

## Analysis of the sports model in selected Western European countries

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### Abstract:

**Problem Statement:** Sport is an area of life that may or may not be of interest to the national legislator. Western European countries have taken a very different approach to the regulation of sport. Some of them adhere to the principle that sport should 'govern itself' and refrain from intervening in this sphere of life, while others believe that it is such a significant social phenomenon (and one with a very high economic potential) that it requires the state to provide it with a specific structural and organisational framework. **Purpose:** The main purpose of this article is to describe the legal regulation of sport in selected Western European countries, which together form the Western European model of sport. **Approach:** The main approach, which was used by the author, is a formal and dogmatic analysis of generally applicable law provisions in Germany, Great Britain, France, Italy and Spain, which apply to the sports matters. The works of the doctrine were also analyzed, the author also gathered the information placed on the websites of various domestic sports organisations and European Union institutions. **Results:** Currently, among Western European countries, there are those that adopt an interventionist model in relation to sport and those that adopt a non-interventionist model (which can also be called autonomous). The model of sports regulation developed in a given country represents a 'difficult compromise' resulting from the need to maintain a balance between the distinctive features of sport (in the form of its autonomy and competition based on an organisational monopoly provided for a single sports organisation) and the necessity for the state to ensure conditions that make this competition possible without distortions, which is certainly not an easy task for the state. **Conclusion:** The way in which sport is regulated in a particular country is usually a result of its history and the actual influence of other legislation and international sporting organisations on the sporting organisations operating in that country.

**Key Words:** sports, model of sports, sports state policy, autonomy of sports, pyramid scheme of sports, organisational structure of sports

### Introduction

Sport as a social phenomenon has many different dimensions and impacts not only on the psycho-physical aspects of people (or rather public health more broadly), but in particular on society, the economy, culture, politics and other areas of public life. It remains a phenomenon that – in terms of its social significance – is able to 'attract and gather citizens around a common game, competition, fun, creating both informal and formal structures that organise themselves to play sports together and develop specific disciplines' (Jedel, Kończak 2019). Therefore, it is not surprising that states decide to also regulate this area of life in the form of a legal act.

Beyond its social significance, the economic importance of sport should also be emphasised – it must first and foremost be assessed in terms of its true economic potential. This is because it is not only the popularity of sporting events themselves that must be taken into account, as they involve spectators sitting at sports venues, with an even larger audience following the event via the media on television and the internet. Sport remains an excellent medium for any advertiser wishing to advertise their product or service during a popular event watched by a large audience. The interest in sport within society makes the sport sector one of the significant sectors of national economies and even for the whole European Union economy. It is a large and fast-growing sector of the European economy that already accounts for more than 2% of Europe's total GDP and almost 3% of employment in the EU (European Commission 2019).

Sport however is 'going through significant changes in which law has assumed and increasingly important role in regulating' (Gardiner & O'Leary & Welch & Boyes & Naidoo 2012). By some authors it is also recognised as 'a crucial component of contemporary society, one very important way through which many of us understand our bodies, our minds and the rest of the world' (Blake 1996). In addition to the economy and society at large, sport also has a significant impact on culture. For example, according to Polish legislators, physical culture is a superior concept to sport, as sport is one of its components, along with physical education and physical rehabilitation. The culture itself also had an influence on sport's development – 'the long historical association between sports and popular culture, culminating in sport becoming a major component of the national popular culture is, we argue, highly significant for the character of sport' (Hargreaves 1986).

The above-mentioned importance of sport in many areas of everyday life justifies its interest on the part of the state as legislator as well as the European Union itself. For the purposes of this article, the approach of the legislation of selected western European countries that together formed the Western European Model of sport referred to in the document 'The European Model of Sport. Consultation Document of DG X' will be analysed (European Commission 1998). In the aforementioned document it is indicated that 'From the end of World War II until the mid 80s, two different models of sport existed in Europe, namely the East and the West European model. The former was more or less ideologically oriented; sport was a part of propaganda. In western countries, European sport developed a mixed model, in which actions performed by governmental and non-governmental organisations existed side by side. It is also important to underline that sport has grown in parallel with television, basically in an environment of exclusively public television. Western European sport is thus the result of private and public activity. In the northern countries, the state does not regulate, whereas in the southern countries, the states play a regulatory role in sport.' (European Commission 1998). The very existence of a European model of sport has been the subject of interest before, but it has remained contested, and with the policy paper 'The European Model of Sport' the European Commission wanted to express its political support for this matter' (Parish 2018).

