/news/1104943/
44 Ibid.
45 World Football Insider (n.d.). Exclusive – FIFA Sponsors Reaping Benefits of South Africa World Cup. Retrieved October 2, 2012, from http://www.worldfootballinsider.com/Story.aspx?id=33485
46 The Telegraph (n.d.). FIFA corruption claims: What the sponsors are saying. Retrieved October 2, 2012, from http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/leisure/8548440/Fifa-corruption-claims-What-the-sponsors-are-saying.html

## Sports organisations and information disclosure

As mentioned above, the three organisations tend to share some internal documents, but they struggle to disclose financial data and information concerning decision-making and election processes. Whatever information they do publish on these matters is usually of minor importance.

It would seem as if these organisations give priority to the protection of their interests over those of their stakeholders, by shrouding their proceedings in secrecy. In effect, their information disclosure policies do not match the needs of the stakeholders. Nevertheless, supporters and journalists report that FIFA and the IOC usually provide information fairly quickly when requested.

### Sports organisations and openness and honesty

Another communication approach all three sports organisations reproduce is that while they discuss extensively the sport they represent, they are almost completely silent on matters pertaining to the organisation itself. They address the promotion of sports but keep mum on internal issues, thus raising frustration among their main stakeholders. It is also hard to reach the organisations. The contact details of their officials, either phone numbers or email addresses, are not published. The only way to reach them is by sending a message to a general address or filling a contact form on their website. Representatives of the Football Supporters Europe federation say that it is possible to contact UEFA and FIFA through these means, but this is not very convenient. Providing different email addresses for each department would make communication more efficient. Supporters also say that it is nearly impossible to get in touch with organisations such as FIFA and UEFA as simple fans. They feel FIFA is indifferent to them and is not likely to communicate with them.

Both supporters and journalists agree that it is impossible to contact the organisations' executives. Many have given up trying since they never seem to obtain satisfaction. It should be emphasised that openness and honesty in communication also concerns communicating on the values and the position of the organisation towards key issues, and that this, in itself, is crucial for maintaining good ties with the stakeholders. As mentioned before, FIFA's sponsors expressed their discomfort and confusion at the organisation's limited response to the phenomenon of racism on the football field, putting a strain on the relationship between the football organisation and its leading partners. This was an uncomfortable situation for both parties, even if ultimately, the sponsors did not withdraw from their collaboration with FIFA, but rather pledged to contribute on their own to antidiscrimination and antiracism activities.

## Sports organisations and fairness

Most of the information provided by FIFA, IOC, and UCI in their public communication is not targeting any specific group, but is addressing the general public. In this regard, the organisations' policies on information sharing can be deemed fair, as they provide equal amount of information to all stakeholders. But this attitude also reveals their reluctance to set priorities and find individual approaches suitable for each one of their stakeholders, making it impossible for them to answer the separate, defined needs of

each one of their publics. This attitude is reflected in their mission statements, in which the importance of differentiating between each stakeholder and finding a personal approach for each one of them is ignored. However, according to the stakeholders themselves, if this differentiation in communication is absent in theory, it is still often implemented in practice.

Although supporters testify the organisations disregard their concerns, a survey conducted by the EJC among European sports reporters has shown that journalists tend to be generally satisfied with the attitude displayed towards them. For the most part, they are provided with all the information they ask for and do not face difficulties in this regard. However they also admitted the Olympic Committee and its affiliate organisations are more journalist-friendly than UEFA or FIFA.

Organisations should strive to respect the principle of fairness also in their approach towards cases of conflicting interests among different stakeholders. Such an issue emerged this year, presenting the IOC with a conflict of interests between the general public and the organisation's sponsors. Public health institutions asked the IOC to cease its partnership with corporations that advertise products that constitute a health hazard. In their public statements, they pointed to the fact that the Olympic Games' biggest sponsors, Coca-Cola and McDonald's, are also the world's leading producers of calorie-full meals and beverages. In this case, the commercial interests of the IOC won. The partnership was maintained and will continue to be so in the future. This decades-old collaboration is beneficial to the IOC, which gets 40% of its revenues from these two companies.

It appears, therefore, that sports organisations occasionally do implement separate communication policies when dealing with different stakeholders, although this matter does not receive official consideration. Unfortunately, these communication policies do not meet standards of fairness one could expect from such major international institutions.

As mentioned earlier, it is important for sports organisations to maintain strong ties with their stakeholders – a goal attainable only through the implementation of the transparency standards mentioned above. Recent experience has shown that the sports organisations listed in this report struggle in this regard. Athletes, supporters, sponsors, governmental agencies, and media are all in some way dissatisfied with their governance practices. Some feel they are ignored or disregarded, while others are critical of the organisations' involvement in corruption scandals or their equivocal reporting on core values and issues affecting the reputation of both the organisations and their stakeholders.

## *Part II:*
## Relationship management in sports and the potential of social media

The first part of this report dealt with basic standards of transparent public communication and provided examples of best practice from the non-governmental sector. This part will focus on the tools available to sports organisations best adapted to allow them to integrate these standards, focusing primarily on social media, recognised as one of the most efficient media tool currently at hand.

Some sports organisations are applying certain basic principles of transparent public communication. Still, there is room for improvement, first and foremost by considering relationship building with key stakeholders a crucial element in their public communication. With this in mind, sports organisations need to look for the appropriate communication models and tools best suited to address specific issues that concern and affect different stakeholders.

The emergence of new technologies has changed the communication process, as well as the habits and the behaviour patterns of the audience. One of the key developments that revolutionised the communication flow is the emergence of Web 2.0, paving the way for a transformation of the public's media engagement, primarily through the simplification of content creation and publication. The increased importance of Web 2.0 and social media, and the influence it exercises on user behaviour in terms of awareness, information gathering, opinions, and attitudes require organisations to adapt quickly and define new ways of interacting with their stakeholders – from fans to community to sponsors to internal staff. The top-down approach, traditionally practiced by sports organisations, does not work anymore. A feedback-based reflexive communication is fundamental for the establishment of a fruitful relationship, beneficial for all parties concerned. Social media represent therefore a unique opportunity, as they are the optimal tool for such a communication model, based on a continuing dialogue. Once organisations relinquish control and begin to engage in a two-way communication, in a transparent and open manner, trust is fostered among the users, as is receptiveness to the organisations' message.

Social media offer an additional advantage in this respect. More than traditional communication means, they give organisations the opportunity to interact directly with fans and other stakeholders. This enables them to get acquainted with the main issues that concern their audience and gain greater knowledge of the stakeholder base, allowing them to better adapt their message to each specific stakeholder, paving the way for a diversity of communication channels and strategies, finely tuned to the needs and specificities of each public.

Moreover, social media offer organisations the possibility to reach out to a great number of people, spread over the whole world, letting them connect either directly with the organisation or among themselves. On top of this, Web 2.0 endows sports organisations with the capacity to link their communication to a multitude of websites, communities, and blogs, thus widening the scope of the message and its appeal. This makes the growth

of a fan base and the development of fan loyalty, through closer interaction via these networks, much easier.

Finally, social media allow consumers to interact with sports organisations for a far lower cost and with a much wider reach, in comparison with traditional promotional alternatives. The consumers are the ones to invest time and money in this exchange, allowing the organisations to obtain a global reach for a relatively small investment. This also means the organisations generate a greater coverage and awareness to their message, provided by the facilitation of fan-based content creation. This is a boon, particularly for sports organisations which do not enjoy major television coverage, or which are interested in increasing their visibility in order to promote and develop sports participation.

The goal of all public communication activities is to build a long-term relationship with strategic publics. In order to accomplish this, sports public communication should identify key publics, evaluate the organisation's relationship with those publics, and strive to foster the desirable relationships with them (Stoldt, 2006). This should be sports organisations' main objective in planning their public communication strategies, rather than simply building symbolic relationships, while disregarding the stakeholders´ desires and needs.

The advantages of managing relationships with key publics, for an organisation, are:

- gaining their trust and support in future dealings;
- making it simpler for the organisation to achieve its objectives and function as part of the community;
- managing a good reputation;
- strengthening the commitment and the bonds of trust between the organisation and its stakeholders.

Sports organisations are particularly attached to the traditional communication style, even though those fail to bring the desired results. In the highly-socialised world of modern communication, traditional communication styles must give way to the more effective contemporary ones.

Social media deeply affect how public relations are practiced. This transformation has not always been easily processed in corporate and organisational communication. One of the biggest challenges for public relations nowadays lies in the organisations' lessening control over their brands and reputation. Whereas in the past individuals could inform only a small group of people about their past experiences with certain institutions or corporations, social networks and other forums allow them presently to spread the word worldwide in record speed. However, if managed properly, this changing balance of power can prove beneficial to organisations as well. Relinquishing control and engaging with the public in a transparent and open way allows them to foster trust with other users, as the receptiveness to the organisations' messages increases (Gillen, 2008).

Social media tools also allow organisations to bypass the gatekeeping prerogatives of legacy media and make their news available to people who have an insatiable appetite for information regarding their favourite sports teams and athletes. Currently, an increasing number of sports fans prefer to get their sports news from social networks such as Facebook or Twitter, rather than national news websites. They want live updates, active participation, and a behind-the-scenes look at their favourite teams and players. Social media make all this possible and even permit supporters to connect directly with their stars.

This transformation of the communication field requires organisations to rethink their interaction with their stakeholders as a continuing dialogue. Expertise in this area will be less concerned with immediate objectives and more with long-term nurturing and development of the relationship between the organisation and its stakeholders, as well as with promoting intra-stakeholder communication (Solis, 2008).

One of the complicating factors of the new communication environment is the increased ability for stakeholders to interact among themselves, out of the organisation's reach. But instead of considering this a drawback, organisations will need to understand how to facilitate, intervene, and negotiate within this new frame, moving from an organisation-centric model to relationship-centric mode of operation (van der Merwe, 2005).

All these changes point to the importance of constructing a communication policy built on the basis of a two-ways symmetrical communication model, as described by J. Grunig. This model is based on an exchange of information, constituting a dialogue. Symmetrical communication is balanced, equilibrating the relationship between the organisation and the public. *"It* [two-ways symmetrical communication] *uses research to facilitate understanding and communication rather that to identify messages most likely to motivate or persuade publics. In the symmetrical model, understanding is the principal objective of public relations rather than persuasion*" (Grunig, 1992, p. 289).

This model is based on the premise that both parties need to negotiate and compromise in order for them to develop a mutual resolution. In the context of sports, this could mean perhaps that a club decides to change the uniform of its players, while the club supporters object to the decision. A compromise could be reached by allowing supporters to provide their own input regarding the new uniform design or keeping the old uniform for home games. By seeking to understand their publics, rather than simply persuade them, organisations are better positioned strategically to establish and maintain fruitful relationships with these key groups and avoid damaging them in cases of conflict.

## Sports organisations' social media experience

Past events have shown that immediacy and the viral aspect of real-time conversations via social media channels can be either very successful when well-managed, or catastrophic when left unmonitored or when badly handled. Social media thus provide sports organisations with both a challenge and an opportunity in the harnessing of this new mode of communication, which provides a more direct and participative approach to building relationships.

While this case study was being compiled, it was apparent that international sports organisations are trying to use social media in their communication arsenal, but with little, or negative, effect. Organisations have a lot of communication channels and new media tools, but these are not used properly and do not give them additional value.

Two major sports events were taking place during the time of this study, and both exemplify well how the use, or misuse, of social media can affect the organisation's image as a whole.

The 2012 European football championship is a typical case of a communication policy gone awry, leading to confusion and misunderstanding between the organisation, the athletes, and the fans. Having no guidelines as to the use of social media, certain national teams (Spain, Denmark, Germany) forbade their players to use social media during the championship, causing discontent among both athletes and supporters, the athletes feeling censored and the supporters feeling shunned. This case demonstrates the organisation's incapacity to manage social media in way that is advantageous for the organisation and in the interest of its stakeholders.

The London 2012 Olympic Games constitute a rather more successful case of communication management. Considering the importance of social media during sport events, the IOC provided guidelines for the use of social media.[47] In this document, the IOC actively encouraged and supported athletes and other accredited persons at the Olympic Games to take part in social media communication and to post, blog and tweet their experiences. Generally speaking, the IOC encouraged all social media and blogging activity at the Olympic Games, provided it was not done for commercial purposes. It also emphasised such activity must respect the Olympic Charter and comply with the rules. The guidelines also specified that any post made during the Olympics should be made in a personal style format and should not be of journalistic character, it must not report on the results of the competitions or comment on the activities of other participants or accredited persons, or disclose any information which is confidential or private in relation to any other person or organisation.

The IOC's policy was a success, insofar as it leads to augmented visibility among the public and to a greater adherence with the organisation's brand, activity, and values, while also answering the stakeholders' wishes and needs.

These examples underline the need to recognise social media as an important part of an organisation's governance activities. International sports organisations need to include social media communication in their budgets, but also to monitor how athletes use them. As Twitter and Facebook continue to contribute to change and personalise sports culture, sports players, teams, leagues, and news outlets have to welcome social media to the game.

47 See http://www.olympic.org/Documents/Games_London_2012/IOC_Social_Media_Blogging_and_Internet_Guidelines-London.pdf

## Conclusion

This paper focused largely on the basic criteria of transparent and accurate public communication to be applied by sports organisations. The guiding principles, which have to be followed in order to achieve a transparent and accurate communication, include accountability, information disclosure, fairness, openness, and honesty.

As such, it is important for sports organisations to be accountable in their financial and decision-making processes, a path open to them by establishing a two-way, feedback-based communication with their stakeholders. The public communication should be done observing the principle of fairness, which means serving the needs of each of the identified stakeholders. Organisations should be open and willing to communicate, engage in discussion with their stakeholders and seek to get a response from them. Any information, which might be in the interest of the stakeholders must be disclosed and accessible.

Additionally, we tried to highlight the importance, for sports organisations, to understand and value their relationship with stakeholders and key publics. To do that, it is essential for them to first identify their stakeholders' reactions to pertaining issues and subsequently devise adequate communication strategies, which are appropriate to the degree of influence they have over the organisation.

Moreover, sports organisations need to keep in mind that public communication is not only about self-promotion. Its role is also to ensure a long-lasting and fruitful relationship among all players in the sports field, be they athletes, sports organisations, fans, or commercial partners. And yet, sports organisations often content themselves with relying on traditions and on the fans' dependency on their infrastructure to ensure their dominance in the field and to avoid dealing with criticism.

Organisations have to recognise that building relationships based only on their own needs and interests, while ignoring the voices of their stakeholders is harmful to them. But maintaining a good reputation, as a transparent and accountable organisation, is only possible by treating the stakeholders in an open manner and by demonstrating a willingness to adapt to innovations and make reforms when necessary. And yet, presently, the score of sports organisations in this regard not up to par, causing misunderstanding, mistrust, and dissatisfaction among stakeholders.

It is therefore essential that sports organisations identify their stakeholders as their primary support groups, able to stand behind the sports organisations, and sustain them in their efforts to transform the world of sports into a genuinely collaborative field, true to the values and ethics it seeks to represent.

The use of social media is one of the key tools in establishing such a two-way, transparent communication environment with the stakeholders. Considering the changing face of the media environment and the rising importance of social media, seen as *the* future tool of communication, sports organisations need to pay special attention to them. Using them appropriately will be an easy way to enrich the relationship with stakeholders,

particularly the supporters and the general public. In light of their speed, efficiency, and low cost of implementation, they can be particularly advantageous for sports organisations. Therefore, social media need to be recognised as a powerful tool, managed according to suitable communication strategies, and with the help of adequate budgetary means.

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# The Swiss regulatory framework and international sports organisations

**By Michaël Mrkonjic, PhD Candidate, Swiss Graduate School of Public Administration, University of Lausanne, Switzerland**

## Introduction

The formal and international recognition of the military neutrality of Switzerland in 1815 has been an essential (re)source of arguments for the development of its foreign policy. It has provided this small country of now eight million people a privileged position in international relations. Since more than one century, notably after the birth of the International Committee of the Red Cross (ICRC) in 1863 in Geneva, Switzerland has succeeded to offer the best conditions for International Non-governmental organisations (INGOs), and many International Governmental Organisations (IGOs) such as the United Nations and its predecessor the League of Nations to develop their cross-border activities without restrictions. Baron Pierre de Coubertin has transferred the headquarters of the International Olympic Committee (IOC) to Switzerland, in 1915. He considered that "Olympism will find in the independent and proud atmosphere that we breathe in Lausanne, the guarantee of freedom that it needs to progress".[48] He was to be followed by many of the International Sports Federations (IFs), the majority of them having now their seat in Lausanne. Hence, Switzerland has become the "Queen of Sports", as the Baron had predicted in 1906.[49] However, time passing, the relations between these international sporting organisations (ISOs) and the Swiss authorities have sometimes been characterised by mutual suspicion and threats. At several occasions, ISOs have expressed their desire to leave Switzerland if they do not obtain what they were asking for.

## International sports organisations as non-profit associations

The IOC and IFs that are located in Switzerland have de facto an international status. But de jure, they are not incorporated as IGOs or international quasi-governmental organisations (IQGOs). They are associations subject to national private law whose terms of constitution and organisation are formalised in the Swiss Civil Code (SCC). The legal framework provided by the Code allows a large freedom of arrangement, but is also imposing certain general conditions. Indeed, in order to be incorporated as association, the organisation should not have an economic purpose and demonstrate its willingness to be organised corporately in Statutes (art. 60.1). These Statutes must take the form of a written document and must contain provisions on the purpose, resources and the organisation of the association (art. 60.2). From a structural point of view, the association must be run by a general assembly (art. 64.1) and an appointed committee that represents the association and manages its affairs (art. 69). At the general assembly all members have equal voting rights[50], and decisions are taken by a majority of the

48 Author's translation from French. City of Lausanne, 2012 accessed on www.lausanne.ch/view.asp?DocId=29881
49 At the time, Coubertin argued that among different reasons justifying such a status, the high level of participation in sport of Swiss citizens was the most evident one.
50 Non imperative legal disposition. Some sports organisations, such as SwissOlympic, follow a proportionality rule.

members present (art. 67). Is deprived of the right to vote any member whose decisions affect himself and his extended family (art. 68). Regarding the committee, this body is responsible for the convocation of the general meeting (art. 64.2) and to keep accounts (in a commercial manner and subject to the Code of Obligations, if the association is registered in the Commercial Register). Finally, the association must submit its accounts to an external ordinary audit, if during two successive years, two of the following values are exceeded: results: CHF 10 million; revenues: CHF 20 million; staff: 50 employees.

## The IOC tax exemption case

Once installed on the shores of Lake Geneva, the Baron wanted as soon as possible to clarify the status of its Committee in order to be able to develop its international operations. However, the local authorities refused to consider the IOC as an association under Swiss law, unless it reformulated its Statutes and register in the Commercial Register. The Baron refused categorically considering that the IOC could not be compared with a "simple" association. The influence it offered to the city of Lausanne, the Canton of Vaud and more widely Switzerland, deserved the recognition of a special status similar to that of IGOs. In 1923, the city of Lausanne and the Canton slightly yielded to the pressure by providing its members with an exemption from cantonal and communal taxes, while the Swiss Federal Council (the Swiss Government) offered them some customs advantages.[51]

For over 50 years, the IOC obtained sporadically very few privileges. And they were far from what the Committee expected compared to what was offered to INGOs notably in terms of immunities. In 1981, the Federal Council recognised it as an association under Swiss law, but offering some of the privileges of an IGO such as the exemption from direct federal tax and the lifting of the quota of foreign personnel. At the time, this decision was purely a matter of international relations since it was based on a (former) constitutional provision (art. 102.8) which stated that: "The Swiss Federal Council sees to the interests of the Confederation outside and is, in general, responsible for external relations". The executive body argued in an opportunistic and pragmatic way that the IOC allows Switzerland to shine internationally, that one way or another, its presence is important for Swiss athletes and finally that the international competition to host the IOC became too pressuring to allow such a symbol of universalism to leave the Helvetic ground. As a consequence, under the leadership of the charismatic National Councillor Adolf Ogi, it began to consider developing a (systematic) hosting policy for ISO's (Concept du Conseil fédéral pour une politique du sport en Suisse, 2000).

For almost 15 years, nothing really happened. The boycotts of the Los Angeles Games in 1984 and the increasing commercialisation of the five interlaced rings might have brought Samaranch to other fields of concerns. It is only from the mid-1990s and not without reason that he reactivates the question of the "Swiss" status of the IOC. Indeed, the introduction of a new law fundamentally changes the relationships between the Federal Council and the IOC and the IFs as well. Knowing that the VAT would enter into force in 1995, the IOC immediately asked the Federal Administration of Finance to be exempted. But the proposition is quickly rejected and the threat of a relocation of the

51 Informations based on Morath Pierre, 2000. Le CIO à Lausanne, 1939-1992. Cabedita.

IOC, followed by other IFs, snaps back.[52] In 1997, the spirit of the Baron reappears as Samaranch asks for an intergovernmental status. Second defeat. However, the Department of Foreign Affairs and its Minister do not see these successive refusals with a very good eye since they are the biggest supporters of the specificity of the IOC. In 1998, under its leadership and that of the famous Adolf Ogi, the Federal Council recognises that the Committee pursues public purposes. More specifically, it declares that it promotes physical education, mutual understanding and peace, and that it has an important economic impact for the region where it is seated. Accordingly, it votes the renewal of the federal tax exemption and the VAT exemption. However, a couple of month later, facing heavy criticism during the "Salt Lake City scandal", and fearing a refusal by the Parliament, the IOC withdraws its request for VAT exemption.

The federal tax exemption of the IOC is formalised in 2000 through a mutual agreement between the Committee and the Council. And this decision will be extended to all IFs in 2008 considering that they foster mutual understanding between cultures, promote peace and positive values (fair play, fight against racism and xenophobia, and integration). Finally, the entry into force of the Host State Act (HSA) in 2008 and that of the Swiss Federal Law on the Promotion of Sport and Physical Education (LPSPE) in 2012 will consolidate the status of ISOs in Switzerland. Both stipulate that the Confederation may facilitate the establishment or the activities of an ISO in Switzerland (Federal Council's Message on the Host State Act; art. 24.2, HSA; art. 4, LPSPE). It may accord financial subsidies and other support measures such as tax exemptions. However, they "are not eligible for the privileges, immunities and facilities contemplated by the [Host State Act]" (art. 24.3, HSA), for example the "inviolability of the person, premises, property, archives, documents, correspondence and diplomatic bag" (art. 3.1.a, HSA).

## The FIFA corruption cases

FIFA has its seat in Zurich since 1932 and, like the other IFs, is a non-profit association under Swiss Law. But on the contrary to many of them (notably those that are located in the canton of Vaud) it pays taxes (more or less 5 million $ in 2011). The two highly mediatised scandals its officials faced during the 2000s – the ISL case (1989-2012) and the bidding and election scandals (2010-2011) – have generated an interesting and quite important debate in the Swiss political and legal spheres. Indeed, it seemed that the regulatory framework was not framed to resolve such corruption issues. Several loopholes in the law hindered the possibility to open a case before courts (notably in the second case, the ISL case having been opened in a relatively complex manner). A quick overview of the Swiss regulatory environment regarding the fight against corruption allows us to understand the situation.

Until 2000, corruption of foreign public agents was not prosecuted in Switzerland. Offering bribes was the usual way of doing business and they were deductible from corporate tax. But since then, under international pressure from the OECD with the Anti-Bribery Convention (2000), the Council of Europe Criminal Law Convention on Corruption (2006), the United Nations Convention against Corruption (2009), and

52 L'Hebdo, 1999. La Suisse a absous les fraudes fiscales du CIO. http://www.hebdo.ch/la_suisse_a_absous_les_fraudes_fiscales_du_7470_.html

GRECOs critical third evaluation cycle on Switzerland (2011) recommending that private corruption should no longer be prosecuted upon complaint but automatically and extend the offence of private sector bribery to sports associations, MPs stressed that something should change in relation to the latter. Accordingly, two main solutions were proposed through two parliamentary initiatives, one by Mrs. Thanei and Mrs. Leutenegger (2010) and one by Mr. Sommaruga (2010).

The first solution was to work on the interpretation of the Swiss Criminal Code in its art. 322septiès on corruption of foreign public agents (2006). Per se, this article is not applicable to ISOs since they are not considered as IGOs (built on Treaties, under immunities or VAT exemptions), or, in other words, members of ISOs are not considered as foreign public agents (although we have seen that ISOs are considered as public service providers). On this basis, the proposition stressed the importance of considering ISOs as IGOs, i.e. consider officials as foreign public "sports" agents. Unfortunately, the proposal was quickly tackled by the Parliament. Probably for the simple reason that, as we have seen, the Host State Act formally recognised that ISOs cannot be considered as IGOs.

The second solution was to work on the Swiss Unfair Competition Act, and more precisely, art. 4.a and art. 23.1 on active and passive corruption (2006). Again, the Act is not applicable to ISOs because bribery of officials for votes is not considered as creating an unfair economic competition, and in any case, an individual can only be prosecuted on complaint. On this basis, the proposition stressed the importance to transfer the article in the Swiss Criminal Code (Title 19 on corruption) and remove the complaint requirement. Both Chambers of the Parliament accepted the initiative and it now the duty of the Department of Justice and Police to prepare a preliminary draft amendment to the law for the beginning of 2013. Last (but not least), under art. 102.2 of the Swiss Criminal Code on criminal liability (2006), an organisation can be sanctioned for not having taken all reasonable organisational measures necessary to prevent such offenses (i.e. art. 322septiès SCC, art. 4a UCA, art. 23/1 UCA). This article has not generated much political debate since it is directly applicable to ISOs. However, notably due to interpretation issues of "all reasonable organisational measures", it had a limited impact so far. Only a very few corporations have been sentenced on the basis of this article.

## Conclusions

This overview on the Swiss regulatory framework on fiscal and corruption issues shows many interesting points in relation to the autonomy of ISOs. With the Host State Act, ISOs that have their seat in Switzerland are formally recognised as INGOs. On a fiscal perspective they are considered as public service providers. On a criminal perspective, mechanisms of compliance with the law are still not effective. To some extent, if we consider FIFA, the organisation can somehow protect itself from the threat of art. 102.2 of the Swiss Criminal Code by reforming its internal structures, but the potential modification of the Swiss Unfair Competition Act (i.e. the amendment to the Swiss Criminal Code) could diminish the legal autonomy of ISOs towards Switzerland. Finally, excluding the "institutional rooting effect" and the "network effect", the future of ISOs in Switzerland will hold in a bargaining between what Switzerland offers (federal tax exemptions), what it refuses (diplomatic immunities), what it imposes (conditional

external audit), what it allows (corrupt activities without criminal complaints) and finally what ISOs offer to Switzerland (international prestige).

# Sports organisations, autonomy and good governance

Working paper for Action for Good Governance in International Sports Organisations (AGGIS) project

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## Introduction

Only recently, the call for good governance has finally reached the traditionally closed sporting world (e.g. Sugden and Tomlinson, 1998; Katwala, 2000; IOC, 2008; Pieth, 2011; Council of Europe, 2012; European Commission, 2012). That this happened in sport much more slowly than in other sectors, such as for failed States or misbehaving corporations in the 1990s, has to do with the fact that the world of sport is traditionally regulated in all its aspects through a closed, self-governing network with its own rules and regulations. Sports organisations tend to act in self-organizing, interorganizational networks characterized by interdependence, resource-exchange, rules of the game, and significant autonomy from the state (Rhodes, 1997). For almost a century, the sporting network was able to exercise its self-governance without any significant interference from states or other actors (Geeraert *et al.* 2012). However, the quality of the self-governance of International Non-Governmental Sport Organisations (INGSOs)[1] has been increasingly questioned due to the commercialisation of sport, which made sport subject to the more avaricious and predatory ways of global capitalism (Andreff 2000, 2008; Sugden 2002; Henry and Lee 2004), but also painfully exposed governance failures such as organisational corruption (such as the Salt Lake City scandal in 1998). Hence, for more than ten years now, the discourse on good governance in sports organisations has become common in the political and sports sphere and this has appeared in relation with the discourse on their autonomy.

Recognising the economic and social function of sport, the European Union (EU) acquired a certain degree of legitimacy in the political steering of sports governance (Garcia, 2009) if INGSOs are not able to protect these functions. That is for instance the case with regard to cases of organisational corruption, doping or match-fixing[53] and adherence to principles of good governance is then perceived as a cure for these diseases. In its 2011 Communication on the European dimension in sport, the European Commission even stresses that good governance is a condition for the self-regulation and autonomy of the sports sector (European Commission, 2011).[54]

Although the body of academic literature on good governance in sport is progressively swelling (see for instance Henry and Lee, 2004; Chappelet and Kübler-Mabott, 2008; de

53 This is particularly true after the entry into force of the Treaty of Lisbon in 2009, when the EU has been given an explicit, albeit very limited, role in the field of sport.
54 Which must also respect EU law.

Zwart and Gilligan, 2009), a reflection on the meanings and definitions of the concept of autonomy seems neglected by research (see f.i Chappelet, 2010), except perhaps from a legal perspective. In practice, the autonomy of sport is often assimilated with broad concepts such as independence or freedom, or narrower ones such as self-government and self-determination (Thing and Ottesen, 2010) or self-regulation of the sporting world. This paper aims to present an overview of the different possible conceptualisations of autonomy applied to sports organisations: political autonomy, legal autonomy, financial autonomy, pyramidal autonomy, functional autonomy, supervised autonomy and negotiated autonomy. Assuming that there may be several conceptualisations of autonomy that apply for the same situation, this paper tries to draw lines of thought on the relation between the concepts of sporting autonomy and good governance in sport. Given the general purpose of the AGGIS project, the focus of this paper is on the European context.

## Political autonomy

Political autonomy can be considered as the historic understanding of the relationships between sports organisations and their environment. Szymanski (2006) describes how modern sport developed in England out of new forms of associativity created during the European enlightenment. That period saw a political sphere dominated by the political ideas of John Locke, often credited as the father of (classic) liberalism. His theory of the social contract advanced the idea that the State itself was a kind of voluntary association that individuals chose to enter out of a state of nature. In his essay "A letter concerning toleration", Locke takes it for granted that voluntary associations have the right to establish themselves and create their own rules and regulations. As a consequence, in Britain, "the state showed little appetite for regulation or intervention" (Clark, 2002, p. 97) while in the rest of Europe, intellectually, the marriage of the state with the developments of sport clubs can be traced back to Rousseau, whose concept of the social contract left little place for independent voluntary associations.[55] The influence of the British in the global spread of the governing structures of football eventually made sure that FIFA was established in 1904 by a class of people who believed in the separation of sport and state as a sacred principle (Tomlinson, 2000).

