



Models of Sport Governance in the European Union: The Relationship between State and Sport Authorities*

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1. Introduction

In 2004 André-Noël Chaker published a study on "Good governance in Sport - A European survey" which was commissioned by the Council of Europe.¹ The Council of Europe was the first international organization established in Europe after the Second World War. With 46 Member States, the Council of Europe currently represents the image of a "wider Europe". Its main objective is to strengthen democracy, human rights and the rule of law. The Council of Europe was the first international intergovernmental organization to take initiatives, to establish legal instruments, and to offer an institutional framework for the development of sport at European level.² The study covers the sport-related legislation and governance regulations of twenty European countries. The aim of this study was to measure and assess sport governance in each of the participating countries. For the purposes of this study the term "sport governance" had been given a specific meaning. Sport governance is the creation of effective networks of sport-related state agencies, sports non-governmental organisations and processes that operate jointly and independently under specific legislation, policies and private regulations to promote ethical, democratic, efficient and accountable sports activities. The legislative framework of the countries under review was analysed according to whether they have references to sport in their constitutions and whether they have a specific law on sport at national level. There are two distinctive approaches to sports legislation in Europe. Countries have adopted an "interventionist" or a "non-interventionist" sports legislation model. An interventionist sports-legislation model is one that contains specific legislation on the structure and mandate of a significant part of the national sports movement. All other sports-legislation models are deemed to be non-interventionist.

In December 2009, the European Commission (Employment, social affairs and equal opportunities DG) commissioned the T.M.C. Asser Instituut (ASSER International Sports Law Centre) to undertake a study on "The Role of Member States in the Organising and Functioning of Professional Sport Activities". The background of the Study is as follows.

Article 39 of the European Community Treaty (EC Treaty) establishes the free movement of workers in what became the European Union. It prohibits all discrimination on the basis of nationality. The European Court of Justice has confirmed that professional and semi-professional sportsmen are workers within the meaning of this Article and consequently, Community law applies to them.³ This implies the application of equal treatment and the elimination of any direct or indirect discrimination on the basis of nationality. The Court particularly stated that Article 39 EC Treaty not only applies to the action of public authorities but also extends to rules of any other nature aimed at regulating gainful employment in a collective manner and

that obstacles to freedom of movement for persons could not result from the exercise of their legal autonomy by associations or organizations not governed by public law.⁴

In light of recent developments in the field of sport, however, certain international sport authorities have advocated the adoption of rules that might be contrary to Community law and in particular to the free movement-of-workers principle. National sport authorities, being members of the international sports authorities, should also apply the rules adopted at the international level. Therefore, the implementation at the national level of such rules would be contrary to EC law.

For example, the European Commission has published an independent study on the "home-grown players' rule" adopted by the European football governing body. This rule requires clubs participating in the European-wide club competitions - Champions League and UEFA Cup (as from the 2009/2010 season: Europa League) - to have a minimum number of "home grown players" in their squads. Home grown players are defined by UEFA as players who, regardless of their nationality or age, have been trained by their club or by another club in the same national association for at least three years between the age of 15 and 21. Compared with the "6+5" rule adopted by the world football governing body FIFA, which is incompatible with EU law, the Commission considers that UEFA has opted for an approach which seems to comply with the principle of free movement while promoting the training of young European players.⁵ The "6+5" rule provides that at the beginning of each match, each club must field at least six players who are eligible to play for the national team of the country of the club.

The European Commission, as guardian of the EC Treaty and within the framework of its competences, can initiate infringement proceedings before the European Court of Justice (ECJ) against Member States that have breached Community law. According to the case-law, an infringement procedure can be initiated against a Member State if government authorities of that Member State are at the origin of the infringement.⁶ As to the actions of private entities, the ECJ has indicated that Member States might be responsible for breach of EC law by private entities, recognised as having legal personality, whose activities are directly or indirectly under State control. Possible criteria that are mentioned in this context are, in particular the appointment of the members of the entity's management committee by state authorities, and the granting of public subsidies which cover the greater part of its expenses.⁷

Therefore, the fundamental element authorising the Commission to initiate an infringement procedure against a Member State is the existence of behaviour breaching Community law that can be attributed to the State. The same reasoning applies also in the field of professional sports activities, where in order for the services of the Commission to launch the infringement procedure, behaviour - breaching Community law attributed to the State must be present. Consequently, it is essential to determine whether and to what extent, Member States participate directly or indirectly in the organisation of professional sports activities.

Community law on the free movement of workers and in particular Article 39 of the EC Treaty being directly applicable in the Member States' legal orders, means that every EU citizen who considers that his/her rights have been violated might go and seek a redress in front of the national administrative authorities and jurisdictions. If the application of EU law is at stake, national courts may request a preliminary ruling from the European Court of Justice, which is entitled to give rulings about the compatibility of sporting rules with the EU legal order.

In the White Paper on Sport, adopted in 2007⁸, the Commission

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2 See: Robert C.R. Siekmann and Janwillem Soek Eds., *The Council of Europe and Sport: Basic Documents*. T.M.C. Asser Press, The Hague 2007, at p. XIX.

3 Case 13/76 Donà, ECR 1976, p. 1333 and Case C-415/93 Bosman, ECR 1995, I-4921.

4 Case C-415/93 Bosman, ECR 1995, I-4921.

5 Cf., IP/08/807 of 28 May 2008.

6 Case C-95/97 Région wallonne v. Commission, ECR 1997, I-1787.

7 Case C-249/81 Commission v. Ireland, ECR 1982, 4005.

8 COM (2007) 391 final, pp. 14-15.

1 Council of Europe Publishing, Strasbourg, September 2004.



reaffirmed its acceptance of limited and proportionate restrictions (in line with EU Treaty provisions on free movement and European Court of Justice's rulings) to the principle of free movement in particular as regards:

- The right to select national athletes for national team competitions;
- The need to limit the number of participants in a competition; and
- The setting of deadlines for transfers of players in team sports.

