

STEFANO BASTIANON

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THE EUROPEAN UNION AND SPORT HANDBOOK

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The information and views set out in this handbook are those of the author and do not reflect the official position of the European Commission.

List of Abbreviations

CAS	Court of Arbitration for Sport
DLV	<i>Deutscher Leichtathletikverband eV-</i> (German Athletics Association)
DHB	<i>Deutscher Handballbund</i> (German Handball Association)
ECA	Euroleague Commercial Assets
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Communities
ELPA	<i>Elliniki Leschi Periigiseon kai Aftokinitou</i> (Automobile and Touring Club of Greece)
ESLC	European Super League Company
EU	European Union
EWOS	European Week of Sport
FAPL	Football Association Premier League
FFAR	FIFA Football Agent Regulations
FFP	UEFA Financial Fair Play Regulations

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FIA	<i>Fédération Internationale de l'Automobile</i> (International Automobile Federation)
FIBA	<i>Fédération Internationale de Basketball</i> (International Basketball Federation)
FIFA	<i>Fédération Internationale de Football Association</i> (International Federation of Association Football)
FIFA-DRC	FIFA Dispute Resolution Chamber
FIM	<i>Fédération Internationale de Motocyclisme</i> (International Motorcycling Federation)
FINA	<i>Fédération Internationale de Natation</i> (International Swimming Federation)
FOA	Formula One Administration Limited
GDPR	General Data Protection Regulation
IAAF	International Association of Athletics Federations
IOC	International Olympic Committee
ISU	International Skating Union
ITC	International Transfer Certificate
MOTOE	<i>Motosykletistiki Omospondia Ellados NPID</i>
NADA	<i>Nationale Anti-Doping Agentur Austria GmbH</i> (Austrian National Anti-Doping Agency)
ÖADR	<i>Österreichische Anti-Doping Rechtskommission</i> (Austrian Anti-Doping Legal Committee)
RSTP	Regulations on the Status and Transfer of Players
TEC	Treaty establishing the European Community

TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UCI	<i>Union Cycliste Internationale</i> (International Cycling Union)
UEFA	<i>Union des Associations Européennes de Football</i> (Union of European Football Associations)
ULEB	<i>Union of European Leagues of Basketball Leagues</i>
UNECTEF	<i>Union Nationale des Entraîneurs et Cadres Techniques Professionnels du Football</i> (French National Football Coaches Association)
URSBFA	<i>Union Royale Belge des Sociétés de Football Association ASBL</i> (Royal Belgian Football Association)
USK	<i>Unabhängige Schiedskommission</i> (Austrian Independent Arbitration Committee)
WADA	World Anti-Doping Agency

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Introduction

This handbook is the result of 30 years of lecturing in several universities across the globe and the experience that the authors acquired as academics, lawyers, sports judges, and arbitrators in the sports world.

They analyze the historical and exhaustive case-law of the Court of Justice of the European Union deciding on the economic dimension of sports disputes.

The handbook also covers the EU Commission decisions as well as other European institutions acts dealing with manifold features of sport.

The authors thrive to focus on the sometime fraught and complicate relationship between the European Union and sport over the years with an interpretive methodology made easy and smooth.

They aim to provide the readers, *in primis* law students, with a complete jurisprudential collection of documents along with an overview of the EU legal and policy framework.

In this perspective, the five main sections of the handbook are designed and drafted in an essential and simple style so that the readers could immediately grasp the legal and policy issues at stake.

The first section deals with the freedom of movement of workers within the EU and ban on discrimination as reviewed by the very early jurisprudence (*Walrave Koch*) and confirmed by landmark cases like *Bosman* until the latest one, *FC Antwerp v. UEFA*.

The second section is dedicated to sport's economic dimension, assessed under the lens of competition law as was applied in the most significant European jurisprudence (*Meca Medina*) until the recent *Superleague* and *ISU* cases.

The third section focuses on the Commission decisions and relevant judgements of the Court of Justice concerning State aids, national public funding of sport infrastructures and events.

The fourth section deals with sport and EU personality rights, which is a matter likely to expand in the light of the very recent but also forthcoming jurisprudence on sensitive data protection issues.

The fifth and last section enlists and appraises the EU programmes and actions in the field of sport.