An equally powerful organisation, the International Olympic Committee (IOC), was founded in 1894 by Pierre de Coubertin. Since its creation, the International Olympic Committee (IOC) has been the supreme authority on all questions regarding the Olympic Movement, a complex system created to regulate the Olympic Games. A product of late nineteenth-century liberalism, de Coubertin strongly believed that politicians could only violate sports integrity stating that: "the beam formed by the goodwill of all members of an autonomous sport, relaxes when the giant figure of this dangerous and imprecise figure called State appears" (de Coubertin, 1909 cited in Chappelet, 2010). Indeed, the Olympic vision emphasised the improvement of the individual and attention had to be on the athletes, not on the countries they represented (Chappelet, 2010). Hence, it was clear

55 In his work "The social contract", in Book II, Chapter 3, Rousseau basically writes that private associations within the state are harmful, because they provoke faction which works against the general will. These ideas were influential in the development of sports organisations because of his concern with the physical and moral development of the Young, as set out in popular discourse "Emile, ou l"éducation".

what de Coubertin envisioned: a central role for sports federations. Nevertheless, the word "autonomy" appears for the first time in the Olympic Charter only in 1949 (Chappelet, 2010): in order to be recognised by the International Olympic Committee (IOC), the National Olympic Committees (NOCs) must be free from any interference from national authorities.[56] The formalisation of the concept of autonomy can be explained by the post-war political context and the role of communist countries which tended to develop a systematic instrumentalisation of sport for policy aims, while federations, in the quest for an identity[57], are constantly struggling for their autonomy (Jeu, 1989). Indeed, exploiting sport as a diplomatic weapon in international relations became common in the former Soviet Union. It led not only to the intervention of the government in the selection of members or the creation of "State sportsmen" (i.e. embracing or forced to embrace the communist ideology), but also less gloriously to systematic doping (Terret, 2010; Bose, 2012).

Both FIFA and the IOC have been very influential on the creation of other INGSOs and hence, the sports world generally eschews state intervention in its activities. On the European continent, governments have also been reluctant to intervene in the sports sector as, even now; they tend to regard it more as a cultural industry or leisure activity rather than a business (Halgreen, 2004, p. 79). Of course, within EU Member States, different structures of sports policy exist, varying from systems with high degrees of state involvement to systems with close to no government interference in sport (Henry, 2009). Nevertheless, in most of European countries, NOCs are politically independent. They are "generally working on premises they own" (Chappelet and Kübler-Mabbott, 2008, p. 55). But the level of autonomy of an NOC varies from one country to another in different parts of the world. There are several situations where NOCs are controlled by the national government. In some situations, notably in "African, Asian and Latin American countries, the NOC is an annex to the Ministry of sport" (Chappelet and Kübler-Mabbott, 2008, p. 55) and the NOC is Minister of Sport, or even President of the Country.

## Legal autonomy

The legal autonomy of a sports organisation can be defined as the private autonomy of the organisation to adopt rules and norms that have a legal impact in a legal framework imposed by the State,[58] be it at national or at international level. At national level, the legal autonomy of sports organisations can be under the scope of civil law for organisational construct, fiscal law for tax exemptions or corporation law for contractual issues. All INGSOs that are seated in Switzerland are non-profit associations (except the World Anti-Doping Agency which is incorporated as a foundation). They fall under the provision of the Swiss Civil Code (articles 60ss) which provides minimum requirements for an association to be created, such as writing and adopting statutes, having an ideal objective

56 Translated and adapted definition from "Pour être valablement reconnu par le C. I. O., un Comité national olympique doit remplir les conditions suivantes […] être indépendant et autonome" (International Olympic Committee, 1949, p.11).

57 The author simply defines identity as internal and external differentiation (Jeu, 1989, p.161)

58 Translated and adapted definition from "Les organisations sportives ne peuvent édicter des règles ou des normes de portée juridique que dans les limites de leur autonomie privé, c'est-à-dire dans le cadre que le droit étatique laisse à leur libre disposition " (Oswald, 2010, p.155)

and resources. Inherent to the hierarchy of norms, most of the articles are considered as non-binding. However, some of them such as article 75[59] have the value of mandatory law. In line with a federal act considering them as having a public utility (Host State Act, 2008), INGSOs are exempt from tax on the federal level. Their particular status has been reaffirmed in 2011, with the adoption of the new law on sport (Loi sur l'encouragement du sport, LESp) stipulating that the Swiss confederation "shall ensure, within the limits of its powers, that international sporting federations enjoy favourable conditions for their activities in Switzerland" (LESp, article 4.3) The legal autonomy is also under the scope of national ordinary courts[60]. However, only a limited number of cases were brought before them.[61] In the same vein, Miège (2000), Camy et al., (2004), and Chaker (2004) have developed a typology of interventionist and non-interventionist European countries by identifying the existence of a sports law and the presence of a provision on sport in the Constitution. At international level, the Council of Europe already recognised this conceptualisation of autonomy in the early 1990s through the European Sports Charter (1992). The Charter stipulates that "voluntary sports organisations have the right to establish autonomous decision-making processes within the law" (Council of Europe, 1992). Accordingly, in its 2000 'Nice Declaration' on sport, the European Council stressed that "[...] with due regard for national and Community legislation [...], it is the task of sporting organisations to organise and promote their particular sports" (European Council, 2000).

In many cases, the legal autonomy of sport has been challenged by the decisions of the Court of Justice of the EU (CJEU). Indeed, athletes have rights and obligations deriving from ordinary law but also from the rules of the sports federations they are registered with (Parrish, 2003). Many of those rules are captured by the EU's internal market competence. The establishment of an internal market,[62] the integration of the Member State's economies as a means to achieve the objectives of the Union such as a balanced economic growth, remains one of the principal tasks entrusted to the Union[63]. In order to secure the ability to deploy factors of production freely across frontiers, the Member States are prohibited to discriminate against goods, persons, services and capital from other Member States (EU freedom of movement law). Within the internal market, there should be free competition, favouring an efficient allocation of resources.[64] The EU "rules on competition" (EU competition law) comprise rules prohibiting distortion of competition by undertakings and rules restricting State Aid granted to undertakings.

Rules issued by sports organisations may potentially breach EU competition and freedom of movement law since sport, when it constitutes an economic activity, is subject to EU

59 « Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof » (Swiss Civil Code, Article 75)
60 See for instance for Switzerland, Baddeley, 1994; Zen-Ruffinen, 2002 ; Oswald, 2010 ; Valloni and Pachmann, 2011. See for instance for France, Simon, 1990 and Karaquillo, 2011.
61 One of the recent examples refers to the decisions of the Swiss Federal Court against a disciplinary measure imposed by FIFA and endorsed by the Court of Arbitration for Sport against a football player on the basis of a violation of public order (Matuzalem case).
62 Since the Single European Act (SEA, 1986), the term "common market" is gradually replaced by "internal market". Since the entry into force of the Lisbon Treaty, the internal market is the sole expression of the objective of market integration pursued by the EU.
63 Article 3(3) Treaty on European Union (TEU)
64 Articles 119(1) and (2), 120 and 127(1) TFEU.

law.[65] The CJEU has dealt with the freedom of movement and sport in numerous cases, most notably in the 'Bosman case'. It is arguably the area of EU law which has had the most substantial impact on sport. Competition law has mainly had an impact on sport rules due to the far-reaching powers of the European Commission as public enforcer of EU competition law (Geeraert, Bruyninckx and Scheerder, 2012, p. 37-40). Hence, it is clear that EU law constitutes a clear limitation to the legal autonomy of sports organisations, as they in principle cannot devise rules that are contrary to EU law. Generally, in case such rules pursue a legitimate (sporting) aim, they may not be deemed to breach EU law when the application of those rules do not go beyond what is necessary for the achievement that purpose. Case law by the CJEU provides invaluable guidance for the application of EU law to sport and as such, it is clear that certain rules will not survive the proportionality test should they ever become under scrutiny before the Court. Obviously, the CJEU did not rule on every type of sporting rule yet, as it can only rule on the cases it gets and then only insofar as the question of their conformity with EU law is part of the constituent elements of the reference for a preliminary ruling made to it. That leaves many questions on conformity with EU law with regard to sporting rules unresolved and consequently, it is not yet clear to what extent EU law limits the legal autonomy of sports organisations.

## Financial autonomy

Historically, sport relies on public financial support and even today, sport often relies on government grants (see Eurostrategies *et al*, 2011). Nevertheless, with the commercialisation of sport came the growing independence of sports organisations. A key factor in that regard has been the breakthrough of sports broadcasting. Indeed, television broadcasting of big sporting events provided access to TV-viewers at any significant international competition convened anywhere around the world and hence, the genuine globalisation of the sport economy took off (Andreff, 2008). In Europe, the dismantling of public broadcasting monopolies in Europe in the 1980's[66] has fostered competition in the industry and consequently, the European consumer increasingly had more public and private channels to choose from (Bourg and Gouguet, 1998). Parallel with those evolutions, since the beginning of the 1980s, a technological revolution has taken place, adding first cable and then satellite and digital television to traditional terrestrial television, while also expanding the available number of channels. The extra capacity persuaded governments to license extensive competition in broadcasting (Szymanski, 2006, p. 430). Moreover, satellite and cable broadcasting brought with it the opportunity to charge consumers directly for signal reception. By the end of the 1980s, a significant number of new competitors offering pay-TV services vied on the European markets. Furthermore they all realised that two main drivers would attract subscriptions: Hollywood movies

65 As has been established in CJEU, Case 36/74 Walrave [1974] E.C.R. 1405. This was later confirmed in numerous sport cases.

66 Privatisation in Europe occurred as a means of reducing the level of governmental debt, to develop and expand domestic capital markets and due to EU directives aimed at liberalising markets previously dominated by state-owned enterprises. Throughout European countries, public service monopolies were gradually removed and finally, in 1989, the EU Directive "Television without Frontiers" required all EU Member States to grant private broadcasters access to their domestic markets. The purpose of this Directive was to promote the process of European integration through cross-border transmissions. Such transitions would be a source of cultural enrichment, would provide the impetus for increased technical innovation in Europe in transmission media and would prevent the dominance of the big American media Corporations (European Commission, 1984; Presburger and Tyler, 1989, pp. 496-497).

and premium sport (Jeanrenaud and Késenne, 2006, p. 7). Hence, we witnessed a sharp increase in broadcasting rights for major sports events. Another outcome of TV broadcasting has been a globalisation and a sharp increase of sponsorship fees for sport. In fact, without television, it would be difficult to imagine that companies would be willing to spend the vast sums of money they spend today for the privilege of being associated with a sporting event, a club or even a player (Jeanrenaud, 2009, p. 53-54).

These evolutions enabled in particular INGSOs to generate vast amounts of revenue by marketing their major events. For instance, broadcast revenues and corporate sponsorship through the Olympic Partner (TOP) programme are currently the most significant source of revenue for the IOC (Chappelet and Kübler-Mabbott, 2008). The 2010 FIFA World Cup made EUR 1,802 million through the sale of television rights, and EUR 802 million via marketing rights. Overall, South Africa 2010 accounted for 87 per cent of FIFA's total revenue during the 2007-2010 period (FIFA, 2013). The revenue that INGSOs can make through their venue has made them independent from their member federations (Forster and Pope 2004, p. 102). Member federations of SGBs usually "own" the organisation since they have created it (Forster and Pope 2004, p. 107) and they have an important watchdog function.[67] Since INGSOs are *de facto* independent organisations, the danger exists that they will not act in the interest of their "owners", i.e. their member federations, and this necessitates the presence of accountability arrangements.

## Pyramidal autonomy

Governing networks in sport, safe for those in North America, are based on a model created in the last few decades of the 19th century by the Football Association (FA), the governing body of the game in England to this day (Szymanski and Zimbalist, 2005, p. 3). This implies that INGOs are the supreme governing bodies of sport since they stand at the apex of a vertical chain of commands, running from continental, to national, to local organisations (Miège, 2000; Croci and Forster, 2004). In other words "the stance taken by a governing body will influence decisions made in any organisation under that governing body's umbrella" (Hums and MacLean, 2004, p.69). Such networks are called pyramid networks because their hierarchic organisational structure visually resembles the shape of a pyramid.

For instance, the football network is comprised of a set of autonomous, interrelated organisations with at the apex FIFA, the worldwide football federation. Under FIFA are five continental organisations,[68] which in their turn all have national associations beneath them. All the organisations in the network are in their own geographical/ functional sphere of competence responsible for the regulation of football but they have to "report" to the organisations that stand above them in the network (Croci, 2001, pp. 2-3; Croci and Forster 2006, pp. 5-6). For instance, UEFA has to comply with FIFA's rules and regulations (FIFA Statutes: art. 20(3) a) and national football associations in Europe

67 In this context it is important to note that the IOC was a top-down creation, whereas most other INGSOs are the creations of groups of national associations that voluntarily gave up their autonomy.

68 Those are AFC (Asian Football Confederation), CAF (Confédération Africaine de Football), CONCACAF (Confederation of North, Central American and Caribbean Association Football), CONMEBOL (Confederación Sudamericana de Fútbol), OFC (Oceania Football Confederation) and UEFA (Union of European Football Associations of Union Européenne de Football Association).

are required to comply with and to enforce UEFA statutes and regulations in their jurisdiction (UEFA Statutes: Art. 7 (5)), but they are also obliged to ensure that clubs and leagues comply with the statutes, decisions and regulations of FIFA (FIFA Statutes: Article 13.1 (d)). Similar networks are to be found in most European sports (European Commission, 1998), but also globally, for instance with the Olympic Movement.

The IOC draws on the Olympic Charter to form its very own 'Constitution', which sets forth not only the fundamental principles and rules of the Olympic Games, but also the organisational and procedural rules governing the Olympic Movement and the statutes of the IFs ruling a given sport (Casini, 2009, p. 4 ; International Olympic Committee 2011, p.8). In this respect, if an International Sports Federation (IF) wishes to join the Olympic movement and obtain the recognition of the IOC, it must comply with the Olympic Charter and the World Anti-Doping Code of the World Anti-Doping Agency (WADA) (International Olympic Committee, 2011, p.51).

Olympic IFs are also members of associations representing their interests according to their participation in the winter or summer Olympic Games, the AIOWF and the ASOIF. IFs recognised by the IOC are members of the Association of Recognised International Sport Federations (ARISF). Although these three types of IFs maintain their autonomy in the organisation and the development of their sport, membership in these associations requires compliance with their respective statutes as well as the Olympic Charter. Finally, national federations (NFs) must comply with the statutes of the IF to obtain the recognition and the rights and obligations related to it. For instance, the International Association of Athletics Federations (IAAF) "shall comprise national governing bodies for Athletics which have been democratically elected in accordance with their constitutions and which agree to abide by the Constitution and by the Rules and Regulations. A national governing body (including its executive body) which has not been so elected, even on an interim basis, shall not be recognised by the IAAF" (IAAF Constitution: Art.4.1).

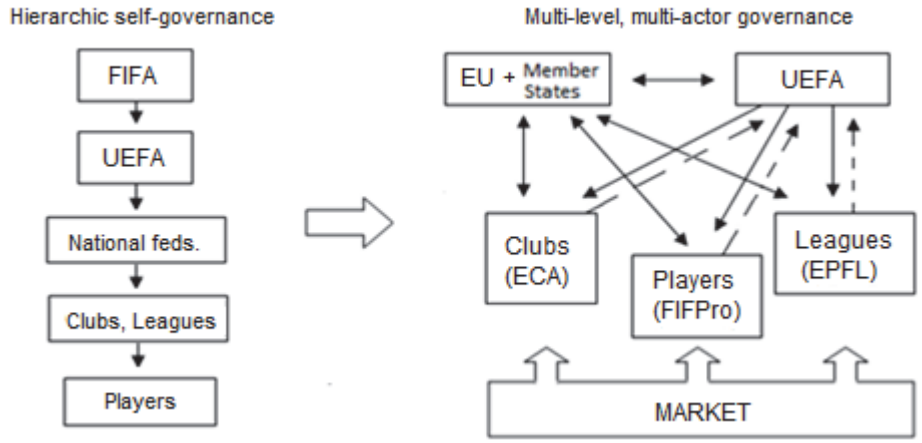
The pyramid structure in sport is said to be undemocratic since those at the very bottom of the pyramid, i.e. clubs and players who want to take part in the competitions of the network, are subject to the rules and regulations of the governing bodies, often without being able to influence them to their benefit. In football, for instance, a player is a member of his club, this club is a member of a national association, and this national association is a member of a continental association (e.g. UEFA) and the global association FIFA. Football's governing bodies issue the footballer with the corresponding license to play only provided he/she fulfils the criteria established in the competition regulations. Consequently, FIFA and, on the European continent, UEFA determine the rules which every club and player must obey.

Currently, the self-governed pyramid networks that traditionally constitute the sports world are increasingly facing attempts by governments – mostly due to the commercialisation of sport- and increasingly empowered stakeholder organisations to interfere in their policy processes (Bruyninckx and Scheerder, 2009; Bruyninckx, 2012; Geeraert *et al*, 2012). At the European level, for instance, the Bosman ruling assured for a definitive but forced EU involvement in sport (García, 2007). The "governmentalisation of sport"

(Bergsgard *et al.*, 2007, p. 46) might seem paradoxical in a time when most academic literature speaks of a retreat of the state from the governance of society. However, when we regard INGSOs as the main regulatory bodies of the sports world, their erosion – or rather delegation – of power mirrors the recent evolutions in societal governance quite perfectly (Geeraert *et al.*, 2012). With regard to stakeholders, in recent years, we witnessed an increasing influence of athletes in the development of policies in INSGOs (Thibault, Kihl and Babiak, 2010).[69] In addition, the commercialisation of sport has made certain clubs, especially those at top-level professional football, big power players, and that has certainly enhanced their position in the governance of their sport. In football, representative organisations of both clubs and players have been given institutionalised consultation by UEFA.

All those developments have led to the emergence of a more networked governance in sport, much to the detriment of the pyramidal autonomy of sport (Croci and Forster, 2004). In European football, for instance, more levels of government (multi-level) and various actors (multi-actor) are now involved in the policy processes (Geeraert, Scheerder and Bruyninckx; 2012). Thus, there has been a shift from the classic unilateral vertical channels of authority of the pyramidal network towards new, horizontal forms of networked governance (see figure 1).

Figure 1: The governance shift in European professional football




Source: Geeraert *et al.* (2012)

## Functional autonomy

Autonomy can also be explained in a functionalist perspective. Indeed, it is common to assume that the primary function of sports organisations is to produce and sanction so called sports rules (Miège, 2000; Forster and Pope, 2004). In that regard, several authors

69 The development of input from athletes in policy-making, however, has not been uniform across all sport organisations. Moreover, as Houlihan (2004) rightly puts, "the few governing bodies of sport that do provide a voice for athletes do so either through limited membership of the body's decision-making forum or through the formation of an 'athletes committee/ commission' linked to the main forum, but safely quarantined from any significant decision-making opportunities" (pp. 421-422).

(Baddeley, 1996; Zen-Ruffinen, 2002; Latty, 2007; Chappelet, 2010; Oswald, 2010) have demonstrated that sports rules cannot be considered as part of a homogeneous group. This is particularly true if we consider their justiciability.

Sports organisations produce (technical) sports rules, the sport rules *sensu stricto*. The most obvious example of such a rule is perhaps the offside rule in football. Sports bodies also produce competition rules, such as the setting of the duration of a world championship or the qualification rules for players. They produce internal organisational rules, such as the freedom to create and amend a governing document. The autonomy of the organisation to issue all these rules will be more or less limited by legal and political interferences. For instance, the Swiss Civil Code will influence organisational rules, such as the organisation of a general assembly.

With the commercialisation of sport came an increasing tension between the rules issued by INGSOs and state law. Indeed, the pyramidal governing model of sport is a major source of conflict, since those at the very bottom may want to challenge the federation's regulations and decisions if they are excluded from the decision making process or if the latter are unwilling to meet them halfway (Tomlinson, 1983, p. 173; Parrish and McArdle, 2004, p. 411; García, 2007, p. 205). Whereas national courts often do not have the jurisdiction to challenge those rules, the CJEU proved to be a suitable venue for unsatisfied stakeholders to challenge the decisions made at the top of the pyramid networks.

In its first ever ruling issued in the area of sport, the 'Walrave ruling' in 1974, the CJEU had to establish whether and to what extent sporting activities are subject to the provisions in the Treaties laying down prohibitions. The Court ruled firstly that the practice of sport is subject to EU law only in so far as it constitutes an economic activity within the meaning of article 2 EEC Treaty (now article 3 Treaty on European Union). Thus, activities which are of sporting interest only, and therefore are not of an economic nature, are not subject to EU law. It is however very difficult to define non-economic sporting regulations, which in principle fall outside the scope of EU law. In its 2006 'Meca-Medina ruling', the CJEU ruled that even if a rule is purely of a sporting nature, and has nothing to do with an economic activity, this does not mean that the activity governed by that rule or the body which issues such rules are not governed by the Treaty. Thus, the simple notion that a rule or regulation would have a purely sporting nature is not sufficient to exclude whoever runs this activity, or the organisation which has created it, from the scope of the Treaty. It must be noted that the Court's ruling essentially does not derogate from its previous treatment of sport. For instance, the so-called sporting rules sensu stricto will most definitely continue to fall outside the scope of EU law.

Obviously, the CJEU did not rule on every type of sporting rule yet, as it can only rule on the cases it gets and then only insofar as the question of their conformity with EU law is part of the constituent elements of the reference for a preliminary ruling made to it. That leaves many questions on conformity with EU law with regard to sporting rules unresolved and consequently leads to legal uncertainty. Ever since the 'Bosman ruling', sport organisations often complain about the lack of legal certainty with regard to EU law. They worry that their rules, transfer rules in particular, might be contested over and

over again by unsatisfied stakeholders and therefore, they ask for a special treatment of their sector (see, e.g., Infantino, 2006; IOC and FIFA, 2007; Hill, 2009). Those lobbying efforts have found their resonance with the EU institutions (see, e.g., European Parliament, 2007, points 59-64; Arnaut, 2006, p. 42-45), although sport never received an exemption from EU law. Some authors however point to the fact that the sport sector does not deserve more legal certainty than other sectors (Wathelet, 2008; Vermeersch, 2009, p. 425). For the sake of clarity, the European Commission is committed to explain, on a theme-per-theme basis, the relation between EU law and sporting rules in professional and amateur sport through its dialogue with sport stakeholders (European Commission, 2011, p. 11).

The Commission's powers in the field of competition law make it a more cost-effective venue for redress than the private enforcement route via national courts and the CJEU. Through that route, it may take many years before a final ruling is issued and since an athlete's prime years usually do not last that long, cases that involve dissatisfied athletes do not reach the CJEU that often and in case they threaten to do so, they may ultimately be settled outside the Court.[70] Events from the past have demonstrated that the Commission is susceptible to political pressure and lobbying efforts and therefore, it makes no hard use of its far-going competition competence and thus, the application of EU law on sport has clearly been politicised. Consequently, the Commission has always shown a willingness to find compromises in the sports sector. This is not necessarily a bad thing. The application of competition law to sports broadcasting rights, for instance, needs to be tailored to the characteristics of sport as a market. Nevertheless, ultimately, it is for the CJEU alone to give binding interpretations of the provisions of the Treaty and the Commission is neither entitled nor in a position to amend the scope or meaning of the provisions of the Treaty by its actions. Therefore, it is not yet possible to provide a holistic image of the impact of EU law on sporting rules. Given the fact that cases relating to sports rules only reach the CJEU every so often, this will not be the case over the next few years.

Meanwhile, the sports world has devised its own legal system which enables it to settle disputes within its own network and according to its own laws instead of in national or European courts. It is safe to say that the functional autonomy of sports organisations has been strengthened in recent years by the development of a system of sports arbitration which has contributed to the emergence of a body of global sports law/*lex sportiva*. According to Foster (2003, p.17), "lex sportiva is a dangerous smoke-screen justifying selfregulation by international sporting federations". He defines *lex sportiva* or "global sports law" as "a transnational autonomous legal order created by the private global institutions that govern international sport. Its chief characteristics are first that it is a contractual order, with its binding force coming from agreements to submit to the authority and jurisdiction of international sporting federations, and second that it is not governed by national legal systems" (Foster, 2003, p.2). The importance of sports arbitration has increased significantly after the establishment of the Court of Arbitration for Sport (CAS), an arbitral institution created by the IOC in 1983 which is competent to resolve all types of disputes of a private nature relating to sport. The jurisprudence of

70 See the Balog (Blanpain, 1998, p. 188-220) and Oulmers (García, 2008, p. 41) cases.

CAS is said to contribute to the development of the body of *lex sportiva*. Since it may take many years before a final ruling is issued through the private enforcement route via national courts and the CJEU, sports arbitration often is more interesting for parties involved in a sporting dispute. Indeed, sports arbitration is a much more cost-effective venue for redress since disputes are resolved relatively fast.

Another illustration of the tension between *lex sportiva* and ordinary state law is the potential issue of "double sanctions" which may occur when a sporting dispute is brought before a sports arbitration and an ordinary court. For instance, suspicious behaviour on the field or, as it was the case for the two Chinese Badminton players at the London Olympic Games, "not using one's best efforts to win a match" can be interpreted as a lack of fair-play, but it can also potentially be sanctioned by a breach of sports rules (i.e, the disqualification of two players for "throwing matches"). Accordingly, manipulation of the outcome of a game may also be brought before ordinary courts. In that case, an offender may be sanctioned by two different legal systems according to the context, and potentially lead to "double sanctions": a sports sanction and a public sanction. This happened for instance in the Marion Jones case in 2008. In order to resolve this issue, sports organisations sometimes forbid their athletes to seek redress before national courts. However, in one of the cases the Commission investigated with regard to alleged Competition law infringements by Fédération Internationale de l'Automobile (FIA), one of its concerns was to ensure that legal challenge against FIA decisions would be available not only within the FIA structure but also before national courts. Hence, the 2001 settlement included the inclusion of a new clause in the FIA rules clarifying that anyone subject to FIA decisions can challenge these before the national courts.[71] Similarly, in the negotiations with FIFA on transfer rules following the abolishment of the old system after the *Bosman* ruling, the Commission insisted that arbitration would be voluntary and would not prevent recourse to national courts. FIFA agreed to modify its rules to this end[72].

Finally, the functional autonomy of sports organisations is also affected by the increased complexity of the sports world. Considering the governance failures in many ISOs and the unpleasant side-effects of the sports business, it seems as though sport governing bodies are also not capable of dealing with the increasingly complex reality unilaterally (Geeraert *et al,*. 2012). Certain issues call for a constructive collaboration between different authorities, market actors and sports organisations (multi-actor) at international, national and local level (multi-level). For instance, an effective resolution of the problem of "match fixing" requires the knowledge and competencies of a constellation of public actors (police, justice, education system, etc.) and private actors (athlete, clubs, family, social network, betting companies, etc.).

## Supervised autonomy

It is generally assumed that the EU offers sports bodies a degree of "supervised autonomy": they can exercise their autonomy as long as they are respectful of European law and demonstrate a clear commitment to transparency, democracy and protection of the

71 European Commission, XXXIst Report on Competition Policy 2001, para. 221 et seq.; also see European Commission press release IP/01/1523 of 30 October 2001.
72 European Commission, press release of 6 June 2002, IP/02/284.

values of sport (Foster, 2000; García, 2007, p. 218; European Commission 2011). In that regard, the European Commission has stressed that its respect for the autonomy of the sports sector – within the limits of the law – is conditional to the commitment of the sector to democracy, transparency and accountability in decision-making (European Commission 2011). However, the Commission does not envisage concrete actions should the sporting organisations not commit themselves to these good governance principles to satisfactory extent. The anticipated role for the Commission in the encouragement of the use of good governance principles is limited to the promotion of standards of sport governance through the exchange of good practice and targeted support to specific initiatives.

On the other hand, because of its limited legal competences regarding sports and because of the recognised autonomous status of sports governing bodies at the European level (European Council 1997, 2000), the EU does not have the power to intervene strongly in the sector. Although the EU does not have a strong sporting competence, in principle it does possess the ability to intervene much stronger in the sports sector on the basis of its internal market powers. Although that is currently not at all politically desirable, such form of latent pressure is ever present in sport matters.

With regard to EU law, the European Commission has an important role as a "supervisor". Pursuant to Article 17(1) of the Treaty on European Union, the Commission is "the guardian of the treaties", which means that it "shall oversee the application of Union law under the control of the CJEU". However, the European Commission has always treated sport matters as a politically highly sensitive issue. Consequently, the Commission's approach towards sports bodies has been rather soft, as it tried to persuade them to comply with European law where appropriate rather than enforcing it (Barani, 2005, p. 46; European Commission, 1991).

Before the 'Bosman ruling', this "negotiated settlement approach" resulted in sport and European law operating in separate realms as there was no hard enforcement of EU law on the sports sector (Parrish, 2003b, p. 252).[73] After the 'Bosman ruling', the sports world realised that EU law could have far-reaching consequences for their activities and embarked on a campaign directed towards the EU (García, 2007, p. 209; Niemann and Brand, 2008, p. 98; Parrish and McArdle, 2004, p. 410). The main goal of the sports lobbying movement was to reduce the regulatory activity of the Commission as much as possible. Hence, the Commission's powers as public enforcers of EU competition law are undermined by the political powers of big INGSOs, who lobby the European Parliament, in the case of FIFA and UEFA through the creation of the Parliamentary Group "Friends of European Football" (Holt, 2007), and the Member States via national politicians and the European Sports Forum (Willis, 2010). Moreover, since sport is very attractive to politicians (García, 2007, p. 208), as patriotic sentiments might come into play, governments often grant football special treatment and even exemptions. Thus, a hard use of the Commission's competition competence in the sports sector is neither (politically)

73 For instance, in 1991, UEFA adopted the so-called 3+2 rule after negotiations with the European Commission, hereby lifting nationality restrictions which, in the light of the CJEU's ruling in the Donà case, were contrary to European free movement law (Parrish, 2003, p. 92). Since UEFA had a "gentlemen's agreement" with the Commission on this issue, it had the conviction that these rules were stable and durable (García, 2007, p. 207).

feasible nor desirable. Therefore, in the field of sport, the Commission has always shown a willingness to find compromises with sports bodies. In football, for instance, this approach was evident in the high-profile cases concerning UEFA's rules on football broadcasting hours (European Commission, 2001c); FIFA's transfer system (European Commission, 2002) and the central marketing of Champions League's television rights (European Commission, 2001d). The rather soft approach by the European Commission in sports is not necessarily a « bad » thing. The application of competition law to sports broadcasting rights, for instance, needs to be tailored to the characteristics of sport as a market.