### Material & methods

The main idea of this article is to describe the legal regulation of sport in selected Western European countries, which together form the Western European model of sport. The assumption remains, however, to demonstrate the systemic regulation adopted by the given legislator and certain general features of the national sports law system, while the subject of this consideration will not be detailed issues concerning the discussion of individual sports law institutions (especially in terms of the sport dispute resolution system) occurring within the framework of the given national sports model due to the volume of this article.

An analysis of sport within the countries that are members of the European Union could not be possible without an analysis of the European Union's activities in this area itself, which was also briefly explained. The main thesis of the article is that sport has been regulated inconsistently in selected western European Union countries. There is no uniform legal act issued by the European Union in this respect, which would cover this range of issues jointly for all member states, leaving the real influence on this area of life to the overwhelming majority of member states. This does not mean, however, that the European Union itself does not take any action to regulate this area of social affairs. To this end, this publication uses predominantly a formal and dogmatic method of analysing the above-mentioned legal provisions of the domestic law of various Western European countries. The author also draws on national and European literature and publicly available information - in particular from the websites of the relevant state sports offices and organisations of the countries he is interested in.

The realised research has a practical dimension and can be a source of knowledge for people interested in the subject of sport or sport law in Europe. It is worth pointing out that the issues raised, which present legislative solutions from various EU member states and are supported by practical examples, are of a universal nature and may contribute to the search for appropriate (optimal) solutions on the European sport forum.

The legal analysis of domestic sports law system will contain the following aspects: 1) Generally applicable sports law; 2) Corporate governance guidelines for domestic sports organisations; 3) State sport policy; 4) Most important domestic sport entities; 5) Domestic sport pyramid scheme; 6) Summary of the sports law system. The choice of Germany, United Kingdom, France, Italy and Spain as the described examples was made due to the actual country coefficients which are established by UEFA and include the above-mentioned football associations as the top 5 in Europe (UEFA 2021). On the one hand, this criterion for selecting countries may seem rather far-fetched, on the other hand, football, as the most popular sport in each of the countries concerned, represents a certain point of reference to other European countries, and the football results achieved by clubs from a given country translate, in a way, into its actual sporting potential. The medal classification of the last Olympic Games in Tokyo can also serve as a prime example: 1) Great Britain was classified in 4th place; 2) France in 8th place; 3) Germany in 9th place; 4) Italy in 10th place; 5) Spain in 22nd place (being the exception of good results achieved by the Western European countries during the Olympic Games).

The author also recognises the vastness of the subject matter undertaken, therefore it should be pointed out that this article is not a comprehensive discussion of the subject matter, but merely an outline of the most important rules prevailing in the sports legislation of the leading European countries in the field of sport, i.e. Germany, Great Britain, France, Italy and Spain, at the same time, without in-depth exploration of the issue from the point of view of the European Union, which could be itself a separate academic study culminating in a separate scientific article.

### Results

Two models of sport have been distinguished within European countries, and the criterion for their division can be defined as geographical - it is the division into the Eastern and Western models (European Commission 1998). This model was to persist from the post-war era until the mid-1980s. The phrase 'European Model of Sport' was also noticed when discussing the issue of organising sport in the White Paper on Sport –

‘The political debate on sport in Europe often attributes considerable importance to the so called ‘>European Sport Model<. The Commission considers that certain values and traditions of European sport should be promoted. In view of the diversity and complexities of European sport structures it considers, however, that it is unrealistic to try to define a unified model of organisation of sport in Europe. Moreover, economic and social developments that are common to the majority of the Member States (increasing commercialisation, challenges to public spending, increasing numbers of participants and stagnation in the number of voluntary workers) have resulted in new challenges for the organisation of sport in Europe.’ (European Commission 2007).

