

Who Owns Football? The Future of Sports Governance and Regulation after *European Superleague*

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Greed, betrayal, revolution – the European Super League has given us a drama of Shakespearean proportions. When the plans of a breakaway competition with some of Europe's most successful, or aspiring to be successful, teams were announced on 19 April 2021, the world of football was thrown into tumult. Sport functionaries called the secessionists “snakes”,¹ politicians voiced threats of “legislative bombs”,² and supporters took to the streets to voice their discontent with the plans, reminding club owners that “football without fans is nothing”.³ The pushback ultimately became too strong and, within two days, the coup collapsed. Nine of the 12 clubs which had initially signed up to the project withdrew, issued public *mea culpas*, and were welcomed back into the fold of the football family. Yet, before this underwhelming ending, the Super League founders put in motion a process which may end up proving their most lasting legacy. They brought legal action before the Madrid Commercial Court aimed at obtaining a declaration that FIFA (Fédération internationale de football association) and UEFA (Union of European Football Associations) could, as a matter of EU law, not prevent the emergence of new football competitions. The Spanish judge submitted a series of questions on the matter to the Court of Justice of the European Union (CJEU). The Court has decided on these in *European Superleague*,⁴ rendering what has, with some plausibility, been called its “most anticipated judgment of all time”.⁵

The Super League dispute epitomises the increasingly fierce fight over who owns football. This fight has unfolded on various sites and engaged different actors, expanding over time in scope and intensity. It involves problems of ownership in a formal sense. Conflicts have arisen about where and by whom football matches can be organised, the extent to which clubs should profit from competitions, and the role that investors should play in the sport. It concerns ownership in a spiritual sense. Fans have decried being excluded from key decision-making processes while, at the same time, managing to periodically re-assert their influence within the game through collective action. Normative expectations towards football have also evolved, with commercialising tendencies, which view the sport as just another form of entertainment and investment opportunity, as well as traditional beliefs, which see it as a public good adhering to specific normative principles, gaining strength. Finally, there have been clashes over regulatory ownership or, perhaps better, oversight. Football federations have become more powerful than ever, while creating, more visibly than ever, problems inside and outside the sporting ecosystem. Public regulators across the world have, as a result, tried to get a firmer grip over the sector through judicial and political means.

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¹ C. Burton, "UEFA president Ceferin slams 'snakes' Woodward and Agnelli after Man Utd and Juventus lead Super League proposals" *Goal* (19 April).

² A. Woodcock, "European Super League: Boris Johnson promises 'legislative bomb' to stop breakaway tournament" *The Independent* (20 April).

³ K. Adam, "The Super League crashed on takeoff. English soccer fans are taking credit." *The Washington Post* (27 April).

⁴ *European Superleague Company* (Case C-333/21) ECLI:EU:C:2023:1011.

⁵ M. P. Maduro, "A New Season: Will it also be a new beginning for Sports and EU Law?" *EU Law Live* (7 October).

The *Superleague* judgment is embedded in these debates, but also directly impacts on them. The decision concerns the legality of FIFA and UEFA's prior authorisation rules for third-party events, as well as the adjacent problem of who has the right to commercially exploit these. It forms part of a trio of sports rulings that were rendered by the CJEU on 21 December 2023. In the parallel *International Skating Union (ISU)* case, the Court examined similar regulations which subject external skating competitions to prior approval and lay down penalties for athletes participating in unauthorised events.⁶ In *Royal Antwerp FC*, it reviewed the so-called "home-grown players" rule, according to which football clubs must have a certain number of players in their squad who were trained in the club or domestic league.⁷ It is not merely the public interest that gives the cases a high profile. The coordinated timing and the formation in which the judgments were delivered – all three are Grand Chamber rulings – suggests that the Court of Justice wanted to use them as an opportunity to consolidate and further develop its sports jurisprudence. The decisions will shape the legal and political foundations of the field in the years to come.

In this article, I want to reflect on what precisely the judgments change and, more specifically, how they affect football governance and regulation. By the former, I mean the way in which the sport governs itself; by the latter, the way in which it is governed by EU law and policy. My analysis will primarily focus on *Superleague* as the most prominent of the three decisions, but insights from the other two rulings will be incorporated where relevant. I will begin by examining the fragile state of football governance and the ambiguous impact of EU sports regulation, before briefly contextualising and summarising the history of the Super League litigation. I will, then, outline the main doctrinal contributions made by the judgment, which consist in an expansive interpretation of EU competition law and a restrictive reading of art.165 TFEU. This, as I shall argue, has important implications for both the governance and regulation of the game. On the governance side, it weakens the institutional elements of the European Sports Model, which has historically defined football, by questioning the federations' monopoly on organising and monetising matches. At the same time, it strengthens the protection of the model's cultural elements, notably the principles of sporting merit and financial solidarity. On the regulatory side, the ruling facilitates greater control of football federations on the basis of EU sports law, albeit through an overly economic and, as such, potentially ill-fitting normative framework. By contrast, it may – not constitutionally, but politically – render EU policy making in this area, which is ever more necessary, ever more challenging.

The Battle for Football and the Role of EU Law

Football, like many other sports, is organised in a pyramid-shaped structure. This pyramid consists of different levels, each with its own "jurisdiction" and competences. At the top, there is FIFA, the international football federation which serves as the global regulator of the sport and is responsible for organising matches between national teams as well as clubs affiliated to different associations. Below that, we find the six confederations which play the equivalent role for their respective continents (AFC for Asia, CAF for Africa, UEFA for Europe etc.). Then comes the domestic level which, in the modern era, is typically divided into national associations (e.g. the FA for England and Wales) and leagues (e.g. the Premier League and English Football League). Last but not least, we have the numerous clubs, players, and fans, which can be subdivided into those situated at higher and lower tiers of professional or amateur football. The levels of the pyramid are connected through a relationship of hierarchy, meaning that bodies located further up in the structure exercise authority

⁶ *International Skating Union* (Case C-124/21 P) ECLI:EU:C:2023:1012.

⁷ *Royal Antwerp FC* (Case C-680/21) ECLI:EU:C:2023:1010.

over those further down. Also, they each have a regulatory and, at least according to their own statutes, commercial monopoly over the competitions they oversee.

Having enjoyed relative stability for a long time, this structure has increasingly come under pressure during the past few decades, with challenges emerging at every level. Looking at the pyramid from the bottom up, fans have, on the one hand, felt an ever greater sense of disenfranchisement due to being disregarded in decisions taken at club and governance level.⁸ On the other, they have managed to stage influential protests, campaign for change, and even take legal ownership of clubs, thus asserting a renewed sense of agency and empowerment.⁹ Players, who, despite their central role in the game, are under-represented in most executive bodies, have begun to organise more actively and make their voice heard through institutions like FIFPro, the international trade union for professional footballers.¹⁰ Clubs, another stakeholder with historically limited influence, have managed to elevate their position in football by creating interest groups like the European Club Association (ECA). The Association is, tellingly, now being challenged, too, for failing to adequately represent the concerns of smaller teams, which have decided to establish the rival Union of European Clubs (UEC).¹¹ An analogous process can be observed with regard to national leagues and associations. The formation of European Leagues (formerly European Professional Football Leagues) has secured them a more influential position in football governance. At the same time, there have been growing misgivings about leagues outside of the “Big 5”, i.e. England, Germany, Spain, France, and Italy, being left behind in financial and sporting terms, leading to proposals to create transnational competitions.¹² The top levels of the structure have not remained immune to challenge either. Particularly FIFA and UEFA are criticised, by both insiders and outsiders, for their poor governance standards, persistent gender inequalities, and failure to act in the best interest of the game.¹³

In light of these developments, doubts have been raised as to whether the idea of a pyramid still accurately reflects the present-day realities of football. García, for instance, proposes to think of the sport’s governance structure as a network instead.¹⁴ The strictly hierarchical relationship between the levels has been softened, decision-making authority has become diffused. Even if we continue to view football governance through the lens of a pyramid, the resulting edifice presents itself in a growingly fragile manner. There is an ongoing battle in football for authority and influence. Different stakeholders seek – depending on their current position – to increase or maintain their relative role inside the sport. Actors with limited powers work towards modifying the status quo, incumbent forces try to protect it. That we are seeing these increasingly intensive contests in football governance should

⁸ D. Ziesche, “A product thirty years in the making: the Champions League, organisational legitimacy, and the disenfranchisement of Europe’s football supporters” (2023) 24 *Soccer & Society* 549.

⁹ See e.g. the European Citizens’ Initiative “Win it on the Pitch”; K. Connolly, “‘We won’t be remote-controlled’: how German football fans took on investors and won” *The Guardian* (23 February); J. Keoghan, *Punk Football: The Rise of Fan Ownership in English Football* (Durrington: Pitch, 2014).

¹⁰ R. Parrish, “Social Dialogue in European Professional Football” (2011) 17 *European Law Journal* 213; B. Dabscheck, “International Unionism’s Competitive Edge: FIFPro and the European Treaty” (2003) 58 *Relations Industrielles / Industrial Relations* 85.

¹¹ Press Release, “New Union of European Clubs Launched to Give a Voice to 92% of Professional Football Clubs” (24 April 2023).

¹² M. Slater, “US and Mexico, Belgium and Netherlands, Ireland? Who will be first to create a cross-border league?” *The Athletic* (26 March); N. Ames, “Baltic League could be pioneer for cross-border football in Europe” *The Guardian* (17 February).

¹³ T. Panja, “From Norway, a Voice Unafraid to Call Out FIFA From the Inside” *New York Times* (24 July); J. Noble, “Uefa official Zvonimir Boban quits in protest at bid to extend president’s term” *Financial Times* (25 January).

¹⁴ Borja García, ‘The Influence of the EU on the Governance of Football’ in Hallgeir Gammelsæter and Benoit Senaux (eds.), *The Organisation and Governance of Top Football Across Europe* (Abingdon: Routledge 2011).

not surprise us. They are directly correlated to the evolution of the game itself. The rapid commercialisation and globalisation of football which has occurred over the last decades means that more is at stake financially, socially, and politically.