## Negotiated autonomy

The risk of overlaps between the various forms and levels of autonomy, especially after the entry into force of the Lisbon Treaty which gave the EU a supporting competence in sport, gradually led to what Chappelet (2010) calls a "negotiated autonomy." There is a tendency that the autonomy of the sports movement is diluted and negotiated in arenas of deliberation (sports forums, social dialogue, expert groups, etc.), which tend to integrate the opinion of a multitude of stakeholders involved in a given issue.

For instance, there is the EU Sport Forum, an annual gathering of all sport stakeholders where the EU dialogues with sport stakeholders. Besides, the Commission also organises thematic discussions with a limited numbers of participants from the sports world. In the professional football sector, projects funded by the Commission relating to the encouragement of social dialogue, a means to foster cooperation and conclude agreements between employers and employees, in the sports sector eventually led to the instalment of a sectoral social dialogue committee in professional football (see Colucci and Geeraert, 2012). The aim of the committee is to improve employment relations for all players and reduce disputes through dialogue. The instalment of the SDCPF fits within the context of a general shift in the government of football (see figure 1).

## Autonomy and good governance

An absolute autonomy of sports organisations seems not feasible in the current state of governance of sport. Its understanding is relative to contextual changes. Taking into account the complexity of the sports system, Chappelet (2010) shows already that the autonomy of sports organisations can be understood in several dimensions (political, psychological, financial and conceptual). That stance is confirmed by the White Paper on sport saying that "European sport is characterised by a multitude of complex and diverse structures which enjoy different types of legal status and levels of autonomy in Member States" (European Commission, 2007, p.18).

The discourse on "good" governance puts the emphasis on the diversity of the sports system and therefore it should also consider a multifaceted approach of the autonomy of sports organisations. INGSOs are the legitimate bodies to promote and develop their sport, but several questions need to be addressed in relation to "good" governance:

- Are they financially, politically, legally, functionally autonomous enough to implement 'good' governance?

- Which sports organisations and which governments are participating in the arenas of deliberation?
- To what extent is the level of EU supervision binding when most international sports organisations are located in a non-EU country?

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# Limits to the autonomy of sport: EU law

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## Introduction

Athletes have rights and obligations deriving from ordinary law but also from the rules of the (international and national) sports federations they are registered with (Parrish, 2003a). Many of those rules are captured by the EU's internal market competences. The establishment of an internal market[74], the integration of the Member State's economies as a means to achieve the objectives of the Union such as a balanced economic growth, remains one of the principal tasks entrusted to the Union.[75] For decades now, the Treaties have defined the objective of establishing an internal market as the creation of *"an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured"*.[76] In order to secure the ability to deploy factors of production freely across frontiers, the Member States are prohibited to discriminate against goods, persons, services and capital from other Member States (EU freedom of movement law). Through the latter so-called "four fundamental freedoms",[77] the founding fathers of the European Union ultimately wanted to open up economic activity within the whole Union. In the end, they hoped that the process of economic integration would progressively lead to a form of political union among the Member States that would proliferate peace and prosperity in Europe.

Within the internal market, there should be free competition, favouring an efficient allocation of resources.[78] The EU "rules on competition" (EU competition law) comprise rules prohibiting distortion of competition by undertakings and rules restricting State Aid granted to undertakings. Competing undertakings are said to ensure further innovation and to motivate undertakings to develop more efficient methods of production. This should lead to lower prices, high-quality products and ample choice for the consumer. In this context, EU rules on competition, enshrined in articles 101-109 of the Treaty on the functioning of the European Union (TFEU), are designed to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits. This benefits consumers, businesses and the European economy as a whole (European Commission, 2010).

It is generally acknowledged that sport bodies eschew any kind of state interference in their sector and that this has urged them to adhere to a strong protectionist vision of sports governance (Parrish, 2011, pp. 215-216). Indeed, the world of sport has tradition-

74 Since the Single European Act (SEA, 1986), the term "common market" is gradually replaced by "internal market". Since the entry into force of the Lisbon Treaty, the internal market is the sole expression of the objective of market integration pursued by the EU.
75 Article 3(3) Treaty on European Union (TEU)
76 Article 26(2) Treaty on the Functioning of the European Union (TFEU)
77 The foundations of the internal market are the Treaty provisions on the free movement of goods (articles 28 to 37 TFEU), free movement of persons, services and capital (articles 45 to 66 TFEU).
78 Articles 119(1) and (2), 120 and 127(1) TFEU.

ally been regulated in all its aspects through a self-governing network with its own rules and regulations. At the same time, governments were reluctant to intervene in the sports sector as, even now; they tend to regard it more as a cultural industry rather than a business. For almost a century, the sporting network was able to exercise its self-governance without any significant interference from states or other actors. Since rules issued by sporting bodies are captured by the EU's Internal Market competences, the Court of Justice of the European Union (CJEU) proved to be a suitable venue for unsatisfied stakeholders to challenge the decisions made at the top of the governing associations of their sports. In its first ever ruling issued in the area of sport, the 'Walrave ruling'[79] in 1974, the CJEU had to establish whether and to what extent sporting activities are subject to the provisions in the Treaties laying down prohibitions. The Court ruled firstly that the practice of sport is subject to EU law only in so far as it constitutes an economic activity within the meaning of article 2 EEC Treaty (now article 3 Treaty on European Union). Thus, activities which are of sporting interest only, and therefore are not of an economic nature, are not subject to EU law.[80]

It is however very difficult to define non-economic sporting regulations, which in principle fall outside the scope of EU law. In its 2006 'Meca-Medina'[81] ruling, the CJEU ruled that even if a rule is purely of a sporting nature, and has nothing to do with an economic activity, this does not mean that the activity governed by that rule or the body which issues such rules are not governed by the Treaty. Thus, the simple notion that a rule or regulation would have a purely sporting nature is not sufficient to exclude whoever runs this activity, or the organisation which has created it, from the scope of the Treaty. Some authors feared that actors in the sports world would be encouraged by this ruling to challenge actions by sports associations in their disadvantage on the basis of EU law, opening a "Pandora's box" of potential legal problems because all disciplinary measures in the field of sport can be considered as violating EU (competition) law (see e.g. Infantino, 2006; Hill, 2009). However, it must be noted that the Court's ruling essentially does not derogate from its previous treatment of sport. For instance, the so-called sporting rules *sensu stricto* will most definitely continue to fall outside the scope of EU law.[82]

Through the years, the CJEU has developed a solid body of case law on the application of EU law on the organisational aspects of sport. That coherent and consistent body of case law can be labelled "EU sports law", as it constitutes a distinct legal approach to applying EU law to sporting situations (see Parrish, 2003b).[83] This paper provides a concise overview of the application of EU law on sporting rules as it delineates the

79 CJEU, Case 36/74 Walrave [1974] E.C.R. 1405.
80 Ibid., paras 4-7. This was later confirmed in several cases.
81 CJEU, Case C-519/04 Meca-Medina & Majcen v. Commission [2006] E.C.R. II-3291.
82 In its staff working document annexed to the 2007 White Paper on sport, the European Commission lists a few types of "pure sporting rules" that – based on their legitimate objectives – are likely not to breach EU law: rules fixing the length of matches or the number of players on the field; rules concerning the selection criteria for sports competitions; rules on "at home" and "away from home" matches; rules preventing multiple ownership in club competitions; rules concerning the composition of national teams; rules against doping; and rules concerning transfer periods. See European Commission (2007b, p. 39).
83 Under EU law there is no doctrine of precedent. The previous case law of the CJEU is neither binding on itself, nor on national courts. In practice, the CJEU has been very reluctant to depart from its earlier case law, in particular because of the need for legal certainty and equality (see Raitio, 2003).

boundaries of the autonomy of sport with regard to EU law. Finally, it provides an overview of the different methods of enforcement of EU law on sports bodies and the legal and political limitations thereof.

## Freedom of movement

The Court of Justice of the European Union (CJEU) has dealt with the freedom of movement and sport in numerous cases. It is arguably the area of EU law which has had the most substantial impact on sport.

### The free movement of workers

Art. 45 (1) TFEU states: *"Freedom of movement for workers shall be secured within the Union"*. More specifically, it enshrines the right, subject to limitations justified on grounds of public policy, public security or public health, to accept offers of employment, to move freely within the territory of Member States and to stay in a Member State for this purpose, and to remain in the territory of a Member State after having employed in that State.

Alongside each Member State's legislation on nationality, the concept of "worker" determines who qualifies for free movement of workers. If the definition of that term could be determined unilaterally by national law, each Member State would be able to eliminate the protection afforded by the treaties to workers.[84] Therefore, there is a need for a Union definition of the concept. Consequently, the CJEU defined as a "worker" "[a person] who for a certain period of time […] performs services for and under the direction of another person in return for which he receives remuneration".[85] This fundamental principle has a broad interpretation. Neither the duration of the work,[86] the origins of the funds from which the numeration is paid,[87] nor the fact that remuneration provided for genuine work is under the minimum subsistence level laid down in the Member State of employment[88] is relevant. In addition, also the type of work is irrelevant, provided that an economic activity is involved.[89]

Hence, the CJEU has confirmed in a number of cases that professional or semi-professional sportspeople are workers by virtue of the fact that their activities involve gainful employment.[90] In the 'Bosman case', the Court held that "rules which are laid down by sporting associations which determine the terms on which professional sports-men can engage in gainful employment are captured by the treaty provision on the free movement of workers".[91]

84 See CJEU, Case 75/63 Hoekstra (née Unger) [1964] E.C.R. 177, at 184.
85 CJEU, Case 66/85 Lawrie-Blum [1986] E.C.R. 2121, para. 17.
86 CJEU, Case 53/81 Levin [1982] E.C.R. 1035, para 17
87 Ibid., para. 16
88 Ibid., para. 15
89 CJEU, Case 196/87 Steymann [1988] E.C.R. 6159, paras 12-14; CJEU, Case C-456/02 Trojani [2004] E.C.R. I-7573, paras 17-24.
90 This was first confirmed in CJEU, Case 36/74 Walrave [1974] E.C.R. 1405, and later in the cases 13/76 Donà, C-415/93 Bosman, C-176/96 Lehtonen, C-519/04 Meca-Medina and C-325/08 Olympique Lyonnais.
91 CJEU, Case C-415/93 Bosman [1995] E.C.R. I-4921, para. 87. In all subsequent cases related to the free movement of (semi-)professional athletes, safe for the Deliège case, the Court qualified these as workers.

When an athlete does not perform services "under the direction of another person"[92], he or she cannot be considered as a worker. In this case, the economic activity of the athlete can in principle be considered an independent activity which might fall under the scope of the provisions of self-employed persons. With self-employment is meant economic activities carried on by a person outside any relationship of subordination with regard to the conditions of work or remuneration and under his or her personal responsibility.[93] Pursuant to article 49 TFEU, self-employed persons who are nationals of a Member State enjoy the right of establishment in the territory of another Member State. However, because there generally is no "fixed establishment in another Member State for an indefinite period",[94] athletes usually do not fall under the freedom of establishment enshrined in article 49 TFEU. In principle, sportspeople may be considered as providers of service in that case.

## The free movement of services

The freedom of services is enshrined in articles 56-62 TFEU. Pursuant to article 56 TFEU, restrictions on freedom to provide services within the Union shall be prohibited. Article 57 TFEU regards as "services" those which are "normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons". Thus, only remunerated services which do not fall under the other fundamental freedoms can be regarded as "services". This way, it is ensured that all economic activity falls within the scope of the fundamental freedoms.[95] Sport is thus subject to the freedom of services where economic activity within the sector has the character of a remunerated service and does not fall under one of the other fundamental freedoms.

Thus far, the only time the CJEU (possibly) qualified an athlete as a provider of service was in the 'Deliège case'.[96] The Court referred to the grants awarded on the basis of earlier sporting results and to sponsorship contracts directly linked to the results achieved by the athlete in order to determine whether she could be regarded as a provider of services within the meaning the Treaty.[97] In that regard, it held that an athlete is capable of being involved in "a number of separate, but closely related, services".[98]

## The prohibition of obstacles to the freedom of movement

For a long time, it was assumed that if a restriction on the mobility of economic operators applied without distinction to a State's own nationals and nationals of other Member States, this was not contrary to the Treaty provisions on free movement of persons

92 CJEU, Lawrie-Blum, para. 17.
93 CJEU, Case C-268/99 Jany and Others [2001] E.C.R. I-8615, paras 34-50. The Treaties however provide for exceptions to the free movement of persons on grounds of public policy, public security and public health (Articles 45(3) and 52 TFEU).
94 CJEU, Case C-221/89, The queen t.Secretary for Transport ex parte Factortame ea., [1991] E.C.R. I-3905, para. 20.
95 CJEU, Case C-452/04 Fidium Finanz [2006] E.C.R. I-9521, paras 31-33.
96 CJEU, Deliège.
97 Ibid., para. 51.
98 Ibid., para. 56. The Court explicitly referred to CJEU, Bond van Adverteerders and others, para. 16, where it was stipulated that "[…] Article 60 [now article 57] does not require the service to be paid for by those for whom it is performed […]".

(Lenaerts and Van Nuffel, 2011, p. 245). However, since the 1988 judgment in 'Wolf'[99], the CJEU has developed a significant body of case law prohibiting obstacles to the freedom of movement. Now, provisions which preclude or deter a national of a Member State from leaving the country in which he or she is pursuing an economic activity in order to exercise the right to freedom of movement constitute an obstacle to that freedom even if they apply without regard to the nationality of the worker concerned.[100]

Consequently, in the field of sport, provisions such as transfer rules which, even if applied without regard to nationality, restrict the freedom of movement of sportspeople who wish to pursue their activity in another Member State constitute obstacles to free movement. A measure which constitutes an obstacle to freedom of movement can be accepted only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons in the public interest. Even if that is the case, application of that measure will still have to be such as to ensure achievement of the objective in question and not go beyond what is necessary for that purpose.[101]

*The Bosman case*

Before the 'Bosman case', a professional footballer at the expiry of his contract could be transferred to his new club only if the latter paid his old club a transfer fee. Jean-Marc Bosman was a professional football player under contract of a Belgian first division club. When the end of his contract approached in 1990, he refused to sign a new contract with his club and was placed on the transfer list for a transfer fee based on his training costs and other pre-determined factors. When no club showed interest in his contract during the month-long compulsory transfer period, Bosman – as an unclaimed player signed a contract with a French second-division club. Bosman's Belgian club never filed the certification papers required to finalise the transfer and subsequently suspended him, preventing him from playing the entire season.[102] Consequently, Bosman brought an action against his Belgian club, RC Liège, the Belgian football association URBFSFA and UEFA.[103] Finally, the case was referred to the CJEU for a preliminary ruling.

The Court, recognising that sporting activities are of considerable social importance in the EU, held that the aims of maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate.[104] However, the Court reasoned that the transfer fee system did not effectively maintain the legitimate objective of financial and competitive balance because the rules neither prevented the richest clubs from monopolising the best players nor reduced the decisive impact of

99 CJEU, Joined Cases 154-155/87 Wolf and Others [1988] E.C.R. 3897, paras 9-14.
100 CJEU, Case C-18/95 Terhoeve [1999] E.C.R. I-345, para. 39; CJEU, Case C-232/01 Van Lent [2003] E.C.R. I-11525, para. 16; CJEU, Case C-209/01 Schilling and Fleck-Schilling [2003] E.C.R. I-13389, para. 25; CJEU, Case C-464/02 Commission v Denmark [2005] E.C.R. I-7929, para. 35; CJEU, Case C-345/05 Commission v Portugal [2006] E.C.R. I-10633, para. 16; CJEU, Case C-104/06 Commission v Sweden [2007] E.C.R. I-5701, para. 65; CJEU, Case C-318/05 Commission v Germany, [2007] E.C.R. I-06957, para. 114.
101 See, inter alia, CJEU, Case C-19/92 Kraus [1993] ECR I-1663, para. 32; Bosman, para. 104; CJEU, Case C‑109/04 Kranemann [2005] ECR I‑2421, para. 33; and CJEU, Case C‑208/05 ITC [2007] ECR I‑181, para. 37.
102 Ibid., paras 28-33.
103 Ibid., paras 34-42.
104 Ibid., para. 106.

finances on the strength of competition. Moreover, the Court indicated that these goals could be achieved by other, less-restrictive means which do not impede worker's freedom of movement.[105] Consequently, the CJEU declared transfer rules adopted by sports associations according to which, at the expiry of his contract, a professional footballer could be transferred to his new club only if it paid his old club a transfer fee to be an obstacle to the free movement of workers.[106]

Secondly, the Court ruled that rules laid down by sporting associations under which, in matches in competitions which they organise, football clubs may field only a limited number of professional players who are nationals of other Member States cannot be deemed to be in accordance with article 45 TFEU since they are not of a purely sporting nature and cannot be justified by a legitimate objective.[107]

*The Lehtonen case*

In the 'Lehtonen case',[108] the transfer rules regarding a "transfer window" of the Belgian basketball federation came under scrutiny. The CJEU ruled that the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions[109] and therefore may be objectively justified. The Court reasoned that late transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that championship, and consequently the proper functioning of the championship as a whole.[110] However, as the rules of the basketball federation established different deadlines for EU and non-EU citizens, the Court ruled that these went beyond what is necessary to achieve the aim pursued.[111]

*The Bernard case*

In the recent (2010) 'Bernard case', the CJEU ruled on obstacles to the free movement of workers arising from training compensation schemes.[112] In its ruling, the Court explicitly and for the first time refers to the new legal basis of the Treaty on Sport, emphasizing the account must be taken of the specific characteristics of sport in general and of its social and educational function when making this consideration.[113]

The French sporting rules at issue concerned a scheme providing for the payment of compensation for training where a young player, at the end of his training, signs a professional contract with a club other than the one which trained him. Fifteen years after the 'Bosman judgement', when the Court declared that a transfer compensation at the end of contract was against EU law, the judges decided that a training compensation is an obstacle to the free movement of workers that, in principle, can be justified by the

105 Ibid., para. 110.
106 Ibid., paras 94-104.
107 Ibid., paras 129 and 137.
108 CJEU, Lehtonen.
109 Ibid., para. 53.
110 Ibid., para. 55.
111 See Bosman, para. 104.
112 CJEU Case C-325/08, Bernard [2010] E.C.R. I-02177
113 CJEU, Bernard, para 40.

objective of encouraging the recruitment and training of young players. [114] In the case of Mr Bernard, the scheme at issue however went beyond what is necessary to attain this legitimate objective because it is characterised by the payment to the club which provided the training, not of compensation for training, but of damages, to which the player concerned would be liable for breach of his contractual obligations and the amount of which was unrelated to the real training costs incurred by the club.[115]

## The prohibition of discrimination to freedom of movement

*The prohibition of direct discrimination*

In order to ensure the free movement of sportspeople there can be no discrimination on the basis of their nationality. On a general note, article 18 TFEU states that *"within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited"*. This article is a horizontal clause, which means that it applies in all situations which fall within the scope *ratione materiae* of EU law. According to settled case-law, article 18 TFEU applies independently only to situations governed by Community law for which the Treaty lays down no specific rules prohibiting discrimination.[116] More specifically, that principle has been implemented explicitly in the TFEU as regards workers[117], self-employed persons[118] and services[119] in the EU.

The fact that professional athletes from an EU Member State under certain conditions fall within the scope of the free movement for people and services implies that any direct or indirect discrimination on grounds of nationality is forbidden and this applies not only to discrimination on behalf of EU Member States but also on behalf of sport associations or organisations. So, when an athlete goes to another EU country and registers him-self/herself with a foreign federation, he/she cannot be discriminated.

Discrimination is direct where a measure employs a prohibited distinguishing criterion such as nationality or subjects different cases to formally similar rules (Lenaerts and Van Nuffel, 2011, p. 172). Sport rules leading to direct discrimination on grounds of nationality are not compatible with EU law. A good example of such rules are for instance those which pose a complete ban on the participation in sporting competitions of athletes who are not nationals of the Member State where the competition is organised but who are nonetheless EU citizens. In the 'Donà case' for instance, only football players affiliated to the Italian federation could take part in matches, whilst affiliation was only open to players having the Italian nationality. The CJEU ruled that the rules of the Italian Football Federation limiting participation in football matches to players with

114 CJEU, Bernard, para. 93.
115 CJEU, Bernard, paras 46-50.
116 See, inter alia, CJEU, Case C-179/90 Merci Convenzionali Porto di Genova v Siderurgica Gabrielli [1991] E.C.R. I-5889, para. 11, and CJEU, Case C-379/92 Peralta [1994] ECR I-3453, para. 18.
117 Article 45(1) and (2) TFEU.
118 Articles 49 and 55 TFEU.
119 Articles 56§1 and 57§3 TFEU. The CJEU attached direct effect to these provisions "in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided", see CJEU, Case 33/74 Van Binsbergen [1974] E.C.R. 1299, para. 27.

Italian citizenship were incompatible with the provisions of the Treaty as they were of an economic nature and were not of sporting interest only.[120]

Direct discrimination may also stem from the installment of quota based on nationality. Particularly, in the 'Bosman' and 'Lehtonen' cases the CJEU held that the fact that such rules or quota do not concern the employment as such of players is of no relevance in order to determine the discriminatory nature of the rules. Because participation in official matches constitutes the essential activity of professional players, any rule limiting such participation also restricts the employment opportunities of the players concerned.[121]

*The prohibition of indirect discrimination*

The provisions on the free movement of persons and services also prohibit indirect discrimination. Indirect discrimination arises where although not making use of an unlawful distinguishing criterion, a provision has effects coinciding with or approaching those of such a distinguishing criterion as a result of its use of other distinguishing criteria which are not as such prohibited (Garonne, 1994).[122] Accordingly, the CJEU has held that "[t]he rules regarding equality of treatment, […] forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result".[123]

Moreover, the Court has concluded that even if certain criteria are applicable irrespective of nationality, they must be regarded as indirectly discriminatory if there is a risk of EU migrant workers being placed at a particular disadvantage.[124] Indirectly discriminatory measures must be necessary and proportionate to the achievement of their legitimate objective in order to be compatible with EU law.[125]

*The UEFA Home-Grown Players Rule*

In 2004, UEFA claimed that studies had shown that the number of players trained in an association and playing in that association's top league had reduced by thirty per cent since the 'Bosman ruling' in 1995 (Chaplin, 2005). As this trend, according to UEFA, is amongst others accompanied by "a lack of incentive in training players, identity in local/regional teams and competitive balance", UEFA decided to take action. In 2005, it adopted regulations with the effect of requiring each club by the 2006-2007 season to have four club-trained players and four players trained by other clubs belonging to the same national association in its twenty-five man squad registered to play in European competitions organised by UEFA (UEFA, 2005). These regulations are known as the

120 CJEU, Donà, Case 13/76 Donà [1976] E.C.R. 1333, para. 19.
121 CJEU, Bosman, and CJEU Case C-176/96, Lehtonen [2000] E.C.R. I-2549.
122 The concept as such is not explicitly covered by the various non-discrimination provisions in EU law, which only prohibits discrimination in general terms.
123 CJEU, Case 152/73 Sotgiu [1974] E.C.R. 153, para. 11.
124 CJEU, Case C-237/94 O'Flynn [1996] E.C.R. I-02617.
125 CJEU, Case C-55/94, Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano [1995] E.C.R. 1-4165, para. 37. The Court identified the conditions required to justify an indirectly discriminatory measure in what has become known as the "Gebhard formula" as "(i) applied in a non-discriminatory manner; (ii) justified by imperative requirements in the general interest; (iii) suitable for securing the attainment of the objective which they pursue; and (iv) not go beyond what is necessary to attain it").

'home-grown players rule'. In the 2007–2008 season, the quota increased to six locally trained players with at least three players qualifying as "club-trained" (UEFA, 2006). The quota increased again for the 2009–2010 season to eight 'locally-trained' players with at least four 'club-trained' players (UEFA, 2009).

UEFA claims that this rule is a purely sporting rule, installed to develop and promote young players. The rule is not directly discriminatory as it does not by its terms impose a restriction on the employment of non-nationals. However, employment opportunities for non-nationals, compared with those for nationals, may be indirectly reduced because the training requirements of the home-grown players rule are more likely to be fulfilled by nationals than non-nationals (Miettinen and Parrish, 2007). Therefore, one could argue that this rule leads to indirect discrimination based on nationality and therefore is incompatible with EU law on the free movement of workers.

The European Parliament considers UEFA's home-grown player rule to be proportionate and non-discriminatory and endorses it enthusiastically (European Parliament, 2008, p. 98). The European Commission's view is that the provisions of the rules appear to be inherent in and proportionate to the achievement of promoting the recruitment and training of young players and ensuring the balance of competitions. However, since the rules risk having indirect discriminatory effects and since the implementation has been gradual over several years, the Commission recently announced a study to assess the consequences of rules on home-grown players in team sports in 2012 (European Commission, 2011).

*Discrimination against third country nationals*

The CJEU decisions in 'Bosman' and 'Lehtonen' on nationality quota did not address whether non-discrimination principles also applied to nationals from countries that had entered into Association or Cooperation Agreements with the EU.[126] Many of these Agreements contain non-discrimination clauses regarding employment conditions for third-party nationals legally employed in EU Member States. The principle of non-discrimination applied in Association Agreements is restricted to workers legally employed in the territory of Member States, and subject to a condition of reciprocity. The Commission expressed the view that non-EU nationals covered under such agreement enjoyed the same anti-discrimination protections as EU citizens. If the sport involves gainful employment it will be subject to EU law or to the provisions of non-discrimination of the Association Agreements. However, most national sport governing bodies did not adjust their rules accordingly as the increased signing of relatively inexpensive players from non-EU countries would further undermine the development of young, domestic talent (Penn, 2006).

In the 2003 'Kolpak case' and in the 2005 'Simutenkov case', the CJEU nonetheless extended the principle of equal treatment to sportsmen from third countries having an Association Agreement with the European Union, because of the existence of non-

126 Association or Cooperation Agreements, also known as "Europe Agreements", provide the framework for bilateral relations between the EU, its Member States, and partner countries. Areas frequently covered by such agreements include the development of political, trade, social, cultural and security links. The legal base for the conclusion of association agreements is provided by article 217 TFEU.

discrimination clauses in these agreements. According to these clauses, the treatment accorded by each Member State to workers from partner countries legally employed in its territory would be free from any discrimination based on nationality as regards working conditions, remuneration and dismissal, relative to its own nationals.

The principle of non-discrimination is also reaffirmed in similar terms in the Cotonou Agreement[127] between the European Union and 78 African, Caribbean and Pacific countries. However, to this date no case regarding this Agreement has reached the CJEU.

## Competition law

Article 101 TFEU prohibits anti-competitive agreements between undertakings. The purpose is to prevent an informal group of undertakings or a more formal association of undertakings from agreeing together to act in an anti-competitive manner, for example, by forming (price) cartels or by market-sharing. Article 102 TFEU prohibits abusive conduct by undertakings that have a dominant position on a market, for example forcing consumers to buy a bundle of products that could be sold separately or forcing competitors off the market by entering into exclusive arrangements. The CJEU defines dominance as "[a] position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers".[128] If a company has a market share of less than 40%, it is unlikely to be dominant. There will generally be a rebuttable presumption of dominance where a company has a market share of 50% or more.[129] Sports associations usually have practical monopolies in a given sport and may thus normally be considered dominant in the market of the organisation of sport events under Article 102 TFEU.

### The application of articles 101 and 102 TFEU on sporting rules

In its 2006 'Meca-Medina' and 'Majcen ruling', the CJEU applied for the first time articles 101 and 102 TFEU to a sporting rule adopted by a sports association relating to a sporting activity.[130] The ruling provides valuable guidance as regards the methodological approach towards assessing a sporting rule adopted by a sports association under articles 101 and 102 TFEU.[131] First, it must be determined sports association that adopted the rule to be considered an 'undertaking' or an 'association of undertakings'. Then, it must be determined whether the rule in question restricts competition within the meaning of article 101(1) TFEU or constitutes an abuse of a dominant position under article 102 TFEU. In order for articles 101 and 102 TFEU to apply, it is also necessary that trade between Member States is affected. Finally, it must be determined if the rule fulfils the conditions for an exception under Article 101(3) TFEU.

127 Article 13, par.3 of the ACP-EU Partnership Agreement signed in Cotonou on 23 June 2000.
128 CJEU, Case 27/76 United Brands Company v Commission [1978] E.C.R. 207, para. 65.
129 CJEU, Case C-62/86 Akzo Chemie BV v. Commission [1991] E.C.R. I-3359, para. 60.
130 CJEU Case T-313/02 David Meca-Medina and Igor Majcen v. Commission [2004] E.C.R. 2004 II-3291.
131 The Commission has indicated that is subscribes to the four-step "test" followed by the Court in order to assess whether a sporting rule infringes EU competition law (European Commission, 2007b).

## 'Undertaking' or 'association of undertakings'

Article 101 TFEU speaks of 'undertakings' and 'associations of undertakings', while article 102 TFEU only mentions 'undertakings'. The CJEU has given a broad definition of an 'undertaking'. It defined the term as "every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed".[132] Since in the absence of 'economic activity' articles 101 and 102 TFEU do not apply, it is relevant to assess to what extent the sport in which the clubs or athletes are active can be considered an economic activity and to extent the members exercise economic activity. The CJEU has defined 'economic activity' as any activity consisting of 'offering goods or services on the market'[133] As EU case law has shown; economic activity may take place at various levels in the sport sector. This ranges from sports associations to clubs and individual athletes.

