Erasmus+ Sport Programme
Collaborative Partnership

DEVELOPING SPORT ADMINISTRATION COMPETENCES (ADMINS)

Customized Curriculum for Sports Administrators

Intellectual Output 3

Co-funded by the European Union

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MODULE 1. SPORTS LAW

Sports law is a broad based mixture of laws that apply to athletes and the sports they play. It is not a singular legal topic with generally applicable principles, but incorporates a variety of legal areas. This module will introduce participants to these core areas of law relevant to the business of sports.

Following the completion of the Module, the participant will be able to:

- Understand the core areas of law relevant to the business of sports;
- Monitor legal regulations in performing the duties of an administrator in a sports organization.

Table 1. Module 1: Sports Law

TOPICS		CONTENT	LEARNING OUTCOMES	WORKLOAD
1	European Union institutions and funding policies	• Historical development of the European Union • Institutions of the European Union • The role of institutions for supranational organizations • Responsibilities of EU institutions • The relationship between the European Union and the Member States	• Explain the historical development of the European Union • Distinguish the Institutions of the European Union • Explain the role of institutions for supranational organizations • Explain the responsibilities of the EU institutions • Explain the relationship between the European Union and the Member States	2 T 3 P
2	Legal acts of the European Union	• EU primary law • EU secondary law • Individual decisions by EU institutions	• Distinguish between primary and secondary EU law • Give examples of recourse avenues	3 T 3 P

			against individual decisions by EU institutions	
3	Sports Law	• Sources of sports law, including EU law • Private versus public law regulation in sports sector • Relationship between rules of private and public origin in sports • Effect of EU law over the sports • Sports institutions • Court of Arbitration in Sports (CAS): competence and procedure • Protecting intellectual property in sports • Relevance of law in sports in general and in managing sports organisations in particular	• Name sources of sports law and distinguish different categories • Provide arguments for public and arguments for private law regulation in sports sector • Provide examples of the relationship between rules of private and public origin in sports • List type of EU rules which affect sports • Differentiate and provide examples of sports institutions • Explain competence of the CAS • Describe the arbitration procedure before the CAS • Provide examples of intellectual property rights in sports • Explain the role of law in sports, including in managing sports organisations	5 T 4 P
Teaching Methods: Verbal methods (oral presentation method, method of lecturing and teaching, writing method, method of conversation, case display method, method of discussion, problem solving method) and practical methods (practical working method, method of independent learning, learning in an online environment)				
VLE Delivery: VIDEO CONTENT – video materials intended for each of the module's topics; THEORETICAL CONTENT – reading materials created in order to broaden the video content; PRACTICAL CONTENT – various exercises that will foster the learning process;				

KNOWLEDGE ASSESSMENT – short quizzes; uploads of completed tasks will be expected. *Note:* The ratio will depend on the type of the module's topic, as it will put greater emphasis on e.g. theoretical content when the topic is introductory / practical content when the topic offers the greater opportunity to introduce various tasks
Staff prerequisites: trainer in the field of the module in question
Literature and other information sources for students: Instructional Materials according to the Curriculum
Literature and other information sources for teachers: • Grayson, Edward, Sport and law, London, 1988. • Beloff, J.M., Kerr, T., Demetriou, Sports Law, Oxford, 1999. • Gardinher S., James, M., O Leary, J., Welch, R.Blackshaw, I., Boyes,S., Caiger,A., Sports Law, Cavendish Publishing, 2001. • Cozzilo,M.J., Levinstein,M.S., Sports Law Cases and Materials, Carolina Academic Press, 1997. • Davies, Karen, Understanding European Union Law, 4th edition, Routledge, 2011. • Frischhut, Markus, Grundlagen des Rechts der Europäischen Union, Linde, 2009. • Borchart, Klaus-Dieter, Das ABC des Rechts der Europäischen Union, Amt für Veröffentlichungen der Europäischen Union, 2010. • Europe direct, http://ec.europa.eu/europedirect • Press releases RAPID, http://europa.eu/press_room/index_en.htm • Database of EU Commission on preparatory acts (Prelex), http://ec.europa.eu/prelex • Database of the European parliament on preparatory acts (OEIL), http://www.europarl.europa.eu/oeil • European Court of Justice, http://curia.europa.eu • EU law server, http://europa.eu

Topic 1. European Union institutions and funding policies

The initial topic within the module Sports Law is aimed at introduction to the European Union institutions and funding policies.

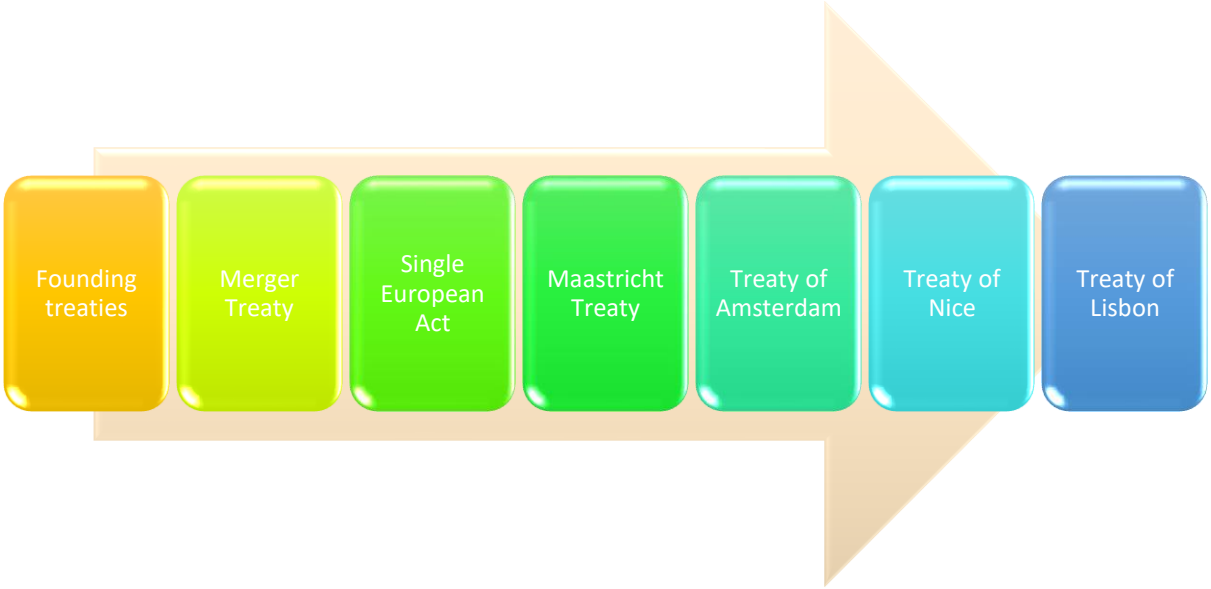
Within this topic the **historical development of the European Union** needs to be described at the outset. The beginnings of cooperation among the six founding Member States, Belgium, France, Germany, Italy, Luxembourg and the Netherlands, came in the aftermath of the Second World War. The idea, captured by the French foreign minister Robert Schumann in its famous 1950 Declaration, was to secure the peace in particular between Germany and France, by putting under control and pooling together their essential war resources. Thus, the European Coal and Steel Community (ECSC) was founded in 1951 as a first step towards the European integrations. In 1957, the Euratom Treaty created the European Atomic Energy Community (EAEC or Euratom) and the Treaty of Rome created the European Economic Community (EEC). These three founding treaties produced the normative basis for the later stronger integration and eventual formation of the European Union as we know it today.

The ECSC Treaty was declared to aim at organising the free movement of coal and steel among Member States without customs duties or taxes as well as discriminatory measures or practices, subsidies, state aids or special charges imposed by states and restrictive practices. It further aimed at freeing up access to sources of production and improved working conditions throughout the ECSE. An important feature was the setting up of a common High Authority to supervise the market, monitor compliance with competition rules and ensure price transparency. The competences of the High Authority were later on assumed by the European Commission. When the ECSC Treaty expired in 2002, rules on the coal and steel sectors were integrated in the treaties establishing the European Community (EC), the Treaty of Rome.

The Euroatom Treaty established an international organisation with the original purpose of creating a specialist market for nuclear power in Europe, by developing nuclear energy and distributing it to its Member States while offering the remaining capacities to non-Member States. Over the years it extended the scope of the matters under coordination to cover a variety of areas associated with nuclear power and ionising radiation. Although until today it remained legally distinct from all other associations, including the European Union, it shares many of the governing institutions with the European Union (but not the European Parliament) and the same Member States. However, two countries participate as associated

states: Switzerland since 2014, and the United Kingdom since 31 January 2020 when Brexit took force.