In order to improve knowledge of the functioning of sport regulations across the EU and to outline the general trends in Europe, analysis of national sport legislation is required in order to determine whether and to what extent, Member States participate directly or indirectly in the organisation of professional sport activities, with a view of clarifying the different levels of responsibility. This country-by-country analysis is to cover:

- a) *Organisation of professional sport activities*: The way in which professional sport activities are organised with particular focus on whether the organisation is:
 - part of general organisation of sport activities or whether there are separate special rules regulating professional sport activities;
 - underpinned by general law, framework law or specific rules governing sectoral sport activities;
 - at the level of the state, or has devolved to, for example, the regional/local level.
- b) *Organisation and functioning of sport authorities*: The way in which sport authorities are organised and function, with particular focus on whether the sport authorities
 - are private actors or whether they act or operate under the auspices of the State;
 - have State participation in any of their responsibilities for the organisation of professional sport activities (for example, nomination of members of governing bodies, financing, and adoption of regulations governing professional sport competitions).
- c) *Discrimination*: Whether there are direct or indirect discriminatory rules and/or practices with regard to Community citizens. The following fields of professional sport activities must be covered: football, basketball, volleyball, handball, rugby and ice-hockey (as to both men and women championships, and in both first and second divisions).

The final purpose of the study was to determine, on the basis of the information gathered and the research undertaken, to what extent the organising and functioning of professional sport activities might be attributed to the State in the European Union.

In this contribution we present a summary of the results of the study in a comparative form, that is, in relation to the issues above under a) and b). We do not discuss the issue of c) since we are mainly interested in the current "abstract" relationship between state and sport authorities in the European Union from the perspective of the "interventionist"/"non-interventionist" models of sport governance. Of course, this perspective is relevant also for the determination of whether states may be considered responsible for the behaviour of the national sport-governing bodies.

2. State influence on the legal organisation of professional sport activities

2.1. The non-interventionist sports legislation model

In Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Luxembourg, Malta, the Netherlands, Slovakia, Slovenia, Sweden and the United Kingdom the sports federations set up according to the act of association are active private actors; they are not under control, responsibility or supervision of State authorities.

Also, in Lithuania the sports federations have full autonomy, even though they must be recognised by the Department of Physical Education and Sports, which sets out the procedure and criteria for recognition. In Hungary other criteria for the legal existence of a sports federation are applicable. A sport federation will only be recognised in case, first, it has at least ten sport organisations operating in a particular sport as members; second, it operates a national contest scheme (championship) continuously for at least three years; and, third, it has a contest scheme involving at least one hundred sportsmen having a contest permit.

2.2. The interventionist sports legislation model

The situation of the sports federations in the remainder of the EU-countries contrasts strongly with that in the above mentioned countries. There, the interference of the state in the doings and dealings of the federations is more or less immanent.

In Bulgaria, according to the Law on Physical Education and Sport, one of the requirements for granting a licence to a sport federation is that it presents rules for the organization of sport competitions. The licence is issued for a period of four years and encompasses the right to organize and carry out sport competitions⁹. Every four years a commission appointed by the head of the State Agency for Youth and Sport assesses the sport organization with regard to renewal of its licence.

In Cyprus the sports federations are under control of the State, both in respect of their financial status and rules for operation. The semi-governmental organisation, Cyprus Sports Authority, supervises sporting activities, advises sports federations and to ensures the functional implementation of all athletics programs. Furthermore, the Cyprus Sports Authority organises the sport representation of Cyprus abroad, regulates the federations, runs competitions and imposes sanctions to sports federations for violation of sports law and international regulations.

In France, the law provides for separate structures to manage professional activities in disciplines to whose federations responsibilities have been allocated by the Minister of Sports. The French Sports Code covers the legal existence of the professional leagues, bodies charged with the representation, management and coordination of professional sporting activities. The sports federations act under the control and supervision of the State authorities insofar as the State delegated their powers to them through legislative measures and the State can therefore cancel these powers as provided by law. The sports federations operate independently but under the control of the Minister of Sport.¹⁰ Before powers can be delegated to them, the sports federations must fulfil certain conditions: first, to be responsible for the organisation of one sport only or related sports; second, to have been approved beforehand by the State under the conditions of the Sports Act; and, third, to have an internal regulation that contains specific provisions as defined in the Sports Act.

In Greece, the State exercises supervision. The competent authorities control the legality of the statutes of association, and financial control is applied to all federations and clubs participating in a professional league. The delegation of the powers by the State to the sport authorities is provided by law. This delegation concerns the possibility to take decisions on every matter concerning the regulations of sport competitions.

In Italy all sport activities are controlled by the Italian Olympic Committee (CONI), which is a public body. CONI is independent although it is under State control (the Undersecretary for Sport). Although the governing authority of each sport is the sports federation, the technical, organizational and managerial autonomy of the federations is supervised by CONI.¹¹

In Latvia the Council of Latvian Sports Federations controls the activities of the sports federations in the field of the organisation and management of particular sport activities according to the procedure provided by regulations of the Cabinet of Ministers (although such regulations have so far not been adopted).¹² Also the Ministry of Welfare, the Ministry of Interior, the Ministry of Defence and the Ministry of Justice have certain competencies in the field of sport.¹³

9 Law for the Physical Education and Sport, amend. SG. 96/29 Oct 2004, Art. 19(1).

10 Loi n° 2003-708 du 1er août 2003 relative à l'organisation et à la promotion des activités physiques et sportives, Art. 16.

11 Legge N. 91/81 sul Professionismo Sportivo, Art. 14.

12 Latvian Sports Law, Published: "Vestnesis", 13 Nov. 2002, No. 165 (2740), S. 10(3).

13 Idem S. 6.



In Poland the organisation of top sports competitions falls within the competence of the Polish sports federations, which are managed autonomously. However, their activity is subject to the supervision of the Minister of Physical Education and Sport. The Minister exercises control in order to verify the compliance of the activity with the applicable regulations, statutes and rules of procedure.

In Portugal sports bodies responsible for the organization and functioning of professional sport competitions - the professional leagues - are established as privately registered non-profit associations. On the basis of the Sports Act, in order to exercise those functions, the professional leagues must conclude a contract with the federations. The activities of the federations, as well as the professional leagues, are supervised by State authorities through enquiries and inspections.

In Romania, the Ministry of Youth and Sport is the specialized body of the central public administration coordinating activity in the field of sport, according to the Law on Physical Education and Sports. The national sport federations are given competence to establish, by means of their own regulations, the conditions for practising professional sport. These regulations have to be approved by the Ministry of Youth and Sport. This Ministry may also supervise and control compliance with the legislative provisions in force and the rules and statutes within all sport structures.

