

A strategic vision for sport in Europe

CDES's Strategic Vision for reinforcing the European Sport Model

1. INTRODUCTION

In response to the European Commission's consultation on a "*Strategic Vision for Sport in Europe: Reinforcing the European Sport Model*", the Center for Law and Economics of Sport (CDES) respectfully submits the following observations.

Founded over four decades ago, CDES constitutes a unique ecosystem bringing together a university research center, a non-profit association and a law firm, all dedicated to the legal and economic analysis of sport and to supporting the development of the sports movement. Its long-standing experience at the intersection of research, advisory work, personal commitment of its members within sports organisations, education and professional training, combined with extensive academic work on the organisation of sport in Europe, underpins the present contribution.

Our premise is that the European Sport Model (ESM) is not - and should not be viewed as - an abstract concept. Rather, it is a concrete way of organising sport that generates tangible public interest outcomes. However, this model currently faces unprecedented pressure from powerful market forces, regulatory uncertainty and governance challenges.

Consequently, this contribution addresses three critical questions: (1) How can the European Sport Model be characterised? (2) Why must it be actively defended? and (3) How can it be more effectively protected in the future?

2. HOW CAN WE DEFINE THE SO-CALLED “EUROPEAN SPORT MODEL”?

For decades, European institutions have adopted apparently contradictory positions regarding the ESM, underscoring the complexity of capturing its essence and defining such a model.

Historically, at the beginning of the 20th century, following a process of institutionalisation that began in England, a specific model for organising sport in Europe emerged.

It is founded on several pillars which constitute the essential markers of the ESM:

- **Pyramidal structure:** the organisation of sport according to a hierarchical and open system based on sporting merit, reinforced by the mechanism of promotion and relegation;
- **Central role of federations:** their authority over the organisation of official competitions and their exercise of regulatory power;
- **Unified ecosystem:** the membership of athletes in clubs, which are themselves affiliated to federations; the participation of athletes in a federation-organised competition per sport and level;
- **Solidarity:** the existence of financial and sporting solidarity mechanisms, in particular vertical solidarity between professional and grassroots levels;
- **Associative basis:** the structuring of sporting bodies in the legal form of associations, often relying on the volunteer status of leadership as a corollary of their associative form and non-profit nature;
- **Territorial anchoring and societal values:** the strong connection between clubs and their local communities; the social, educational, cultural and health functions attached to sport practice.

Throughout the 20th century, the development of sport coincided with increasing interaction with the market. From the 1970s onwards, as the European Community progressively brought the concepts of sport and economic activity closer together, the Court of Justice clarified the conditions under which EU law¹ applies to sport.

Initially, the Court held that the practice of sport is subject to Community law insofar as it constitutes an economic activity, whereas rules of purely sporting interest and adopted on non-economic grounds fall outside its scope². The Court also acknowledged that, even when Community law is applicable, certain rules adopted for reasons “*of sporting interest only*” could be justified³. However, subsequent case-law (from *Bosman*⁴ and *Meca-Medina*⁵ to recent

¹ Still Community law at that time.

² ECJ, 12 December 1974, C-36/74, Walrave and Koch v Association Union Cycliste Internationale and Others.

³ Notably, ECJ, 14 July 1976, C-13/74, Donà v Mantero.

⁴ ECJ, 15 December 1995, C-415/93, Union royale belge des sociétés de football association and Others v Bosman and Others.

⁵ ECJ, 18 July 2006, C-519/04 P, Meca-Medina and Majcen v Commission.

rulings such as *TopFit and Biffi*⁶, *European Superleague Company*⁷, etc⁸.) has demonstrated that very few aspects of organised sport escape the scope of EU law (not even amateur sport). The notion of a “sporting exception” has never amounted to a general exemption. At most, it represents a very narrow exclusion for purely sporting rules - a category that appears extremely limited in practice.

Thus, current jurisprudence establishes that “specificity of sport” is not a blanket exemption from EU law. Rather, it is a parameter to be taken into account when assessing whether “restrictive” rules adopted by a sporting association: (1) in the context of economic freedoms, pursue legitimate objectives and are proportionate; or (2) should be considered as having the ‘object’ or ‘effect’ of preventing, restricting or distorting competition. Article 165 TFEU, which recognises the social and educational functions of sport and its structures based on voluntary activity, reinforces this idea but does not create a separate legal regime for sport. As confirmed in the recent *European Superleague* judgment, this provision cannot be interpreted as being a special rule exempting sport from the application of other relevant Treaty provisions or requiring special treatment for sport in that context: the undeniable specific characteristics of sport may be taken into account, but strictly within the existing EU law framework.