The EEC Treaty envisaged the progressive reduction of customs duties and the establishment of a customs union among the Member States. The objective of creating a single market for goods, labour, services, and capital across Member States was in the hearth of all endeavours. It likewise assured the creation of a Common Agriculture Policy, a Common Transport Policy and a European Social Fund. The EEC treaty has been amended several times since its adoption in 1957, the first cut not that essential being the Merger Treaty which entered into force in 1967 to create a single Commission and a single Council to serve the then three European Communities (EEC, Euratom and ECSC).



The first major revision of the Rome Treaty was the Single European Act (SEA), signed in 1986 and entered into effect in 1987. The SEA set the European Community, an objective of establishing a single market by the end of 1992, as well as codified European Political Cooperation, the predecessor of the European Union's Common Foreign and Security Policy (CFSP). A number of legislative reforms were envisaged, while removal of non-tariff barriers to cross-border intra-Community trade and investment was intended to economically stimulate the then twelve Member States. In fact, there were three accession waves by the time the SEA was signed: in 1972 (Denmark, Ireland and the United Kingdom), in 1979 (Greece) and in 1985 (Spain and Portugal). To facilitate the mentioned objectives, the SEA reformed the legislative process by introducing the cooperation procedure, extending Qualified Majority

Voting to new areas and shortening the legislative process. Already then, the SEA signatories declared themselves to pursue the goal of establishing a European Union.

This actually happened when the Treaty of the European Union or the Maastricht Treaty was concluded in 1992. This Treaty established the European Union and removed the word “economic” from the Treaty of Rome’s official title and the official name of the Community which was then renamed into European Community. The Maastricht Treaty marked a new stage in the process of European integration, by providing for a shared European citizenship, announcing the introduction of a single currency (today the reference is made to the "Maastricht criteria" – for the currency union), and some features of a common foreign and security policies. The Treaty also addressed the democratic deficit by strengthening the role of the European Parliament particularly in co-decision legislative procedure. It granted the Parliament the power to confirm (and veto) Council nominations for the European Commission.

Although not categorically related to the membership in the European Union, the European area without borders known as “Schengen Area” has to be mentioned here. In 1995, the first group of Member States (France, Germany, Belgium, Luxemburg, Netherlands, Portugal and Spain) abolished their internal border controls, following the 1985 Schengen Agreement and the 1990 Schengen Convention. Countries gradually joined so that the Schengen Area now comprises 26 countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland. Awaiting to join are: Romania, Bulgaria, Croatia and Cyprus.

The Treaty of Amsterdam was signed in 1997 by the then 15 Member States given that in 1994 three new States joined: Austria, Finland and Sweden. They all agreed to transfer further powers from national governments to the supranational bodies of the European Union, including legislating on immigration and asylum, adopting laws in certain civil and criminal law matters, and enacting foreign and security policy (CFSP). Moreover, they decided on implementing institutional changes related to expansion following the accession of new Member States.

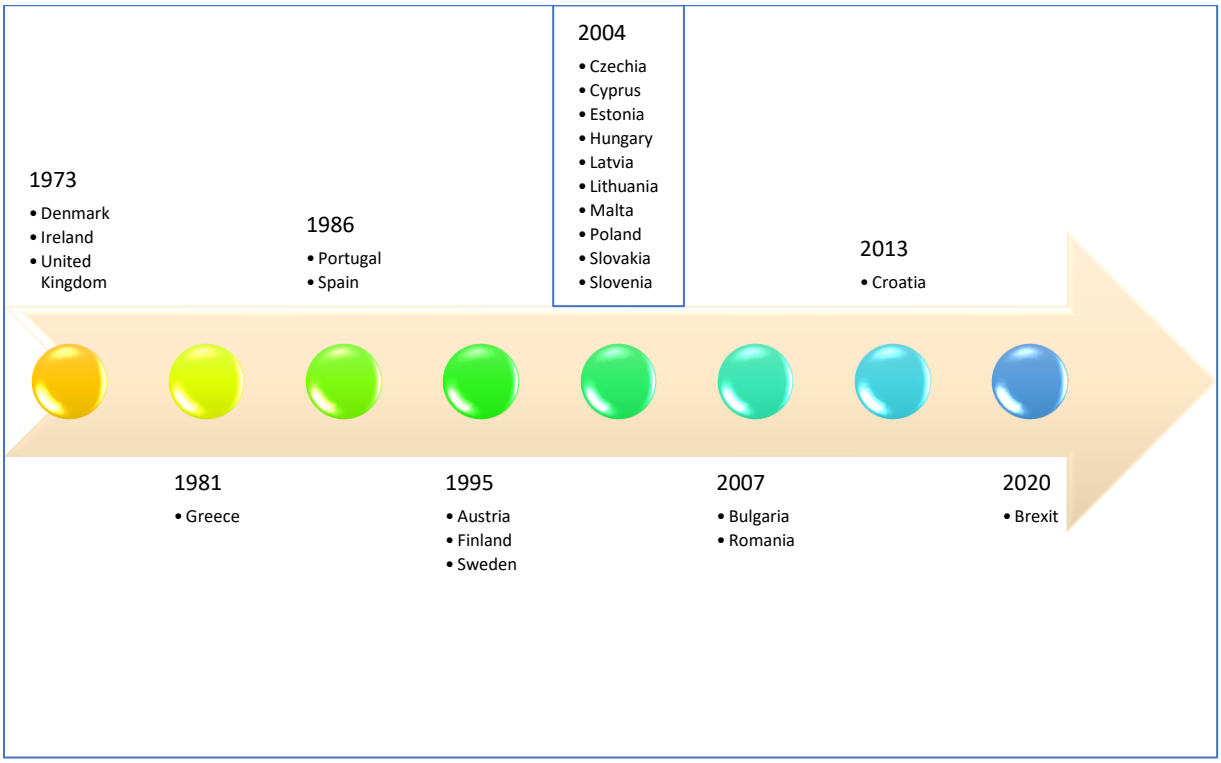
The Treaty of Nice was signed in 2001 and entered into force in 2003. It amended both the Maastricht Treaty and the Treaty of Rome. The Treaty of Nice was deemed necessary in the anticipation of the eastward expansion; hence, it concerned the reforms to the institutional structure of the European Union, notably, the seats in the European Parliament and the weight of votes in the Council. This Treaty was not welcomed by many. For instance Germany

believed that they should be given more votes in the Council when compared to France. The issue was also raised in the course of Irish referendum in which the voters first rejected the Nice Treaty believing that small states were marginalised; the second referendum brought the reversed voting result and the Treaty was accepted. The Treaty also dealt with the expiration of the ESCE.

The reform was very important as already in 2004 the fifth enlargement wave, the largest ever, hit the European Union, encompassing the "A10" countries: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Bulgaria and Romania acceded to the European Union in 2007.

The same year, the Treaty of Lisbon was signed and in 2009 it entered into force, amending the two treaties which form the constitutional basis of the European Union: the Maastricht Treaty and the Treaty of Rome. The Treaty of Lisbon renamed the Treaty of Rome into the Treaty on the Functioning of the European Union – TFEU. It marked the end of the European Community as a separate legal entity from the European Union, confirming the European Union as the main form of integration and a consolidated legal personality for the European Union. Important institutional changes that came about are introduction of the qualified majority voting instead of unanimity in no less than 45 policy areas in the Council, a change in calculating qualified majority, a strengthening legislative power of the European Parliament under the ordinary legislative procedure, and the shaping of the institutions of the President of the European Council and a High Representative of the Union for FASP. Added to the Treaty is also the binding Charter of Fundamental Rights of the European Union. For the first time, the Treaty provided for the right and procedure to leave the European Union, which was for the first time relied on in the course of Brexit.

Croatia's accession to the European Union was the last step in the enlargement, and the question of further enlargement, in particular in a view of the Western Balkan countries, is an ongoing process with no fixed dates on the horizon as yet.