What is the European Union's (EU) role in this process? The EU is traditionally seen as a threat to the autonomy of sport as a result of its regulatory involvement in the area. The literature distinguishes between European sports law and policy.¹⁵ The former has primarily been shaped by the CJEU and, to a smaller extent, the Commission. Since the 1970s, the Court has accepted that professional sports fall into the scope of the Treaties insofar as they constitute an "economic activity",¹⁶ applying free movement and competition law to sporting regulations as well as, in the amateur context, EU citizenship rules.¹⁷ The Commission initially focused its efforts on antitrust proceedings, launching investigations into commercial aspects of the 1990 and 1998 FIFA World Cups¹⁸ and the centralised sale of football broadcasting rights,¹⁹ before turning its attention to combating the financial aid granted to football clubs by local governments.²⁰ In addition, a variety of policy measures have been adopted with the objective of guiding the EU's involvement in sports, including numerous resolutions, reports and declarations.²¹ These different strands of activity lead to the creation of an explicit, if limited, EU sports competence during the Lisbon revision, which can be found in art.165 TFEU and enables the Union to take supporting measures. Since, Council work plans have articulated the EU priorities here and yielded a range of initiatives aimed at promoting the values set out in the provision.

The sum of these efforts is believed to have created meaningful EU regulatory capacity in the field of sport in general and football in specific.²² The Union has subjected federations to the discipline of internal market law, thus restricting their previously unfettered autonomy and empowering stakeholders who are under-represented in sports structures. More lately, there is pushback against this narrative. Scholars have argued that the EU, instead of intervening in and correcting the failures of sports governance, has come to solidify existing power structures. European football regulation is said to have been "captured" by football governing bodies,²³ a process that has been facilitated by the latter's strategic use of lobbying strategies.²⁴ The Commission has refused to initiate competition

¹⁵ Arnout Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA* (Basingstoke: Palgrave Macmillan 2016).

¹⁶ *Walrave and Koch* (Case 36/74) ECLI:EU:C:1974:140.

¹⁷ *Donà* (Case 13/76) ECLI:EU:C:1976:115; *Bosman* (Case C-415/93) ECLI:EU:C:1995:463; *Meca-Medina and Majcen* (Case C-519/04 P) ECLI:EU:C:2006:492; *Biffi* (Case C-22/18) ECLI:EU:C:2019:497.

¹⁸ Case IV/33.384 and IV/33.378 – Distribution of package tours during the 1990 World Cup; Case IV/36.888 – 1998 Football World Cup.

¹⁹ COMP/C.2-37.398 – Joint selling of the commercial rights of the UEFA Champions League; COMP/C-2/381.73 – Joint selling of the media rights to the FA Premier League; Case COMP/C.2/37.214 – Joint selling of the media rights to the German Bundesliga.

²⁰ COMP/SA.33584 – Alleged municipal aid to the professional Dutch football clubs Vitesse, NEC, Willem II, MVV, PSV and FC Den Bosch in 2008–2011; COMP/SA.40168 – Willem II; COMP/SA.41612 – MVV; COMP/SA.41613 – PSV; COMP/SA.41614 – Den Bosch; COMP/SA.29769 – Spanish Football Clubs (2016); COMP/SA.33754 – Real Madrid (2016); COMP/SA.36387 – Valencia, Hércules and Elche (2016).

²¹ Among the notable ones being the Amsterdam Declaration [1997] OJ C340/136; Commission, White Paper on Sport, COM(2007) 391 final.

²² Ken Foster, "Can Sport be Regulated by Europe?: An Analysis of Alternative Models" in Andrew Caiger and Simon Gardiner (eds.), *Professional Sport in the EU: Regulation and Re-Regulation* (The Hague: Springer 2001); Richard Parrish, *Sports law and policy in the European Union* (Manchester: Manchester University Press 2003).

²³ Henk Erik Meier et al., "The Capture of EU Regulation by the Football Governing Bodies" (2023) 61 *Journal of Common Market Studies* 692.

²⁴ B. García, "UEFA and the European Union: From Confrontation to Co-operation?" (2007) 3 *Journal of Contemporary European Research* 202.

proceedings against football federations since the mid-2000s (and, with the notable exception of the *ISU* case, SGBs writ large), while producing statements expressing support to UEFA on several occasions and signing a string of cooperation agreements. The legislative process has failed to deliver critical football regulation, such as the much-debated directive on players' agents, ignoring repeated calls for action from stakeholders. Lastly, no major change has come from the Court of Justice. Partly due to a dip in litigation, partly due to the Court's deferential approach vis-à-vis SGBs, there had, until *Superleague*, been no judgments that interfered with major aspects of football governance since *Bosman*. Increasingly, it seems that the EU does not subvert, but cements the football pyramid.

From Super League to Super Litigation

This is the context in which the ESL proposal surfaced. The original plans from 2021 – which were subsequently amended – foresaw the creation of a new competition consisting of 20 teams. 15 founding clubs were meant to serve as permanent members, while five additional teams would qualify annually based on their performance in the national leagues. On the day of the announcement, only 12 permanent members were revealed, presumably because the German and French sides that had been invited declined to join. The “dirty dozen”, as they were quickly dubbed, included some of the most successful sides in the history of European football, such as Real Madrid, AC Milan, and Liverpool FC, alongside clubs that stood out more for their financial prowess than sporting legacy, such as Manchester City and Tottenham Hotspur. The competition was supposed to function as a rival to the Champions League, not, however, to the national leagues, in which the participating clubs intended to continue to play. Crucially, it was to be owned and governed by the founding members, taking it out of UEFA's hands.

The rationale behind the Super League idea is easy to grasp: it revolves around prestige, money, and power.²⁵ The League promised to create a format in which only top clubs would play, and these clubs would play a greater number of matches against each other than so far. This would cut out what was perceived to be dead wood in the current European competitions. No more *Braga v Union Berlin* or *Red Star Belgrade v Young Boys Bern* on a cold Tuesday night – it would be *Manchester United v FC Barcelona* and *Juventus v Chelsea* on perpetuity. The result would be a high-end product that could be marketed globally and yield revenues far exceeding those presently available. The sign-on bonus of €233 million which the new league's founders were promised, more than double what a Champions League winner makes, gives an indication of its perceived economic potential. What further increased the appeal of participating was that the permanent members had a guaranteed spot. Inspired by the organisation of professional sports leagues in North America, the ESL – several of whose clubs are owned by US investors – followed a quasi-“closed shop” model, making it impossible for the founding clubs to get relegated and, thus, ensuring a steady income. In parallel, the participating teams agreed to a spending cap of 55% of their revenues, further alleviating economic pressures. To placate the rest of the football pyramid, solidarity payments to the tune of €400 million per year were pledged; again, a multitude of what national associations receive right now. The financial commitments were underwritten by J.P. Morgan.

The outside reaction was fast and furious. Together with the affected national leagues and associations, UEFA published a statement in which it criticised the Super League as a “cynical” project “founded on the self-interest of a few clubs” and promised to do whatever it took to stop the

²⁵ Paul Michael Brannagan et al., “The 2021 European Super League attempt: motivation, outcome, and the future of football” (2022) 14 *International Journal of Sport Policy and Politics* 169.

plans.²⁶ The participating clubs would be banned from playing in any official competition at the domestic, European, and international level; players could be stopped from playing for their national teams. The rest of the football world responded equally strongly, with athletes, managers, and pundits decrying the avarice of the breakaway clubs and the departure from old-inherited football ideals. In one of the more noteworthy interventions, Pep Guardiola of Manchester City condemned the League's closed structure by quipping: "it's not sport if you can't lose".²⁷ Politicians, too, voiced their discontent. Boris Johnson and Emmanuel Macron declared that they would do everything in their powers to prevent the breakaway project.²⁸ Margaritis Schinas, Vice-President of the European Commission, went as far as calling the Super League an affront to the "European way of life".²⁹ But it was the fans that broke the secessionists' back. Legions of *tifosi* – particularly those of the English sides that had signed up to the new competition – took to the streets and social media to protest against the plans.³⁰ In the end, the pushback became too big. First, the six English clubs withdrew; shortly later, Atlético Madrid, Inter Milan, and AC Milan followed suit. Within 48 hours, the project had disintegrated.

While the Super League proposal may have felt to many like a dramatic break with the world of football, it constituted, in reality, the logical endpoint of the systemic tensions that had long marred the sport.³¹ This was a project concocted by a group of elite clubs that tried, assisted by venture capital, to increase their influence and revenue. It promised to bring enormous profits to a select few rich teams, which were already benefitting financially from their regular participation in the Champions League, and lower the standing of smaller teams playing outside the top competitions, with the effect of deepening existing imbalances in the game. It upset supporters who had been completely left out of the decision-making, while also, somewhat paradoxically, providing a striking illustration of the power they continue to hold within the game. The schism between traditional local fans, who largely rejected the proposals, and newer global fans, many of whom would have probably rejoiced at the prospects of seeing Manchester City play Real Madrid several times a year, became more apparent than ever. Perhaps most importantly, however, the Super League was a frontal attack on the federations' monopoly on organising and commercially exploiting football matches. It represented a break with the football pyramid as such.

Before the ESL crumpled under the weight of public indignation, its founders initiated legal proceedings before the Madrid Commercial Court in which they sought a declaration that FIFA and UEFA's football monopoly and the sanctions issued against the breakaway clubs violated EU competition law. The following day, the (single) judge in charge of the case imposed interim measures against the football governing bodies, prohibiting them from taking any action that would impede the creation of the Super League.³² Shortly later, he made a request for a preliminary ruling to the CJEU with a long list of questions about the compatibility of FIFA and UEFA's prior approval system, as well as the adjacent issue of ownership over the commercial rights to third-party competitions, with

²⁶ Statement by UEFA, the English Football Association, the Premier League, the Royal Spanish Football Federation, LaLiga, the Italian Football Federation and Lega Serie A (2021).

²⁷ J. Jackson, "'It's not sport if you can't lose': Guardiola criticises Man City's Super League plan" *The Guardian* (20 April).

²⁸ A. W. a. A. Wickham, "European politicians slam breakaway football 'super league' plan" *Politico* (18 April).

²⁹ See <https://twitter.com/MargSchinas/status/1383908768631558150>.

³⁰ K. Adam, "The Super League crashed on takeoff. English soccer fans are taking credit."

³¹ J. Welsh, "The European Super League debacle: why regulation of corporate football is essential" (2023) 24 *Soccer & Society* 172; B. G. Henk Erik Meier, Mara Konjara, Malte Jetzke, "The short life of the European Super League: a case study on institutional tensions in sport industries" (2022) *Managing Sport and Leisure*.

