THE AUTONOMY OF SPORT IN EUROPE

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Introduction

In Europe, as from the end of the 19th century, the bodies responsible for the codification of sports rules and the organisation of competitions generally took the form of non-profit associations. In this capacity, thanks to national legislation guaranteeing freedom of association, they enjoyed considerable autonomy from government in most European countries. It can even be said that, for most of the 20th century, the majority of European states allowed sports organisations to develop as bodies fully independent of the public authorities. For many years the clubs, the regional and national federations and the European or international federations, not to mention the National Olympic Committees (NOCs) and the International Olympic Committee (IOC), operated in virtually complete independence of local and national government and were self-regulating, while sport itself was becoming an increasingly important sociocultural and economic sector.

During the 1970s the Council of Europe became the first European intergovernmental organisation to take a real interest in this sector and to work together with the sports movement. In 1975 it adopted the Sport for All Charter, which was replaced by the European Sport Charter in 1992. It concerned itself with issues such as doping or spectator violence, which led to the adoption of two major conventions on these subjects. Although the European Court of Justice (ECJ) delivered two judgments concerning the sports sector during the 1970s, it was not until the 1990s that the European Union began to intervene in sport once it had become an economic activity (confining itself solely to this aspect, since there was no EU competence for sport in general at the time). The ECJ's Bosman judgment, pronounced in 1995, was perceived by the sports movement as a government intrusion in the autonomy of national and international sports organisations (dealing with football in the case under consideration).

In subsequent years a growing number of sport-related cases were brought before the European or national courts. Many were decided in favour of the sports organisations concerned, but a number of verdicts called into question certain sports rules and were regarded by the federations as encroaching on their autonomy. The sports movement began to call for a "sports exception" in Community law, or at least to emphasise the "specificity" of sport. The governments of the EU member states heeded these demands, going so far as to include in the Treaty of Lisbon of 2007 (not yet ratified) an article (149) providing for the promotion of sporting issues "while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."

However, this development did not really satisfy the European and international sports movement since the "specific nature" of sport had not been clarified. In 2006 the Independent European Sport Review, commissioned by the UK Presidency of the EU, drew attention to the degree of legal uncertainty that still existed as regards the relationship between Community law and sporting regulation. According to the international sports organisations this uncertainty curtailed their autonomy. In July 2006 the ECJ's Meca-Medina judgment reinforced their fears. Although it found in favour of the sports organisations concerned (the International Swimming Federation and the IOC), the European court stated inter alia "If the sporting activity in question falls within the scope of the Treaty, the conditions for engaging in it are then subject to all the obligations which result from the various provisions of the Treaty." This enigmatic phrase caused a strong reaction from the European sports federations and the IOC and FIFA (the International Federation of Association Football) since they regarded it as a significant retrograde step compared with earlier precedents set by the court.
and an increased threat to their autonomy. It is true that most sports activities have an economic, or business, dimension and accordingly fall within the scope of the EU treaties. In addition, the concept of the conditions for engaging in a sport is very broad and covers themes such as nationality and the anti-doping rules (challenged in the Meca-Medina case), which had until then been regarded as an autonomous preserve of the sports organisations. The title of the ECJ's press release even read "The International Olympic Committee's rules on doping control fall within the scope of Community competition law."

The IOC then held a seminar in Lausanne in September 2006 on the autonomy of the Olympic and Sports Movement, to which it invited a number of its own members and the Presidents of the International Federations and National Olympic Committees. This seminar reasserted that autonomy was essential to the preservation of the values inherent in sport. A second seminar was organised by the IOC in February 2008. It was devoted to discussion of the "Basic Universal Principles of Good Governance of the Olympic and Sports Movement" as the fundamental basis for securing the autonomy of its member organisations and ensuring this autonomy is respected by their partners. The autonomy of the Olympic Movement has been chosen as one of the sub-themes of the 2009 Olympic Congress (coming under the theme "The Structure of the Olympic Movement"). It was also a key item on the agenda of a meeting between the IOC and eight European Secretaries of State for Sport or their representatives, held in Lausanne in January 2008.

It can therefore be seen that, more than ten years after the Bosman judgment, the autonomy of non-governmental sports organisations (abbreviated to sports autonomy) has become a highly topical concern. It has almost replaced specificity, the previously dominant and very closely related theme. It brings to mind the more or less synonymous concepts of the independence and self-regulation of the sports movement. It is also very closely linked to the issue of governance, addressed by earlier Council of Europe studies and by the 10th Conference of European Ministers responsible for Sport held in Budapest in 2004.

This theme raises many questions: Autonomy in relation to whom? Concerning which aspects? On what legal basis? Within which limits? Using which instruments? How is autonomy defined? The purpose of this report is to clarify the concept of sports autonomy with a view to the 11th ministerial conference in Athens. The first part gives an overview of recognition of the concept of autonomy in sports rules and regulations and in international law. The second part cites a number of examples of challenges to the autonomy of sports organisations resulting from government or judicial interference. The third part analyses the responses to a survey carried out by the Enlarged Partial Agreement on Sport (EPAS) in May 2008. The fourth part investigates the restrictions on sports organisations' autonomy resulting from state law and the lex sportiva (sporting rules and regulations as a whole). It introduces the concepts of horizontal and vertical autonomy. The fifth and last part sets out the conclusions and proposes an operational definition of autonomy in sport.

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1 The seventh and last principle is entitled "Harmonious relations with governments while preserving autonomy". In particular it recommends co-operation, co-ordination and consultation with government bodies as the best way for sporting organisations to preserve their autonomy.
1. Overview of recognition of the concept of autonomy

To determine in which contexts the concept of autonomy is recognised, we shall first examine the instruments issued by sports organisations, followed by those originating from public authorities.

Recognition of the concept of sports autonomy by sports organisations

This section is based on Appendix 1 to this report. We shall first consider recognition of the concept of autonomy in the Olympic Charter, that is the entire set of rules laid down by the IOC, governing its own functioning and the Olympic Movement, which went by various names until the designation "Olympic Charter" was finally adopted. Then we shall look at the rules of a number of International Sports Federations (IFs). For a brief presentation of the IOC, the IFs and the Olympic Movement, reference can be made to Chappelet (2008).

Under Pierre de Coubertin's concept, still valid for the IOC, members were independent of their government and represented the Olympic Movement within their country, rather than their country on the IOC. They were accordingly politically autonomous, and this autonomy was often reinforced by their financial independence. This autonomous status enjoyed by each of its members and its own resources allowed the IOC itself to be independent of political institutions. (The sole exception, in theory, was that members of the IOC belonging to royal families could not easily adopt a position departing from their government's.)

However, it was not until 1949 that the term autonomy first appeared in the Olympic Charter, and with regard not to members of the IOC but to the National Olympic Committees (NOCs). Under Rule 25 of the Charter of 1949,\(^2\) being "independent and autonomous" became a requirement for recognition of the NOCs. This condition had not been mentioned in earlier versions of the Charter, but had been discussed at a meeting of the IOC Executive Board and the International Federations in 1946, during which a resolution was passed on joint resistance to any kind of political or commercial pressure. It can be noted that this criterion of autonomy was added to other older requirements at a time when the IOC was beginning to recognise NOCs within the Soviet bloc, not least in the USSR, a country which participated in the Olympic Games for the first time in 1952. It is therefore clear that what the IOC members had in mind was preserving independence and autonomy from governments, in particular those of Communist countries.

In 1955 this provision was strengthened. Rule 24 included a provision that "National Olympic Committees must be completely independent and autonomous and entirely removed from political, religious or commercial influence." The following year this provision became a separate rule (25), printed in bold type. In 1958 it was added that NOCs which failed to comply with this rule would forfeit their recognition and lose the right to send participants to the Olympic Games. Note can be taken of the inclusion of a reference to commercial influence, which coincided with the timid beginnings of sponsorship and television rights at the Melbourne Games in 1956.

\(^2\) The IOC regularly amends the Olympic Charter. The successive versions are therefore identified by their year of adoption by the Session (annual general meeting) of the IOC. The numbering of the rules may change as new provisions are added or deleted.

\(^3\) Italics are used in the citations to make it easier for the reader to pinpoint references to the concept of autonomy.
In 1968 the Model Constitution for a National Olympic Committee, then part of the Olympic Charter (it has since been deleted), provided that members of an NOC were obliged to inform the IOC of any political interference in its operations. In 1971 Rule 24 provided "Governments cannot designate members of National Olympic Committees. ... In the event of any regulations or actions of the National Olympic Committee conflicting with International Olympic Committee Rules, or of any political interference in its operations, the International Olympic Committee member in that country must report on the situation" to the President of the IOC.

In 1989 the implementing provisions ("bye-law") concerning Rule 24 recommended to NOCs that they "raise funds to enable them to maintain their full independence, in particular from the government of their country or from any other organization that controls sport in the country. Fund raising must, however, be undertaken in a manner that preserves the dignity and independence of the NOC from commercial organizations." It can be noted that this provision was introduced at a time when several NOCs were, like the IOC, beginning to develop significant sponsorship activities.

The following are the main provisions of the Olympic Charter currently in force (2007) as regards autonomy and the related concepts:

"Rule 28 Mission and role of the NOCs

3. The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes.

4. The NOCs have the exclusive authority to select and designate the city which may apply to organise Olympic Games in their respective countries.

5. In order to fulfil their mission, the NOCs may cooperate with governmental bodies, with which they shall achieve harmonious relations. However, they shall not associate themselves with any activity which would be in contradiction with the Olympic Charter. The NOCs may also cooperate with non-governmental bodies.

6. The NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal [qualifier added in 2004], religious or economic pressures which may prevent them from complying with the Olympic Charter.