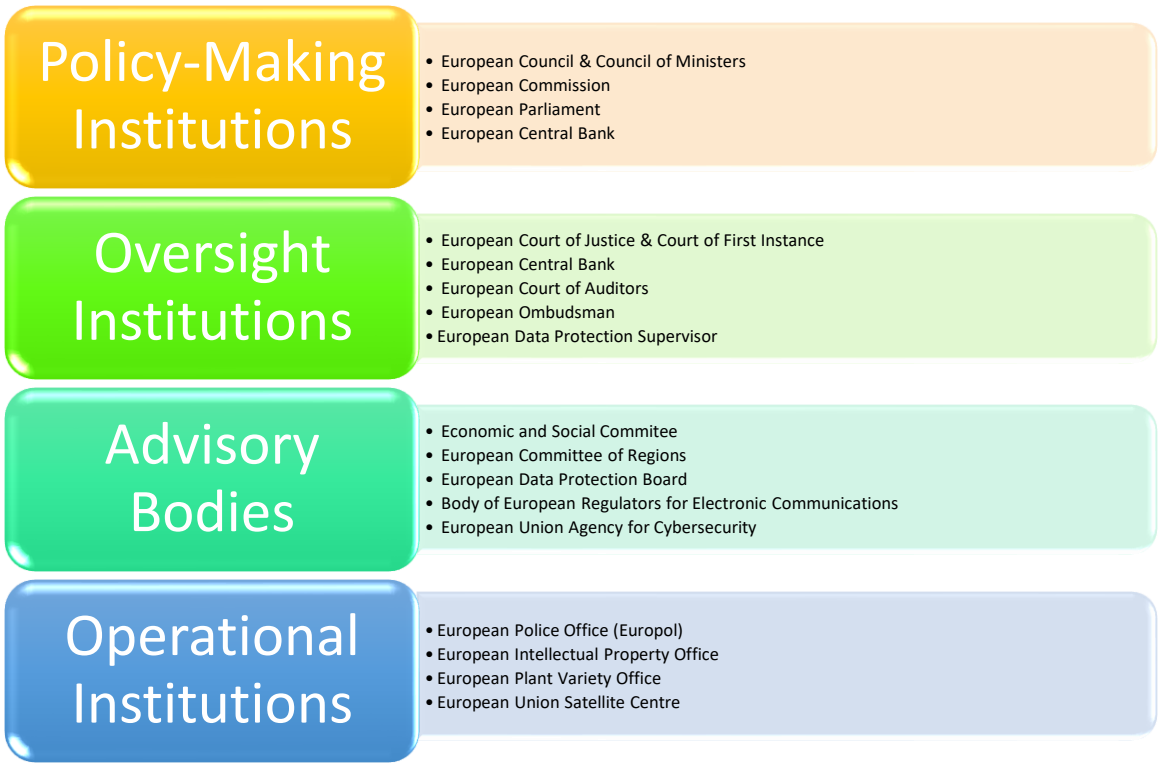
The topic of **European Union institutions, their role in this supranational organization and responsibilities** necessitates a brief account of the past. The three European communities shared the Court of Justice and the Parliament; however, they had a separate Council and High Authority, which was called the Commission in these Communities. The reason for this is the different relationship between the Commission and Council under the three Treaties. At the time, the French government was suspicious of the supranational powers, and wanted to limit those of the High Authority established first by the ESCE Treaty when the new Communities were established in 1957, giving the Council a greater role in checking the executive.

Merging the three communities in 1967 into the European Communities was reflected in joined institutions. The institutions of the European Economic Community were mostly the ones which continued to be the shared institutions. In this institutional rationalisation, the number of common European institutions was 5.

Today, the institutions listed in Article 13 of the Treaty on European Union are: the European Parliament, the European Council (of Heads of Government), the Council of the European Union (of national Ministers, a Council for each area of responsibility), the European

Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors.

Based on the Warleigh's categorisation, the institutions are of three basic types: the policy-making institutions, the oversight institutions and the advisory bodies (Alex Warleigh, Understanding European Union Institutions, 1st ed. Routledge, 2002.). At least one other category may be added - the operational institutions which are established to carry out specific, usually sectorial tasks and procedures.



Before being given its present name in 1962, the European Parliament (EP) was first named the Common Assembly under the Treaty of Rome, and later renamed the Parliamentary Assembly. Its 705 members represent nearly 500 million citizens and are, since 1979, directly elected every five years by universal suffrage. The Parliament shares the European Union legislative and budgetary powers with the Council comprised of national ministers. However, its powers are less strong than those of the Council in certain areas, yet it has certain

supervisory powers over the Commission (unlike the Council) for instance, approving the Commission President and the Commissioners as a collective, reviewing Commission work programme, approving the budget spending.

The European Council consists of the twenty-seven heads of state or government of the European Union Member States and is thus said to be the highest political body of the European Union. Four times a year they meet to decide on the European Union policy agenda. Its composition and tasks are summarised in the below box.

Source: The ABC of EU law, https://op.europa.eu/en/publication-detail/-/publication/5d4f8cde-de25-11e7-a506-01aa75ed71a1

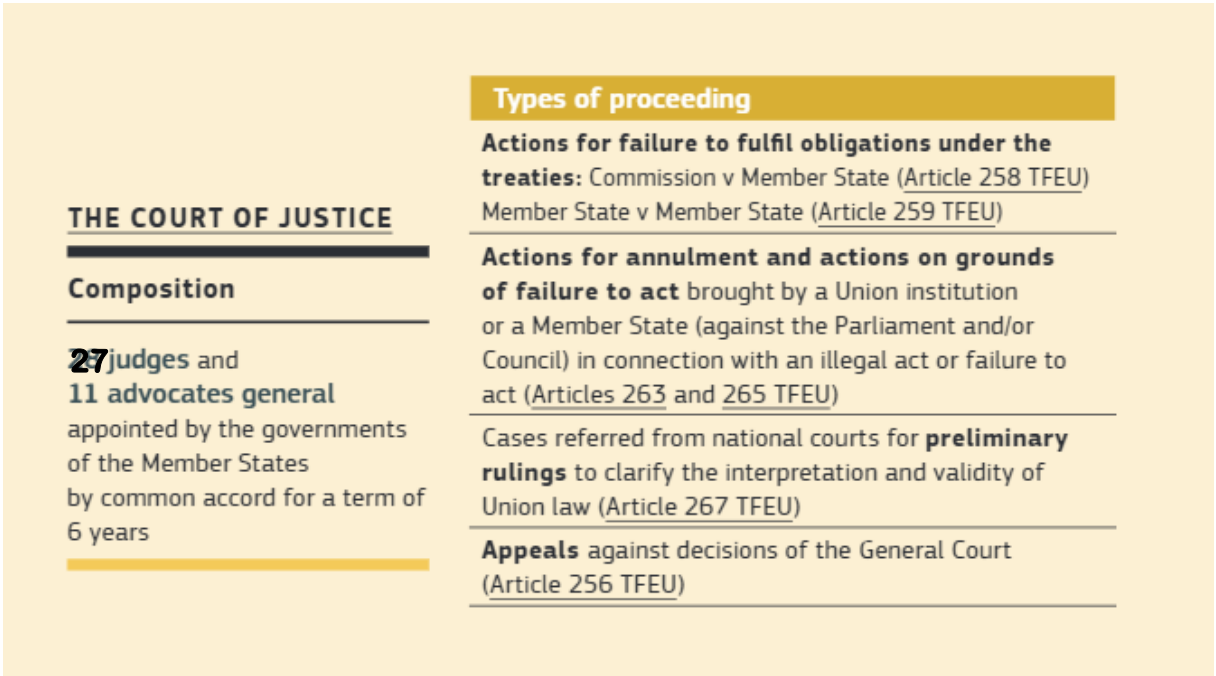
The European Council should be distinguished from the Council of the European Union (known as the Council of Ministers or simply Council), which is composed of twenty-seven national ministers – each Member State has one seat. The actual composition of the Council changes depending on the topic of the meeting: for the matters of transport, national ministers for transport meet. They act as government representatives, adopting decision either by majority or unanimous vote allocated roughly according to population of each Member State. The Council has European Union legislative and budgetary powers shared with the European Parliament, and limited executive powers based on intergovernmental principles such as to decide on the CFSP. Its Presidency rotates between the Member States every six months, while the groups of three Presidencies work together on a common programme.

The European Commission is the European Union politically independent executive body. Unlike the members of the Council, the European Commissioners represent the interest of the European Union as a whole. The College of Commissioners is composed of the President of the Commission, eight Vice-Presidents, including three Executive Vice-Presidents, the High

Representative of the Union for Foreign Affairs and Security Policy, and 18 Commissioners, each responsible for a portfolio. It is heavily staffed by various professions organised into Directorates-General (DGs) responsible for specific policy areas. The Commission is alone responsible for drawing up proposals for new European Union legislation, and has a duty to implement the decisions of the European Parliament and the Council.

Together, these three institutions produce the European Union supranational legislation through the ordinary legislative procedure (formerly, co-decision). In principle, the Commission proposes new laws, and the Parliament and Council adopt them. The Commission and the member countries then implement them, and the Commission ensures that the laws are properly applied and implemented. Whereas in the ordinary legislative procedure the Parliament has an equal footing with the Council, the special legislative procedures, which apply only in specific cases, give the Parliament only a consultative role. Such special topics include taxation, where the Parliament gives only an advisory opinion in the so-called consultation procedure.

Charged with several tasks is the Court of Justice of the European Union (CJEU), which has two levels: the Court of Justice and the General Court. The fist level is detailed in the below presentation.