In Spain, although the sports federations are private entities with their own legal personality, they also exercise public functions which have been delegated to them by central administration. They act as partners of the public authorities. The articles of association and regulations of the sports federations have to be approved by the Higher Sports Council. In addition, the Higher Sports Council has the competence to conclude agreements with the Spanish sports federations on their objectives and sports programmes, in particular those concerning high-level sport, and on the organizational functions of the federations. Such agreements are governed by administrative law.

National umbrella organizations

In all EU countries, sports federations are affiliated with a national umbrella organization. The main purpose of these umbrella organizations is to act as intermediaries between the sports federations and the public authorities in order to establish a coherent sports policy. In various countries, however, the tasks of the umbrella organization are more comprehensive, and certain public powers are delegated to them in their relations with sports federations.

In Latvia the State has authorized the Council of Latvian Sports Federations to assume the responsibility of recognizing activities of the sports federations. The Council of Latvian Sports Federations gives sports federations the right to manage and coordinate activity in their respective fields of sports as well as to represent the State in the relevant international sports federation.

In Italy, the State has assigned to CONI all regulatory powers in the sports sector. More specifically, CONI manages the organisation of national sports and promotes the strengthening of national sports, deals with training of the athletes and makes available appropriate means for Olympic Games and any other national or international sporting event, fosters the practice of sporting activities, takes and

supports any initiative necessary for fighting doping, discrimination and violence in sport. All CONI's tasks are listed in a Legislative Decree. These provisions state that CONI's National Council regulates and coordinates national sports activities, harmonizing the action of national federations, in accordance with deliberations and directives of the International Olympic Committee (IOC). Among its various tasks, the CONI National Council adopts the CONI statutes and any regulations within its competence, it issues decisions aimed at the recognition of national sports federations, affiliated sporting activities and other sporting bodies. The National Council also establishes the fundamental principles to which national sports federations' statutes must conform in order to be recognized. Moreover, the CONI National Council establishes, in line with international sporting rules and within each sport federation, the criteria for distinguishing professional sport from amateur sport. In addition, the National Council sets out conditions and criteria governing the exercise of its controlling powers over federations and any other sports bodies.

In Malta, the sports federations can opt to register with the Malta Sports Council. All sport organisations that register with the Malta Sports Council are entitled to receive assistance or benefits under the Malta Sports Act. Registration also entitles them to make use of State-run sport facilities at a subsidized rate or to receive by legal title or rent a sport facility to be administered by them.

In Slovenia the Sports Act authorizes the National Olympic Committee to implement the licensing system and to manage the benefits that come with the status of elite athlete (medical examinations, health insurance, social security, scholarships, special education and studying conditions, and so on).

In Sweden, the Sports Confederation has the authority to distribute State grants to sport.

2.3. Extent of state control

As Chaker observed in his 2004 study, "'interventionism' should not be taken to mean undue state control or governmental infringement of the basic freedoms of sports NGOs".¹⁴ The Council of Europe's member states have accepted the European Sport Charter.¹⁵ One of the essential prerequisites the Charter has achieved is to provide the necessary balance between governmental and non-governmental action and to ensure the complementarity of responsibilities between them. This is given expression in the fact that - even in interventionist countries - the law has bestowed upon the sports federations some public powers. Normally the State does not delegate powers or responsibilities to the sports federations through laws or regulations except in France, Greece, Romania and Spain. In Cyprus, these powers are mostly found in the competences that the State has given to the federations in order for them to have their own legal and arbitration committees as well as control of their own programmes. In Portugal, on basis of the Sports Act, the State delegates to the sporting authorities some disciplinary and regulatory powers. In Slovenia, the sporting authorities can appoint eight members to the Council of Experts. Among other tasks, this Council can make proposals for new laws and regulations in the field of sports. In Spain, the Sports Act establishes that sports federations, under the coordination and guidance of the Higher Sports Council, will, among other things, exercise disciplinary authority on the terms laid down in the Act and its implementation rules.

A State could most effectively intervene in the organisation and functioning of professional sport competitions if it is involved in the appointment of members of the sporting authorities. However, there are no EU countries where the public authorities have this right of appointment or participation in any way in the composition of the management bodies.¹⁶ To help avoid electoral irregularities, however, the Electoral Guarantees Board of the Spanish Higher Sports Council is responsible for overseeing the electoral processes in the governing organs of the sports federations.

Another indication of the limits of the influence of the State on the organisational freedom of national federations can be found in the degree of autonomy of those federations to adopt regulations governing competitions. In almost all EU countries (25 out of the 27), the

¹⁴ André-Noël Chaker, *Good Governance in sport - a European survey*, Council of Europe Publishing, Strasbourg, September 2004, p. 9.

¹⁵ Recommendation No. R(92)13 Rev of the Committee of Ministers to Member States on the Revised European Sports Charter (adopted by the Committee of Ministers on 24 September 1992 and revised on 16 May 2001).

¹⁶ Most statutes of the international sports federations contain provisions relating to the independence of member associations and the independence of the decision-making process of the governing body in each country. State involvement in appointment and approval procedures

may conflict with these provisions and could lead to national associations being suspended by the international federation. In Recommendation Rec(2005)8 of the Committee of Ministers to member states on the principles of good governance in sport (adopted by the Committee of Ministers on 20 April 2005) it was recommended that the governments of member states adopt effective policies and measures of good governance in sport, which include - inter alia as a minimum requirement - democratic structures for non-governmental sports organisations based on clear and regular electoral procedures open to the whole membership.



supreme authorities of the sports federations (according to their statutes) are entitled to adopt regulations, rules and other provisions in line with international rules and the domestic general legal framework but independent of State intervention. Although in Poland the state is not involved in establishing the federations' statutes, they are subject to the control of the Minister of Physical Education and Sport, in respect of their compliance with applicable regulations. In Romania, conditions for practising professional sport are established by the national sport federations, by means of own norms, but these conditions must be approved by the Ministry of Youth and Sport. A specialized central public body is entitled to supervise and control the way the national sport federations observe these norms.