International sports associations such as FIFA or UEFA are undertakings to the extent that they themselves carry out activities of economic nature. This can be, for example, the selling of broadcast rights. In its 1990 'FIFA World Cup ruling', the Commission held that although FIFA is a federation of sports associations and accordingly carries out sports activities, "FIFA also carries out activities of an economic nature, notably as regards: the conclusion of advertising contracts, the commercial exploitation of the World Cup emblems, and the conclusion of contracts relating to television broadcasting rights".[134] Therefore, the Commission concluded that FIFA constitutes an undertaking within the meaning of article 101 of the TFEU.[135] Sports associations also constitute undertakings under Article 102 TFEU to the extent they group members which in turn constitute undertakings.[136]

International sports associations not carrying out economic activities themselves may be considered associations of undertakings. A sports association is an "association of undertakings" capable of acting anti-competitively if its members, i.e. clubs or athletes, are engaged in an economic activity.[137] Also, international sports associations can sometimes be referred to as "associations of associations of undertakings". In its ruling in the UEFA Champions League case, the Commission held that, as its membership consists of economic entities (clubs), national football associations are associations of undertakings but are also themselves engaged in economic activities. As the members of UEFA are the national football associations, it is therefore "both an association of associations of undertakings as well as an association of undertakings".[138]

A national sports association can be both an undertaking under Articles 101 and 102 TFEU and an association of undertakings under Article 101 TFEU. National sports associations are undertakings where they themselves carry out economic activity. In the

132 CJEU, Case 41/90 Klaus Höfner and Fritz Elser v Macroton GmbH [1991] E.C.R. I-1979, para. 21.
133 CJEU, Case 118/85 Commission v Italy [1987] E.C.R. 2599, para. 7.
134 European Commission, Cases 33384 and 33378, Distribution of package tours during the 1990 World Cup [FIFA World Cup], OJ 1992 L 326/31, para. 47.
135 Ibid., para. 48.
136 CJEU, Case T-193/02, Piau v. Commission, E.C.R. 2005 II-209, paras. 112 and 116.
137 See CJEU, Case T-193/02, Piau v. Commission, E.C.R. 2005 II-209, para. 72.
138 European Commission, Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 106.

'FIFA World Cup case', the Commission held that the Italian football league had a share in the profits of the FIFA World Cup and was able to exploit commercially in Italy the 1990 World Cup emblem, which is had itself created.[139] National sports associations are also associations of undertakings under Article 101 TFEU to the extent they constitute groupings of undertakings, i.e. sport clubs or athletes for which the practice of sport constitutes an economic activity.[140] Sport clubs or teams are undertakings within the meaning of Article 101 and 102 TFEU to the extent that they carry out economic activities. This has been confirmed by the CJEU in the 'Piau'[141] and by the Commission in the 'ENIC/UEFA cases'.[142]

Individual athletes may also be undertakings within the meaning of article 101 TFEU regardless of his or her status of amateur or professional.[143] In his opinion in the 'Bosman case', Advocate General Lenz considered that football players employed by a football club – and who therefore are not independent - do not constitute undertakings.[144] However, in this case they may be considered undertakings when they carry out economic activities independent of their club, for instance when they enter into sponsoring agreements. Besides, the 'Deliège case' has demonstrated that an athlete can be a provider of service and thus an entity engaged in an economic activity.[145]

## The 'Wouters' test

If a sport association can be regarded as an 'undertakings' or "associations of undertakings", it must then be assessed whether the rule adopted by it restricts competition within the meaning of article 101(1) TFEU or constitutes an abuse of a dominant position under article 102 TFEU. In this regard, the most significant element of the CJEU's assessment of the latter in 'Meca-Medina' concerns the role of the judgement in the 'Wouters case', which as such had nothing to do with sport.[146] The Court's reference to 'Wouters' is of profound importance to the future treatment of sport under EU competition law. It entails that, in order to establish whether a rule adopted by a sport body violates EU Competition Law, account must be taken of the 'overall context' in which the rule was adopted or produces its effects and its objectives; whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and whether the rule is proportionate in light of the objective pursued.

The 'Meca-Medina ruling' eliminates the notion, originating in the 'Walrave case', of a 'purely sporting rule' which has an economic effect yet automatically falls out of the scope of EU law. The only rules which can pass as 'purely sporting' are a very small category of rules which have no economic effect, the so-called sporting rules *sensu stricto*, which will

139 See FIFA World Cup Case.
140 In the Piau case, the GC held that is "common ground" that national associations are groupings of football clubs for which the practice of football is an economic activity. See CJEU, Case T-193/02, Piau v. Commission, E.C.R. 2005 II-209, para. 69.
141 European Commission, Piau,.
142 European Commission, Case 37806, ENIC/UEFA, para. 25.
143 Ibid., para. 46.
144 See Opinion of Advocate-General Lenz in Bosman.
145 Ibid, paras. 56 and 57.
146 CJEU, Case C-309/99 Wouters [2002] E.C.R. I-1577.

most definitely continue to fall outside the scope of EU law.[147] The majority of regulations adopted by a sport body however exert an economic impact. This does not mean that they are incompatible with EU law. Consequential restrictive effects of a regulation of a sporting association which cause economic hardship are not treated as prohibited restrictions for the purposes of application of article 101 TFEU (or the provisions on freedom of movement for workers and freedom to provide services) provided that they are inherent in the pursuit of those objectives.

It is important to stress that article 2 of Council Regulation No 1/2003 on the implementation of the rules on competition provides that the burden of proving an infringement of art. 101(1) TFEU shall rest on the party or the authority alleging the infringement.[148] Those who want to challenge a regulation by a sport body find that the 'Wouters' formula is reversed: they will have to show that the consequential effects restrictive of competition go beyond what is inherent in the pursuit of the practice's objectives, for only then there is a violation of article 101(1) TFEU. Given the burden of proof, it is for the applicant, challenging a sport regulation, to demonstrate coherent alternative governance structures (Weatherill, 2006).

The CJEU made it clear in its 'Meca-Medina ruling' that, in the line of its 'Wouters ruling', even if a rule issued by a sport association restricts the freedom of action of the athletes, it may not breach Articles 101 and 102 TFEU to the extent that the rule in question pursues a legitimate objective and its restrictive effects are inherent in the pursuit of that objective and are proportionate to it. Following the 'Meca-Medina ruling', legitimate objectives of sporting rules will normally relate to "the organisation and proper conduct of competitive sport".[149] In assessing the existence of a legitimate objective, account must be taken of the specific characteristics, i.e. the distinctive features setting sport apart from other economic activities, of sport and of their social and educational function.[150] The restrictions caused by a sporting rule must be inherent in the pursuit of its objective.[151]

## Justification under article 101 (3) TFEU

Where a restriction under Article 101(1) TFEU is found, such restriction may be justified under Article 101(3). Article 101(3) TFEU provides that the prohibition contained in

147 In its staff working document annexed to the 2007 White Paper on sport, the European Commission lists a few types of "pure sporting rules" that – based on their legitimate objectives – are likely not to breach EU law: rules fixing the length of matches or the number of players on the field; rules concerning the selection criteria for sports competitions; rules on "at home" and "away from home" matches; rules preventing multiple ownership in club competitions; rules concerning the composition of national teams; rules against doping; and rules concerning transfer periods (European Commission, 2007b, p. 39).

148 EU Council Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

149 CJEU, Meca Medina, paras. 45 and 46. They may include, for instance, the ensuring of fair sport competitions with equal chances for all athletes, the ensuring of uncertainty of results, the protection of the athletes' health, the protection of the safety of spectators, the encouragement of training of young athletes, the ensuring of financial stability of sport clubs or the ensuring of a uniform and consistent exercise of a given sport.

150 See e.g. CJEU Bernard, para. 40.

151 CJEU, Meca Medina, para. 45. In Meca-Medina, the CJEU concluded that the effects of penalties on athletes' freedom of action must be considered to be "inherent" in the general objective of the anti-doping rules to combat doping in order for competitive sport to be conducted on a fair basis.

Article 101(1) TFEU may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned. Such a justification is most likely to apply where a rule is not inherent in the organisation or proper conduct of sport so as to justify the application of 'Wouters' but where the beneficial effects of a rule outweigh its restrictive effects.

## Sporting rules that may infringe Articles 101 and 102 TFEU

The cases in this section concern sporting rules which restrict competition and which have not been held to be necessary or inherent for the organisation of proper conduct of sporting competitions. Therefore, such rules will be likely to infringe Articles 101 and/or 102 TFEU.

*Rules shielding sports associations from competition*

The 'FIA case' concerned a conflict of interest situation arising from the fact that a the Fédération Internationale d'Automobile (FIA), the principal worldwide authority for motor racing, was not only the regulator but also the commercial exploiter of motor sport. This set incentives for the FIA to abuse its regulatory power in order to protect and increase the commercial rents from its self-promoted products and, thus, discriminate against and deter products under its authority that were promoted by independent agencies.

In 1999, the Commission issued a Statement of Objections (SO) against rules by FIA that prohibited drivers and race teams that held a FIA licence from participating in non-FIA authorised events, so circuit owners were prohibited from using the circuits for races which could compete with Formula One. The Commission *prima facie* alleged the FIA to abuse its dominant position in the market for global motor racing because

- it used its power to block series which compete with its own events;
- it used this power to force a competing series out of the market;
- it used its power abusively to acquire all the television rights to international motor sports events; and
- it protected the Formula One (F1) Championship from competition by tying everything up that is needed to stage a rival championship.

In 2001, the Commission reached a settlement with FIA and subsequently closed the case (European Commission, 2001a, 2001b). In particular, the settlement included that FIA would:

- limit its role to that of a sport regulator without influence over the commercial exploitation of the sport and thus removing any conflict of interest (through the appointment by FIA of a 'commercial rights holder' for 100 years in exchange for a one-off fee);

- guarantee access to motor sport to any racing organisation and to no longer prevent teams to participate in and circuit owners to organize other races provided the requisite safety standards are met;
- waive its TV rights or transfer them to the promoters concerned; and
  remove the anticompetitive clauses from the agreements between FOA and broadcasters.

The 'MOTOE case'[152] involved the combination of regulatory powers and an organisation of competitions with economic activity in the regulated market, similar to the F1/FIA investigation into alleged abuses by the FIA in making commercial gains (European Commission, 2001b). The key difference between these cases is the role which the state plays in legitimising and establishing the special powers of the dominant undertaking. In the MOTOE case, the respondent ELPA was granted a regulatory power of consent by the state rather than economic power. However, ELPA could effectively prevent rival competitions with that state power and it was alleged to have been abused when ELPA offered no reasons for refusing to consent to a competition organised by MOTOE, a rival to its own competitions (Miettinen, 2008, p. 13).

In the MOTOE case, it was declared that the mere risk of abuse is sufficient for an infringement of article 106(1) TFEU considered in conjunction with article 102 TFEU.[153] It is important to stress the fact that the MOTOE judgment provides some reasons why sports services will not often constitute services of general interest that are shielded from the full force of the Treaty's internal market rules.

So, the MOTOE judgment raises the question of whether the risk of abuse itself requires regulation and supervision of an undertaking that is placed, by virtue of special powers, in a dominant position (Miettinen, 2008, p. 16). Where a body is active in other ancillary markets, its regulatory function is itself the reason why it is led to abuse its dominant position by imposing unfair conditions on its competitors.[154] The 'MOTOE case' however suggests that, if tempered with "restrictions, obligations, and review", the grant of that power might not in itself be contrary to Articles 102 and 106(2) TFEU. As a consequence of MOTOE, it could be argued that since all undertakings that are endowed with regulatory powers are placed in a dominant position, regardless of whether they abuse that position, they must be subject to 'restrictions, obligations and review' (Miettinen, 2008, p. 17).

*Rules concerning the legal challenge of decisions taken by sports associations*
In the 'FIA case', one of the Commission's concerns was to ensure that legal challenge against FIA decisions would be available not only within the FIA structure but also before national courts. The 2001 settlement included the inclusion of a new clause in the FIA rules clarifying that anyone subject to FIA decisions can challenge these before the national courts.[155]

152 CJEU, Case C-49/07, Motosyklesistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio, [2008] E.C.R. I-04863.
153 CJEU, MOTOE, para. 50.
154 CJEU, MOTOE, paras 49-50.
155 Ibid.

Similarly, in the negotiations with FIFA on transfer rules following the abolishment of the old system after the 'Bosman ruling'; the Commission insisted that arbitration would be voluntary and would not prevent recourse to national courts. FIFA agreed to modify its rules to this end (European Commission, 2002).

*Rules concerning nationality clauses for sport clubs/teams*

The 'Bosman case'[156] concerned UEFA's '3+2 rule', which permitted each national football association to limit the number of foreign players whom a club may field in any first division match in their national championships to three, plus two players who have played in the country of the relevant national association for an uninterrupted period of five years, including three years as a junior. The limitation of foreign players in a football club was ruled illegal by the CJEU in so far as they discriminated against players from countries within the European Union.[157]

Although the CJEU ruled only on the basis of the free movement for workers, the Commission and Advocate General Lenz[158] considered that rules limiting the employment of foreign players also infringed Article 101(1) TFEU because they restricted the possibilities for the individual clubs to compete with each other by engaging players.

*Rules governing the transfer of athletes in club competitions*

In the 'Bosman case', the CJEU ruled that transfer rules for expired contracts constitute an obstacle to the freedom of movement for workers since they provide that a professional footballer may not pursue his activity with a new club established in another Member State unless it has paid his former club a transfer fee agreed upon between the two clubs or determined in accordance with the regulations of the sporting associations.[159] The Court reasoned that the transfer fee system did not effectively maintain the legitimate objective of financial and competitive balance because the rules neither prevented the richest clubs from monopolising the best players nor reduced the decisive impact of finances on the strength of competition. Moreover, the Court indicated that the goals set out by UEFA could be achieved by other, less-restrictive means which do not impede worker's freedom of movement.[160]

The CJEU did not assess the transfer rules under Articles 101 and 102 TFEU. Advocate General Lenz however concluded in his Opinion that the transfer rules also violated Article 101 TFEU because they replaced the "normal system of supply and demand by a uniform machinery which leads to the existing competition situation being preserved... [E]ven after the contract has expired the player remains assigned to his former club for

156 CJEU, Bosman.
157 Ibid., para. 137.
158 CJEU, Bosman, Opinion of AG Lenz, para. 262.
159 Ibid., para. 100. In para. 103, the Court held that "[i]t is sufficient to note that, although the rules in issue in the main proceedings apply also to transfers between clubs belonging to different national associations within the same Member State and are similar to those governing transfers between clubs belonging to the same national association, they still directly affect players "access to the employment market in other Member States and are thus capable of impeding freedom of movement for workers".
160 Ibid., para. 110.

the time being".[161] Under normal competitive conditions, a player would have been able to transfer freely upon expiry of the contract and choose the club which offers him the best terms. The transfer rules therefore restrict the possibilities of the clubs to compete with each other by engaging players. Therefore, there is no doubt that such transfer rules for expired contracts would also not survive the test in 'Meca-Medina'.

Much more controversial is the discussion about the issue of the legality of the payment of transfer fees for players who are still under contract. The demanding of such a fee by the selling club has the potential to severely restrict freedom of movement between EU states for players. According to Egger and Stix-Hackl (2002, p. 87), the regulations, as a decision of an association of undertakings, have restrictive effects since they in certain cases prevent football clubs to engage players without a transfer payment or for a smaller payment than that demanded by the old club. As their effects, the transfer regulations combine the right of the former club to retain the player with a right to compensation. In fact, in a large number of cases it is precisely the amount of the fee demanded which prevents a player's transfer and thereby, the clubs' access to their sources of supply is restricted.

In accordance with the 'Meca-Medina ruling', it must then be determined whether the restrictions caused by the rule are inherent in the pursuit of the objectives; and whether the rule is proportionate in light of the objective pursued. The response to this question, which ultimately must be answered by the CJEU, is analogous to the response above as regards objective justification of the transfer system in the field of the free movement for workers. Referring to the 'Bosman ruling',[162] Egger and Stix-Hackl (2002, p. 89) find that the demanding of a freely defined fee for a player is not proportionate. Objective criteria are thus needed to calculate the fee, based primarily on the costs of training of the player and on the contribution of the player concerned to the economic success of the club.[163]

*Rules concerning the organisation of ancillary activities (agent licensing)*
The 'Piau judgment'[164] concerned FIFA rules governing the profession of football agents through whom professional football players may conclude contracts with the clubs. Under these rules, a contract was valid only if the agent involved had a licence for his/her practice issued by the national football association. Licensed agents had to pass an interview, have an impeccable reputation, and deposit a bank guarantee. In 2000, following the administrative procedure initiated by the Commission after a complaint

161 Bosman,Opinion GA Lenz, para. 262. The transfer rules in Bosman did not constitute "purely sporting" rules but concerned economic activity (see the reference of the GC Meca Medina, paras. 40 and 42).
162 In Bosman, para. 107, the CJEU held that "the application of the transfer rules is not an adequate means of maintaining financial and competitive balance in the world of football. Those rules neither preclude the richest clubs from securing the services of the best players nor prevent the availability of financial resources from being a decisive factor in competitive sport, thus considerably altering the balance between clubs".
163 It must be noted that the fact that the current rules have been worked out with and even approved by the Commission has no legal significance. The Commission is neither entitled nor in a position to amend the scope or meaning of the provisions of the Treaty by its actions as it is for the CJEU alone to give binding interpretations of those provisions. Thus, the CJEU might still find these rules to be incompatible with EU law should they become under scrutiny again. Egger and Stix-Hackl (2002, p. 89) mention that a way to draw up transfer rules compatible with Competition Law, is to lay them down at contractual level, whether in the individual contracts of players with their (former) clubs or in the form of a collective agreement.
164 CJEU, Case T-193/02, Piau v. Commission, E.C.R. 2005 II-209.

was lodged which alleged that the regulations constituted a restriction on competition under Articles 101 and 102 TFEU, FIFA adopted new Players' Agents Regulations, which were enforced in March 2001 and were amended again in April 2002. FIFA had removed the most restrictive limitations. For instance, the deposit was substituted by a liability insurance and the interview was replaced with a multiple-choice test. Following these amendments the Commission, by a decision of 15/04/2002, rejected the complaint. The General Court (GC) and later the Court of Justice[165] upheld this decision.

## Sports media rights

Securing media rights for major international, European and national sport events are crucial for many media operators to be able to enter and stay in the market. Especially top league European football clubs increasingly make a large part of their revenue from the sale of media rights. In recent years, the sale of broadcasting rights has become a of capital importance for top European clubs, replacing ticket income as the single most important source of revenue. As the Commission stated in its decision in the *Newscorp/Telepiù* case: "rights to recent premium films and most regular football events where national teams participate […] constitute the essential factor (the "drivers") that leads consumers to subscribe to a particular pay-tv channel or platform"[166]

Given the economic importance of sport media rights, it is no wonder that the sale of in particular football broadcasting rights has been subject to scrutiny by the Commission and the national competition authorities for some time now. So, the Commission has dealt with the acquisition of sport media rights in a number of cases.

It should come as no surprise that, as regards EU competition law, all broadcasting organisations, whether they are public or not, are undertakings within the meaning of Articles 101 and 102 TFEU.[167] The activities of acquiring and sublicensing television rights and the sale of advertising slots all constitute examples of activities of an economic nature.[168]

### Market definitions

The definition of the relevant market is the first necessary step in any antitrust investigation. Indeed, in order to assess the existence or creation of market power it is essential to identify the relevant geographical and product markets, i.e. the boundaries of competition between firms. A general distinction is usually made between two markets: the up-stream markets and the downstream markets. In the upstream market, media operators purchase rights for content from the right-owners. In the downstream markets, media operators compete for audiences and advertising revenues. As the acquisition of media rights at the upstream level affects the competitive structure at the downstream level, these two levels are clearly interrelated (Gérardin, 2004, p. 7).

165 Order of the CJEU of 23 January 2006, Case C-171/05P, E.C.R. 2006 I-37.
166 European Commission, Decision of 2 April, 2003, Case COMP/M. 2876 OJ 2004 L 110/73. See also: European Commission, Decision of 15 September 1999, Case 36539 British Interactive Broadcasting/Open, OJ 1999 L 312/1, para. 28.
167 CJEU, Case 155/73 Guiseppe Sacchi E.C.R. [1974]409, para. 14.
168 European Commission, Decision of 10 May 2000, Case 32150, Eurovision, OJ 2000 L 151/18, para. 64.

In 1996 in the Bertelsmann/CLT case, the Commission identified for the first time a separate product market for television rights for sport events.[169] This segmentation was justified by the Commission by pointing towards the specific characteristics of sport events as compared to film and other programme rights. In later decisions, the Commission has given a more specific definition of upstream markets. In the 'Eurovision case', the Commission considered that there could be separate markets for the broadcasting rights for certain major sport events such as the Olympic Games.[170] In its decision in the 'UEFA Champions League case', the Commission defined a separate market for the acquisition and resale of broadcasting tights for football events played regularly throughout the year. This includes in particular matches in the national leagues or national cup tournament as well as the UEFA Champions League and the UEFA Europa League.[171] In the 'Newscorp/Telepiù case', the Commission defined a separate market for the broadcasting rights for football events that do not take place regularly where national teams participate, such as the FIFA World Cup and the European Football Championship.[172] In the recent CVC/SLEC decision, the Commission suggested that in Italy and Spain a narrower market of TV-rights for major sports events could be defined consisting of Moto GP and Formula One.[173] The decision confirmed that regular major sport events, i.e. sport events that take place throughout the year or throughout a significant time period each year such as Formula One races are not in the same market as major irregular sport events which take place for a few weeks every four years.[174]

Technology has made the greatest contribution to the many different product markets at the downstream level, i.e. the markets for the acquisition of media rights for sport events. Separate markets are generally defined for the provision of pay-TV as opposed to free-to-air TV.[175] The Commission concluded this based on the different trading relationships involved, the different conditions of competition, the price of the services, and the characteristics of the two types of television.[176] As regards new media, the Commission further identified downstream markets for on-demand sport content services delivered via second- and third generation mobile phones (such as UMTS) and via internet.[177]

With regard to the geographic market definition, the Commission has held thus far that the upstream markets are of a national character or at the largest confined to linguistic

169 European Commission, decision of 7 October 1996, Case M.779 Bertelsmann/CLT, OJ 1996 C 364/3, para. 19.
170 European Commission, Decision of 10 May 2000, Case 32150, Eurovision, OJ 2000 L 151/18, paras 38-45.
171 European Commission, Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 63.
172 European Commission, Decision of 2 April, 2003, Case M. 2876, Newscorp/Telepiù, OJ 2004 L 110/73.
173 European Commission, Decision of 20 March 2006, Case M.4066, CVC/SLEC, paras 51-55..
174 Ibid., para. 33-37.
175 See, e.g., European Commission, Decision of 3 August 1999, Case M.1574, Kirch/Mediaset, OJ 1994 L 364/1; European Commission, Decision of 2 April, 2003, Case M. 2876, Newscorp/Telepiù, OJ 2004 L 110/73.
176 See European Commission, Decisions of 15 September 1999, Case IV.36.539, BiB/Open, C1999/2935, para. 24; of 21 March 2000, Case JV.37 BSkyB/Kirch Pay TV, para. 24; of 2 April, 2003, Case Newscorp/Telepiù, COMP/M. 2876, OJ 2004 L 110/73, paras. 18-47; of 29 December 2003, Case 38287, Telenor/Canal+/Canal Digital, para. 28; Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 82; and Commission decision of 19 January 2005, Case 37214 Joint selling of the media rights to the German Bundesliga, OJ 2005 L 134/46, para. 18).
177 Case 37214 Joint selling of the media rights to the German Bundesliga, OJ 2005 L 134/46, para. 18; European Commission, Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, paras. 82-85.

regions.[178] As a result of national regulatory regimes, language barriers, and cultural factors, the upstream geographical market also tends to be national, not only for national events but also for international sport events.[179] However, in the 'Murphy case',[180] the CJEU has stated that a system of licences for the broadcasting of football matches which grants broadcasters territorial exclusivity on a Member State basis and which prohibits television viewers from watching the broadcasts with a decoder card in other Member States is contrary to EU law .

## The joint selling of media rights (upstream market)

The Commission's decision making practice as regards the sale and acquisition of football rights is thus far limited to cases relating to the joint selling of exclusive rights under Article 101 TFEU. No decisions have been adopted with regard to the behaviour of a single seller, such as sport associations or sport rights agencies, under Article 102 TFEU. Joint selling occurs, for instance, when sport clubs entrust the selling of their media rights to their sports association, which sells the rights collectively on their behalf. Such an arrangement constitutes a horizontal agreement between clubs which restricts competition as it prevents individual clubs from competing in the sale of sports media rights. As one price is applied to all rights collectively, which leads to uniform prices compared to a situation with individual selling, the horizontal agreement constitutes price fixing, a hard-core restriction under Article 101 TFEU.

In addition, the joint selling arrangement often reduces the number of rights available in the upstream acquisition market. Particularly, if those exclusive rights are purchased by a single buyer, this can result in the reinforcement of the market position held by dominant pay-tv companies which are the only companies with a sufficient financial capacity to offer the high prices demanded for sports media rights. As such, this may create barriers to entry on downstream broadcasting markets and may lead to access foreclosure in these markets, as other retailers in the downstream market are foreclosed from accessing these rights. Moreover, joint selling could lead to output restrictions when certain parts of the jointly acquired rights are withheld from the market (Toft, 2006).

However, the Commission has recognised that joint selling may have pro-competitive effects that lead to efficiency gains in the marketing of rights and accepted joint selling arrangements under Article 101(3) TFEU. In its decisions, the Commission has in particular identified three types of benefits (European Commission, 2007b):

- The creation of a single point of sale, which provides efficiencies by reducing transaction costs for football clubs and media operators.
- Branding of the output creates efficiencies, which helps the media products getting a wider recognition and hence distribution.

178 See, e.g., Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 90; Case M.779 Bertelsmann/CLT, OJ 1996 C 364/3, para. 22.
179 See, e.g., Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, para. 88
180 CJEU, Case Joined Cases C-403/08 and C-429/08 Football Association Premier League Ltd and Others v QC Leisure and Others (C-403/08) and Karen Murphy v Media Protection Services Ltd (C-429/08) [Murphy] [2011] E.C.R. I-00000.

- The creation of a league product, which is focused on the competition as a whole rather than the individual football clubs participating in the competition.

*The UEFA CL case*

The Commission's position on joint selling of sport rights is exemplified by its 2003 decision on the joint marketing of the Champions League by UEFA.[181] In this case, the Commission for the first time accepted joint selling of football media rights and laid out the principles for a pro-competitive rights structure. The joint selling arrangements for the sale of the Champions League rights were originally notified to the Commission in 1999. The original arrangements provided for the sale of UEFA Champions League free and pay-tv rights on an exclusive basis in a single bundle to a single broadcaster per territory for several years in a row. Buyers had only one source of supply and a single large broadcaster per territory would acquire all free and pay-tv rights, excluding others and resulting in a number of rights being left unexploited and output restrictions (European Commission, 2007b). The Commission took the view that these arrangements would result in the rights being acquired in a bundle by a single media group per country on an exclusive basis thereby restricting competition between pay-tv operators and hampering the development of new forms of distribution.[182] Following the intervention by the Commission, UEFA amended its joint selling arrangements. UEFA's proposal for a new joint selling arrangement was the subject of several meetings between UEFA and the Commission and it was modified in a number of points at the request of the Commission. The revised arrangements were notified to the Commission which in its decision of 2003 finally exempted them under Article 101(3) subject to a number of conditions.

First, in order to reduce the risk of foreclosure effects in the downstream market, the Commission required UEFA to organise a competitive bidding process under non-discriminatory and transparent terms, the so-called "non-discriminatory and transparent tendering". This way, all qualified broadcasters are given an equal opportunity to bid for the rights.[183]

Second, the risk of long-term market foreclosure was limited by requiring UEFA to limit the duration of the exclusive media rights contracts to a period not exceeding three UEFA Champions League seasons.[184] Allowing longer contract duration would risk creating a situation where the purchaser would be able to establish a dominant position on the downstream market.

Third, the risk of market foreclosure resulting from a single buyer acquiring all the valuable rights was limited by obliging UEFA to unbundle the media rights in separate packages by splitting them up into several different rights packages that would be offered for sale in separate packages to different third parties.[185] UEFA agreed to offer its TV rights in several smaller packages on a market-by-market basis. The precise format

181 European Commission, Decision of 23 July 2003, Case 37398, Joint selling of the commercial rights of the UEFA Champions League, OJ 2003 L 291/25, paras 136 et seq.
182 Statement of objections sent on 20 July 2001 (IP/01/1043).
183 See: European Commission, UEFA CL, paras 27-30.
184 Ibid., para. 25.
185 Ibid, para. 22.

may vary depending on the structure of the TV market in the Member State in which the rights are being offered.[186] More specifically, the Commission required:

- A reasonable amount of different packages. The Commission required the creation of two or two main live rights packages for free-TV or pay-TV each comprising two matches per match night, the so-called Gold and Silver packages. When the competition has reached the final stages the two main live packages will absorb all TV rights of the UEFA Champions League.[187] The reason for this requirement was that the creation of various packages would enable more than one media operator to acquire the rights.
- By providing for specific packages for certain distribution platforms, the so-called earmarking, mobile operators and internet service providers were enabled to acquire rights. Due to the strong asymmetric value of rights for different distribution platforms, access to sports media rights may be foreclosed to downstream market operators in certain evolving markets or platforms such as 3G networks or internet markets.

In Order to limit the risk of output restrictions caused by the joint sale of broadcast rights, the Commission required UEFA to ensure that there were no unused rights. This was achieved firstly by a reduction of UEFA's exclusive right to sell by allowing the football clubs to sell certain media rights in parallel with UEFA. If UEFA has not managed to sell the rights of the matches not falling under a package within one week after the draw for the group stage of the UEFA Champions League, UEFA will lose its exclusive right to sell these TV rights. Thereafter, UEFA will have a non-exclusive right to sell these TV rights in parallel with the individual home clubs participating in the match).[188] The right of UEFA and the individual football clubs to sell these remaining matches are subject to picks made by the broadcasters having bought the main live packages Gold and Silver.[189] Secondly, The Commission ensured market availability of les valuable rights such as deferred highlights and new media rights[190] by imposing the parallel exploitation of these rights by individual clubs and UEFA.