Source: The ABC of EU law, https://op.europa.eu/en/publication-detail/-/publication/5d4f8cde-de25-11e7-a506-01aa75ed71a1 (the correction has been made with regard to the number of judges)

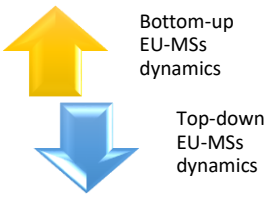
The CJEU interprets EU law to make sure it is applied in the same way in all EU countries, and settles legal disputes between national governments and EU institutions. It can also, in certain circumstances, be used by individuals, companies or organisations to take action against an EU institution, if they feel it has somehow infringed their rights. There are several procedures which the CJEU conducts and the main ones are detailed in the above box. The General Court rules on actions for annulment brought usually by individuals or companies against individual acts of European Union institutions, such as a Commission decision on violation of competition law or state aid, or the Board of Appeal decision on registration of trademark or design. The decisions of the General Court may in principle be challenged the CJEU.

Acting as the European Union independent external auditor, the European Court of Auditors (ECA) checks whether the European Union taxpayers' money has been spent according to the budget and annually reports on European Union finances to the Parliament and the Council of the European Union.

The European Central Bank (ECB) manages the euro and frames and implements European Union economic and monetary policy. Its main aim is to keep prices stable, thereby supporting economic growth and job creation. It does so by, among other things, setting the interest rates at which it lends to commercial banks in the eurozone, managing the eurozone's foreign currency reserves, ensuring that financial markets and institutions are well supervised by national authorities, authorising the production of euro banknotes by eurozone countries.

On the topic of the **relationship between the European Union and the Member States** a lot has been said and written from various angles, political, legal, economic etc. However, one conclusion is true for all of them: this relationship is multifaceted and dynamic.

In its complexity, the relationship is both bottom-up and top-down. Under the objective of European integration, the bottom-up direction is channelled through the construction of the supranational institutions of the European Union and the delegation of national powers to the supranational decision-making level. Under the cap of Europeanisation, the top-down influences are concerned with shaping the European Union policies, passing the European Union legislation, and establishing the European Union procedures and political processes.



Despite the important role of the European Union institutions, their composition and the legislative procedures as explained above, still allow for the national executives to "hold a key position in both the decision-making and the implementation of European policies and thus influence the way in which Member States shape European policies and institutions and adapt to." (Tanja A. Börzel, How the European Union Interacts with its Member States, Institute for Advanced Studies, Vienna, https://www.ihs.ac.at/publications/pol/pw_93.pdf, at 19)

Although sovereign powers have been transferred from the Member States to the European Union by the agreement of the Member States themselves, they are not always fully aware or accepting of with the increasing influence of European Union law especially after the Maastricht Treaty brining the desired unity expressed also in Article 2 using the wording "The Union is founded on the values... These values are common to the Member States...". Sometimes they seek to defend their autonomy against the European Union. One part of the relations between the European Union and its Member States is the relationship between the European Union law and the Member States legal systems. The basic principles developed over time are the principles of supremacy of European Union law over the national law in all situations in which they are in conflict. The established case-law commenced with the European Court of Justice (as it was called then) Judgment of 15 July 1964, *Flaminio Costa v E.N.E.L.*, C-6/64, EU:C:1964:66, in which the shareholder of the nationalised energy company in Italy refused to pay the bill arguing that the nationalisation was contrary to the Treaty of Rome.

One of the most prominent examples of the tension between the European Union and Member States legal systems are those related to the decisions of the German Constitutional Court, the so-called *Solange* decisions in the 1970s and 1980s and the recent *PSPP* decision which reveal the difficulty of the German national legal system to accept supremacy of the European Union law. The *Solange* saga (name coming from the German term meaning "so long as") and the *PSPP* case all consists of parallel decisions by both the ECJ/CJEU and the German Constitutional Court

Solange I

In the first case, the Common Agricultural Policy was at issue. The exports were allowed only by exporters which obtained an export licence, on a deposit of money to be forfeited (if they carry out the export outside the validity of the licence). The German company Internationale Handelsgesellschaft mbH claimed that the licensing system violates of their right to conduct a business under the German Constitution, because it was disproportionate and unnecessary for attaining the public objective. Upon the questions by the German Administrative Court, the ECJ rendered a judgment confirming the compliance of these requirements with the fundamental rights (ECJ, Judgment of 17 December 1970, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, C-11/70, EU:C:1970:114). The German Constitutional Court restrained itself from questioning this conclusion as long as the protection of the fundamental rights was evident, thus leaving a option opened to do so if not so.

Solange II

In another case the then European Community import licensing rules (protective measures related to the preservation of mushrooms) were disputed before the German Court. The European Court of Justice held they were valid (ECJ, Judgment of 12 April 1984, *Wünsche Handelsgesellschaft GmbH & Co. v Federal Republic of Germany*, C-345/82, EU:C:1984:166). In a view that since 1974 the ECJ had developed protection for fundamental rights and all Member States had acceded to the European Convention on Human Rights (ECHR), the German Constitutional Court ruled that so long as the then European Communities (and the ECJ) effectively protect fundamental rights against the sovereign powers of the Communities, it will no longer check the European Union law against human rights under the German Constitution.

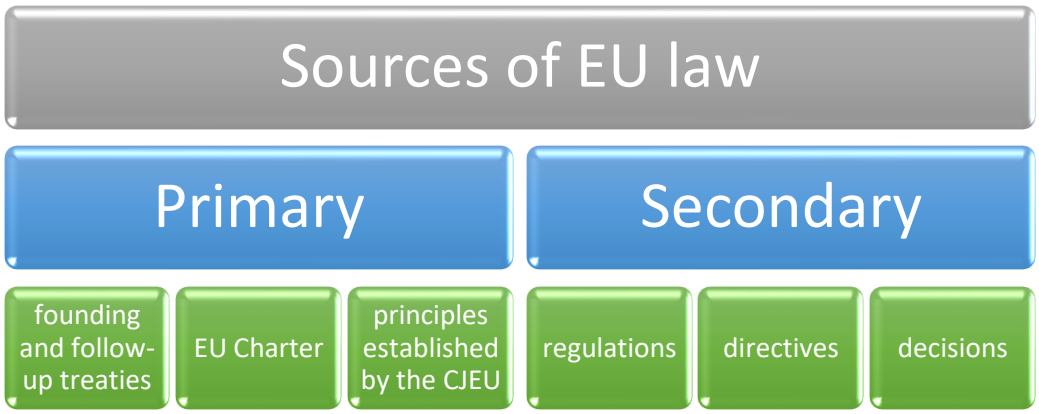
PSPP

More recently, the German Federal Constitutional Court ruled on the European Central Bank's decision of 4 March 2015 concerning the Public Securities Purchase Programme (PSPP). This ECB decision was validated by the CJEU in its judgment of 11 December 2018 (CJEU, Judgment of 11 December 2018, *Proceedings brought by Heinrich Weiss and Others*, C-493/17, EU:C:2018:1000). However, the German Constitutional Court ruled on 5 May 2020 that the

ECB had acted beyond its legal powers by not complying with the principle of proportionality (Article 5 of the Treaty of the European Union) and by stepping over the limits of monetary policy of the European Union (Article 119 of the Treaty on the Functioning of the European Union). The European Parliament has stated that "With this sentence, which runs counter to a CJEU ruling, the German Constitutional Court is in breach of the primacy of EU law on which the EU rule of law is based." The Parliament also suggested that the Commission instigates the infringement procedure against Germany. The end to this conflict does not necessarily entail the court proceedings against Germany since the solution may be in that the German Federal National Bank may find ways to meet the requirements of proportionality in implementing the PSPP.

Topic 2. Legal acts of the European Union

The second topic within the module Sports Law focuses on **European Union legal acts**. The basic division of European Union legal sources is to primary and secondary (sometimes also other less important categories).



Right now, among the treaties as primary sources three are in force: the Treaty on the European Union, the Treaty on the Functioning of the European Union and the Euroatom Treaty. The Charter of Fundamental Rights of the European Union is also part of the primary

law. In addition, the primary law is also made of the general principles established by the CJEU in its judgments.

Secondary legislation comprises all the acts adopted by the EU institutions which enable the EU to exercise its powers. Among them regulations, directive and decisions are binding, while recommendations and opinions are not (Article 288 of the TFEU). The TFEU introduced a hierarchy of norms within the secondary legislation: 1) legislative acts (Article 289 of the TFEU) are legal acts adopted by an ordinary or special legislative procedure – such as regulations or directives, and 2) non legislative acts which may be: 2a) delegated acts (Article 290 of the TFEU) are legally binding acts that enable the European Commission to supplement or amend non-essential parts of European Union legislative acts, and 2b) implementing acts (Article 291 of the TFEU) which serve as a tool for application of the European Union law, adopted mostly the Commission and rarely by the Council.

