

ARTICLE

Reforming Football: What the EU Can Do

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Abstract

The numerous scandals that have marred the world of football suggest that reform is badly needed. As governing bodies like FIFA and UEFA fail to make meaningful improvements, calls for public regulation are gaining ground. This article explores what the European Union (EU) could do to effect change. Although long hailed as a powerful sports regulator, there is a widespread feeling that the EU's regulatory potential remains unfulfilled. The article argues that the Union is in a unique position to leave a positive mark on football governance if it decides to regulate the sport more extensively. Three options are outlined: increasing the intensity of scrutiny exercised under the internal market rules, changing the approach towards cooperation with football stakeholders, or enacting a European Sports Act. After examining the benefits and drawbacks of each route, it will be claimed that, on balance, the most promising avenue is EU legislation which sets out minimum governance standards as well as substantive requirements, including on human rights, gender equality, and athlete welfare. The conclusion will offer some reflections on what would need to happen for the proposal to materialize, discussing the role of advocacy coalitions and crises in bringing about regulatory change.

Keywords: Football; good governance; EU law; sports regulation; *European Superleague*; Article 114 TFEU

A. Introduction

Football is in dire need of reform. The frequency and magnitude of the controversies which the beautiful game, and those who run it, have generated over the past decade allow for no other conclusion. The arrest of several high-ranking football officials in 2015 and their subsequent prosecution laid bare how deeply engrained corruption, bribery, and fraud have become in the sport.¹ The World Cups in Brazil, Russia, and Qatar demonstrated how little regard the Fédération Internationale de Football Association (FIFA) holds for human rights, especially but not solely those of local residents, migrant workers, and the LGBTQ+ community.² Revelations of sexual abuse committed or facilitated by members of numerous associations—from Afghanistan to Zimbabwe³—are a reminder of how fragile the position of women continues to be within the game.⁴ And these are,

¹DAVID CONN, *THE FALL OF THE HOUSE OF FIFA: THE MULTIMILLION-DOLLAR CORRUPTION AT THE HEART OF GLOBAL SOCCER* (2017).

²Antoine Duval, *How Qatar's Migrant Workers Became FIFA's Problem: A Transnational Struggle for Responsibility*, 12 *TRANSNAT'L LEGAL THEORY* 473, 474 (2022); Daniela Heerdt, *Tapping the Potential of Human Rights Provisions in Mega-Sporting Events' Bidding and Hosting Agreements*, 17 *INT'L SPORTS L. J.* 170, 172 (2018); Megan Corrarino, "Law Exclusion Zones": *Mega-Events as Sites of Procedural and Substantive Human Rights Violations*, 17 *YALE HUM. RTS. & DEV. L. J.* 180, 192 (2014).

³Ed Aarons, Romain Molina & Suzanne Wrack, *From Afghanistan to Zimbabwe: Sexual Abuse Allegations in Football Around the World*, *GUARDIAN* (Mar. 5, 2022), <https://www.theguardian.com/football/2022/mar/05/from-afghanistan-to-zimbabwe-sexual-abuse-allegations-in-football-around-the-world>.

⁴For the latest high-profile example, see FIFA Disciplinary Committee, *Luis Rubiales Bejar*, Decision FDD-15763 (Oct. 26, 2023).

remarkably, only the tip of football's problem iceberg. An extended troubleshooting list includes antiquated governance structures, growing financial imbalances, and inadequate safeguards for athletes, just to name some of the most pressing issues.

For a long time, there was hope that these and similar ailments would be remedied through self-regulation. Football governing bodies like FIFA and the Union of European Football Associations (UEFA) exercise a regulatory role within the sport and could reform the way in which it functions. Some reforms did materialize—meaningful change, however, has not.⁵ Ethics and governance committees were set up but quickly ridden of their critical members;⁶ human rights policies were developed with great fanfare but flouted with even greater ease;⁷ rules on gender equality were adopted but used to keep women out of governance posts.⁸ Overall, it is hard to shake off the feeling that too little is done too late. Where football authorities act, they do the bare minimum to keep public and commercial pressures at bay. Often, they do not act at all. Maybe more worryingly, there is no genuine effort to engage in self-reflection and improvement. Critiques from the outside of how the world of football operates are being dismissed as unfounded.⁹ Critiques from the inside are condemned as unseemly.¹⁰

This realisation has started to seep in with legislators in Europe and globally. France passed an act aimed at “democratising sport,” which introduces transparency requirements for sports officials, establishes timeframes for achieving gender parity in governing bodies, and limits the number of terms for presidents of federations and professional leagues.¹¹ Spain enacted a new sports law in which it strengthened the rights of athletes, tightened the rules in relation to conflicts of interest, and created independent advisors to watch over the rights and interests of fans.¹² Poland has announced that it will impose a 30% quota for women in sports governing bodies.¹³ In other corners of the world, we have seen similar advances in sports regulation, including in Mexico on equal pay,¹⁴ in Korea on athlete maltreatment,¹⁵ and in Australia on sports integrity.¹⁶ But the most ambitious football-specific initiative has emerged in the UK. After years of dissatisfaction with the way in which the sport was run, triggered by insolvencies of historical clubs, an increasing sense of disenfranchisement among supporters, and the announcement of the European Super League, the British government conducted a review of football governance.¹⁷ The resulting report recommends creating an independent regulator with powers to oversee

⁵Steven A. Bank, *Reforming FIFA from the Inside Out*, 52 VAND. J. TRANSNAT'L L. 265, 285 (2019).

⁶Andrew Das, *FIFA Moves to Replace Ethics Committee Leaders*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/sports/soccer/fifa-ethics-committee-fired.html>; Murad Ahmed, *FIFA Ousts Governance Chief in 'Night of Long Knives'*, FIN. TIMES (May 9, 2017), <https://www.ft.com/content/79ed66e2-3504-11e7-bce4-9023f8c0fd2e>.

⁷AMNESTY INTERNATIONAL, *PLAYING A DANGEROUS GAME? HUMAN RIGHTS RISKS LINKED TO THE 2030 AND 2034 FIFA WORLD CUPS* (June 5, 2024).

⁸Mariyam Mohamed v. Asian Football Confederation (AFC) Election, CAS 2019/A/6310 (Ct. of Arb. for Sport) (Jan. 25, 2021).

⁹Lord Peter Goldsmith, *How to Investigate Misbehavior in International Sports Organizations*, in *REFORMING FIFA*, 31, 31 (Mark Pieth ed., 2014).

¹⁰Paul MacInnes, *Lise Klaveness, the Norwegian Who Rocked FIFA: "It's Our Job to Push Further"*, GUARDIAN (Apr. 1, 2022), <https://www.theguardian.com/football/2022/apr/01/lise-klaveness-the-norwegian-who-rocked-fifa-its-our-job-to-push-further>.

¹¹Loi 2022-296 du 2 mars 2022 visant à démocratiser le sport en France [Law 2022-296 of March 2, 2022 on the Democratization of Sport in France], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Mar. 3, 2022.

¹²Ley 39/2022 (B.O.E. 2022, 314) (Spain). For a critical assessment of the scope of the reform, see Borja García, *Luis Rubiales as a Symptom of Spanish Sport Poor Governance Standards*, 29 MANAGING SPORT & LEISURE 1, 3 (2024).

¹³Polish Ministry of Sport and Tourism, *Czas na Kobiety w Sporcie [It's Time for Women in Sport]* (July 18, 2024), <https://www.gov.pl/web/sport/czas-na-kobiety-w-sporcie-ministerstwo-sportu-i-turystyki-zapowiada-nowelizacje-ustawy-o-sporcie>.

¹⁴Mexico Senate Committees Back Bill for Fairer Pay for Women in Sport, REUTERS (Nov. 15 2023), <https://www.reuters.com/sustainability/society-equity/mexico-senate-committees-back-bill-fairer-pay-women-sport-2023-11-16/>.

¹⁵Haewan Park, Michael P. Same & Steven J. Jackson, *The Policy Instrument Mix in South Korea: Precursor to Maltreatment in Sport*, 16 INT'L J. SPORT POL'Y & POLS. 641 (2024).

¹⁶*Sports Integrity Australia Act 2020* (Cth) (Austl.).

¹⁷INDEP. REP., *FAN-LED REVIEW OF FOOTBALL GOVERNANCE: SECURING THE GAME'S FUTURE* (Nov. 24, 2021) https://assets.publishing.service.gov.uk/media/63e4d010d3bf7f05b871200d/Football_Fan_led_Governance_Review_v8Web_Accessible.pdf.

football finance, club ownership, and fan engagement, and forms the foundation for the Football Governance Bill which is currently making its way through parliament.¹⁸

The EU has, by and large, been absent in this story. Which is not to say that it does not regulate football. EU law and policies have famously contributed to—and to an important extent, even pioneered—constraining the autonomy of sport. Since the 1970s, the Court of Justice of the European Union (CJEU) has accepted that professional sports in general,¹⁹ and football in specific,²⁰ constitute an economic activity and, as such, fall into the scope of the European Treaties. It has employed this logic to review the compatibility of nationality requirements,²¹ transfer restrictions,²² agents regulations,²³ and training compensation schemes²⁴ with free movement law. The European Commission has used its authority under the EU competition and state aid provisions to probe into rules on ticket sales,²⁵ multi-club ownership,²⁶ and broadcasting rights,²⁷ as well as financial subsidies.²⁸ In addition, a variety of football and sports-related policies have transpired, including declarations, resolutions, white papers, and cooperation agreements.²⁹

Despite this considerable football *acquis*, there is a widespread feeling that the EU's regulatory potential remains unfulfilled. The Union has remained silent on most of the major problems which have plagued the sport. It has, with the exception of a few non-binding resolutions, not done much to counter the 2015 corruption scandals; it has stayed out of the debate on human rights that emerged in the context of the latest World Cups; it has not taken tangible steps to improve the role of women in football governance. Scholars have begun to study the EU's regulatory reluctance and theorize reasons for it. García noted almost two decades ago that there has been a shift in the Union's relationship with UEFA from conflict to cooperation.³⁰ Geeraert

¹⁸Football Governance Bill 2024-25, HL Bill [213] (Eng.).

¹⁹Case C-36/74, Walrave & Koch v. Ass'n Union Cycliste Int'l, ECLI:EU:C:1974:140, ¶ 4 (Oct. 24, 1974).

²⁰Case C-13/76, Donà v. Mantero, ECLI:EU:C:1976:115, ¶ 12 (July 14, 1976).

²¹*Id.*

²²Case C-415/93, Union Royale Belge Sociétés Football Ass'n v. Bosman, ECLI:EU:C:1995:463 (Dec. 15, 1995).

²³Case T-193/02, Piau v. Comm'n Eur. Cmty., ECLI:EU:T:2005:22 (Jan. 26, 2005).

²⁴Case C-325/08, Olympique Lyonnais SASP v. Olivier Bernard & Newcastle UFC., ECLI:EU:C:2010:143 (Mar. 16, 2010).

²⁵Commission Decision of 20 July 1999 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Case IV/36.888—1998 Football World Cup), 1999 O.J. (L 5/55). *See also* Commission Decision of 27 October 1992 relating to a proceeding under Article 85 of the EEC Treaty (IV/33.384 and IV/33.378 - Distribution of package tours during the 1990 World Cup), 1992 O.J. (L 326/31).

²⁶Commission, COMP/37 806—ENIC/UEFA (2002).

²⁷Commission Decision of 23 July 2003, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398—Joint selling of commercial rights of the UEFA Champions League), 2003 O.J. (L 291/25); Commission Decision of 19 Jan. 2005, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty and Article 53(1) of the EEA Agreement (Case COMP/C-2/37.214—Joint selling of the media rights to the German Bundesliga), 2005 O.J. (L 134/46); Commission Decision of 22 Mar. 2006, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty (Case COMP/C-2/38.173—Joint selling of the media rights to the FA Premier League), 2006 O.J. (C 7/18).

²⁸Commission Decision of 20 November 2013, SA.37109 (2013/N)—Belgium Football stadiums in Flanders, C(2013) 7889; Commission Decision of 18 December 2013, SA.35501—Financement de la construction et de la rénovation des stades pour l'Euro 2016, C(2013) 9103; Commission Decision of 6 March 2013, SA.33584—Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch, C(2013)1152; Commission Decision of 4 July 2016, SA.41613—PSV, C(2016) 4093; Commission Decision of 4 July 2016, SA.40168—Willem II, C(2016) 4061; Commission Decision of 4 July 2016, SA.41612—MVV, C(2016) 4053; Commission Decision of 4 July 2016, SA.41614—Den Bosch, C(2016) 4089; Commission Decision of 4 July 2016, SA.33754—Real Madrid, C(2016) 4080; Commission Decision of 4 July 2016, SA.29769—FC Barcelona, C(2016) 4046; Commission Decision of 4 July 2016, SA.36387—Valencia, Hércules and Elche, C(2016) 4060.

²⁹*See, inter alia*, Amsterdam Declaration on Sport, 1997 O.J. (C 340/136); Nice Declaration on Incorporating the Specific Characteristics of Sport and its Social Functions into the Implementation of Common Policies (2000); Commission, White Paper on Sport COM (2007) 391 final; Resolution of the Council and of the Representatives of the Governments of the Member States Meeting within the Council on the Key Features of a European Sports Model, 2021 O.J. (C501/1); European Parliament, Resolution on EU Sports Policy: Assessment and Possible Ways Forward, 2022 O.J. (C224/2); Commission Decision of 9 June 2022 on the adoption of the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA), C(2022) 3721.