For the sake of completeness, reference is also made to the pending and important cases (*FIFA v. BZ, FT v. FIFA, ROGON GmbH & Co. KG et others/Deutscher Fußballbund eV (DFB), CD Tondela – Futebol, SAD et Others/Portuguese Antitrust Authority, PFA, AIC and UNFP v. FIFA, Seraing, Italian Football Federation and Italian Olympic Committee*) before the Court of Justice on which the latter is going to rule over the course of the next few months.

A selected bibliography is detailed for the students who wish to widen their knowledge and go forward in this fascinating area of law.

Finally, the authors wish to sincerely thank Durante Rapacciuolo and Paolo Stancanelli for their valuable comments and suggestions and Anshul Ramesh for the linguistic revision.

Bergamo – Bruxelles, 1 August 2024

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I. FREEDOM OF MOVEMENT AND BAN ON DISCRIMINATION ON THE BASIS OF NATIONALITY

1. LEGAL FRAMEWORK

The European Union is an international organization composed of 27 Member States and an internal single market governed by EU law. The Treaty on the Functioning of the European Union (TFEU) and the relevant secondary legislation encapsulate, among others, the principles as well as the policies on free movement of people, goods, services and capital which define and objectify the internal market for European citizens and enterprises.

In fact, in light of the free movement rules, EU citizens are entitled to move freely from one Member State to another to search for a job, to work or to establish a business there, to move back to their home country without facing any border check or any sort of discrimination in comparison with the host country citizens or whatever obstacle, legal or material.

In detail, EU citizens in the host Member State cannot be discriminated on the basis of their nationality with regard to access to employment, remuneration, working conditions, and social benefits.

Thus, these fundamental principles of freedom and non-discrimination apply to athletes, independent of their sporting status – amateurs or professionals – or employment status, being employees as for instance football, basketball, handball players or self-employed like judokas or tennis players.

The Court of Justice has systematically said that EU law applies to sport not as such but whenever it constitutes an economic activity pursuant to Article 2 TEC¹ (now Article 3 TEU)² and, as a consequence, for years has applied

¹ Article 2 TEC (original version): “It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States”.

² Article 3 TEU: “1. The Union’s aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly

Article 45 TFEU (freedom of movement of workers)³ and Article 56 TFEU (freedom of establishment and freedom to provide services)⁴ to professional athletes whose sports activity also qualifies as an economic activity.

competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.

4. *The Union shall establish an economic and monetary union whose currency is the euro.*

5. *In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.*

6. *The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties”.*

³ Article 45 TFEU (ex Article 39 TEC): “1. Freedom of movement for workers shall be secured within the Union.

2. *Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*

3. *It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:*

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

4. *The provisions of this Article shall not apply to employment in the public service”.*

⁴ Article 56 TFEU (ex Article 49 TEC): «Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union”.

When the notion of European citizenship was inserted in Article 18 TFEU⁵ and Article 21 TFEU,⁶ even amateur players, i.e. those who do not have an employment contract and, therefore, do not perform an economic activity *stricto sensu* benefited of the freedom provided by the Treaty.

Over the years, sport business has gained growing importance and Article 6 TFEU⁷ reflects this evolution allocating to the European Union the competence to carry out actions to support, coordinate or supplement the actions of the Member States in the area of sport.

However, the analysis of Article 165 TFEU⁸ ought to be conducted carefully and precisely to detect its substantial scope for the EU sport policy.

⁵ Article 18 TFEU (ex Article 12 TEC): “*Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*”

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination”.

⁶ Article 21 TFEU (ex Article 18 TEC): “*1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.*”

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament”.

⁷ Article 6 TFEU: “*The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:*

- (a) protection and improvement of human health;*
- (b) industry;*
- (c) culture;*
- (d) tourism;*
- (e) education, vocational training, youth and sport;*
- (f) civil protection;*
- (g) administrative cooperation”.*

⁸ Article 165 TFEU (ex Article 149 TEC): “*1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.*”

This provision designs the nature of supporting actions the EU can take to develop the European sport dimension through incentive measures so as to sustain the Member States sport policies in promoting moral and social matters. It expressly states the stark limits of this European competence.

