

# The role of the EU in better governance in international sports organisations

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## Introduction

Since the entry into force of the Lisbon Treaty in 2009, article 165 of the Treaty on the Functioning of the European Union (TFEU) grants the EU an express role in the field of sport. However, the Member States only granted the EU a supporting competence, the weakest type of the three principal types of EU competence. In the areas where the EU has a supporting competence, it can only coordinate or supplement the actions of the Member States, who retain the primary authority. Thus, the impact of article 165 TFEU will remain limited, but nevertheless not insignificant. Sport is now brought within the explicit reach of the founding Treaties for the first time and obviously this is profoundly significant. Moreover, Article 165 TFEU definitely stimulates the further development of a coherent and direct sports policy.<sup>5</sup> Also, from a legal point of view, the EU's role in sports, which gradually increased over the years, is now legitimated in a legal and financial basis which means that sporting bodies can no longer claim that the EU should not be interfering in the sports sector. Furthermore, the newly adopted budget for sport enables the European Commission to support (mobility) projects, while article 165 TFEU grants the EU the competence, in consultation with the Member States, to coordinate projects among Member States.

However, because of its limited legal competences regarding sports and because of the recognised autonomous status of sports governing bodies at the European level, the EU does not have the power to intervene strongly in the sector. That means that at the EU level, a difficult balance has to be found between allowing total autonomy and establishing an extensive framework for government intervention.

Before the Lisbon Treaty, EU policymaking in sport was limited to raising awareness, collecting information and/or the exchange of best practices through the use of 'soft' instruments, such as communications, conclusions, resolutions, reports or declarations. Now that the EU has an explicit competence in the field of sport, this approach will most likely not change. Besides, the European Commission's 2007 White Paper on Sport and 2011 Communication on the European dimension in sport clearly indicate that the Commission's main policy tool in sport is dialogue: structured dialogue with leading international and European sport organisations and other sport stakeholders; and political dialogue with Member States and other concerned parties.

Given its limited sporting competence, which role can or should the EU play in the quest for better governance in international sports organisations (ISOs)? This paper draws

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<sup>5</sup> For instance, the inclusion of sport within the Treaty required both the Commission and the Parliament to review their approach to sport and the EU institutions no longer work on a mere informal basis on sport. Thus, article 165 certainly creates "institutional momentum" (Weatherill, 2011, p. 12).

from new governance theories in order to demonstrate the benefits of EU interference in professional sports and to define the desired role for the EU therein. Finally, these findings are applied to the case of good governance in international sports organisations. In this way, we formulate answers to two highly pertinent questions: should the EU interfere in professional sports with regard to the need for better governance in ISOs; and, what form should such intervention take?

## Conceptual background: governance networks

The classical view of a direct and almost exclusive connection between state and the governing of society is less and less consistent with reality. Today, political systems and activities are no longer exclusively connected to –or even the prerogative of– states (Bruyninckx and Scheerder, 2009). Many reasons have been suggested to explain this phenomenon, but it is clear that the role of governments is changing. Governments are gradually managing society through self-governing networks. Within these networks, different non-state actors, such as citizens, professionals, voluntary organisations, unions and private actors are involved in policy-making, and more general processes of rule and norm formulation. This allows authorities to govern ‘at a distance’ (Rose, 1996, p. 43), but it does not mean that central and local governments are being hollowed out (Hirst, 1994). The role of states is increasingly changing into that of an ‘activator’ and ‘facilitator’ (Kooiman, 1993) but they still play a key role in local, national and transnational policy. Yet at the same time, their powers are steadily eroding, since they no longer monopolise the governing of the general well-being of the population (Rose, 1996; Sørensen and Torfing, 2005).

According to many policy analysts, the public sector has seen this erosion of government in order to deal with today’s multi-layered society (Mayntz, 1991, 1999; Kickert 1991; Rhodes, 1996, p. 662). Government policies have evolved from a centralist, top-down model (labelled ‘government’) to a ‘governance’ model (Rose, 1996). Such new forms of governance also emerge at the international level. In order to compensate for the loss of governance capabilities of nation-states and to fill gaps in global regulation of global public goods, new forms of global governance are emerging (Zacher, 1999; Weiss, 2000; Keohane, 2006). Thus, at both international and domestic level, society is increasingly being governed by an interplay between the state, business and civil society. As such, private actors are increasingly engaging in activities that have traditionally been regarded as governmental activities and the clear line between the public and the private sector is blurring.