9. Apart from the measures and sanctions provided in the case of infringement of the Olympic Charter, the IOC Executive Board may take any appropriate decisions for the protection of the Olympic Movement in the country of an NOC, including suspension of or withdrawal of recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC or the making or expression of its will to be hampered. The IOC

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The IOC was apparently concerned about pressure from state legal systems and, in particular, from Community law.
Executive Board shall offer such NOC an opportunity to be heard before any such decision is taken.

**Rule 29  Composition of the NOCs**

...  
4. Governments or other public authorities shall not designate any members of an NOC. However, an NOC may decide, at its discretion, to elect as members representatives of such authorities.

...  
**Bye-law to Rules 28 and 29**

...  
3. Recommendations
It is recommended that NOCs:

...  
3.4 seek sources of financing in a manner compatible with the fundamental principles of Olympism."

It can therefore be seen that, as from the mid-20th century, the IOC recognised and required in the Olympic Charter that NOCs should be autonomous of governments (from both a political and a legal standpoint), and also of economic or religious authorities.

At the same time, for about fifteen years now, the IOC has expressly recognised that the International Sports Federations (IFs) are independent of it (Rule 26 of the 2007 Charter), subject to compliance with the Charter and, since 2004, with the World Anti-Doping Code:

"The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code. Subject to the foregoing, each IF maintains its independence and autonomy in the administration of its sport."

Owing to its refusal to accept the Anti-Doping Code, FIA (the international motor sport federation) is no longer recognised as an IF by the IOC. The latter also forced a number of IFs - those concerned with ice skating (in 2002) and boxing, fencing, gymnastics and taekwondo (in 2004) - to revise what it regarded as the insufficiently impartial rules followed by these sports' referees, umpires and judges.

Similarly, the IFs recognise the autonomy of their national federations provided that the latter comply with the rules laid down at global level by the IF for the sport in question. However, the degree of this autonomy may vary depending on the IF concerned.

For example, the statutes of FISA (the International Rowing Federation), the UCI (International Cycling Union), the FEI (the International Equestrian Federation), the FIG (International Gymnastics Federation), the ITF (International Tennis Federation) and the FIS (International Ski Federation) strongly assert this principle (cited by Latty (2007, p. 130) and Simon (1990, p. 84)):

"FISA shall have no part in purely national questions. It shall allow its member federations complete autonomy internally. " Article 4 of the FISA Statute.
"The UCI will carry out its activities in compliance with the principles of: ... non-interference in the internal affairs of affiliated federations." Article 3 of the UCI Constitution

"Nothing in the Statutes shall authorise the FEI to intervene in national equestrian or any other matters not under the jurisdiction of the FEI, or shall entitle National Federations to submit such matters to the FEI for settlement under these Statutes." Article 61 of the 21st edition of the Statutes of the FEI which has disappeared from the current edition

"Federations, continental unions and regional groups retain their entire autonomy and independence of action within the limits imposed by these Statutes." Article 31 of the FIG Statutes

"The objects and purposes for which [ITF] is established are to ... preserve the independence of [ITF] in all matters concerning the game of tennis without the intervention of any outside authority in its relations with its Members." Article IV j) of the ITF Memorandum of Association

"The FIS respects the autonomy of its affiliated National Ski Associations." Article 4.2. of the FIS Statutes

The International Mountaineering and Climbing Federation (UIAA) even recognises the principle of subsidiarity in its internal affairs: "The UIAA shall not undertake any activity which is more effectively done by its member associations." (Article 4 of the Articles of Association)

Other IFs are far less explicit. Examples are FIFA (the International Federation of Association Football), UEFA (the Union of European Football Associations) and the IAAF (International Association of Athletics Federations). For instance, the FIFA Statutes do not use the word "autonomy". Mention is merely made of the independence of members, that is the 208 national federations:

"Article 17 Bodies
1 A Member's bodies shall be either elected or appointed in that Association. A Member's statutes shall provide for a procedure that guarantees the complete independence of the election or appointment." 2008 version

Similarly, the word autonomy cannot be found in the UEFA Statutes, which instead impose a requirement regarding elections within the member associations:

"Member Associations must provide for the free election of their executive body. This obligation shall be included in their statutes. Where there is no such provision or where the Executive Committee considers an executive body of a Member Association not to have been established by free elections, the Executive Committee shall have the power to refuse to recognise an executive body, including an executive body set up on an interim basis." Article 7 bis, sub-paragraph 2, June 2007
Nor does the IAAF use the word autonomy, since Article 1 of its statutes merely states that it is made up of regularly elected member federations, which commit themselves to comply with its statutes and abide by the rules and regulations.

The pressure exerted by the IFs on the NFs' autonomy therefore varies according to the sport and the theme concerned. Similarly, the autonomy of the continental associations in relation to the IFs for their sport varies greatly. The IOC exercises greater scrutiny over the autonomy of the NOCs than over that of the IFs. Generally speaking, this primarily concerns autonomy in relation to government.

Recognition of the concept of sports autonomy by public authorities

This section is based on Appendix 2. It first discusses recognition of the concept of autonomy in instruments issued by intergovernmental organisations on sport-related themes (UNESCO, the Council of Europe, the European Union), followed by European countries' national legislation.

It is firstly interesting to note that the concept of sports autonomy is not mentioned in three intergovernmental instruments of the 1970s and 1980s: the European Sport for All Charter, adopted by the Council of Europe in 1975 in the form of a recommendation to member states; the International Charter of Physical Education and Sport, adopted in 1978 by the General Conference of UNESCO; and the Anti-Doping Convention adopted in 1990 by the member states of the Council of Europe following a number of recommendations issued as far back as the 1970s.

It was from the end of the 1980s that sports organisations' autonomy began to be referred to by European intergovernmental organisations, particularly at meetings of the Council of Europe's Committee for the Development of Sport (CDDS). In 1992 the Council introduced the concept in Article 3 of the European Sports Charter:

"Voluntary sports organisations have the right to establish *autonomous* decision-making processes within the law. Both governments and sports organisations shall recognise the need for a mutual respect of their decisions." (Article 3, paragraph 3).

The issue was discussed at the 9th European Sports Forum held in Lille in 2000 under the aegis of the European Commission, which brought together all the European sports organisations and the public authorities concerned. Paragraph 10 of the conclusions of the working party on the specific nature of sport read:

"The participants urge that thought be focused on what constitutes the uniqueness of sport (its social and educational role, etc.) and on the consequences of this uniqueness (acknowledging the *autonomy* of sport for all rules of a non-economic nature: the rules of the game, protection of young people, provisions to guarantee fair competition, to ensure solidarity or to promote sport among the population at large)."

At this gathering sports autonomy was perceived as a consequence of the specificity of sport, which had become a general concern following the Bosman judgment delivered five years earlier.
At the end of 2000, following the European Commission's report on sport submitted to the European Council in Helsinki in December 1999, the Heads of State and Government of the European Union, gathered in Nice under the French presidency, adopted a declaration on the theme of sport. For lack of a ratified treaty giving the European Commission competence in this field, this "Nice Declaration" remains the highest-ranking instrument on sport for the 27 EU member states. Point 7 of this declaration reads:

"The European Council stresses its support for the independence of sports organisations and their right to organise themselves through appropriate associative structures. It recognises that, with due regard for national and Community legislation and on the basis of a democratic and transparent method of operation, it is the task of sporting organisations to organise and promote their particular sports, particularly as regards the specifically sporting rules applicable and the make-up of national teams, in the way which they think best reflects their objectives."

The issue of autonomy was also addressed at length in Chapter 4 ("The organisation of sport") of the European Commission's White Paper on Sport, published in July 2007, which states inter alia:

"The Commission acknowledges the autonomy of sporting organisations and representative structures (such as leagues). Furthermore, it recognises that governance is mainly the responsibility of sports governing bodies and, to some extent, the Member States and social partners. Nonetheless, dialogue with sports organisations has brought a number of areas to the Commission's attention, which are addressed below. The Commission considers that most challenges can be addressed through self-regulation respectful of good governance principles, provided that EU law is respected, and is ready to play a facilitating role or take action if necessary.

4.1 The specificity of sport

Sport activity is subject to the application of EU law. This is described in detail in the Staff Working Document and its annexes. Competition law and Internal Market provisions apply to sport in so far as it constitutes an economic activity. Sport is also subject to other important aspects of EU law, such as the prohibition of discrimination on grounds of nationality, provisions regarding citizenship of the Union and equality between men and women in employment.

At the same time, sport has certain specific characteristics, which are often referred to as the "specificity of sport". The specificity of European sport can be approached through two prisms:

- The specificity of sporting activities and of sporting rules, such as separate competitions for men and women, limitations on the number of participants in competitions, or the need to ensure uncertainty concerning outcomes and to preserve a competitive balance between clubs taking part in the same competitions;
- The specificity of the sport structure, including notably the autonomy and diversity of sport organisations, a pyramid structure of competitions from grassroots to elite level and organised solidarity mechanisms between the different levels and
operators, the organisation of sport on a national basis, and the principle of a single federation per sport;

...

As is explained in detail in the Staff Working Document and its annexes, there are organisational sporting rules that – based on their legitimate objectives – are likely not to breach the anti-trust provisions of the EC Treaty, provided that their anti-competitive effects, if any, are inherent and proportionate to the objectives pursued. Examples of such rules would be "rules of the game" (e.g. rules fixing the length of matches or the number of players on the field), rules concerning selection criteria for sport competitions, "at home and away from home" rules, rules preventing multiple ownership in club competitions, rules concerning the composition of national teams, anti-doping rules and rules concerning transfer periods.