National Sports Acts do not necessarily imply the adoption of an interventionist sports legislation model. Indeed, 22 EU countries have promulgated sports legislation, of which 17 favour the non-interventionist approach.

3. State influence on the financing of professional sport activities

Article 12 of the revised European Sports Charter¹⁷ reads that "[A]ppropriate support and resources from public funds, that is, at national, regional and local levels, shall be made available for the fulfilment of the aims and purposes of this Charter. Mixed public and private financial support is to be encouraged, including the generation by the sports sector itself of resources necessary for its further development." The sports authorities are thus expected to generate resources for themselves. In all EU countries, the first matter of importance is that the professional competitions are funded through the governing body. Principally the financing of sport associations consists of membership fees, sponsorship agreements, income from business activities such as owning property and selling fan products, the sale of broadcasting rights or even public listing on the stock exchange.¹⁸ The popularity of only a few sport disciplines is great enough to render sports federations financially self-supporting. By contrast, the segments of the population that the majority of sports disciplines attract are too narrow to ensure their own funding. These sports federations are dependent on direct and/or indirect public financial support.

In Austria the legal basis for public financing is to be found in the Federal Sports Promotion Act.¹⁹ Sport authorities can be financed through benefits from annuities, interests and credits, loans by the State, or subsidies through grants under private law.²⁰ Decisions on such financial support are made by the Chancellor in an annual plan, after consulting with the respective sport governing bodies.²¹ If one

single sport-related grant exceeds 2/100,000 of the total annual budget of Austria, it has to be expressly authorized by the Federal Minister of Finance.²² In principle, the State exercises financial control, but the Chancellor is empowered to transfer the financial control to the Federal Austrian Sport Organisation (BSO) by a contract that must contain a reporting obligation for the BSO.²³

In Belgium the professional bodies are dependent on commercial activities for their funding. The State does not participate directly or indirectly in their financing. In the Flemish Community, the sporting authorities do not receive any direct financial support from or experience any financial control by the Flemish government either. The State participates indirectly in their financing through granting subsidies to the Flemish sports federations under a decree concerning sports federations.²⁴ The Flemish government only exercises financial control over the Flemish sports federations within the framework of this decree.

In Bulgaria, according to Article 18 of the Law on Physical Education and Sport²⁵: "The sport clubs and associations, members of a licensed sport federation, shall acquire the right [...] to receive state support and to use sport grounds and facilities which are state and municipal property, according to the regulations for this purpose." The State participates directly and indirectly in the financing of sports authorities responsible for the organisation of professional competitions. In compliance with the aims and tasks underpinning the programme for the development of physical education and sport and the Law on Physical Education and Sport, the State 1) finances (funds) the duly approved programmes and projects for public sport and youth activities; 2) supports and promotes non-profit legal entities to implement public sport and youth activities through tax, credit-interest, customs and other financial and economic concessions (relief), as well as different kinds of financing provided in various legal documents; and 3) establishes, maintains, modernizes and manages sports sites and facilities which are State property and controls the conditions for their use for this purpose only. The State exercises financial control over the funding so provided.²⁶

In the Czech Republic, only the Ministry of Education, Youth and Sport offers financing, by allocating grants to the associations with a country-wide competence in the field of sport.²⁷ Regional authorities also give financial support to sport activities, and there is the possibility of funding through a special procedure that operates annually and through which the deputies of the Lower Chamber of the Czech Parliament present proposals for financial support, some of which may involve the financing of a volleyball court, a football field, or similar facilities. If the State decides to support an activity in this way, control is very rigorous.

In Denmark, one of the characteristics of sport is the large amount of public funding that may indirectly or directly be granted in support of professional sport. In addition to this, the Danish sport sector benefits from specific rules on VAT taxation. The State subsidy for sport is based on the Act on Football Pools, Lotteries and Betting Games which stipulates the allocation of the National Lottery's profits to a number of different cultural and humanitarian purposes, such as sport organizations.²⁸ The subsidies allocated to the Ministry of Culture are primarily granted to the main sport organizations²⁹ and the Danish Foundation for Culture and Sports Facilities. The Ministry of Culture exercises financial control in pursuance of the Executive Order on Accounts and Audit of Beneficiaries of Subsidies.³⁰ The Danish Foundation for Culture and Sports Facilities manages public venture capital and acts as an independent expert council under the Ministry of Culture. The mission is to develop and support construction in the field of sport, culture and leisure not based on interests of personal finance.³¹ The Danish Foundation for Culture and Sports Facilities acts as the secretariat for the Elite Facility Committee established as a self-governing institution with the purpose of supporting construction in the area of elite sport with a view to international sport events. The Ministry of Culture exercises financial control in pursuance of the Executive Order on Accounts and Audit of Beneficiaries of Subsidies.³² The Act on the Promotion of Elite Sport regulates elite sport in general by establishing the frame-

17 See supra nt. 2.

18 The activities of sports federations are in principle twofold: besides being charged with the organisation of a specific sport; they pursue a commercial activity. Priority, however, the sports performance is their priority and the financial aspects serve as constraints for their ambitions on the field.

19 Bundesgesetz Vom 12. Dezember 1969, *Betreffend Förderungen des Sportes aus Bundesmitteln* (Bundes-Sportförderungs-gesetz) Stf: Bgbl. Nr. 2/1970.

20 Idem § 2. and § 4.(3)

21 Idem § 3.(1), (2)

22 Idem § 19.

23 Idem § 10.

24 Décret relatif à un mouvement de rattrapage en matière d'infrastructure sportive par le biais du financement alternatif of 23 May 2008, *Moniteur Belge* of 06-08-2008, no. 2008202798, p. 41071.

25 Law for The Physical Education and Sport. Prom. SG. 58/9 Jul 1996, amend. SG. 53/4 Jul 1997, amend. SG. 124/27 Oct 1998, amend. SG. 51/4 Jun 1999, amend. SG. 81/14 Sep 1999, amend. SG. 53/30 Jun 2000, corr. SG. 55/7 Jul 2000, amend. SG. 64/4 Aug 2000, amend. SG.

75 2 Aug 2002., amend. SG. 95 8 Oct 2002., amend. SG. 120 29 Dec 2002., amend. SG. 96/29 Oct 2004.