The approach by the Commission in the *UEFA CL* case has become standard. The spirit of this decision was clearly followed in subsequent cases related to the joint selling of sports media rights, in particular the 'DFB' and 'FAPL' cases.

*The DFB and FAPL cases*

The DFB[191] and FAPL[192] concerned the joint selling by the German Football League (Deutsche Liga-Fussballverband, DFB) and the English Football League (FA Premier League Limited) of the media rights of their respective competitions. In both cases,

186 Ibid., para. 32.
187 Ibid., para. 33.
188 Ibid., para. 34.
189 Ibid., para. 35.
190 Ibid., paras 40, 44.
191 European Commission, Decision of 19 January 2005, Case 37214 Joint selling of the media rights to the German Bundesliga, OJ 2005 L 134/46.
192 European Commission, Decision of 22 March 2006, Case 38173 Joint selling of the media rights to the FA Premier League [FAPL], OJ 2006 L 176/104.

commitments were made to amend the original joint selling arrangements and these were made legally binding under Article 9(1) of Regulation 1/2003.[193] Pursuant to this provision, Commission, where it intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment, the Commission may by decision make those commitments binding on the undertakings. In the 'DFB case', the commission made its first ever commitment decision.

The commitments by both the DLF and the FAPL included the unbundling of rights into separate rights packages for TV broadcasting and mobile platforms, the possibility for individual clubs to exploit certain unsold rights and rights unused by the initial purchaser, as well as the exploitation of deferred rights and rights for the new internet broadcasting (the internet broadcasting rights were sold as a separate package in DFB but not in FAPL) and telephony broadcasting markets. Rights were to be disposed of using a public tender procedure and exclusive rights contracts were not to exceed three football seasons (European Commission, 2007b).

In the 'FAPL case', the Commission seemed to be pushing for more far-reaching measures due to the structure of the relevant downstream market.[194] In order to prevent that all packages of valuable live rights were sold to the dominant pay-TV operator in the United Kingdom, BSkyB, the Commission considered it necessary to impose a no single buyer obligation on the collective selling entity in the FAPL decision. Over a number of years prior to the 'FAPL decision', BSkyB had acquired all the valuable live-TV packages that were made available on the market by the joint seller. Additional remedies were therefore deemed necessary to prevent downstream foreclosure and to ensure access also of other market players. In the absence of such remedies there was a risk that competition would remain eliminated well beyond the duration of any on-going contract as due to the long-term presence of the dominant buyer competition was ineffective. Moreover, an obligation was imposed on the seller to accept only stand-alone unconditional bids for each individual package.[195] The rights would be sold to the highest standalone bidder. Such unconditional selling is aimed at preventing a powerful buyer interested in acquiring the most valuable package(s) from offering a bonus on condition that all the valuable rights are sold to it, thus inciting initial rights owners not to sell at least some packages to competitors in the same market or operators in neighbouring markets.

### The joint buying of media rights (downstream market)

Article 101 TFEU does not hold an automatic objection to joint buying agreements. However, such agreements may also raise competition concerns when the exclusive acquisition of sports media rights leads to foreclosure and output restrictions as a result of vertical restraints in agreements between seller and buyer or by horizontal agreements between different buyers (European Commission, 2007b). For instance, parties excluded from the agreement can be prevented from acquiring the rights. Therefore, the

193 EU Council Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.
194 Ibid.
195 European Commission, FAPL, para. 40.

Commission has tried to ensure in its decisions relating to the joint buying of media rights that third parties have sufficient access to the jointly acquired media rights.

The Commission has dealt with a number of cases where remedies were necessary to address situations where a powerful retail operator on one platform foreclosed access to exclusive content for operators in the same or neighbouring markets. Its approach can be illustrated on the basis of the 'EBU/Eurovision'[196] and the 'Audiovisual Sport'[197] cases. Those cases have demonstrated that "there is no necessary objection to membership rules per se. But they must be objective and sufficiently clear so as to enable them to be applied uniformly and in a non-discriminatory manner. Rules which do not meet these criteria cannot be treated as "indispensable" and so cannot be exempted under [Article 101(3)]" (Weatherill, 2006, p. 21).

## The import, use and sale of foreign decoder cards

In the 'Murphy case',[198] the CJEU ruled that a system of licences for the broadcasting of football matches which grants broadcasters territorial exclusivity on a Member State basis and which prohibits television viewers from watching the broadcasts with a decoder card in other Member States is contrary to EU law. The Court ruled that national law which prohibits the import, use or sale of foreign decoder cards is contrary to the freedom to provide services and cannot be justified by the objective either of protecting intellectual property rights or of encouraging the public to attend football stadiums. Therefore, any EU consumer should be allowed to go to another Member State in order to get a decoder and a decoder card.

However, as opposed to the actual live football match itself, the opening video sequence, the Premier League anthem, pre-recorded films showing highlights of recent Premier League matches, or various graphics added to Premier League matches are protected by copyright. Therefore, a person who wants to transmit those works to the customers present in a public house (a "communication to the public" within the context of intellectual property law) may need consent from the rights holder and thus, a publican like Ms Murphy may need further authorisation from the Premier League to show these. It is certain that after the CJEU ruling the Premier League will not be able to prevent the free circulation across borders of decoder cards giving access to Premier League matches. However, copyright issues may prohibit broadcasting live PL football matches using foreign subscriptions.

196 European Commission, Decision of 11 June 1993, Case 23150, EBU/Eurovision System, OJ 1993 L 179, para. 49.
197 European Commission, Press release of 8 May 2003, Commission closes its probe of Audiovisual Sport after Sogecable/Via Digital merger, IP/03/655.
198 CJEU, Case Joined Cases C-403/08 and C-429/08 Football Association Premier League Ltd and Others v QC Leisure and Others (C-403/08) and Karen Murphy v Media Protection Services Ltd (C-429/08) [Murphy] [2011] E.C.R. I-00000.

# The enforcement of EU law on sports bodies

## The Court of Justice of the European Union

The reference for a preliminary ruling is the procedure that enables national courts to question the CJEU about the interpretation or validity of EU law in the context of a dispute submitted to the Court. Pursuant to Article 267 TFEU, the Court of Justice of the European Union is empowered to give preliminary rulings on the interpretation of the Treaties and the validity and interpretation of acts of the EU institutions, bodies, offices or agencies. Article 256(3) TFEU specifies that not only the CJEU but also the General Court shall have jurisdiction to give preliminary rulings in the areas determined by the Statute of the CJEU. However, the CJEU has not made any arrangements to share its jurisdiction with the General Court and consequently, the CJEU alone is empowered to give preliminary rulings.

Any national court to which a dispute in which the application of a rule of EU law raises questions has been submitted can decide to refer to the CJEU to resolve these questions. National courts or tribunals adjudicating at last instance, as a rule pursuant to article 267 TFEU, must refer but this is subject to the doctrine of *acte clair*.[199] Other courts can however exercise their discretion. From that time onwards the national court must stay proceedings until the CJEU has handed down its decision. The CJEU gives a decision only on the constituent elements of the reference for a preliminary ruling made to it, and the national court remains competent for the original case. Thus, the CJEU can only rule on the sporting rules that it gets and then only insofar as the question of their conformity with EU law is part of the constituent elements of the reference for a preliminary ruling made to it.

The referral to a preliminary ruling to the CJEU is by far the most effective tool to get satisfaction from an infringement of the EU law. The CJEU has the obligation to answer the question put to it. It cannot refuse to answer on the grounds that this response would be neither relevant nor timely as regards the original case. It can, however, refuse if the question does not fall within its sphere of competence. The CJEU has however rarely refused to give a preliminary ruling.

## The European Commission

*Guardian of the Treaties*

Each EU Member State is responsible for the implementation of Union law (the adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system. The peculiarity of the EU legal order is emphasised by the Commission's powers to initiate proceedings against a defaulting Member State in its role as the "guardian of the Treaties" (action for non-compliance). Article 17(1) TEU specifies that the Commission *"shall oversee the application of Union law under the control of the CJEU"*. Thus, the Commission, and not the other Member States,[200] has

199 CJEU, Case 283/81, CILFIT and Lanificio di Gavardo SpA v Ministry of Health [1982], E.C.R. 3415.
200 Under Article 259 TFEU Member States are also empowered to bring an action against each other for an alleged breach of EU law but only after the matter has been laid before the Commission. Such actions are however rare,

the principle responsibility for ensuring that the Member States comply with EU law. Under article 258 TFEU, only the Commission may bring an action against a Member State. Nevertheless, a person considering that a MS is infringing EU Law may lay a general complaint before the European Commission. It is however under no obligation to act on the complaint.

The fundamental element authorising the Commission to initiate an infringement procedure against a Member State is the existence of behaviour (action or omittance) resulting in the breaching of EU law that can be attributed to the State.[201] Therefore, no general complaint can be lodged against an international sports body because those are mostly private bodies, often governed under Swiss law. However, complaints could be lodged against a Member State that has implemented sporting rules in its legislation and a sports body when it is governed by public law and acts as a Public Authority. Consequently, it is essential to determine whether, and to what extent, Member States participate directly or indirectly in the organisation of professional sports activities.

The Commission takes whatever action it deems appropriate in response to either a complaint or indications of infringements which it detects itself. Article 258 TFEU sets out a procedure to be followed by the Commission, which gives the Member State an opportunity, on the one hand, of remedying the breach before the action is brought before the CJEU, and on the other hand, to present its defence to the Commission's complaint. If the Commission still considers that a Member State is in breach of its obligation, it may institute proceedings before the CJEU.

*Public enforcer of EU competition law*

The Treaty grants the European Commission far-reaching powers as public enforcer of EU competition law. It has the competence to investigate whether practices of undertakings comply with its provisions on competition policy. The Commission may become aware of the infringement of EU competition law through any source (e.g., the press, TV, complaints from competitors and the general public). It may act ex officio, or upon an application from a Member State or from "any natural or legal person who can show a legitimate interest".[202] In order to show such an interest, complainants must demonstrate that their interest is, or is likely to be, adversely affected by the anti-competitive conduct of an undertaking.[203] If the latter is the case, a natural or legal person and a Member State may thus lodge a complaint with the European Commission against a football body, which can be considered an undertaking or an association of undertakings, regarding infringement of EU Competition Law.

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because the political implications of them may damage friendly relations between the Member States involved. Consequently, Member States prefer that the Commission acts against the defaulting State under Article 258 TFEU.

201 Article 258 TFEU refers explicitly to Member States, by which is meant central, regional or local authorities and any agency of the State or independent bodies or institutions which are to be regarded as public bodies. Furthermore, acts of legal persons governed by private law which are controlled by the public authority may result in an infringement of EU law on the part of the MS concerned.

202 Article 7 of Regulation 1/2003

203 GC, Case T-144/92, BEMIM v Commission [1995] E.C.R. II-147.

The CFI has distinguished the procedural stages concerning individual complaints before the Commission.[204] After gathering information, the Commission may either decide not to pursue the complaint, specifying the reasons for its decision and inviting complainants to submit their observations within a fixed time limit. Otherwise, it has a duty either to initiate a procedure against the subject of the complaint or to adopt a definitive decision rejecting the complaint.[205] The Commission is required to make a decision[206] as to whether to proceed with the complaint within a reasonable time.[207] If the Commission adopts a final decision on rejection or acceptance of a complaint, the complainant has the right to seek judicial review of that decision before the CJEU under Article 263 TFEU.[208]

It should be noticed that, although the Commission is under a duty to reply to a complainant,[209] under the settled case law of the CJEU, the Commission is not required to conduct an investigation in each case.[210] The Commission may reject a complaint when it considers that the case does not display a sufficient "EU interest" to justify further investigation.[211] The assessment of the Union interest raised by a complaint depends on the circumstances of each individual case. Such a decision can be taken either before commencing an investigation or after taking investigative measures.[212] However, the Commission is not *obliged* to set aside a complaint for lack of Union interest.[213]

The Commission's powers in the field of competition law make it a more cost-effective venue for redress than the private enforcement route via national courts and the CJEU. This was for instance mirrored in the swelling sports-related caseload following the 'Bosman ruling', when a series of high profile investigations into the organisational aspect of sport were launched by the DG competition, usually after a complaint, including an examination of the transfer system in football (Parrish, 2003b, p. 252). The European Commission, should it decide to initiate a procedure against the subject of the complaint, can force a sports body to change its rules in conformity of the relevant EU Legislation and sanction it for its violation.[214] In order to enforce EU competition law the

204 More specifically, it has distinguished three stages, see GC, Case T-24/90 Automec (II) [1992] E.C.R. II-2223.
205 CJEU, Case C-282/95P Guérin [1997] E.C.R. I-1503.
206 Ibid.
207 GC, Case T-127/98 UPS Europe SA v Commission [1999] E.C.R. II-2633.
208 CJEU, Case 26/76 Metro v Commission [1977] E.C.R. 1875.
209 CJEU, Case 210/81 Demo-Studio Schmidt [1983] E.C.R. 3045.
210 Settled case law since CJEU, Case T-24/90, Automec v Commission of the European Communities, [1992] E.C.R. II-2223, para. 85.
211 The concept of "EU interest" was clarified by the GC in Case T-24/90 Automec II. In this case the Court stated that the Commission is entitled to prioritise cases and assess on a factual and legal basis whether a case raises significant EU interest, in particular as regards the functioning of the internal market, the probability of establishing the existence of an infringement and the required scope of the investigation.
212 CJEU, Case C-449/98 P, International Express Carriers (IECC) v Commission of the European Communities [2001] E.C.R. I-3875, para. 37.
213 Cf. CJEU, Case T-77/92, Parker Pen v Commission of the European Communities, [1994] E.C.R. II-549, paras 64/65. See European Commission, Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (2004/C 101/05).
214 Under article 7 of Regulation 1/2003, the European Commission is empowered to adopt a decision requiring the undertaking concerned to end an infringement and the Commission may impose on undertakings behavioural or structural remedies proportionate to the infringement and necessary to bring the infringement to an end. Under Article 8, the Commission may grant interim relief in urgent cases where there is immediate danger of irreparable damage to the complainant, or where there is a situation which is intolerable for the public interest. Under Article 9 of Regulation 1/2003 when the Commission intends to adopt a decision requiring the parties to terminate infringements, the parties

Commission is even empowered to impose pecuniary sanctions on undertakings for infringements that have already ceased, subject to the limitation period, as well as for on-going infringements.[215] In fact, fines imposed by the European Commission appear to be the main method of enforcement of EU competition law (Wils, 2002, p. 13). In the field of sport, however, the Commission has always shown a willingness to find compromises with sport bodies and remarkably, no fines have ever been imposed on a sports body.

*The negotiated settlement approach in sports*

Even though the CJEU ruled as early as 1974 in the 'Walrave case' that, when sport constitutes an economic activity it is subject to European law, for a long time, the EU was not at all occupied with sport. The 'Walrave approach' was not fully enforced as sport remained an activity of marginal economic significance during the 1970s and 1980s (Parrish and McArdle, 2004, p. 411). Moreover, the Council and especially the European Commission treated sport matters as a politically highly sensitive issue. Consequently, the Commission's approach towards sports bodies was rather soft, as it tried to persuade them to comply with European law where appropriate rather than enforcing it (Barani, 2005, p. 46; European Commission, 1991).[216] This negotiated settlement approach resulted in sport and European law operating in separate realms (Parrish, 2003b, p. 252) as there was no hard enforcement of EU law on the sports sector (Parrish, 2003b, p. 252).[217] The EU institutions were however not unanimous on the exceptional treatment of football. The European Parliament requested the Commission to ensure that economic sporting activities complied with EU law, consistently calling for restrictions on player mobility in European sport to be lifted (European Parliament, 1984; 1989a; 1989b; 1994, Parrish, 2003a, p. 65). Due to the Parliament's lack of competence, these requests were nonetheless downplayed or ignored.[218]

However, the sports world clearly failed to understand that the Commission is neither entitled nor in a position to amend the scope or meaning of the provisions of the Treaty by its actions as it is for the CJEU alone to give binding interpretations of those provisions. Consequently, the CJEU's 'Bosman ruling' shocked international sports organisations, who did not at all expect EU law to have such severe consequences for

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may offer commitments to meet the concerns expressed to them by the Commission. In such a situation the Commission may adopt a decision making these commitments binding on the undertakings.

215 Those fines, which are given for a variety of reasons, can even be imposed before a final decision is taken by the Commission. See articles 23 and 24 of Regulation 1/2003.

216 For instance, the Commission arranged several meetings with football authorities to discuss the problem of nationality quotas during the 1970s and 1980s.

217 For instance, in 1991, UEFA adopted the so-called 3+2 rule after negotiations with the European Commission, hereby lifting nationality restrictions which, in the light of the CJEU's ruling in the Donà case, were contrary to European free movement law (Parrish, 2003a, p. 92). Since UEFA had a "gentlemen's agreement" with the Commission on this issue, it had the conviction that these rules were stable and durable (García, 2007b, p. 207).

218 At the same time, however, the European Parliament demonstrated a desire to balance the economic regulation of sport with the promotion of sports socio-cultural and integrationist qualities, which was best expressed before the Bosman case in the 1994 "Larive report" (European Parliament, 1994; Parrish, 2003a, pp. 14-15). This desire was descended from the acknowledgement of the potential of sports as a tool for enhancing the identity and the image of the EU with its apathetic citizens. In the 1984, in a response to a perceived crisis in European integration, an ad hoc committee (the Adonnino Committee) was established following Fontainebleau Summit to explore measures that would strengthen the image of the European Community in the minds of its citizens. The Committee made eight sets of non-binding recommendations, one of which concerned sport. (see Parrish, 2003a; European Commission, 1984; Adonnino, 1985).

their rules, despite the fact that the ruling is a straightforward application of existing, well-established legal provisions (see, e.g., Blanpain and Inston, 1996; Parrish and McArdle, 2004): sport as a business activity has to abide by the rules of European law.[219]

Strengthened in their conviction by the Commission's negotiated settlement approach, they were convinced that they could continue their long-standing self-governance without any interference of state authorities. They failed to acknowledge that sport was starting to become a significant economic activity in the 1990s (García, 2007b, p. 209). Moreover, the EU had just completed the single market and the ideology of the four freedoms was particularly strong (Parrish and McArdle, 2004, p. 441).[220]

After an initial period of real confrontation with the EU characterised by emotional and sometimes irrational, unfounded criticism on the EU and its "over-zealous regulators", the sports world soon realised that EU law could have far-reaching consequences for their activities and embarked on a campaign directed towards the EU in an attempt to reverse the situation (García, 2007b, p. 209; Niemann and Brand, 2008, p. 98; Parrish and McArdle, 2004, p. 410). The main goal of the sports lobbying movement was to reduce the regulatory activity of the Commission as much as possible. It is quite safe to assume that political pressure by Member States, following skilful lobbying with national governments by FIFA and UEFA, contributed heavily in favour of FIFA and UEFA as regards the final settlement on the new FIFA transfer system in 2001 (Niemann and Brand, 2008, p. 98; García, 2011, p. 26).

Thus, although the European Commission acts autonomously in its competition competencies, it does not operate within a political vacuum. Clearly, the Commission's powers as public enforcers of EU competition law are undermined by the political powers of big international sports organisations, who lobby the European Parliament, in the case of FIFA and UEFA through the creation of the Parliamentary Group "Friends of European Football" (Holt 2007), and the Member States via national politicians and the European Sports Forum (Willis 2010). Moreover, since sport is very attractive to politicians (García, 2007b, p. 208), as patriotic sentiments might come into play, governments often grant football special treatment and even exemptions. Thus, a hard use of the Commission's competition competence in the sports sector is neither (politically) feasible nor desirable. Therefore, in the field of sport, the Commission has always shown a willingness to find compromises with sports bodies.[221]

219 As had been established by the Court in the Walrave and Donà cases. In fact, that UEFA did not expect the 3+2 rule to be contrary to the free movement of workers was a clear misinterpretation on their part of the CJEU's Donà ruling.
220 Furthermore, the Bosman ruling can to a large extent be considered as FIFA and UEFA's own making. The pyramid governing model of football is a major source of conflict, since those at the very bottom may want to challenge the federation's regulations and decisions if they are excluded from the decision making process or if the latter are unwilling to meet them halfway (García, 2007b, p. 205; Parrish and McArdle, 2004, p. 411; Tomlinson, 1983, p. 173).
221 In football, for instance, this approach was evident in the high-profile cases concerning UEFA's rules on football broadcasting hours (European Commission, 2001c); FIFA's transfer system (European Commission, 2002) and the central marketing of Champions League's television rights (European Commission, 2001d).

## Conclusion

It is clear that sport, when it constitutes an economic activity, is subject to EU law. This constitutes a clear limitation to the autonomy of sports organisations, as they in principle cannot devise rules that are contrary to EU law. Generally, in case such rules pursue a legitimate (sporting) aim, they may not be deemed to breach EU law when the application of those rules do not go beyond what is necessary for the achievement that purpose. Case law by the CJEU provides invaluable guidance for the application of EU law to sport and as such, it is clear that certain rules will not survive the proportionality test should they ever become under scrutiny before the Court.

Obviously, the CJEU did not rule on every type of sporting rule yet, as it can only rule on the cases it gets and then only insofar as the question of their conformity with EU law is part of the constituent elements of the reference for a preliminary ruling made to it. That leaves many questions on conformity with EU law with regard to sporting rules unresolved and consequently leads to legal uncertainty. Ever since the 'Bosman ruling', sport organisations often complain about the lack of legal certainty with regard to EU law. They worry that their rules, transfer rules in particular, might be contested over and over again by unsatisfied stakeholders and therefore, they ask for a special treatment of their sector (see, e.g., Infantino, 2006; IOC and FIFA, 2007; Hill, 2009). Those lobbying efforts have found their resonance with the EU institutions (see, e.g., European Parliament, 2007, points 59-64; Arnaut, 2006, p. 42-45), although sport never received an exemption from EU law. Some authors however point to the fact that the sport sector does not deserve more legal certainty than other sectors (Wathelet, 2008; Vermeersch, 2009, p. 425). For the sake of clarity, the European Commission is committed to explain, on a theme-per-theme basis, the relation between EU law and sporting rules in professional and amateur sport through its dialogue with sport stakeholders (European Commission, 2011, p. 11).

The Commission's powers in the field of competition law make it a more cost-effective venue for redress than the private enforcement route via national courts and the CJEU. Through that route, it may take many years before a final ruling is issued and since an athlete's prime years usually do not last that long, cases that involve dissatisfied athletes do not reach the CJEU that often and in case they threaten to do so, they may ultimately be settled outside the Court.[222] Events from the past have demonstrated that the Commission is susceptible to political pressure and lobbying efforts and therefore, it makes no hard use of its far-going competition competence and thus, the application of EU law on sport has clearly been politicised. Consequently, the Commission has always shown a willingness to find compromises in the sports sector. This is not necessarily a bad thing. The application of competition law to sports broadcasting rights, for instance, needs to be tailored to the characteristics of sport as a market.

Ultimately, it is for the CJEU alone to give binding interpretations of the provisions of the Treaty. The Commission is neither entitled nor in a position to amend the scope or meaning of the provisions of the Treaty by its actions. Therefore, it is not yet possible to provide a holistic image of the impact of EU law on sporting rules. Given the fact that

222 See the Balog (Blanpain, 1998, p. 188-220) and Oulmers (García, 2008, p. 41) cases.

cases relating to sports rules only reach the CJEU every so often, this will not be the case over the next few years. Meanwhile, the sports world has devised its own legal system which enables it to settle disputes within its own network and according to its own laws instead of in national or European courts. It is safe to say that the autonomy of sports organisations has been strengthened in recent years by the development of a system of sports arbitration which has contributed to the emergence of a body of global sports law/*lex sportiva*.[223]

223 According to Foster (2003), "lex sportiva is a dangerous smoke-screen justifying selfregulation by international sporting federations". (p.17) He defines lex sportiva,or "global sports law" as "a transnational autonomous legal order created by the private global institutions that govern international sport. Its chief characteristics are first that it is a contractual order, with its binding force coming from agreements to submit to the authority and jurisdiction of international sporting federations, and second that it is not governed by national legal systems" (Foster, 2003, p.2).

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# Stakeholders, stakeholding and good governance in international sport federations

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## Introduction

It is far from clear whether the enthusiasm for stakeholder theory should be seen in a positive light as a refinement of our understanding of the wide variety of roles that individuals play in society and the consequent variety of relationships that they have with institutions such as international sport federations. A less positive view is that the concept of the 'stakeholder' is a poor substitute for the more robust concept of citizen and stakeholder theory is a poor substitute for a theory of civil, social and political rights. However, it is hard to deny the momentum that the study of stakeholding has acquired in recent years. It has become, in many respects, the dominant lens through which to view the relationship between an organisation and the various internal and external groups with which it directly or indirectly interacts.

One of the problems in operationalising the concepts associated with stakeholder theory is the imprecision of the central concept of stakeholding (see Mitchell *et al.* 1997; Mainardes *et al.* 2011). However, there is general agreement that the fundamental elements of the theory are as follows: first, that the organisation has relationships with many groups (stakeholders) which can either affect the operation of the organisation (for example, sponsors and athletes and the media) and without whom the organisation would cease to function (or at least have great difficulty in functioning) or are affected by the organisation (for example, spectators, sports apparel manufacturers and event organisers); second, stakeholder theory is concerned with the nature of these relationships and their impact on the IF and stakeholders; third, all stakeholders are considered to have a legitimate interest in the organisation; fourth, the theory tends to emphasise the consequences for management decision-making of stakeholder activity rather than ways to facilitate a stronger stakeholder voice; and fifth, there is an assumption that managers believe that they will be more successful in achieving organisational objectives if they take stakeholder concerns into account.

## Types of stakeholder theory

### Descriptive

The aim is to describe actual behaviour (Brenner and Cochran, 1991). For example, one might design a testable hypothesis – 'that the CEO and board of an IF will take stakeholder interests into account in their decision-making'. In addition, the researcher might be concern to trace the pattern of relationships between stakeholders and the resources and strategies they utilise to promote/defend their interests. The aim might also be to simply describe stakeholder types: such as voluntary or involuntary (Clarkson, 1995);

narrow or wide (Evans and Freeman, 1988); strategic or moral (Goodpastor, 1991); active or passive (Mahoney, 1994); or primary or secondary (Carroll, 1978). However, descriptive classificatory approaches are less likely to be useful for our project as they are predicated on a disinterested (or overly disinterested) position for the researcher. The only exception is Mahoney's distinction between active and passive stakeholders – a distinction which is considered in more detail below.

### Instrumental

Concerned with causal relationships between managers/decision-makers and stakeholders (Jones, 1995). Hypotheses might include: a) 'if managers of IFs develop positive relationships with their stakeholders they will have a competitive advantage over other IFs', b) 'if IFs have close relationships with media and sponsors they will tend to neglect their club networks', or c) 'if IFs are part of the Olympic movement they will tend to allow a greater role for athletes in Federation decision-making'. Such hypotheses are relatively easy to test and will provide insights into the character of governance arrangements in IFs and their consequences. However, the focus tends to be only on one half of the stakeholder-organisation relationship and tends to ignore (or downplay) stakeholder activity.

### Normative

The concern here is to identify the obligations that are placed on managers due to the application of stakeholder theory (and good governance theory) and integrates ethics with business. This process has been described by Jones and Wicks (1999, p. 209) as 'the development of normative cores: accounts that describe the basic functions of the firm [or IF] (its telos or mission) and the responsibilities of management'. This view of stakeholder theory comes closest to our concerns with the assessment and promotion of good governance.

### Stakeholding and interests

Much stakeholder theory is based on a rational model of behaviour insofar as it is assumed that stakeholder groups will be mobilised by a desire to protect/promote their interests. It is also routinely assumed that stakeholder groups are relatively homogeneous and are defined by their roles (as athletes, spectators, members etc.). However, this dominant view raises two important questions related to IF governance: first, how do stakeholder groups become mobilised; second, is it reasonable to assume that stakeholder groups are sufficiently homogeneous for them to be treated as sharing common interests?

### Stakeholder mobilisation and motivation

Not all stakeholder groups are a) active in pursuing their collective interest; b) aware that they have a collective interest; or c) willing to accept that they share a common interest. In other words some groups might be latent stakeholder groups. A central research question is what turns latent or passive stakeholder groups into active groups? As mentioned above stakeholder theory tends to define stakeholder groups by their role or their relationship to one or more focal organisations such as event organising bodies (IOC), international federation or sports broadcasters. Some groups will have a degree of direct interaction (for example, club football fans) and this inter-personal interaction may

provide the ingredients of stakeholder action such as organisational resources/capacity (a supporters club), forms of regular communication (fan magazines) and opportunities for mutual support (at matches and fan club meetings). For these groups stakeholder mobilisation is easier to explain. However, it is more difficult to achieve stakeholder action among groups such as television viewers of sport (or subscribers to 'pay to view' sports channels) who have a strong relationship with a sports broadcaster and the IF that sells the rights, but have only weak links with each other – that is, they are not strongly aware of their collective identity or, if they are aware, have limited opportunity to develop collective action.

Mitchell and Wood (1997) suggest that active stakeholding requires a group to possess: power (e.g. control of resources required/desired by the IF), legitimacy (e.g. by virtue of membership, shareholding or election) and urgency (a reason to act). The most obvious 'reason to act' is discontent with IF behaviour, but there are many examples of discontented groups failing to mobilise particularly among lower income or socially marginal groups. Consequently it is argued that for effective mobilization stakeholder groups not only need power, legitimacy and urgency, but also a series of additional tangible and intangible resources. Tangible resources would include staff, office equipment and office space and intangible resources would include expertise and leadership. In sport there has for many years been a concern with the lack of influence of athletes within major IFs and event organising bodies (athletes in the 'big four' professional sports in the US might be an exception). While athletes in the major Olympic sports for example have power (to withdraw their labour), legitimacy (few would challenge their right to claim a stake in the IF) and urgency (over issues such as eligibility/selection to compete, doping, control of image rights etc.) they have proved very difficult to organise due, arguably, to a lack of tangible resources and a lack of intangible resources including leadership and long term continuity of group membership (which prevents the accumulation of collective knowledge). However, there is evidence that once a stakeholder group has become mobilised the group generates its own momentum as the group becomes a reference point for individual identity. Achieving initial mobilisation and developing momentum over the short to medium term is a considerable challenge.