However, in respect of the regulatory aspects of sport, the assessment whether a certain sporting rule is compatible with EU competition law can only be made on a case-by-case basis, as recently confirmed by the European Court of Justice in its Meca-Medina ruling. The Court provided a clarification regarding the impact of EU law on sporting rules. It dismissed the notion of "purely sporting rules" as irrelevant for the question of the applicability of EU competition rules to the sport sector.

The Court recognised that the specificity of sport has to be taken into consideration in the sense that restrictive effects on competition that are inherent in the organisation and proper conduct of competitive sport are not in breach of EU competition rules, provided that these effects are proportionate to the legitimate genuine sporting interest pursued. The necessity of a proportionality test implies the need to take into account the individual features of each case. It does not allow for the formulation of general guidelines on the application of competition law to the sport sector."

In its report on the White Paper, published in April 2008, the European Parliament also expresses full support for respect for the autonomy of sport and of its representative bodies.

In January 2008 the Parliamentary Assembly of the Council of Europe unanimously adopted a Resolution (No. 1602) on the need to preserve the European sport model, in which it stated "The independent nature of sport and sports bodies must be supported and protected, and their autonomy to organise the sport for which they are responsible should be recognised. The federation must continue to be the key form of sporting organisation, providing a guarantee of cohesion and participatory democracy."

It also called on the governments of member states to "acknowledge and give practical effect to the specificity of sport and protect the autonomy of sports federations (governing bodies)".

In the end, the only recent European intergovernmental instrument that fails to mention the concept of autonomy is the Enlarged Partial Agreement on Sport (EPAS), which was adopted in 2007. The 11th Council of Europe Conference of Ministers responsible for Sport, being held in Athens in December 2008, has nonetheless made autonomy one of its key themes.
National legislation addresses the concept of autonomy in very different ways. As stated in the EU White Paper on Sport 'European sport is characterised by a multitude of complex and diverse structures which enjoy different types of legal status and levels of autonomy in Member States.' The same applies to the member states of the Council of Europe.

In the context of this report it is not possible to undertake an exhaustive study of these statuses and levels of autonomy. Some authors have written entire books on the links between national legislation and sporting rules and regulations. Examples are Jean-Marc Duval (2002) and Frank Latty (2007), who devotes the whole of the second part of his work to the degree of autonomy of the *lex sportiva* within the state framework (pages 419-618), followed by the international framework (pages 619-766). In particular he discusses the situation in France, which is quite a special case since the country's sports federations, while often delegated public authority for their sport, remain under the close supervision of the Ministry of Sport via the model statutes and numerous legislative measures in force.

The other extreme is represented by countries such as Germany, whose national sports organisations enjoy a very high degree of autonomy, the federal and Länder governments having delegated policy-making in the field of sport to them. Chaker (1999, p. 22) writes that the autonomy of the sports movement is one of the three principles on which implementation of this policy is based, the other two being subsidiarity and partnership between public and sporting authorities.

In general, reference can be made to the surveys on national sports legislation and on good governance in sport commissioned by the Council of Europe (Chaker, 1999 and 2004). The author, André-Noël Chaker, divides the respondent countries into two categories (Chaker, 2004, p. 7):

- Those with non-interventionist sports legislation (Austria, Cyprus, Czech Republic, Denmark, Finland, Germany, Latvia, Lithuania, the Netherlands, Switzerland, the United Kingdom) where sports organisations can be presumed to enjoy greater autonomy, and
- Those with interventionist legislation (Armenia, Azerbaijan, Croatia, Estonia, France, Georgia, Hungary, Italy, Luxembourg, Romania, Slovenia, Spain), where there is presumably less autonomy.

As this classification may be deemed too rudimentary, reference can also be made to that proposed by the VocaSport project on employment in sports across Europe, which was funded by the European Commission and concerned the 27 EU Member States (Camy et al, 2004). It identified four main configurations that national sports systems can assume according to the dominant role played by a particular sector:

- The "missionary configuration" (in which the voluntary sports movement predominates): Austria, Denmark, Germany, Italy, Luxembourg and Sweden
- The "bureaucratic configuration" (in which the public authorities predominate): Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia and Spain.
- The "entrepreneurial configuration" (in which private stakeholders predominate): Ireland and the United Kingdom
- The "social configuration" (in which social agents predominate): the Netherlands.
It can be said that sports organisations' autonomy is greatest under the missionary configuration, followed by the social configuration and then the entrepreneurial configuration. The bureaucratic configuration leaves sports organisations far less scope for autonomy or, to be more precise, strictly regulates their autonomy through legislation.

These observations, which tend to over-generalise, should naturally be tempered with country-by-country studies. It can nonetheless be noted that there is a strong correlation between the general perception of autonomy voiced by respondents to the EPAS questionnaire (cf. part three of this report) and their country's configuration according to the Vocasport classification.

To conclude the first part of this report, it can be seen that the concept of the autonomy of sports organisations, in particular the NOCs, was well recognised by the Olympic Movement as early as the 1950s, and by European intergovernmental organisations from the 1990s. All have regularly reasserted this principle in the early years of the third millennium. However, it is striking that the instruments issued by both sports and governmental organisations say little about this concept and propose no definition for it. In the next part of the report we will seek to narrow down this concept, drawing on European examples.

2. European examples concerning sports organisations' autonomy

We shall first look at government interference in national sports organisations, followed by international ones. Then we shall consider a number of cases relating to autonomy dealt with by national courts, and subsequently cases brought before the European courts.

Government interference in national sports organisations

There are numerous examples of such interference, but it truly poses a problem where it results in the provisional or permanent suspension of the national sports organisation concerned (NOC or national federation (NF)) by the umbrella international sports organisation (the IOC or the IF).

More often than not these cases concern repeated ministerial meddling with the composition of NOCs or NFs or with their elections. It was on this ground that the IOC suspended the Iraq National Olympic Committee in 2008, and the Panama National Olympic Committee in 2007. Difficulties also arose in Kuwait in 2008, which led the IOC to supervise the elections to the country’s NOC. This is a sensitive issue since many non-European NOCs are chaired by sports ministers.

5 In the end, following an agreement with the Iraqi government, the IOC allowed four Iraqi athletes to participate in the Beijing Games under the authority of the officials of the suspended NOC and invited five government observers to the games in exchange for an undertaking concerning the transparent and fair election of an independent NOC before December 2008. An association defending the rights of Iraqi athletes had considered lodging a complaint against the IOC with the International Court of Justice in The Hague, which would have been the first-ever attempt to submit an IOC decision on recognition to an international court established to settle disputes between state governments.
Similarly, in 2008, FIFA (the International Federation of Association Football) suspended the national football federations of Albania and Madagascar. It also threatened to suspend the Spanish federation due to government attempts to make it hold early elections. In the end, the government backed down for fear that the Spanish team would be barred from the Euro 2008 championship. In 2006 FIFA briefly suspended Greece’s football federation on account of draft legislation reinforcing state control of the sport (in particular to prevent match fixing). It thereby pressured the Greek parliament into making football a genuine exception to the country’s sports law.

Interference restricting the very activities of the NOCs or NFs is less frequent. Mention can be made of the historical example of the United States government’s intervention in 1980 to prevent the US NOC and those of other countries from participating in the Moscow Olympic Games. Most of the European NOCs refused to bow to this pressure to boycott the games, sometimes strongly relayed by their governments (as in the United Kingdom), thus showing their political autonomy. The German NOC, like those of many non-European countries, nonetheless decided not to send a team to Moscow. Similarly, the NOCs of many countries of eastern Europe (apart from Romania) could not withstand the Soviet government’s call to boycott the Los Angeles Olympics in 1984. In 1999 the IOC also suspended the NOC of Afghanistan, whose government, dominated by the Taliban, barred women from participating in sport. In 2003 it suspended Iraq’s NOC, headed by one of the then President’s sons, for failing to comply with the Olympic Charter and, above all, for the torture of athletes.

(Inter)governmental interference in international sports organisations

As a result of the transnational nature of international sports organisations, which usually allows them to evade government control, cases of such interference are rare. Mention can nonetheless be made of the United Nations resolutions on apartheid (the most recent in 1985), which caused international sports organisations gradually to suspend their relations with South Africa (until 1992) and Rhodesia (until 1980), although the NOCs or NFs of these countries were sometimes recognised and often racially integrated. In 1992 the UN also decreed a trade embargo on Yugoslavia, then in the throes of civil war. Spain, which was hosting the Barcelona Olympics the same year, applied this embargo, obliging the IOC to allow athletes from former Yugoslavia to participate as “independent athletes” although at the time it still recognised the then Yugoslav NOC (now Serbia’s).

The case of the Taiwanese athletes’ withdrawal from the Montreal Games in 1976 also pointed to a decline in the IOC’s autonomy, from which it drew certain lessons. A few days before the opening of these Games, the Canadian government went back on its earlier promises and refused these athletes leave to enter the country because it recognised the People’s Republic of China as the sole government of China. The IOC protested but to no avail, and the Taiwanese turned down a last-minute compromise proposed by the Canadian government (Bousigue, 2008). Ever since, the Olympic identity card, issued by the Organising Committee for the Olympic Games (OCOG) to the athletes selected to participate, has served as a visa authorising entry into the host country. In addition, the IOC requires candidate cities wishing to host the games and their governments to provide written guarantees of compliance with the Charter (which inter alia provides for the participation of all recognised NOCs). This is not always easy where certain provisions of the Charter conflict with the public policy of the potential host state. This occurred, for example, with the Paris
Olympic bid in 2008, as the anti-doping controls in force in France differed from those prescribed by the IOC.

Extrajudicial interference in the affairs of international sports organisations by European public authorities is rare. Mention can be made of two examples.

In 2001 the Fédération Internationale Automobile (FIA) was forced to divide its activities between two legally separate entities (one dealing with regulatory matters and the other with commercial affairs) to prevent the European Commission's Directorate General for Competition from intervening in the sport of motor racing.