³⁰Borja García, *UEFA and the European Union: From Confrontation to Co-operation?* 3 J. CONTEMP. EUR. RSCH. 202 (2007).

found that although the EU can control the sport through legal and political means, football governing bodies have developed clever strategies for mitigating this control.³¹ Meier and colleagues have come to the conclusion that European institutions have become unduly influenced by the football industry, exemplifying a form of “regulatory capture.”³²

The dynamics leading to EU inaction in this area are, thus, increasingly well understood. What is missing is a positive proposal of what EU action could look like. *If* the EU decided to regulate football more extensively, which measures could and, ideally, should it take? This question has taken on a renewed urgency as a result of not only the spread of governance failures, but the latest wave of litigation affecting the game. In *European Superleague* and the simultaneously decided *Royal Antwerp*, the Court of Justice quashed FIFA and UEFA rules on third-party competitions and home-grown players.³³ The judgments have raised the level of competition law scrutiny to which federations are subjected, paving the way for a series of follow-up challenges directed at the regulation of transfers, agents, and the international match calendar.³⁴ With more and more aspects of football governance under legal pressure, there is a search for ways out of the impasse. In a joint declaration, Europe’s sports ministers have recognized the need for action, inviting the Commission to explore ways to protect solidarity and other principles of “values-based sport,” including democracy, equality, openness, sporting merit, and social responsibility.³⁵

The present Article seeks to contribute to this debate by examining what the EU can do to reform football. I will argue that three main options are available: Increasing the intensity of scrutiny exercised under the existing internal market rules, changing the EU’s approach towards cooperation with football stakeholders, and, finally, enacting European sports legislation. The benefits and drawbacks of each approach will be examined. I will argue that, on balance, it is the legislative route which holds the greatest promise, although it could helpfully be combined with other strategies. In doing so, the analysis is connected to recent calls for EU sports legislation that have been made by scholars like Weatherill and Maduro, as well as the author of this Article.³⁶ I hope to articulate in greater detail the comparative advantages of regulating through legislation, given possible alternatives, and outline the shape this could take. In light of the aforementioned problems surrounding regulatory capture, the elephant in the room is whether the EU can summon the necessary political will to pursue this course of action. I will, at first, bracket the question and assume that it can, focusing on the different regulatory strategies that could, in principle, be adopted. In my final remarks, I shall then offer some reflections on what would need to happen for the proposal to stand a chance of success.

³¹ARNOUT GEERAERT, *THE EU IN INTERNATIONAL SPORTS GOVERNANCE: A PRINCIPAL-AGENT PERSPECTIVE ON EU CONTROL OF FIFA AND UEFA* (2016).

³²Henk Erik Meier, Borja Garcia, Serhat Yilmaz & Webster Chakawata, *The Capture of EU Regulation by the Football Governing Bodies*, 61 J. COMMON MKT. STUD. 692 (2023).

³³Case C-333/21, *European Superleague Company, SL v. Fédération Internationale de Football Association (FIFA) & Union Eur. Football Ass’ns (UEFA)*, ECLI:EU:C:2023:1011 (Dec. 21, 2023); Case C-680/21, *UL & SA Royal Antwerp Football Club v. Union Royale Belge Sociétés Football Ass’n ASBL*, ECLI:EU:C:2023:1010 (Dec. 21, 2023).

³⁴Case C-650/22, *Fédération Internationale de Football Association (FIFA) v. BZ*, ECLI:EU:C:2024:824 (Oct. 4, 2024); C-209/23 *RRC Sports GmbH v. Fédération Internationale de Football Association (FIFA)* (Mar. 30, 2023), <https://curia.europa.eu/juris/documents.jsf?num=C-209/23> (pending); C-428/23 *ROGON v. Deutscher Fußballbund e. V. (DFB)*, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-428/23> (pending). See also Statement, FIFPRO Europe, *Legal Claim Against FIFA* (June 13, 2024), <https://fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa>.

³⁵*Déclaration des ministres des sports européens pour un modèle sportif basé sur la solidarité*, LE MÉRITE SPORTIF ET L’IMPACT SOCIÉTAL DU SPORT (2024), <https://www.sports.gouv.fr/declaration-des-ministres-des-sports-europeens-pour-un-modele-sportif-base-sur-la-solidarite-le>.

³⁶Stephen Weatherill, *Saving Football from Itself: Why and How to Re-make EU Sports Law*, 24 CAMBRIDGE Y.B. EUR. LEGAL STUD. 4, 16 (2022); Miguel Póiares Maduro, *EU Law and Sports: A Match Made in Hell or in Heaven?*, in *THE INTERNAL MARKET IDEAL* 215, 232 (Jeremias Adams-Prassl, Ariel Ezrachi, Sanja Bogojevic & Dorota Leczykiewicz eds., 2024); JAN ZGLINSKI & FAIR SQUARE, *LAWS FOR THE GAMES: HOW THE EU CAN REFORM SPORTS GOVERNANCE* 8 (Oct. 2024), https://fair-sq.org/wp-content/uploads/2024/10/Laws-for-the-Games-Report_Pages_v3.pdf.

B. Can the EU be a Transformative Force?

Before addressing what precisely the EU can do, it is worthwhile to consider the preliminary question as to whether it should get involved in the business of reforming football at all. This may not be immediately obvious. We might expect that task to be the primary responsibility of other actors, such as individual states or the international community. The Union was founded as a project of regional economic integration and, during most of its existence, sports policy was not an explicit part of its mission statement.³⁷ In spite of that, three reasons suggest that EU regulatory action in the field of football would have distinct benefits.

The first is the transnational nature of football. Few areas of life have acquired such a strong cross-border dimension as football. International competitions have been added to the domestic league systems and gained in importance over time. Take the European football landscape. Continental competitions—including, at present, the UEFA Champions League, Europa League, and Conference League—were established in the 1950s and have become ever more relevant for clubs as a source of income, measure of success, and object of aspiration.³⁸ Partly as a consequence of this, and partly as the result of advances in broadcasting, travel, and technology, football fandom has become more internationalized, too. Aficionados follow their teams when they play games abroad, watching non-domestic leagues has become more popular, and support of clubs from other countries has increased.³⁹ At the same time, the cross-border movement of players has surged. The *Bosman* ruling has made it easier for footballers to sign for teams outside their home country, a possibility of which they have made enthusiastic use.⁴⁰ Football has, thus, become a truly transnational phenomenon. Consequently, it calls for a transnational regulatory response, one which the EU can deliver.

The second reason is the EU's relatively stronger immunity from pressure exercised by football federations. Sports governing bodies around the world have put in place rules that prevent governments from interfering in their function.⁴¹ Designed to protect the autonomy of sport, these safeguards have been interpreted increasingly widely and used to fend off attempts of government intervention—with great success. Their persuasive force is tied to the sanctions which they impose. Associations found to have been compromised by government action can be suspended and stopped from hosting or participating in major sporting events, a threat which frequently proves effective.⁴² Prominent examples include Poland, where the Minister of Sport replaced the board of the Football Association with a government supervisor due to widespread corruption but had to backtrack after UEFA considered to take away the country's hosting privileges of the 2012 Eurocup,⁴³ and Peru, where a bill increasing financial reporting duties of and government control over the domestic federation was withdrawn after reports surfaced that

³⁷But see now art. 165 of the Treaty on the Functioning of the European Union, 2008 O.J. (C 115/47) [hereinafter TFEU].

³⁸Peter Millward, 'We've All Got the Bug for Euro-Aways': What Fans Say about European Football Club Competitions, 41 INT'L REV. SOCIO. SPORTS 375, 387 (2006); Regina Weber, *Banal Europeanism? Europeanisation of Football and the Enhabitation of a Europeanised Football Fandom*, 24 SPORT SOC'Y 1893, 1897 (2021); Floris de Witte & Jan Zglinski, *The Idea of Europe in Football*, 1 EUR. L. OPEN 286, 290 (2022).

³⁹Jonas Biel, Tobias Finger, Arne Niemann, Vincent Reinke, Radoslaw Kossakowski, Jens Jungblut, Dobrosław Mankowski & Ramon Llopis-Goig, *A European Public Sphere United by Football: A Comparative Quantitative Text Analysis of German, Norwegian, Polish and Spanish Football Media*, 63 J. COMMON MKT. STUD. 3, 9 (2023).

⁴⁰Bernd Frick, *Globalization and Factor Mobility: The Impact of the 'Bosman Ruling' on Player Migration in Professional Soccer*, 10 J. SPORTS ECON. 88, 100 (2009).

⁴¹There is variation in how these are worded. Art. 19(1) of the FIFA Statutes, e.g., requires member associations to "manage [their] affairs independently and without undue influence from third parties".

⁴²Henk Erik Meier & Borja García, *Protecting Private Transnational Authority Against Public Intervention: FIFA's Power Over National Governments*, 93 PUB. ADMIN. 890, 896–97 (2015).

⁴³Magdalena Kędzior & Melchior Szczepanik, *Poland: New Shape, Old Problems*, in THE TRANSFORMATION OF EUROPEAN FOOTBALL 204 (Arne Niemann, Borja García & Wyn Grant eds., 2011).

the national team could be expelled from 2018 FIFA World Cup.⁴⁴ More recently, the Italian and UK governments received similar warnings when announcing their intention to regulate aspects of football governance, leading, at least in the former case, to the planned legislation being significantly narrowed down.⁴⁵ The EU cannot be punished with the same ease as it does not have its own association or team. Sanctioning all Member States instead is not a realistic option either, given that, for commercial reasons, no major football tournament could take place entirely without European participation. This gives the EU greater political leverage.

International action would, in theory, provide an alternative to EU regulation. States could agree to a set of legal standards that would govern football or sports more broadly. Successful examples of such cooperation exist in fields like anti-doping.⁴⁶ However, there are two practical difficulties connected with this approach. One is getting a meaningful number of countries to coalesce around a meaningful set of regulatory requirements. Even the Convention on the Manipulation of Sports Competitions, which is among the few bright spots in this area, has only been signed by forty-three countries and ratified by a mere fourteen.⁴⁷ Although it can also be difficult to reach agreement in the EU, there are well-established institutional structures in place that facilitate collective decision-making. The other downside is that international treaties lack the hard enforcement mechanisms that come with European law, making it comparatively easy for states to flout their responsibilities. By contrast, EU rules can create binding obligations that must be implemented by national governments, agencies, and courts in all Member States. An array of legal, political, and financial tools ensures high levels of compliance.⁴⁸ This renders EU law less dependent on the goodwill of individual countries.

Finally, and despite its geographical limitations, the EU has the potential to positively influence sports governance at a global scale. This is important not just because of the growingly international character of football, but also in light of the fact that the most powerful federations governing the game, including FIFA and UEFA, are located outside the Union. EU action can be designed so that it applies to non-EU actors, as exemplified by the Digital Services and Markets Acts which regulate the conduct of Big Tech companies regardless of where these are based.⁴⁹ EU sports legislation could, similarly, extend to the activities originating with governing bodies established outside the internal market, yet taking place or exerting effects inside of it, such as staging competitions, broadcasting matches, or concluding sponsorship deals.⁵⁰ Even EU rules that are not specifically tailored to global phenomena can end up impacting on the global regulatory landscape. Political scientists know this phenomenon as “normative”⁵¹ and “market power Europe,”⁵² legal scholars have dubbed it the “Brussels effect.”⁵³ Due to the EU’s ideational influence and the size of its economy, its rules influence legal standards worldwide in areas such

⁴⁴Rogger Fernández, *Rusia 2018: Nuevo Proyecto de Ley Puede Desafiarnos de FIFA*, BOCÓN (Dec. 13, 2017), <https://elbocon.pe/futbol-peruano/seleccion-peruana/rusia-2018-fifa-lanzo-ultimatum-fpf-por-intromision-politica-158994/>.

⁴⁵Susy Campanale, *Italian Football at Risk from UEFA and FIFA After Passing Controversial Law*, FOOTBALL ITALIA (July 11, 2024), <https://football-italia.net/italian-football-risk-uefa-fifa-controversial/>.

⁴⁶International Convention Against Doping in Sport, Oct. 19, 2005, 2419 U.N.T.S. 201.

⁴⁷Convention on the Manipulation of Sports Competitions, Sept. 18, 2014, 3326 U.N.T.S.

⁴⁸Lisa Conant, *Compliance and What EU Member States Make of It*, in COMPLIANCE AND THE ENFORCEMENT OF EU LAW 1, 15 (Marise Cremona ed. 2012).

⁴⁹Regulation 2022/1925 of 14 Sept. 2022 on Contestable and Fair Markets in the Digital Sector, 2022 O.J. (L 265/1) [hereinafter Digital Markets Act]; Regulation 2022/2065 of 19 Oct. 2022 on a Single Market For Digital Services, 2022 O.J. (L 277/1) [hereinafter Digital Services Act].

⁵⁰In addition, the rules could stipulate that clubs, teams, and players from the EU can only participate in sporting events complying with European regulatory standards.

⁵¹Ian Manners, *Normative Power Europe: A Contradiction in Terms?*, 40 J. COMMON MKT. STUD. 235 (2002).

⁵²Chad Damro, *Market Power Europe*, 19 J. EUR. PUB. POL’Y 682 (2012).