³² Juzgado de lo Mercantil No 17 de Madrid, Order 20 April 2021.

arts.101 and 102 TFEU and the free movement rules.³³ With the eyes of most observers focused on the developments in Luxembourg, the domestic proceedings intensified. The original judge from the Madrid Commercial Court became the target of a motion to recuse of UEFA, which was eventually dismissed by the Madrid High Court and criticised, in remarkably strong terms, as an act of “bad faith”.³⁴ In the meantime, he was, due to a rotation within the Spanish judiciary,³⁵ replaced by another colleague who promptly annulled the interim measures, in line with the wishes of the football governing bodies. Different judge, different outcome – one need not be a radical realist to recognise the risks and uncertainties connected with this *modus operandi*.

The oral hearings before the CJEU took place in June 2022. 24 governments filed observations, the highest number ever recorded in EU proceedings. The submissions were not only a sign of the social significance of the case, but a testament to the influence that football authorities hold across the continent. All intervening Member States sided with UEFA and FIFA. AG Rantos, to whom the *Superleague* (and *ISU*) case had been assigned, delivered his opinion on 15 December 2022, the anniversary of the *Bosman* ruling.³⁶ In it, he took, in unwitting contrast to *Bosman*, an openly SGB-friendly approach. The Advocate General asserted that art.165 TFEU represented a “constitutional” recognition of the European Sports Model, which is defined by the pyramid structure, a system of open competitions, and a financial solidarity regime.³⁷ This constitutionalisation protected existing organisational features of football and justified granting sports a differential treatment under EU law. art.165 TFEU was, so Rantos argued, a *lex specialis* to arts.101 and 102 TFEU and a horizontal provision that needed to be considered when implementing other EU policies.³⁸ FIFA and UEFA’s rules merely restricted competition by effect, not object, and could profit from the regulatory ancillary restraints doctrine which had been established in *Wouters* and extended to sports in *Meca-Medina*. The Advocate General submitted that the prior authorisation rules pursued legitimate objectives – mirroring the principles underlying the European Sports Model – and found, after a distinctly light-touch proportionality assessment, that they were necessary and proportionate means for achieving these (with the exception of the sanctions which could only be applied against the breakaway clubs, not their players). Similarly, he concluded that the rules on the ownership of the commercial rights of football matches were compatible with EU law, at least in relation to the FIFA and UEFA’s own competitions.

While the opinion of AG Rantos sparked a sense of relief on the banks of Lake Geneva, trouble was already on the horizon. In March 2023, First Advocate General Szpunar delivered his opinion in *Royal Antwerp* on the “home-grown players” rule.³⁹ Szpunar had been asked by the Court to focus on the rule’s implications for the free movement of workers. He concluded that the measure constituted indirect discrimination and could, in its present state, not be regarded as proportionate as it failed to coherently pursue the twin objectives of training young players and maintaining a competitive balance between clubs. More than for its concrete outcome, the opinion was significant because it proposed a different reading of art.165 TFEU than *Superleague*. While avoiding to openly criticise his colleague, Szpunar articulated nothing short of a comprehensive refutation of Rantos’s position. He stressed that art.165 TFEU was a provision of soft law which was addressed to the Union, not SGBs, and that it

³³ Juzgado de lo Mercantil No 17 de Madrid, Order 17 May 2021.

³⁴ Audiencia Provincial Civil de Madrid, Recurso de Apelación 1578/2022.

³⁵ “El juzgado que lleva la Superliga ya tiene nuevo titular” *IUSPORT* (28 October 2021).

³⁶ *European Superleague Company* (Case C-333/21) ECLI:EU:C:2022:993, Opinion of AG Rantos; *International Skating Union v Commission* (Case C-124/21 P) ECLI:EU:C:2022:988, Opinion of AG Rantos.

³⁷ *European Superleague Company*, Opinion of AG Rantos, para 30.

³⁸ *Ibid*, Opinion of AG Rantos, para 34.

³⁹ *Royal Antwerp FC* (Case C-680/21) ECLI:EU:C:2023:188, Opinion of AG Szpunar.

did not need to be considered across the entirety of EU policy-making. Overall, the legal value of the norm was “so limited” that it had, other than helping in identifying justification grounds and conducting proportionality analysis, “absolutely no bearing on the case”.⁴⁰ This *disputatio* between the Advocates General signalled that two fundamentally different visions of EU sports law co-existed at the Court.

A New Legal Framework: The Rise of EU Sports Antitrust

Against this backdrop, the *Superleague* judgment was hotly anticipated. When it did materialise in December 2023, the headline finding, as per the Court of Justice’s press release, read: “The FIFA and UEFA rules on prior approval of interclub football competitions, such as the Super League, are contrary to EU law”. This caption may create the impression of a concise decision, but *Superleague*, like its two sister rulings, is a behemoth of a judgment, the longest sports decision to ever come out of Luxembourg. The case provided the European judges with an opportunity to take stock of the state of EU sports law. The Court used this opportunity to affirm many of the fundamentals of its jurisprudence, while also expanding it in several ways.

Before coming to what has changed, it is worth explaining what has not. The Court starts by reiterating the basic principles governing its sports case law. Sport falls into the scope of the Treaties insofar as it constitutes an economic activity. Rules adopted by SGBs can be caught by free movement law if they govern the work done or services provided by players or – and this is new – have an indirect impact on these. The same holds true for competition law, for the purposes of which associations may count as undertakings and their regulations as decisions by associations of undertakings, as well as general principles of EU law, such as non-discrimination and proportionality. What follows is an unexpected comeback of the purely sporting exemption, a doctrine which dates back to the Court’s earliest sports jurisprudence and was understood to have been overruled in *Meca-Medina*.⁴¹ According to it, rules which are non-economic and “relate to questions of interest solely to sport” do not trigger the application of internal market law. The exemption has attracted widespread criticism for creating a false dichotomy between economic and sporting aspects which tend to be intertwined due to the commercialisation of the sector. The only solace for critics may be that it is likely to continue to play a negligible role going forward. Beyond the two established categories (composition of national teams⁴² and ranking criteria determining athlete participation in competitions⁴³) and the rules of the game (pitch sizes, offside, etc.), it is difficult to imagine what types of regulations could be protected.

After this general introduction, the novelties begin. The first issue that warrants closer attention is the Court’s treatment of art.165 TFEU. Given the prominent place that the provision had occupied in the hearings and opinions of both Advocates General, it is no surprise that the judgment dedicates considerable space to clarify its legal status and effects. The Court explains that the norm gives the EU a supporting competence and does not allow pursuing a sports “policy”, merely an “action”.⁴⁴ Then, two of the propositions put forward by AG Rantos are considered and dismissed. Art.165 TFEU is – unlike the provisions which are located in the first part of the Treaty (concerning gender equality,

⁴⁰ Ibid, para 55.

⁴¹ A. Rincón, “EC Competition and Internal Market Law: On the Existence of a Sporting Exemption and its Withdrawal” (2007) 3 Journal of Contemporary European Research 224.

⁴² *Donà*.

⁴³ *Deliège* (Cases C-51/96 and C-191/97) ECLI:EU:C:2000:199.

⁴⁴ *European Superleague Company*, para 99. The same phrase can be found in *Royal Antwerp FC*, para 67.

environmental protection, good governance etc.) – not a horizontal norm which the Union must consider in all of its policies. Nor is it a rule that exempts sport from, or requires special treatment under, primary law. The message is clear: sport is business as usual. Which is not to say that the particularities of sporting activities must be ignored. They can, however, only be accommodated within the ordinary structure of EU law. Although this is a change in tone rather than substance compared with previous case law,⁴⁵ it is a change no less. More forcefully than before, the Court communicates its willingness to subject sport to the same set of rules and level of scrutiny as other sectors.

These passages are just as noteworthy for what they contain as for what they don't. At no point is the European Sports Model or its "constitutional recognition" mentioned. The Court's silence is best understood as a(nother) courteous, yet firm rebuke of the Rantos position. It suggests that there is no explicit entrenchment of the European Sports Model under art.165 TFEU. This, it bears emphasising, does not mean that the Model is overturned or that EU law does not protect some of its features; the matter is more complicated, as I shall explain below. What it means is that art.165 TFEU does not constitutionally protect the existing structures of sports governance in Europe and, crucially, cannot serve as a shield for SGBs against legal and regulatory intervention from the EU. For the sports movement, which had lobbied for introducing the provision into the Treaties for that very reason,⁴⁶ this is a disappointing outcome.

Although the *dicta* on art.165 TFEU are important, it is the Court's engagement with EU competition law that forms the most consequential aspect of the ruling. The Court applies and re-interprets arts.101 and 102 TFEU in ways that have implications not just for sports law, but also general competition law.⁴⁷ As noted above, *Superleague* is not the first judgment to apply European competition rules in the sporting context. *Meca-Medina* and *Piau* had pioneered this route, the handful of Commission decisions as well as the many national antitrust proceedings have developed it.⁴⁸ Yet, never did the Court pronounce itself on the interplay between competition law and sports in such detail. Three key changes are made.

The first concerns transparency duties. Pursuant to case law under art.106 TFEU, Member States which grant an undertaking special or exclusive rights must ensure that equality of opportunities between all economic operators is safeguarded. This, in particular, goes for situations in which the relevant undertaking has been given the competence to regulate market access and behaviour. *MOTOE* had already introduced this principle to sports via art.102 TFEU.⁴⁹ Greece imposed a prior authorisation requirement on the organisation of motorcycling competitions and delegated parts of the relevant assessment to the domestic motorcycling federation, which ran such competitions itself. The Court recognised the dangers attached to this dual regulatory and commercial role and demanded that, to prevent abuse, the federation's powers had to be subject to restrictions, obligations, and review. *Superleague* embraces this insight and takes it further. The Court states that the same duty arises under arts.101 and 102 TFEU – in fact, it is "all the more necessary"⁵⁰ – when an undertaking

⁴⁵ S. Weatherill, "The Impact of the Rulings of 21 December 2023 on the Structure of EU Sports Law" (2024) *International Sports Law Journal*.

⁴⁶ B. G. a. S. Weatherill, "Engaging with the EU in Order to Minimize its Impact: Sport and the Negotiation of the Treaty of Lisbon" (2012) 19 *Journal of European Public Policy* 238.

⁴⁷ G. Monti, "EU Competition Law after the Grand Chamber's December 2023 Sports Trilogy: *European Superleague*, *International Skating Union* and *Royal Antwerp FC*" (2024) TILEC Discussion Paper.

⁴⁸ B. v. Rompuy, "The role of EU competition law in tackling abuse of regulatory power by sports associations" (2015) 22 *Maastricht Journal of European and Comparative Law* 179.