26 Idem Art. 64e (1) and (2).

27 Act No.115/2001 on Support of Sport, dated 28th February 2001 § 3 (1) c).

28 Consolidation Act No. 273 of 17 April 2008.

29 Namely the organizations mentioned above under I and the Horse Race Finance Foundation, cf. Section 6B. Apart from the fixed allocation laid down in Section 6B earmarked for specific sport organizations, the Ministry of Culture also receives an allocated fixed amount which is not earmarked other than for 'cultural purpose' which includes sport.

30 Executive Order No. 924 of 28 September 2005.

31 By Act No. 349 of 9 June 1993, amending the Act on Football Pools, Lotteries and Betting Games ('Tips- og lot-toloven'), cf. the Regulations on the Foundation.

32 Executive Order No. 924 of 28 September 2005. As for the Elite Facility Committee, this is stipulated in the Regulations Section 10.



work for Team Denmark.³³ Team Denmark is a self-governing State institution with the overall responsibility of developing elite sport in a socially justifiable manner through subsidies. Team Denmark must also procure commercial income for elite sport through media agreements in cooperation with the National Olympic Committee and Sports Confederation of Denmark (DIF). In addition, municipalities may support elitist sport where this is not actual business. Again, The Ministry of Culture exercises financial control in pursuance of the Executive Order on Accounts and Audit of Beneficiaries of Subsidies. Sport Event Denmark was established as a self-governing institution with the purpose of attracting major international sport events to Denmark through financial support and acts as an advisory to national federations, municipalities and others. Sport Event Denmark is owned and financed by DIF, Team Denmark, the Ministry of Economics and Business Affairs and the Ministry of Culture, the State being the largest sponsor. Moreover, a number of municipalities have established public-funded event offices.³⁴ Here too, the Ministry of Culture exercises financial control in pursuance of the Executive Order on Accounts and Audit of Beneficiaries of Subsidies.

In Estonia, sports activity is financed from several sources: State budget, local budgets, foundations, sponsors and an organization's financing.³⁵ Support from the state budget is paid to sports organizations that have a development plan and have timely submitted an official statistics report to the agency conducting official statistical surveys which complies with the relevant requirements. The procedure for the distribution of funds allocated from the State budget to support sport organizations is established by a regulation of the Minister of Culture. The Ministry of Culture concludes a contract with the sport authority receiving the support, stipulating the purpose for which the support may be used, the rights and obligations of the parties, the procedure for reporting proper purpose use of the support and sanctions for breach of contract.

In Finland, sport associations may apply for State subsidies for their activities. The Ministry for Education allocates the State subsidies to associations that have applied for them after obtaining an opinion from the National Sport Council. The grounds for granting State subsidies are set forth in the 1998 Sports Act³⁶ and the 1998 Sports Regulations). State subsidies can be used, among other things, for financing youth work, organizing competitions at different levels, and covering costs of participating in international competitions and tournaments. In addition to this, the State exercises financial control through tax law.

In France, according to the Sport Act the sport associations can obtain public funding for missions of general interest.

In Germany the sporting authorities finance themselves from the revenues that they earn. The State is neither directly nor indirectly involved in financing them and does not exercise any financial control.

In Greece, Article 16 of the Constitution states that sports shall be under the protection and the ultimate supervision of the State. The State shall make grants to and control all types of sport associations, as specified by law. The use of grants in accordance with the purpose of the associations receiving them shall also be specified by law.

However, this financial support concerns only the national sport federations and not the sporting authorities in charge of the organisation of professional competitions. Law 2725/1999³⁷ provides that no state aid is available to professional athletes' unions. In reality, however, the State indirectly supports professional sports through broadcasting rights of public television and sponsorship from a betting company, which is also controlled by the State. The professional sporting authorities are financially controlled by the Ministry of Trade.

In Hungary, the State is involved in financing the sports authorities - sports organizations and sports associations - appointed to organize professional competitions. Financing takes place both directly - State aid pursuant to the Sports Act,³⁸ Act XXXVIII of 1992 on public finances, the Government Decree³⁹ on State financial procedures, and the Ministerial Decree on State support for sports purposes - and indirectly by tax allowances. Besides the national government, local government also takes part in financing the sport authorities. This financing may be carried out through tenders, in the form of sponsoring, by the municipality's own business activity, and so on. Regarding the monitoring of the use of State support, the State acts in accordance with the provisions of Act C of 2000 on accounting. In addition, pursuant to subsection (2) of Section 13/A of Act No XXXVIII of 1992 on public finances, all organizations or private persons financed from any subsystem of public finances or from EU funds or receiving any aid from those resources must account for the proper use of any amount granted to them for any special purpose other than as a social allowance. The funded institution shall verify the use of and account for the amounts. Should the organization or private person financed or subsidized fail to meet this obligation in due time, then any further financing or assistance shall be suspended until the obligation is fulfilled. In case of illegal or improper use of any assistance, the user shall be subject to reimbursement as laid down in separate laws. In addition, the State Audit Office and the Government Audit Office are entitled to carry out auditing activities concerning the use of central State aids.

In Ireland, there is some State financing. The Department of Arts, Sport and Tourism administers the Sports Capital Programme, which is funded by the National Lottery. Funding is also provided to specific national sporting bodies by the Irish Sports Council, acting under the Irish Sports Council Act 1999.⁴⁰ The Irish Sports Council sees itself as a resource for these bodies, with a priority of strengthening and developing their capabilities. Eligibility criteria establish minimum requirements for bodies wishing to apply for support. This eligibility process is currently under review. The Sports Council has to report before the Minister for Sport, Tourism and Recreation about each spending.⁴¹ The State exercises financial control insofar as financial support is targeted, and the bodies concerned must show that they have delivered on key objectives. The Irish Sports Council sees this as a process of dialogue.