In 2004 the European Parliament asked the Commission to make representations to the IOC so it would require its sponsors and suppliers to respect decent labour standards. This led the IOC to initiate an internal debate on its social responsibility and to take measures vis-à-vis the OCOGs and their licensees.

Cases brought before national courts

At national level numerous sport-related cases have been brought before the courts of European countries with the aim of challenging certain decisions by sports organisations and, hence, their jurisdictional autonomy. Generally speaking, the national courts have been reluctant to intervene in "sporting regulation", which they often consider to be part of the autonomous preserve of the national and international federations. Nonetheless, depending on the countries concerned, a whole corpus of sports case law has emerged, resulting in a corresponding reduction in national sports organisations' autonomy. It would be tedious to go over it here and, above all, pointless since all of these cases show that sports rules can sometimes be set aside under a national legal system.

The IFs and the IOC are themselves to a large extent outside the jurisdiction of the national courts because of their transnational nature. It is moreover for this reason that many sport-related cases are now systematically brought before the EU courts, since Community law applies to the 27 EU member states and, through various agreements, many other countries in Europe and elsewhere. Mention can nonetheless be made of a few interesting cases in which international sports organisations' autonomy was (or could have been) affected by a national court's decision.

In 1979 Henry Hsu, a national of Taiwan, sought an injunction from a court of the Canton of Vaud against the IOC, of which he was a member, for failing to comply with a mandatory rule of the Swiss Civil Code (Article 75) allowing a member to challenge an association's decisions to which he had not officially assented. The IOC is indeed an association under Swiss law with its headquarters in Lausanne (Canton of Vaud). Henry Hsu was challenging a decision by the IOC requiring the Taiwanese NOC to change its name and emblem so as to allow recognition of the NOC of the People's Republic of China. In 1980 Henry Hsu withdrew his complaint, thereby avoiding a situation where an IOC decision would have been called into question by a local court. Since 1981 the IOC has enjoyed special status in Switzerland, recognised by the Swiss government and reinforced in 2000, but it still has no judicial immunity.
In 1981, when the IAAF, the international athletics federation, still had its headquarters in London, a UK court ruled that it had incorrectly interpreted its statutes by solely authorising athletes from the People's Republic of China to participate in competitions, excluding those originating from Taiwan. However, in 1987 the UK High Court of Justice held that the IAAF had correctly applied its rules to the Swiss middle distance runner Sandra Gasser, who had failed a doping test. The IAAF considered that these and other cases (Krabbe and Reynolds) of external scrutiny of the way it interpreted its rules interfered with its autonomy to such an extent that in 1989 it moved its headquarters to Monaco. This new location placed it beyond the reach of the UK courts, but not outside Monegasque jurisdiction. However, it thereby escaped from the European judicial area secured by the Brussels-Lugano system, whereby judgments are applicable throughout this area whatever their country of origin.

In 1995 Bernard Tapie, then President of the Olympique de Marseille (OM) football club, lodged an appeal with a court of the Canton of Bern against a decision by UEFA barring the OM from the Champions League following a proven case of match-fixing by President Tapie, who had manipulated the outcome of a French first division game between the OM and Valenciennes. The cantonal court of Bern (where UEFA then had its headquarters) provisionally suspended the European federation's decision, thereby challenging not only its decision-making authority in sporting matters but also the lawfulness of its statutes, which prohibited appealing to a national court. UEFA and FIFA then threatened the French football federation with withdrawal of the 1998 World Cup from France. In the end, Bernard Tapie withdrew his appeal and UEFA's decision became enforceable. In 1995 UEFA moved to the Canton of Vaud, inter alia to avoid the particularities of Bernese law.

In 2005 the Football Club of Charleroi (Belgium) and the G14 (bringing together the 14, and subsequently 18, leading European football clubs) took FIFA to court for non-payment of compensation when players employed by a club were required to play for their country's national team. At the same time the G14 lodged a similar complaint against FIFA with the Swiss Competition Commission, since both FIFA and the G14 had their headquarters in Switzerland. The two cases were dropped following the disbanding of the G14 in 2008. If they had been successful they would have undermined FIFA's autonomy to decide on the (non-) payment of compensation to players. In the meantime, FIFA and UEFA had devised a solution which was apparently acceptable to all concerned.

In 2008 the British sprinter Dwain Chambers challenged the lawfulness of the statutes of the British Olympic Association (BOA) before the High Court of Justice in London on grounds of unreasonable restraint of trade. He had been sanctioned for using performance-enhancing drugs and had served his suspension, but the BOA excluded him from the Beijing Olympics in accordance with a regulation of 1992 whereby athletes convicted of doping were banned for life from the games. In the end the High Court found against him, although the penalty imposed by the BOA went far beyond the two-year ban provided for in the World Anti-Doping Code. The IOC has now instituted a systematic ban on participating in the next Olympic Games for all athletes given a minimum two-year suspension for drug use.

At European level not more than 100 sport-related cases have been brought before the European Court of Justice (ECJ) since the 1980s and before the European Court of Human Rights since the 1990s. Latty (2007, p. 833) puts their number at 76 before the ECJ and 7 before the Court of Human Rights. However, these cases are always of considerable importance because, in view of Europe's significant role in world sport, they affect both the
European and the international sports federations. Here too, it is not possible to list all the cases, but mention should be made of a few particularly interesting examples. These cases have moreover been analysed in detail by a number of authors, such as Hustin (1998), Miège (2000) and Latty (2007).

As noted in the introduction, following the verdicts in the cases of Walrave (cycling) in 1974 and Donà (football) in 1976, it was the ECJ's judgment of 1995 concerning the Belgian footballer Bosman that really unleashed a series of complaints by sports men and women against their organisations, whose decisions and/or rules were thus challenged in the European courts, resulting in restrictions on their autonomy to determine sporting regulations. The Bosman judgment ultimately caused FIFA to change its rules on transfers of players in 2001 (Husting, 1998, Cohen, 2007). Similarly, FIFA amended its regulations on football players' agents following a complaint lodged by Laurent Piau, who contended that the rules previously in force restricted his access to this profession.

Conversely, in its judgments concerning complaints by the Belgian judoka Deliège, in 1996, relating to the selection criteria for participation in competitions, and the Finnish basketball player Lethonen, in 1999, regarding transfer deadlines, the ECJ held that other sports regulations were compatible with Community law (in particular the freedom of movement of workers and services). The ECJ also recognised the international and national federations' autonomy in such regulatory matters. The International Basketball Federation (FIBA) nonetheless decided to relax its rules on transfers following the Lethonen judgment.

In 2001, at a conference on "Governance in sport" organised by the European Olympic Committees and the FIA (Fédération Internationale de l'Automobile), the European Commissioner for Competition, Mario Monti, declared "the Commission is not, in general, concerned with genuine 'sporting rules'. Rules, without which a sport could not exist, (that is, rules inherent to a sport, or necessary for its organisation, or for the organisation of competitions) should not, in principle, be subject to the application of EC competition rules. Sporting rules applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition." (cited by Foster, 2005, p. 85). The European Commission henceforth recognised that sports rules did not infringe Community law provided they pursued a legitimate aim (in particular of a sporting and social nature) and were proportional to that aim (Latty, 2007, p. 741).

It was for this reason that the Meca-Medina and Majcen judgment of 2006 was regarded as a retrograde step by the sports organisations, whose decision-making autonomy had been previously confirmed by a number of judgments delivered by the ECJ (see the introduction). For the first time their freedom to determine anti-doping rules was challenged, whereas these rules were now governed by the World Anti-Doping Code, which had been incorporated in the national law of countries having ratified UNESCO's ad hoc convention, signed in 2005, a treaty under international law.

Some sports men and women are now prepared to go so far as to challenge sporting regulations before the European Court of Justice or the European Court of Human Rights at the Council of Europe. In 2007 the Argentinean tennis player, Cañas, dissatisfied with a decision by the Court of Arbitration for Sport (CAS) in a case he had brought against the Association of Tennis Professionals (ATP), appealed to the European Commission's Directorate General for Competition not only against the ATP but also against the CAS and WADA (the World Anti-Doping Agency). He has said he will go before the ECJ if necessary.
Yet, the case concerning him occurred in Mexico, the ATP is incorporated under the law of Delaware (United States) and the CAS is based in Switzerland. The same year, the Kazakhstani cyclist Kashechkin took the International Cycling Union (UCI) to court in his Belgian home town to challenge a suspension for doping. After losing his first court case, he stated his intention to take the matter as far as the European Court of Human Rights, since he believes that his human rights have been violated. If these complaints were successful, sports organisations' autonomy to determine anti-doping rules would be severely restricted. It could even be said that the whole system which the sports movement has gradually put in place to preserve its autonomy, as far as possible, through systematic recourse to arbitration by the CAS would be at risk, at least in matters of doping, which accounts for about one-third of the cases brought before the CAS.

**Intrusions in sports organisations' autonomy by other sports organisations**

There are few examples of interference with sports organisations' autonomy by other sports organisations on account of the pyramid structure whereby the clubs are affiliated to the national federations, which are themselves affiliated to the international federations for the sport concerned. In addition, as we saw in the first part of this report, the IOC reserves the right to withdraw its recognition of NOCs and IFs which fail to comply with the Olympic Charter, its code of ethics or the World Anti-Doping Code. In the past, the IOC utilised this clause to threaten certain IFs whose rules on amateurism were deemed incompatible (this applied to the FIS and the IIHF (International Ice Hockey Federation) during the period after the Second World War). However, today it is entirely exceptional for a higher-ranking sports organisation to encroach upon the decision-making autonomy of another subordinated or parallel organisation (naturally except where a decision is imposed from the outside).