⁴⁹ *MOTOE* (Case C-49/07) ECLI:EU:C:2008:376.

⁵⁰ *European Superleague Company*, para 137.

has acquired the ability to affect market entry through its own conduct, i.e. without public delegation. While SGBs may adopt rules on the organisation and proper functioning of sporting competitions, they are, as “gatekeepers”,⁵¹ not allowed to unduly exclude other operators. Given the evident conflict of interests at stake, they must adopt a framework of substantive and procedural rules with transparent, clear, precise, and non-discriminatory criteria for prior authorisation, thus limiting the scope for arbitrary decisions and enabling effective review. This effectively imposes a special legal responsibility, or a “stricter tier of competition law”,⁵² on sports federations.

A second set of changes concerns art.101(1) TFEU and restrictions of competition by object. The Court of Justice begins, in an almost pedagogical manner, by explaining the structure of the provision. The concept of by object restrictions, so we are reminded, is to be interpreted strictly and reserved for conduct revealing a sufficient degree of harm to competition which, by its very nature, impairs the internal market. The Court provides a set of known criteria – content, context, and objectives – as well as a new list of examples for making that determination. While leaving the final decision to the referring judge, it concludes, in fairly unambiguous terms, that FIFA and UEFA’s authorisation regulations violate these pre-requisites. By failing to put in place transparent, objective, precise, non-discriminatory, and proportionate criteria for third-party events, the rules hinder competition and innovation. The same verdict, it bears noting, is reached in the *ISU* case. Even in *Royal Antwerp*, the less blatantly restrictive home-grown players rule is, due to its market partitioning effects, held to potentially come within the category of by object restrictions, again subject to evaluation by the national court.

This finding has, thirdly, repercussions for the question of justification. Ever since *Wouters*, the Court has accepted that anti-competitive agreements may fall outside the scope of art.101(1) TFEU if they pursue public interest objectives, the means used are necessary for achieving those objectives, and their anti-competitive effect is not disproportionate.⁵³ EU sports lawyers have always understood the doctrine to provide a general justification clause which gives SGBs the possibility to defend their otherwise anti-competitive regulations. *Superleague* changes this. Conduct which infringes art.102 TFEU “by its very nature” or, in the context of art.101 TFEU, has as “its very ‘object’ the prevention, restriction, or distortion of competition” cannot benefit from the exemption.⁵⁴ This does not mean that the ancillary restraints doctrine is overruled – it is, however, qualified. While still applying to restrictions by effect (or ordinary abuses of market dominance), it no longer covers restrictions by object (or serious abuses of market dominance) which can only be justified with reference to the more demanding art.101(3) TFEU. The Court suggests that we had “implicitly” known all this since *MOTOE*, an unconvincing attempt at camouflaging a serious doctrinal shift. At no point had its previous jurisprudence, in sports or other sectors, suggested that the scope of the ancillary restraints doctrine is limited. Even though the competition law community has been divided over the merits of this carve-out,⁵⁵ there are first signs that it is here to stay. The new formula has already been applied

⁵¹ S. Weatherill, “Football Revolution: how do the Court’s rulings of 21 December 2023 affect UEFA’s role as a ‘gatekeeper’?” EU Law Analysis (4 January).

⁵² P. I. Colomo, “On Superleague and ISU: the expectation was justified (and EU competition law may be changing before our eyes)” *Chillin’Competition* (21 December).

⁵³ *Wouters* (Case C-309/99) ECLI:EU:C:2002:98.

⁵⁴ *European Superleague Company*, paras 185-186.

⁵⁵ B. Zelger, “Object Restrictions in Sports after the ECJ’s Decisions in *ISU* and *Superleague*” (2024) *Journal of European Competition Law & Practice*; cf. C. Bergqvist, “Things That Do Not Make Sense - *Superleague* and *ISU* On Ancillary Restraints” (2024) *European Competition and Regulatory Law Review*.

in two subsequent cases, in both of which private regulators were denied the opportunity to invoke ancillary restraints to defend by object restrictions.⁵⁶

Many of the key assessments in *Superleague* are deferred to the referring judge, including on the justification of FIFA and UEFA's regulations.⁵⁷ This has a decentralising impact on the case itself as well as on possible future litigation in the field. The ultimate decision about the compatibility of football regulations with EU competition rules will often lie with the national judiciary, rendering the role of domestic courts and the choice of forum for legal challenges significant. Since *Superleague* was decided, the first-instance proceedings in Spain have been completed, with the Madrid Commercial Court concluding – in what can be described as a faithful application of the CJEU's guidance – that the current restrictions on third-party events are anti-competitive.⁵⁸ But the element of deference in *Superleague* should not detract from the fact that the doctrinal changes made in the judgment expand EU sports law in a substantial manner. The Court curbs the protective effect of art.165 TFEU and communicates its willingness to critically scrutinise the actions of SGBs. Arts.101 and 102 TFEU are widened to include transparency duties which are designed to ensure equality of opportunity for third-party organisers. A precedent is set for sporting regulations to be classified as restrictions by object. At the same, the possibilities for justification are narrowed down (by qualifying the ancillary restraints doctrine) and rendered more challenging (by shifting the focus to art.101(3) TFEU). The combination of these factors paves the way for a more active application of EU competition law in the domain of sports.

Governance Impact: What is Left of the European Sports Model?

The legal framework established in *Superleague* has implications for both sports governance and regulation. In relation to governance, these can be made sense by reference to the European Sports Model. Coined by the Commission in the 1990s, the notion quickly rose to fame as an articulation of the distinct nature of the European, as opposed to the North American, sporting landscape. The Commission itself backtracked a decade later in its White Paper, acknowledging that it was “unrealistic to try to define a unified model of organisation of sport” in light of the diversity and transformation of the sporting landscape.⁵⁹ The concept subsequently faded into obscurity, before experiencing a remarkable renaissance during the Super League saga when federations, politicians, and fans alike rallied around it. How does *Superleague* affect the European Sports Model? The question calls for a bifurcated answer. As Floris de Witte and I have argued, the Model can be divided into two elements: institutional and cultural.⁶⁰ The institutional dimension denotes the way in which decision-making power in sports is organised, the cultural dimension captures the values which are embraced. While weakening the former, the judgment strengthens the latter.

Institutional Dimension: The Football Pyramid, Breakaway Leagues, and Alternative Formats

Institutionally, the European Sports Model rests on the pyramid structure that was explained earlier in some detail. Different levels covering different jurisdictions are combined into a unitary system, with those on the top exercising hierarchical powers over those further down. An important question

⁵⁶ S. Weatherill, "Changing the law without admitting it: The Court's three rulings of 21 December 2023 applied twice in January 2024" *Kluwer Competition Law Blog* (7 February).

⁵⁷ This is a broader trend, see J. Zgliniski, *Europe's Passive Virtues: Deference to National Authorities in EU Free Movement Law* (Oxford: Oxford University Press, 2020).

⁵⁸ Juzgado de lo Mercantil No 17 de Madrid, Judgment 24 May 2024.

⁵⁹ White Paper on Sport, 12.

⁶⁰ F. d. W. a. J. Zgliniski, "The Idea of Europe in Football" (2022) 1 *European Law Open* 286.

arising after the *Superleague* judgment is whether this structure remains intact. In the direct aftermath of the ruling, the parties appeared to diverge on this matter. Whereas A22 proclaimed that the decision “end[ed] UEFA’s] 69-year monopoly in cross-border club football in Europe”,⁶¹ UEFA President Aleksander Čeferin declared that the Court had “embraced[d] the key features of the European football pyramid”.⁶²

What explains these discrepancies? The judgment itself provides a mixed outcome. On the one hand, it affirms, even bolsters, UEFA’s regulatory role within football. The Court underlines that sports federations “enjoy legal autonomy” which – as long as they comply with EU law – allows them to adopt rules concerning “the organisation of competitions in their discipline, their proper functioning and the participation of sportspersons therein”.⁶³ Further, due to the specific characteristics of football:

it is legitimate to subject the organisation and conduct of international professional football competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall match calendar as well as, more broadly, to promote, in a suitable and effective manner, the holding of sporting competitions based on equal opportunities and merit.⁶⁴

SGBs may not just enact such rules but also enforce them, if necessary, through sanctions.⁶⁵ Thus, on the regulatory side, the legal position of the football pyramid remains firm.

Things look different on the commercial side. It is here that the Court’s pronouncements on FIFA and UEFA’s role as private gatekeepers, and the special responsibilities arising from this position, are relevant. In order to conform with EU competition law, football governing bodies must create a substantive and procedural framework for prior authorisation which contains clear, precise, transparent, and non-discriminatory criteria. Third parties cannot categorically be denied access to the market of organising and monetising football matches. This is not the same as saying that federations must admit all or, indeed, any competitor. However, they are obliged to create rules that will enable external operators to apply for authorisation, in the spirit of equal opportunity. FIFA and UEFA have, for the time being, not lost their commercial monopoly – but defending it has become more difficult.

Sensing where the wind was blowing, UEFA adopted the “Authorization Rules governing International Club Competitions” in June 2022.⁶⁶ Do these satisfy the *Superleague* criteria? Probably not. Although the Court does not address the legality of the new rules, there is reason to believe that they do not comply with the requirements laid down in the judgment. The regulations comprise a list of provisions which govern both the substantive and procedural criteria for authorisation requests. UEFA clearly made an effort to digest and incorporate the General Court’s ruling in the *ISU* case, which had already been rendered by then.⁶⁷ Its rules are more detailed than those adopted by the International Skating Union and specify the objectives pursued, as well as their connection to the concrete criteria, in greater detail.⁶⁸ The disciplinary measures are, likewise, more firmly rooted in

⁶¹ A22, Press Release 21 December 2023 – A22 Proposes New Open European Competition.

⁶² UEFA, European football community stands firm against so-called Super League (21 December 2023).

⁶³ *European Superleague Company*, para 75.

⁶⁴ *Ibid*, para 144.

⁶⁵ *Ibid*, paras 142 and 145-146.

⁶⁶ UEFA Authorisation Rules governing International Club Competitions (2022).

⁶⁷ *International Skating Union* (Case T-93/18) ECLI:EU:T:2020:610.