In Italy, CONI performs all its tasks and activities through a limited company called *Coni Servizi*.⁴² *Coni Servizi* has a share capital amounting to € 1,000,000, and all shares are assigned to the Ministry of Economic and Financial Affairs.⁴³ Any further increase in the capital is decided by the Minister of Economic and Financial Affairs in agreement with the Minister of Cultural Heritage and Activities. The relationship between CONI and *Coni Servizi*, including the financial one, is governed by an annual service contract. The president and the other members of the board of directors are appointed by CONI. The president of the board of statutory auditors is appointed by the Minister of Economic and Financial Affairs, and all other members are appointed by the Minister of Cultural Heritage and Activities. *Coni Servizi's* accounts are controlled by the Court of Accounts in accordance with Art. 12 of Act no 259 of 1958.⁴⁴ The State finances CONI directly and directly controls *Coni Servizi*. The Court of Accounts is also competent to control national federations' accounts.⁴⁵ This is due to the public character of the service relationship between national sport federations and CONI, which directly or indirectly finances the national federations, and also to the public nature of CONI's resources.

In Latvia, the State budget funds for sport have been allocated in

33 Consolidation Act No. 1332 of 30 November 2007.

34 Formerly named 'Idrætsfonden Danmark'.

35 Sports Act, passed 6 April 2005 (RT I 2005, 22, 148), entered into force 1 January 2006, Chapter 4 - Financing of Sports, § 14 Sources of financing and § 15 Principles of financing from state budget.

36 Chapter 2 - State financing, Section 5 - Statutory state grants for local sport provision (Amendment 662/2002) and Chapter 3 - Miscellaneous provisions, Section 11 - Financing of state subsidy and grants.

37 2725/1999/-121 Ερασιτεχνικός -

Επαγγελματικός Αθλητισμός και άλλες διατάξεις ΦΕΚ Α'

121/17.6.1999, ΝΟΜΟΣ ΥΠ' ΑΡ. 2725

38 See Chapter VIII of the Sports Act.

39 217/1998 (XII.30.) Korm.

40 Number 6 of 18th May, 1999.

41 Irish Sports Council Act, 1999, s. 26.

42 Law-Decree no. 138 of 2002, *Interventi urgenti in materia tributaria, di privatizzazione, di contenimento della spesa farmaceutica e per il sostegno dell'economia anche nelle aree svantaggiate*, Art. 8.1.

43 Idem Art. 8.4

44 Idem Art. 8.10.

45 See Corte dei Conti, Lazio sez., judgment of 23-01-2008 no. 120 at pages 9-12 (doc. 06).



accordance with the annual State budget law. The Financial Commission of the Ministry of Education and Science assesses financial proposals submitted by the sports federations in accordance with the internal regulations of the Ministry of Education and Science, by which State budget funds are to be allocated to sports. The Financial Commission submits the financial proposal to the Latvian National Sports Council, which develops recommendations for the division of the State budget funds in the field of sport and submits such recommendations to the Ministry of Education and Science.⁴⁶ The State participates indirectly in professional sports financing since State budgeted funds have been allocated to the specialised sports organisation - the limited liability company "Latvian Olympic Team" - which further contracts athletes.⁴⁷ The financing system provides a transparent process for monitoring the expenditures of the State allocations. The agreements on State budget funding signed for each sports organization stipulate that a financial report shall be submitted on a regular basis. The Ministry of Education and Science monitors the flow of finances and whether expenditures correspond to the particular objective stated in the agreement.

In Lithuania sports may be financed by allocations from the State budget and municipal budgets, by funding derived from lotteries, as well as other financing legally obtained. The State can participate directly in the financing of sporting authorities. Non-governmental physical education and sports organizations may receive funds from the State and municipal budgets for the implementation of physical education and sports programmes and projects.⁴⁸ A State institution or the municipal administration shall sign contracts for the use of such funds with the organizations involved. The procedure and format for the conclusion of such contracts as well as the procedure for accounting for funds used are laid down by the Department of Physical Education and Sports. If the State and the municipal institutions allocate funds, they have the right to check how these funds are used. The organizations which have received funds from the State and municipal budgets must submit a report on the use of these funds to the institutions which have allocated the funds.

In Luxembourg, the Sports Act provides that the funds that the State grants for sporting activities, for technical supervision and for sports administration are to be determined annually in the State budget.⁴⁹ State funding is divided into subsidies and financial contributions for a specific expense, the latter requiring supporting documentation. The State provides subsidies and financial contributions for competitive and leisure sports and sports infrastructure. The State provides ordinary subsidies to sports clubs and federations, based on a point system that takes into account the number of licensed members, particularly young members, the qualifications of club trainers, and the federation's participation in official competitions. With respect to the federations, the State is more inclined to provide financial contributions for the federations' operating expenses than ordinary subsidies.

In Malta, a company may prove to the satisfaction of the Commissioner that it has made a cash donation to an athlete or sports organisation participating in national or international sports events and such events are approved by the Malta Sports Council. Such donation may then be claimed as a deduction against income for the year of assessment in which it is made, provided that a certificate is issued in this respect by the Malta Sports Council and the said athlete or sports organisation is not in any way related to the donor company. The State participates indirectly through the schemes made avail-

able by the Malta Sports Council to those sport organisations that are registered.⁵⁰ There are several incentive Schemes for improvements of facilities, equipment and education to help grassroots athletes, including the maintenance and upgrading of sport facilities. The State, through its Sport Authority, verifies that the public funds received by the organisations were used for the purpose for which they were granted. At the end of their financial year, sport organisations registered with the Malta Sports Council must submit their audited accounts so that the Council can verify that the organisation has not become profit-making.

In the Netherlands, a general framework for subsidising the sport sector is laid down in the Public Welfare Act of 1994. National sports associations can file an application with the Ministry of Health, Welfare and Sport for an annual subsidy for performing their activities. Occasionally they may apply to other ministries for subsidies, for example to finance special projects in the field of sports. Besides this, municipalities and provinces spend many millions of Euros to maintain sporting facilities, to organise major events and to fund special projects, but also to stimulate elite sport. The associations and/or clubs are accountable for their expenditures. In addition to public financing, the National Olympic Committee (NOC*NSF) provides subsidies to regular members. This money comes from the revenue generated by the National Lottery, which is involved in organising games of chance. Some of the funds that are available for sport are paid directly to sports associations. Another portion goes to umbrella organisations. These umbrella organisations receive funds in order to maintain themselves and to carry out activities for the purpose of supporting the sport associations.

In Poland, the sports federations are funded from different sources, that is, membership fees, voluntary contributions by sponsors, and the State budget, that is, by means of subsidies from the central budget, special purpose funds and the funds provided by local governments. The special purpose subsidies are aimed at financing certain tasks such as: the organisation of sports competitions or Olympic preparations. Some funds allocated from the subsidies may be spent on the administrative activity of sports associations. The use of public funds is subject to control of the national or local government that grants the subsidy and by the Supreme Chamber of Control.