Currently, among European countries, there are those that adopt an interventionist model in relation to sport and those that adopt a non-interventionist model (which can also be called autonomous). The model of sports regulation developed in a given country represents a 'difficult compromise' resulting from the need to maintain a balance between the distinctive features of sport (in the form of its autonomy and competition based on an organisational monopoly provided for a single sports organisation) and the necessity for the state to ensure conditions that make this competition possible without distortions, which is certainly not an easy task for the state (Krzeńskiak 2016). The subject of consideration will concern the countries of Western Europe, which have mostly adopted a non-interventionist model. While the main focus will be on Western European countries, it should be noted that sport as a universal phenomenon will not escape the regulation of any country - even the Vatican has established a special department of sport in order to - among other things - combat violence among fans, as well as doping scandals and corruption in sport (Mielnik 2014).

It is also worth mentioning that while models of sport organisation occurring in individual countries have much in common, each of the models occurring in a given country can be assigned to one of the two aforementioned groups, which take their name from the degree of state interference in this area of life (Krzeńskiak 2016). Thus, the interventionist model will consist in the fact that the state assumes that 'the development and administration of sport is considered to be within the competence of public administration' (Krzeńskiak 2016). Since sport falls within the competence of public administration, in this case it should be considered that the state has not only the right but also the duty to take care of this matter, regulate issues related to it and, above all, supervise them. On the other hand, the second model - the non-interventionist one - consists of the fact that 'the state does not treat sport as part of the state administration, but rather as part of the private life of citizens' (Krzeńskiak 2016). Within this model, sport can also be considered in terms of civil liberty (Łebek 2011). The essential criterion that makes it possible to distinguish between the two models of sport mentioned above is the existence of specific - specifically dedicated - state legislation that imposes structural restrictions on sports organisations and affects the scope of autonomy of sport in a given country (Chaker 2004, Siekmann 2011, Radke 2018).

## **Discussion**

### **Germany**

The German legislator has not decided to regulate at least the most important institutions of sports law within a single act dedicated to sports. Regulations on sport are not numerous and concern issues that can be described as particularly important from the point of view of the state - so, for example, doping, bans on doping substances (Krzeńskiak 2016). In terms of corporate governance guidelines for sports organisations - they come from a leading sport governing body in Germany - the German Olympic Sports Confederation (Engelhard & Wassenhoven 2021, German Olympic Sports Confederation 2021). The German Olympic Sports Confederation ('Deutscher Olympischer Sportbund', DOSB) is the non-governmental umbrella organisation of German sport which was founded on 20 May, 2006, resulting from the merger of the German Sports Confederation (DSB) and the National Olympic Committee for Germany (German Olympic Sports Confederation 2021). It is important to note, however, that this entity does not have the right to give instructions, suggestions or even recommendations to the bodies that represent the individual sports, nor does it have such a right in relation to the associations at the level of the federal states (Krzeńskiak 2016).

The legal solutions adopted in German sports law are the result of their independent development by judicature and doctrine, which were based on general legal rules from the field of, in particular, civil law, administrative law, competition law and criminal law (Krzeńskiak 2016). However, it should be noted that the state (federal) policy 'is oriented on the constitutional division of responsibilities between the federal and state governments. Based on its responsibility for representing Germany abroad, the Federal Government sees its task as promoting world-class sport, while the states have primary responsibility for promoting recreational sport for all. As part of its national responsibility for sport, the Federal Government is also dedicated to overseeing and improving the framework conditions for the appropriate development of recreational sport, not only because sport for all is an important source of elite athletes, but also because recreational sport can help promote social cohesion.' (German Federal Ministry of the Interior and Community 2021).

With regard to the most important sporting bodies - sport clubs and sporting organisations (sport governing bodies) - they are predominantly organised in the form of associations (registered, with a non-profit business profile) according to Section 21 et seq. of the German Civil Code (BGB) (Engelhard & Wassenhoven 2021). They are granted with a wide degree of autonomy, which allows them to regulate their own affairs, that also includes the right to compile their own internal regulations and also set up an internal dispute resolution