Despite the unanimous position of European institutions in favour of preserving the specificity of sport, this legal framework has failed to prevent the rise of private commercial phenomena that have undermined the ESM. Indeed, some sport federations have been confronted with the emergence of rival private commercial operators creating “closed” supranational competitions, by freeing themselves from the obligations applicable to federations (for example, Euroleague Commercial Assets in basketball, the Kontinental Hockey League or the International Swimming League among existing competitions, the Superleague in football or R360 in rugby among projects that have not yet got off the ground). Beyond the organisation of competitions, the ESM is also being challenged at its base by the development of new practices outside the club-centric pyramidal model. These conflicting realities demonstrate that the “specificity of sport”, as currently applied, is struggling to effectively protect European sport, especially in a context of heterogeneous legislation and organisational models for sport within European countries.

⁶ ECJ, 13 June 2019, C-22/18, *TopFit and Biffi*.

⁷ ECJ, 21 December 2023, C-333/21, *European Super League*.

⁸ Notably, ECJ, 21 December 2023, C-680/21, *Royal Antwerp Football Club*; 21 December 2023, C-124/21 P, *International Skating Union v Commission*; 1st August 2025, *Royal Football Club Seraing*, C-600/23.

3. WHY DEFEND THE EUROPEAN MODEL OF SPORT?

The ESM emanates from a vision rooted in fundamental values that elevate sport beyond the mere consideration of economic activity. Theoretically and practically, from an economic perspective, sport is a special economic good: it possesses the distinctive characteristics of a “public good”⁹.

Recognizing sport as a public good is essential to justify the protection and defence of the ESM. Indeed, this model enables the production of sport while preserving the principles that constitute its public value – principles that are directly or potentially undermined by the erosion of the pillars of the ESM 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 ESM provides conditions favourable to their respect, contrary to alternative models.

More broadly, this debate reflects a societal urgency that extends beyond sport. Unregulated market dynamics tend to assess activities solely by their direct contribution to growth or financial return, while largely ignoring their positive and negative externalities. So far, public policies and regulatory frameworks have only partially corrected this bias, at best. In the current context of ecological, social and health crises, such a perspective is no longer sustainable. There is, in our view, a strong case for the EU legislator to promote an approach that explicitly integrates these externalities into the assessment of activities. Sport is emblematic in this respect: when organised in line with the ESM, it generates substantial positive externalities which the free market alone often fails to value or protect and which justify a specific protective framework.

However, sport is currently being seized and transformed by powerful market forces and a dominant financial logic. If it becomes exclusively an entertainment industry aimed at mass consumption, it risks severing its link to educational and ethical purposes. Tensions arise from the conflict between the objective of profit maximization and the respect for the principles that make sport a public good. As such, one of the challenges lies in maintaining the interactions between the different levels of the pyramid.

Protecting the ESM is, therefore, not an act of protectionism, but essential for the continued perception of sport as a public good. It is the only way to ensure that sport continues to benefit society as a whole, rather than becoming a classic economic good serving only private interests.

⁹ In economic theory, a public good is defined as a good that is non-rival (one person’s use does not reduce what is available for others) and non-excludable (it is difficult or impossible to prevent anyone from using it).

4. HOW SHOULD THE EUROPEAN SPORT MODEL BE BETTER PROTECTED?

The diagnosis is clear: while there is a broad political consensus in favour of the ESM, the legal tools available to protect it appear constrained. In the view of CDES, any realistic reflection and proposal for action must start from this legal reality, while calling for a more assertive use of the European Commission's existing powers.

4.1 The legal reality: acknowledging the limits of Article 165 TFEU

As recalled above, the Treaties and the case-law of the Court of Justice make it clear that the ESM cannot be protected through a general “sporting exception” or by an autonomous sport-specific regime detached from the rest of EU law, which is in any case not – or no more – claimed by the sports movement. Article 165 TFEU confers only a supporting competence on the EU: it may support, coordinate or supplement Member State action, but it cannot harmonise national legislation in the field of sport. The *European Superleague Company* judgment confirms that Article 165 TFEU is neither a “cross-cutting provision” of general application nor a special rule exempting sport from market and competition law.

In parallel, the Court of Justice has accepted that sporting associations may be categorised as “undertakings” within the meaning of Articles 101 and 102 TFEU. This functional qualification is understandable in legal terms, but it remains reductive if it leads to treating sport organisations as standard market players. In reality, they are hybrid actors whose regulatory powers and public-interest missions are structurally linked to the ESM.

In this context, relying on a hypothetical Treaty revision - to make sport a shared competence or to enshrine a formal “sporting exception” - is not a realistic short-term strategy, from a political as well as a legal point of view. Nor is it realistic to expect the Court to construct, through interpretation, an exception it has explicitly refused to create. Protection of the ESM must therefore be achieved within the current Treaty framework, through political choices that make full use of the Commission’s soft-law, funding and coordination instruments.

4.2 Proposals for concrete actions

If the EU cannot legislate a single model into existence, it can nevertheless create an environment in which the ESM is the most viable and legally secure option. CDES suggests complementary avenues for action.

a. Providing legal certainty

The Commission should first provide a clearer normative framework for the ESM within its supporting competence. The forthcoming Communication on a strategic vision for sport in Europe offers an opportunity to restate, in operational terms, the core principles of the ESM. This framework would not create a *lex specialis* for sport, but it would clarify the EU’s understanding of the ESM as a model that generates public value and positive externalities. It could be endorsed through Council conclusions and complemented by a Recommendation under Article 165(4) TFEU.