⁶⁸ This part of the General Court’s judgment, which had been based on the initial Commission decision in the case, ended up being upheld on appeal; see *International Skating Union*, paras 137-138.

the idea of proportionality, with violations being punished depending on their degree of seriousness and limited to 10% of a club's turnover and exclusion from UEFA competitions for up to three years or as long as the unauthorised competition takes place. (The *Superleague* and *ISU* judgments suggest that the regulations could go even further and stipulate sanctions against players.) Still, there are, at least,⁶⁹ two problems with the current rules, one minor and the other more serious.

Let me start with the former. The regulations hand the power to approve or deny an authorisation request to the UEFA Executive Committee, which takes its decision based on four sets of criteria: administrative and financial, sporting and technical, ethical, and sporting merit.⁷⁰ Based on them, the Executive Committee can, *inter alia*, require that the proposed competition respects the "Laws of the Game", puts in place an anti-doping programme, and complies with the principles of sporting merit and openness. All of this is permitted according to the *Superleague* ruling. UEFA may establish common rules for the organisation and conduct of football matches, ensure the homogeneity of the sport, and protect the idea of equal opportunities and merit. Matters get trickier when it comes to solidarity payments. The regulations state that organisers must, as part of the administrative and financial criteria, submit information on how much they intend to contribute to the Social, Education and Sporting Fund (which is meant to fund grassroots projects, youth programmes, etc.) and the European Sports Model Fund (which is meant to redistribute money to non-participating clubs).⁷¹ The extent of this duty, however, remains ambiguous – the rules simply state that competitions with annual gross revenues exceeding EUR 10 million "may" be required to contribute to the funds in a "reasonable and proportionate manner".⁷² The regulations are certainly right in demanding that the level of payments should increase with the level of financial success, yet the open-ended way in which they are formulated generates potential for abuse. Where UEFA will want to prevent new formats to protect existing competitions, it will be able to set the price tag at a prohibitively high level. It is hard to see how the broad discretion granted to the Executive Committee could be considered sufficiently clear and precise, or how it would enable effective review of an authorisation decision.

But the weightier problem concerns the duty of non-discrimination. Given that FIFA and UEFA operate on the market for football matches, their authorisation criteria must not be discriminatory. This means that third-party competitions cannot be subject to requirements which are different from those applicable to competitions organised by the federations, or are identical but impossible or excessively difficult to fulfill in practice.⁷³ Football governing bodies cannot give their own competitions preferential treatment. Yet, this is precisely what UEFA's Authorisation Rules do. They stipulate that new competitions "shall not adversely affected the good functioning of UEFA Champion Club Competitions"⁷⁴ and must, in particular, not impact the participation of the clubs that would, based on their domestic results (e.g. as winners of the national league) or European successes (e.g. as

⁶⁹ A further, not football-specific issue concerns dispute resolution. The Authorisation Rules require that any dispute is resolved by the Court of Arbitration of Sport 'to the exclusion of jurisdiction of any civil court'. The *ISU* judgment casts doubt over the legality of such clauses, which make it impossible for individuals to assert their rights deriving from EU competition law; see A. D. a. B. V. Rompuy, "Taking EU (Competition) Law outside of the Court of Arbitration for Sport (Case C-124/21 P *International Skating Union v Commission*)" *EU Law Live* (12 February).

⁷⁰ UEFA Authorisation Rules, Art 10(1).

⁷¹ UEFA Authorisation Rules, Art 4(1)(d).

⁷² UEFA Authorisation Rules, Art 10(3)(f).

⁷³ *European Superleague Company*, para 151; see also *International Skating Union*, para 133. Scholars of EU administrative law will detect a more than passing resemblance to the principles of equivalence and effectiveness that constrain national procedural autonomy, see *Rewe* (Case 33/76) ECLI:EU:C:1976:188; *Comet* (Case 45/76) ECLI:EU:C:1976:191.

⁷⁴ UEFA Authorisation Rules, Art 7(4).

titleholders), be qualified for the Champions League. The requirement openly prioritises UEFA competitions over those of third parties, which runs diametrically against the logic of non-discrimination. It is especially problematic given that UEFA can easily increase the number of teams participating and games played in its own competitions, thus putting further pressure on the match calendar and the availability of the best-performing clubs.

The duty of non-discrimination has another important consequence: UEFA will not be able to reject new competitions to protect its own events. Elite clubs, private equity firms, and sovereign wealth funds will be all ears. The door is open for a second, privately (or publicly) owned Champions League.⁷⁵ Recent developments in other sports such as golf have demonstrated how easy it is to set up high-profile events outside of established structures – as long as you have the money to back it up, that is.⁷⁶ Does this mean that the Super League can go ahead now? Perhaps counterintuitively, the answer is no. That is not just because the fans have, effectively, buried the project for the time being, but as a matter of European law. In its preliminary remarks, the Court of Justice went to pains to explain that its decision concerned FIFA and UEFA's authorisation rules, not the specific Super League project. And still, the ruling suggests that the League, at least in its original design (on the updated plans below), could be blocked by UEFA without much difficulty. The Court underlines that football is defined by certain rules, principles, and values. We will explore content of these in more depth below, but they include a belief in sporting merit. A competition in which most teams play and stay regardless of their prior achievements, is, of course, the antithesis of that ideal. EU law stands in the way of creating a US-style closed football competition.

What it might, however, facilitate is the emergence of other alternative formats. Calls for change in football to keep fans interested, especially those within the younger demographic, have become common.⁷⁷ The sport seems to face the choice between innovating or perishing. The *Superleague* ruling adds fuel to the discussion. In its reasoning concerning the anti-competitive nature of FIFA and UEFA's authorisation regulations, the Court of Justice states that:

Those rules thus make it possible... to restrict the creation and marketing of alternative or new competitions in terms of their format or content. In so doing, they also completely deprive professional football clubs and players of the opportunity to participate in those competitions, even though they could, for example, offer an innovative format whilst observing all the principles, values and rules of the game underpinning the sport. Ultimately, they completely deprive spectators and television viewers of the opportunity to attend those competitions or to watch the broadcast thereof.⁷⁸

EU competition law, hence, protects innovation in football – but only in so far as it stays within the limits of the principles, values, and rules of the game. This creates a curious tension, but also room for evolution. How much room? Getting rid of “inconsequential matches”,⁷⁹ one of the core mantras of the Super League founders, would appear to be permitted, as long as participation of clubs from across Europe is ensured. Providing free streaming of matches, another element of the reworked

⁷⁵ S. Weatherill, "Football Revolution: how do the Court's rulings of 21 December 2023 affect UEFA's role as a "gatekeeper"?" *EU Law Analysis* (4 January).

⁷⁶ LIV Golf, the new professional men's golf tour which was financed by Saudi Arabia's sovereign wealth fund, has established itself as a potent rival to the PGA Tour before announcing a merger with the latter.

⁷⁷ S. Agini, "European football needs innovation and drama, says Real Madrid and FC Barcelona investor" *Financial Times* (25 February); A22, *A22 Proposes New European Competition* (2023).

⁷⁸ *European Superleague Company*, para 176.

⁷⁹ J. F. Díaz, "Bernd Reichart: The European Super League is not dead" *Marca* (16 December).

proposal,⁸⁰ should equally be no problem; in fact, it may even generate efficiencies for consumers. By contrast, changes to how football is played – such as shortening playing times, an idea floated by Florentino Pérez in the wake of the ESL announcement⁸¹ – would violate the Laws of the Game and, consequently, seem to go beyond what is permitted.

Value Dimension: Sporting Merit, Financial Solidarity, and the Question of Constitutionalisation

Besides the pyramid structure, the European Sports Model rests on a set of values. AG Rantos had summarised these as including the promotion of open competitions, notably through a system of promotion and relegation which strives to maintain competitive balance and prioritises sporting merit, and financial solidarity, through a redistribution of revenue within the game. The Court of Justice, as mentioned, did not espouse a constitutional reading of the European Sports Model so understood. Does that mean that the cultural values underpinning football are irrelevant under EU law? Quite the opposite.

The Court acknowledges that sport has specific characteristics which should be taken into account in the context of free movement and competition law, at all stages of the analysis. The features to consider include “the nature, organisation or functioning of the sport concerned... how professionalised it is, the manner in which it is practised, the manner of interaction between the various participating stakeholders and the role played by the structures and bodies responsible for it”.⁸² In its examination of art.102 TFEU, the Court outlines what it sees as the specific characteristics of football. The relevant paragraph deserves to be quoted in its entirety:

The sport of football is not only of considerable social and cultural importance in the European Union, but also generates great media interest; its specific characteristics include the fact that it gives rise to the organisation of numerous competitions at both European and national levels, which involve the participation of very many clubs and also that of large numbers of players. In common with other sports, it also limits participation in those competitions to teams which have achieved certain sporting results, with the conduct of those competitions being based on matches between and gradual elimination of those teams. Consequently, it is, essentially, based on sporting merit, which can be guaranteed only if all the participating teams face each other in homogeneous regulatory and technical conditions, thereby ensuring a certain level of equal opportunity.⁸³

The Court lays down a list of elements here which, in substance, closely resembles those identified by AG Rantos.⁸⁴ Football has a large number of competitions in which a large number of teams participate, it believes in sporting merit, and promotes equal opportunity. These traits are, in a later passage, summarised as “openness, merit and solidarity” and referred to as the “principles, values and rules of the game underpinning professional football”.⁸⁵ They define, in the eyes of the Court, the European Football Model.

⁸⁰ A22, A22 Proposes New European Competition.

⁸¹ “Real Madrid president Florentino Perez calls for ‘innovative’ reforms to Champions League” The Independent (21 December 2021).

⁸² *European Superleague Company*, para 105.

⁸³ *Ibid*, para 143.

⁸⁴ G. Íñiguez, “*European Super League Company* and the (New) Law of European Football” (2024) 9 European Papers 1; A. Villanueva, “Accounting for the specificities of sport in EU law: Old and new directions in the 21 December 2023 judgments” (2024) *International Sports Law Journal* .

⁸⁵ *European Superleague Company*, paras 176 and 253.