In Portugal, professional leagues are registered non profit associations that have financial, technical and administrative autonomy.⁵¹ The State is not allowed directly to participate in financing the organization of professional sport competitions, except for the improvement of sport facilities. The financial activities of the federations and the professional leagues are supervised by State authorities through enquiries and inspections.⁵²

In Romania, the Sports Act contains provisions regarding the financing of sports activities.⁵³ National sport federations can request support from the budget of national or local public authorities. The budget of public sport structures is determined by local or national public authorities. It is very important that all non-governmental sport structures are exempt from local contributions and taxes. Based on special contracts, the non-governmental sport associations and the Romanian Olympic Committee may receive funding from the State budget or from the budget of local authorities for organizing sport competitions or other sport events. The State, by means of its specialized bodies, can thereby exercise financial control over the activities of the national sport federations.

In Slovakia, according to the Law on Physical Culture, the sources of financing of sport are, among others, the State budget to a minimum of 0,5% of the annual budget; the State budget under a special Act on Support of Sport; profit from lotteries and other forms of betting; and support from municipalities.⁵⁴ The State participates directly in the financing of sport, which is regulated by the Sports Act.⁵⁵ Financing of sports from the State budget is implemented through grants that may be provided for securing the organization of sport competitions.⁵⁶ The beneficiary of a grant is obliged annually to publish the amount and type of grants received if the income from grants exceeds € 33,194 a year.⁵⁷ The law does not provide for any other specific means of financial control by the State.

46 Sports Law, Published: "Vestnesis", 13 Nov. 2002, No. 165 (2740), S. 9(3), 2).

47 Idem S. 14(1) and (2).

48 Law on Physical Culture and Sport of the Republic of Lithuania, December 20, 1995 No. I - 1151, Arts. 10, 3), 11, 2) and 5), 38 and 40.

49 Loi du 3 août concernant le sport, Mémorial A-N° 131, 17 August 2005, Art. 9.

50 Sports Act, Sports [CAP. 455. 1], Chapter 455, 27th January, 2003, Act XXVI of 2002, PART II.

51 Lei no 5/2007 de 16 de Janeiro, Lei de Bases da Actividade Física e do Desporto, Art 22(1).

52 Idem Art. 21.

53 Legea Educatiei Fizice i Sportului, Law no. 69/2000, Title XI, Arts. 67-75.

54 300/2008 Z.z., ZÁKON z 2. júla 2008 o organizácii a podpore športu a o zmene a doplnení niektorých zákonov, Zmena: 462/2008 Z.z., Art. 13.

55 Idem Arts. 10 to 18.

56 Idem Art. 11 (1) (b).

57 Idem Art. 18 (5).



In Slovenia, the State directly finances the sporting authorities if they organize competitions which fall under the National Sports Program and/or annual sports programme and if that programme is of a "public interest" as defined by the law.⁵⁸ Competitions can also be financed by local municipalities.⁵⁹ In the case of professional competitions that are financed by public funds, financial control is carried out by the Court of Auditors.

In Spain, the public authorities - State, autonomous regions and local authorities - may grant subsidies to sports associations. State subsidies are awarded by the Higher Sports Council. The grounds for granting State subsidies are laid down in a Ministerial Order.⁶⁰ Moreover, groupings of clubs at national level may receive State subsidies. The Higher Sports Council is not only responsible for granting these financial subsidies to the sports federations and other sports bodies and associations, but also for authorising the multi-annual budgets of the Spanish sports federations, determining the use of the federations' net capital in the event of their dissolution, controlling the subsidies that have been granted and authorising the levying and conveyance of their property assets, where these have been wholly or partially financed through State public funds.

In Sweden, the State contributes to the financing of sport activities. Subsidies are paid to sport associations on different levels. In principle, the State pays financial contributions to the national Sport federation, which transfers money to different levels of the national sport associations.⁶¹ In general the State transfers money to the national federation, and most of that money is transferred to local sport clubs as operating grants. Beyond that, most subsidies for sport derive from the State-regulated organisation dealing with lotteries and other forms of betting. However, in a government proposal presented in January 2009 it was suggested that the financial contribution via this National Lottery be replaced by a more stable and predictable financial contribution directly from the State.⁶² Regional county councils also pay contributions to the sport associations at the regional level, independently of State subsidies. At the local level, municipalities give direct or indirect financial support to sport clubs. For instance, a sport club could receive funding from the local authorities depending on the number of members. Furthermore, the local authorities are often in charge of football grounds, sports centres, and so on. Indirectly, this amounts to support for local sport activities since clubs can thereby rent time for playing, training, and so on, at a reasonable price. The State monitors the financial support to sport. Reports from the Swedish National Audit Bureau and the Swedish Agency for Public Management account for financial contributions to non-profit associations. One conclusion of such reports has been that there is no common basic policy for financial support from State authorities. Further, it was noted that there is no common policy or regulations governing financial support at the regional and local level and that monitoring systems were insufficient.⁶³ In 2009, Government proposals were presented for the establishment of a new monitoring system.⁶⁴ According to these proposals, the Centre for sport research (CIF) would be responsible for the annual monitoring activities whereby certain criteria - formulated in rather general terms related to general goals for

State support - have to be used, such as sport as a "popular movement", the importance of sport for public health, sport and its relevance for children and youth, equal participation of men and women, training in democracy, and so on.⁶⁵ Before, monitoring was carried out by means of reports from national sport federations on different aspects of the use of financial contributions to sport. These reports, focusing on quantitative data, are now to be completed within the terms of the new monitoring instruments.