Regulations are legal acts of general application and binding in their entirety and directly applicable in all European Union Member States – to ensure uniform application of European Union law in all Member States. For instance, when the European Union decided to take action to better protect human health and the environment against the risks associated with chemical substances or to provide for competent courts in cross-border disputes such as those arising from the contracts, it adopted a regulation by acts of the Council and Parliament under the ordinary or special legislative procedures. The regulation is addressed to abstract categories of persons, not to identified persons (as the decision). A regulation binds: the European Union institutions, the Member States, the individuals who fall under its scope. The regulation is directly applicable in all Member applies immediately as the norm in all EU countries, without need to be transposed into national law; it creates rights and obligations for individuals and they can therefore invoke it directly before national courts, and it can be used as a reference by individuals in their relationship with other individuals, Member States or authorities.

Directives are adopted by the European Union institutions in an ordinary or special legislative procedure, and then incorporated — or transposed — by European Union Member States to become part of the nationally passed law in each of them. For example, the directive on the organisation of working time sets mandatory rest periods and a limit on weekly working time authorised in the European Union, while the directive on trademarks defines requirements for protection and reserved acts of the holder to be part of the national laws in all Member States. Directives are binding in

terms of the objective they pursue, but leave more or less discretion to the Member States how to achieve this objective. Directives may be either of minimum and maximum (or full) harmonisation. The former sets minimum standards and Member States may provide for higher standards, while the latter set he fixed standards and Member States may not introduce stricter (or less strict) rules. Directive is different from the regulation in that it is not directly applicable in Member States, but first has to be transposed into national law. Being a text with general application, not addressing individual natural or legal persons, it is also different from the decision.

Decisions are directly binding in entirety, like a regulation. A decision may be a legislative or a non-legislative act. They are legislative acts when adopted in the ordinary or special legislative procedure. In other cases, decisions are non-legislative acts such as when adopted by the European Council, the Council or the Commission outside such procedures. Decision may have an individual addressee or not. Decision with specific addressee may be addressed to one or several Member States, one or several companies or individuals. For example, when the Commission acted within its powers of a competition agency its decision imposing a fine on software giant Microsoft for abuse of its dominant market position, was addressed specifically to Microsoft. Decisions without addressee may be adopted by legislative procedures and they are legislative acts, whereas those not adopted by legislative procedures are non-legislative acts. Such non-legislative decisions are common in the field of CFSP.

International agreements which the European Union concludes with non-European Union countries or with international organisations are an integral part of European Union law. These agreements are separate from primary law and secondary legislation and form a *sui generis* category. According to the CJEU case-law, they can have direct effect and their legal force is superior to secondary legislation, which must therefore comply with them.

Supplementary law is a further category which consists of sources of European Union law which are essentially used by the CJEU as rules of law in cases where the primary and secondary legislation do not provide a solution. The supplementary sources include the CJEU case-law, international law and the general principles of law.

As described on behalf of the European Parliament: “The ‘life cycle’ of EU law – including its creation, application, interpretation and enforcement – involves various institutional actors. Key roles in the creation of EU law are played by the Commission, Parliament and Council, while the application of EU law on a day-to-day basis is predominantly the task of national courts. Supreme authority to interpret EU law, and to review the compatibility of legislation

with the treaties is vested in the CJEU." (Rafał Mańko, The EU as a community of law Overview of the role of law in the Union, EPRS, March 2017, PE 599.364, https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599364/EPRS_BRI(2017)599364_EN.pdf).

Depending on their nature, challenges to the legal acts adopted by the European Union institutions may take place in various proceedings. The European Union legislative acts may be challenged before the CJEU by the action for annulment of the act.

Digital Rights Ireland

A case in point being the action for annulment of the Data Retention Directive in which the CJEU declared the entire Directive invalid (CJEU, Judgment of 8 April 2014, *Digital Rights Ireland and Seitlinger and Others*, Joined Cases C-293/12 and C-594/12, EU:C:2014:238). It has done so in a view of the wide-ranging and particularly serious interference of the Directive with the fundamental rights because the interference was not actually limited to what is strictly necessary and thus the principle of proportionality was violated.

Non-legislative acts may be challenged in other proceedings adequate to their particular nature. For instance, if the decision was addressed to a particular entity, it may be challenged before the competent authority.

Apple

Thus the Commission decision ordering the tech giant Apple to return to the Irish State the funds received as a part of the tax benefits because they were deemed to constitute unlawful state aid, the company may commence the proceedings before the General Court of the European Union asking for annulment of the Commission decision. In this particular case the Commission decision was annulled (General Court, Judgment of 15 July 2020, Ireland v Commission and Apple Sales International and Apple Operations Europe v Commission, Joined Cases Cases T-778/16 and T-892/16, EU:T:2020:338).

Topic 3. Sports law

The final and central topic within the module Sports Law is concerned with various forms of **regulations covering different aspects of sports** in the European Union and beyond. Although certain rules are present at the level of the European Union, some come from international and national sources. In addition, many of the rules are of autonomous nature. Thus, the sports law in general consists of mixture of private and public rules and various arguments are put forward in support of both regulatory approaches.

Private rules are the first rules that have been put in place where the traditional principle of sporting autonomy comes from. Since the origin of modern sport in the 18th to 19th century in the Western world, federations and clubs have been spared the governmental influence. The sport is thus traditionally autonomously regulated and this is part of the guarantees that it remains separate from politics and outside the influence of public (regional or national) actors assuring the integrity of sport as an organised human activity. Up till now, sports institutions have developed a strong preference for their autonomy and self-regulation. This autonomy has also been materialised in the fact that they are in some countries almost exclusive or in other predominant providers of sport activities such as sports competitions and sports facilities.

Regulation of sports requires specialised knowledge and skills to understand the sport's logic and functioning, in order to be able to adequately regulate it. Being a global phenomenon, sport has grown to be largely regulated at the global level. This entails various aspects of it, from the rules of the games and sponsorship arrangements to the status and transfer of players, disciplinary offences and dispute resolution. Specialised sports arbitrators are deemed superior to State judges as they possess sport-related expertise and understanding which the latter may lack. Autonomous regulatory approach to sports is also said to assure efficiency both in terms of flexibility when there is a need for change and in terms of costs because it is borne by the sports sector and not financed from the State budget (drafting the laws and carrying our court proceedings). As financially self-sufficient, the sports sector needs to enjoy freedom in commercial dealings when selling broadcasting rights or entering sponsorship transactions. Further efficiency is seen in the fact that sports institutions assume the part of the public social tasks of the State by providing sports to public from early age, fulfilling educational, health, cultural and recreational functions. For all these reasons, sports institutions are usually convinced that less State interference is better for the sport itself. For

instance, when the EU law intervened in sports within the *Bosman* case (see below), the FIFA strongly criticized the EU.

Origins of private rules are to be found primarily in the sports governing bodies (SGBs) which regularly pass rules and regulations. The governance structure of sports usually includes national and international bodies, but they are sometimes also supported by regional ones, which by definition are usually organised in the form of as non-profit sport associations (this is done under the national rules of a chosen country or in case of national ones – the rules of that country). On the national level, those are various football associations, for instance, the Croatian Football Federation, the Danish Football Association and the Italian Football Federation, or handball associations, for instance, the Malta Handball Association, Royal Spanish Handball Federation and the Swedish Handball Federation. A further organisational level from which the regulations originate is comprised of the continental federations, such as the Union of European Football Associations (UEFA), the ASEAN Football Federation (AFF) or the South American Football Federation (CONMEBOL). On the global level, regulators include umbrella associations gathering the national associations, for instance, Fédération Internationale de Football Association (FIFA), International Handball Federation (IHF), International Skating Union (ISU) and Union Cycliste Internationale (UCI), or cross-sports one as the World AntiDoping Agency (WADA). A similar layered structure is present with regard to the Olympic sports movement: there are National Olympic Committees (NOCs), European Olympic Committees (EOC) and International Olympic Committee (IOC). An example of the autonomous legal source is the Olympic Charter. It is the founding document of the Olympic Movement, which addresses issues such as the legal status of the IOC, the role of the International Federations and the NOCs, the World Anti-Doping Code, as well as the Olympic flag, emblems, motto and flame. The Olympic Charter also states that all disputes that arise in connection with the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), thus avoiding recourse to the national judiciary. Dispute resolution bodies of sports governing bodies (SGBs) exists at different levels: national, regional or international. The central global sports venue for solving disputes is the CAS.