Is this constitutionalisation through the back door? The specific characteristics of sports are incorporated into the application of EU primary law, the functional equivalent of constitutional law. That accommodation not only provides SGBs with a potential justification for restricting free trade or competition, it gives them the mandate to regulate and enforce the relevant principles, values, and rules. So there seems to be constitutionalisation, but of a peculiar kind. First of all, it is contextual rather than universal. There is a not one-size-fits-all model; everything depends on the given discipline. EU law will take the structural features of a particular sport on board and help protect them. Football is defined by openness, merit, and solidarity. But the same need not be true for boxing, cycling, or padel. The scrutiny and protection resulting from EU law will, in these cases, take a different shape. Secondly, the constitutionalisation is reactive rather than prescriptive. A sport will adopt certain foundational values which are, then, picked up by EU law, not the other way around. This is an important difference to what AG Rantos appeared to propose. A genuine constitutional recognition of the European Sports Model would have meant that primary law stipulates *a priori* obligations with which a discipline – or more precisely, every discipline – must comply. Taken to its logical conclusion, this would have meant that all sports, regardless of their organisational or cultural idiosyncrasies, would have had to follow the same set of principles.⁸⁶ No more wildcards at the Tour de France, no Six Nations in rugby, no plurality of boxing belts.

This construct has two subtle institutional repercussions. The first one concerns the EU itself. The location of sporting values in free movement and competition law means that the Court of Justice remains the “primary interpreter” of the European Sports Model(s).⁸⁷ The role of the EU’s *pouvoir constituant* in articulating a specific vision of sports governance through art.165 TFEU is, in this way, sharply reduced. The second implication concerns the world of sports. The reactive way in which European law operates in relation to sporting values creates a sort of positive obligation. Football governing bodies must respect the values underpinning the game – otherwise, these will no longer be considered to form part of the European Football Model. *Ought* follows from *is*, legal protection from cultural practice. This “responsibilises”⁸⁸ sporting actors. If, for instance, football federations create or maintain closed leagues themselves,⁸⁹ they will erode the status of sporting merit as a foundational value of the sport and, as a result, not be able to prevent closed competitions run by third parties.

One important question which the *Superleague* judgment only answers incompletely is how such sporting values will be enforced. We can expect federations to play a central role here. Their function is to oversee compliance with the principles underpinning a given sporting ecosystem by those already participating in (athletes, clubs, agents etc.) as well as those wanting to enter it (third party organisers, investors, advertisers etc.). But can sporting values be enforced *against* them, too? The ruling suggests that they can, at least in an indirect way. As SGBs are subject to EU competition law, they must, whenever engaging in anti-competitive conduct, demonstrate that their behaviour is justified. Their defence will often be based on the “principles, values, and rules” underpinning the sport which they oversee. But for it to be successful, federations will have to show that their actions do serve those principles, values, and rules. A similar conclusion follows from the duty of non-discrimination. An SGB may put in place a system of prior authorisation for new competitions, yet that system must

⁸⁶ J. Zgliniski, “Constitutionalising the European Sports Model: The opinion of Advocate General Rantos in the European Super League case” *EUROPP Blog* (16 December).

⁸⁷ M. M. Delgado, “The ECJ and its Sports Model after “European SuperLeague”” *Verfassungsblog* (4 January 2024).

⁸⁸ In a different context, and with more problematic implications, see S. Coutts, “The Absence of Integration and the Responsibilisation of Union Citizenship” (2018) 3 *European Papers* 761.

⁸⁹ The US Major League Soccer is the most famous example, but not the only one: FIFA pushed for the creation of an “African Super League” which was initially meant to operate as a closed shop; see D. Storey, “Why the plan for an African Super League is just as flawed as it was in Europe” *iNews* (1 February).

operate in a non-discriminatory manner. Consequently, if FIFA and UEFA want to demand that third-party events follow the Laws of the Game, are based on sporting merit, and promote financial solidarity, they must demand the same from their own events.

Some formidable conundrums could be awaiting us. Values are complex concepts which make comparison and adjudication difficult. Take the principle of sporting merit, which has so prominently featured in the Super League litigation. At a basic formal level, it stipulates that participation in competitions must be based on a team's results in previous competitions. The original ESL proposal violated that idea in a fairly obvious way by rejecting promotion and relegation. Permanent members would be allowed to play in the competition regardless of how well, or poorly, they performed at the domestic or European level. But the founders have learned from their mistake. Their updated proposal foresees the creation of three leagues: Star, Gold, and Blue.⁹⁰ The first two consist of 16 teams each, the last of 32 teams, which initially play in a group stage and, then, in playoff round. (This is the structure for men, but there is a similar, slimmed down version for the women's game.) The tiers are connected through a promotion-and-relegation mechanism, with the last two clubs finishing in the Star and Gold League dropping down and the final 20 of the Blue League exiting the competition altogether. Does this violate the principle of sporting merit? Not in the aforementioned formal sense. There will be promotion and relegation, and every club can eventually be thrown out of the competition. The proposal might still violate the idea of sporting merit in a more substantive way. As only two teams drop down, clubs participating in the Star and Gold Leagues face a minimal risk of relegation. What is more, even if they played poorly, it would take a Star League team three seasons to exit the Super League altogether, regardless of its performance at the domestic level. Leicester City, for example, could, had the competition been established a few years ago, still be playing European – potentially even Star League – football despite being temporarily relegated to the second division in England.

This set up protects incumbents and could, as such, be seen to run against the ideal of sporting merit. After all, it is not sport if you (almost) can't lose. UEFA would be likely to deny authorisation to such a competition, but it would be just as likely run into some non-trivial issues with its argument. A legal challenge based on EU competition law would mean that UEFA would have to show that its decision is justified based on sporting merit and does not impose more stringent requirements on third-party competitions than on its own. The problem is that UEFA's competitions, too, increasingly protect the position of incumbents. The Champions League has had the effect of ossifying the clubs that participate and succeed in European football.⁹¹ This is the combined result of the increase in broadcasting revenues, their insufficient redistribution, as well as the periodic reforms of the competition which has seen the number of games and clubs from the top leagues being increased, thus minimising financial risks for historically successful teams. The Champions League is at odds with the ideal of sporting merit in a substantive sense. Granted, not to the same extent than the updated Super League, but this is precisely the peril: we are beginning to talk about differences in degree, not in kind.

Policy Impact: The Future of EU Sports Regulation

⁹⁰ <https://a22sports.com/en/competition/>.

⁹¹ Girish Ramchandani et al., "'You can look, but don't touch': competitive balance and dominance in the UEFA Champions League' (2023) 24 Soccer & Society 479; E. Ünsal, "How the UEFA Champions League divided Europe and harmed competitive balance within domestic leagues" (2023) 24 Soccer & Society 492.

In addition to changing the parameters in which federations operate, the Court's judgment changes the parameters in which EU sports regulation can take place. The Super League saga has shown how great the need for regulation is in football, revealing problems surrounding fan representation, competitive balance, and financial redistribution. Developments beyond the case, ranging from poor governance standards, to sexual abuse scandals, to human rights violations, likewise indicate that the sport requires reform. Against this backdrop, the question as to what impact the judgment will have on the EU's ability to regulate football is vital.

EU sports regulation is typically divided into a law and a policy limb. Sports law consists of, primarily, the jurisprudence of the Court of Justice and, secondarily, the decisions of the Commission. Sports policy denotes the class of proactive, structural measures. Here, we have a greater diversity of instruments, which include expert studies, white papers, and work plans. The difference between the two resembles that between negative and positive integration (although, as I shall argue, binding legal rules can and should be enacted through policy route).⁹² The *Superleague* ruling further extends the potential of sports law, while complicating the making of sports policy.

EU Sports Law

Like many other areas of European integration, EU sports regulation has traditionally had a stronger law than policy arm.⁹³ The most consequential interventions into sports have stemmed from court rulings and antitrust proceedings. EU law has, where successfully invoked, forced federations and other stakeholders to abandon, modify, or re-think their actions. The *Superleague* judgment expands this reflexive dynamic. The new legal framework, which is defined by an enhanced use of competition law, broadens the scope and depth of EU sports law. There is promise in this development, but also peril.⁹⁴

Let me begin with the promise. As a result of the judgment, a broader range of sports regulations can be subjected to judicial and administrative review and, where they are, the standard of scrutiny applied may be higher than until now. This is due to the Court of Justice's re-interpretation of the EU competition rules. *Superleague* establishes that federations must adopt clear, precise, transparent, and non-discriminatory criteria when adopting prior authorisation requirements for third-party competitions. Their actions can constitute restrictions by object under art.101(1) TFEU. At the same time, justifying anti-competitive behaviour is made harder. The scope of the ancillary restraints doctrine is reduced, resulting in a partial shift towards art.101(3) TFEU. There remain a number of open questions about the exact contours of these changes, which will have to be clarified in future case law. Do the transparency duties only apply to rules concerning prior approval?⁹⁵ How widely will the concept of restrictions by object be interpreted?⁹⁶ What remains of the ancillary restraints

⁹² A. Geeraert, *The EU in International Sports Governance: A Principal-Agent Perspective on EU Control of FIFA and UEFA* (Basingstoke: Palgrave Macmillan, 2016) 108.

⁹³ This has changed over time, see Martijn van den Brink, Mark Dawson and Jan Zgliniski, "Revisiting the asymmetry thesis: negative and positive integration in the EU" (2023) *Journal of European Public Policy*.

⁹⁴ This section draws on J. Zgliniski, "Can EU competition law save sports governance?" (2024) *International Sports Law Journal*.

⁹⁵ J. Lindholm, "Requiring good governance from private regulators: what about the rest of us after ESL and ISU?" (2024) *International Sports Law Journal*.

⁹⁶ B. Zelger, "Object Restrictions in Sports after the ECJ's Decisions in *ISU* and *Superleague*" (2024) *Journal of European Competition Law & Practice*.

doctrine?⁹⁷ Be that as it may, there is no doubt that the judgment imposes more demanding standards on SGBs.

What seems to be motivating the Court of Justice's findings is a growing distrust towards private regulators. The dangers of "private government" have long been known.⁹⁸ Although the Court does not deny SGBs a regulatory role as such, it does subject their actions to closer control. Federations can, in principle, adopt prior approval requirements to protect sporting merit and financial solidarity – only, however, if they can put forward "convincing arguments and evidence" that these requirements generate "genuine, quantifiable efficiency gains".⁹⁹ They can engage in a centralised sale of media rights – if they can show that this will bring "real and concrete" benefits for all football stakeholders, including clubs, fans, and broadcasters.¹⁰⁰ They can oblige clubs to have a minimum number of locally or domestically trained players in their squad – again, only if they can present "specific arguments and evidence" testifying to the positive impact this has on the game.¹⁰¹ Federations often claim that they work for the good of sport and society. The Court asks them to prove it.