⁵³ANU BRADFORD, *THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD* (2020).

as competition, environmental, and data protection law. Similar dynamics can be observed in relation to football governance, where regulations are often adapted to reflect the requirements of European law, though their territorial reach extends that of the Union.⁵⁴ This suggests that the EU could, by broadening its regulation of football, effect change internationally.

The prospects of an EU-led initiative may raise legitimate worries about the Euro-centricity of the proposal. Too often have law and regulation served as tools of the Global North for wresting agency away from countries of the Global South.⁵⁵ It is a point that needs to be taken most seriously. Yet, it need not preclude EU intervention but should, instead, guide the process and shape of that intervention. Due to the various forms of pressure and lobbying, the extent to which football is regulated across the world remains limited overall. EU action promises to fill this regulatory vacuum and, by doing so, empower stakeholders that are disenfranchised in present sports governance structures, in Europe and beyond. Organisations like FIFA have abused the argument of protecting the interests of countries from the Global South by shielding itself from regulatory oversight for too long. The under-regulation of football has achieved the exact opposite; it has hit vulnerable stakeholders in these countries the hardest.⁵⁶ It led to the displacing of some of the poorest communities in South Africa and Brazil, left thousands of Nepalese workers deployed on Qatari infrastructure projects without legal protection, and denied women like Mariyam Mohamed the opportunity to take on executive roles in federations.⁵⁷ By incorporating their voices, concerns, and rights in the regulatory process, the EU would strengthen, not weaken, their position in football.⁵⁸

There are other reasons that may make us doubt whether it would be a good idea for the EU to increase its regulatory footprint in football. These include constitutional concerns. For a long time, the EU had no explicit competence to regulate sports. Although this has changed since the Treaty of Lisbon, the powers which it has gained are of a limited nature, comprising supporting action only.⁵⁹ There are also political concerns. The Union has been argued to follow the dynamics of the “joint-decision trap,”⁶⁰ a tendency of multi-level polities to struggle with adopting common rules due to differences between its constituent units or being forced to adopt rules representing the lowest common denominator. In a sensitive policy field like football this might make it particularly hard to reach an agreement. In addition, the already-noted signs of regulatory capture raise questions about whether EU institutions have the necessary independence to regulate the sport.⁶¹ Finally, there are ideological concerns. The EU has long been criticized for having a neoliberal bias and being exceedingly focused on promoting free trade, although lacking a

⁵⁴The Super League saga is the latest example of this phenomenon. Although the CJEU’s ruling, formally, only made changes in relation to the twenty-seven Member States necessary, UEFA decided to update its authorisation regulations for all of its fifty-five national associations. See UEFA Authorisation Rules governing International Club Competitions – Edition 2024.

⁵⁵Makau Mutua, *What is TWAIL?*, 94 AM. SOC’Y INT’L L. 31, 31 (2000); Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, 34 EUR. J. INT’L L. 7, 31 (2023).

⁵⁶Basil Ugochukwu, *Global Governance in All Its Discrete Forms: The Game, FIFA, and the Third World*, 33 WINDSOR Y.B. ACCESS JUST. 199, 208 (2016).

⁵⁷*Substitute: The Case for External Reform of FIFA*, FAIR SQUARE (Oct. 30, 2024), <https://fairsq.org/substitute-report/>; Miguel Poirares Maduro & Benedita Menezes Queiroz, *You Can’t Sit With Us. Discrimination Against Women in Football: A Commentary of the Mariyam Mohamed vs. Asian Football Confederation (AFC) Elections Case*, (Católica Glob. Sch. of L., Working Paper No. 1, 2022).

⁵⁸Echoing the arguments of TWAIL scholars, this should occur at every stage of regulation: From identifying problems, to drafting the rules, to applying and revising them. See Bhupinder S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT’L CMTY. L. REV. 3, 23–26 (2006); Opeoluwa Adetoro Badaru, *Examining the Utility of Third World Approaches to International Law for International Human Rights Law*, 10 INT’L CMTY. L. REV. 379, 387 (2008).

⁵⁹TFEU art. 165.

⁶⁰Fritz Scharpf, *The Joint-Decision Trap: Lessons from German Federalism and European Integration*, 66 PUB. ADMIN. 239, 254 (1988).

⁶¹Henk Erik Meier, Borja Garcia, Serhat Yilmaz & Webster Chakawata, *supra* note 32.

sensitivity for social, environmental, and, more broadly, non-economic interests.⁶² Can we expect such an organisation to improve the state of affairs in football?

These concerns need careful consideration, and I will try to address them in the following sections. Still, even if the prospect of the EU regulating football more extensively might not seem like the perfect solution, it may well be the least imperfect solution.⁶³ Weatherill puts it pointedly: “By some distance the strongest argument in favor of placing faith in the EU as a source of governance reform in sport is – if not the EU, then who?”⁶⁴ Football authorities have, time and again, been shown to be unwilling to implement serious reforms. National governments have, by and large, felt impotent to demand them. The legislative initiatives in France, Spain, and the UK, although undoubtedly significant, remain exceptions, which can to some extent be explained by the strength of the domestic sports markets, and have a limited territorial scope. Switzerland, where FIFA and UEFA are located and could, therefore, be controlled most directly, has a notoriously *laissez-faire* approach to sports regulation.⁶⁵ An international initiative extending beyond Europe’s confines is not in sight.⁶⁶ Market-based solutions have, due to the quasi-natural monopoly structure of football, low chances of success.⁶⁷ In this situation, the EU at least offers the possibility of bringing about change. How it can do that is the topic we shall turn to next.

C. Option One: EU Adjudication

One way of expanding EU regulatory control of football would be to intensify the scrutiny exercised *vis-à-vis* football governing bodies in judicial and other types of formal proceedings, such as competition or state aid investigations. Institutionally, this would primarily involve the Court of Justice and the Commission. Substantively, it would concern the application of internal market rules. The idea here would be to broaden and deepen EU scrutiny in football-related cases and, thus, increase the degree of external supervision of the sport. This proposal fundamentally amounts to a continuation of what the EU has been doing in the realm of sports, but with greater vigor. It would seek to harness the power of adjudication in a more pro-active manner.

Most of EU sports law has been created through CJEU rulings or Commission decisions. The Court accepted in *Donà* that professional football constitutes an economic activity and falls into the scope of the free movement rights.⁶⁸ As a result, football regulations which impede cross-border movement of players are, despite their typically private nature, *prima facie* violations of EU internal market law. This logic was prominently applied in *Bosman*, in which FIFA and UEFA’s then-binding rules on nationality and transfer restrictions of players were struck down. Other cases followed.⁶⁹ In the meantime, the Commission began to employ EU law to scrutinize acts of football authorities too, initially focusing on competition rules. It examined restrictive rules on

⁶²Sacha Garben, *The Constitutional (Im)balance Between ‘the Market’ and ‘the Social’ in the European Union*, 13 EUR. CONST. L. REV. 23 (2017); Diamond Ashiagbor, *Unravelling the Embedded Liberal Bargain: Labour and Social Welfare Law in the Context of EU Market Integration*, 19 EUR. L. J. 303, 317 (2013).

⁶³NEIL KOMESAR, *IMPERFECT ALTERNATIVES* (1994).

⁶⁴Weatherill, *supra* note 36, at 14.

⁶⁵Mark Pieth, *The Responsibility of the Host Country*, in REFORMING FIFA 23, 24 (Mark Pieth ed., 2014).

⁶⁶See Grit Hartmann, *ClearingSport: Towards an Agency Countering Crime and Protecting Integrity in World Sport*, Play the Game, (June 2023), <https://www.playthegame.org/media/rt3mkfyk/clearingsport.pdf>.

⁶⁷See Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573, 629 (2015).

⁶⁸See Case C-13/76, *Donà v. Mantero*, ECLI:EU:C:1976:115, ¶ 12 (July 14, 1976).

⁶⁹For football, see, e.g., Case C-325/08, *Olympique Lyonnais SASP v. Olivier Bernard & Newcastle UFC.*, ECLI:EU:C:2010:143 (Mar. 16, 2010). For other sports, see Case C-176/96, *Lehtonen & Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, ECLI:EU:C:2000:201 (Apr. 13, 2000); Cases C-51/96, C-191/97, *Deliège v. Ligue francophone de judo et disciplines associées ASBL*, ECLI:EU:C:2000:199 (Apr. 11, 2000); Case C-438/00, *Deutscher Handballbund eV v. Kolpak*, ECLI:EU:C:2003:255 (May 8, 2003).

package tours and ticketing during the 1990 and 1998 World Cups,⁷⁰ reviewed restrictions on multi-club ownership,⁷¹ and secured commitments in a series of proceedings concerning the collective sale of broadcasting rights.⁷² Subsequently, its attention turned towards combatting subsidies granted to football clubs by local governments in breach of EU state aid provisions.⁷³

From a football governance perspective, the suggestion to intensify European scrutiny in cases like these may sound curious. Has not the EU interfered in football enough already? The Union has been famed and shamed for limiting the autonomy of sports. Legendary are the comments made by former UEFA president Lennart Johansson in the aftermath of *Bosman*: “The European Union is trying to destroy club soccer.”⁷⁴ For football authorities, the intervention of a public regulator was, at that point, a novelty. They had gotten accustomed to enjoying essentially unfettered discretion in running their affairs, a model rooted in the 19th century ideas of sport as a voluntary pastime for amateurs. In this light, having the Court of Justice set legal boundaries for self-regulation constituted an unprecedented restriction of their decision-making freedom. It signified a shift from the idea of absolute to that of “supervised” autonomy.⁷⁵

From a single market perspective, the sports cases present themselves in a different light. Compared with many—not all⁷⁶—areas of internal market law, the scrutiny to which football authorities are subjected has mostly been limited. The exemption of rules of “sporting interest only” from judicial review and the continuous recognition of the specific nature of sports have contributed to a lenient standard of scrutiny.⁷⁷ Until recently, where football rules were reviewed, they tended to be upheld or, at best, corrected at the margins. The Court of Justice’s case law is indicative in this regard. *Piau* lent indirect support to FIFA’s (old) player agents regulations.⁷⁸ *Bernard* merely required technical amendments in how training compensations for young players are calculated.⁷⁹ The same pattern can be observed outside of football: *Meca Medina* upheld anti-

⁷⁰Commission Decision 92/521 of 27 Oct. 1992, Relating to a Proceeding Under Article 85 of the EEC Treaty (IV/33.384 and IV/33.387—Distribution of Package Tours During the 1990 World Cup), 1992 O.J. (L 326/33); Commission Decision 2000/12 of 20 July 1992 Relating to a Proceeding Under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Case IV/36.888—1998 Football World Cup), 1999 O.J. (C 2295/57).

⁷¹European Commission Memorandum Concerning COMP/37 806: ENIC/UEFA (2002) (comprising a letter to complainant ENIC to provide the Commission’s opinion on the insufficient grounds for their complaint).

⁷²Commission Decision of 23 July 2003, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398—Joint selling of commercial rights of the UEFA Champions League), 2003 O.J. (L 291/25); Commission Decision of 19 Jan. 2005, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty and Article 53(1) of the EEA Agreement (Case COMP/C-2/37.214—Joint selling of the media rights to the German Bundesliga), 2005 O.J. (L 134/46); Commission Decision of 22 Mar. 2006, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty (Case COMP/C-2/38.173—Joint selling of the media rights to the FA Premier League), 2006 O.J. (C 7/18).

⁷³Commission Decision of 20 November 2013, SA.37109 (2013/N)—Belgium Football stadiums in Flanders, C(2013) 7889; Commission Decision of 18 December 2013, SA.35501—Financement de la construction et de la rénovation des stades pour l’Euro 2016, C(2013) 9103; Commission Decision of 6 March 2013, SA.33584—Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch, C(2013)1152; Commission Decision of 4 July 2016, SA.41613—PSV, C(2016) 4093; Commission Decision of, SA.40168—Willem II, C(2016) 4061; Commission Decision of 4 July 2016, SA.41612—MVV, C(2016) 4053; Commission Decision of 4 July 2016, SA.41614—Den Bosch, C(2016) 4089; Commission Decision of 4 July 2016, SA.33754—Real Madrid, C(2016) 4080; Commission Decision of 4 July 2016, SA.29769—FC Barcelona, C(2016) 4046; Commission Decision of 4 July 2016, SA.36387—Valencia, Hércules and Elche, C(2016) 4060.

⁷⁴Ian Thomsen, *Europe’s Soccer Stars Ponder Joy of Free Agency*, N.Y. TIMES (Dec. 16, 1995), <https://www.nytimes.com/1995/12/16/IHT-europes-soccer-stars-ponder-joy-of-free-agency.html>.

⁷⁵Richard Parrish, *The Birth of European Union Sports Law*, 2 ENT. L. 20, 22 (2003).

⁷⁶JAN ZGLINSKI, EUROPE’S PASSIVE VIRTUES: DEFERENCE TO NATIONAL AUTHORITIES IN EU FREE MOVEMENT LAW 67 (2020).

⁷⁷STEPHEN WEATHERILL, EUROPEAN SPORTS LAW: COLLECTED PAPERS 8 (2014).

⁷⁸See case T-193/02, *Piau v. Comm’n Eur. Cmty.*, ECLI:EU:T:2005:22 (Jan. 26, 2005). The new FIFA Football Agent Regulations are currently also being challenged before the Court of Justice. See C-209/23 RRC Sports GmbH v. Fédération Internationale de Football Association (FIFA), <https://curia.europa.eu/juris/documents.jsf?num=C-209/23> (pending); C-428/23 ROGON v. Deutscher Fußballbund e. V. (DFB), <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-428/23> (pending).