## The homogeneity of stakeholder groups

The dominant assumption in stakeholder theory is that stakeholder groups reflect a high degree of homogeneity of interests and priorities in relation to the focal organisation – the international federation (Wolfe and Putler, 2002). In a study of stakeholder groups in a university (students, academic staff, student athletes, alumni etc.) Wolfe and Putler found that while each group was homogeneous in its interests and priorities on some issues it displayed heterogeneous interests and priorities on other issues. Their conclusion was that interests can cut across role-based stakeholder assumptions. In relation international sports federations it may be that stakeholder groups are indeed defined by their role (as athletes, sponsors, fans, coaches, media etc.), but it is also possible that stakeholder groups are far less distinct and that their 'membership' cuts across roles and is defined by values, beliefs and attitudes (to commercial ownership, sale of broadcasting rights to pay to view broadcasters, to early youth elite competition etc.).

## Key questions in relation to good governance of international sports federations

1. Is it more appropriate to define IF stakeholders in terms of their identity (i.e. as fans, athletes, coaches etc.) or in terms of their interests (i.e. in elite sport/club success, community/club development, youth sport etc.)?
2. What are the key factors that enable active stakeholding rather than passive or latent stakeholding?
3. Under what conditions will stakeholder groups be motivated to mobilise?
4. To what extent are the major latent or actual IF stakeholder groups supporters of good governance? Are more (most) IF stakeholder groups primarily concerned with securing relative advantage over other stakeholder groups?
5. Is stakeholder theory (and by implication the ambitions for 'good governance') based on a simplistic pluralist conceptualisation of power in global sport according to which power is reflected in the agency of groups and is not deeply embedded in the structure of modern sport?

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# Good governance in International Non-Governmental Sport Organisations: an empirical study on accountability, participation and executive body members in Sport Governing Bodies

Working paper for Action for Good Governance in International Sports Organisations (AGGIS) project

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This paper uses empirical data on structural issues relating to the quality of the self-governance of 35 Sport Governing Bodies. Firstly, this paper presents empirical evidence on the lack of accountability arrangements in SGBs. In particular, the watchdog function of their member organisations is severely undermined by the general absence of objective criteria and transparency in the distribution of funding to members. With regard to checks and balances, arguably the most topical issue is the total lack of independent ethics committees, if any, and their inability to conduct *ex officio* investigations. Secondly, our survey demonstrates that most SGBs have institutionalised athlete participation. However, in the overwhelming majority of the organisations, they have not been granted formal decision making power. Thirdly, with regard to executive body members, there is the rather anachronistic dominance of the European continent and also the preponderance of male officials. In addition, the general lack of term limits poses serious threats with regard to the concentration of power, which is evidenced for instance by the overall number of years SGB presidents are in office. The presented empirical evidence clearly supports the recent calls for good governance in sport. SGBs need to agree upon a set of well-defined criteria of good governance and take action towards compliance with those. Only then, the self-governance of sport will be credible and justifiable.

## Introduction: the issue of good governance in International Non-Governmental Sports Organisations

In the last two decades, a significant body of governance literature has emerged. This has led to some considerable theoretical and conceptual confusion and therefore, "govern-ance" is often used very loosely to refer to rather different conceptual meanings. Van Kersbergen and van Waarden (2004), for example, distinguish no less than nine different meanings regarding "governance", which may lead to the conclusion that the term simply has "too many meanings to be useful" (Rhodes, 1997, p. 653). Definitions on governance depend largely on the respective research agendas of scholars or on the phenomenon that is being studied. Perhaps the best way to find a useful clarification on the concept within the context of this paper is by distinguishing it from, at least at first sight, similar concepts. For instance, Kooiman (1993) differentiates governance from governing,

defining the first as those societal activities which make a "purposeful effort to guide, steer, control, or manage (sectors or facets of) societies" (p. 2). Governance, on the other hand, is mainly concerned with describing "the patterns that emerge from the governing activities of social, political and administrative actors" (p. 3). Another commonly described distinction is that between governance and government: while government usually refers to the formal and institutional top-down processes which mostly operate at the nation state level (Stoker, 1998), governance is widely regarded as "a more encompassing phenomenon" (Rosenau ,1992, p.4). Indeed, in addition to state authorities, governance also subsumes informal, non-governmental mechanisms and thus allows non-state actors to be brought into the analysis of societal steering (Rosenau 1992, p. 4, Lemos and Agrawal, 2006, p. 298).

The governance debate has been increasingly prescriptive, hence the current global quest for so-called "good governance". In the national realm, we witnessed the passing of absolute and exclusive sovereignty, as with the end of the cold war, it became politically more correct to question the quality of a country's political and economic governance system in international fora (Weiss, 2000, pp. 796-806). Thus, what has been described as a "chorus of voices" has been urging governments "to heed higher standards of democratic representation, accountability and transparency" (Woods, 1999, p. 39). In the corporate world, good governance is usually referred to as "corporate governance" or "good corporate governance", which relates to the various ways in which private or public held companies are governed in ways which are accountable to their internal and external stakeholders (OECD, 2004, p. 11; Jordan 2008, p. 24). Its origins derive from the early stages of capital investment and it regained prominence out of scepticism that product market competition alone can solve the problems of corporate failures (Shleifer and Vishny, 1997, p. 738).

International institutions have issued a checklist of factors that, in their experience, are useful indicators of good governance for both the private and the public sphere at national and international level (e.g. UNDP 1997, European Commission, 2001; OECD, 2004; WB, 2005; IMF, 2007). Such checklists serve as a yardstick for good governance and are oriented towards core features of governance structures and processes that are especially to be found in OECD countries (Hyden, Court and Mease, 2004). They comprise factors that include key principles such as accountability, efficiency, effectiveness, predictability, sound financial management, fighting corruption and transparency. In addition, when they refer to the political area, they may also include participation and democratisation, since a democratic environment is seen as a key background variable for good governance (e.g. Santiso, 2001).

Only recently, the call for good governance has finally reached the traditionally closed sporting world (e.g. Sugden and Tomlinson 1998; Katwala, 2000; IOC, 2008; Pieth, 2011; Council of Europe, 2012; European Commission, 2012). That this happened much more slowly in sport than in other sectors has to do with the fact that the world of sport is traditionally regulated in all its aspects through a self-governing network with its own rules and regulations. For almost a century, the sporting network was able to exercise its self-governance without any significant interference from states or other actors (Geeraert *et al.* 2012).

However, in recent years, the quality of the self-governance of International Non-Governmental Sport Organisations (INGSOs)[224] has been increasingly questioned due to the commercialisation of sport, which painfully exposed governance failures such as corruption and bribery, but also made sport subject to the more avaricious and predatory ways of global capitalism (Andreff, 2000; 2008; Sugden, 2002; Henry and Lee, 2004). The importance of good governance in INGSOs cannot be underestimated. Analogous with the business world, economic sustainability ensures that INGSOs can achieve their long-term objectives as it ensures that they continue to operate in the long run (Bonollo De Zwart and Gilligan, 2009). Complying with good governance is also a means for making sure that an INGSO is capable to steer its sport in an increasingly complex sporting world (Geeraert *et al.* 2012). Moreover, in addition to enhancing public health through physical activity, sport has the potential to convey values, contribute to integration, and economic and social cohesion, and to provide recreation (European Commission, 2007). It has been argued that those important sociocultural values of sport are seriously undermined by corruption (Schenk, 2011, p. 1). Also, as sports commercialised significantly, particularly during the last two decades, the socioeconomic impacts on the wider society of rules devised and issued by sports bodies have increased accordingly (Katwala 2000, p. 3). This evolution, which mirrors the growing influence from international non-governmental organisations on what once had been almost exclusively matters of state policy (Weiss, 2000, p. 800), also has as a consequence that the lack of good governance in INGSOs has the potential to have substantial negative repercussions on the wider society. Finally, since INGSOs are charged with taking care of a public good, it is paramount that they take care of their sports in a responsible and transparent manner (Katwala, 2000, p. 3; Henry and Lee, 2004).

Notwithstanding the current internal and external efforts, the impression is that there still is inertia towards the achievement of better governance in the sports world (Katwala 2000, p. 2-5; Play the Game, 2011). That can partly be attributed to the fact that, with regard to good governance in sports, there are important knowledge gaps, situated at two levels. First, there is no generally accepted good governance code for international sports organisations. Good governance principles must always take account of the specificity of the relevant organisation (Edwards and Clough, 2005, p. 25). Therefore, codes from other sectors cannot be applied blindly to sports, since INGSOs are in fact a very peculiar kind of organisations. In their capacity as regulators/promoters of their sports, they in fact comprise elements of state, market and civil society actors, and this poses serious questions with regard to which elements from good governance checklists can and should be applied to the sports world. Moreover, there are many different structures to be discerned within INGSOs (Forster and Pope, 2004, pp. 83-100), which only adds to the complexity of the issue. Hence, a set of core and homogeneous principles is still missing, despite efforts by a multitude of actors at different levels. Second, there is a clear lack of substantive empirical evidence of the internal workings of INGSOs (Forster and Pope, 2004, p. 102). High profile scandals related to corruption teach us that there probably is

224 In this article, we use the term International Non-Governmental Sport Organisation (INGSO) as an umbrella term for all types of international sport organisations chiefly because it relates to the terms International Governmental Organisation (IGO) and International Non-Governmental Organisation (INGO), which have a long tradition in the field of Politics and Political Science.

something wrong. But those are merely symptoms; the real question is: how bad is the disease?

In this paper, we treat three issues which the literature defines as particularly problematic with regard to the governance of INGSOs. These are accountability and participation issues (e.g. Forster and Pope, 2004, pp. 102-106; Houlihan, 2004, pp. 421-422; Thibault, Kihl and Babiak, 2010; Pieth, 2011; Geeraert *et al.*, 2012; Pielke, 2013), and the (perceived) conservatism and inertia in the people that govern INGSOs (Tomlinson 2000, Henry and Lee, 2004, p. 31). Often, a broad evidence base is lacking in academic literature as most of the time, the empirical focus is on one or only a few –usually larger- organisations (e.g. Sugden and Tomlinson, 1998; Schenk, 2011; Chappelet, 2012) or a series of local sports organisations (e.g. Taylor and O'Sullivan, 2009), but never on a broad range of INGSOs. The authors of this article try to present empirical evidence in order to define if the situation is as problematic as the literature and different pressure groups often make out. They try to identify certain governance aspects that particularly deserve quality improvements.

## Methodology

This study is premised upon a set of ontological and epistemological assumptions closely related to the critical realist social theory (e.g. Bhaskar, 1975, 1978, 1989, 1998). This approach reconciles the interpretivists view that "actors produce a structure" with the realist stance that "rules, norms and operating procedures, together with sometimes unobservable structures can determine decision-making" (Marsh and Furlong, 2002, p. 37). As such, the critical realist stance on social science can be briefly summarised as follows: structures provide the context within which agents act and, as such, constrain or facilitate actions. However, it is agents who interpret that structure, and, in acting, change the structure (Marsh, 2008, p. 253).

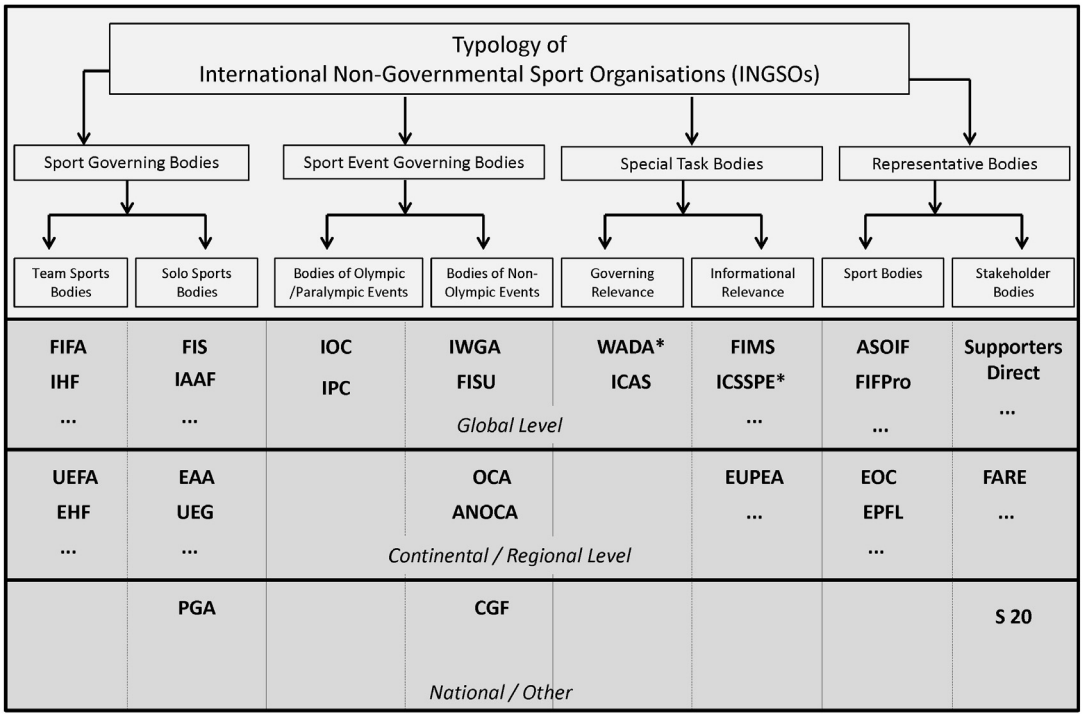
Critical realism implies that the choices for a particular method must "depend on the nature of the object of study and what one wants to learn about it" (Sayer, 2000, p. 19). When investigating good governance in sport, the researcher is confronted with the lack of a set of core and homogeneous principles and also a clear lack of substantive empirical evidence of the internal workings of INGSOs. Thus, in order to deal with those knowledge gaps, this study employs a triangulation of research methods (e.g. McNabb, 2004). In order to determine whether the lack of good governance is indeed widespread among INGSOs, there is a need for empirical evidence. However, the way in which that evidence is interpreted may vary, since conceptualisations of what constitutes good governance in INGSOs vary perforce.

Our research focuses on Sport Governing Bodies (SGB), arguably the most important type of INGSOs. In identifying this category, we use the following typology of INGSOs, based on that of Forster and Pope (2004, p. 79 ff.), who identify four categories: Team Sports Governing Bodies, Solo Sports Governing Bodies, Sport Event Governing Bodies and Specialist Bodies like the World Anti-Doping Agency (WADA).[225] Our categorisation

225 It must be noted that WADA is in fact a hybrid organisation, since it is governed and funded equally by the Sports Movement and governments (see Casini, 2009).

is similar, but more detailed and hence, at least in our view, better suited to grasp the complexity of the sport world (see figure 1).

Figure 1: Typology of international non-governmental sports organisations




Key: * = Hybrid Organisation; IHF = Int. Handball Federation; EAA = European Athletics Association; UEG = European Union of Gymnastics; IWGA = Int. World Games Association; FISU = Int. University Sports Federation; OCA = Olympic Council of Asia; ANOCA = Association of National Olympic Committees of Africa; CGF = Commonwealth Games Federation; ICAS = International Council of Arbitration for Sport; FIMS = Int. Federation of Sports Medicine; ICSSPE = Int. Council of Sports Science and Physical Education; EUPEA = European Physical Education Association; ASOIF = Association of Summer Olympic Associations; S 20 = Sponsors Voice Germany

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For reasons of clarity, each of the four categories of INGSOs is subdivided into two sections. The distinctive features of the four categories of INGSOs are shown in table 1.

Table 1: Distinctive features of the four types of INGSOs

| INGSO | Distinctive feature |
|---|---|
| Sport Governing Bodies | Team Sports or Solo Sports[226] |
| Sport Event Governing Bodies | Olympic / Paralympic Events or Non-Olympic Events |
| Special Task Bodies | Direct Impact on Governing or no direct impact |
| Representative Bodies | Sport Bodies or Stakeholder Bodies |

Firstly, an explorative set of parameters was composed based on a selection of available literature on good governance, good corporate governance, democratic governance and good governance in sports organisations. Since information on the internal functioning of INGSOs is only scarcely available, the focus was inevitably on parameters for which the data was actually publicly available. Several INGSOs were contacted via e-mail in order to obtain more comprehensive data, but none did respond. Nevertheless, INGSOs normally do publish their statutes, constitution or bylaws online, so data for rules based

226 Given the blurring boundaries between Solo Sports and Team Sports, we adhere to Forster and Pope's (2004, p. 91) view that Solo sports are those for which one-against-one competition is intrinsic to the nature of the game.

or *de jure* indicators of good governance could be gathered (Kaufman and Kraay, 2007, p. 5-9). Those were then supplemented with the more outcome based indicators available on the organisations' websites (Kaufman and Kraay, 2007, p. 9-12).

Subsequently, the scheme was applied to the 35 SGBs that are officially recognised by the IOC. That means that Sport Event Governing Bodies, Special Task Bodies and Representative Bodies such as the leagues in North-American sports that are often even more powerful than their corresponding SGBs, fall outside the scope of the research. In order to interpret the outcomes of the survey, the focus was on three issues which are defined in academic literature as particularly problematic with regard to the governance of INGSOs. Conceptual and theoretical frameworks from political science were used where appropriate in order to analyse the data with the view of painting an objective picture on the current state of governance in INGSOs.

## Accountability

Accountability is a cornerstone of both public and corporate governance because it constitutes the principle that informs the processes whereby those who hold and exercise authority are held to account (Aucoin and Heintzman, 2000, p. 45). Bovens (2007) defines accountability in the narrow sense as "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pose judgement, and the actor may face consequences" (p. 450). As such, it requires three elements: the actor is obliged to inform the forum about his or her conduct; there needs to be a possibility for the forum to interrogate the actor and to question the adequacy of the information or the legitimacy of the conduct; and the forum may pass judgement on the conduct of the actor (Bovens, 2007, p. 451). Similar elements are to be found in most definitions of accountability (e.g. Stiglitz, 2003; Grant and Keohane 2005).

The governance of INGSOs is said to be characterised by accountability deficits -a lack of accountability arrangements (Forster and Pope, 2004, p. 9; Pielke, 2013). That is not without danger since a lack of accountability brings with it, and constitutes a breeding ground for, issues related to corruption, the concentration of power, and the lack of democracy and effectiveness (Aucoin and Heintzman, 2000; Mulgan, 2003, p. 8, Bovens 2007, p. 462). Thus, the importance of accountability in public governance is usually explained in three ways, which all have their own separate theoretical perspective on the rationale behind accountability and a separate assessment of accountability relations. First, accountability is important to provide a democratic means to monitor and control government conduct ("the democratic perspective"); second, for preventing the development of concentrations of power ("the constitutional perspective"); and third, to enhance the learning capacity and effectiveness of public administration ("the learning perspective") (Aucoin and Heintzman 2000; Bovens, 2007, p. 462).

In this section, we apply those three perspectives in order to analyse the accountability issues that confront the governance of sport today. However, the accountability that is being demonstrated by INGSOs should not be limited to the fora that are being discussed here (e.g., see Pielke, 2013). Since INGSOs are charged with taking care of a public good

public good and sport, both at amateur and professional level, relies heavily on public sector support, INGSOs are also expected to demonstrate a high degree of accountability to their surrounding community (Katwala, 2000, p. 3; Henry and Lee, 2004, p. 31; Wyatt, 2004). In fact, a growing public anger at individuals and institutions that are supposed to pursue the public's interests but refuse to answer to their grievances exists not only with regard to state authorities (Elchardus and Smits, 2002; Mulgan, 2003, p. 1; Dalton, 2004), but increasingly as regards INGSOs. Finally, with regard to INGSOs, in many cases the absence of a government that is willing and able to hold them accountable by posing stricter organisational requirements is often regarded as an influential factor that may lead to bad (self-) governance (Forster and Pope, 2004, p. 9). The inter-related question of state (or European Union) intervention will not be treated here (see Geeraert *et al.* 2012).

## The democratic perspective: Member federations

The democratic perspective of public accountability is extremely important since citizens should be able to control those holding public office (March and Olsen, 1995, p. 141-181; Mulgan, 2003). In parliamentary democracy, the relation between citizens and popular representatives can be defined in accordance with the principal-agent model (Strøm, 2000). That means that the people, who are the primary principals in a democracy, have given away their sovereignty to popular representatives. Accountability arrangements and mechanisms then help to provide the political principals with information about how their interests are represented and offer incentives to agents to commit themselves to the agenda of the people (Przeworski, Stokes and Manin, 1999; Strøm, 2000; Bovens, 2007, p. 456).

Such a form of accountability can be said to exist in corporate governance as well, although it is not always well developed (Jensen and Meckling, 1976; Hart, 1995). Multi-national companies are answerable to their shareholders, who have an important watchdog function as it can be said that there is a chain of control from the shareholders to the board of directors to the management. In that way, the board is the agent and the shareholders are the principal.

INGSOs do not have shareholders or citizens as principals, but since they are member-ship organisations, they have a membership-based control structure, which entails that the annual general meeting controls the activity of the board, which they elected to oversee organisation management and to hire personnel and in which ultimate authority is vested (Hoye and Cuskelly, 2007, p. 11; Enjolras, 2009, p. 769). Indeed, the member federations of SGBs usually "own" the organisation since they have created it (Forster and Pope 2004, p. 107). However, in the largest SGBs, member federations are now partly dependent on the funds they receive from their corresponding SGB (Forster and Pope, 2004, p. 102; Schenk, 2011, p. 2). Moreover, SGBs often make vast sums of money and this has made them independent from their member federations (Forster and Pope, 2004, p. 102).

Our survey indicates that at least 18 (51%) SGBs give funding to their members, directly or through development programmes. For the others, we found no references to funding,

but this does not necessarily mean that it is not being distributed (see table 2). Of course, there is nothing wrong with funding member organisations per se. On the contrary, supporting member associations and confederations financially reflects solidarity and helps developing the sport. However, it also potentially entails certain risks, since associations may be influenced in the use of their powers within the organisation (Pieth, 2011, p. 31) and/or become rather benevolent towards or even servants to their SGBs (Forster and Pope, 2004, p. 102). As such, funds could for instance be used to ensure votes, to support a certain agenda or to ensure the (re-)election of officers (Forster and Pope, 2004, p. 113). In that case, members will not hold their corresponding SGB accountable and turn from a watchdog into a lapdog for those who govern the organisation.

Thus, it is paramount that funds are properly distributed by SGBs. For only two (10%) of the 18 organisations which grant funding, we found that funding was distributed according to objective criteria (see table 2). In the absence of such criteria, SGBs can distribute financial means *ad-hoc*, which increases the risk of haphazard, improper use. Nevertheless, the positive counter side is that SGBs can influence their members through the motivational aspect of subsidising. Still, given the potential risks involved, specific decisions related to the distribution of funding would have to be objectively reproducible, which would also make decisions understandable for members (Pieth, 2011, p. 31).

At the least, the funds should be distributed in a transparent manner, which would make them open to outside scrutiny (Schenk, 2011, p. 6). We only managed to find three SGBs (17%) that provide more or less detailed information about the amounts distributed. Three others only gave partial information, while 12 SGBs (67%) did not provide any information at all (see table 2).

Table 2: Funding, distributed among members

| | n | % |
|---|---|---|
| **Members receive funding** | | |
| Yes | 18 | ~51% |
| No/ unknown | 17 | ~49% |
| **For 18 SGBs known to distribute funding:** | | |
| **Objective criteria for funding?** | | |
| Yes | 2 | ~11% |
| No | 16 | ~89% |
| **Distributed funds available through website?** | | |
| Yes | 3 | ~17% |
| Partly | 3 | ~17% |
| No | 12 | ~67% |

Forster and Pope (2004, p. 107-108) argue that a realistic interpretation of the relationship between SGBs and their members would be that SGBs operate independently of the national federations and not as their agent. In fact, according to Mulgan (2003) "the principal who holds the rights of accountability is often in a position of weakness against his or her supposed agent" (p. 11). Such weakness indeed provides for the reason for accountability in the first place and underscores the importance of adequate arrangements. The main way in which member organisations can hold their SGB accountable is through their statutory powers. Most notably, these relate to the election of the people that govern the organisation. In accordance with principles of corporate governance and democracy in general, the members should be able to choose their president and governing council.

According to our research, in all 35 SGBs the legislative body –usually named 'congress' – is competent to elect the president. In only 23 organisations (66%), the congress elects the governing council. Nevertheless, in 9 SGBs (26%) the congress is only partly involved, but often that is due to a number of mandatory seats for regional members (see table 3). In the case of the World Taekwondo Federation (WTF) however, the president is allowed to choose 10 members to the governing council. In the cases where the congress has no voice in the election of the executive body (3 SGBs), members do have a seat, but the democratic character of the election procedure is doubtful.

Table 3: Role of the congress in the election of president and executive body

| | n | % |
|---|---|---|
| **Does congress elect governing council?** | | |
| yes | 23 | ~66% |
| partly | 9 | ~26% |
| no | 3 | ~9% |
| **Does congress elect president?** | | |
| Yes | 35 | 100% |

The congress has an important monitoring function with regard to the executive body (Strøm, 2000). Thus, it is important that the legislative bodies of SGBs come together frequently, so that their opinion is heard and those that rule the SGB are obligated to defend their governance on a regular basis. As shown in table 4, most SGBs (17; 49%) organise a congress meeting on an annual basis. In fifteen SGBs (40%), the congress meets every two years and in 2 (6%) only once every four years.

Table 4: Frequency of congress meetings

| | n | % |
|---|---|---|
| **Frequency of congress meetings** | | |
| every four years | 2 | ~6% |
| every two years | 15 | ~43% |
| Once | 17 | ~49% |
| Unknown | 1 | ~3% |

The organisation of congresses can of course be rather costly. As it is important that a high attendance rate is achieved, SGBs should make an effort to reimburse travel expenses and hotel stays for poorer members although this might be difficult for smaller SGBs. Nevertheless, as a minimum, the target should be set at one meeting per year in order to give the congress the possibility to scrutinise annually produced accounts and the general policy of the past year.

It is important that the congress, as principals, have complete and credible information on the accuracy of the accounting and financial reporting of the governing body, the agent. In order to make sure the agent uses resources in accordance with the principals wishes, monitoring mechanisms such as a financial and audit committee or external auditing can be put in place (OECD, 2004, pp. 54-56; Spanhove and Verhoest, 2007). For reasons of objectivity, such committees should be sufficiently independent from the executive body of the organisation (Hart, 1995, p. 682). As table 5 indicates below, the vast majority of surveyed SGBs lack such committees.

Table 5: Presence of financial and audit committees

| | n | % |
|---|---|---|
| **Presence of financial committee** | | |
| Yes | 11 | ~31 |
| No | 24 | ~69 |
| | | |
| **Presence of audit committee** | | |
| Yes | 12 | ~34 |
| No | 23 | ~66 |

## The constitutional perspective: checks and balances

The main rationale behind the constitutional perspective of accountability is to withstand the ever-present tendency toward power concentration and abuse of powers in the executive power (Bovens, 2007, p. 466). Hence, one of the cornerstones of democracy is the systems of checks and balances in state authority, which limits the powers of the legislative, executive and judiciary branches of the state. For instance, the power to request that account be rendered over particular aspects is given to law courts or audit instances.

The separation of powers is also a good governance practice in non-governmental organisations or in the business world (OECD, 2004, p. 12; Enjolras, 2009). For instance, the separation of power between the management of an organisation and the board entails a system of checks and balances that entails the implementation of internal control procedures (Enjolras, 2009, p. 773).

There seems to be growing agreement in the professional sports world that a system of checks and balances and control mechanisms are also needed in international non-governmental sports organisations (INGSOs) and that it constitutes good governance (IOC, 2008, p. 4; Philips, 2011, p. 26). Indeed, a checks and balances system is para-

mount to prevent the concentration of power in an INGSO and it ensures that decision making is robust, independent and free from improper influence (Arnaut, 2006, p. 58). In reality, the concept of separation of powers in sports governance usually implies separating the disciplinary bodies from the political and executive arms of a sports body. That means that active officials are usually excluded from the disciplinary body and –if present- the appeal body of the SGB, thus separating the disciplinary bodies from the political and executive arms of the organisation.

According to Pieth (2011), that exclusion should be extended to the ethics committee of the INGSO. Indeed, INGSOs seem to have been pre-occupied with dealing with corruption and malpractice on the playing field rather than with the quality of their own internal functioning (Forster and Pope, 2004, p. 112). Nevertheless, checks and balances should also apply to staff working in the different boards and departments of an organisation since they usually ensure that no manager or board member or department has absolute control over decisions, and clearly define the assigned duties, which is the very core of the concept. Taking the example of comparable bodies such as the World Bank or the IOC, Pieth recommends including external members into FIFA's Ethics committee. In the view of checks and balances, an ethics committee could in theory be called to adjudicate on the behaviour of members of the executive body of an INGSO. Therefore, the Committee should be elected by the Congress rather than by the governing body. Moreover, the ethics committee should have the power to initiate proceedings *ex officio*, thus without referral by the executive body or president (Pieth 2011).

Our research indicates that 17 organisations (49%) have adopted a code of ethics and only 12 (34%) have an ethics committee that monitors compliance with such a code. Only three organisations have an independent ethics committee, which means that they operate independently from the executive body of the organisation.[227] If the latter is not the case, the committee cannot be expected adjudicate appropriately on the behaviour of members of the executive body. In only one organisation, the International Cycling Union (UCI), the ethics committee has the power to initiate proceedings on its own initiative. In most organisations, the president or the board must first refer a case to the committee before it can start investigations, which severely undermines the checks and balances with regard to the management of the organisation. Table 6 summarises these findings.[228]

227 Here, we used outcome rather than rules based indicators. For instance, an organisation may have enshrined in its statutes that its general assembly elects the members of the ethics committee, but when some of them also have a seat in the executive body of the organisation, we do not deem the committee to be independent.
228 We did not include any budgeting information on ethics committees, since such information was extremely scarcely available.