This heightened external scrutiny is likely to improve internal governance standards in football. To avoid having their regulations quashed, federations will seek to comply with the new *Superleague* requirements, which will force them to revise their current practices. Much attention in the academic commentary on the ruling has focused on the transparency duties which can be seen as formulating good governance expectations.¹⁰² These duties will, once implemented, contribute to making the process of prior authorisation of third-party competitions more rational, predictable, and fair. Yet, unless the Court of Justice decides to extend their scope of application to other aspects of sports regulation and stipulates that every SGB decision – not just those concerning market entry – complies with minimum standards of transparency, accountability, representation, etc.,¹⁰³ they will have a rather limited substantive reach.

What may, in the long run, have a more significant impact is the Court's decision to open up the possibility to classify sports regulations as by object restrictions, while narrowing down the scope for justifying them. The partial closing of the ancillary route means that the distinction between by object and by effect restrictions will become crucial going forward. Where conduct is found to fall into the former category, SGBs must defend it based on art.101(3) TFEU. As part of that, they need to demonstrate that their regulatory choices achieve efficiency gains and an equitable part of the profit resulting from those efficiency gains is reserved for the "users". The only way to do that for federations is to consider the costs and benefits for all stakeholders affected by their decision-making. This group is to be understood widely according to the Court and includes not only elite clubs, professional players, and commercial broadcasters, but supporters, amateur teams, and young

⁹⁷ P. C. M. a. D. J. Neven, "Legitimate objectives in antitrust analysis: The FIFA regulation of agents and the right to regulate football in Europe" (2024) *Concurrences* .

⁹⁸ E. Anderson, *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)* (Princeton: Princeton University Press, 2017).

⁹⁹ *European Superleague Company*, paras 196 and 205.

¹⁰⁰ *Ibid*, para 236.

¹⁰¹ *Royal Antwerp FC*, paras 129 and 135.

¹⁰² See the International Sports Law Journal's special issue on the ruling, including Richard Parrish and Luka Živić, "Royal Antwerp and Home-Grown Players: Re-shaping Sports Governance and EU Sports Law and Policy"; Borja García, "Down with the politics, up with the law! Reinforcing EU law's supervision of sport autonomy in Europe"; Rusa Agafonova, "ISU and *Superleague* judgments: sports governance in the market-driven era".

¹⁰³ See proposal by J. Lindholm, "Requiring good governance from private regulators: what about the rest of us after ESL and ISU?".

athletes¹⁰⁴ – that is, stakeholders whose concerns are regularly marginalised. By forcing football authorities to take their interests into consideration, *Superleague* may contribute to making sports governance more inclusive, which could lead to better-balanced substantive decisions.¹⁰⁵

Although the active use of EU competition law has, thus, the potential to leave a positive mark on football, it also comes with risks. The first one is de-regulation. EU competition law is a tool of negative integration. Its purpose is to remove obstacles to trade and commerce. By widening the scope of the competition rules and limiting the opportunities for justifying anti-competitive behaviour, the Court facilitates this process. More sports regulations can be challenged and fewer defended. We know from general research into European integration that increasing the chances of success of legal action increases the likelihood of such action being brought¹⁰⁶ – there is no more powerful motivation for litigation than the prospect of winning. The new legal framework will open up new opportunities for both public and private actors. Even if the Commission does not choose to pursue them (in line with its current deferential stance), national competition authorities may, whereas football stakeholders who are dissatisfied with existing rules and have the necessary financial resources most certainly will. Cases against the regulations on transfer rules, player agents, transnational leagues as well as the new FIFA Club World Cup are already pending.¹⁰⁷ Restrictions on financial fairplay, multi-club ownership, and broadcasting rights could be targeted next. It need not be that all of these rules will be struck down. A lot will depend on how expansively European and national judges apply the aforementioned concepts. But the general direction of travel is clear: a greater number of legal cases will put a greater number of football rules at risk. Yet, that is precisely the problem. We need more, not less regulation in football.

Regulating through competition law comes with a second disadvantage. Even though it may help remove certain problematic practices, its regulatory success can necessarily remain partial at best. This is, for one, because it hinges on suitable proceedings being brought. Competition rules can only effect change where they are (or there is a threat they will be) activated, be it by public authorities or private litigants. That will not always be a given. Some measures will prompt competition proceedings, others – despite being, from a public policy perspective, more detrimental – may not. Imagine, to pick but one example, that we want to reduce the environmental impact of football matches, but the only lawsuits that are filed concern the salary cap for agents. Even where competition proceedings align with our regulatory needs, their effect will be limited. Competition enforcement works on a case-by-case basis, with each case typically focusing on a single regulatory problem. One issue will be solved in a first proceeding, after which several years might pass before a second related issue is addressed in a follow-up proceeding, after which a few more years will pass before a third issue is looked at, and so on. This piecemeal approach makes it difficult to impose a coherent regulatory vision.

¹⁰⁴ *European Superleague Company*, para 195.

¹⁰⁵ The German Bundeskartellamt already announced that it will pay greater attention to horizontal and vertical solidarity when reviewing the centralised sale of media rights, requirements that are intended to benefit smaller clubs; see Bundeskartellamt, Vorsitzendenschreiben – Zentralvermarktung der Medienrechte an Spielen der Bundesliga und der 2. Bundesliga (26 February 2024).

¹⁰⁶ Alec Stone Sweet, *The Judicial Construction of Europe* (Oxford: Oxford University Press 2004).

¹⁰⁷ *FIFA v BZ* (Case C-650/22) ECLI:EU:C:2024:375, Opinion of AG Szpunar; C-209/23 *RRC Sports*; C-428/23 *ROGON*. Swift Hesperange has brought legal action in Luxembourg against the division of football leagues along national boundaries, with a reference to the CJEU expected. FIFPRO has challenged FIFA's decision to create an enlarged Club World Cup, see 'FIFPRO Europe Statement: Legal claim against FIFA', available at < <https://fifpro.org/en/supporting-players/health-and-performance/player-workload/fifpro-europe-statement-legal-claim-against-fifa> >.

A final risk of using competition norms as a means to govern football lies in subjecting the sport to an ill-fitting regulatory framework. Competition law is built around concepts such as efficiency gains, consumer welfare, product quality, pro- and anti-competitive effects. To what extent these concepts provide useful categories for analysing and correcting the functioning of football is open to doubt. Through the commercialisation process that has taken place over the past decades, the sport has, of course, moved away from its humble origins as an occasional pastime for locally-bound amateurs and turned into a global enterprise generating eye-watering revenues. But in addition to its commercial aims, it continues to pursue a variety of goals – social, educational, redistributive, health-related – which diverge from those of ordinary businesses. It is unclear whether competition rules can accommodate these goals adequately. There has been a longstanding debate about the ability of competition law to serve as a tool for public policy.¹⁰⁸ Its focus on markets and economic activity makes it notoriously hard to promote, sometimes even recognise, non-economic considerations. The rise of the more-economic approach in the 2000s has added difficulty in this regard.¹⁰⁹ Although both scholars and regulators have, in recent years, tried to make competition law more socially responsive,¹¹⁰ the situation remains challenging. Non-economic concerns can be incorporated at different stages of competition proceedings, notably under art.101(3) TFEU, but they need to be translated into quantifiable economic gains.¹¹¹ This will be reasonably straightforward for football regulations which have a clear financial dimension and can easily be measured, such as the sums of money to be paid as solidarity payments. It is less straightforward for those pursuing more intangible non-economic objectives, such as ensuring that a club fields a certain number of local players as part of its social function.¹¹²

Approaching football regulation through a competition lens also has inevitable substantive limitations. Competition law can only target (regulatory) problems that count as (legal) problems under competition law. This may sound trite but is, in fact, a serious constraint. For competition norms to apply, a series of threshold criteria need to be met. We need an agreement between undertakings or a decision by association of undertakings which restricts competition by object or effect and affects intra-EU trade; or, alternatively, an undertaking that holds a dominant position which it abuses. Even if interpreted generously, it is unlikely that these criteria could be deployed to tackle some of the most pressing problems in football, such as the lack of robust human rights safeguards, the gender inequalities defining its governance bodies, or the weak protections accorded to fans and athletes. What is worse, competition law could stand in the way of improving standards in certain scenarios. Consider the 50+1 Rule, which obliges German clubs to be majority-owned by its members (mostly supporters), and has, since *Superleague*, come under pressure in domestic competition proceedings.¹¹³ All of this is a reminder that competition law is a valuable, yet limited regulatory tool. While it can

¹⁰⁸ G. Monti, "Article 81 EC and public policy" (2002) 39 Common Market Law Review 1057.

¹⁰⁹ J. Blockx, "The limits of the 'more economic' approach to antitrust" (2019) 42 World Competition 475.

¹¹⁰ A. Gerbrandy, "Solving a sustainability-deficit in European Competition Law" (2017) 40 World Competition 539; S. Kingston, "Competition Law in an Environmental Crisis" (2019) 10 Journal of European Competition Law & Practice 517; S. Makris, "EU Competition law as responsive law" (2021) 23 Cambridge Yearbook of European Legal Studies 228. See also the sustainability chapter in the Commission's revised horizontal guidelines from 2023.

¹¹¹ Or Brook, *Non-Competition Interests in EU Antitrust Law: An Empirical Study of Article 101 TFEU* (Oxford: Oxford University Press 2022).

¹¹² Here, the benefits may need to be reframed as yielding pro-competitive effects or generating consumer interest; see *Royal Antwerp FC*, para 130.

¹¹³ Bundeskartellamt, 50+1-Verfahren – Verfahrensstand (6 February 2024). For a more conciliatory assessment, see 50+1-Regel – Auswirkungen der EuGH-Rechtsprechung und weitere Verfahrensführung (24 May 2024).

be applied to correct certain types of undesirable market behaviour, it is not a “panacea for all contemporary ills”.¹¹⁴

EU Sports Policy

Sports policy has, to date, been the weaker limb of EU sports regulation. Not necessarily because there has been too little of it – over the years, a panoply of different European policy initiatives have materialised. They range from expert studies aimed at specific sporting issues, to resolutions and declarations on a variety of topics, to broader attempts at guiding the EU’s involvement in the area through white papers and work plans. Yet, most of the policy *acquis* has remained in the realm of soft law. Unlike in other areas of EU law, as well as many global sports policy regimes, there is a dearth of binding rules that would establish a regulatory framework for the sector. Perhaps more worryingly, there is growing evidence that European institutions are controlled by, rather than control, federations and associations.¹¹⁵ Therefore, the question as to whether the *Superleague* judgment improves policy making capacities here has a special urgency.