⁷⁹See Case C-325/08, *Olympique Lyonnais SASP v. Olivier Bernard & Newcastle UFC.*, ECLI:EU:C:2010:143 (Mar. 16, 2010).

doping rules for swimmers; *Lehtonen* affected minor aspects of the transfer rules in basketball but gave the general system the green light; *Deliège* refused to find that selection procedures for judo competitions constituted a restriction on free movement altogether.⁸⁰ With the exception of *Bosman*, the Court's jurisprudence had, for the longest time, not forced any fundamental changes on football governance.⁸¹

This is starting to change. The trio of sports rulings rendered by the CJEU in December 2023 embodies a re-thinking of the appropriate level of scrutiny, testifying to a willingness to probe more intensely into the actions of sports federations, particularly through the means of EU competition law.⁸² *European Superleague* epitomizes the new approach. The question at the heart of the dispute was whether the FIFA and UEFA rules on prior authorisation of third-party events are compatible with Articles 101 and 102 TFEU. Whereas Advocate General Rantos had taken a deferential approach in the case, accepting that the relevant regulations were mere restrictions by effect which—based on a distinctly light-touch review—constituted justified and proportionate means for protecting the European Sport Model,⁸³ the Court opted for a more substantive form of review. It underlined that sporting activities are subject to the ordinary application of internal market law. Third parties cannot be categorically prevented from hosting football events; their requests must be decided based on authorisation regulations which comply with a set of transparency duties, including clear, precise, and non-discriminatory rules that enable effective review. Departing from previous case law, the Court also held that the ancillary restraints exemption, which permits private actors to impose limitations on economic freedom as long as these pursue legitimate objectives in a proportionate manner, no longer applies to by object restrictions. As a result, sports governing bodies can now only defend such measures based on the more demanding Article 101(3) TFEU, or the equivalent objective necessity test from Article 102 TFEU.

This doctrinal shift facilitates more in-depth judicial review and, by the same token, forces federations to explain and justify their regulatory choices to a greater extent than before. *Superleague* and *Antwerp* illustrate this neatly. The Court accepts that football governing bodies can restrict third-party competitions to protect sporting merit and financial solidarity, but asks them to present “convincing arguments and evidence” that the authorisation rules will translate into “genuine, quantifiable efficiency gains.”⁸⁴ They can force clubs to have a minimum of locally trained players to incentivize the training of young athletes, as long as they can produce “specific arguments and evidence” on the “reality of that incentive.”⁸⁵ The benefit which federations bring to the world of football will not simply be assumed—it must be proven.⁸⁶ This may lead to more balanced and inclusive decisions in governing bodies, which are now obliged to consider the interests of all affected

⁸⁰Case C-519/04, *Meca-Medina & Majcen v. Comm'n of the Eur. Cmty.*, ECLI:EU:C:2006:492 (July 18, 2006); Case C-176/96, *Lehtonen & Castors Canada Dry Namur-Braine ASBL v. Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)*, ECLI:EU:C:2000:201 (Apr. 13, 2000); Cases C-51/96, C-191/97, *Deliège v. Ligue francophone de judo et disciplines associées ASBL*, ECLI:EU:C:2000:199 (Apr. 11, 2000).

⁸¹Even the transfer system adopted after *Bosman* significantly differed from the one originally envisioned by the European Commission. See Borja García, *The 2001 Informal Agreement on the International Transfer System*, 1 EUR. SPORTS L. & POL'Y BULL. 17, 20 (2011).

⁸²See Case C-333/21, *European Superleague Company, SL v. Fédération Internationale de Football Association (FIFA) & Union Eur. Football Ass'ns (UEFA)*, ECLI:EU:C:2023:1011 (Dec. 21, 2023); Case C-680/21, *UL & SA Royal Antwerp Football Club v. Union Royale Belge Sociétés Football Ass'n ASBL*, ECLI:EU:C:2023:1010 (Dec. 21, 2023) [hereinafter *Royal Antwerp FC*]; Case C-124/21 P, *International Skating Union v. Comm'n of the Eur. Cmty.*, ECLI:EU:C:2023:1012 (Dec. 21, 2023).

⁸³Case C-333/21, *European Superleague Company v. Fédération internationale de football association (FIFA) and Union of European Football Associations (UEFA)*, ECLI:EU:C:2022:993 (Dec. 21, 2023) (opinion of AG Rantos). For a critical appraisal, see Jan Zglinski, *Constitutionalising the European Sports Model: The opinion of Advocate General Rantos in the European Super League case*, LONDON SCH. ECON. EUROPP BLOG (Dec. 16, 2022), <https://blogs.lse.ac.uk/europpblog/2022/12/16/constitutionalising-the-european-sports-model-the-opinion-of-advocate-general-rantos-in-the-european-super-league-case/>.

⁸⁴Case C-333/21, *European Superleague Company*, ECLI:EU:C:2022:993, ¶¶ 196, 205.

⁸⁵Case C-680/21, *Royal Antwerp FC*, ECLI:EU:C:2023:1010, ¶¶ 129, 135.

⁸⁶Jan Zglinski, *Can EU Competition Law Save Sports Governance?* 23 INT'L SPORTS L. J. 475, 478 (2024).

by their actions. But it, equally, incentivizes further litigation. As it gets harder for federations to defend their rules, it becomes more appealing for actors dissatisfied with them to mount legal challenges.

The result is a formidable weapon which could be strategically deployed as a tool for change. The recipe is simple: Stakeholders bring court cases to overturn unfair or harmful football regulations. We have gotten a first taste of the power of this idea over the past months, during which an unprecedented amount of football litigation has been launched. In *Diarra*, a former player questioned the legality of the FIFA rules on premature contract termination without cause.⁸⁷ Applying its new sports jurisprudence, the CJEU found them to amount to disproportionate restrictions on free movement and competition. Three more preliminary references, one on the operation of sports arbitration⁸⁸ and two on the reworked player agents regulations,⁸⁹ are pending. Another dispute on the division of football leagues across national boundaries is unfolding before the domestic courts in Luxembourg.⁹⁰ Moreover, the international players union FIFPRO has brought legal action in Belgium against FIFA's plans to stage an expanded Club World Cup, highlighting the adverse effects of an increasingly congested match calendar on the health of players.⁹¹

For this approach to unfold its full potential, the Commission—as well as national competition authorities—would need to get on board. The Commission has, even more so than the Court, been highly deferential in its supervision of football governing bodies, often heeding to the idea of the specificity of sport.⁹² There are two ways for extending its control. First, the Commission could take on more football cases. An important difference between judicial and competition or state aid proceedings is that the former can, for the most part,⁹³ not be initiated by the EU itself. The Court has to wait for litigation to come its way. By contrast, the Commission can launch proceedings of its own motion. This is a mighty power, but it has been used scarcely in football-related matters. A few early examples aside, all competition investigations concerning football were conducted in the long decade following *Bosman*; no formal proceedings have been initiated since 2006. As already noted, there was a series of state aid cases in the 2010s, yet these were primarily directed at local municipalities, not football governance bodies. The dearth of proceedings is not due to a lack of potential legal problems within the world of football, or their connection with European law. Given the broad scope of the EU competition rules and the monopolistic structure of football, many decisions taken by the sport's governing bodies, leagues, and clubs could, in theory, be reviewed. Nor is it due to a lack of awareness of these problems. Football stakeholders have frequently filed complaints, trying to convince the Commission to take action.⁹⁴ Yet, their requests have been rejected for reasons of political

⁸⁷Case C-650/22, *Fédération Internationale de Football Association (FIFA) v. BZ*, ECLI:EU:C:2024:824 (Oct. 4, 2024).

⁸⁸See Case C-600/23 *Royal Football Club Seraing v. FIFA*, ECLI:EU:C:2025:24 (Jan. 16, 2025).

⁸⁹C-209/23 *RRC Sports GmbH v. Fédération Internationale de Football Association (FIFA)*, <https://curia.europa.eu/juris/documents.jsf?num=C-209/23> (pending); C-428/23 *ROGON v. Deutscher Fußballbund e. V. (DFB)*, <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-428/23> (pending).

⁹⁰*Case Swift Hespérage v UEFA and FLF, DUPONT HISSEL*, https://www.dupont-hissel.com/en/news/24_case-swift-hespera-nge-v-uefa-and-fff (last visited Feb. 10, 2025).

⁹¹*FIFPRO Europe Statement: Legal Claim Against FIFA*, FIFPRO EUROPE (June 13, 2024), <https://fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa>.

⁹²Pablo Ibáñez Colomo, *Competition Law and Sports Governance: Disentangling a Complex Relationship*, 45 *WORLD COMPETITION* 323, 336 (2022).

⁹³But see R. Daniel Kelemen & Tommaso Pavone, *Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union*, 75 *WORLD POL.* 779 (2023) (showing that the number of infringement proceedings initiated by the Commission has gone down).

⁹⁴See, e.g., Ali Walker, *Football Agents Complain to EU Over FIFA's Fee Crackdown*, POLITICO (Apr. 28, 2023), <https://www.politico.eu/article/football-agent-complain-european-commission-fifa-crackdown-fee/>; *Player Unions and Leagues File Complaint to European Commission over FIFA's Imposition of International Match Calendar*, FIFPRO (Oct. 14, 2024), <https://fifpro.org/en/who-we-are/what-we-do/foundations-of-work/player-unions-and-leagues-file-complaint-to-european-commission-over-fifa-s-imposition-of-international-match-calendar>.

expediency.⁹⁵ A greater willingness of the Commission to investigate in this area, by following up on complaints and opening proceedings of its own motion, would broaden EU control over football. The *International Skating Union* case provides a blueprint in this regard.⁹⁶

Second, and relatedly, the Commission could exercise more intense scrutiny in the cases which it decides to pursue. Much of what has been said earlier in relation to the Court applies here. The key would be to conduct a more thorough assessment of football rules and their justifications. Take, by means of example, the decision on the joint selling of the Champions League broadcasting rights.⁹⁷ The choice to sell rights collectively is *prima facie* anti-competitive as rights holders cannot compete on the broadcasting market. Rights for football competitions still tend to be sold jointly, for one, because it is easier to have a single TV contract than a plethora of agreements with individual clubs and, for another, because the collective selling serves a redistributive function. Better known teams increase the attractiveness of the product, with the money generated going towards clubs that are less known. After UEFA committed to an unbundling of the rights offered, the scheme was swiftly approved under Article 101(3) TFEU. Yet, the question as to whether it fulfills the requirements of the provision should have been—and, after *Superleague*, will have to be⁹⁸—posed with greater seriousness. In particular, efficiency gains for all users must be shown. Scholars have highlighted that the current system acts to the detriment of broadcasters and fans by artificially increasing licensing and subscription fees.⁹⁹ Its redistributive aspects were left out altogether of the Commission's assessment. If a core motivation for selling rights jointly is the transfer of funds from wealthier to poorer teams, there must be an investigation into whether the scheme manages to achieve that objective.¹⁰⁰

Pursuing football reform through enhanced EU adjudication would have several advantages. Perhaps the most obvious one is the familiarity with this approach. EU institutions have experience with applying internal market rules to football-related matters, and these rules impose legally binding obligations on federation, a point that will be explored in greater detail in the next section. But there are also two more subtle benefits in terms of institutional dynamics. One is that the Court and Commission have a higher degree of independence than the EU legislative process, attenuating the risk of capture, and are smaller in size. This means that fewer actors need convincing. There is notably no need for direct support of the Member States, some of which have shown to be particularly protective of sports governing bodies.¹⁰¹ The second is that adjudication, unlike legislation, allows unrepresented stakeholders to challenge the status quo more easily, even without political support. Although not everyone benefits to the same extent—litigation tends to favor the “haves” over the “have nots,”¹⁰² this feature has been cleverly used by players, clubs, and

⁹⁵See, e.g., Commission, Case AT.40105—UEFA Financial Fair Play Rules (Oct. 24, 2014), C(2014) 8028.

⁹⁶Commission Decision of 8 Dec. 2017 Relating to Proceedings under Article 101 of the Treaty on the Functioning of the European Union (the Treaty) and Article 53 of the EEA Agreement Case AT.40208 —International Skating Union's Eligibility Rules, C(2017) 8240 final.

⁹⁷Commission Decision of 23 July 2003, Relating to a Proceeding Pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398—Joint selling of commercial rights of the UEFA Champions League), 2003 O.J. (L 291/25).

⁹⁸Case C-333/21, European Superleague Company, ECLI:EU:C:2023:1011, ¶ 236 (Dec. 21, 2023).

⁹⁹Pablo Ibáñez Colomo & Alfonso Lamadrid, *Football, TV Rights and the “Single Buyer Rule”*. In *A World of Commitment Decisions, Bad Policy Dies Hard*, CHILLIN'COMPETITION (Feb. 11, 2016), <https://chillingcompetition.com/2016/02/11/football-tv-rights-and-the-single-buyer-rule-in-a-world-of-commitment-decisions-bad-policy-dies-hard/>. See also Grow, *supra* note 67, at 616.

¹⁰⁰See Bundeskartellamt [Federal Cartel Office] Feb. 26, 2024, DFL-Medienrechte: Vorsitzendenschreiben des Bundeskartellamtes (Ger.) (Letter from the Federal Cartel Office to the DFL regarding the awarding of media rights to Bundesliga and 2. Bundesliga games, in which the Office announces that it will impose more stringent requirements regarding horizontal and vertical solidarity in the future).