In the United Kingdom, the Department of Culture, Media and Sport (DCMS) advised that it undertakes the following funding activities in respect of sport: DCMS provides significant funding for sports provision, improving the quantity and quality of sporting opportunities at every level, from the playground to the podium. Our aim is to encourage wider participation in sport, helping to create a more active nation through sport and improve performance. In June 2008 the DCMS published "Playing to Win - a new era for sport", which sets out the Government's ambition to become a truly world-leading sporting nation, capitalizing on the 2012 Olympic Games and Paralympic Games. The main funding elements in connection with professional sports are:

- *Sport England*: The DCMS funds Sport England, which is responsible for delivering the government's sporting strategy in England in the same way as the Sports Councils do for the devolved Home Countries of the UK. It distributes exchequer and lottery funding and advises the DCMS on sports policy. Designated sports authorities such as governing bodies, clubs and local authorities may receive such funding. The Government's equality agenda in sport and their community programmes are channelled through Sport England.
- *UK Sport*: Established by Royal Charter in 1996, UK Sport works in partnership with the home country sports councils and other agencies in an effort to lead sport in the UK to world-class success. UK Sport is responsible for managing and distributing public investment and is a statutory distributor of funds raised by the National Lottery. UK Sport is focussed on elite sporting success. It develops and funds performance and events programmes.
- *Sports facilities*: The DCMS funds new or refurbished public sports facilities. For example, the government partly financed the construction of Wembley Stadium.

The State exercises financial control directly through the normal rules on taxation and indirectly through the funding programmes mentioned above.

4. Conclusion

To what extent are the public authorities of the EU countries involved in the organisation and functioning of professional sport competitions? Have they adopted an attitude of aloofness or do they intervene on the basis of sports legislation? In other words, have they adopted a "non-interventionist" or an "interventionist" model of sport governance? Another interesting question is if and to what extent the legislators in the various EU countries have provided the public authorities with powers to control the financial situation of the sport sector. Apart from legislation, another means available to governments to exercise control over the sports movement is access to funding⁶⁶. By regulating the flow of money into the sports movement, a government with a non-interventionist sports legislation model can have as much or more of an impact on the sports movement than an interventionist-type country. In the Annex below the findings of the T.M.C. Asser Instituut's research study for the European Commission are summarized concerning these issues, country-by-country.

The European Model of Sport has as main feature its pyramid structure of sport organisations. Sport clubs are members of one national federation (known as the *One-Association-Principle*); that federation forms part of an international federation. The regulations of the international federation must be implemented in the regulations of the lower echelons. Where an Olympic sport and a pre-Olympic or Olympic event is concerned, the international federation is subject to the rules and regulations of the International Olympic Committee

58 The Law on Sport of the Republic of Slovenia, art. 3.
59 Idem Art. 7.
60 Ministerial Order ECI/2768/2007, of 20 September, respecting the rules for awarding subsidies and financial grants by the Higher Sports Council.
61 See Ordinance Förordning (1999:1177) om statsbidrag till idrottsverksamhet.
62 The Government's proposition 2008/09:126 Statens stöd till idrotten. See also Official report SOU 2008:59 Föreningsfostran och tävlingsfostran - En utvärdering av statens stöd till idrotten.
63 Riksrevisionen, Offentlig förvaltning i privat regi - statsbidrag till idrottsrörelsen och ideella organisationer

(RIR 2004:15). See also Bidrag till ideella organisationer - kartläggning, analys och rekommendationer, Statskontoret, Rapport 2004:17, Stockholm 2004.
64 The Government's proposition 2008/09:126 Statens stöd till idrotten. See also Official report SOU 2008:59 Föreningsfostran och tävlingsfostran - En utvärdering av statens stöd till idrotten.
65 The Government's proposition 2008/09:126 Statens stöd till idrotten, pp. 32 f.
66 André-Noël Chaker, Good governance in sport - A European survey, Council of Europe Publishing, Strasbourg, September 2004, p. 11.



(IOC). National federations in interventionist countries could be sandwiched between the sports legislation of the country and the rules and regulations of the higher echelons. Serving those two masters, normally, does not give way to conflicts, because - as said before - interventionism should not be taken to mean undue State control or governmental infringement of the basic freedoms of sports NGOs. However, the occurrence of conflicts is not a purely academic question. This was for example proven in 2006, when FIFA suspended the European football champion Greece and its member clubs from inter-

national competition because of government interference in the sport. The Hellenic Football Federation was suspended for not being in line with the principles of the FIFA Statutes regarding the independence of member associations and the independence of the decision-making process of the football-governing body in each country. In the shortest possible time the Greek Parliament approved an amendment to the relevant legislation to make the Greek Football Federation more independent; FIFA's emergency committee then lifted the suspension.

The International Sports
Law Journal

ANNEX

Sports legislation framework and sports financing in EU countries

| Country | Sport in the Constitution | Sports Act | Type of Sports Legislation | Direct/indirect financing by the State |
|----------------|---------------------------|------------|----------------------------|--|
| Austria | Yes | Yes | Non-Interventionist | Direct and indirect |
| Belgium | No | No | Non-Interventionist | No |
| Bulgaria | Yes | Yes | Interventionist | Indirect |
| Cyprus | Yes | Yes | Interventionist | Indirect |
| Czech Republic | No | Yes | Non-Interventionist | Direct |
| Denmark | No | Yes | Non-Interventionist | Indirect |
| Estonia | No | Yes | Non-Interventionist | Direct |
| Finland | No | Yes | Non-Interventionist | Direct |
| France | No | Yes | Interventionist | Indirect |
| Germany | No | No | Non-Interventionist | No |
| Greece | Yes | Yes | Interventionist | Direct |
| Hungary | Yes | Yes | Non-Interventionist | Direct |
| Ireland | No | Yes | Non-Interventionist | Direct |
| Italy | Yes | Yes | Interventionist | Indirect |
| Latvia | No | Yes | Interventionist | Direct |
| Lithuania | Yes | Yes | Non-Interventionist | Direct |
| Luxembourg | No | Yes | Non-Interventionist | Direct |
| Malta | No | Yes | Non-Interventionist | Indirect |
| Netherlands | No | No | Non-Interventionist | Direct and indirect |
| Poland | Yes | Yes | Interventionist | Direct |
| Portugal | Yes | Yes | Interventionist | No |
| Romania | No | Yes | Interventionist | Direct |
| Slovakia | No | Yes | Non-Interventionist | Direct |
| Slovenia | No | Yes | Non-Interventionist | Direct |
| Spain | Yes | Yes | Interventionist | Indirect |
| Sweden | No | Yes | Non-Interventionist | Direct |
| United Kingdom | No | No | Non-Interventionist | Indirect |