

EUROPEAN SPORT MODEL ASSESSMENT AND PROSPECTS



EXECUTIVE SUMMARY

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The contradictory positions taken by the European institutions on the European Sport Model (ESM) for decades demonstrate the difficulty of understanding such a model. At the beginning of the 20th century, following a process of institutionalisation that began in England, a model for the organisation of European sport emerged.

It is based on a number of pillars, which appear to be **essential markers** defining the ESM:

- The monopoly of federations;
- The regulatory power of federations;
- The affiliation of athletes within clubs;
- The participation of athletes in a single competition;
- The organisation of sport according to a hierarchical system reinforced by the promotion/relegation phenomenon;
- The structuring of sporting bodies in the form of associations;
- The voluntary nature of the leaders of sporting bodies, a corollary of the adoption of the associative form and its non-profit nature.

Throughout the 20th century, the development of sport was accompanied by increasing interaction with the market. While the European Community, from the 1970s onwards, brought the concepts of sport and economic activity closer together, the first rulings handed down by the European courts seemed to recognise a sporting exception, which would exempt sport from having to apply European law, in particular, competition law (the Walrave and Koch rulings in 1974, then Donà in 1976). Gradually the concept of the sporting exception in ECJ case law was abandoned (Bosman judgment, Meca-Medina judgment) in favour of a new concept, that of the specificity of sport, which, although it did not exclude the applicability of European law to sport, was to fight against its application.

Despite the unanimous position of the European institutions in favour of preserving the specificity of sport, the latter has not been able to avoid the advent of a certain number of phenomena of a private commercial origin that have undermined the European sport model. Indeed, some sport federations have been confronted with the emergence of private commercial operators who have created their own supranational sport competitions by freeing themselves from the obligations applicable to federations (Euroleague, KHL, ISL). Beyond the organisation of competitions, the European sport model is also under attack at its base with the development of new practices, which differ from historical practices in that they take place outside the club-centric pyramidal organisation model of sport.

These conflicting situations show that the specificity of sport is struggling to play its role in protecting European sport. It therefore seems legitimate to ask the question of how to defend the European sport model, especially in a context of heterogeneous legislation and organisational models for sport within European countries.

Therefore, the issue we raise is as follows:

Why defend the European sport model?

The aim of this study is above all to demonstrate that the European model emanates from a vision based on fundamental values that must take sport beyond the mere consideration of economic activity. As such, one of the challenges lies in maintaining the interactions between the different levels of the pyramid.

We will first present the challenges faced by the European sport model in the face of the emergence of competing commercial initiatives. We will then analyse how the European sport model's respect for the principles that constitute sport as a collective good justifies national and supranational public authorities maintaining or even strengthening the defence of the model. Finally, based on this analysis, it will be necessary to propose prospective scenarios that will allow us to project what the future of the European sport model could be.

I. THE CHALLENGES FACED BY THE EUROPEAN SPORT MODEL DUE TO THE ADVENT OF PRIVATE MARKET COMPETITION

The pillars of the European sport model, and more particularly the monopoly of federations and the principle of affiliation, have been undermined for several years by numerous phenomena, which all have the common denominator of originating in the private commercial sector at all levels of the European pyramid model.

However, the sporting institutions consider that, as the traditional organisation of sport in Europe, the European sport model should benefit from the highest protection, especially when it comes to prohibiting private market players from intervening in the market of the organisation of sport competitions. For their part, the European institutions consider sport to be an economic activity in its own right, within which sport federations must comply with European competition law, like any other economic operator. **Frustrations arise therefore from a contradictory perception of the degree of protection provided by the European Union to the European sport model.**

In sport litigation, the Court and the Commission put in place a proportionality test, and must verify several elements on a case-by-case basis:

- First, they must ascertain whether the objective pursued by the rule in question is legitimate.
- Then, they must determine whether the measures put in place are proportionate: at this stage, the Court and the Commission will have to determine whether the measures in question are appropriate and necessary.

Even though this pragmatic approach appears to take into account the specificities of sport and paves the way for dialogue and justification, the sporting movement does not seem to be satisfied with it.

We are therefore entitled to question the relevance of maintaining the traditional European sport model; indeed, in view of the repeated attacks on the model, what are the reasons that justify the sport movement's desire to maintain and defend this model at all costs? Why not establish a new model that would leave room for all actors, including those from the private market sector?

The answers to these questions lie in the very nature of sport. **Indeed, economically, sport has to be regarded as a public good.**

From this conception of sport, a certain number of principles will emerge, the existence of which alone justifies the protection of the European model of sport by all actors.