Indeed, the same provision affirms once more the specificity of sport as a human and social activity while keeping the national sport laws and regulations out of the EU legal harmonization reach. In other words, the EU cannot formulate its own constraining sports rules to which the Member States and their citizens should abide. The last indent of this article corroborates the limited scope of the EU sport responsibility, allocating to the EU Council of Ministers the power of adopting only recommendations, which have no abiding force on the Member States laws and its citizens.

The wording of Article 165 TFEU on specificity meets the sports stakeholders’ claim to keep safe their legal autonomy and the peculiarities of their activities.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,*
 - encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,*
 - promoting cooperation between educational establishments,*
 - developing exchanges of information and experience on issues common to the education systems of the Member States,*
 - encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,*
 - encouraging the development of distance education,*
 - developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.*
- 3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.*
- 4. In order to contribute to the achievement of the objectives referred to in this Article:*
- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,*
 - the Council, on a proposal from the Commission, shall adopt recommendations”.*

II. FREEDOM OF COMPETITION

1. LEGAL FRAMEWORK

Professional sport activities have two intertwined dimensions.

The traditional one is the purely agonistic, human and social challenge held out on pitches, athletic stadiums or public roads.

The other dimension is the economic one, which has hugely developed in the last five decades and has given birth to the so-called sport business, ranked as a prime financial activity worth hundreds of billions of Euros worldwide. The sport business is now fully assimilated into other economic activities and therefore subject to the legal screening of the relevant European and national competition authorities.

Since creating the common market and afterwards the single market, both the Commission and the Court of Justice have ruled that economic activities in the context of sport do fall fully within the scope of European Union law, including Articles 101⁸³ and 102⁸⁴ TFEU. Although sport fulfils very important

⁸³ Article 101 TFEU (ex Article 81 TEC):

“1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
- (b) limit or control production, markets, technical development, or investment;*
- (c) share markets or sources of supply;*
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,*
- any decision or category of decisions by associations of undertakings,*
- any concerted practice or category of concerted practices,*

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

educational, social and cultural functions, there is a wide-ranging field of activities that clearly have an economic nature: for example, the income, revenues and profits originating from the sport events organizations, sponsorships and media rights, advertising activities, and the transfer of athletes.

However, the Commission and the Court of Justice have been wary and prudent in dealing with free competition issues in sport. The EU institutions have been aware that sport matters are socially, politically sensitive and unique.

For example: (a) sport events are a product of the contest between a number of clubs/teams or at least two athletes; accordingly, the interdependence between competing adversaries is a feature specific to sport; (b) if sport events are to be of interest to the spectator, they must involve uncertainty as to the result; therefore, there must be a certain degree of equality in competitions; and (c) the organisational level of sport in Europe is characterised by a monopolistic pyramid structure.⁸⁵

Article 101 TFEU applies to “undertakings” and “associations of undertakings”, while Article 102 TFEU applies to “undertakings”.

The Court of Justice has defined the term “undertaking” broadly to include every entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.⁸⁶

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

⁸⁴ Article 102 (ex Article 82 TEC):

“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

⁸⁵ Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport (COM (2007) 391 final), para. 3.4.

⁸⁶ ECJ, judgment of 23 April 1991, Case 41/90 *Klaus Höfner and Fritz Elser v Macroton GmbH*, ECR 1991 I-1979, para. 21.

Moreover, an economic activity is defined as any activity consisting of offering goods or services on the market.⁸⁷ Accordingly, it is not surprising that individual athletes, sports clubs and sports associations are considered as undertakings and/or associations of undertakings.

An elite, professional athlete participating in an international competition is exercising an economic activity – even if he/she is not remunerated by the organiser – because such services are normally remunerated and the participation in the event generates economic activity (e.g., the sale of tickets, broadcasting and media rights, sponsoring agreements and other commercial services).

The fact that an individual athlete is employed by a sports club does not rule out that the athlete may be considered an undertaking insofar as he/she carries out economic activities independent thereof, e.g., by entering into sponsorship agreements.⁸⁸

Similarly, it is settled case law that sports clubs/teams are undertakings within the meaning of Article 101 TFEU and Article 102 TFEU to the extent they carry out economic activities by selling for instance tickets of the sport events, selling broadcasting rights or concluding sponsorship or advertising agreements.