mechanism, granted by article 9 of the Basic Law for the Federal Republic of Germany of 1949 which grants the freedom of association. The need to increase the degree of professionalism of the activities carried out, which resulted from the acquisition of more and more financial funds by sports clubs, resulted in the change allowed by the German Football Association (DFB) which made it possible for the clubs associated in the German Bundesliga to form commercial entities out of their professional football sections (Engelhard & Wassenhoven 2021). The majority of the clubs decided to change their status and transformed into: 1) Stock corporations (Bayern Munich); 2) Limited liability companies (Bayer 04 Leverkusen GmbH); 3) partnerships limited by shares with a limited liability company as general partner (Borussia Dortmund GmbH & Co KGaA) (Engelhard & Wassenhoven 2021). The changes of the legal structure were enabled, however the 50+1 rule was introduced which requires 'that the majority of voting rights within such commercial football companies (i.e., more than 50 per cent) (need) to be controlled by their parent member associations' (Engelhard & Wassenhoven 2021).

### Great Britain

It should be pointed out at the outset that Britain has played a special role in the development of modern sport. The Great Britain was the birthplace of a large majority of the team sports which include: association football, badminton, billiards, bowls, boxing, British baseball, rounders, cricket, croquet, curling, darts, golf, fives, field hockey, netball, rugby (union and league), tennis, table tennis, snooker, Motorcycle Speedway, squash, water polo, and shinty. The British system of sports law seems similar to the German one. Similarly to Germany, the United Kingdom does not have a single supreme law dedicated to the matter of sport. Intervention in sport in the form of a legal act of statutory rank and interference on the part of public administration bodies concerns only necessary matters, when the public interest demands so (Beloff & Beloff & Kerr & Demetriou 2012, Krzeńskiak 2016). The way in which the British authorities act in the field of sport can best be put in the following way - the state authorities intervene in sport only when they come to the conclusion that 1) Sports organisations cannot cope with the issue, or 2) The problems are so serious from a social point of view that the support of a 'strong partner' such as the state is required (as exemplified by the passing of the Football Spectators Act 1989 which also introduced the football banning order - FBO, under which a magistrate can ban an individual from attending football matches - either domestic or foreign - for a period of 2-10 years and can also impose additional restrictions) (Krzeńskiak 2016).

There are no existing corporate governance laws which apply exclusively to sports organisations in Great Britain, however 'general guidance is available to provide sports bodies with suggested elements for good governance that they are encouraged to follow' (Singer & White & Heron 2021). The codes of good governance are issued by both private and public entities. For instance, Sport and Recreation Alliance (which is a private organisation that 'brings together the sport and recreation sector and support our members to tackle the challenges and take advantage of opportunities' and is considering itself as 'the voice of the sector to Government, policy makers and the media, which provide advice, support and guidance') issued a document called 'The Principles of Good Governance for Sport and Recreation' (Sport and Recreation Alliance 2017). The idea was to 'provide any type and size of organisation with a practical and user-friendly model to implement best practice' (Sport and Recreation Alliance 2017). On the other hand, public funding bodies (in that case – UK Sport and Sport England) collectively established a Code for Sports Governance which 'sets out the levels of transparency, diversity and inclusion, accountability and integrity that are required from those organisations who seek – and are in receipt of – UK Government and National Lottery funding from us and/or UK Sport.' (UK Sport & Sport England 2021).

Regarding the desirability of state action on sport, in the early 2000s British Prime Minister Tony Blair indicated that: 'Government doesn't run sport and nor should it. But it does have a duty to ensure sport can thrive. Sport is central to a great deal of what any government wants to achieve. As The Observer debate has shown, a good sports policy is also a good education policy, a good health policy, a good community-cohesion policy and a good anti-drugs and anti-crime policy. Sport is also a major strand of our national life.' (Blair 2005). This position has been maintained consistently by successive UK governments (Krzeńskiak 2016). On the one hand, one can note an increase in legislative activity on the part of the legislature in the area of sport, which intensified in the 1980s, and on the other hand, one can still determine that the state chooses not to interfere too much in the sphere of professional sport, limiting itself exclusively to broadly defined support for sport and the creation of appropriate conditions for its practice (Hoye & Smith & Westerbeek & Stewart & Nicholson 2006, Krzeńskiak 2016). In 2021, the United Kingdom published its Sport's Strategic Plan for 2021-2031, in which the mission is formulated as follows: 'Create the greatest decade of extraordinary sporting moments; reaching, inspiring and uniting the nation.' (UK Sport 2021).