Mention can nonetheless be made of the case of the Fédération Internationale de Volley-ball (FIVB), which, in 2002, suspended the Argentine Volleyball Federation following commercial disputes linked to the hosting of the World Championship in Buenos Aires. This suspension prevented the Argentine team from participating in the 2003 Pan-American Games, despite a last-minute solution proposed by the Pan-American Sports Organization (PASO). The FIVB then took this last body before the IOC Ethics Commission for having attempted to breach its decision. The Commission reiterated the principle that the IFs were autonomous, but reprehended the FIVB for having violated certain fundamental principles of the Olympic Charter, in particular the right to sport conferred on athletes and the right to practice a sport without any kind of discrimination. This case triggered other complaints which led the FIVB President to resign his IOC membership (he was a member of the IOC in his capacity as President of a leading IF); he was subsequently acquitted of a charge of forgery of business documents by a court of the Canton of Vaud.

Again in 2002, the IOC barred the Latvian bobsledder Prusis from competing in the Salt Lake City Games, although he had previously been authorised to participate by his international federation (the FIBT) despite an earlier suspension for doping. Prusis lodged an appeal with the CAS, which decided in his favour on the ground that, by virtue of the IFs' autonomy, the IOC was not empowered to review their decisions unless it proved that they violated the Olympic Charter. The CAS nonetheless acknowledged that the IOC had been right to exclude from the same games a female skier from Grenada, who had not been selected by her NOC, a verdict which fully endorsed the NOC's autonomy to compose its own Olympic team (Rule 28 of the Olympic Charter).
In conclusion to this second part of the report it can be said that, despite the acknowledgments of autonomy by both sports organisations and the public authorities noted in the first part, there have been many cases of interference in the rules relating to the organisation of competitions not just by governments but also by sports organisations and athletes themselves, who no longer think twice about appealing to the national or European courts. These constitute as many examples of a real decline in sports autonomy, albeit often justified by inconsistencies between sporting regulations and the social objectives pursued by sports organisations.

3. Analysis of replies to the EPAS questionnaire on autonomy in sport

In May and June 2008 the Executive Secretariat of the Enlarged Partial Agreement on Sport (EPAS) sent a questionnaire on autonomy in sport (see Appendix 5) to the sports authorities, both governmental (ministries, offices of state secretaries) and non-governmental (sports confederations or National Olympic Committees), of the 25 states parties to the Council of Europe Agreement.

The questionnaire covered five dimensions: (1) a conceptual study, (2) a political study, (3) a legal study, (4) a financial study and (5) a psycho-sociological study.

(1) The conceptual study aimed to determine what those in charge of sport at the governmental and non-governmental levels mean by "autonomy".

(2) The political study set out to establish whether the concept of "sports autonomy" was explicitly mentioned in general policy statements, speeches and other documents by ministers or state secretaries responsible for sport or by heads of national sports confederations over the previous twelve months and, if so, in what terms.

(3) The legal study focused on inclusion of the concept of "autonomy of the sports movement" or "sports autonomy" in national legislative and regulatory instruments and in other relevant documents.

(4) The financial study aimed to determine whether "financial autonomy" existed within European sports movements and, if so, what it entailed.

(5) The purpose of the psycho-sociological study was to ask sports authorities to say whether they regarded their national sports movement as "autonomous" at the date of the survey and, if so, to gauge this autonomy on a quantitative scale. Another question raised was the areas in which further progress could be made towards greater autonomy in future.

At the date of the questionnaire: Andorra, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, Monaco, the Netherlands, Norway, San Marino, Serbia, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" and the United Kingdom.
The replies received to this questionnaire are shown in Appendices 3 and 4 and summarised below first from the standpoint of public sports authorities, then from that of non-governmental sports organisations. It can also be seen from the replies that this is the first survey on this theme in which the respondents have participated (only one respondent did not provide this information).

The public sports authorities' point of view

As at 1 August 2008 replies had been received from all the public sports authorities of the 25 EPAS member states, except for Bosnia and Herzegovina, Liechtenstein, Monaco, "the former Yugoslav Republic of Macedonia" and the United Kingdom, and from the authorities of some currently non-member states (Croatia, Czech Republic, Poland, Russia, Slovakia and Ukraine), giving an 80% response rate for the EPAS member states. Overall, 26 replies were received. The results can therefore be regarded as meaningful, especially as the countries with the biggest populations responded (except for the United Kingdom). The results are analysed for each dimension studied. The detailed responses can be found in Appendix 3.

Conceptual dimension

The most frequently cited synonyms or words associated with autonomy were: independence (16 times); sports organisation or movement (14); democracy (12); freedom (10); and self-governance (8). Other key words of interest but less frequently cited include: apoliticism, decentralisation, non-interventionism, specificity of sport and subsidiarity.

Few public sports authorities proposed a definition of the concept. Mention can be made of the following: "The right of sports organisations to decide independently of politics about the issues of their existence, activity and future" (Croatia) or Poland's reference to protection of the sports movement against government interference in a climate of mutual respect. Serbia pointed out that sports organisations had to be empowered to deal effectively (autonomously) with their rules.

Political dimension

From a political standpoint it can be seen that, over the previous twelve months, government statements or official documents made reference to sports autonomy in 62% of the respondent countries, although no link can be established between the government's political leanings (right, centre, left) and the existence of such statements. This is therefore unquestionably a topical concern in Europe, no matter who is in power. Slovenia also stated that this topic was a key focus of discussions with the sports movement during the Slovenian EU Presidency. It goes without saying that, as underlined by the respondents, the political situation in the broad sense is far more favourable to sports autonomy today than it was before the Berlin Wall came down.

Legal dimension

From the legal angle it can be seen that, although half of the respondent countries' constitutions make reference to sport, sports autonomy is only rarely mentioned (in two out of twelve cases: Denmark and Estonia). However, if a country has a law relating to sport, it mentions the autonomy of the sports movement in some 50% of cases and very often includes
a legal definition of such autonomy. Figure 1 sums up the responses received (some countries failed to answer all the questions).

Despite their diverging replies, almost all of the respondents (except for two - Azerbaijan and Cyprus) consider their country's sports movement to be autonomous from a legal standpoint. The respondent from Cyprus indicated that the country's sports law expressly recognised the Olympic Charter (which requires that sports organisations should be autonomous).

![Figure 1](image_url)

**Figure 1 – Replies to the questions on the legal dimension of sports autonomy**

**Financial dimension**

From a financial standpoint all the respondent states financially support their sports movements, which, in the majority of cases, could not exist or would be far smaller without this support (exceptions being Finland and Iceland). Nonetheless, according to the respondent public sports authorities this assistance does not undermine the financial autonomy of the sports movement in three quarters of the countries concerned. However, the uses made of these funds are subject to more or less complex forms of government scrutiny in all but five countries.

France states that the situation varies considerably from one sport to another, citing the examples of football and tennis, which are more financially independent, and the modern pentathlon, which is less so. Latvia indicates that financial autonomy is subject to certain criteria and contractual requirements where public funds are involved, but that there must be no supervision of the management of funds originating from sponsors or patrons. Figure 2 summarises the responses received.

Norway describes an approach which could serve to define the financial autonomy of sport in Europe: The purpose of public funding of sport is to reinforce the framework for the performance of sport and physical activity in Norway. The sports movement is Norway's largest voluntary sector. The public authorities consider it important to allow the sports movement to develop on its own terms. Public funding of sport is founded on sport's inherent social value and must foster, rather than be substituted for, voluntary work. From this
standpoint, public funding of organised sport takes the form of basic grants, which come with a few general guidelines on how the funds are to be used. Within these guidelines the sports movement is free to determine its own objectives and priority activities. This freedom facilitates the financial autonomy of the sports movement in Norway. The Netherlands cite an ideal objective: the country's sports organisations are self-financing, while government funding is intended to be used to relieve tensions.

![Figure 2 – Replies to the questions on the financial dimension of sports autonomy](image)

**Psycho-sociological dimension**

From this standpoint, three quarters of the respondents consider their country's sports movement to be autonomous, while the remainder regard it as only partly autonomous. The only public sports authorities which took the view that their sports movements were not at all autonomous were those of Hungary, Ukraine and Azerbaijan. Russia said it was too autonomous!

On a scale from 0 (no autonomy) to 10 (complete autonomy), the respondent countries gave a mark of 9 for political and legal autonomy, whereas financial autonomy scored 6.5 and overall autonomy 8.2.

Greece recommended adopting a European policy for sports autonomy. Croatia proposed more tax relief for sponsorship of sport. Slovenia stated that, as a social activity to which "general social rules" and regulations apply, sport could not be completely autonomous, but must function according to the operating standards and principles of society as a whole. France pointed out that, to give sport more autonomy, it would be necessary to look closely at what the stakeholders understand by the concept and initiate a political debate on the
possibilities for improving the situation: "It would then doubtless become feasible to negotiate on a case-by-case basis the aspects and areas where autonomy could/should progress."

The sports organisations' point of view

As at 1 August 2008 few replies had been received from non-governmental sports organisations. Only six international sports federations (athletics, basketball, boxing, football, gymnastics and ice hockey) – out of a potential total of 35 Olympic IFs - and one European federation (football) responded. One IF (volleyball) expressly refused to reply, since it disagreed with the aim of the questionnaire. Only four National Olympic Committees (Croatia, Denmark, Spain and Luxembourg) replied, a response rate probably attributable to the heavy workload in the run-up to the Beijing 2008 Games. Six sports confederations separate from their country's NOC responded (Denmark, Finland, Czech Republic, Sweden, the United Kingdom and Slovakia) and a few scattered national federations, which had apparently obtained the questionnaire by indirect means since it had been sent only to the international federations (via the IOC and the associations of International Federations for the Winter and Summer Olympics (the ASOIF and the AIOWF)), the European federations, the NOCs and the national sports confederations (via the ENGSO).