National sports associations too may be undertakings both under Article 101 TFEU and Article 102 TFEU and associations of undertakings under Article 101 TFEU whenever they carry out economic activity, e.g., by commercially exploiting a sport event. Sports associations are associations of undertakings under Article 101 TFEU to the extent they constitute groupings of sports clubs/teams or athletes for which the practice of sport constitutes an economic activity.

Lastly, international sports associations (such as the IOC, UEFA or FIFA) are undertakings to the extent they carry out activities of economic nature such as the organization of international competitions and their commercial exploitation, the conclusion of advertising contracts and contracts relating to broadcasting rights.

That said, national and/or international sports associations are the bodies that adopt sporting rules, which sport clubs/teams and athletes need to apply and observe. Sporting rules adopted by national or international sports associations may constitute agreements or decisions by undertakings or associations of undertakings within the meaning of Article 101(1) TFEU. Such sporting rules, like any other decisions or agreements, are prohibited if they have as their object

⁸⁷ ECJ, judgment of 16 June 1987, Case 118/85 *Commission v Italy*, ECR 1987, 2599, para. 7.

⁸⁸ European Commission, *Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport*, para. 2.1.3.

or effect the restriction or distortion of competition within the common market and affect trade between Member States.⁸⁹

By contrast, Article 102 TFEU prohibits any abuse by one or more undertakings in a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

Traditionally, national and international sports associations usually have monopolies in a given sport and may thus normally be considered dominant in the market of the organisation of those sports events under Article 102 TFEU.⁹⁰

The Court of Justice has validated the existence of the exception or derogation from applying the above-mentioned rules for some economic sporting activities. The EU judges have found that the competition rules are not infringed by the sporting rule restrictions, whenever the latter pursue a legitimate objective, the restrictive effects are inherent in the pursuit of that objective and are proportionate to it.

Legitimate objectives of sporting rules will normally relate to the organisation and proper conduct of competitive sport and may include, e.g. ensuring fair sporting competitions with equal chances for all athletes, uncertainty of results, protection of the athletes' health, protection of the safety of spectators, the encouragement of training of young athletes, financial stability of sport clubs/teams or ensuring an uniform and consistent exercise of a given sport (the "rules of the game").⁹¹

Article 101(3) TFEU applies also to sport. According to this provision, where a restriction under Article 101(1) TFEU is found, the prohibition therein contained may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned.

⁸⁹ European Commission, *Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport* (COM (2007) 391 final), para. 2.1.4.

⁹⁰ *Ibidem*.

⁹¹ *Idem*, para. 2.1.5.

Conclusions

The number and the importance of cases in the field of sport recently submitted to – and the ones currently pending before – the Court of Justice testify the impact that EU law can have on the international sports stakeholders and their regulatory framework.

In several political acts (*Amsterdam* and *Nice Declarations*), the EU Member States and the EU institutions (*European Parliament*) have recognized the autonomy of sports associations to “rule the game” while the Court of Justice since its first jurisprudence (*Walrave and Koch* case) has always declared that sport as an economic activity falls under the scope of the EU Treaty.

According to this undisputed principle, the EU judges have decided that a transfer fee at the end of an employment contract was an obstacle to the freedom of movement of workers and quotas of players on the basis of their nationality were discriminatory (*Bosman case*). Moreover, training compensations in football were justified only if they reflect the real and effective costs for training players (*Bernard case*).

At the same time, transfer windows were considered legitimate to protect the integrity of competitions (*Lehtonen case*), and selection rules limiting the number of athletes in a tournament were deemed to be inherent in the conduct of an international high-level sports event (*Deliège case*).

Of course, over the years, the jurisprudence has evolved to the point that in a remarkable decision (*Meca Medina case*), the Court of Justice made it clear that there is no blanket exception for sport and it rejected as irrelevant the notion of “purely sporting rules” – such as the doping ones – for the purposes of applying EU competition law.

In assessing the compatibility of a sporting rule with the EU competition rules, the judges decided that account must be taken of (a) the overall context in which the rule was adopted or the decision was taken or produces its effects, and more specifically, of its objectives; (b) whether the restrictive effects are inherent in the pursuit of the objectives; and (c) are proportionate to them.