¹⁰¹GEERAERT, *supra* note 31, 108.

¹⁰²See Marc Galanter, *Why the Haves Come out Ahead: Speculations on the Limits of Legal Change*, 9 L. & Soc'y Rev. 95, 135–43 (1974).

agents, all actors with only limited representational gravitas in the football pyramid, to prompt legal change.

But there are, likewise, serious disadvantages attached to this course of action. To begin with, any reform effort achieved through the adjudicative process would necessarily remain *ad hoc*.¹⁰³ One regulatory issue would be settled in one case, another would be handled in a following case, and yet another in a further case, each of which might be years apart. Although the Court and Commission have embraced certain overarching principles when dealing with football, such as recognizing its social function and the significance of values like financial solidarity, competitive balance, and sporting integrity,¹⁰⁴ it is hard to impose a coherent regulatory vision in this way. To make matters worse, at least the CJEU can, as noted, not directly control its agenda.¹⁰⁵ Therefore, the potential for reforming football judicially will always depend on suitable legal proceedings being brought, and that is not a given. Where we will want to regulate player welfare or improve environmental standards, there may only be cases on breakaway leagues or agent remuneration.

Perhaps more importantly, however, it is open to question whether free movement and competition rules provide a suitable normative framework for regulating football.¹⁰⁶ As an instrument of negative integration, their primary role is to remove, not create, regulatory requirements. This carries the risk of facilitating de-regulation in an area where more regulation is needed. More worryingly still, they force a peculiar legal structure onto football, which was originally created to deal with trade barriers and market failures. EU competition law exemplifies the problems this can create. It is a field built on concepts such as efficiency gains, consumer welfare, and output levels. Whether these provide a helpful lens for regulating the types of problems arising in football is anything but obvious. Despite the rapid commercialization which the sport has undergone, it is not, and has never been, just about commercial interests. It pursues a variety of social, educational, redistributive, and health-related functions, which competition law famously struggles to accommodate.¹⁰⁷ This means that although competition rules may be a potent tool for reform in some areas, they will be inept at handling others or may even stand in the way of achieving public policy objectives. The proceedings against the 50+1 Rule which protects majority fan ownership of football clubs in Germany are, although ultimately unsuccessful, a warning sign of the tensions that may be on the horizon.¹⁰⁸

D. Option Two: EU Cooperation

In addition to hard EU sports law generated through adjudication, a number of softer EU policy measures regarding football and sport in general have emerged over time. Some of these policies were already mentioned. They include documents such as the 2007 White Paper on Sport, the periodic work plans setting the EU's policy ambitions in the sector, as well as numerous topic-specific resolutions, recommendations, and reports. Here, too, changes could be made with a view to increase European regulatory oversight.

In football, arguably the most important policy instrument is the cooperation between the EU and the sport's governing bodies. This cooperation initially occurred on a case-by-case basis around questions of compliance with EU law. After the *Bosman* ruling, the Commission entered a protracted and, at times, arduous dialogue with FIFA and UEFA which led to the adoption of a new transfer system. In subsequent years, UEFA would consult with the Commission about the legality of further endeavors, including the sale of broadcasting rights, the homegrown players

¹⁰³Weatherill, *supra* note 36, at 14.

¹⁰⁴See De Witte & Zginski, *supra* note 38, at 298.

¹⁰⁵SUSANNE K. SCHMIDT, THE EUROPEAN COURT OF JUSTICE AND THE POLICY PROCESS 3 (2018).

¹⁰⁶Zginski, *supra* note 86.

¹⁰⁷Giorgio Monti, *Article 81 EC and Public Policy*, 39 COMMON MKT. L. REV. 1057 (2002).

¹⁰⁸Bundeskartellamt [Federal Cartel Office] Feb. 6, 2024, 50+1-Verfahren-Verfahrensstand; Bundeskartellamt [Federal Cartel Office] May 29, 2024, 50+1-Regel-Auswirkungen der EuGH-Rechtsprechung und weitere Verfahrensführung.

rule, and the Financial Fairplay Regulations. Since 2014, this relationship has been formalized. The Commission and UEFA signed an “Arrangement for Cooperation” with the objective to strengthen the ties between the two institutions. It was renewed and extended four years later and is, as of June 2022, in its third edition.¹⁰⁹

Looking at the content of the Cooperation Arrangement, we find a great deal of powerful rhetoric. We learn, among other things, that both sides “share a common desire to promote and strengthen a ‘European Sport Model’ based on values, such as solidarity between different levels in sport, in particular between professional and grassroots sport, fairness, integrity, openness, gender equality and good governance in sport”;¹¹⁰ that they seek to promote climate action, social inclusion, the women’s game, financial solidarity within the football pyramid, and competitive balance between clubs;¹¹¹ that they will protect fundamental rights as enshrined in the EU Charter of the Fundamental Rights and the UEFA Human Rights Commitment; and reinforce the fight against discrimination of the LGBTIQ community.¹¹² There is even a passage stating that the sides “aim at continuing to promote principles of good governance in sport, such as accountability, democracy, inclusivity, integrity, participation and transparency, whilst also sharing an ambition to further develop these principles in ensuring gender equality and representativeness.”¹¹³

Despite its grandiloquence, the Agreement contains preciously little substance. Other than some generally worded statements about intensifying mutual efforts during the Men’s Euro 2024 and Women’s Euro 2025, it only states that in order to attain the aforementioned objectives, the sides intend to participate in joint events and initiatives, facilitate dialogue and cooperation, and exchange information and best practices.¹¹⁴ There are no hard commitments, no expected results, no concrete benchmarks.

The hope behind the Arrangement—at least, on a charitable reading—may have been that it would lead to improvements in football governance by deepening the relationship between the EU and UEFA. The now-defunct German foreign policy maxim “Wandel durch Handel”, or “evolution through trade”, comes to mind, whereby economic connections with authoritarian countries are established with the (official) aim of bringing about political change.¹¹⁵ Yet, almost a decade into the formal cooperation with UEFA there is no sign that tangible change has been attained, indeed. Instead, the agreement has created a series of problems which hamper reform.

To begin with, the Cooperation Arrangement contributes to solidifying UEFA’s position as the control center of European football. This is partly because UEFA is the only actor from the world of football which enjoys the privilege of having a formal agreement with the Commission, and partly because the text explicitly recognizes the pyramid structure as an essential feature of the European Sports Model.¹¹⁶ By the same token, the Arrangement facilitates lobbying. The institutionalized dialogues, events, and knowledge exchanges provide ample opportunities for football officials to further their influence within the European political process. Finally, and most

¹⁰⁹Commission Decision of 9 June 2022 on the adoption of the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA)–Annex, C(2022) 3721.

¹¹⁰*Id.* at ¶ 1.1.

¹¹¹*Id.* at ¶¶ 2(c), 3.6.3, 3.6.6.

¹¹²*Id.* at ¶¶ 1.3, 3.1, 3.2.7.

¹¹³*Id.* at ¶ 3.6.4.

¹¹⁴*Id.* at ¶ 5.1.

¹¹⁵See Bernhard Blumenau, *Breaking with Convention? Zeitenwende and the Traditional Pillars of German Foreign Policy*, 98 INT’L AFF. 1895, 1907 (2022) (discussing renewed criticism of the doctrine after Russia’s 2022 invasion of Ukraine).

¹¹⁶See Commission Decision of 9 June 2022 on the adoption of the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA)–Annex, C(2022) 3721 at ¶ 3.6.1. Earlier versions had, in addition, openly backed specific rules of UEFA. See Commission Decision of 14 October 2014 adopting the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA), C(2014) 7378 (notably regarding the redistribution of broadcasting rights, the system of training compensation fees, and the role of arbitration as means for dispute settlement).

worryingly, the agreement imbues UEFA with normative and cognitive legitimacy.¹¹⁷ Slogans about UEFA's commitment to values such as good governance, gender equality, and fundamental rights are repeated without critical appraisal. This lends them an aura of veracity, while also creating a sense of inevitability about UEFA being the sole institution that can protect them.

What could be done to remedy the situation? There are several possibilities. As a basic principle, the EU should demand more in exchange for its cooperation with UEFA in future iterations of the agreement. At present, the main benefit which the EU appears to derive is, other than the occasional photo opportunity with football dignitaries, having its Green Deal advertised during Champions League matches. This is not enough. The Commission could make the acceptance of concrete commitments—on transparency, representation, climate change, social inclusion, the women's game, and the many other objectives listed in the current agreement—a condition for mutual cooperation. Even if not legally binding, they would articulate specific duties that UEFA would be expected to comply with, thus facilitating accountability. Where such commitments are not viable, general goals or benchmarks could be formulated, along the lines of those commonly used in international law.¹¹⁸ These could be paired with indicators that allow to measure implementation and progress.¹¹⁹ Heerdt and Bernaz have made a proposal in this direction concerning the protection of women's rights in football, outlining the positive impact that structural, process, and outcome indicators could have.¹²⁰

In addition, the EU could consider concluding formal agreements, or engaging in similar institutionalized forms of cooperation, with football stakeholders other than UEFA. Already after the signing of the first Cooperation Arrangement in 2014, Duval noted that:

There is no good reason to confer a special political status to UEFA, especially taking into account that, as a private government, it refuses to give a real institutional voice to some of its most prominent “citizens”: the players, the clubs or the fans. By doing so, the Commission risks cutting itself from the other legitimate voices of football and losing sight of its duty to defend the European general interest as a whole.¹²¹

The focus on cooperating with UEFA, and with UEFA only, may seem like a natural consequence of the pyramid structure in which European football is organized. However, by buying into the premises of the present governance system, the Commission also perpetuates and reinforces many of its problematic features. Restricting one's perspective to the opinions of a small number of UEFA officials is a poor way of determining the general interest of football. Hearing the concerns of the constituencies which are under-represented in football decision-making processes would provide a better-balanced picture. This could include cooperations with FIFPRO, the organization representing professional footballers;¹²² the recently founded Union of European Clubs, which seeks to provide a platform for smaller clubs that do not feel represented within UEFA;¹²³ fan groups such as Football Supporters Europe, which promote fan involvement across the

¹¹⁷Mark C. Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20 ACAD. MGMT. REV. 571, 582 (1995).

¹¹⁸See, e.g., G.A. Res. 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Sept. 25, 2015).

¹¹⁹KEVIN E. DAVIS, ANGELINA FISHER, BENEDICT KINGSBURY & SALLY ENGLE MERRY, GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH CLASSIFICATION AND RANKINGS (2012).

¹²⁰Daniela Heerdt & Nadia Bernaz, *Elements for FIFA's Feminist Transformation: The Case for Indicators on Football and Women's Rights*, 20 INT'L J. CONST. L. 299, 316 (2022).

¹²¹Antoine Duval, *The New “Arrangement” Between the European Commission and UEFA: A Political Capitulation of the EU*, ASSER INTERNATIONAL SPORTS LAW BLOG (Oct. 15, 2014), <https://www.asser.nl/SportsLaw/Blog/post/the-new-arrangement-between-the-european-commission-and-uefa-a-political-capitulation-of-the-eu>.

¹²²FIFPRO has already profited from informal EU support in the past, for instance by being included in reform processes such as the overhaul of the transfer system at the request of the Commission. See Braham Dabscheck, *International Unionism's Competitive Edge: FIFPro and the European Treaty*, 58 RELATIONS INDUSTRIELLES 85, 98 (2022).

¹²³See Press Release, Union of European Clubs, The Union of European Clubs Launches in Brussels (Apr. 24, 2024), <https://www.ueceurope.org/post/the-union-of-european-clubs-launches-in-brussels>.

continent;¹²⁴ and some of the manifold NGOs working on football-related matters, whose thematic interests range from human rights and gender equality to environmental protection and anti-racism.¹²⁵

The potential of reforming football through changes in the EU's approach to cooperation, be it *vis-à-vis* UEFA or other stakeholders, should not be underestimated. Introducing commitments or benchmarks in the Commission's agreements with UEFA could incentivize action in the areas covered; the reputational costs connected with a failure to achieve the stipulated objectives would serve as a motivation to work towards compliance. Giving a platform to unheard voices would put pressure on football governing bodies to consider viewpoints that are currently neglected and, thus, possibly lead to a re-thinking of their policies. All of this, however, ultimately is only a poor substitute for conventional regulation. Given that none of the obligations would be legally binding, football authorities could choose to not engage in the desired behavior with relative ease. The only tool to prevent this would be informal sanctioning mechanisms, the most important of which is public pressure. Putting too much faith into the effectiveness of public pressure alone—not backed up by the threat of legal sanctions—is a risky bet. Too often have football governing bodies shown to be unresponsive to both the general public and stakeholders from within the sport.

Cooperation agreements are, I should add, but one policy tool through which the EU can and has tried to influence football governance. A social dialogue committee for professional football was established to facilitate negotiations on labor-related issues between players, clubs, and leagues.¹²⁶ Different EU institutions and expert groups have issued reports and recommendations for sports governing bodies.¹²⁷ Funding of football-related projects via the Erasmus+ program has been used to advance European policy objectives.¹²⁸ One could, in principle, consider employing any of these instruments more actively as a means for reform.