Public regulation is deemed necessary from the perspective of sports as an activity capturing general population, which is aimed at fulfilling some of the important public functions of health, education, recreation and cultural life of the citizens. Sports has changed since its early days and has grown into a huge business. The sports industry reached a value of nearly US$488.5 billion in 2018, and at the beginning of in 2020 it was estimated to be worth over US$500 billion (it has been, however, affected by the COVID-19 pandemic and the predictions for the future may have to be adjusted). Two sports segments are particularly prone to

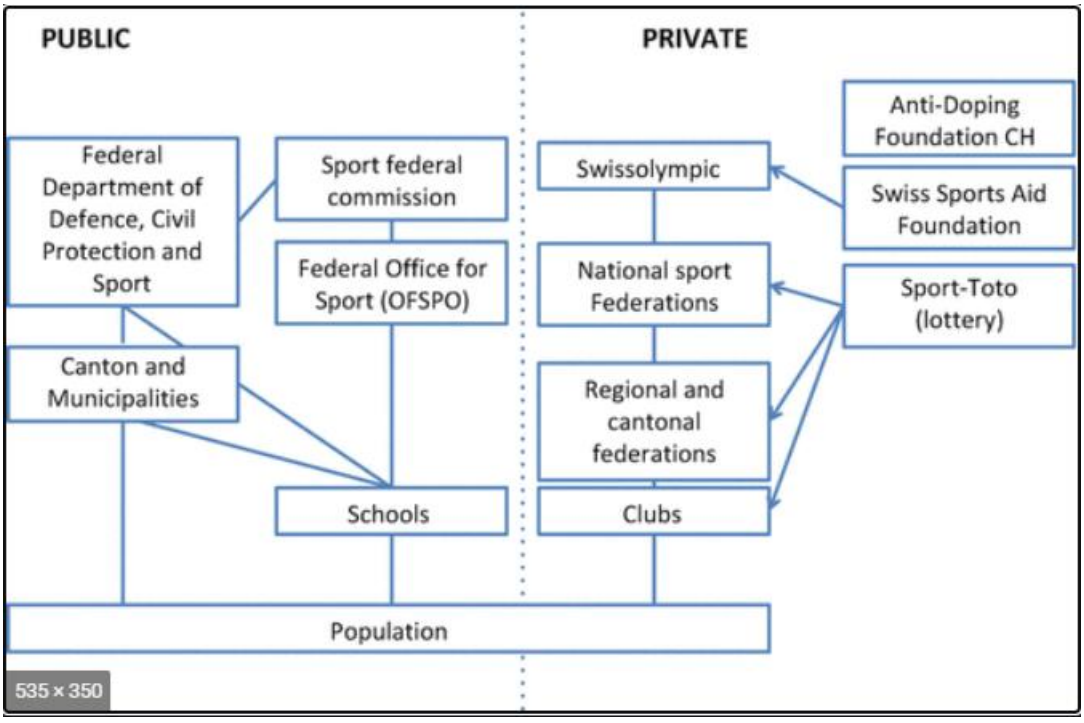
growth: 1) the participatory segment, which includes fitness and recreation centres, community sports, sporting facilities such as local golf clubs, marinas, gyms, personal training, etc., and 2) the spectator segment, which involves clubs and sports teams, event revenue, media rights, sponsorship and merchandising. There is also a tendency in growth of the economic and legal consultancy to the sports sector (Study on the Contribution of Sport to Economic Growth and Employment in the EU Study commissioned by the European Commission, Directorate-General Education and Culture Final Report November 2012, https://ec.europa.eu/assets/eac/sport/library/studies/study-contribution-spors-economic-growth-final-rpt.pdf, at 69). Given its increasing share in the overall economy, the sports sector needs to be regulated at the public level to protect market rights of undertaking against (natural) monopolies and rights of sportsmen and other professions participating in sports. Such rights range from worker's rights to non-discrimination right. From the governance perspective, autonomous regulatory approach leads to inefficiency as not all stakeholders have the opportunity to partake in policy and law making. Given that the citizens do not have the say in the regulations, self-regulation of sports is also undemocratic. SGBs need to be subject to public rules and State court jurisdiction; otherwise they would be rendered unaccountable for all kinds of violations including the most severe ones, such as violations of fundamental rights. Sports dispute solution venues might not guarantee protection of highest values as they have no duty to apply rights enshrined in constitutions or conventions, just as they cannot guarantee impartiality and quality of the decisions in the same vein as State judges.

Public rules originate from several types of public legislators. One is the European Union where the sports law commenced to develop in consequence of application of the Treaty principles to sports activities such as with regard to the free movement of workers, services and establishment, as well as competition and state aid law. The European Union Member States are also important contributors to the regulation of sport-related activities, where many different approaches can be identified. Most differences concern the degree to which the States intervene, hence it is possible to distinguish between those which significantly intervene such as France and those which adopt the non-interventionist approach such as the former Member State United Kingdom. There is also an influence of the human rights actors over the sports law, in particular the Council of Europe by means of the European Convention on Human Rights (ECHR).

In summary, many countries finance or co-finance sports federations and a few go beyond that. However, as per, Willem and Scheerder, at least in Europe, the reliance of sports institutions on governments is common and considerable so that the governments' saying in

professional and grassroots sport policies is generally increasing (Annick Willem, Jeroen Scheerder, Conclusion: The Role of Sport Policies and Governmental Support in the Capacity Building of Sport Federations, in: Jeroen Scheerder, Annick Willem, Elien Claes (eds.), Sport Policy Systems and Sport Federations, Springer, 2017, pp. 303-320).

The below chart shows the Swiss example of the organisation of the sports system.



Source: Emmanuel Bayle, Switzerland: The Organisation of Sport and Policy Towards Sport

Federations, in: Jeroen Scheerder, Annick Willem, Elien Claes (eds.), Sport Policy Systems and Sport Federations, Springer, 2017, pp. 263-282, Figure 1. Organisation of sport in Switzerland (-> Financing system for the private side)

On the topic of the **Court of Arbitration for Sport (CAS)**, known also by its French name Tribunal Arbitral du Sport (TAS) and seated in Lausanne, Switzerland, it is important to state that this institution is created with the aim of solving sports-related disputes. Established in 1983 by the IOC, the CAS provides dispute resolution services by arbitrators with specialised knowledge in the field of sports. While CAS was initially monitored and solely funded by the

IOC, as of 1994, this task was entrusted to specially-founded body – the International Council of Arbitration for Sport (ICAS) by means of the Paris Agreement Related to the Constitution of the International Council of Arbitration for Sport. This change was intended to upgrade its independent status, along with other structural and procedural changes. According to the Code of Sports-related Arbitration, the CAS has the following competences: 1) to resolve the disputes referred to them through ordinary arbitration, 2) to resolve anti-doping-related matters as a first-instance authority or as a sole instance, 3) to resolve through the appeals arbitration procedure disputes concerning the decisions of federations, associations or other sports-related bodies, insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide, and 4) to resolve the disputes that are referred to them through mediation. The CAS hears cases on a variety of subjects, including doping, issues of nationality, advertising sponsorship, judging matters and other subjects of a commercial or disciplinary nature. The Code further provides that the CAS has three divisions: the Ordinary Arbitration Division as a court of sole instance, the Anti-Doping Division as a specialised division, and the Appeals Arbitration Division hearing appeals from the international federations, associations and other sports organizations. The CAS also has a special segment for football. Besides, the CAS also establishes special *ad hoc* divisions which are convened to hear urgent cases arising in the course of the Olympic Games. Such decisions have to be made in no more than 24 hours. Around 300 cases are registered by the CAS every year. However, the CAS is not the last instance all together – it is subject to the court review before the Swiss Federal Tribunal which hears the appeals against CAS decisions. Judicial recourse to the Swiss Federal Tribunal is allowed on a very limited number of grounds, such as lack of jurisdiction, violation of basic procedural rules (e.g. violation of the right to a fair hearing) or incompatibility with public policy.

The arbitral proceedings before the CAS are regulated by the CAS Procedural Rules. The proceedings commence by the Claimant's request for arbitration filed by the requesting party with the CAS Office and after the arbitration fee has been paid to the CAS. The CAS communicates the request to the Respondent, calls upon the parties to express themselves on the law applicable to the merits of the dispute and set time limits for the Respondent to submit any relevant information about the number and choice of the arbitrator(s) from the CAS list, as well as to file an answer to the request for arbitration.

The proceedings are held in French, English or Spanish, according to the parties' choice, or in the absence of one, according to the decision of the President. The parties may be represented or assisted by persons of their choice, who need not be a lawyer. The Panel of the Ordinary Division which decides the case is composed of one or three arbitrators. The CAS has nearly

300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. The parties to the particular arbitral proceedings may agree how the arbitrators from the CAS list are appointed, and if they fail to agree, the CAS Procedural Rules set the method. Every arbitrator shall be and remain impartial and independent of the parties and shall immediately disclose any circumstances which may affect her/his independence with respect to any of the parties. An arbitrator may be challenged if the circumstances give rise to legitimate doubts over her/his independence or over her/his impartiality. An arbitrator may be removed if she/he refuses to or is prevented from carrying out her/his duties or if she/he fails to fulfil her/his duties within a reasonable time. Parties may apply for provisional or conservatory measures under the CAS Procedural Rules only after all internal legal remedies provided for in the rules of the federation or sports-body concerned have been exhausted.