In view of the low response rate (23 replies in all) and the disparity of the respondent sports organisations, no statistical processing giving a reliable overview of the situation was possible. The most interesting qualitative observations are set out below under the five headings of the questionnaire. The detailed responses can be found in Appendix 4.

**Conceptual dimension**

At the conceptual level the synonym or keyword most often cited by the non-governmental sports organisations is independence from government and national or supranational political authorities. The Confederation of Slovak Sport Federations pointed out that autonomy was a hypothetical ideal which was very difficult to achieve and that the present situation was far from corresponding to this ideal. The Luxembourg NOC believes that sports autonomy is endangered. The IAAF, UEFA and FIFA want more consultation with the public authorities.

The UK Central Council for Physical Recreation (CCPR) proposed a definition: The autonomy of sport is its right to set its own rules and regulations and to be independent from political interference in the governance of sport for the benefit of sport and its participants (but within the confines of the law). The Swedish confederation summed it up in a nutshell: "Setting its own objectives".

**Political dimension**

Half of the respondents stated that the issue of sports autonomy had been addressed in political statements made by their organisations' heads over the previous twelve months. Several mentioned meetings on this subject hosted by the IOC in Lausanne or by NOCs. A number expressed disappointment that the European Union's White Paper on Sport had not properly addressed this issue. These brief elements confirm that autonomy is a topical concern.
Legal dimension

Virtually all the respondents consider that the sports movement in their country or in Europe is autonomous from a legal standpoint (strange to say, the sole exception is the UK CCPR). In general, they consider that including a precise definition of autonomy in national or European legislation on sport would be useful. This would usefully supplement the instruments on autonomy that already exist in half of the respondent countries. It must however not be overlooked that several European countries have no law on sport (Germany, the Netherlands, the United Kingdom and Sweden).

Financial dimension

All of the respondent sports organisations recognised that their government gave financial support to sport and, in most cases, issued guidelines on the use to be made of the funds. Among the respondent confederations, only those of Sweden and the United Kingdom consider that the sports movement could survive without public funding. This is also indirectly apparent from the fact that, to a large extent, the chief financial sources cited, apart from households, are municipal or national grants or lottery money. Several organisations nonetheless underlined the need to raise funds in a more autonomous manner, in particular through commercial or television rights.

The British Swimming federation complained that it had to surrender elements of its autonomy in order to obtain government funds.

Strangely, no organisation (not least the IFs and the NOCs) mentioned the financial autonomy engendered by the significant funds received from the IOC for participation in the Olympic Games.

Psycho-sociological dimension

Only two respondent sports organisations considered that their country’s sports movement was not autonomous (the Spanish NOC and the Estonian Boxing Federation). The others were divided between complete autonomy and partial autonomy, particularly in financial matters. Some organisations pointed out that financial autonomy was not sought after, especially with regard to the construction and operation of sports facilities, but solely autonomy in terms of governance.

UEFA stated that strong financial autonomy, as was generally the case in football, could result in excess commercialisation, causing individuals or legal entities to invest in sports organisations (in particular football clubs). This might undermine their autonomy while curtailing that of the umbrella sports organisations since the interests pursued were not the same (profit-making versus the development of sport and social aims). It could even lead to the creation of private leagues, which would exert strong pressures on the traditional sports organisations or even attempt to change the rules of the game (particularly with regard to the use of technology). UEFA, FIFA and the IIHF considered that the problem was not so much financial autonomy as legal autonomy, which these organisations rated at less than 5 on a scale of 0 to 10.

The CCPR considered it important that sports autonomy must not be further undermined by the European capacity to harmonise sports laws and regulations or by non-essential transfers
of power to European governmental organisations, in other words that the principle of subsidiarity should be respected also in sport.

Overall, it can be seen from the responses to this questionnaire that the vast majority of sports organisations and of public sports authorities in the countries of Europe do not perceive autonomy as a real problem, apart, to some extent, from the financial angle. Only the respondent international federations complained of a lack of legal autonomy, principally in relation to Community law.

4. Restrictions on sports organisations' autonomy

The European examples concerning sports organisations' autonomy (part 2) and the replies to the EPAS questionnaire (part 3) bring to light a number of restrictions on sports autonomy resulting from legal provisions (national or international) and the entire set of sporting rules and regulations (lex sportiva). These two aspects are discussed in turn below, along with the solutions that can be envisaged so as to optimise sports organisations' autonomy. These restrictions are represented by the arrows in figure 3, which symbolise the organisations' dependence on others, as explained below.

Figure 3 – Principal restrictions on sports organisations' autonomy

Restrictions resulting from state law

State law is mainly national law, but in federal states it can have a regional dimension (an example being cantonal law in Switzerland). In a state governed by the rule of law, as are all European states, it is naturally binding on that state's sports organisations, such as the NOC, the national sports confederation (NSC), national federations (NFs), regional federations,
clubs, and so on. Local government authorities, such as municipalities or regional
governments, can also issue regulations which apply to the organisations located within their
boundaries. An example is municipal regulation of local sports clubs.

The legal situation varies considerably from one European country to the next since some
countries have no sports law, while others’ sports laws involve greater or lesser restrictions on
autonomy. Where no such law exists, it is the law on freedom of association or another law
that applies.

Some countries (such as France) impose model statutes on sports organisations that wish to be
declared in the public interest.

As pointed out by Latty (2007, p. 449), irrespective of the individual case under
consideration, the courts’ attitudes to self-regulation by sports organisations vary in line with
each country’s legal tradition. Those with Romano-Germanic legal systems are traditionally
more interventionist than those with Common Law systems. To this must be added the fact
that things are organised very differently from one country to another, with greater or lesser
degrees of centralisation or decentralisation at the level of the public authorities and greater or
lesser consolidation of sports organisations (cf. Chaker, 1999, p. 52, for an analysis of these
characteristics).

As we saw in the third part of this report, the financial autonomy of sports organisations in
European countries is sometimes restricted by guidelines on the use of public funds. These
organisations could better safeguard their autonomy by concluding target agreements or
service contracts with the public authorities of the tier of government with which they deal.
These public management instruments were devised as from the 1990s for other fields of
public action in connection with the reforms aimed at modernising public sector management.
However, they lend themselves to use in sport and are already being implemented, for
example, in the case of national federations or clubs in Germany, France and Switzerland.
These agreements or contracts determine the sports organisation’s target objectives over a
number of years (usually four) and the services it is to supply in exchange for cash grants and
subsidies in kind provided by a public authority.

International or European sports organisations (such as the IFs or the European federations)
usually derive some of their income from broadcasting or commercial rights linked to the
events they run, and the Olympic IFs receive significant sums from the IOC linked to the
organisation of the Olympic Games. These bodies therefore have a good deal of financial
autonomy. Legally speaking, these transnational bodies are scarcely affected by the various
states’ laws taken individually, the exception being the law of their headquarters state, as we
saw in the second part of the report (with the cases of Hsu, concerning the IOC, and
Olympique de Marseille, concerning UEFA).

Since about forty of these organisations are located in the Swiss Confederation, Swiss law is
of particular importance from this standpoint, but Switzerland’s law governing associations is
generally deemed to entail few restrictions (it consists of only twenty articles of the Swiss
Civil Code - Articles 60 to 79). Furthermore, as pointed out by Latty (2007, p. 449), the Swiss
courts have, by gradually drawing a distinction between legal rules and the rules of the game,
granted a form of jurisdictional immunity to the rules they regard as purely sport-related. This
is far from true of other European courts.
Most European states, including Switzerland, are members of the UN, UNESCO and the Council of Europe and have ratified the international conventions issued by these intergovernmental organisations, which they have thus integrated in their national law. The conventions that have a significant role in sporting matters (and can sometimes restrict sports organisations' autonomy) are:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950)
- the European Convention on Spectator Violence and Misbehaviour at Sports Events (Council of Europe, 1985)
- the Anti-Doping Convention (Council of Europe, 1989)
- the International Convention against Doping in Sport (UNESCO, 2005).

The European Convention on Human Rights dates from the post-war period but, as from the 1980s, was utilised in connection with doping in sport (cf. the Kashechkin case referred to above). It has been suggested that the IOC should incorporate the concept of human rights into the Olympic Charter (Marguénaud, 2008).

In addition to these treaties which have force of law in the (numerous) European countries that have ratified them, the intergovernmental organisations have adopted many resolutions, recommendations and declarations concerning certain aspects of sport, which bind their member states, and hence the sports organisations based there, to differing degrees. A past example is certain UN resolutions instituting embargos against a number of countries.

The World Anti-Doping Agency (WADA) has special status. It is a foundation under Swiss private law, but UNESCO's International Convention against Doping in Sport makes it responsible for the fight against doping and for formulating a World Anti-Doping Code. Its structure and its equal funding by the Olympic movement and public authorities moreover reflect its simultaneously private and public service nature. Its decisions are binding on all organisations having signed the World Code, not least the IOC and the IFs. As provided in the Code, an appeal against a WADA decision lies to the Court of Arbitration for Sport (CAS), a private court set up by the Olympic movement so as to avoid, as far as possible, national courts' intervening in sport (see below). It can be noted in passing that the World Anti-Doping Code was drafted so as to prevent incompatibilities with states' public policy or breaches of human rights (Kaufmann-Kohler et al, 2003).