The term ‘governance network’, then, is used to describe public policy making and implementation through a web of relationships between state, business and civil society actors (Klijn, 2008, p. 511). In recent years, a second generation body of governance network literature has emerged, focusing on the democratic performance of governance networks (see e.g. Bogason and Musso 2006; Skelcher, Mathur and Smith, 2004; Sørensen and Torfing, 2005; Leach, 2006; Klijn and Skelcher, 2007; Papadopoulos, 2007).

Mostly due to the commercialisation of sport, the self-governed networks that traditionally constitute the sports world are currently facing attempts by governments and

increasingly empowered stakeholder organisations to interfere in their policy processes. Hence, policy in European professional sport is more and more made by a multi-level, multi actor network of intertwined stakeholder organisations, state authorities such as the EU and the relevant ISOs (Geeraert *et al*, 2012). The increased involvement of public authorities in sports might seem paradoxical in a time when most academic literature speaks of a retreat of the state from the governance of society. However, when we regard ISOs as the main regulatory bodies of the sports world, their erosion, or rather delegation, of power mirrors the recent evolutions in societal governance quite perfectly.

## The benefits of EU interference in professional sports

The EU has limited legal competences regarding sports and it recognises the autonomous status of sports governing bodies (European Council, 1997, 2000; Treaty of the functioning of the European Union, Article 165). So, what exactly is the desired role for the EU in high-level sports? Should the European Commission limit itself to its role in the past: pointing in the general direction indicated by the CJEU rulings and waiting for all the involved actors to move along while trying to achieve a compromise between them (Croci, 2009, p. 150)? We contend that the EU should assume a more pro-active role and that this would contribute to more efficient and democratically legitimate governance. Basically, we can summarise our argumentation in three points (see Geeraert *et al*, 2012; Geeraert, 2013, forthcoming).

## The need for democratic control on international sport organisations

The process of globalization leads to growing transnational interdependence of economic and social actors. Consequently, at the national level, globalisation has caused a loss of the regulatory powers of state institutions due to the fragmentation of authority and the increasing ambiguity of borders and jurisdictions (Cerny, 1995; Kobrin, 2009, p. 350). The modern welfare state has to cope with a 'regulatory overstretch' in the sense that it is no longer able to provide public goods or to prevent public bads in such fields as macroeconomic planning or social safety (Wolf, 2008, p. 227). On this note, Kooiman (2000, p. 139) points to the 'limitations of traditional public command-and-control as a governing mechanism', while Habermas (2001), in the same context, speaks of a 'postnational constellation'. In this new constellation, two traditional and best-understood modes of coordination, namely hierarchies (through regulative law) and markets (through financial incentives) are not appropriate media of political steering in this new constellation and thus, new forms of global governance are emerging, which mirror the increased delegation of authority to non-state actors we witnessed in the national realm. In addition, at the international level, a regulatory vacuum exists in which powerful transnational actors often have powers that dwarf those of many governments (Scherer and Palazzo, 2011, p. 900). Hence, the general worry with regard to globalization is that, in a globalized world, powerful actors are not accountable (Baylis, Smith and Owens, 2008, p. 11). Obviously, this goes for multinational companies, but the argument also applies to SGBs.