II. RESPECT FOR THE FOUNDING PRINCIPLES OF SPORT AS A PUBLIC GOOD: THE VOCATION OF THE EUROPEAN SPORT MODEL

Sport is a special economic good. Theoretically, it has the qualities of a so-called 'public good'. The introduction to this concept of public good is essential to justify the protection and defence of the European sport model. Indeed, it appears as **a model that allows the production of sport while respecting the principles that make it a public good**, which are directly or potentially undermined by the erosion of the pillars of the European sport model and the desire of the private sector to focus only on profitable activities. We are referring here to solidarity, and in particular vertical **solidarity**, to the social functions attributed to the practice of sport, to the **territorial networking of** sport, to the integrity of competitions and the moral and physical **integrity of** athletes and finally to the **training** of talent. These principles are constitutive of sport as a public good and the European sport model proposes conditions favourable to their respect, contrary to alternative models.

The protection of the European sport model is therefore essential for the continued perception of sport as a public good, and with it all the principles that differentiate sport from a classic economic good.

This protection is today in the hands of the European institutions as well as those of the actors of the sporting movement. A prospective analysis of their behaviour is necessary to determine whether this protection will tend to weaken or strengthen in the coming years.

III. RECOMMENDATIONS FOR FEDERAL STRATEGIES IN THE FACE OF DIFFERENT PROSPECTIVE SCENARIOS

In order to describe what the future of the European Sport Model might look like, two scenarios have been constructed to reflect possible developments. More specifically, the first scenario characterises a situation in which the protection of the European Sport Model by the institutions would weaken, while the second scenario presents a favourable development characterised by a strengthening of this protection. In each of these hypotheses, it will be important to describe the process of how this scenario came about and to analyse the consequences for the European sport model and its actors.

SCENARIO 1

WEAKENING THE PROTECTION OF THE ESM



To envisage the weakening of the protection of the European sport model is to envisage either that the **proportionality test**, within which the specificity of sport was intended to be applied, **proves systematically unfavourable to the sport movement, or that the European Union decides to purely and simply remove the concept of the specificity of sport from the Treaty on the Functioning of the European Union.**

The conditions for this scenario to occur are multiple. Endogenously, three elements can be identified that fall under the responsibility of the sporting movement:

- Inadequate governance;
- Insufficient consideration of sport as a public good;
- Excessive heterogeneity of organisational models for sport across disciplines and countries.

At the same time, exogenously, the action of actors outside the sport movement also has repercussions on the weakening of the protection of the European sport model, particularly at the political level, where liberal ideas favouring competition are imposed in the European institutions, which leads to their application within the sport sector.

Weakening the protection of the European sport model by neutralising the effects or eliminating the specificity of sport would be a source of major legal uncertainty that could call into question the federations' monopoly or the pyramid-shaped organisation of sport and thus curb the actions of the sport movement. Faced with this uninhibited competition, the traditional organisation of European sport is in great danger, under threat by an offer that responds more adequately to the needs and desires of practitioners at all levels. This freedom in the organisation of sport, which results in a great heterogeneity of models at the European level, leaves only a framework of common values that is powerless to establish the traditional model of sport organisation as the dominant model.

SCENARIO 2

STRENGTHENING THE PROTECTION OF THE ESM



The improvement of the current situation for the sport movement, in the form of increased protection of the European sport model by the European institutions, could materialise in different ways:

- **Sport could be included in the Treaties as a shared competence of the European Union.**
- **Sport could benefit from a sporting exception instead** of the specificity formalised in the Treaty on the Functioning of the European Union.

These first two solutions do not have the support of the sport movement or the European institutions.

The ultimate solution that could be proposed to strengthen the protection of the European sport model would be **to integrate the rules of sport as a regulatory exemption**, in order to allow them to escape the application of European competition rules.

Endogenously, three elements can be identified that fall under the responsibility of the sport movement and would explain why this scenario occurs:

- The development of adequate governance;
- Improving communication with the European institutions;
- The implementation of actions demonstrating the consideration of the principles of sport as a public good.

Beyond the reasons that can be attributed to the sport movement, the decision of the European authorities to reinforce the protection of the European sport model is also due to exogenous reasons. Indeed, following secession attempts at the top of the pyramid, European political representatives became aware of the precarious situation of the traditional model and measured the consequences of its disappearance.

This scenario reinforces the founding pillars of the European sport model, notably concerning federated practice and the federations' monopoly. It also marks the end of the application of competition law to sport, which has the effect of dissuading private market operators and putting an end to direct competition in the organisation of events, both at the elite and amateur levels.

IV. CONCLUSION

In order to convince the European institutions to improve the protection of the traditional sport model in Europe, the sport movement has a series of indices that the European institutions have been communicating in the different texts they have been producing for many years. In this respect, it can be considered that the European institutions have defined the roadmap to follow so that sport can be considered at its true value, i.e., a sector that cannot be limited to a mere economic activity.

The sport movement must therefore take these arguments into account and comply with them, by respecting the procedure recommended by the European institutions and by developing a communication strategy aimed at these institutions, in order to promote its actions and the positive consequences for European practitioners.

This way the sport movement will be able to claim political support that could lead to a better recognition of the European sport model as well as obtain a better protection that would allow it to guard itself from the attacks of private market actors, who are determined to challenge the traditional model of the organisation of sport. Whereas the latter has much more to offer than merely a commercial and economic vision of sport, whether it is at elite or amateur level.

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