Lastly, Community law, that is the law deriving from the treaties and conventions ratified by European Union member states, plays a very specific role in sporting matters, since it is directly binding on all the EU member states (of which there are currently 27) and partly binding on all states that have signed bilateral co-operation or association agreements with the EU (almost all Council of Europe member states, including Switzerland, and many non-European countries). As already mentioned, pending the ratification of the Treaty of Lisbon (2007) and in particular Article 149 thereof, sport is not yet an EU competence. However, sports organisations' autonomy has been encroached upon, above all since the 1990s, by decisions taken by the European Commission and the EU courts in matters where sport could be regarded as an economic activity and therefore fully subject, inter alia, to the rules on freedom of movement and of competition which are part of Community law.

In this connection, European and international sports organisations have underlined sport's specificity in the hope of seeing it excluded from the scope of Community law (for instance
via an exemption). This possibility, which looked like a dead end following the publication of the European Commission's White Paper on Sport in 2007, now seems to have been opened up again following the initiative taken by the governments of France and the Netherlands in 2008. In the Independent European Sport Review (2006) the international sports organisations and UEFA proposed to the European Union that it adopt a number of recommendations, instructions, guidelines, voluntary agreements and so on, which are soft law instruments that could better preserve the sports organisations' autonomy and afford them increased legal certainty with regard to cases brought against them before the EU Commission and courts.

With similar aims in mind, six European team sport federations (basketball, football, handball, ice hockey, rugby and volleyball) listed the fields in which sports autonomy could be improved in a document of July 2008 entitled "Safeguarding the heritage and future of team sport in Europe", which was submitted to the French EU presidency (see Appendix 1 for an excerpt from this paper). These federations principally propose that the European Council should request the Commission to implement "the most effective means to recognise the specificity of sport within a clear legal framework" in accordance with the principles set out in the paper concerning training of players, transfers, agents and good governance of clubs and federations. They call for the establishment of "an appropriate European licensing framework and financial management body, to be administered by the relevant European sports federations."

It can therefore be seen that the complete autonomy aspired to by transnational sports organisations can in fact only be an autonomy exercised under the scrutiny of their headquarters state and the states where they operate. Nonetheless the national courts rarely interfere in the internal functioning of these bodies. When asked to decide cases by complainants, they simply verify that the organisations are applying and complying with the sports rules they have set for themselves. Conversely, since the 1990s, transnational sports organisations' autonomy has been restricted at European level via the conventions and treaties ratified by EU or Council of Europe member states.

**Restrictions resulting from the lex sportiva**

On account of the pyramid system which gradually became the norm in sport during the 20th century, the autonomy of lower-ranking sports organisations is restricted by the higher-ranking ones. For instance, a club is bound by the rules of its national federation (NF), which is itself bound by those of the international federation (IF) for its sport and of the National Olympic Committee (NOC) for its country. These last two bodies may be recognised by the International Olympic Committee (IOC) if they comply with the Olympic Charter and related instruments such as the Olympic Code of Ethics and the World Anti-Doping Code. This recognition can be withdrawn. However, these restrictions on their autonomy are freely accepted by the organisations of the Olympic Movement, which is in point of fact defined as all the legal and natural persons who agree to be guided by the Olympic Charter (see Rule 1 of the Charter).

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7 Several IFs have adopted their own codes of ethics so as to avoid being over-committed to the IOC's. They include the IFs for baseball (IBAF), cycling (UCI), football (FIFA), gymnastics (FIG), wrestling (FILA), skating (ISU) and archery (FITA).
To avoid the need to refer disputes between sports organisations and/or sports players to the national courts (deemed to be slow and costly) the Olympic Movement established the Court of Arbitration for Sport (CAS) in 1983. Most sports organisations, in particular the IOC and WADA, now recognise the CAS as the final court of appeal for their disciplinary proceedings. Through the decisions it has taken over the years, the CAS has helped to bring sporting rules into line with the basic principles of law (equal treatment, the right to a hearing, proportionality of penalties, and so on). In other words, sports organisations have voluntarily adapted their rules to avoid systematic findings against them by the CAS or by national courts. The CAS is located in Lausanne and is governed by the principles laid down in Chapter 12 of the Swiss Federal Law on Private International Law. Its decisions cannot be appealed against, except for alleged violations of its own procedural rules, in which case an appeal lies to the Swiss Federal Tribunal (the highest Swiss court), a remedy that has been exercised only very infrequently. The CAS is accordingly de facto the supreme court administering the lex sportiva, i.e. the whole body of rules and regulations issued by sports organisations. It has unquestionably strengthened the autonomy of international sports organisations, despite the gradual adaptation of their rules to comply with the general principles of law.

The lex sportiva is a huge body of regulations of all kinds issued by tens of thousands of non-governmental organisations (NGOs), covering over one hundred sports and applicable at the local, national or transnational levels. The Olympic Charter, drawn up by the IOC, is merely the tip of an enormous iceberg, which is constantly changing and becoming ever-more complex. Three kinds of “sporting rules” can be identified in this regulatory jungle:

- the rules of the game
- competition rules
- club rules.

The rules of the game are the technical rules according to which a given sport is played. Examples are: in football a penalty shot is taken at a distance of 9 metres from the opposing team's goal; in the 110 metre hurdles race the hurdles must be 1.06 metres high and set at a distance of 9.15 metres from each other; an amateur boxing match lasts three rounds. These rules constituted the very basis for the establishment of the European and international federations, one of whose first objectives was to harmonise the rules followed in the different countries. They have been adapted to developments in the various sports and to the needs of television (examples being the introduction of the tie-break in tennis or the golden goal rule in football). These rules have only very rarely been challenged in the national courts, and in such cases the courts have generally been unwilling to concern themselves with them or with their (sometimes very complex) interpretation, which is a matter for judges, referees and umpires on the field of play or for appeals boards once a competition is over. It is inconceivable that a national court should make an offside decision! Even the CAS, before which a number of cases were brought (especially in respect of the Atlanta 1996 and Athens 2004 Games), abstained from overturning the decisions given by Olympic judges, referees and umpires. Nor do governments intervene, unless the rules are in breach of public policy, which would be the case, for example, if a boxing federation were to adopt a rule stipulating that a match should be fought until the death of one of the participants.

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8 The New York courts, however, intervene in the America’s Cup rules, since they were originally set out in a Deed of Gift filed with the Supreme Court of the State of New York.
What can be termed **club rules**, or statutes, are those adopted by each non-governmental sports organisation operating on a not-for-profit basis to regulate its own functioning, such as the rules determining who can become a member; how its President or Chair is appointed; when it holds general meetings, etc. These rules must be in accordance with the law of the country where the organisation has its headquarters, and often with that country's legislation on non-profit associations. In Switzerland, for example, an association must have a management body, hold regular general meetings, be registered in the Commercial Register if it carries on commercial activities and have its accounts audited by an outside body if it has more than fifty employees. However, under the general legal framework applicable to all legal persons, sports organisations have considerable autonomy. Here too, this autonomy is limited solely by public policy principles, such as the principle that members must not be forbidden from appealing to the national courts, a prohibition which was included in too many sports organisations' statutes for many years.

What can be termed **competition rules** are all the rules governing competitions organised for a given sport over a given period. For example: the World Alpine Skiing Championship takes place every two years in a location chosen by the International Ski Federation; in Olympic football only three players over 23 years of age may be included in each squad; gymnasts participating in the European championship must be over the age of 15. Competition rules can be divided into those directly concerning the athletes (age, nationality, gender, conduct, substance use, and so on) and those concerning the organisation of the competition proper (date, venue, equipment, logistics, sponsoring, broadcasting, betting, and so on). Historically speaking, these competition rules have been laid down over time by the sports organisations with a view to setting up events allowing participants at all levels to compete and, at the same time, creating a source of revenue for the organisers. They constitute a heritage for these organisations and for sport in general, although they can be strongly influenced by commercial considerations (for example, as regards the frequency of major competitions or broadcasting times).

It is these competition rules that have been most frequently challenged before the national courts and the CAS (particularly in doping matters) in cases where much is at stake in the competition and, above all, where the rules affect the participating athletes, who can be regarded as sports workers. It can therefore be said that sports organisations' autonomy to decide these rules is currently contingent on the nature of the events they govern: the more professional and commercial the event, the greater the risk that the rules will be challenged.

The European team sport federations (which often have a very large professional branch) listed sixteen categories of (competition) rules concerning which they would like the European Union to work with them to adopt guidelines geared to preserving their autonomy (ETSF, 2008). These are the rules on: the structure of championships and calendars; the national character of championships; the movement of players between teams; attendance at sports events; the release of players to participate in national teams; doping and other disciplinary matters; club licensing systems; ownership of clubs in the same competition; the activities of agents; local training of players; selling of commercial rights; clubs' financial stability; sporting and financial solidarity; arbitration as a dispute resolution mechanism; intellectual property and sport's integrity in relation to betting. These European federations propose focusing first on certain priority areas.

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9 Or other laws governing legal entities: for instance, the international federations for sailing (ISA F), water-skiing (IWSF) and squash (WSF) are companies limited by guarantee under UK law; the International Tennis Federation (ITF) is a company limited by shares registered in the Bahamas (Latty, 2007, p. 432)
The diagram in figure 4 shows all of these rules, which to some extent overlap for the same sport and which, it should not be forgotten, exist for each organised sport and sporting discipline, since rules are an inseparable part of the concept of sport. The Olympic Charter contains both the statutes of the IOC as a club, the rules on organisation of the Olympic Games (a prestigious competition if ever there was one) and the rules on the functioning of the Olympic Movement.

![Figure 4 – The three categories of sports rules](image)

It would be highly desirable to have a complete, up-to-date collection of these sports rules at European level. At its headquarters in Lausanne the CAS keeps a library of the regulations issued by those sports organisations that recognise it. An electronic database would be a more effective solution and would facilitate access. A project to establish a database could be set up with European funding.