Yet, similar reservations to those voiced above apply. In the decade and a half since its creation, the social dialogue mechanism has just yielded one tangible output, the agreement on minimum requirements for standard football player contracts.¹²⁹ Given that this is a voluntary process which is largely handled by the social partners, it is unclear whether and how the EU could nudge them towards cooperating on a wider range of subject-matters¹³⁰—except, of course, through the threat

¹²⁴Football Supporters Europe has merged with the other large European fan organization, Supporters Direct Europe. See *A New Era For Football Supporters Representation: FSE & SD Europe Merger Date Confirmed*, Football Supports Europe (Oct. 3, 2022), <https://www.fanseurope.org/news/a-new-era-for-football-supporters-representation-fse-sd-europe-merger-date-confirmed/>.

¹²⁵See, e.g., FAIR SQUARE (last visited Apr. 16, 2025), <https://fairsq.org/> (advocating for human rights); PLAY THE GAME (last visited Apr. 16, 2025), <https://www.playthegame.org/> (promoting democracy, transparency, and freedom of expression); FOOTBALL FOR FUTURE (last visited Apr. 16, 2025), <https://footballforfuture.org/> (supporting environmental sustainability); KICK IT OUT (last visited Apr. 16, 2025), <https://www.kickitout.org/> (tackling racism and discrimination); HER GAME TOO (last visited Apr. 16, 2025), <https://www.hergametoo.co.uk/> (fighting against sexism).

¹²⁶Michele Colucci & Arnout Geeraert, *The Social Dialogue in European Professional Football*, 33 COMPAR. LAB. L. & POL'Y J. 203 (2012).

¹²⁷See, e.g., Council Conclusions on Enhancing Integrity, Transparency and Good Governance in Major Sport Events (2016) 9069/16 SPORT 21; European Parliament, Resolution on an integrated approach to Sport Policy: good governance, accessibility and integrity No. 2016/2143(INI), 2017 O.J. (C 252/2); *Expert Group on Green Sport Approves Recommendations on Sustainable Sport*, EUROPEAN OLYMPICS COMMITTEES, <https://www.euoffice.eurolympic.org/expert-group-on-green-sport-approves-recommendations-on-sustainable-sport/>.

¹²⁸See Leigh Thompson, *ERASMUS+ SPORT: FUNDING OPPORTUNITIES FOR SPORT*, SPORT+RECREATION ALLIANCE (Mar. 9, 2015), <https://sportandrecreation.org.uk/news/erasmus-sport-funding-opportunities-for-sport#:~:text=Well%2C%20recalling%20the%20great%20man,funding%20for%20sport%2Drelated%20projects>.

¹²⁹UEFA, *Agreement Regarding the Minimum Requirements For Standard Player Contracts in the Professional Football Sector in the European Union and in the Rest of the UEFA Territory* (2012), <https://fmf.md/cdn/docs/AGREEMENT%20REGARDING%20THE%20MINIMUM%20REQUIREMENTS%20FOR%20STANDARD%20PLAYER%20CONTRACTS.pdf>.

¹³⁰Berndt Keller, *Sectoral Social Dialogue in Professional Football: Social Partners, Outcomes and Problems of Implementation* 20 (Eur. Trade Union Inst., Working Paper No. 2018.04, 2018). See *Commission Communication Strengthening Social Dialogue in the European Union: Harnessing its Full Potential for Managing Fair Transitions*, COM (2023) 40 final (Jan. 25, 2023).

of litigation¹³¹ or legislation. Crucially, collective bargaining does not provide a suitable solution for regulatory problems that do not concern employment relationships, such as good governance, fan rights, and environmental sustainability. There is no evidence that the many reports produced by the EU and its expert groups, which typically issue soft calls and recommendations, have had a palpable impact on the running of sports either. The Erasmus+ funding seems to have some positive influence on social cohesion and gender equality,¹³² but has a limited financial scope and does not extend to core governance issues; the idea of “money for reforms” will forever be a difficult sell in an industry as wealthy as football. In sum, while potentially useful, these instruments at best constitute complimentary devices in the quest for reform.

E. Option Three: EU Legislation

The final, and most ambitious, way to expand EU regulatory oversight would be adopting a European Sports Act.¹³³ By this, I mean a piece of secondary—in domestic terms, statutory—legislation that would lay down binding rules covering some core aspects of football or, more broadly, sports governance. Nothing of the kind exists as of yet in the EU. Although there is no European template for this type of action, the legislative initiatives in countries such as France, Spain, Poland, and the UK could serve as sources of inspiration.

What would this legislation entail? There is a variety of possibilities in terms of the breadth and depth of the rules that could be imposed. The choice will, on the one hand, depend on the identification of regulatory objectives, or in relation to which aspects of football governance we consider intervention to be needed. With some, such as preventing corruption and bribery, this will be evident. With others, such as promoting fan representation or competitive balance, there might be greater disagreement. On the other hand, the choice will depend on the extent to which we want to pursue these objectives and the tools we see as being capable of attaining them. For each of the proposals discussed in the following, more and less far-reaching variants can be envisaged. Selecting the appropriate instruments and striking a balance between the competing interests at stake would be the task of the EU political process. But despite the open-ended nature of this exercise, the discussion ought to be structured around, and consider adopting, two sets of rules: Governance requirements and substantive requirements.

As a starting point, a European Sports Act would need to stipulate minimum governance standards, that is, rules concerning the institutional structure and decision-making processes of football governing bodies. Good governance has become a much-used concept, inside and outside of sport.¹³⁴ Different definitions have emerged, but they revolve around a few common themes which could guide EU action.¹³⁵ Accountability is one of them. European legislation should set

¹³¹Leanne O’Leary, *ISU, Royal Antwerp, European Superleague & Employment Relations in Sport*, 23 INTER’L SPORTS L. J. 431, 433 (2024); Press Release, FIFPRO, Decision of European Court of Justice (Oct. 4, 2024), <https://fifpro.org/en/supporting-players/obtaining-justice/governance-and-representation/fifpro-statement-decision-of-european-court-of-justice>.

¹³²Louis Moustakas, *Sport and Social Cohesion within European Policy: A Critical Discourse Analysis*, 20 EUR. J. FOR SPORT & SOC’Y 1, 9 (2023); Abel Nogueira Lopez, Olga Molinero, Alfonso Salguero, Fabio Lucidi & Sara Marquez, *Identification of Gender Discrimination in Sports: Training of Agents of Change*, 27 J. OF SPORT PSYCH. 43, 47 (2017).

¹³³See Jan Exner, Stephen Weatherill & Jan Zgliniski, *The European Sports Act: A Proposal to Improve Sports Governance Through EU Legislation*, LSE LEGAL STUDIES WORKING PAPER NO. 10/2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5235136.

¹³⁴Arnout Geeraert, *The Need for Critical Reflection on Good Governance in Sport*, in GOOD GOVERNANCE IN SPORT 1, 3 (Arnout Geeraert & Frank van Ekeren eds., 2022).

¹³⁵See, e.g., INT’L OLYMPIC COMM., BASIC UNIVERSAL PRINCIPLES OF GOOD GOVERNANCE WITHIN THE OLYMPIC MOVEMENT (2022); PLAY THE GAME, NATIONAL SPORTS GOVERNANCE OBSERVER: INDICATORS AND INSTRUCTIONS FOR ASSESSING GOOD GOVERNANCE IN NATIONAL SPORTS FEDERATIONS (2018); Council of Europe, *Recommendation of the Comm. Of Ministers to Member States on the Promotion of Good Governance in Sport*, CM/Rec(2018)12 (2018); EU Expert Group “Good Governance” Work Plan for Sport: Principles of Good Governance in Sport (Sept. 2013), https://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrbl2-sept2013.pdf.

requirements for free, fair, and regular elections in governing bodies. Imposing limit term times for executive positions would also prevent accumulations of power. Representation is another. Federations could be obliged to ensure the representation of stakeholders who currently have no, or limited, voice in decision-making processes. This includes women who remain under-represented at all levels of football governance,¹³⁶ a situation that could be improved by laying down mandatory quotas, which exist in France and soon Poland—set respectively at 50% and 30%¹³⁷—and would be consistent with EU instruments such as the Women on Company Boards Directive.¹³⁸ It equally extends to players, clubs, and fans. As to the latter, the UK fan-led review proposed the establishing of “golden shares” and shadow boards to allow supporters influence decisions taken by their clubs; at governance level, there could be a requirement to give fan representatives seats in executive bodies. To prevent conflicts of interests, individuals who are active in football should be prohibited from profiting from the commercial exploitation of football-related activities, as per the “Anti-Pique clause” in Spain’s new sports act. To improve the effectiveness of checks and balances, rules could be put in place to stop officials who served in one “branch” of football governance, for example in executive committees, to serve in another, like disciplinary committees.¹³⁹

One issue that would need discussing in this context is whether the regulatory and commercial functions of football authorities should be separated. Weatherill has made a proposal to that effect, emphasizing the systemic conflict of interests between the two roles.¹⁴⁰ The problem with having regulatory powers and economic interests in the same pair of hands is that the latter can easily influence the former. A federation may, under the banner of protecting the integrity of the sport, take decisions that are aimed at promoting its financial goals, a danger explicitly recognized in the *Superleague* and *ISU* judgments. The potential for cross-contamination could be reduced if the two functions are uncoupled. This would be a drastic measure, but not an unprecedented one. For example, the EU competition investigations into international motor racing in the early 2000s resulted in the Fédération Internationale d’Automobile (FIA) separating its regulatory and commercial operations.¹⁴¹ Alternatively, the Sports Act could be helpfully used to provide guidance on how governing bodies can avoid conflicts of interests while discharging their functions in order to comply with the transparency duties enunciated by the CJEU.

Governance standards should be seen as a non-negotiable component of any EU sports legislation, but more can be done. Substantive requirements could be adopted with a view to regulating the content of football rules and policies. Again, the list of potential suggestions is long, but documents like the Council of Europe resolution on football governance contain, in addition to the various legislative initiatives at Member State level, helpful guidance.¹⁴² The EU could impose human rights obligations on football governing bodies to protect individuals within the game, such as free speech of players and supporters, or affected by it, like health and safety of workers involved in infrastructure projects or citizens living near them; this could extend to

¹³⁶Moya Dodd & Catherine Ordway, *FIFA Governance: How Crisis Opened the Door for Gender Equality Reform* 31 (Jean Monnet Working Paper 14/20, 2020).

¹³⁷Code du Sport, L. 141-1 (Fr.); Polish Ministry of Sport and Tourism, *Czas na Kobiety w Sporcie [It’s Time for Women in Sport]* (July 18, 2024), <https://www.gov.pl/web/sport/czas-na-kobiety-w-sporcie-ministerstwo-sportu-i-turystyki-zapowiadana-nowelizacje-ustawy-o-sporcie>.

¹³⁸Directive 2022/2381 of 23 Nov. 2022 on improving the gender balance among directors of listed companies, 2022 O.J. (L 315/44).

¹³⁹Maduro, *supra* note 36.

¹⁴⁰Weatherill, *supra* note 36.

¹⁴¹Notice published pursuant to Article 19(3) of Council Regulation No 17 concerning Cases COMP/35.163—Notification of FIA Regulations, COMP/36.638—Notification by FIA/FOA of agreements relating to the FIA Formula One World Championship, COMP/36.776—GTR/FIA and others, 2001 O.J. (C 169/5).

¹⁴²EUR. PARL. ASS., *Football Governance: Business and Values* (2022), <https://pace.coe.int/en/files/29765/html>.

bidding criteria for football competitions.¹⁴³ Athletes' rights could be strengthened. The protection which players enjoy in the sports justice system has long been criticized as insufficient,¹⁴⁴ and could be enhanced by introducing requirements concerning the right to defense, the independence of adjudicators, and the availability of remedies before ordinary courts.¹⁴⁵ The protection of minors from abuse, violence, and trafficking could be improved. Associations could be obliged to comply with the principle of equal pay and adopt robust maternity policies. An owners' and directors' tests could help control who gets to run football clubs, involving, as proposed in the UK Fan-Led Review, checks on integrity, competence, and financial resources. Other ideas, such as rules protecting the openness of football competitions, laying down improved head injury protocols, and setting expectations towards financial redistribution, are among the many propositions that could be considered.

Readers familiar with the inner workings of sports will have noticed that although some of the requirements mentioned above are novel, others already exist in the rules of football governing bodies. One may be tempted to think of the latter as an unnecessary duplication of regulation, but that would be a hasty conclusion. Even if EU legislation were to reproduce standards set out in football statutes, it would still have an important added value. The shift from self-regulation to regulation entails the shift from self-control to external control. What is problematic about present-day football governance is not primarily that there is a lack of sensible rules, but that these remain underenforced or misapplied. Even the best-intended internal reforms are bound to remain ineffective as long as no cultural change takes place within an organization.¹⁴⁶ Having public safeguards would, to an important extent, allow this problem to be overcome by enabling public scrutiny. We would no longer be powerless if a FIFA President extended their tenure beyond what is permitted, officials were appointed despite lacking political or financial independence, or the hosting privileges for a World Cup were awarded to countries with a poor human rights record. EU institutions could review and, if necessary, correct these violations.

This brings me to the issue of enforcement. A choice would have to be made as to how to implement the normative content of the European Sports Act. Several possibilities exist here. The first would be to simply adopt the law without creating a special enforcement regime. We would have a set of rights and obligations with which actors in the football world would be expected to comply, similarly to European legislation in many other fields. Both EU and national authorities as well as, assuming the new rules had direct effect, private individuals would watch jointly over their compliance. A second, more determined solution would be to put enforcement in the hands of an institution that systematically monitors the conduct of football governing bodies and actors. This could be the Commission which, as the "guardian of the Treaties," already has expertise here, but would need additional resources to discharge its tasks, for example through an Office or Directorate-General for sport. However, ideally, an independent regulator would be established in the form of an EU sports agency, which could be modelled after the one proposed in the UK Football Governance Bill and possibly co-operate with designated national authorities.