In the world of sports, SGBs, like many multinational corporations operating on a global playing field, are able to choose the optimal regulatory context for their operations and as such they pick a favourable environment as the home base for their international

activities (Forster and Pope, 2004, p. 9; Scherer and Palazzo, 2011, p. 905). This is mostly Switzerland, where they are embedded into a legal system that gives them extensive protection against internal and external examination (Forster and Pope, 2004, p. 112). The fact that there is no state actor imposing sound organisational rules on these private organisations is not without danger to the decency of their internal functioning since, in the absence of a ‘whip in the window’, the expectation is that the reliability of voluntary self-commitments suffers (Scharpf, 1994; Wolf 2008, p. 239). It is assumed that the potential threat that stricter regulations will be enacted unless the potentially affected actors adapt their behaviour to the expectations of the legislator, pushes those organisations which operate ‘in the shadow of hierarchy’ towards compliance. According to Wolf (2008, p. 244), ‘even the most prominent functional equivalents to the checks and balances institutionalised within the political systems of democratic states (...) cannot be provided by private actors alone’. On the contrary, some authors even go so far as to suggest that hierarchical organisations which are not subject to (local) democratic control cannot be expected to have internal practices conducive to democratic manners (Hirst 2000, p. 21).

If SGBs need to be put under some kind of democratic control, which authority can fulfil this role? In theory, this could be the country where their headquarters are based. In practice, we see that SGBs are almost never subject to stringent requirements or external examination, while other national governments are clearly faced with a ‘regulatory overstretch’ with regard to these organisations. The EU seems to be the only actor capable of fulfilling this role and evidence suggests that its involvement in professional football has certainly contributed to more democracy in the sector (Geeraert, Scheerder and Bruyninckx, 2012). Although the EU does not have a strong sporting competence, in principle it does possess the ability to intervene much stronger in the sports sector on the basis of its internal market powers. While that is currently not at all politically desirable, such form of latent pressure is ever present in sport matters and hence, sport officials generally acknowledge that ‘it is important to have good relations with the EU’ (Interview: sports official, August 2012). As such, the EU has been able to influence the governance of sport at the highest level with consequences for multiple and various actors and sectors at the underlying levels (Colucci and Geeraert 2012; Geeraert, Scheerder and Bruyninckx, 2012). It would certainly be better if other regional organisations could contribute to a more global approach in sport, but the reality is that they hardly exist (Bruyninckx, 2012).

### A more effective governance of a complex environment

Economic driving forces have transformed professional sports in Europe, football in particular, into a complex micro-economy consisting of a set of interdependent markets. Teams buy players; fans buy tickets, merchandising and subscriptions to sports broadcasting channels; media companies buy broadcasting rights; and big businesses buy corporate suites and sponsorship opportunities. Teams themselves have even become commodities to be bought and sold (Gerrard, 2004, p. 247). Indeed, sport in Europe has become increasingly commercial and more and more the target of, and integrated with, transnational business interests (Holt, 2007, p. 51). This has resulted in a complex network with growing interdependence between business interests and the sports world,

which raises the question whether ISOs can continue to govern their sport unilaterally through their self-governing networks. State authorities are not able to deal with an increasingly complex society unilaterally and have started to integrate civil society and market actors in new, more horizontal, governance methods. Considering the governance failures in many ISOs and the unpleasant side-effects of the sports business, it seems as though sport governing bodies are also not capable of dealing with the increasingly complex reality unilaterally (Geeraert *et al.*, 2012). Those issues call for a constructive collaboration between different authorities, industry and football bodies (multi-actor) at international, national and local level (multi-level).

### The involvement of democratically elected politicians in the networked governance

From a networked governance perspective, the involvement of democratically elected politicians in the steering of the sports world has the advantage that a resourceful, collectively oriented and democratically committed group is involved in the governance of the sport (Woods, 1999, p. 45; Sorensen and Torfing, 2005, p. 215). This contributes to the democratic legitimacy of decisions made by the ISO and legitimises the role of ISOs in society (Geeraert *et al.*, 2012). Administrators in ISOs cannot be expected to take account of the larger environment, beyond their sport, yet at the same time, the rules and regulations they devise and the decisions they take often have a significant global socioeconomic impact.