Aside of those developments, some policy documents (*White Paper on Sport* and subsequent Commission Communication on *Developing the European Dimension in Sport*) have defined and paved the way for a comprehensive EU political approach to sport. In this direction, several actions

and programmes (*Erasmus+* sports programme) have been adopted in line with Article 165 TFEU in order to foster the European dimension through sport.

The recent *Superleague* jurisprudence has been particularly important and has caused a stir in the football world. In fact, the Court of Justice has ruled that the FIFA and UEFA rules making any new interclub football project, such as the *Super League*, subject to their prior approval, and prohibiting clubs and players from playing in those competitions, are unlawful, given that there is no framework under the FIFA and UEFA rules ensuring that they are transparent, objective, non-discriminatory and proportionate.

Even before the Court of Justice's ruling, in June 2022, UEFA modified its rules on the prior authorization system, enacting a complex procedural system. It remains to be seen whether these new rules satisfy the requirements of clarity, objectivity, non-discrimination and proportionality as defined by the Court of Justice.

Similarly, the rules giving FIFA and UEFA exclusive control over the commercial exploitation of the rights related to those competitions are such as to restrict competition, given their importance for the media, consumers and television viewers in the European Union.

The rulings issued on 21 December 2023 also clarified the role and scope of Article 165 TFEU. In particular, the Court of Justice held that Article 165 TFEU is not a cross-cutting provision having general application. Accordingly, although the competent EU institutions must factor the different elements and objectives listed in Article 165 TFEU when they adopt incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations, need not be integrated or taken into account in a binding manner in the application of the rules with respect to the interpretation which the referring court is seeking guidance from the Court of Justice, irrespective of whether they concern the freedom of movement of persons, services and capital (Articles 45, 49, 56 and 63 TFEU) or the competition rules (Articles 101 and 102 TFEU).

Therefore, the Court of Justice reiterated that Article 165 TFEU cannot be regarded as being a rule exempting sport from all or some of the other primary provisions of EU law liable to be applied to it or requiring special treatment for sport in the context of that application.

Although less celebrated than the *Superleague* ruling, the *ISU* case deserves great attention, especially regarding the conditions under which an arbitral justice system and the relevant jurisdictional control can be considered consistent with EU law. There is no doubt that the *ISU* ruling casts heavy shadows on the CAS arbitration system and therefore it will be interesting to see how the Court of Justice will rule in the pending *Seraing* case.

The most recent jurisprudence coupled with the current pending cases, would very likely push the sports federations to “*think out of the box*”, possibly to reinvent themselves in order to keep on carrying out their important cultural and social functions to progress in the sports business by complying with EU fundamental freedoms.

For this reason, the forthcoming ECJ's case law should receive the utmost consideration from the concerned sports federations. The latter should make the effort to adopt innovative policies and strategies. In conclusion, they should qualify themselves and be recognized as the competent and legitimate organizations carrying out vital cultural, economic and social functions.

This way, they would deserve to progress in the sports business on the condition of complying with EU fundamental freedoms.

Selected Bibliography

- Agafonova R., *ISU and Superleague Judgments: Sports Governance in the Market-driven Era*, *The International Sports Law Journal*, 2024.
- Anderson J., *Sports Law*, Edward Elgar, 2024.
- Anderson J., García García B., Parrish R., eds., *Research Handbook on EU Sports Law and Policy*, Edward Elgar, 2018.
- Bastianon S., *La Corte di Giustizia e la Superlega*, *Rivista di Diritto Sportivo*, Giappichelli, 2024.
- Bastianon S., *Le Sentenze Superlega, ISU e SA Royal Antwerp FC: Una Prima Lettura*, Quaderni AISDUE, 2024.
- Bastianon S., Del Bo C. eds., *La Neutralità dello Sport*, Carocci, 2023.
- Bastianon S., *I casi ISU e Superlega nelle Conclusioni dell'Avvocato Generale Rantos. Prime Osservazioni*, RDES, 2023.
- Bastianon S., *Is the Superleague Dead? Not Yet*, RDES, 2023.
- Bastianon S., *From the "Dirty dozen" to "The good, the Bad and the Ugly. Some Preliminary Remarks on the Super League Affaire in the Light of EU Competition Rules"*, RDES, 2021.
- Bastianon S., *The ISU Case: Commission 2 -1 ISU*, www.eurojus.it, 2020.
- Bastianon S., *La Sentenza Bosman Vent'Anni Dopo. Aspetti Giuridico-Economici della Sentenza che ha Cambiato il Calcio Professionistico Europeo*, Giappichelli, 2015.
- Bastianon S., Nascimbene B., *Diritto Europeo dello Sport. L'Europa in Movimento. Raccolta di Testi e Documenti*, Giappichelli, 2011.