Table 6: Ethics committees

| | n | % |
|---|---|---|
| **Presence of code of ethics** | | |
| Yes | 17 | ~49 |
| No | 18 | ~51 |
| | | |
| **Presence of ethics committee** | | |
| Yes | 12 | ~34 |
| No | 23 | ~66 |
| | | |
| **Independent ethics committee** | | |
| Yes | 3 | ~9 |
| No | 9 | ~26 |
| | | |
| ***Ex offcio* investigations** | | |
| Yes | 1 | ~3 |
| No | 9 | ~26 |
| Unclear | 2 | ~6 |

## The learning perspective: the impetus to change the status-quo

One of the major purposes of public accountability is that it induces the executive branch to learn (van den Berg, 1999, p. 40; Aucoin and Heintzman, 2000; Bovens, 2007, p. 463). The possibility of punishment in the event of errors and shortcomings motivates governments to search for more intelligent ways of organising their business. In addition, accountability offers a mechanism to confront administrators to reflect on the governance failures resulting from their past conduct (Bovens, 2007, p. 463).

The fact that most SGBs (*de facto*) are not representative bodies whose executive officers are clearly responsible and accountable to a democratically elected assembly has as a consequence that member organisation will not likely provide an impetus to change the status-quo within the SGBs (Forster and Pope, 2004, pp. 102-106; Schenk, 2011). In fact, the lack of accountability mechanisms in SGBs constitutes a vicious circle as it prevents the impetus for change towards stronger accountability within the organisations.

## Accountability and compliance issues

SGBs are able to choose the optimal regulatory context for their operations and as such they pick a favourable environment as the home base for their international activities (Forster and Pope, 2004, p. 9; Scherer and Palazzo, 2011, p. 905). Reportedly, this is mostly Switzerland, where they are embedded into a legal system that gives them enormous protection against internal and external examination (Forster and Pope, 2004, p. 112). Our research indicates that 27 SGBs (77%), including the largest organisations, are indeed based in Switzerland (see table 7).

Table 7: Registered offices of the surveyed SGBs

| Organisation | Registered Office | Country |
|---|---|---|
| AIBA | Lausanne | Switzerland |
| BWF | Kuala Lumpur | Malaysia |
| FEI | Lausanne | Switzerland |
| FIBA | Geneva | Switzerland |
| FIBT | Lausanne | Switzerland |
| FIE | Lausanne | Switzerland |
| FIFA | Zürich | Switzerland |
| FIG | Lausanne | Switzerland |
| FIH | Lausanne | Switzerland |
| FIL | Berchtesgarden | Germany |
| FILA | Corsier-sur-Vevey | Switzerland |
| FINA | Lausanne | Switzerland |
| FIS | Oberhofen am Thunersse | Switzerland |
| FISA | Lausanne | Switzerland |
| FITA | Lausanne | Switzerland |
| FIVB | Lausanne | Switzerland |
| IAAF | Monaco | Monaco |
| IBU | Salzburg | Austria |
| ICF | Lausanne | Switzerland |
| IGF | Lausanne | Switzerland |
| IHF | Basle | Switzerland |
| IIHF | Zürich | Switzerland |
| IJF | Lausanne | Switzerland |
| IRB | Dublin | Ireland |
| ISAF | Southampton | UK |
| ISSF | Munich | Germany |
| ISU | Lausanne | Switzerland |
| ITF | London | UK |
| ITTF | Lausanne | Switzerland |
| ITU | Vancouver | Canada |
| IWF | Budapest | Hungary |
| UCI | Aigle | Switzerland |
| UIPM | Monaco | Monaco |
| WCF | Lausanne | Switzerland |
| WTF | Seoul | Korea |

The absence of a state authority that can or will hold private self-regulations accountable is not without danger to general principles of good (democratic) governance. It is assumed that the potential threat of stricter regulations, unless the potentially affected actors adapt their behaviour to the expectations of the legislator, pushes those organisations which operate "in the shadow of hierarchy" towards compliance. In the absence of

such a "whip in the window", the expectation is that the reliability of voluntary self-commitments to good democratic governance –if they even exist- would suffer (Sharpf 1994, p. 41; Wolf, 2008, p. 239). According to Wolf (2008, p. 244), "even the most prominent functional equivalents to the checks and balances institutionalised within the political systems of democratic states (…) cannot be provided by private actors alone". On the contrary, some authors even go so far as to suggest that hierarchical organisations which are not subject to (local) democratic control cannot be expected to have internal practices conductive to democratic manners (Hirst, 2000, p. 21).

## Participation

Participation should be distinguished from accountability, since the former implies proactive input into the policy process, whereas the latter is in nature retrospective: "actors are to account to a forum after the fact" (Harlow, 2002, p. 185; Bovens 2007, p. 453). That is not to say that certain stakeholders, especially those that unite themselves into pressure groups, do not possess the power to scrutinise, criticise and demand changes from their corresponding SGBs (Mulgan, 2003, p. 25), but the distinction should be clear.

According to Arnstein (1969), "participation of the governed in their government is, in theory, the cornerstone of democracy -a revered idea that is vigorously applauded by virtually everyone" (261). Everyone, that is, except SGBs. Their main stakeholders, i.e. athletes and sometimes clubs, have traditionally been kept out of the policy processes that are decisive to the rules that govern their activities. Indeed, sport is traditionally governed though hierarchical chains of command. That structure is undemocratic since those at the very bottom of the chain, i.e. clubs and athletes, are automatically subject to the rules and regulations of the governing bodies, often without being able to influence them to their benefit. As a consequence, sports policy is rarely carried out in consultation with athletes, and almost never in partnership with athletes (Houlihan, 2004, pp. 421-422). That seems paradoxical and somewhat ironic, as sporting rules and regulations often have a profound impact on athletes' professional and even personal lives. Moreover, hierarchic governance in sport is a major source of conflict, since those that are excluded from the decision making process may want to challenge the federation's regulations and decisions (Tomlinson, 1983, p. 173; García, 2007, p. 205; Parrish and McArdle, 2004, p. 411).

However, in recent years, we witness an increasing influence of athletes in the development of policies in SGBs (Thibault, Kihl, and Babiak, 2010). Nevertheless, as Houlihan (2004) puts, "the few governing bodies of sport that do provide a voice for athletes do so either through limited membership of the body's decision-making forum or through the formation of an "athletes committee/ commission" linked to the main forum, but safely quarantined from any significant decision-making opportunities" (pp. 421-422).

As demonstrated in table 7, our survey indicates that in 28 of the investigated SGBs (80%), stakeholders are in some way represented. In all of those cases the represented stakeholders include athletes, who are represented by means of an athletes commission in 24 SGBs (69%). However, our data clearly supports Houlihan's (2004, pp. 421-422)

view: only 4 SGBs (11%) grant athletes some sort of (very limited) decision making power. In all other cases, with the exception of two SGBs that do not share information on the matter, athletes' representatives have only been given a consultative status. Thus, while in most cases, athletes have been given a "voice", they certainly do not have a "vote". Or, to put it differently: institutionalised consultation does not equal actual participation, as the latter requires that affected parties have access to decision making and power (Woods, 1999, p. 44; Young, 2000).[229]

The commercialisation of sport has made certain sports clubs, especially those in top-level professional football, big power players, and that has enhanced their position in the governance of their sport (Colucci and Geeraert, 2012). Nevertheless, as table 1 indicates, at the global level, that evolution only resulted in institutionalised consultation for clubs within FIFA. Of course, it must be noted that eight of the researched organisations govern purely individual sports.

As can be witnessed from table 8, in general and with the exception of athletes, the SGBs clearly lack official channels through which the various stakeholders can participate in the decision-making processes. That is not to say that all stakeholders should be given institutionalised participation, nor that granting institutionalised participation necessarily constitutes good governance. In any case, it is important that a balance of stakeholder interests is preserved in an SGB, certainly with regard to labour issues. For instance, analogous with collective bargaining practices, clubs (employers) and athletes (workers) inevitably have different interests and therefore should be equally represented within SGBs that govern team sports (Colucci and Geeraert, 2012).

229 This contrasts with the situation in North-America, where collective bargaining agreements govern the employer-employee relationships between the owners of professional sports teams and players' associations (Dryer, 2008). In Europe, on the other hand, sport was for a long time regarded solely as a leisure activity and therefore, the "sports industry" concept is not yet as developed and player unions have been relatively weaker and not equipped with the necessary bargaining powers (Halgreen, 2004, p. 79).

Table 8: Stakeholder representation

| | n | % |
|---|---|---|
| **Stakeholder representation** | | |
| Yes | 28 | ~80% |
| No | 7 | ~20% |
| | | |
| **Decision making power for stakeholders** | | |
| Representative athletes commission has a seat in the board | 4 | ~11% |
| None | 28 | ~80% |
| Undisclosed | 3 | ~9% |
| | | |
| **Categories of represented stakeholders** | | |
| Athletes | 28 | ~80% |
| Referees | 2 | ~6% |
| Coaches | 4 | ~11% |
| Clubs | 1 | ~3% |
| Judges | 1 | ~3% |
| Media | 1 | ~3% |
| Veterinarians | 1 | ~3% |
| | | |
| **Existing stakeholder committees** | | |
| Athletes | 24 | ~69% |
| Coaches | 4 | ~11% |
| Events | 2 | ~6% |
| Clubs | 1 | ~3% |
| Referee | 1 | ~3% |
| Veterinarians | 1 | ~3% |
| Media | 1 | ~3% |
| Marketing and TV | 1 | ~3% |

Sport organisations often complain about a lack of legal certainty, especially with regard to EU law. They worry that their rules, transfer rules in particular, might be contested over and over again by unsatisfied stakeholders and therefore, they ask for a special treatment of their sector (see, e.g., Infantino, 2006; IOC and FIFA 2007; Hill, 2009). It is important to realise that, regardless of questions of righteousness (either moral or legal), the legal uncertainty in the sports sector has its roots in the lack of "vote", or even "voice" of stakeholders. If stakeholders were to be included in the processes decisive of the very rules that regulate their activities, they would very likely experience a sense of "owner-ship". That means that they will come to see the decisions of the SGB as their own decisions, which will make policy implementation more effective (World Bank, 1996, Woods 1999, p. 44). This will very likely preclude them to challenge these decisions - that is, if they perceive their representatives who are involved in the policy process as legitimate (Saward, 2005). In order to obtain much-desired legal certainty, SGBs should therefore focus on actual participation for their stakeholders. Moreover, several scholars

have noted that an equal representation of stakeholders in the policy process contributes to long-term effectiveness (e.g. Young 1992, 1994).

Although the here researched rules-based indicators may differ from the actual outcome, as informal processes may sometimes lead to actual decision-making power for stake-holders, it is safe to say that there still is ample room for improvement on the matter of stakeholder representation in SGBs. That goes in particular for athlete representation, since mere consultation offers no assurance that athletes' concerns and ideas will actually be taken into account (Arnstein, 1969, p. 219).

## Executive body members

This section presents empirical evidence on executive body members of SGBs. In particular, using a mixture of input and outcome based indicators, the focus is put on nationality issues, gender balance, and age and term limits.

### Nationality issues

There is no general geographic approach among the SGBs with regard to identifying confederations. Drawing inspiration from the structure of *inter alia* FIFA, we discern six regions when presenting the results on how the executive bodies are composed: Africa, Asia, Europe, NaCaCa[230], Oceania and South America.

Our survey data clearly demonstrates that Europe has a dominant role within the SGBs. As shown in table 9, the old continent has almost twice as many officers in the executive bodies as the other regions combined. Europe has in average four seats while the other regions have between two and 0.6. Thus, our data supports the calls for greater diversity in the executive and governing bodies in SGBs (e.g. Katwala, 2000; IOC, 2009; Schenk, 2011).

Table 9: Number of members on the executive bodies per region

| | n | % |
|---|---|---|
| **Executive body members** | | |
| Africa | 33 | ~8% |
| Asia | 75 | ~18% |
| Europe | 191 | ~47% |
| NaCaCa | 58 | ~14% |
| Oceania | 22 | ~5% |
| South America | 26 | ~6% |

The European domination does not only extend to the number of members on the executive body, but can also be witnessed with regard to the number of presidents and general secretaries. As table 10 below shows, 25 presidents (71%) and 26 general secretaries (74%) are European.

230 North America, Central America and the Caribbean

European athletes have always been well-represented at the Olympics and Europe has until now hosted 29 of the 48 Olympics and is also well-represented in the all-time Olympic medal table. Together with a great Olympic history, Europe has had great economic and political impact during the 20th century and its all-together historic influential role explains its current domination. Recently, other regions have developed economically, politically and also in sports. In that regard, the Europe's dominant role could be labelled anachronistic.

Table 10: Number of presidents and secretary generals per region

| | n | % |
|---|---|---|
| **Number of presidents** | | |
| Africa | 2 | 6 |
| Asia | 4 | 11 |
| Europe | 25 | 71 |
| NaCaCa | 2 | 6 |
| Oceania | 0 | 0 |
| South America | 2 | 6 |
| | **n** | **%** |
| **Number of secretary generals** | | |
| Africa | 1 | 3% |
| Asia | 2 | 6% |
| Europe | 26 | 74% |
| NaCaCa | 6 | 17% |
| Oceania | 0 | 0% |
| South America | 0 | 0% |

In many ways, the United States remains the most dominant country in the world and this is clearly reflected in its sporting influence, although there is no American president within the SGBs. Since it has 31 of the regions' 58 seats, it is clear that the United States has a dominating role within the NaCaCa region. Moreover, the US has the most seats per nation worldwide, no other nation has more than its 19 seats and at least one American has a seat in in 24 SGBs' executive bodies.

Another great power, China, does not have an equally dominant role as the US since it has "only" 10 seats in the executive bodies. China does not even hold the most seats among the Asian countries since South Korea indeed possesses 16 seats, while delivering two of the four Asian SGB presidents. Given the emerging economic status of the country, China's modest representation within SGBs is rather surprising.

In Europe, France, Germany, Great Britain, Italy and Spain all have a leading role and ample opportunity to exert influence within the SGBs. The 'big five' possess 89 of the 191 seats that Europe currently holds and the same tendency can be witnessed with regard to presidents and general secretaries. Thirteen out of 25 European president and 15 out of 26 European general secretaries are currently held by an official from above mentioned nations.

Contrasting with its size and performance on the global sporting scene, Switzerland has many prestigious posts within the SGBs. Although its five general secretary positions can to some extent be explained by the fact that the SGBs' are often based in Switzerland, its five president posts are notable. In addition, two of the most prestigious SGBs, FIFA and IIHF, have a Swiss president.

Finally, one hundred nations which have a National Olympic Committee recognised by the IOC are not represented within any of the surveyed SGBs. Economic reasons may explain this phenomenon.

## Gender inequality

Equity issues in terms of positions within the organisation have been raised within a number of INGSOs, in particular with regard to gender (Henry and Lee, 2004, p. 33). Consequently, there have been calls for greater diversity within the executive bodies of INGSOs (Schenk, 2011; Council of Europe, 2012).

Our survey indicates that there is an overwhelming overrepresentation of male members within the SGBs' executive bodies. Only 12 per cent of the executive members of all SGBs are female. Fifteen of the 35 analysed organisations do not have female representatives within the executive body and the same pattern can be discerned with the number of female presidents. As table 11 below indicates, only three of the surveyed SGBs have a female president and only four have a female secretary general.

Table 11: Female presidents and secretary generals

| | n | % |
|---|---|---|
| **Female president** | | |
| Yes | 3 | ~9% |
| No | 32 | ~91% |
| | | |
| **Female secretary general** | | |
| Yes | 4 | ~11% |
| No | 31 | ~89% |

As table 12 below shows, only 20 of the 35 SGBs have a female representative in the executive body and only 12 have more than one female representative.

Some of the analysed SGBs have a reasonable distribution of board seats between men and women. In addition, 16 organisations have some form of regulations in their statutes assuring female representation within the organisation, such as a quota in the executive body or in some of the organisations' commissions. Both FIH and ITU have introduced certain provisions into their statutes with the aim to achieve a gender balance and this has proven to be an important way of integrating more female representatives into the organisations' executive bodies.

Katwala (2000, p. 3) stresses the importance of sport as a powerful symbol and catalyst for changes in gender roles. In order to realise a sustainable sporting culture, it is of

great importance to involve women in the governance of sport. Paternalistic claims that everybody's interest are taken into account will not be taken serious if key groups such as women not are involved (*Ibid.* p. 9). Hence, it is important that female representatives are placed in decision-making positions so that they can contribute their experiences and views to the organisations and even become role models for other women who want to become involved in sport organisations.

Table 12: Female inclusion

| | n | % |
|---|---|---|
| **Female representatives** | | |
| Yes | 20 | ~57% |
| No | 15 | ~43% |
| | | |
| **More than one female representative** | | |
| Yes | 12 | ~34% |
| No | 23 | ~66% |

## Tenure issues

There have been calls for a limitation of terms in office from outside the sports world (e.g. Council of Europe 2012; Transparency International, 2011). Katwala (2000, p. 27) also calls for a term limitation, both for presidents and executive body members, and states that presidents that hold office for more than two four year terms may result in an unhealthy concentration of power.

The idea of term limitation derives from antiquity (Oakley, 1994, 14 ff.). It is presumed that term limits constitute a remedy for several tenure issues. Firstly, for high rates of re-election stemming directly from the tremendous advantages incumbents enjoy over challengers because with seniority comes power. Secondly, for apathetic voters due to the certain re-election of incumbents, which results in politicians naturally losing touch with voters. Hence, term limits make sure that elections are real contests about the issues, provide new ideas for solving problems and prevent the concentration of power (Cohen and Spitzer, 1992, 479-480).

Arguments against term limits are the waste of talent and experience and the presumption that more terms induces elected officials to undertake extensive and arduous enterprises for the public benefit instead of worrying about their prospects after leaving office (*Ibid.*, 480-482). However, it has been argued that term limits in fact reduce the value of holding office, which induces "truthful" behaviour by incumbents, which in turn enables the voter to selectively elect higher quality agents to a second term in office (Smart and Sturm, 2004). From a democratic perspective, it is paramount that individuals have an *actual* possibility to be elected, enabling groups that might previously have been overseen and underrepresented to hold a position of power (Thompson and Moncrief, 1993). Hence, democracy within sport organisations may deepen through a continuous renewal of the core of the organisations.

As table 13 below outlines, only eight out of 35 organisations have regulations outlined in their statutes regarding the number of terms allowed in office, and only six have rules stating that members must stand down when they reach a specific age. Only the FIH and the International Skating Union (ISU) have such limitations in place. Thus, it would certainly be desirable for more international sport organisations to implement term limits into their statutes.

Table 13: Age and term limits within the SGBs

| | n | % |
|---|---|---|
| **Age limit** | | |
| Yes | 6 | ~17% |
| No | 29 | ~83% |
| *Average age limit: 73 years* | | |
| **Term limit** | | |
| Yes | 8 | ~23% |
| No | 27 | ~77% |

The monopolisation of power due to a lack of term limits is evidenced for instance by the average number of years SGB presidents are in office, which is a stunning 14. Outliers are the International Luge Federation (FIL), which has only had one president in its 37 year existence, and the World Taekwondo Federation (WTF), whose president has been in office for the past 29 years (see table 14).[231] The IOC has had 7 presidents since its founding in 1894, who have been in office for an average of 15 year.

231 We could not find information for the International Rugby Board (IRB) and the International Golf Federation (IGF).

Table 14: Figures on tenures for SGB presidents

| Organisation | Year founded | Number of former presidents | Average years in office for former presidents | Current presidency |
|---|---|---|---|---|
| FIL | 1957 | 1 | 37 | 1994- |
| WTF | 1975 | 1 | 29 | 2004- |
| FIS | 1924 | 3 | 25 | 1998- |
| IAAF | 1912 | 4 | 22 | 1999- |
| FIVB | 1947 | 3 | 22 | 2012- |
| FIBT | 1923 | 4 | 22 | 2010- |
| ITU | 1989 | 1 | 19 | 2008- |
| FISA | 1892 | 5 | 19 | 1989- |
| FILA | 1905 | 5 | 19 | 2002- |
| AIBA | 1920 | 5 | 17 | 2006- |
| FIG | 1881 | 7 | 16 | 1996- |
| ITTF | 1926 | 5 | 15 | 1999- |
| ISSF | 1907 | 5 | 15 | 1980- |
| IHF | 1946 | 4 | 14 | 2000- |
| UCI | 1900 | 8 | 13 | 2005- |
| FIFA | 1904 | 7 | 13 | 1998- |
| UIPM | 1948 | 4 | 11 | 1993- |
| ISU | 1892 | 9 | 11 | 1994 |
| ISAF | 1907 | 6[232] | 11 | 2012- |
| IWF | 1905 | 10 | 10 | 2000- |
| WA (FITA) | 1931 | 8 | 9 | 2005- |
| IJF | 1951 | 9 | 8 | 2007- |
| ICF | 1924 | 10 | 8 | 2008- |
| FIH | 1924 | 10 | 8 | 2008- |
| IIHF | 1908 | 12 | 7 | 1994- |
| FIE | 1913 | 14 | 7 | 2008- |
| FIBA | 1932 | 11 | 7 | 2010- |
| FEI | 1921 | 12 | 7 | 2006- |
| FINA | 1913 | 16 | 6 | 2009- |
| WCF | 1966 | 9 | 5 | 2010- |
| BWF | 1934 | 17 | 4 | 2005- |
| ITF | 1913 | 28[233] | 2 | 1999- |
| IRB | 1886 | - | - | 2008- |
| IGF | 1958 | - | - | - |
| IBU | 1993 | -[234] | - | 1993- |
| **Average** | | **8** | **14** | |

232 From 1906 to 1946 a chairman was elected from time to time to orchestrate the annual meetings.
233 Since 1938.
234 Anders Besseberg has been president since IBU was founded in 1993.

## Conclusion

The governance of sport is characterised by self-regulation. SGBs thus determine their own internal functioning while, in general, they are embedded into a legal system that gives them protection against internal and external examination and there exists no generally agreed upon checklists for good governance for these organisations. Although the painted picture is far from a holistic one, the hope is that this paper adds a few empirical insights on structural issues relating to the quality of the self-governance of SGBs to the growing body of academic literature on good governance in sport.

Firstly, this paper presents empirical evidence on the lack of accountability arrangements in SGBs. In particular, the watchdog function of their member organisations is severely undermined by the general absence of objective criteria and transparency in the distribution of funding to members. With regard to checks and balances, arguably the most topical issue is the total lack of independent ethics committees, if any, and their inability to conduct *ex officio* investigations. In sum, accountability deficits not only constitute a breeding ground for corruption and the concentration of power, they also impede the impetus for change towards good governance.

Secondly, our survey demonstrates that most SGBs have institutionalised athlete participation. However, in the overwhelming majority of the organisations, they have not been granted formal decision making power. Moreover, other stakeholders are still largely quarantined from participation opportunities. Although we focused on rules-based indicators with regard to this issue and thus, actual decision making power may vary, it is safe to say that there is still room for improvement on this issue.

Thirdly, with regard to executive body members, there is the rather anachronistic dominance of the European continent and also the preponderance of male officials. SGBs simply cannot claim that everybody's interests are taken into account when key groups are not (sufficiently) involved. In addition, the general lack of term limits poses serious threats with regard to the concentration of power, which is evidenced for instance by the overall number of years SGB presidents are in office.

The authors of this paper do not claim to paint a comprehensive picture on governance issues in SGBs relating to accountability, good governance and executive body members. Indeed, there is still a lot of data left to be uncovered and many research avenues are still to be explored. For instance, the focus of this paper was mostly on rules based indicators. Future research could focus on outcome based indicators such as the actual influence stakeholders can exert in decision making processes. In addition, although the issue was present between the lines, the topical good governance concept of transparency was perhaps not given the attention it deserves.

In spite of the obvious limitations of this paper, the presented empirical evidence clearly supports the recent calls for good governance in sport. SGBs need to agree upon a set of well-defined criteria of good governance and take action towards compliance with those. Only then, the self-governance of sport will be credible and justifiable.

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# AGGIS Sports Governance Observer

## Introduction

The Sports Governance Observer' will enable not only Play the Game and our AGGIS partners, but any person with a serious commitment to better sports governance, including senior officials within sports organisations, to register and analyse the quality of governance in international or major national sports organisations. The tool is based on academic sources on good governance and existing codes for good governance in other sectors.

The Sports Governance Observer consists of four dimensions: Transparency and public communication; Democratic process; Checks and balances and Solidarity and a range of more evidence-based questions labelled 'factual questions´. Each dimension consists of a checklist of factors that are important indicators of good governance and for the improvement of governance within sports organisations. It is important to stress that the indicators are not to be treated as simple yes or no questions and that they indeed should be assessed in a more detailed way. This is illustrated below by means of an example.

Example: Checks and balances – question 8

| |
|---|
| The organisation has an independent body (e.g. Ethics Committee) to check the application of the rules referred in question 5-7 above |

> In the view of checks and balances, an ethics committee could in theory be called to adjudicate on the behaviour of members of the executive body of an organisation. Therefore, the ethics committee should be elected by the Congress rather than by the governing body. Moreover, the ethics committee should have the power to initiate proceedings ex officio, thus without referral by the executive body or president.
>
> Source: Geeraert, Alm and Groll (2012), Working paper for Action for Good Governance in International Sports Organisations (AGGIS) project[235]

Above statement outlines and determines that the mere presence of an ethics committee does not guarantee an effective check and balances arrangement. Indeed, several additional parameters have to be fulfilled in order for the organisation to receive the maximum score for the indicator in the final Sports Governance Observer.

It is also important to notice that the organisations need to provide external actors with information on their internal functioning in order to make the assessment and to help them improve their governance. After a testing period during 2013, the Sports Governance Observer will reach its final form, when each indicator will be equipped with an easy to use 'fiche méthodologique' that explains how to grade each indicator and why this indicator has been chosen.

235 Good governance in International Non-Governmental Sport Organisations: an empirical study on accountability, participation and executive body members in Sport Governing Bodies

| Transparency and public communication |
|---|
| 1. The organisation publishes its statutes/constitution on its website |
| 2. The organisation publishes its by-laws on its website |
| 3. The organisation publishes its sport rules on its website |
| 4. The organisation publishes its organisational chart on its website |
| 5. The organisation publishes its strategic plan on its website |
| 6. The organisation publishes the agenda and minutes of its statutory meetings on its website |
| 7. The organisation gives the media access to its general assembly |
| 8. The organisation publishes basic biographical information about its board members and senior officials on its website |
| 9. Contact details to board members and senior officials are published on the website |
| 10. The organisation publishes information about its member federations on its website |
| 11. The organisation publishes its annual general activity report on its website |
| 12. The organisation publishes reports of its standing committees on its website |
| 13. The organisation publishes an annual financial report on its website |
| 14. The organisation publishes remuneration, for example per diem payments and bonuses of its board members and senior officials on its website |
| 15. The organisation publishes main event reports with detailed and relevant information on its website |

| Democratic process |
|---|
| 1. There are elections of the president and the governing bodies and standing committees |
| 2. The elections are on the basis of secret ballots and clear procedures detailed in its governing document/s |
| 3. The organisation offers to the candidates standing for election opportunities to present their programme/manifesto |
| 4. The decisions on allocation of major events are made through a democratic, open and transparent process |
| 5. The organisation's major policy decisions are taken by ballot in the general assembly/congress or similar |
| 6. The organisation defines a quorum in its governing document/s for its decision making bodies |
| 7. The organisation's elected officials have a term limit |
| 8. The organisation's general assembly meets at least once a year |
| 9. The organisation's governing body meets regularly |
| 10. The organisation has gender equity guidelines for its leading officials |
| 11. The criteria for a bid for major events are communicated to its members in good time |
| 12. The organisation provides opportunity for stakeholders to be represented within the organisation |

| Checks and balances |
|---|
| 1. The organisation has an internal audit committee |
| 2. The organisation is externally audited by international recognised standards |
| 3. The organisation has accounting control mechanisms in place |
| 4. The organisation separates regulatory and commercial functions |
| 5. The organisation has or recognises an Ethics/Integrity Code for all its members and officials |
| 6. The organisation has clear conflict of interest rules |
| 7. The organisation recognises a code or has its own standards of good governance |
| 8. The organisation has an independent body (e.g. Ethics Committee) to check the application of the rules referred in question 5-7 above |
| 9. The organisation's decisions can be contested through internal channels specified in its governing document/s |
| 10. The organisation recognises Court of Arbitration for Sport (CAS) as an external channel of complaint and allows athletes and officials to contest decisions in civil courts |
| 11. The organisation recognises and complies with the WADA World Anti-Doping Code |

| Solidarity |
|---|
| 1. The organisation allocates specific resources for the global development of grass-root activities |
| 2. The organisation has legacy requirements for communities in which its events are hosted |
| 3. The organisation inspects and audits the use of funds given to its internal stakeholders |
| 4. The organisation adopts an environmental management system (ISO, EMAS[236] or similar) for its major events |
| 5. The organisation has a well-defined Social Responsibility (SR) strategy and/or programmes |
| 6. The organisation controls the use of funds given to its SR programmes and applies ISO 26000[237] standard or similar |
| 7. The organisation offers consulting to member federations in the areas of organisations and management through workshops, one to one advice or similar |
| 8. Representatives from economically disadvantaged member federations can apply for support to attend the general assembly |
| 9. The organisation adopts a clear anti-discrimination policy |

236 http://ec.europa.eu/environment/emas/index_en.htm
237 http://www.iso.org/iso/home/standards/iso26000.htm

| **Factual questions** |
|---|
| 1. Founding year |
| 2. Where is the organisation located? |
| 3. The national law under which the organisation is governed |
| 4. Legal status |
| 5. President |
| 6. Secretary General (head of administration) |
| 7. By whom is the president elected? |
| 8. By whom is the Secretary General elected/appointed? |
| 9. To whom is the Secretary General answerable? |
| 10. Number of members of the Executive Committee? |
| 11. By whom are the members of the Executive Committee elected/appointed? |
| 12. The organisation's elected/ officials have an age and term limit |
| 13. Geographical spread of the Executive Committee members |
| 14. Which body within the organisation awards the main events? |
| 15. Members systems and number of members/units |
| 16. Does the organisation offer statistical data about its participation rates etc.? |
| 17. The organisation publishes a yearly budget |
| 18. The size of the financial reserve of the organisation |
| 19. The organisation has relations/cooperation with sports organisations representing disabled |

# Existing governance principles in sport: a review of published literature

**By Professor Jean-Loup Chappelet and Michaël Mrkonjic, Swiss Graduate School of Public Administration, University of Lausanne, Switzerland**

Since the beginning of the 21st century, the "good" governance theme has become a must when sports organisations are facing cases of corruption, doping, match fixing and mismanagement. Due to the philosophical debate about what is considered as an appropriate ("good") behavior in a given society and the theoretical debate on the concept of governance, "good" governance acquired the quality of being highly extensible and flexible. Therefore, it can encompass a large scope of situations.