According to Sørensen and Torfing, (2005, p. 202), the involvement of democratically elected politicians in the steering of a governance network also helps to make sure that public policy and governance produced by those networks is in line with the popular will expressed by the political majority of the elected assemblies. That so-called 'participatory rhetoric' is however somewhat problematic in EU policy-making, as the distance between the directly affected citizens and their representatives is quite large here (Sharpf, 1999, p. 9).<sup>6</sup> According to Sharpf (1999, p. 9-10), majority rule will only be accepted in politics with a 'thick' collective identity, that is, in politics based on pre-existing commonalities of history, language, culture, and ethnicity. That is not the case with regard to the EU, although processes of Union-wide political communication and opinion formation could eventually arise, facilitated by European political parties, European associations, and European media.<sup>7</sup> As that is currently not yet the case, a more modest form of legitimisation must have to uphold the Union. Sharpf therefore introduces the concept of 'output-oriented legitimacy', where political choices are legitimate if and because they effectively promote the common welfare of the constituency in question: 'government for the people' (Sharpf, 1999, p. 6-10).<sup>8</sup> According to Sharpf (1999, p. 11-12), output-oriented legitima-

6 This is in fact a common problem with international collective action. As transnational issues increasingly call for transnational interventions, the distance between policy-makers and the citizens that are affected by those policies increases.

7 In that regard, the notion of EU citizenship, as introduced by the Treaty of Amsterdam, currently primarily is a legal concept rather than a political reality.

8 It must be noted that the democratic quality of Sharpf's notion of "output-oriented legitimacy" seems doubtful, since such a legitimacy might just as well be provided by any dictatorship. On this note, we refer to Schumpeter (1942), who observed: "And even the good of the people may be, and in many historical instances have been, served just as well or better by governments that cannot be described as democratic according to any accepted usage of the term" (p. 269-270).

cy requires no more than the perception of a range of common interests that is sufficiently broad and stable to justify institutional arrangements for collective action. In that regard, it is true that EU citizens tend to allocate the responsibility to the EU for those policy domains which are characterised by an endogenous internationalisation (Niedermaier and Sinnott, 1995; De Winter and Swyngedouw, 1999). Moreover, according to a Eurobarometer Survey from 2004, a majority of EU citizens are in favour of a greater EU intervention in sports (European Commission, 2004).

## A democratically legitimate role for the European Union in professional sports

### The limits to European Union intervention in professional sports

For all above indicated reasons, we clearly oppose to some kind of blanket self-governance of the sports world. It is however very important to stress that we do not advocate a strong interventionist role for the EU. From a legal and political perspective, that is not feasible. From a democratic networked governance perspective, it would undermine the self-regulatory capacity of the governance network and drastically reduce the motivation from the network actors to participate and encourage them to play safe and avoid risks (Mayntz, 1991; Sørensen and Torfing, 2009, p. 286).

SGBs were originally founded by a class of people who believed in the separation of sport and state as a sacred principle because they claimed that politicians could only violate sport's integrity (Tomlinson, 2000; Chappelet, 2010). Hence, political autonomy is still the aim of the sports world and therefore, state intervention is still a very sensitive and even controversial topic. Thus, it must be clear that the above advocated involvement of democratically elected politicians in the steering of the sports world also has its clear limitations. In that regard, the EU certainly must not be involved in every issue related to sport. According to Sørensen and Torfing (2009, p. 295), public interference is important and warranted only if and when the issue at hand is of 'great importance to the wider community'. In the case of EU interference in sport, the concept of the wider community should certainly comprise the EU territory. In every other case, EU interference is not legitimate.

### The meta-governance of sport governance networks

At this point, the question remains what role the EU can or should fulfil in networked arrangements in sports, taking account of its limited sporting competence. In fact, the general lack of a strong EU competence in sport is not problematic from a governance network point of view. As governance networks are defined in terms of their capacity for self-regulation, they cannot be controlled through the exercise of sovereign power (Mayntz, 1991, p. 10). Hence, the governance network literature has redefined the notion of political control in terms of 'meta-governance' (Kooiman, 1993; Jessop, 2002; Bogason and Musso, 2006; Peters, 2006; Sørensen and Torfing, 2005, 2009). Meta-governance holds that the most appropriate way of controlling governance networks is by 'steering'. That means that, via a series of more or less subtle and indirect forms of governance, politicians should seek to shape the free actions of the network actors in accordance with a number of pre-defined general procedural standards and substantial goals. Thus, the