- Bellia O.D., Colucci M. eds., *Transfer of Players: a Practical Approach to Implementing the FIFA Rules*, SLPC, 2020.
- Blanpain R., Colucci M. - Hendrickx F. eds., *The Future of Sport in the European Union*, Kluwer Law International, June 2008.
- Blanpain R., Inston R., *The Bosman Case: the End of the Transfer System?*, Peeters, 1996.
- Bogusz B., Cygan A., Szyszczak E. eds., *The Regulation of Sport in the European Union*, Edward Elgar, 2007.
- Cattaneo A., Parrish R., *The Court of Justice Moves and Then Fixes the Goalposts on How EU Law Applies to Sport*, *EU Law Live*, 2024.
- Cattaneo A., *The Nature of Broadcasting Rights in US and Europe*, *The International Sports Law Journal*, Springer Link, 95-99.
- Cavaliero M. - Colucci M. eds., *Disciplinary Procedures in Football: An International and Comparative Analysis*, SLPC, 2017.
- Colucci M. ed., *The FIFA Regulations on Working with Intermediaries: Implementation at National Level*, SLPC, 2016, 2nd edition.
- Colucci M. and Hendrickx F. eds., *Regulating Employment Relationships in Professional Football: A Comparative Analysis*, SLPC, 2014.
- Colucci M. ed., *Contractual Stability in Football*, SLPC, 2011.
- Colucci M. ed., *L'Indennità di Formazione nel Mondo dello Sport*, SLPC, 2011.
- Colucci M. ed., *The Bernard Case: Sports and Training Compensation*, SLPC, 2010.
- Couse C., Powell A., *Justifying Indirectly Discriminatory Restrictions: Can European Football's Home-Grown Players Rules Withstand the Proportionality Test?*, *The International Sports Law Journal*, Springer Link, 2024.
- De Dios Crespo Pérez J., *The Specificity of Sport in the CAS Jurisprudence*, *The Future of Sport in the European Union*, Blanpain R., Colucci M. - Hendrickx F. eds., Kluwer Law International, June 2008.

- Downward P., Parrish R., Pearson, G. Semens A., *An Assessment of the Compatibility of UEFA's Home Grown Player Rule with Article 45 TFEU*, *European Law Review* 39, 4, 2014, 493-510.
- Duval A., *The International Skating Union Ruling of the CJEU and the Future of CAS Arbitration in Transnational Sports Governance*, *The International Sports Law Journal*, Springer Link, 2024.
- Duval A., James M., *Another Bosman Moment? The Decisions of the Court of Justice of the European Union on 21 December 2023 and the Future of Transnational Sports Governance*, 2024.
- Duval A., Krüger A., Lindholm J., *The European Roots of the Lex Sportiva: How Europe Rules Global Sport – Yearbook of International Sports Arbitration 2018–2020*, ASSER International Sports Law Series, T.M.C. ASSER Press, 2023.
- Duval A., Van Rompuy B., *The Legacy of Bosman: Revisiting the Relationship Between EU Law and Sport – ASSER International Sports Law Series*, T.M.C. ASSER Press, 2016.
- Duval A., Rigozzi A., *Yearbook of International Sports Arbitration 2015*, ASSER International Sports Law Series, T.M.C. ASSER Press, 2016.
- Duval A., Van Rompuy B., *Protecting Athletes' Right to a Fair Trial Through EU Competition Law: The Pechstein Case*, *Fundamental Rights in International and European Law - Public and Private Law Perspectives*, Paulussen C. et al., T.M.C. ASSER Press, 2016.
- Duval A., *Lex Sportiva: A Playground for Transnational Law*, 19 *The European Law Journal* (6), 2013, 822–842.
- Ferraioli F., *Sport in European Policies*, Editoriale Scientifica, 2022.
- Garcia-Garcia B., *Down with the Politics, Up With the Law! Reinforcing EU Law's Supervision of Sport Autonomy in Europe*, *The International Sports Law Journal*, Springer Link, 2024.
- Garcia-Garcia B., Konjer M, Meier H-E, Jetzke M., *The Short Life of the European Super League: a Case Study on Institutional Tensions in Sport Industries*, *Managing Sport and Leisure*, 29(3), 2022, 518-539.