Regardless of which precise requirements are adopted, one issue that would need consideration is whether football governing bodies should gain something from being regulated. In particular: Should they be granted a legal monopoly in return for adhering to external regulatory standards,

¹⁴³John G. Ruggie, "For the Game. For the World." *FIFA and Human Rights*, HARVARD KENNEDY SCHOOL (2016), <https://www.hks.harvard.edu/centers/mrcbg/programs/crri/research/reports/report68>.

¹⁴⁴Faraz Shahlaei, *The Collision Between Human Rights and Arbitration: The Game of Inconsistencies at the Court of Arbitration for Sport*, 40 ARB. J. 169, 174 (2024); Chui Ling Goh & Jack Anderson, *The Credibility of the Court of Arbitration for Sport*, 13 HARV. J. SPORTS & ENT. L. 233, 236 (2022); Antoine Duval, *Time to Go Public? The Need for Transparency at the Court of Arbitration for Sport*, Y.B. INT'L SPORTS ARB. 3 (2017).

¹⁴⁵See Case C-600/23, *Royal FC Seraing v. FIFA, UEFA, et al*, ECLI:EU:C:2025:24 (Jan. 16, 2025) (opinion of AG Ćapeta).

¹⁴⁶MARK PIETH, *Beyond Changing the Code: Reforming Culture*, in REFORMING FIFA 59, 59 (Mark Pieth ed. 2015).

as a *quid pro quo*?¹⁴⁷ There are examples of this type of arrangement at the national level. Some Member States, such as France, have accorded sports federations exclusive governing rights while subjecting them to regulatory requirements. This solution would certainly make it more palatable for football authorities to accept EU legislation. It would, however, also be a big concession—and it is not clear whether that concession is warranted. There would be something unusual about a sector creating so many negative internalities and externalities that lawmakers feel the need to intervene, yet being rewarded by securing a monopoly to pursue its activities. It may, instead, be justified to regulate the field without cementing its monopolistic makeup, as recent EU legislation on digital services illustrates.

Addressing these delicate regulatory questions risks, some may object, putting the cart before the horse. Would the EU even be allowed to enact a football law? A constitutional prerequisite for legislation is competence. The Union is bound by the principle of conferral, which means that it can only act where and to the extent which the Treaties allow it to. Historically, the EU had no explicit power to regulate sports. This has changed with the Treaty of Lisbon and the insertion of Article 165 TFEU, which tasks it with contributing to European sporting issues by, *inter alia*, “promoting fairness and openness in sporting competitions” and “protecting the physical and moral integrity of sportsmen and sportswomen.”¹⁴⁸ Although this puts EU policy making in the field of sports on firmer ground, the norm is designed as a supporting competence. It enables the adoption of incentive measures and recommendations but excludes harmonization. Or, as the Court of Justice somewhat formalistically put it in *Superleague*, Article 165 TFEU covers “actions” in the field of sport, not “policies”.¹⁴⁹ As a legal basis for setting binding pan-European standards—of whatever scope and depth—it would, therefore, be unsuitable.

Article 114 TFEU provides a better alternative. It gives the EU the competence to adopt legislative measures relating to the internal market, and could, if needed, be used in combination with more specific norms from free movement¹⁵⁰ and other areas.¹⁵¹ There are scores of legislative precedents for this way of proceeding. The aforementioned Digital Services and Market Acts, which regulate Big Tech companies, are based on Article 114 TFEU. The European Media Freedom Act, which promotes media pluralism and independence,¹⁵² is as well. So is the Critical Entities Resilience Directive, which protects essential infrastructure.¹⁵³ The Corporate Sustainability Due Diligence Directive, which strengthens human rights duties of businesses, adds Articles 50(1) and 50(2)(g) TFEU to the mix.¹⁵⁴ These are but the latest high-profile examples.

According to a well-established line of case law,¹⁵⁵ Article 114 TFEU can be invoked for measures that are genuinely aimed at improving the conditions for the establishment and functioning of the internal market. Mere disparities between Member State laws are not

¹⁴⁷See, e.g., Weatherill, *supra* note 36, at 22.

¹⁴⁸TFEU art. 165.

¹⁴⁹Case C-333/21, *European Superleague Company*, ECLI:EU:C:2023:1011, ¶ 99 (Dec. 21, 2023).

¹⁵⁰TFEU arts. 50(1) & 50(2)(g).

¹⁵¹See, e.g., TFEU art. 157(3).

¹⁵²Regulation 2024/1083 of 11 Apr. 2024 Establishing a Common Framework for Media Services in the Internal Market, 2024 O.J. (L 2024/1083).

¹⁵³Directive 2022/2557 of 14 Dec. 2022 on the Resilience of Critical Entities, 2022 O.J. (L 333/164).

¹⁵⁴Directive 2024/1760 of 13 June 2024 on Corporate Sustainability Due Diligence, 2024 O.J. (L 2024/1760).

¹⁵⁵Case C-376/98, *Ger. v. Eur. Parliament & Council (Tobacco Advertising I)*, ECLI:EU:C:2000:544 (Oct. 5, 2000); Case C-491/01, *Brit. Am. Tobacco*, ECLI:EU:C:2002:741 (Dec. 10, 2002); Case C-58/08, *Vodafone v. Secretary of State for Business, Enterprise & Regulatory Reform*, ECLI:EU:C:2010:321 (June 8, 2010); Case C-358/14, *Pol. v. Parliament & Council (Menthol Cigarettes)*, ECLI:EU:C:2016:323 (May 4, 2016); Case C-547/14, *Philipp Morris v. Secretary of State for Health*, ECLI:EU:C:2016:325 (May 4, 2016).

sufficient. They must obstruct free movement and have a direct effect on the functioning of the internal market or cause significant distortions of competition. Laws can be aimed at preventing the emergence of future trade barriers as long as they are likely and pursue non-economic objectives, even if they are a decisive factor in the regulatory choices made. The Court has interpreted these criteria generously,¹⁵⁶ and there can be little doubt that European legislation which focuses on professional football or sports would meet them. Sport is a significant element of the internal market, accounting for over 2% of the EU's GDP and 3% of its employment, with professional football making up the lion's share of these figures.¹⁵⁷ There are already significant disparities in how football is regulated across Europe, which stem from both public legislation and private self-regulation.¹⁵⁸ They might further deepen in the future, as the recent legislative developments at the national level suggest. The regulatory differences restrict freedom of movement and have a direct effect on the internal market, by making it less attractive and, at times, impossible for players, clubs, owners, and other actors to work, provide services, or invest capital abroad. By the same token, they affect competition in a tangible way, by creating different conditions for economic activity across leagues and associations.

The question may be raised whether relying on Article 114 TFEU would not amount to a circumvention of Article 165 TFEU. Several reasons militate against this reading. The EU is, in principle, free to choose the legal basis for its actions, as long as that the criteria for resorting to that legal basis are fulfilled. If the requirements for legislating under Article 114 TFEU are met—and they are—the existence of Article 165 TFEU cannot alter that conclusion. Suggesting otherwise would mean that the introduction of the latter provision has somehow restricted the scope of the former, or that the EU's competence to regulate sports through its internal market powers has, paradoxically, become narrower after it was given a formal sports competence. It is worth highlighting that the CJEU's latest jurisprudence does not change things in this regard, as the CJEU insists on the limits of Article 165 TFEU while not ruling out regulating the sector through other legal bases. I should add that it is not unusual for EU institutions to rely on general competence norms although more specific, thematically relevant provision exist. We have even seen this happening in the area of sport itself, and to the benefit of UEFA, the cooperation agreement with whom was concluded not based on Article 165 TFEU, but Article 17 TFEU.¹⁵⁹ None of this renders Article 165 TFEU superfluous. The norm permits the EU to adopt a variety of measures it could otherwise not pursue, or not as easily, including on sports funding, through programmes like Erasmus+ and the European Year of Youth, and international cooperation, such as agreements on anti-doping. Nor does it turn Article 114 TFEU into a general sports competence. Only economic aspects of sports with a direct impact on the internal market fall in its purview, while others, such as the regulation of local and amateur sports, remain outside of it.

The benefits of pursuing the goal of football reform through EU legislation are, in many ways, a direct response to the drawbacks of the two previously discussed options. A dedicated football law would allow the EU to regulate in a systematic, not *ad hoc*, manner. It would establish predictable rules for football stakeholders that would not depend nearly as much on litigation. It would, at the same time, permit to adopt a coherent regulatory framework that would replace the current piecemeal approach. Unlike in judicial proceedings, the rights, interests, and concerns of all football stakeholders—not just the ones affected by the specific dispute—could more easily be taken into consideration. This would enable the finding of acceptable trade-offs and compromises

¹⁵⁶Stephen Weatherill, *The Function and Limits of Legislative Harmonization in Making the Internal Market*, in OXFORD PRINCIPLES OF EUROPEAN UNION LAW: VOLUME II (Takis Tridimas & Robert Schütze eds., forthcoming).

¹⁵⁷European Commission Study on the Economic Impact of Sport Through Sport Satellite Accounts (Apr. 2018), <https://op.europa.eu/en/publication-detail/-/publication/865ef44c-5ca1-11e8-ab41-01aa75ed71a1/language-en>.

¹⁵⁸For the latter, see *Explaining the Bundesliga's 50+1 Rule*, BUNDESLIGA, <https://www.bundesliga.com/en/faq/what-are-the-rules-and-regulations-of-soccer/50-1-fifty-plus-one-german-football-soccer-rule-explained-ownership-22832>.

¹⁵⁹See Duval, *supra* note 121.

on a variety of issues that, during legal or competition proceedings, are discussed separately but are, in substance, closely linked to one another: Transfer rules and financial sustainability, club ownership and fan rights, training compensation and revenue redistribution, and so on. Finally, and in contrast to the EU cooperation route, all of this would come in the form of binding legal rules, which can be enforced by institutions outside the football world.

The principal problem with the legislative approach is practical: How to get there? As promised at the outset, I will provide some reflections on this issue in the next section. At this point, however, it bears pointing out that if, for political or other reasons, it proves impossible to enact reasonably comprehensive football legislation, the EU could adopt sectoral measures instead. These would be aimed at specific aspects of football governance, such as athletes' rights, fan representation, or, to mention a topic debated before the European Parliament not too long ago, environmental impact.¹⁶⁰ Alternatively, legislative projects with a cross-sectoral reach could be extended or applied to football-related issues. The Television Without Frontiers Directive, which protects public access to major sporting events,¹⁶¹ and the new Foreign Subsidies Regulation, which extends EU state aid rules to non-EU countries,¹⁶² exemplify this strategy. Measures like these will often be easier to agree on than a general sports law, as the range of substantive issues and, consequently, the scope for political disagreement are more confined. However, they also have a limited reach and, consequently, make it harder to set out a consistent regulatory framework. One risks ending up getting bits and pieces of regulation which do not necessarily follow an overarching idea or, in the case of non-sport specific legislation, may not even consider football-related concerns during the legislative process, raising the specter of ill-fitting requirements.

F. How to Get There: Coalitions, Crises and Change

Arguing for more extensive regulation of football in the form of EU legislation may appear, at once, overdue and anachronistic. Overdue because the death of self-regulation was pronounced decades ago by scholars like Moran, who noted that “we regulate when we cease to trust.”¹⁶³ That the world of sports has been allowed to continue on the path of self-regulation to such a significant extent and for such a long period of time—despite giving us so many reasons for ceasing to trust—is astonishing. At the same time, the case for publicly enforced legislation may feel oddly outdated. Regulatory theory and practice have moved away from “command and control” type regulation towards hybrid, polycentric, and decentralized models.¹⁶⁴ Although different approaches have emerged, their leitmotif is that the state's regulatory role is minimized while that of private actors is increased. Legislation increasing the role of the EU, which is not a state but a state-like polity, would seemingly run against this trend. The two observations are not necessarily contradictory, though. The effect of European legislation would be to regulate certain fundamental aspects of

¹⁶⁰On Environmental Sustainability in Sport: Hearing Before the European Parliament's Sports Group (Apr. 4, 2023), <https://www.europarl.europa.eu/streaming/?event=20230426-1215-SPECIAL-OTHER>.

¹⁶¹Council Directive 89/552 of 3 Oct. 1989 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 1989 O.J. (L 298/23).

¹⁶²Regulation 2022/2560 of 14 Dec. 2022 on foreign subsidies distorting the internal market, 2022 O.J. (L 330/1). See Matt Slater, *Belgian Club to Take Legal Action Over Manchester City Stablemate Lommel SK*, N.Y. TIMES (May 5, 2023), <https://www.nytimes.com/athletic/4491068/2023/05/05/cfg-man-city-lommel-virton/>.

¹⁶³Michael Moran, *From Command State to Regulatory State?*, 15 PUB. POL'Y & ADMIN. 1, 10 (2000). See also MICHAEL MORAN, *THE BRITISH REGULATORY STATE: HIGH MODERNISM AND HYPER INNOVATION* (2003).