conditions for interaction of relatively free and self-responsible actors within governance networks are structured in order to ensure conformity with some generally defined objectives (Sørensen and Torfing, 2005, p. 202). The attempts of the public authorities to steer the self-regulating governance networks are ultimately backed by the threat of replacing the horizontal network governance with hierarchical rule. Hence, the effectiveness of steering is ensured when governance networks operate 'in the shadow of hierarchy' (Sharpf, 1994, p. 40; Wolf, 2008, p. 239). However, if the actual attempts at regulating a self-regulating network become too tight, the network will cease to be a network, instead becoming reduced to an order-taking bureaucracy (Sørensen and Torfing, 2005). Given the limited EU competence in sports, that is certainly not an issue here.

Short-term executive authority in the 'government' of the EU is delegated to the European Commission (Hix, 1998, p. 41) and therefore that institution will mostly be involved in meta-governing tasks at EU level. The delegation of power to public administrators is a familiar issue with governance networks (Kingdon, 1984; Kickert *et al.* 1997; Sørensen 2002; Skelcher *et al.* 2005). Sørensen (2002, p. 710) points to the question of the democratic legitimacy of active public administrators. She concludes that a democratically legitimised meta-governor should perform the task of drawing a line between politics and administration (Sørensen, 2002, p. 711). At the EU level, the European Parliament and the Council could fulfil this role. They could set out the 'overall direction' (Klijn and Skelcher, 2007, p. 604) for the Commission, for instance through Resolutions. The Commission can then undertake the 'detailed design and implementation processes' (Klijn and Skelcher, 2007, p. 605). In the case of sport and EU freedom of movement and especially in its role as public enforcer of EU competition law, the Commission however has clearly defined and strong competences. These competences have been given to the Commission in a democratically legitimate way and as such, in these fields, the Commission can act freely.

So, it is very important that whatever action the Commission undertakes in sport must be explicitly, but broadly, legitimised and backed by the European Parliament and the Council of the EU. In addition to contributing to legitimacy, that would also enforce the EU's role as 'whip in the window'. Events from the past have also demonstrated that, even when the Commission acts within its predefined competence as public enforcers of EU (competition) law, political pressure can severely influence and even undermine its actions, and this happened in particular in sport (Niemann and Brand, 2008; García 2011; García and Meier, 2012; Geeraert, Bruyninckx and Scheerder, 2012). Thus, it is very important that the 'decision-making triangle' of the EU, i.e. Council, Commission and Parliament, are on the same line with regard to the content and scope of interventions in the professional sports sector and that they coordinate their messages, since inconsistent and conflicting messages will seriously undermine the effects of meta-governance (Torfing, Sørensen and Fotel, 2009, p. 287).

In order to steer sport governance networks effectively, the EU must combine 'hands-off' and 'hands-on' forms of meta-governance (Sørensen and Torfing, 2009, p. 247). Hands-off forms of meta-governance, that means, at a distance from the self-regulating governance networks, are adequate in the initial phase of the steering of the governance network.

The term comprises network design and network framing as meta-governance methods. Network design involves the shaping and structuring of governance networks, either by encouraging the formation of particular forms of networks, or by relying on pre-established networks. During this process, meta-governors influence inclusion and exclusion of certain actors and the empowerment of weaker actors and determine the scope of the network (Sørensen and Torfing, 2005, p. 204). Network framing involves the formulation of the political goals and objectives, which can be broadly defined, to be pursued by the network and the allocation of resources. Sometimes, a legal framework that facilitates and constraints the network may even be drawn. Network framing must always be backed by the continuous monitoring and critical evaluation of the output of the network (Sørensen and Torfing, 2005, p. 204).