In terms of the most important sporting bodies – despite the fact that in Great Britain there is no legal act of statutory rank regulating the matter of sport, a rule exists that in each sport discipline at the national level there is, in principle, one organisation (which aims primarily at organising and conducting sport competition in a given sport discipline, organising sporting, organisational and disciplinary rules) (Gardiner 2004, Krzeńskiak 2016). This means that both England, Wales, Scotland and Northern Ireland will have such organisations, there is no single organisation overseeing a particular sport across the whole of the UK. These sports organisations also form together as their members sports associations from lower levels - i.e. regional or local. These

organisations regulate both amateur and professional sport, noting that, as regards professional sport, there is a trend in continental European countries to set up special companies to run professional competitions - the Football Association Premier League Limited being one example. The organisations of the athletes themselves also hold a strong position, such as the British Athletes Commission, which aims to 'provide independent, confidential expert and professional support and advice for all athlete members. If necessary, the BAC can provide athletes with pro bono legal advice and support to challenge discriminatory or inappropriate behaviour' (British Athletes Commission 2021). Moving on, when it comes to the sports clubs, their legal structure depends on its purpose and mode of operation – the legal structures are usually adopted as one of the following: 1) Private and public companies limited by shares; 2) Companies limited by guarantee; 3) Charitable or community interest vehicles; or 4) Unincorporated associations (Singer & White & Heron 2021). The generally applicable law does not specify legislative provision, which are aimed directly at sports clubs, however they are required to comply with the general legal framework that governs their specific legal form (e.g., the Companies Act 2006 in the case of private or public limited companies).

## France

The French model of organising sport is certainly one of the more distinctive when considering Western European countries. It is considered as 'one of the most mature and well-established sports laws in Europe and worldwide' (Soiron & Gobardhan 2021). Unlike many European countries (such as the aforementioned Germany and the United Kingdom), France has a comprehensive law governing sport (*Code du sport*) which regulates the following matters: 1) General principles; 2) Public participants; 3) Associations and sports societies; 4) Sports federations and professional leagues; 4) Representation and conciliation bodies. In such a sports law legal system, it is anticipated that the provision of suitable conditions for the development of physical culture and sport is an obligation of the State (Krzeńskiak 2016).

There are no existing corporate governance laws which apply exclusively to sports organisations in France. The law of 1 July 1901 relating to associations does not impose any specific way of managing on those associations (Fajgenbaum & Lachacinski & Vigneron & Garcia-Sutereau 2021). However, it should be noted that 'some sports corporations (i.e., SAOS, EUSRL and SASP) are under the obligation to comply with standard by-laws setting out various rules regarding shareholders and corporate governance' (Soiron & Gobardhan 2021). In terms of the sports federations – pursuant to appendix I-5 of the French Code of Sport, they will be obliged to conscript a supervisory commission for electoral operations, a medical commission, and a commission of judges and referees (Fajgenbaum & Lachacinski & Vigneron & Garcia-Sutereau 2021). A situation from 2017 should also be brought up when 'the Law of 1 March 2017 has inserted into the French Code of Sport an obligation for the delegated federations to establish a charter of ethics and deontology in accordance with the principles laid down in the charter issued by the French National Olympic and Sports Committee (CNOSF)' (Fajgenbaum & Lachacinski & Vigneron & Garcia-Sutereau 2021).