- Garcia Garcia B., Weatherill S., *Engaging with the EU in Order to Minimize its Impact: Sport and the Negotiation of the Treaty of Lisbon*, *Journal of European Public Policy*, 19(2), 2012, 238-256.
- Gardiner S., Parrish R., Siekmann R. (eds.), *EU, Sport, Law and Policy: Regulation, Re-regulation and Representation*, T.M.C. ASSER Press, 2009.
- Gardiner S., Welch R., Boyes S., *Sports Law*; Taylor & Francis Ltd, 2011.
- Halgreen L., *European Sports Law: a Comparative Analysis of the European and American Models of Sport*, Karnov Group, 2024.
- Hendrickx F., *What if Sport and the Law Have Become Interlocked?*, *Ethics and Governance in Sport. The Future of Sport Imagined*, Vanden Auweele Y. et al. eds., Routledge, 2016.
- Hendrickx F., *Rules of Law in the Business of Sport*, *Sports Governance, Development and Corporate Responsibility*, Segaert B. et al. eds., Routledge, 2012.
- Hendrickx F., *Justification of Training Compensation in European Football: Bosman and Bernard Compared*, *The Bernard case: Sports and Training Compensation*, Colucci M. ed., SLPC, 2010.
- Hendrickx F., *Future Directions of EU Sports Law*, *The Future of Sport in the European Union*, Blanpain R., Colucci M. - Hendrickx F. eds., Kluwer Law International, June 2008.
- Houben R., Budzinski O., Wathélet M., *The Transfer System in Football: Diarra and What's Next* (June 20, 2024). Available at SSRN: <https://ssrn.com/abstract=>
- Houben R. ed., *Research Handbook on the Law of Professional Football Clubs*, Edward Elgar, 2023.
- Houben R., *Sports Governance (in Football) under Attack*, *The International Sports Law Journal* 23(1), 2023.
- Houben R. Petrovic S., *The State of Football Governance – Advocate General Szpunaz Paves the Way for a Critical Assessment of the Status Quo*, *Asser International Sports Law Blog*, 2023.

- Katsarova I., *State Aid in Sport: Striking a Difficult Balance*, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603971/EPRS_BRI\(2017\)603971_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603971/EPRS_BRI(2017)603971_EN.pdf).
- Kornbeck J., *EU Antitrust Law and Sport Governance: The Next Frontier?*, Taylor & Francis Ltd, 2022.
- Lindholm J., *Requiring Good Governance from Private Regulators: What about the Rest of Us After ESL and ISU?*, The International Sports Law Journal, Springer Link, 2024.
- Lindholm J., Parrish R., *Horizontal Direct Effect of Union Citizenship and the Evolving Sporting Exception: TopFit*, Common Market Law Review 57, 4, 2020, 1283-1304.
- Meredith J., Garcia-Garcia, B., *To Be or Not to Be Specific? Understanding EU Institutions' Definition of the Specific Nature of Dport*, Sports Law, Policy & Diplomacy Journal, 1(1), 2023, 17-44.
- Nafziger J. A.R., Gauthier R. eds., *Handbook on International Sports Law*, Edward Elgar, 2022.
- Nafziger J. A.R., Ross S.F. eds., *Handbook on International Sports Law*, Edward Elgar, 2013.
- O'Leary L., *ISU, Royal Antwerp, European Superleague & Employment Relations in Sport*, The International Sports Law Journal, Springer Link, 2024.
- Parrish R., Zivic L., *Royal Antwerp and Home-Grown Players: Re-shaping Sports Governance and EU Sports Law and Policy*, The International Sports Law Journal, Springer Link, 2024.
- Parrish R., Cattaneo A., *Sports Law in the European Union*, International Encyclopaedia of Sports Law, Colucci M. ed., Wolters Kluwer, 2020.
- Parrish R., *Article 17 of the FIFA Regulations on the Status and Transfer of Players: Compatibility with EU Law*, Maastricht Journal of European and Comparative Law 22, 2, 2015, 256-282.
- Parrish R., Pendlebury A., *Bosman at 20: The Future of Sports Law*, Law in Sport, 2015.