The ordinary procedure lasts between 6 and 12 months. For the appeals procedure, an award must be pronounced within three months after the transfer of the file to the Panel. The award shall be made by a majority decision, or, in the absence of a majority, by the President alone. Before the award is made, resolution of the parties' dispute by conciliation may be encouraged. Any settlement reached between the parties may be embodied in an arbitral award rendered by consent of the parties. Proceedings under the CAS Procedural Rules are confidential, so the parties, the arbitrators and CAS are not allowed to disclose to any third party any facts or other information relating to the dispute or the proceedings without the permission of CAS. Awards are made public, unless all parties agree or the Division President so decides, which is sometimes done where the interest of the public is prevailing.

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may also be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned. The time limit for appeal is twenty-one days from the receipt of the decision appealed against

In addition to arbitration, the CAS offers the option of mediation. Mediation is a non-binding and informal procedure, based on a mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS mediator, with a view to settling a sports-related dispute.

On the topic of **relationship between public and private law rules in sports** it is important to note that the State court will respect the arbitration agreements to the extent they are permitted under national and international law. However, the competences of the CAS (or any other autonomous sports body be it a federation, association, club or alike, or a dispute resolution body) do not in principle present an obstacle to competences of State courts to act in the areas which are not arbitrable. All sports actors have to be aware that certain national and international institutions may have jurisdiction to supervise their judicial system and its compliance especially with the public policy matters, such as due process rights of players and alike, freedom od speech and so on. Let us take an example of criminal liability for the offences on the sports field. The disciplinary measure pronounced by the sports institution does not protect the player form the parallel criminal persecution of a particular State. A case in point is a December 2020 incident in which the Texas player Emmanuel Duron attacked a referee after being ejected from a game. Irrespective of whether a disciplinary measure was rendered or not, he was arrested by the police and charged with assault at an arraignment hearing in the Edinburg Municipal Court, while his team – the Edinburg High School football team, was removed from the playoffs.

A further example is concerned with violation of human rights in the sports context, such as when a player addresses hate speech to another player during the game. The sanction may be rendered not only by the autonomous sports body, but also State court in the criminal proceedings. The State which will be acting upon this offence depends on the scope of its own law – which may be based on the territorial or personal connection. Otherwise, the issue may arise when such hate speech is used in communication with the audience, even when no particular individual is verbally attacked as was the situation in case which eventually reached European Court of Human Rights (ECtHR) under the name *Šimunić v. Croatia*.

Šimunić v. Croatia

The case of *Šimunić v. Croatia* concerned the right to freedom of expression of this famous football player (ECtHR, decision of 22 January 2019, *Šimunić v. Croatia*, Application no. 20373/17). These are the facts of the case: the applicant, a football player, was convicted of a minor offence of addressing messages to spectators during a football match, the content of which expressed or incited hatred on the basis of race, nationality and faith. The High Minor Offences Court held: "It is an uncontested fact that the said cry, irrespective of its original Croatian literary and poetic meaning, was used also as an official greeting of the Ustash[e] movement and totalitarian regime of the Independent State of Croatia (NDH) which was

present in all official documents, either in its original form 'For Home and Leader – Ready!' or in its abbreviated forms 'For Home – Ready!' or 'For Home', and that that movement originated from fascism, based, inter alia, on racism, and thus symbolises hatred towards people of a different religious or ethnic identity, the manifestation of racist ideology, as well as demeaning the victims of crimes against humanity ... " As main complaint, the applicant considered his conviction a breach of freedom of expression under Article 10 of the ECHR. He also complained that he had been punished for an act which had not constituted an offence in violation of Article 7 of the ECHR; that the Croatian courts had been inconsistent in their approach which violates Article 6 of the ECHR; that, under Article 13, the remedies used had not been effective; and that, under Article 1 of Protocol No. 12, he had been discriminated against, since others who had used the same expression had been acquitted. The law applicable is Article 10 of the ECHR: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." The ECtHR applied the following test: is there an interference with the protected right (freedom of expression)? If this is the case: is it «in accordance with the law»? (legal basis); does it pursue a «legitimate aim»?; and is it «necessary in a democratic society»? (which includes proportionality test). Then, the necessity test was applied: the States are under the duty to combat intolerance, racism and discrimination (in sport). Where are the limits of Article 10? The ECtHR found it important to refer to Article 17 of the ECHR (prohibition of abuse of rights). Importance was also given to the context of the incident: the applicant chanted a phrase used as a greeting by a totalitarian regime at a football match in front of a large audience to which the audience replied and he did so four times. The ECtHR referred to the applicant, a football player, as a "role model", which should have been aware of the possible negative impact of provocative chanting. The proportionality of the fine (approx. 3.300 EUR) was also respected. As a result, the ECtHR concluded that the authorities of the respondent State struck a fair balance between the applicant's interest in free speech, on the

one hand, and the society's interest in promoting tolerance and mutual respect at sports events as well as combating discrimination through sport, on the other hand.

An interesting note on the topic: Rietiker, Daniel, The European Court of Human Rights and FIFA: Current Issues and Potential Challenges, VerfBlog, 2019/7/06, https://verfassungsblog.de/the-european-court-of-human-rights-and-fifa-current-issues-and-potential-challenges/.

On the particular topic of **relationship between autonomous sports law and European Union law**, the first and foremost observation concerns the nature of the latter which is supranational and many of its rules are mandatory serving the goals of single market (a brief account of this development is provided in Alexander Lelyukhin, The impact of EU on sport broadcasting: what does the line of recent ECJ cases signal about?, *International Sports Law Journal*, vol. 13, 2013, 104–131, at 106). This is the origin of the effect of EU law in the sports are rules regulating the European Union internal market, initially the rules on free movement of workers, services and establishment and the rules on free market competition.

Bosman

Jean-Marc Bosman was a player for RFC Liège in the Belgian First Division in Belgium. His contract with the club expired in 1990 and he wanted to play for French club Dunkerque. However, Dunkerque was not prepared to pay the transfer fee demanded by RFC Liège, so the latter refused to release Bosman. In the meantime, Bosman's wages were reduced as he was no longer a first-team player. He took his case all the way to the then European Court of Justice (ECJ) and complained about the legality of FIFA's rules regarding football players' transfer. The ECJ ruled that the then transfer system restricted the free movement of workers and was thus prohibited by Article 39(1) of the EC Treaty (now Article 45(1) of the TFEU) (ECJ, Judgment of 15 December 1995, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*, C-415/93, EU:C:1995:463). Bosman was given the right to a free transfer at the expiration of his contract if the transfer is from a club within one European Union association to a club within another European Union association. This right belongs to all players in European Union.

The ECJ explained, that having regard to the objectives of the European Union, sport is subject to European Union law in so far as it constitutes an economic activity under the primary European Union law, as in the case of the activities of professional or semi-professional footballers, where they are in gainful employment or provide a remunerated service. Rules governing business relationships between employers in a sector of activity fall within the scope of the European Union provisions relating to freedom of movement for workers if their application affects the terms of employment of workers. That is true of rules relating to the transfer of players between football clubs which, although they govern the business relationships between clubs rather than the employment relationships between clubs and players, affect, because the employing clubs must pay fees on recruiting a player from another club, players' opportunities for finding employment and the terms under which such employment is offered. The ECJ further stated that the principle of freedom of association, enshrined in Article 11 of the ECHR, is protected in European Union legal order, but rules restricting freedom of movement for professional sportsmen, laid down by sporting associations, cannot be seen as necessary to ensure enjoyment of that freedom by those associations, by the clubs or by their players.

By the ruling in *Bosman* the ECJ also prohibited domestic football leagues in European Union Member States, and also UEFA, from imposing quotas on foreign players to the extent that they discriminated against nationals of European Union Member States. At the time, some leagues placed quotas restricting the number of non-nationals allowed on member teams. Also, UEFA had a rule that prohibited teams in its competitions (the Champions League, Cup Winners' Cup and UEFA Cup) from listing more than three "foreign" players for any game. Following the judgment in *Bosman*, quotas could still be imposed, but only to restrict the number of players who are not European Union nationals on each team. The ECJ reasoned that the Treaty precludes the application of rules laid down by sporting associations under which, in matches in competitions which they organize, football clubs may field only a limited number of professional players who are nationals of other European Union Member States. Such rules are contrary to the principle of the prohibition of discrimination based on nationality as regards employment, remuneration and conditions of work and employment and it is of no relevance that they concern not the employment of such players, on which there is no restriction, but the extent to which their clubs may field them in official matches, since, in so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned. Nor can those rules, which do not concern specific matches between teams representing their countries but apply to all official matches between

clubs, be justified for reasons which are not of an economic nature and are of sporting interest only, such as: preserving the traditional link between each club and its country, since a football club's links with the Member State in which it is established cannot be regarded as inherent in its sporting activity; creating a sufficient pool of national players to provide the national teams with top players to field in all team positions, since, whilst national teams must be made up of players having the nationality of the relevant country, those players need not necessarily be registered to play for clubs in that country; or maintaining a competitive balance between clubs, since there are no rules limiting the possibility for richer clubs to recruit the best national players, thus undermining that balance to just the same extent.