In sum, it can be seen that sports organisations’ autonomy is restricted by the law of the countries in which they operate, above all as regards competition rules. The traditional dichotomy between the rules of the game and the legal rules, which long prevailed in the case law (especially following the Kummer decision of 1973), is no longer appropriate. It is necessary to specify which categories of rules of the game are at issue, rather than talking about their "sports character", which is strictly speaking impossible to decide.

**Horizontal autonomy versus vertical autonomy**

Following this study of the restrictions on overall sports autonomy, whether recognised by law or noted in practice, it is also helpful to draw a distinction between two forms of autonomy of sports organisations: horizontal and vertical. Figure 5 shows the principal sporting bodies (public authorities and sports authorities) at the different levels of the system of governance. It facilitates an understanding of these two types of autonomy.
Horizontal autonomy is that enjoyed at a given level (local, regional, national, European or international) by a sports organisation in relation to its correspondent public authority of the same level, for example a club in relation to "its" municipal sports department, a national sports federation in relation to "its" Ministry for Sport, a European federation in relation to the European Commission or the Executive Secretariat of EPAS, both bodies coming under a council of sports ministers of, respectively, European Union or Council of Europe member states. There is even a Conference of Ministers and Senior Officials responsible for Sport and Physical Education (MINEPS) within UNESCO.

Sports organisations are encountering growing difficulties in securing complete horizontal autonomy because states are increasingly subsidising sport and therefore adopt mechanisms to ensure the proper use of the funds allocated. This form of autonomy above all entails good cooperation between public and sports authorities of the same level within the legal framework specific to that level, which varies considerably according to the region, country or continent concerned. It is negotiable to some extent, depending on the resources made available by the local, regional or national authorities. At the European and international levels there is a need to reinforce such cooperation.

Vertical autonomy is that enjoyed by lower-ranking sports organisations in relation to higher-ranking ones within the same sport or on the occasion of a multi-sport competition. Examples are a club in relation to its national (or sometimes regional) federation, a national federation in relation to its European and/or international federation, the NOC in relation to the IOC and also the European Olympic Committees (EOC) and the world-level Association of National Olympic Committees (ANOC). A significant restriction on this autonomy derives from the fact that the sports rules applied to a given sport are the same throughout the world. The international federations (IF) tolerate only a few departures from the standard rules in certain countries or continents. However, athletes and officials willingly accept the rules for their
sport, especially where they participate in it at a competitive level. This vertical autonomy is "supervised" by WADA (for doping matters) and the CAS (for all sports related issues which both parties are willing to refer to it, including appeals against decisions taken by WADA).

As we have seen, these vertical and horizontal forms of autonomy can be incompatible. For instance, a national federation may be required to respect its IF’s rules on nationality, but these rules may clash with its own country’s law or with the rules of the union to which it belongs. It can even be said that, in Europe, the challenge to vertical sports autonomy from the European public authorities is growing, as sports policy is interconnected with all kinds of other polices that increasingly come within the EU’s competence (economic policy, competition, employment, education, health, etc.). Here too, closer co-operation between European public and sports authorities should make it possible significantly to reduce these incompatibilities and result in greater autonomy for European sport. This is doubtless what the continent’s sports organisations are seeking when they call for sports autonomy. In the international (non-European) context the situation is more difficult, since the IFs and the IOC today have no qualified correspondent public authorities (except in doping matters through the UNESCO Convention of 2005 establishing WADA). However, as already mentioned, the situation in Europe directly influences many non-European countries which have signed agreements with the European Union. A negotiated form of sports autonomy in Europe would therefore have a worldwide impact.

5. Conclusions

By way of a conclusion, we first propose a definition of sports autonomy that takes account of the various aspects of the concept discussed in this report. We then comment on this definition.

The autonomy of sport is, within the framework of national and international law, the possibility for non-governmental, non-profit-making sports organisations to:

1) establish, amend and interpret rules appropriate to their sport freely, without undue political or economic influence;

2) choose their leaders democratically, without interference by states or third parties;

3) obtain adequate funds from public or other sources, without disproportionate obligations;

4) use these funds to achieve objectives and carry on activities chosen without severe external constraints;

5) negotiate with the public authorities legitimate standards proportionate to the achievement of these objectives.

It must first be said that this definition applies to non-governmental sports authorities, which are usually non-profit-making, such as the IOC, the IFs, the European federations, the national or regional federations and sports clubs, all of which are private entities legally independent of the public authorities and the commercial sector. Historically, it is these
organisations that have regulated sport in Europe and world-wide and, in this capacity, they
deserve to have their autonomy recognised under the national law of the countries where they
operate and under international law as recognised by these countries when they accede to
international conventions or treaties. In the context of the principles of the rule of law, it is on
the other hand inconceivable to absolve them from compliance with this legal framework. It is
nevertheless desirable to recognise the right of the sports movement, like that of other
communities (including religious ones), to a form of transnational legal organisation that can
relieve states of concerns which are not part of their primary responsibilities and which can, in
accordance with the subsidiarity principle, more appropriately be dealt with by organisations
closer to the persons concerned.

As stated in the first indent of the above definition, this autonomy first concerns freedom to
adopt, amend and interpret "sports rules", that is to say the rules of the game, competition
rules and club rules. These rules - on which sports activities are based - must be established
after consultation of the interested parties by the bodies officially responsible for this role and
must be in keeping with public policy and the general principles of law. It would be useful to
have a permanently up-to-date electronic data base of these rules. They must also be
interpreted firstly by impartial judges, umpires or referees on the field of play and
subsequently by transparent disciplinary bodies, whose decisions may be appealed against
before the CAS or even national courts. Sports autonomy therefore encompasses sports
organisations' self-regulation, a concept which Latty (2007, p. 444) defines as a combination
of the internal setting and supervision of rules which primarily relate to those who subscribe
to them.

The second indent of the above definition focuses on the importance of democratic
appointment of the leaders of sports associations at all levels, since cases of local or national
government interference have been regularly observed in such matters. It also outlaws
interference by third parties (the media, sponsors, investors, etc.), who must be kept out of the
appointment process. This also entails an obligation for sports organisations to hold regular,
elections, representative of stakeholders, in accordance with the principles of good
governance. It would also be desirable to disqualify persons holding public office from
appointment to an office in the sports world. The legal independence of organisations should
be supplemented by the independence of their key officials.

The third indent addresses the issue of financial autonomy, making the point that there can
be no true autonomy without financial resources. However, whether resources are of public or
private origin, they must not entail severe constraints for the sports organisations concerned.
From this standpoint, it would be interesting to apply the concept of services in return
provided by the sports organisations to the public authorities which subsidise them, as is the
case with the money they receive under traditional sponsorship contracts concluded with
private firms. These services in return can be defined in the agreements on targets or other
similar documents concluded with a given level of government. "Good" self-regulation of the
sports sector is already in itself a useful service in return to the public sector, which is thereby
relieved of non-sovereign tasks. Along similar lines, a move could be made towards financial
supervisory bodies for professional (team) sports.

The fourth indent conversely points out the key need for sports organisations to be able to set
themselves objectives and perform (sports) activities without being manipulated by their
public and above all their private financiers. Sports autonomy also means the ability to pursue
purely sports related goals, in particular the development of sport and the progress of its
practitioners. In his recently published autobiography (2008) the President of the IOC called for there to be no political meddling in the decisions the sports movement has to take. While there is often political interference, commercial pressures should not be overlooked. Sports organisations generally assert that they are free of such pressures, but this is difficult to verify since their contracts with sponsors and television are not public documents. It can, however, be seen that the rules of sport are regularly changed to make events more attractive to TV viewers. Moreover, it was specifically media and commercial interests that gave rise to the intrusion of Community law in the sports sector. Third parties (sponsors, the media, investors and so on) should accordingly not be overlooked in any consideration of the autonomy of sport, and it must be a well-established principle that they should not impinge on that autonomy.

Figure 6 – The four degrees of autonomy of sports organisations

Lastly, the **fifth and final indent** recognises that autonomy can result from co-operation, co-ordination, consultation and even negotiation between parties, far more than from mutual disregard. This is true both locally and nationally (levels at which the EPAS questionnaire moreover did not reveal any major problem of autonomy). It should be even more the case at the European level, where transnational organisations were long exempt from the supervision of lawfulness and proportionality normally performed by public authorities in a democratic state. This point is consistent with the seventh principle of good governance adopted by the IOC at its second seminar on sports autonomy held in 2008 (see note 1 on page 4). It brings us back to the first indent, since, following consultations and the adoption of soft law instruments by the public authorities, sports rules may be altered so as to avoid legal disputes.

Figure 6 sums up the situation, identifying four degrees of autonomy of sports organisations depending on the category of sports rules and the kinds of parties involved (public or private):
virtually complete autonomy (as regards the rules of the game), contingent autonomy (as regards competition rules), restricted autonomy (as regards club rules) and commercial autonomy (governed by contracts signed with third parties).

In conclusion, it can be said that autonomy is one of the fundamental criteria for a modern model of sports organisation. It is a praiseworthy principle, which is socioeconomically justifiable in developed societies. Today, however, this principle clashes with the increasing complexity of the international and Olympic systems and with the growing economic dimension of sport, which unquestionably facilitates its financial autonomy but also entails new risks due to the involvement of third parties (sponsors, the media, investors, gamblers and so on).

Sports organisations must work with states to develop a new model of sports autonomy falling somewhere between the ideal of complete autonomy and an undesirable superficial autonomy; it is a question of finding a halfway point between liberalism and interventionism, what might be described as a "compromise autonomy", typical of the "social configuration" identified by the Vocasport project.

At European level the Council of Europe could very well be the appropriate intergovernmental organisation within which to discuss and implement such a model, since its geographical scope and its membership in practice coincide with those of the European federations or confederations for the various sports.

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