- Parrish R., *Sports Law and Policy in the European Union*, Manchester University Press, 2003.
- Poiars Maduro M., *Sports Governance After the Superleague Judgement: giont into extra time?*, The International Sports Law Journal, Springer Link, 2024.
- Powell A., Couse C., *Justifying Indirectly Discriminatory Restrictions: Can European Football's Home-Grown Players Rules Withstand the Proportionality tests?*, The International Sports Law Journal, Springer Link, 2024.
- Rapacciuolo D., *Sport and the European Court of Justice Case Law on Competition Policy – Wit, Wisdom, Resilience, Steadfastness and Pedagogy of the Grand Chamber of the European Court of Justice*, RDES, 2023.
- Rapacciuolo D., *The European Parliament Resolution of 23 November 2021 on EU Sports Policy: from Confrontation to Intervantion, Supervision, and Protection of the European Model of Sport*, RDES, 3-2021.
- Rapacciuolo D., *The Future of Football: a Delicate Balance between Sport and Business Model*, RDES, 2-2021.
- Rapacciuolo D., *The European Super League Saga, the Future of the European Model of Sports and the Football Business in Europe*, RDES, 1-2021.
- Ross S. F., *Advanced Introduction to Global Sports Law*, Edward Elgar 2021.
- Smokvina V., *The CJEU Royal Antwerp FC Case or About the Home-Grown Players Rule*, Football Legal 18, 2022.
- Tognon J., *Diritto e Politiche dello Sport nell'Unione Europea. Ruolo Sociale, Dimensione Economica e Integrità*, CLUEP, 2016.
- Tognon J., *Diritto Europeo dello Sport*, Libreria Internazionale Cortina, 2008.
- Van der Burg T., *How UEFA Can React to the Super League Ruling*, The International Sports Law Journal, Springer Link, 2024.

Van Maren O., *EU State Aid Law and Professional Football: A Threat or a Blessing?*, European State Aid Law Quarterly, Volume 15, 2016, Issue 1, 31-46.

Van Maren O., *The Real Madrid Case: A State Aid Case (Un)like Any Other?*, Competition Law Review, Volume 11, 2015, Issue 1, 83-108.

Van Rompuy B., *The Role of EU Competition Law in Tackling Abuse of Regulatory Power by Sports Associations*, Maastricht Journal of European and Comparative Law 2, 2015, 179-208.

Van Rompuy B., *The Impact of the Lisbon Treaty on EU Competition Law: A Review of Recent Case Law of the EU*, CPI Antitrust Chronicle, 2011.

Velazquez Hernandez P., *The European Commission's White Paper on Sport, The Future of Sport in the European Union*, Blanpain R., Colucci M. - Hendrickx F. eds., Kluwer Law International, June 2008.

Villanueva A., *Accounting for the Specificities of Sport in EU law: Old and New Directions in the 21 December 2023 Judgments*, The International Sports Law Journal, 2024.

Weatherill S., *The Impact of the Rulings of 21 December 2023 on the Structure of EU Sports Law*, The International Sports Law Journal, 2024.

Weatherill S., *Principles and Practice in EU Sports Law*, Oxford European Union Law Library, 2017.

Weatherill S., *European Sports Law, Collected Papers*, 2nd edition, Series: ASSER International Sports Law Series, ASSER Press, 2014.

Zglinski J., *Can EU Competition Law Save Sports Governance?*, The International Sports Law Journal, Springer Link, 2024.

Zylberstein J., *The Specificity of Sport: a Concept under Threat*, The Future of Sport in the European Union, Blanpain R., Colucci M. - Hendrickx F. eds., Kluwer Law International, June 2008.

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