¹⁶⁴David Levi-Faur, *The Global Diffusion of Regulatory Capitalism*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 26 (2005); Colin Scott, *Regulation in the Age of Governance: The Rise of the Post-Regulatory State*, in *THE POLITICS OF REGULATION* 145, 150 (Jacint Jordana & David Levi-Faur eds., 2003); Julia Black, *Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a “Post-Regulatory” World*, 54 CURRENT LEGAL PROBS. 103, 105 (2001).

football governance, while leaving federations autonomy in other matters. This would insert an element of public regulation and curtail the scope for self-regulation, in line with Moran's thesis. However, the eventual system would contain elements of both public and self-regulation, in line with modern regulatory conceptions. So even if the vantage point may be different, the finishing point could be comparable: Some government control alongside some private regulation.

Perhaps a more significant question is whether the EU would have the political authority for such an intervention. The Union has frequently been criticized for over-regulating; indeed, for regulating certain fields at all. Does it have the necessary legitimacy to enter the football arena? This is a delicate issue, but one that need not prove an insurmountable obstacle. The times where the EU mostly occupied itself with technical details of economic regulation are long gone. We are seeing an increasing number of successful EU legislative projects completed on topics of high salience, such as digital services, social policy, and gender equality.¹⁶⁵ Tackling a sensitive policy field such as football would, in this light, not be unusual. In fact, the already high level of Europeanisation of the sector, in terms of both the transnational activity of fans, players, and clubs as well as the growing amount of European case law, makes it a fertile ground for stronger EU regulation. What is more, there could be a democratic dividend. Maduro puts this sharply, stating the Union "can reinstate democratic control over a form of private regulatory power that Member States cannot effectively regulate and scrutinize on their own."¹⁶⁶ No single country can take on UEFA and FIFA, but the EU may be able to.

The EU would, of course, have to decide internally whether to invest the necessary efforts into an undertaking of this magnitude. Political capital is scarce, regulatory endeavors need to be wisely picked. This truism applies to the present-day Union with particular force. After over a decade of stumbling from one crisis to the next, amplified by the rise of geopolitical tensions, EU institutions have increasingly difficult choices to make both in terms of what they do and how they do it. Saving football may, at first sight, not look like a priority. Although there is no doubt that there is a myriad of other issues requiring EU attention, it would be a mistake to dismiss this one too quickly. Football matters socially, politically, and financially. Where the game thrives, it forms an influential cultural practice which contributes to identity building, social cohesion, and economic prosperity. Where it fails, it exerts negative effects not only on actors directly involved in the game, but also local as well as, more and more, global communities.¹⁶⁷ The sport has become too important to be left unregulated.

What, then, needs to happen for EU legislation in this area to materialize? This, in many ways, is the million-euro question. It brings us back to the starting point of the Article, the observation that the EU has, so far, not fulfilled its regulatory potential when it comes to football. Although there is certainly no readymade path, existing research on sports regulation can help identify strategies for how to change this state of affairs. The most in-depth work on the topic has been done by Geeraert.¹⁶⁸ Drawing on a principal-agent model, he found that—in addition to the size of the internal market—regulatory capacity and cohesiveness are the main factors determining the success of EU control of sports governing bodies. The better developed both dimensions are, the more credible the threat of EU sanctions becomes, thus strengthening regulatory impact. Football authorities can mitigate EU control by manipulating the preferences of the European Commission, Parliament, and Member States through lobbying and reprisals, as well as by appeasing aggravated football stakeholders through favors and compromises. These insights can be usefully combined with the recent work on regulatory capture. Meier, Garcia, Yilmaz & Chakawata have shown that football governing bodies have managed to influence the EU political process by relying on the Commission's self-understanding as a "legitimacy

¹⁶⁵See Weatherill, *supra* note 156.

¹⁶⁶Maduro, *supra* note 36, at 234.

¹⁶⁷FairSquare, *supra* note 57, at 93–167.

¹⁶⁸GEERAERT, *supra* note 31, at 137.

maximiser” which avoids unpopular conflicts.¹⁶⁹ They make use of the interest heterogeneity among football stakeholders and invoke socio-cultural ideals to shield the sport from regulatory intervention.

Based on the above, we can envisage three basic steps that would, in one form or another, need to take place before European sports legislation—and greater regulatory involvement in general—can emerge. The first is intensified coalition building. If an EU Sports Act is meant to see the light of day, different actors will need to be convinced of its appeal. This notably includes national governments, the Commission, the Parliament, the general public, as well as the world of football itself. The concept of advocacy coalitions, developed by Sabatier,¹⁷⁰ was introduced into the scholarship on EU sports law by Parrish, who argued that there were two competing forces which shape EU action here: the single market, or “football business,” coalition and the socio-cultural, or “sporting autonomy,” coalition.¹⁷¹ Whereas the former sees sport as a commercial activity to which the principles of internal market law should be applied with the ultimate objective of de-regulating the sector, the latter believes that sport is a specific socio-cultural activity which needs to be exempt from EU rules. Doubts have been voiced as to whether these coalitions ever existed in their pure form,¹⁷² but even if they did, the project of reforming football through EU regulation would require a different advocacy setup, one which combines elements of both of Parrish’s groups. This “regulatory reform” coalition would, on the one hand, need to embrace the belief that football should adhere to certain normative values, such as good governance, gender equality, financial solidarity, and fan representation, thus resembling the socio-cultural coalition. On the other hand, it would need to aim at protecting these values through EU regulation, thus resembling the single market coalition.

Who could be part of this new coalition? One major constituency is likely to lie in the many stakeholders who are currently under-represented in, or profit little from, existing football structures: Associations with a strong(er) moral compass,¹⁷³ leagues and clubs at Europe’s periphery, fans not given a voice in matters of football governance, as well as female players and officials. Another important group is ordinary citizens who are no longer willing to tolerate the ethical, social, and financial problems that football creates. This coalition of regulatory reformists would need to start, first of all, by advocating for its cause within the world of football and society at large, then put pressure on higher-ranked institutional actors. Athletes, fans, and citizens would have to convince national associations and governments, which would subsequently exert pressure in the Council. A similar, bottom-up advocacy chain could reach the Commission and Parliament. Once the reform movement would become sufficiently strong, its demands could make it into Parliament as a reflection of popular will, or a critical mass, and relieve some of the anxieties the Commission may have in its function as “legitimacy maximiser.” As the US experience with regulating the International Olympic Committee after the Salt Lake City scandal and the football governance legislation in the UK show, lawmakers will step in where they anticipate political gains which, in turn, depend on the visibility of and support for a cause.¹⁷⁴

The second step on the road towards EU regulation would, in all likelihood, have to be the occurrence of a crisis. Given the well-established power structures within football, coalition building is improbable to suffice in and of itself as a means to prompt change. We know from

¹⁶⁹Meier, Garcia, Yilmaz & Chakawata, *supra* note 32, at 704.

¹⁷⁰Paul A. Sabatier, *An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein*, 21 POL’Y SCI. 129 (1988).

¹⁷¹Richard Parrish, *The Politics of Sports Regulation in the European Union*, 10 J. EUR. PUB. POL’Y 246 (2003).

¹⁷²Serhat Yilmaz, *Advancing our Understanding of the EU Sports Policy: The Socio-cultural Model of Sports Regulation and Players’ Agents*, 10 INTER’L J. SPORT POL’Y 353, 358 (2018).

¹⁷³See Colin Millar, *FIFA Criticised By Norwegian FA Over ‘Flawed’ 2030 and 2034 Men’s World Cup Bidding Process*, N.Y. TIMES (Dec. 10, 2024), <https://www.nytimes.com/athletic/5983701/2024/12/10/world-cup-fifa-hosts-criticism-norway/>.

¹⁷⁴See Roger Pielke Jr., *How Can FIFA Be Held Accountable?*, 16 SPORT MGMT. REV. 255, 264 (2013).

general regulatory theory that crises or “focusing events”¹⁷⁵ can be a powerful catalyst for reform and have proven to put an end to self-regulation in many sectors.¹⁷⁶ There is no reason to think that the link between reform and crisis should be any weaker in football. The institutional reforms of FIFA were triggered by large-scale investigations into corruption within the organization, the latest changes of the French Sports Code were inspired by governance failures in the domestic football system, and the government review of English football was explicitly justified by reference to several “points of crisis in the national game.”¹⁷⁷ More specifically in relation to EU sports law and policy, it has been observed that football authorities need to “demonstrate their trustworthiness to the EU institutions to significantly influence [their] preferences”.¹⁷⁸ Against this backdrop, events casting federations in a problematic light, such as instances of significant financial or ethical wrongdoings, are consequential as they, simultaneously, increase the demand for regulation and decrease the ability of football governing bodies to push back against it.

In hindsight, the 2015 corruption case probably presented the best opportunity to serve as such a focusing event and inspire an expansion of European regulatory oversight of football. Every political institution of the EU voiced their discontent with sport governance standards and called for reform.¹⁷⁹ The years leading up to the Qatar World Cup were another chance, with public dissatisfaction with FIFA reaching extraordinarily high levels. In the meantime, the Super League controversy has made reform efforts more challenging. On the one hand, it shows that the power of UEFA and national associations has weakened. On the other hand, it has led the EU and the Member States to rally behind the football pyramid, as symbolically illustrated by the *Superleague* hearings before the CJEU where every single of the twenty-two intervening Member States, an all-time record, sided with the federations. This has added to the cognitive legitimacy of existing governing bodies, presenting them as the saviors of all that is worthwhile about the game, not as a major cause of many of the problems it is experiencing. But, the way things look, the next crisis will come—and it will have to be used by the reform coalition with greater determination.

The third and final step will be the actual reform. At this point, legislative proposals prepared in advance should be taken out of the drawer. As explained, many stars will have to align to get to this stage. Lawmaking is a famously complex and incalculable endeavor. The best legislative projects can fail, but already serious consideration of legislation might have a palpable effect. The UK experience with the fan-led review is instructive in this context. The mere publication of the review’s report—and the prospect of government-sponsored legislation embracing its findings—led the Premier League to strengthen its policing of financial fairplay¹⁸⁰ and improve fan involvement,¹⁸¹ aspects that featured prominently in the recommendations. Operating in the “shadow of hierarchy”¹⁸² can be a powerful incentive for self-improvement. Yet, to effect lasting change, a credible threat of sanctions must be sustained. This, in turn, requires “hierarchy” to step out of the shadows on occasion.

¹⁷⁵JOHN W. KINGDON, AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES 96 (2010).

¹⁷⁶MICHAEL MORAN, THE BRITISH REGULATORY STATE: HIGH MODERNISM AND HYPER INNOVATION (2003).

¹⁷⁷DEP’T FOR DIGIT., CULTURE, MEDIA & SPORT, FAN-LED REVIEW OF FOOTBALL GOVERNANCE: SECURING THE GAME’S FUTURE 12 (2021) (Gr. Brit.).

¹⁷⁸GEERAERT, *supra* note 31, at 169.

¹⁷⁹Council and Parliament, *supra* note 127. See also, *A Pledge to Implement Good Governance in Sport*, GOOD GOVERNANCE IN SPORTS (including an invitation of the Commission for sports governing bodies to implement a declaration on good governance), https://www.eusport.org/goodgovernance/GGS_outputs/GGS_Documents/good_governance_pledge.

¹⁸⁰Katie Falkingham, *Manchester City Charged with Breaking Financial Rules by Premier League*, BBC SPORT (Feb. 6, 2023), <https://www.bbc.com/sport/football/64536785>; Sachin Nakrani & Andy Hunter, *League ‘Wants Everton to Lose 12 Points’ in FFP Case*, THE GUARDIAN (Oct. 26, 2023), <https://guardian.pressreader.com/article/282295324886523>.

¹⁸¹PREMIER LEAGUE HANDBOOK 241–46 (2024), Section R: Supporter Relations, https://resources.premierleague.pulselive.com/premierleague/document/2024/12/11/e9aa1b9e-a7d5-4788-8afe-6e07b8a5f5fc/TM1603-PL_Handbook-and-Collateral-2024-25_11.12_DIGITAL.pdf.

¹⁸²Adrienne Héritier & Dirk Lehmkuhl, *The Shadow of Hierarchy and New Modes of Governance*, 28 J. PUB. POL’Y 1 (2008).

G. Conclusion

Change in sports governance rarely comes voluntarily—it requires external pressure. This article sketched three ways in which the EU could increase its regulatory control over football: Adjudication, cooperation, and legislation. Each solution has its merits and demerits, potential and challenges. Yet, ultimately, legislation is the gold standard. Adopting a dedicated sports law would allow the EU to act in a self-determined fashion and set out binding rules on a range of issues which follow a coherent regulatory idea. The different options need not be mutually exclusive. Multiple routes could be pursued in parallel and interact in a reinforcing manner. The past of EU sports law illustrates this well. Activist court rulings like *Bosman* emboldened the Commission to initiate competition proceedings and devise its own sport policy. The strategies discussed above could be combined in a similar manner. Daring CJEU and Commission decisions would strengthen the case for legislative action, more demanding cooperation standards could inspire higher standards of judicial review.

Although legitimate debates may and should be had about the precise contours of regulatory intervention, there cannot be any doubt that intervention is needed. Football governing bodies have shown themselves to be incapable of governing the game in a democratic, fair, and socially responsive manner. Their actions have harmed players, clubs, fans, as well as communities across the globe. Therefore, reform is imperative. Federations ought not see this as a punishment or burden. Quite the opposite: EU regulation would create conditions under which they can discharge their mission more effectively and realize self-stated goals such as promoting transparency, accountability, equality, and human rights to a greater extent than at present. For the good of the game.

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