Second, the Commission could adopt guidance on the application of EU internal market and competition law to sport, in line with the Court of Justice's case-law. Such guidelines, illustrated with concrete examples, could clarify under which conditions sporting rules that restrict economic freedoms can be considered legitimate and proportionate in light of the ESM. They could also clarify which specific characteristics of sport should be taken into account, and how, when assessing whether a given rule or practice constitutes a restriction of competition (such as, according to the Court, its level of professionalisation, the way competitions are organised, the interaction between the various participating stakeholders and the role of governing bodies). They should also address what are, as required by the Court of Justice, the *"substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate"*.

While such guidance would not bind the Court, it would provide much-needed legal certainty and give sport governing bodies greater confidence to regulate without constant fear of litigation, given that the burden of proof lies heavily on them.

b. Leveraging financial conditionality

The Commission should use funding as a strategic lever as the EU is already a significant funder of sport through Erasmus+ and other programmes. Public money should support public goods. EU funding programmes could be more explicitly aligned with the ESM by making support conditional on a limited set of standards that demonstrate adherence to the core pillars of the ESM. Rather than imposing detailed regulations, the EU would thus use financial incentives.

c. Institutionalising the "pyramidal dialogue"

The threat to the ESM often arises from a disconnection between stakeholders. The Commission could therefore facilitate a permanent structured dialogue bringing together EU institutions, Member States, sport organisations, athletes' representatives, local authorities and academic experts. Such a forum would not only increase the visibility of the ESM, but also provide a space to define and update standards of good governance in sport.

This points to the value of a "proximity-based" form of regulation, shaped through social dialogue between stakeholders, rather than legal rules imposed solely from above. In the field of sport in particular, norms that are co-constructed are more likely to reflect practical realities and to be effectively applied. This proximity-based approach and co-produced regulation are principles that CDES has long advocated in its work on sports regulation¹⁰.

¹⁰ In his Opinion in Bosman case, Advocate General Lenz already suggested that, by analogy with US antitrust law, social dialogue could provide a way to reconcile the autonomy of the sporting movement with EU competition law. He observed that "the conclusion from American law for Community law is only that in order to guarantee collective bargaining autonomy [...], it may be necessary to exclude collective agreements from competition law where that is necessary for that purpose." (paras 226, 273 and 274).

For the sports movement, such “pyramidal dialogue” should go hand in hand with efforts to strengthen both its external and internal legitimacy. On the one hand, it implies improving communication with the European institutions. On the other hand, if federations wish their autonomy to be respected under EU law, they must demonstrate that their internal decision-making is inclusive and transparent. In practice, stronger democratic legitimacy and better institutional dialogue are mutually reinforcing and together constitute one of the best safeguards against closed, purely commercial breakaway projects.

d. Integrating externalities and monitoring the ESM

The Commission could strengthen the protection of the ESM by more systematically integrating the positive and negative externalities of sport into policy-making and by improving the evidence base on which decisions are taken. Impact assessment guidelines should, where relevant, require explicit consideration of how proposed measures affect, for instance, sport participation, health outcomes, social cohesion, territorial inclusion, or environmental footprint of sport. This would help ensure that the value of sport is assessed not only in terms of short-term economic output, but also in terms of its broader contribution to public policy objectives.

To support this, the Commission could develop a “European Sport Model Scoreboard” based on a limited set of indicators, such as the openness of competitions, the existence and volume of solidarity flows from elite to grassroots sport, participation levels across age, gender and socio-economic groups, territorial coverage of clubs and facilities, and the representation of athletes and women in decision-making bodies. Such a scoreboard would make the ESM more visible, allow progress and divergences to be monitored over time, and provide an evidence base for policy dialogue and funding priorities.

e. Supporting research and data

In parallel, the Commission could make targeted use of its funding instruments to support research and data collection on the ESM. Programmes such as Erasmus+ and other relevant EU funding streams could finance projects aimed at:

- developing and testing robust tools and indicators to analyse and evaluate the externalities of sport;
- designing and refining the indicators proposed for a future “European Sport Model Scoreboard”;
- improving the comparability and availability of sport-related data across Member States.

Such investment in evidence and measurement would provide a more solid basis for the “sport-proofing” of EU policies and for the monitoring and promotion of the ESM over time.

5. CONCLUSION

The ESM is a unique European asset that promotes cohesion, solidarity and the public value of sport. While Article 165 TFEU limits the EU's ability to impose this model through “hard law”, it does not prevent the Commission from acting as a catalyst and guardian of these values and underlying principles. By combining greater legal clarity with targeted financial incentives, better data and structured dialogue, the Commission can help ensure that sport in Europe continues to function as a public good rather than a purely commercial activity.

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