Can the EU even have a sports policy after the ruling? The Court, remember, went out of its way to highlight that the Union can pursue “actions”, not “policies”, based on art.165 TFEU. A literal reading of this sentence might suggest that adopting an EU sports policy is categorically prohibited. However, as so often, context matters. The paragraph in which the remark is made concerns the type of competence which the Union has been conferred in relation to sports. In distinguishing between policy and action, the European justices draw – if in a somewhat formalistic manner – attention to the language of the Treaties to convey that art.165 TFEU merely establishes a supporting competence. This, as the subsequent sentence clarifies, excludes any form of harmonisation. It does not, however, prevent other forms of regulatory involvement as long as the relevant constitutional limits are respected. Legally, these passages change little, if anything, in how far the Union’s powers regulation reach in relation to sports. Politically, by contrast, they may well have repercussions for the willingness of EU institutions to intervene, but more on that in a second.

The Super League incident itself triggered a number of policy responses at the European level. In the months after the plans of the new league were revealed, each of the EU’s main political institutions jumped to the aid of UEFA. In November 2021, the European Parliament passed a resolution in which it expressed explicit opposition to breakaway competitions.¹¹⁶ Shortly afterwards, the Council adopted a resolution on the key features of the European Sports Model in which it emphasised the importance of sports adhering to certain organisational features, such as the pyramidal structure, and values, including financial solidarity, open competitions, and the respect for fundamental rights.¹¹⁷ The Commission followed up with a study which came to similar conclusions, praising the positive role played by federations in the governance of 15 selected disciplines, among them football.¹¹⁸ Finally, in June 2022, a mere few weeks before the hearings in Luxembourg, it signed a new Cooperation Arrangement with UEFA, a thinly veiled attempt at backing the organisation in the dispute.

¹¹⁴ N. Dunne, “Public interest and EU competition law” (2020) 65 Antitrust Bulletin 256, 281.

¹¹⁵ Meier et al., “The Capture of EU Regulation by the Football Governing Bodies”.

¹¹⁶ European Parliament, Resolution on EU sports policy: assessment and possible ways forward (2021/2058(INI)).

¹¹⁷ Council and Member State Governments, Resolution on the key features of a European Sport Model (2021/C 501/01).

¹¹⁸ Commission, *Study on the European Sport Model* (April 2022).

The responses are emblematic of the current failures of EU sports policy making. None of them impose genuine obligations on football federations. The Cooperation Arrangement encapsulates many of the problems in this regard. It is full of inspiring rhetoric. Both the Commission and UEFA profess their dedication to good governance, gender equality, financial solidarity, and human rights. None of this, however, translates into tangible commitments. We find no concrete duties, benchmarks, or other tools for monitoring compliance. Measures like these may, at first glance, look like well-intended attempts of the Union to establish connections with the world of football, yet they have problematic consequences. The agreement singles out UEFA as the sole actor worthy of formal cooperation with EU institutions, thus further bolstering its status and influence in European football. It repeats many of the confederation's slogans without any form of critical evaluation, imparting the sense that UEFA really is devoted to values such as transparency, accountability, representation, and human rights. Overall, the message conveyed is that the EU's role is to help and defend federations, not to regulate them.

More is needed. There is a growing sense that the EU should increase its political oversight of football. A number of instruments are, in theory, available: the Cooperation Arrangement could be modified to stipulate clearer regulatory expectations; the use of the social dialogue could be incentivised;¹¹⁹ funding could be used more strategically to prompt change.¹²⁰ One option which is starting to gain traction in the academic debate – and remains, so far, entirely unexplored – is legislation.¹²¹ An EU sports or football act could lay down rules with which federations and other stakeholders have to comply. This would, unlike existing soft law measures, establish a binding normative framework while allowing, contrary to the traditional litigation approach, to regulate football in a more coherent and predictable manner. The precise content of the legislation would be a matter for the political process, but the recent domestic initiatives provide a valuable source of inspiration. France has enacted a law aimed at “democratising sport”, which subjects SGBs to gender parity requirements, imposes duties of transparency on sports dignitaries, and sets out term limits for presidents of federations and leagues.¹²² Spain has reformed its national sports act, strengthening the rights of athletes and fans alongside tightening rules on conflicts of interests for representatives.¹²³ The UK plans on creating an independent football regulator with powers to supervise licensing requirements, fan rights, club ownership, and revenue distribution.¹²⁴

One issue arising in light of *Superleague* is whether a law like this would be constitutionally permitted. The Court of Justice has underscored the limited nature of art.165 TFEU in the judgment. Yet, even before the ruling, the provision was, as a supporting competence, never an appropriate legal basis for such far-reaching interventions. Art.114 TFEU – alongside similar, more specific norms from the free movement of persons and services¹²⁵ – has always been the stronger foundation and

¹¹⁹ See Commission, “Strengthening Social Dialogue in the European Union: Harnessing its Full Potential for Managing Fair Transitions” COM(2023) 40 final.

¹²⁰ This could be done through programmes like Erasmus+, although the financial strength of professional football limits the extent of the ‘governance through funding’ approach.

¹²¹ S. Weatherill, “Saving Football from Itself: Why and How to Re-make EU Sports Law” (2022) 24 Cambridge Yearbook of European Legal Studies 4; M. P. Maduro, “EU Law and Sports: A Match Made in Hell or in Heaven?” in Sanja Bogojević et al. (eds.), *The Internal Market Ideal* (Oxford: Oxford University Press 2024); J. Zginski, “Reforming Football: What the EU Can Do” (forthcoming).

¹²² Loi du 2 mars 2022 visant à démocratiser le sport en France.

¹²³ Ley 39/2022, de 30 de diciembre, del Deporte.

¹²⁴ Football Governance Bill 2024. The legislative process has been put on halt due to the announcement of the general election for July 2024, but both major political parties have committed to adopting legislation in this area in the future.

¹²⁵ Arts.53(1) and 62 TFEU.

could be used to regulate professional football.¹²⁶ An entirely different issue is whether football legislation is politically feasible. Here, two scenarios are possible. It could be that the Court of Justice's remarks on art.165 TFEU disincentivise EU action, adding to the existing difficulties with regulating the sector that result from the strong divergences between Member States and political pressure from SGBs. In that case, litigation and competition proceedings, will continue to serve as the main instrument to regulate sports, reinforcing "the primacy of EU law over politics" here.¹²⁷ There is an alternative scenario. Regulatory theory tells us that crises can act as powerful catalysts for regulation.¹²⁸ The prospect of breakaway competitions, which has increased after the ruling, have prompted grumbling in political circles across the continent. Federations see their monopoly at risk and face growing legal uncertainty due to more frequent litigation. This could make for a more fertile ground for legislative intervention. It is noteworthy in this context that all national sports minister, except Spain, have signed a declaration in response to the judgment which underlines the importance of the European Sports Model and invites the Commission to "reflect on appropriate ways to pursue the 2021 Council resolution regarding the safeguarding of the openness of competitions, sporting merit, integrity, solidarity and values in sport" – an express call for greater EU involvement in the sector.¹²⁹ It remains to be seen whether this will generate the necessary momentum for action.

Conclusion

Who, then, owns football after *Superleague*? In many ways, the judgment reflects the contradictory circumstances in which the sport finds itself at this juncture. The Court of Justice's ruling acknowledges the important role played by football federations, while strengthening the position of clubs, investors, and other stakeholders who are dissatisfied with the status quo. It protects traditional football values such as sporting merit and financial solidarity, while paving the way for new competitions that will amplify the commercialising trends within the game. It stipulates that the concerns of fans, small clubs, and lower tiers of the pyramid need to be taken more seriously, while opening up possibilities for elite clubs and players to increase their already sizeable profits. These structural tensions define modern football. The ruling is both shaped by and further accentuates them.

When the request for a preliminary reference in the Super League dispute was first lodged, commentators were quick to note that the case could end up becoming a second *Bosman*. The Court had the chance to overturn a long-established system of football privileges and put FIFA and UEFA in their place. The eventual judgment turned out more balanced than some hoped, others feared. And still, there may be important parallels. The legacy of *Bosman* is complicated.¹³⁰ The decision is rightly celebrated as having reduced nationality discrimination, increased free movement of players, and "changed everything" in how EU law governs sports.¹³¹ However, it has also turbocharged the economic growth that the game has experienced over the past decades, with all its side effects: wage inflation, financial pressures, competitive imbalances. Similarly, the legacy of *Superleague* is likely to be complicated. It paves the way for raising governance standards in football, while also risking to

¹²⁶ S. Weatherill, "Saving Football from Itself: Why and How to Re-make EU Sports Law".

¹²⁷ B. García, "Down with the politics, up with the law! Reinforcing EU law's supervision of sport autonomy in Europe" (2024) *International Sports Law Journal*.

¹²⁸ M. Moran, *The British Regulatory State: High Modernism and Hyper Innovation* (Oxford: Oxford University Press, 2003).

¹²⁹ Déclaration des ministres des sports européens pour un modèle sportif basé sur la solidarité, le mérite sportif et l'impact sociétal du sport (2024).

¹³⁰ A. Duval and B. Van Rompuy, *The Legacy of Bosman: Revisiting the Relationship Between EU Law and Sport* (The Hague: Springer 2016).

¹³¹ S. Weatherill, *European Sports Law* (2nd edn, The Hague: Springer 2014) p. 497.

deepen many of the problems which the sport is experiencing, ranging from greater financial inequalities, to problematic investments, to the empowering of actors who do not have the game's best interests at heart.

The Super League saga is not just a reflection of the state of football, it is a reflection of the state of EU sports regulation as well. Football needs reform. The EU has, so far, not managed to respond to this need. The Commission, Council, and Parliament have all produced documents outlining a normatively rich vision of football, yet failed to translate this vision into workable regulatory commitments. Against this backdrop, we can read the *Superleague* decision as the Court stepping in where the political process has remained inactive. We have seen this dynamic unfolding many times before in the history of European integration – during the establishing of the internal market, the creation of digital rights, and, more recently, the Rule of Law crisis. If these precedents teach us one lesson it is that judicial activism only stands a chance of effecting change where it is followed up by political action. Although it may manage to weed out undesirable regulations here and there, EU competition law can, even in its enhanced form, not save football governance.¹³² Political action, which will take stock of existing problems and devise systematic solutions, is indispensable for making meaningful progress.

¹³² J. Zgliniski, "Can EU competition law save sports governance?".