According to some studies, the judgment in *Bosman* induced higher competitive balance at national level by boosting talent development as expected by the European Union policy makers. However, surprisingly it also reduced competition in the Champions League because non-established clubs were incline to sell their best players instead of competing against the best teams (Pehr-Johan Norbäck, Martin Olsson, Lars Persson, Talent development and labour market integration in European football, The World Economy, Vol 44, No. 2, 2021, pp. 367–408).

Development in the dynamics of the relations between autonomous and European Union rules is evident in another case in which the ECJ also established supremacy of European Union law over the autonomous sports law created by the sports institutions.

Meca-Medina

In this case David Meca-Medina and Igor Majcen, professional long-distance swimmers from Spain and Slovenia respectively, failed doping tests after finishing first and second in a World Cup race in Brazil, and were banned for a period of four years by a decision of Fédération Internationale de Natation (FINA)'s Doping Panel in 1999. They then appealed the decision before the CAS, which confirmed the suspension in 2000 and subsequently reducing it to two years. Subsequently, they filed a case with the European Commission stating that the rules adopted by the International Olympic Committee (IOC) concerning doping control were incompatible with the rules on competition and freedom to provide services in European Union. They claimed that fixing of the limit for Nandrolone at two nanogrammes per millilitre of urine was a concerted practice between the IOC and the 27 laboratories accredited by it. They further argued that the arbitral courts were not independent of the IOC and thus also

supportive of the anti-competitive practice. The Commission dismissed their claim (European Commission, decision of 1 August 2002, COMP/38158—Meca-Medina and Majcen/IOC) as well as the Court of First Instance (later renamed into General Court of the European Union) (CFI, decision of 30 September 2004, *Meca-Medina and Majcen v Commission*, T-313/02, EU:T:2004:282). In its judgment, the CJEU stated that, in a view of the general objectives of the European Union, sport is subject to European Union law only in so far as it constitutes an economic activity and where a sporting activity takes the form of gainful employment or the provision of services for remuneration, which is true of the activities of semi-professional or professional sportsmen. Thus it may come under the scope of Article 39 of the EC Treaty (now Article 45 of the TFEU) or Article 49 of the EC Treaty (now Article 56 of the TFEU). These provisions on freedom of movement for persons and freedom to provide services do not, however, affect rules concerning questions which are of "purely sporting interest" and, as such, have nothing to do with economic activity. In assessing the compatibility of the disputed anti-doping regulations with European Union competition law, the CJEU observed that account had to be taken of the overall context in which the decision of the (sporting) associations was taken or produces its effects and, more specifically, of its objectives. It has then to be considered whether the consequential effects restrictive of competition are inherent in the pursuit of those objectives and are proportionate to them (ECJ, Judgment of 18 July 2006, *David Meca-Medina and Igor Majcen v Commission of the European Communities*, C-519/04, EU:C:2006:492).

Although the sportsmen were not successful in the case due to the lack of proof of disproportionate nature of the anti-doping rules at issue, it was definitely confirmed that sporting rules fall under the scope of European Union law leaving no place for the purely sporting rules exception. As such the sports rules may be assessed as to their compatibility with the European Union law.

The topic of **protecting brands and other intellectual property in sports** is very important from the economic perspective and ability of the sports institutions and organisations to successfully o commercialise their activities. The protection of sport-related intellectual property rights has been shaped by the CJEU case law. Various intellectual property rights may be used for the purpose of protecting the intellectual capital of the sports movements (such as Olympic Movement) organisations (such clubs) or even individual players, but trademarks and copyright/neighbouring rights are the most important among them.

Trademarks may consist of any signs capable of being represented graphically, such as a word, logo, colour scheme or sound applied to goods and services. The signs must be capable of distinguishing the goods and services of one undertaking from those of other undertakings. A trademarked product informs the purchaser of the origin of the product, thus marking it as distinct from other products. At EU level, trade mark law is governed by two instruments: the Trademark Directive, which aims at harmonising the conditions for registration of a national trade mark in respect of goods or services, and the European Union Trademark Regulation. In the sport context, trade marks are used extensively in the sport industry to protect sporting brands, but also by other sporting actors. The CJEU has given its interpretation of the trade mark directive in cases involving clubs or sporting goods manufacturers.

Arsenal Football Club v Reed

The facts were as follows: Arsenal FC is a football club, which holds registered trademarks in United Kingdom, which was then the European Union Member State. Matthew Reed had sold items bearing the registered trademarks of the Arsenal FC, such as scarfs, on the stall near the football stadium along with the notice that they are not official merchandise. In 1999, Arsenal Football Club commenced the court proceedings against him claiming he had infringed their registered trademarks and performed acts of passing off. The then ECJ had considered whether this use affected the essential function of the mark and held that such non-authorised use of the sign "Arsenal" on scarves sold by Reed is such as to create the impression that there is a material link in the course of trade between the goods concerned and the trademark holder. The use of a sign which is identical to the trademark at issue is liable to jeopardise the guarantee of origin. It is consequently a use which the trademark holder may prevent in accordance with the Trademark Directive. It is immaterial that, in the context of that use, the sign is perceived as a badge of support for or loyalty or affiliation to the trademark holder.

The ECJ's findings are important for sport in that it supports trademark holders and adds clarity to the question of whether a sign is being used as a trademark or a badge of support. Moreover, in the field of trademarks, the role played by big sport federations and the IOC in setting guidelines for trademark identification processes and designs of sports products can be an issue of concern for sporting goods manufacturers.

In the field of copyright and neighbouring rights, the 1996 Database Directive is of relevance for sport as it relates to sports information, such as fixture lists (lists of matches and dates)

owned by leagues and used by sport betting companies. This Directive has been interpreted by the CJEU in several judgments in cases concerning the sports database owners FM and BHB. Regarding the exploitation of databases (fixture lists and horse-racing data) by bookmaking services, the CJEU held in these cases that the right-holders cannot claim protection under the Database Directive.

Another matter related to copyright concerns the sale of media rights over the sporting events, which economically is one of the main sources of funding. The question of copyright protection of sports events was raised.

Murphy

The case concerned Portsmouth pub landlady Karen Murphy who was sued by the FA Premier League's (FAPL) for using an imported satellite decoder card to show a Greek TV broadcaster's Premier League football programming, rather than the coverage from BSkyB (the FAPL's official broadcaster in the UK). The CJEU ruled that European Union rules on free movement of services and competition prohibited contractual provisions and national legislation that prevent viewers in one European Union Member State from importing satellite decoder devices from another European Union Member State to watch the services of a foreign broadcaster. (CJEU, Judgment of 4 October 2011, *Football Association Premier League Ltd and Others v QC Leisure and Others, and Karen Murphy v Media Protection Services Ltd*, Joined cases C-403/08 and C-429/08, EU:C:2011:631)

Whereas it is evident that the sports event is not in itself a copyright work, the broadcast of it constitutes a subject matter protected by neighbouring right under the 1961 Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. This means that the signals, not the content are protected. In effect this means that, for instance, sport club accepts the statutes of the national sports association, including the transfer of media rights. As an organiser of the sports events within a league, the national sport association has a right to authorise entrance to the event (at the stadium as well as by media broadcast) and can thus use civil law claim against unauthorised "distributors". Authorised "distributors" are those who have been given the right to enter the event for the purpose of broadcasting, in exchange for payment.

In addition, although the sports event is not copyrightable, its audio-visual recording (or audio commenting) may be protected by copyright. In the same vein as the broadcasting rights, the copyright in such recordings is usually held by the national sports association. As previously said, neighbouring rights of broadcasters are not dependant on the copyright in the underlying content.

The European Commission has expressed that the sport-related counterfeiting and piracy have become an international phenomenon with considerable economic and social repercussions. Counterfeiting activities during major sporting events are a real challenge and can have economic impacts for sport right-holders. The sporting goods industries are particularly concerned by the growing purchase of counterfeit goods over the internet. The protection and enforcement of intellectual property rights is an important issue for sport right-holders, although the sport sector hardly differs from other business sectors in this respect and faces similar challenges. Existing cooperation networks with the Commission for the fight against counterfeiting during major sporting events (e.g. issuing of information for customs officials to help them to differentiate between genuine and counterfeit items during the European football championship in 2004) could be further developed.