If we consider that the International Olympic Committee created such a narrative through the *Basic universal principles of good governance of the Olympic and sports movement* and their formal incorporation in the IOC Code of Ethics and the Olympic Charter, the "good governance" theme acquired the power to cover a wide range of sports actors all around the world. Indeed, according to the fundamental principles of the Olympism, sports organisations within the Olympic movement - the IOC, IFs, NOCs, OCOGs, NAs, clubs, athletes, judges, referees, coaches, technicians and other organisations recognized by the IOC - shall have the responsibility for ensuring that principles of good governance are applied. And this observation applies also to supranational institutions. When the Council of Europe publishes the *Recommendation Rec (2005)8 on the principles of good governance in sport,* 47 countries – including their national sports organisations - are affected by such an institutional tool.

However, the "good" governance theme emerged in other parts of the world, under different cultures, under different theoretical influences (corporate governance or democratic governance), sometimes under different wordings such as "good practices", "principles of conduct" or simply governance. Therefore, the aim of this paper is to present an overview of existing and published governance principles in sport. It puts the emphasis on international governmental organisations, such as the Council of Europe and the European Union; international non-governmental organisations, such as Transparency International and Play The Game; the work of scholars such as Henry and Lee (2004) and Chappelet and Kübler-Mabott (2008); sports organisations, such as the International Olympic Committee and the Union Cycliste Internationale; quasi-governmental sports organisations, such as UK Sport and the Australian Sports Commission (see table 1).

Table 1: Published literature by category

**International governmental organisations**

**Council of Europe**

| | |
|---|---|
| 2004 | Resolution I on the principles of good governance in sport |
| 2005 | Recommendation Rec (2005) 8 on the principles of good governance in sport |
| 2012 | Resolution 1875 (2012) Good governance and ethics in sport |

**European Union**

| | |
|---|---|
| 2000 | Nice Declaration on the specific characteristics of sport and its social function in Europe |
| 2007 | White paper on sport |
| 2011 | Communication to the European Parliament: developing the European dimension of sport |
| 2013 | Principles of good governance in sport (to be published by Expert Group GG) |

**International non-governmental organisations**

**Transparency International**

| | |
|---|---|
| 2011 | Safe hands: building integrity and transparency at FIFA |
| 2011 | ICC governance review |

**Play the Game**

| | |
|---|---|
| 2011 | Cologne consensus: towards a global code for governance in sport |

**One World Trust**

| | |
|---|---|
| 2007 | 2007 Global Accountability Report : FIFA accountability profile |
| 2008 | 2008 Global Accountability Report : IOC accountability profile |

**Transnational corporations**

**Pricewaterhouse Coopers**

| | |
|---|---|
| 2012 | An independent governance review of the International Cricket Council |

**Scholars**

**Katwala**

| | |
|---|---|
| 2000 | Democratising global sport |

**Chaker**

| | |
|---|---|
| 2004 | Principles of good governance in sport |

**Henry and Lee**

| | |
|---|---|
| 2004 | Good organisational governance |

**Burger and al**.

| | |
|---|---|
| 2005 | Best Practice Governance Systems |

**McNamee and Flemming**

| | |
|---|---|
| 2005 | Conceptual model for the corporate governance of sport |

**Chappelet and Kübler-Mabott**

| | |
|---|---|
| 2008 | Principles for the governance of world sport |

**Taylor and O'Sullivan**

| | |
|---|---|
| 2009 | Board structures of sporting governing bodies |

**De Zwart and Gilligan**

| | |
|---|---|
| 2009 | Key governance indicators in sport organisations |

**Mowbray**

| | |
|---|---|
| 2012 | Contingent and standards governance framework |

### International and European sports associations

**European Olympic Committees and Fédération Internationale de l'Automobile**

2001 Statement of good governance principles

**Union Cycliste Internationale**

2004 Rules of good governance

**Commonwealth Games Federation**

2006 Principles of conduct

**International Olympic Committee**

2008* Basic universal principles of good governance of the Olympic and sports movement (*2 modifications in 2012 related to Structures, regulations and democratic process)

**European Team Sports Association**

2008 Good governance by sports federations

**Union of European Football Associations**

2009 Good governance and autonomy

2012 Good governance menu card for UEFA member associations 2012-2016

### National sports associations and agencies

**Sport and Recreation South Africa**

2004 Best practice principles of good governance in sport

**UK Sport**

2004 Good governance: a guide for national governing bodies of sport

**Dutch NOC*NSF**

2005 Good sport governance code

**United States Olympic Committee**

2005 USOC preliminary NGB governance guidelines

**Sport and Recreation New Zealand (Sport New Zealand)**

2006 Nine steps to effective governance: building high performing organisations

**Wales Sports Council**

2006* Sound governance and good management characteristics (* circa ; year of publication not disclosed but reference to the document appears in the 2006-2007 annual report)

**Sport and Recreation Alliance (UK)**

2011 Voluntary code of good governance for the sport and recreation sector

**Sport England**

2011 Good governance guidance

**Australian Sports Commission**

2012 Sports Governance Principles

Table 2: International governmental organisations

| **Council of Europe** | | |
|---|---|---|
| 2004 | 2005 | 2012 |
| *Resolution I on the principles of good governance in sport* | *Recommendation Rec (2005) 8 on the principles of good governance in sport* | *Resolution 1875 (2012) Good governance and ethics in sport* |
| *Adopted at the 10th Conference of European Ministers responsible for sport in Budapest* | *Adopted by the Committee of Ministers* | *Adopted by the Parliamentary Assembly* |
| wcd.coe.int/ViewDoc.jsp?Ref=CM(2004)213&Language=lanEnglish&Site=CM | https://wcd.coe.int/ViewDoc.jsp?id=850189&Site=CM | www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=18258&Language=EN |
| Democratic structures based on clear electoral procedures open to the membership | Democratic structures for nongovernmental sports organisations based on clear and regular electoral procedures open to the whole membership | Federations, associations, professional leagues and other sports organisations should include in their codes of sports ethics the provisions needed to prevent criminal associations from infiltrating the management bodies of sports companies or authorities. The purchase of sports clubs using capital of unknown origin should be prevented by making it compulsory for clubs to seek information about potential owners |
| Professional organisation and management, with an appropriate code of ethics and procedures for dealing with conflicts of interest | Organisation and management of a professional standard, with an appropriate code of ethics and procedures for dealing with conflicts of interest | The Basic Universal Principles of Good Governance of the Olympic and Sports Movement, drawn up by the International Olympic Committee (IOC) in 2008, should be complied with by all sports organisations |
| Accountability and transparency in decision making and financial operations | Accountability and transparency in decision making and financial operations, including the open publication of yearly financial accounts duly audited | Within sports federations, it is necessary to introduce supervisory mechanisms achieving a new balance in the powers of their presidents and ensuring that presidents are accountable to members' assemblies |
| Fairness in dealing with the membership and solidarity | Fairness in dealing with membership, including gender equality and solidarity | In this context, the term of office for which presidents of federations are elected should be limited (for example a four year term, renewable only once). In addition, within sports federations, multiple candidates should be encouraged to stand for election as president, as should female candidates at every level. |
| A basis for setting an equitable partnership between the public authorities and the sports movement | | The statutes of sports federations should prevent any form of conflict of interest by prohibiting individuals from holding senior offices within those federations if, at the same time, they hold senior posts in a club |

| | | |
|---|---|---|
| | | The governance mechanisms of sports federations should be such as to involve athletes in the major decisions relating to the regulation of their sport. In this respect, encouragement could be given to the representation of players' and athletes' trade unions and to the presence of former athletes of acknowledged integrity on federation committees |
| | | It would be necessary to improve, within all sports federations, the provisions concerning the committees responsible for examining candidatures for the hosting of major international sports events. Strict rules on eligibility and on these committees' election and operating arrangements should be drawn up in order to prevent and punish any conflicts of interest or acts of self-interest among members, and strict checks should be provided for in order to avoid any attempted bribery or the exercise of improper influence on voting members' final decision. The possibility of including outside observers on such committees without the right to vote should be considered |
| | | Sports associations and federations at every level (regional, national, continental and international) should publish annually (on their websites and in their activity reports) details of their income and expenditure and the remuneration of their senior executives and elected managers |

| European Union | | |
|---|---|---|
| 2000 | 2007 | 2011 |
| *Nice Declaration on the specific characteristics of sport and its social function in Europe* | *White paper on sport* | *Communication to the European Parliament : developing the European dimension of sport* |
| *Adopted by the European Council in Nice* | *Presented by the European Commission* | *Adopted by the European Commission* |
| http://ec.europa.eu/sport/documents/doc244_en.pdf | http://ec.europa.eu/sport/documents/wp_on_sport_en.pdf | http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri= COM:2011:0012:FIN:EN:PDF |
| Transparency | Transparency | Transparency |
| Democracy | Democracy | Democracy |
| Solidarity | Accountability | Accountability |
| Ethics | Representation of stakeholders | Representation of stakeholders |

Table 3: International non-governmental organisations

| Transparency International | |
|---|---|
| 2010 | 2011 |
| *Safe hands: building integrity and transparency at FIFA* | *ICC governance review* |
| *Published by Transparency International and FIFA* | *Published by Transparency International* |
| http://www.transparency.ch/de/PDF_files/Divers/110816_FIFA_SafeHands.pdf | http://blog.transparency.org/2012/01/31/defining-theboundaries-a-blue-print-for-enhancing-cricketadministration/ |
| Putting the past behind | **International** |
| New procedures of good governance and transparency (more detailed reporting, rotation; roles and responsi-bilities; remuneration, benefits, payments, grants) | Widen its focus from corruption among players to encompass other forms of corruption that threaten the integrity of the game such as trading of influence and cronyism |
| The way forward through the application of Anti bribery codes developed in other sectors | Conduct an independent risk assessment of the corruption risks facing cricket at the national and international levels, and what impacts these risks may have on the integrity and reputation of the game |
| Putting anti-corruption policies into practice (Review of the code of ethics; review of the organisational structures: key management personnel, high risk areas, strengthening existing transparency measures, investigations and sanctions; implementation strategy: communication policy and training, monitoring and reporting) | Commission a review of anti-corruption best practice in other sectors and benchmark itself against other international organisations, both in sport and other spheres |
| | Based on the above risk assessment and benchmarking, the ICC should introduce best practice policies and procedures in all areas that are appropriate to mitigate the risks to integrity |
| | Acknowledge its role in the global governance of cricket and take responsibility for setting out governance standards for member countries and significant matches, competitions or leagues played under the auspices of private promoters |

| | |
|---|---|
| | Create a mechanism that allows individual supporters of the game throughout the world to convey their views and opinions to their respective national boards or Federations, and thence to the ICC, as appropriate, who could take these into account when making significant decisions |
| | Review its internal procedures for dealing with corruption cases, including the desirability of establishing an independent anti-corruption tribunal, to ensure that it follows international best practice |
| | Review the arrangement whereby corruption and security have been combined into a single unit within the council. Adequate resources for anti-corruption investigation and enforcement should be made available. National boards or Federations should also have more resources for investigation and enforcement |
| | Review its whistleblowing procedures to ensure that they are confidential, provide appropriate protection, are available to all the game's stake-holders, and are widely publicised |
| | More transparent about the type, quality and response to the anti-corruption training it offers to players and officials |
| | Greatly increase the information available on its website about its approach to governance and corruption, and the progress it is making. All policies and procedures should be available for review unless there is a legitimate reason for confidentiality |
| | Introduce greater accountability into its govern-ance structures, and in particular in its board and key committees |
| | The ICC and national boards should review their anti-corruption training and mentoring procedures to ensure that they are state of the art and aligned with best practice |
| | **Domestic** |
| | Require national boards or Federations to have in place codes of conduct, policies and procedures that reflect ICC's own global best practice ap-proach. The ICC should also have capacity building programmes to assist bodies who need support to improve their standards within agreed time-frames |
| | There should be greater transparency of national boards, and greater accountability to stakeholder groups including amateur and professional players and supporters, for example through greater disclosure of information, including policies and decisions, by national boards |

| | |
|---|---|
| | Member countries should consider creating anticorruption tribunals at domestic levels to hold individuals and organisations to account, if existing anti-corruption mechanisms are inadequate |
| | Effective mechanisms to review whether domestic boards are adhering to anti-corruption codes and procedures, and should have strong sanctions, including financial sanctions or suspensions, available to it if member countries' boards or federations are judged to have infringed the rules |
| | **Private organisations** |
| | Ensure that there is proper scrutiny, and due diligence undertaken, of private promoters and their associates |
| | Appropriate measures should be put into place with regard to the ownership structures, financial arrangements and tournament design of high-profile private competitions or leagues to safeguard the integrity and reputation of the game |
| | Private promoters and associated competitions must be subject to oversight of the relevant national board so that all tournaments fall under the purview of ICC, which can if necessary delegate some supervisory authority to the national board of the host nation |

| **Play the Game** |
|---|
| 2011 |
| *Cologne consensus: towards a global code for governance in sport* |
| *Adopted by the participants at the 2011 Play The Game Conference in Cologne* |
| http://www.playthegame.org/fileadmin/documents/Cologne_Consensus.pdf |
| Governance documents and practices, and democratic procedures |
| Representation principles, including age, gender, ethnicity, tenure and stakeholder issues |
| Principles of autonomy and cooperation with governments |
| Transparency and accountability, both operational and financial |
| Monitoring, compliance and enforcement, including the feasibility of an independent agency to this end |
| Development of grass-root sport |
| Education, sharing of information and best practices |
| Equity, inclusiveness, non-discrimination and minority protection |

| One World Trust | |
|---|---|
| 2007 | 2008 |
| *2007 Global Accountability Report*<br>*FIFA accountability profile* | *2008 Global Accountability Report*<br>*IOC accountability profile* |
| http://oneworldtrust.org/publications/doc_view/169-2007-global-accountability-report?tmpl=component&format=raw | http://oneworldtrust.org/publications/doc_view/225-2008-global-accountability-report-black-andwhite?tmpl=component&format=raw |
| Transparency | Transparency |
| Participation | Participation (internal member control / external stakeholder engagement) |
| Evaluation | Evaluation |
| Complaints and response | Complaints and response (internal / external) |

Table 4: Transnational corporations

| Pricewaterhouse Coopers |
|---|
| 2012 |
| *An independent governance review of the International Cricket Council* |
| http://static.icccricket.<br>ya-<br>hoo.net/ugc/documents/DOC_6E43A6280C922ABC51A9C6AB55AA58E1_1328155148580_481.pdf |
| Board |
| Ethics |
| Membership, Board structure and Committees |
| Funding |

Table 5: Scholars

| Katwala |
|---|
| 2000 |
| *Democratising global sport* |
| Katwala, S. (2000). *Democratising Global Sport.* London: The Foreign Policy Centre. |
| Accountability and transparency (term limits for those in charge ; financial transparency ; business and commercial relationships within sports based on fair and open competition and disclosure of key information ; transparent and professional funding ; credible ethics code and independent investigation of abuses ; professional governance and communications) |
| Giving sport's stakeholders a say (athletes ; fans ; sponsors) |
| Institutional cooperation and public interest |
| Fight against doping |
| Hosting major tournaments |
| Match fixing and corruption |
| TV rights and the communications revolution |

| **Chaker** |
|---|
| 2004 |
| *Principles of good governance in sport* |
| Chaker, A.-N. (2004). *Good governance in sport: A European Survey*. Strasbourg: Council of Europe. |
| Freedom of association |
| Freedom of speech |
| Freedom of operation |
| Transparency (audit) |
| Independence (control; conflicts of interest) |
| Democracy (consultation) |

| **Henry and Lee** |
|---|
| 2004 |
| *Good organisational governance* |
| Henry, I. and Lee, P. C. (2004). "Governance and ethics in sport", in *The Business of Sport Management* (Beech, J. and Chadwick, S.), Harlow: Prentice Hall, pp. 25-42. |
| Transparency (clarity in procedures and decision-making, particularly in resource allocation) |
| Accountability (to financial investors and other emotional investors) |
| Democracy (access to representation in decision-making should be available to those who make up the organisation's internal constituencies) |
| Responsibility (for the sustainable development of the organisation and its sport, and steward-ship of their resources and those of the community served) |
| Equity (in treatment of constituencies – for example gender equity and participants/employees with disabilities) |
| Effectiveness (establishing and monitoring of measures of effectiveness with measurable and attainable targets) |
| Efficiency (the achievement of such goals with the most efficient use of resources) |

| **Burger and al.** |
|---|
| 2005 |
| *Best Practice Governance Systems* |
| Burger, S. and al. (2005). "Compliance with Best Practice Governance Systems by National Sports Federations in South Africa", in *Aspects of Sport Governance* (Kluka, D. and al., Eds.), Oxford: Meyer and Meyer Sport, pp. 125-152. |
| Accountability |
| Responsibility |
| Transparency |
| Social Responsibility |
| Independence |
| Fairness |
| Discipline |

| **Chappelet and Kübler-Mabott** |
|---|
| 2008 |
| *Principles for the governance of world sport* |
| Chappelet, J.-L. and Kübler-Mabbott, B. (2008). *The International Olympic Committee and the Olympic System: The governance of world sport*, London: Routledge |
| Transparency |
| Democracy |
| Accountability |
| Autonomy |
| Social responsibility |

| **Taylor and O'Sullivan** |
|---|
| 2009 |
| *Board structures of sporting governing bodies* |
| Taylor, M. and O'Sullivan, N. (2009). "How Should National Governing Bodies of Sport Be Governed in the UK? An Exploratory Study of Board Structure", *Corporate Governance: An International Review*, 17, pp. 681–693. |
| Nonprofit boards should contain a reasonable balance between members possessing appropriate business expertise and members representing the eider membership of the organisation |
| Nonprofit boards should be limited to between 5 and 12 members, thereby facilitating debate while also optimizing decision making |
| Nonprofit boards should separate the roles of chairman and CEO. This separation should make the board more objective and independent while also enabling the board to effectively pursue multiple and often conflicting objectives |
| Nonprofit boards should contain sufficient non-executive representation so as to ensure the independence of decision making |
| NED's should bring onto boards of non-profits specific business insights or experience that the board does not already possess |

| **De Zwart and Gilligan** |
|---|
| 2009 |
| *Key governance indicators in sport organisations* |
| Zwart, F. de and Gilligan, G. (2009). "Sustainable Governance in Sporting Organisations", in *Social Responsibility and Sustainability in Sports* (Rodriguez, P. a al., Eds), Oviedo, Universidad de Oviedo, pp. 165-227. |
| Identification, consultation and participation of stakeholders |
| Access to and timely disclosure of information |
| Fair and ethical decision-making, corporate social responsibility and codes of conduct |
| Principal board responsibilities |
| Competency/experience and skills of directors |
| Board and management roles to be distinguished and specified |

| **Mowbray** |
|---|
| 2012 |
| *Contingent and standards governance framework* |
| Mowbray, D. (2012). "The contingent and standard governance framework for national governing bodies", in *Handbook of Sport Management* (Robinson, L. and al., Eds), London: Routledge, pp. 26-41. |
| Structural standards (framework, induction, purposeful structure, process-based, purposes, board size, tenure, chairman selection, policy) |
| Partnership and communication standards (partnership, relationships, communication, advocacy) |
| Planning standards (strategy, annual plan, meeting plans, resources, performance, financial results, learning, meeting attendance, risk minimisation) |
| Transparency standards (board committees, compliance with integrity, conflict of interest, culture of inquiry, transparency, board members, equal opportunity, independence) |

## Other authors on sport governance (who do not recommend specific principles)

Foster, J. (2006). "Global Sports Organisations and their Governance", *Corporate Governance*, Vol. 6, No 1, pp. 72-83.

García, B. (2011). "The EU and Sport Governance: Between Economic and Social Values", in *Social Capital and Sport Governance in Europe* (Groeneveld, M. and al., Eds.), London: Routledge, pp. 21-40.

Hoye, R. and Cuskelly, G. (2007), *Sport Governance*, Oxford, Elsevier.

Hums, M. A. and MacLean, J. C. (2004). *Governance and Policy in Sport Organizations*, Scottsdale, Arizona: Holcomb Hathaway.

Sawyer, T.H. and al. (2007). *Sport Governance and Policy Development. An Ethical Approach to Managing Sport in the 21st Century.* Sagamore Publishing, Champaign.

Zölch, F. A. (2004), "Corporate Governance im Sport", in U. Scherrer and F. A. Zölch (Hrsg.), *Sportveranstaltungen – im Fokus von Recht und Wirtschaft*, Zürich: Orell Füssli, pp. 93-112.

Table 6: International and European sports associations

| **European Olympic Committees and Fédération Internationale de l'Automobile** |
|---|
| 2001 |
| *Statement of good governance principles* |
| *"The rules of the Game" First international governance in sport conference, Brussels* |
| http://www.fia.com/public/fia_structure/resources/governance_sport.pdf |
| The role of the governing body |
| Structures, responsibilities and accountability |
| Membership and size of the governing body |
| Democracy, elections and appointments |
| Transparency and communication |
| Decisions and appeals |
| Conflicts of interest |
| Solidarity |
| Recognition of other interests |

| **Union Cycliste Internationale** |
|---|
| 2004 |
| *UCI Rules of good governance* |
| http://www.uci.ch/Modules/BUILTIN/getObject.asp?MenuId=&ObjTypeCode=FILE&type=FILE&id=MzQxMDk&LangId=1 |
| Identity |
| Objectives |
| Representation |
| Decision-making process |
| Transparency |
| Communication |
| Sports Management |
| Rules |
| Commercial activities |
| Finances |
| Solidarity |

| **Commonwealth Games Federation** |
|---|
| 2006 |
| *Principles of conduct* |
| *Code of conduct* |
| http://www.thecgf.com/about/constitution.pdf |
| Selflessness |
| Integrity |
| Objectivity |
| Accountability |
| Openness |
| Honesty |
| Non discrimination |

| **International Olympic Committee** |
|---|
| 2008 |
| *Basic universal principles of good governance of the Olympic and sports movement* |
| *Seminar on autonomy of the Olympic and sports movement* |
| http://www.olympic.org/Documents/Conferences_Forums_and_Events/2008_seminar_autonomy/Basic_Universal_Principles_of_Good_Governance.pdf |
| Vision, mission and strategy |
| Structures, regulations and democratic process |
| Highest level of competence, integrity and ethical standards |
| Accountability, transparency and control |
| Solidarity and development |
| Athletes' involvement, participation and care |
| Harmonious relations with governments while preserving autonomy |

| **European Team Sports Association** |
|---|
| 2008 |
| *Good governance by sports federations* |
| *Safeguarding the heritage and future of team sport Conference* |
| http://www.uefa.com/MultimediaFiles/Download/uefa/KeyTopics/74/35/95/743595_ DOWN-LOAD.pdf |
| Appropriate involvement of stakeholders in the decision making process |
| Operating in a democratic and transparent way |
| Fight against racism and corruption |
| Promotion of the principle of fair play |
| Work with public authorities on societal issues: violence; corruption; money laundering; trafficking/smuggling of minors; stadia and security; illegal betting; xenophobia, racism and other forms of discrimination; match fixing and doping |

| **Union of European Football Associations** | |
|---|---|
| 2009 | 2012 |
| *Good governance and autonomy* | *Good governance menu card for UEFA member associations 2012-2016* |
| *4th Value of UEFA Eleven key values* | |
| http://www.uefa.com/uefa/elevenvalues/index.html | MESGO Master thesis by Alex Phillips |
| Openness | Strategy |
| Democracy | Democracy and Inclusiveness |
| Transparency | Transparency |
| | Solidarity |
| | Integrity |
| | Effectiveness and efficiency |
| | Legal stability |

Table 7: National sports associations and agencies

| **Sport and Recreation South Africa** |
|---|
| 2004 |
| *Best practice principles of good governance in sport* |
| *King II Report on corporate governance* |
| Accountability |
| Responsibility |
| Transparency |
| Social responsibility |
| Independence |
| Fairness |
| Discipline |

| **UK Sport** |
|---|
| 2004 |
| *Good governance: a guide for national governing bodies of sport* |
| Governance vs. management |
| Role, responsibilities and liabilities of Board members (Selflessness, Integrity, objectivity, accountability to stakeholders, openness, honesty, leadership |
| Specific role of the Chair |
| Board Members training |
| Board performance and evaluation |
| Conflicts of interest |
| Evaluating the CEO |
| Role of the CEO |
| Overview of the importance of international controls |
| The governing document |
| Effective meetings and information needs |
| Sub committees |
| Supporting the Board |
| Organisational reporting lines |
| Strategic planning |
| Risk management |
| Policies and procedures |
| Internal audit |
| Monitoring, evaluating and KPI |
| Importance of participation and accountability |
| Open organisational culture |
| General Assembly |
| Consultation |
| Electronic communication |
| Annual reports |
| Volunteer management |
| Regulatory compliance |
| Financial reporting |
| Audit |
| Labour law |
| Child protection and working with vulnerable groups |

| **Dutch NOC*NSF** |
|---|
| 2005 |
| *13 points of advice* |
| *Good sport governance code* |
| http://www.nocnsf.nl/cms/showpage.aspx?id=1857 |
| Unity within the organisation |
| Existence and definition of statutes/policy |
| Good administration and healthy financial policy |
| Organisational structure |
| Members |
| Code of conduct for the board approved by the General Assembly |
| Liability of the board |
| Communication |
| Step down of a member of the board |
| Annual meeting of the board |
| Statutory for directors and managers |
| Responsibility of the board (regulate) for the general assembly to be sell able to do its monitoring job |
| The board should well-define the regulations of the following subjects: disciplinary regulation, sexual harassment, discrimination, racism and handing complaints |

| **United States Olympic Committee** |
|---|
| 2005 |
| *USOC preliminary NGB governance guidelines* |
| https://custom.cvent.com/EE7D9F1FF632436E9BD5A04565F24F99 /files/1fe9e6f85e2c4675bda34c8e01b6137b.pdf |
| NGBs should be governed by a board which shall have sole responsibility for governance |
| NGB boards should generally be between 7 and 12 in membership |
| NGB boards should have at least 20% independent directors as well as at least 20% athlete directors |
| NGB boards should have staggered term limits |
| NGBs must have at least the following 3 standing committees: Audit (which shall also have responsibility for ethics matters unless ethics issues are addressed by another committee), Compensation, and Nominating and Governance |
| NGB committees should be of the minimum number and size possible to permit both conduct of the sport and appropriate board governance |
| The role of management and the role of governance should be defined clearly, with each NGB being staff managed and board governed |
| NGBs must be financially and operationally transparent and accountable to its members and the USOC |
| NGBs must adopt best practices for not for profit organizations |
| NGBs must comply with all of the requirements for membership as defined in the Ted Stevens Olympic and Amateur Sports Act, USOC Bylaws, and any USOC Board policies |

| **Sport and Recreation New Zealand (Sport New Zealand)** |
|---|
| 2006 |
| *Nine steps to effective governance: building high performing organisations* |
| http://www.sportnz.org.nz/Documents/Sector%20Capability/effective_govt_2nd.pdf |
| Prepare the job description |
| Develop the work plan |
| Review the structure and content of the standard board meeting |
| Recast the strategic plan |
| The chief executive – recruitment, performance measures and evaluation |
| Enhance the board's monitoring effectiveness |
| Regularly review the board's performance |
| Ensure active succession planning |

| **Wales Sports Council** |
|---|
| Circa 2006 |
| *Sound governance and good management characteristics* |
| http://www.scw.sequence.co.uk/performance-and-excellence/governing-bodies/governance |
| Strong accountability to all members, funders and stakeholders |
| Modern and efficient arrangements for governance |
| Appropriate legal structures |
| Appropriate business planning |
| Clear leadership which commands the respect of players |
| A sport run with energy, enthusiasm and passion |
| Explicit roles and expectations to ensure the optimum contribution from board members, paid staff, volunteers and players |
| Transparent and compliant systems for managing and administering the sport |
| Commitment to ethical standards and fair play |
| Diverse sources of revenue without over-dependence on any one funder |
| Partnerships working to deliver national opportunities for sport |

| **Sport and Recreation Alliance (UK)** |
|---|
| 2011 |
| *Voluntary code of good governance for the sport and recreation sector* |
| http://www.sportandrecreation.org.uk/smart-sport/voluntary-code |
| Integrity: Acting as guardians of the sport, recreation, activity or area |
| Defining and evaluating the role of the board |
| Delivery of vision, mission and purpose |
| Objectivity: Balanced, inclusive and skilled board |
| Standards, systems and controls |
| Accountability and transparency |
| Understanding and engaging with the sporting landscape |

| **Sport England** |
|---|
| 2011 |
| *Good governance guidance* |
| http://www.sportengland.org/funding/small_grants/want_to_apply-1.aspx |
| Board leadership |
| The Board in control |
| The high performance Board |
| Board Review and renewal |
| Board delegation |
| Board and trustee integrity |
| The open Board |

| **Australian Sports Commission** |
|---|
| 2012 |
| *Sports Governance Principles* |
| http://www.ausport.gov.au/__data/assets/file/0010/485857/ASC_Governance_Principles.pdf |
| Board composition, roles and powers |
| Board processes |
| Governance systems |
| Board reporting and performance |
| Stakeholder relationship and reporting |
| Ethical and responsible decision making |

The partners of Action for Good Governance in International Sports Organisations

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The project has received funding from the European Commission under the framework of the Preparatory Actions in Sport.

European Commission