Hands-on forms of meta-governance are recommended when the governance network shows signs of failure and close interaction between the meta-governors and the governance network is needed. That is for instance the case when conflicts arise between network actors, when deadlocks occur, when key actors are excluded from the policy deliberations, or when policy output stays too far from what is deemed acceptable by the meta-governors (Sørensen and Torfing, 2009, p. 247). The first hands-on form of meta-governance is network management, which includes attempts by meta-governors to reduce tensions through conflict management, promoting favourable conditions and providing inputs and resources for joint action, and empowering certain actors (Kickert and Koppenjan, 1997, p. 47-51; Sørensen and Torfing, 2009, p. 247). The second hands-on form of meta-governance is network participation, which requires the participation of the democratically elected politicians in the networks. That way, they can get first-hand knowledge of the policy processes and exert their political authority in order to influence the network (Sørensen and Torfing, 2005, p. 204-205; 2009, p. 247). Hands-on forms of meta-governance are not only appropriate in the case of governance network failures, as it is also quite common in policy areas closely related to the core functions of the state (Sørensen and Torfing, 2009, p. 247). However, if the relative autonomy of the network is a key political goal, as is the case with sports at the EU level, hands-on forms of meta-governance may be avoided by elected politicians and public administrators (see Marcussen, 2007; Geeraert, Scheerder and Bruyninckx, 2012). Nevertheless, in those areas where change is very much needed, the EU should wield hands-on meta-governance in order to actively influence policy.

## Conclusion

It is clear that the issue of enhancing the governance quality of ISOs is an issue of great importance to the wider EU community. This can be explained broadly from two angles. First, it is clear that sport is a public good that fulfils important social, educational, cultural and health-related functions in society. Indeed, in addition to enhancing public health through physical activity, sport has the potential to convey values, contribute to integration, and economic and social cohesion, and to provide recreation (European Commission, 2007). As such, sport allows millions of Europeans to learn the value of fair play and the importance of rules, and to develop respect for others. ISOs, which still largely depend on public funding, need to set a positive example by taking steps to build

integrity as the positive impact of their example reverberates globally (Schenk, 2011, p. 1). If not, they threaten to jeopardise the positive impact their sports can have on society.

Second, as sports commercialised significantly, particularly during the last two decades, the socioeconomic impacts on the wider society of rules devised and issued by sports bodies increased accordingly. This also means that bad governance in ISOs has the potential to have substantial negative repercussions on the wider society, and thus, on the wider EU community.

Thus, it is clear that EU interference on the matter is legitimate. Based on governance network theories, such interference should take the form of 'steering'. In order to ensure democratic legitimacy, the European Parliament and the Council should set out the 'overall direction' for the Commission, for instance through Resolutions. The Commission, which exercises short-term authority in the governance of the EU, can then undertake the detailed design and implementation processes. Practically, this means that the Parliament and the Council should express their firm support for better governance in ISOs. Solid reference in those institutions' Resolutions would legitimise the Commission's role, which is certainly desirable given the political goal of sporting autonomy,<sup>9</sup> but could also act as a form of light pressure on ISOs to take the necessary steps towards better governance. Although the EU does not have a strong sporting competence, in principle it does possess the ability to intervene much stronger in the sport sector on the basis of its internal market powers. Although that is currently not at all politically desirable, such form of latent pressure is ever present in sport matters. That means that stronger support from EU-level politicians for better governance in ISOs could certainly act as some sort of whip in the window.

The Commission then gently has to steer ISOs into the direction of better governance through subtle and indirect forms of governance, such as coordinating collaboration between ISOs on better governance, providing knowledge and resources, promoting favourable conditions and providing inputs and resources for joint action. In that regard, it is very important that Council, Commission and Parliament, are on the same line as regards interventions in the professional sports sector and that they coordinate their messages since inconsistent and conflicting messages will seriously undermine the effects of the Commission's meta-governance efforts.

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<sup>9</sup> On that note, it is important to stress that networked governance in sport does not at all entail that the autonomy of ISOs should be hollowed-out, nor does it seek to undermine the concept. Esmark and Triantafyllou (2007) clarify this notion by stating that 'network governance [...] is characterised by its attempt to provide an answer to the question of how (and by what means) it is possible to facilitate, adjust and coordinate the self-governing capacities of actors in a way that does not encroach on their autonomy' (p. 101). However, it is of course true that, as the governing models in sport evolve towards a more networked form of governance, the hierarchical top-down governing by ISOs of the stakeholder environment clearly is eroding. Thus, while horizontal networked governance is not at all respectful for the pyramid governing model in sport, it very much is for the autonomy of sport bodies.

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