The most significant role in terms of state sport policy is attributed to the French Ministry of Sports. The French Ministry of Sport itself is responsible for defining the main objectives of the national sport policy, setting the legal framework, notably through the sport code, and ensuring that the general interest is respected (French Ministry of Sports 2017). Above all, the remit of the French sports ministry includes the promotion of sport and the management and supervision of sports organisations (Lewis & Taylor 2014, Krzeńskiak 2016). Apart from the above-mentioned activities, the following have also been identified as the fields of activity for this body: 1) The development of sport for all, in particular for those who are farthest from sport; 2) The organisation of high-level sport, in order to maintain France's rank among the great sporting nations; 3) Prevention through sport, protection of athletes and the fight against intolerable abuses such as doping, violence, racism, cheating and all forms of discrimination; 4) the promotion of sports professions and the development of sports employment (French Ministry of Sports 2017). However, from the perspective of professional sport, the most relevant competence of the French Ministry of Sports remains granting to the federation of any sport discipline the right to organise and regulate the sport, through a delegation of public service – such a delegation of public service is granted to the federation for a period of four years and then is indefinitely renewable (Soiron & Gobardhan 2021). This gives rise to an interesting phenomenon, namely the possibility of treating French national sports associations as entities performing certain duties delegated to them by the State (Krzeńskiak 2016). The State has the primary possibility of verifying whether a given sports organisation provides the guarantees for the conduct and organisation of sporting competition in a given sport at national level and, if it considers that this is the case, then it gives it the overall responsibility for all of its activities in this respect. Such a sports federation, on the other hand, should continue to be regarded as a private legal entity, but one which performs the public tasks entrusted to it. The recognition of a sports federation has control consequences for that federation as it is subject not only to control by the French Ministry of Sport but also by other authorised state bodies (Haas & Martens 2011, Krzeńskiak 2016).

In terms of the most significant sports organisations in France, 'the sports clubs, the federation and its decentralised bodies are required to be non-profit organisations governed by the French law of 1 July 1901 and its decree of 16 August 1901' (Soiron & Gobardhan 2021). However, there are certain legal restrictions for sport clubs which aim at participating in professional sports. Clubs that take part in events which generate revenues

greater than €1.2 million annually, or which employ athletes who receive a total income exceeding €800,000, are required to create, in addition to the non-profit organisation, a commercial corporation which will be in charge of its commercial activities – in accordance with Article L.122-2 of the French Sports Code, a 'sport corporation' must take one of the following legal forms: 1) Limited liability company with a sole member (a single-owner limited liability sport company (EUSRL); 2) A limited liability company with a sports object (SAOS); 3) A professional sports limited company (SASP); 4) A limited liability company; 5) A limited company; or 6) A simplified joint-stock company (Soiron & Gobardhan 2021). When it comes to sports associations and federations – pursuant to articles L.121-1 and L.131-2 of the French Code of Sport, sports associations and sports federations must be set up in the form of associations, in accordance with the provisions of the law of 1 July 1901 (except for sports associations having their headquarters in the departments of Haut-Rhin, Bas-Rhin and Moselle applying the Alsace-Moselle Civil Code) (Fajgenbaum & Lachacinski & Vigneron & Garcia-Sutereau 2021). As in England, it is also possible to set up a professional body to manage a professional league in a particular sport. It is worth noting that the federation and the professional league must comply with standard by-laws imposed by the lawmaker – which requires the federation and the professional leagues to adopt a set of disciplinary and anti-doping regulations (Soiron & Gobardhan 2021). It should also be pointed out that the Olympic and Paralympic Games will be held in Paris in 2024 – this fact resulted in the need to renew the French sports system (L'Agence nationale du Sport 2022). The mission, entrusted to the Paris 2024 Organising Committee for the Olympic and Paralympic Games, led to the conclusion that the French model of sport was generally based on foundations dating from the 1960s. The National Sports Agency was therefore born from the desire to accompany this transformation of the French sport model. This ambitious objective requires the mobilisation of all stakeholders in the sport ecosystem around a legally adapted structure. On 24 April 2019, the National Sports Agency was created by ministerial decree, then by the law of 1 August 2019, in the form of a Public Interest Grouping and thus replaced the National Centre for the Development of Sport (L'Agence nationale du Sport 2022). The Agency aims to contribute to the general development (or rather 'overhaul' of sport) by renewing the governance model of French sport by activating two levers of action: 1) The High Performance Unit – it contributes to the support of sports federations towards better results/more excellence in the dynamics of the Olympic and Paralympic Games by placing the athlete-coach unit at the heart of the system (in generally – the professional sport; 2) The Practice Development Department – which is divided into two services: Federal and Territorial Development and Sports Facilities and guarantees the practice of sport for all audiences, at all ages and in all territories, with the aim of increasing the number of people practising sport by 3 million people by 2024 thanks to the strong exposure opportunity of the Games. This pole favours actions aimed at correcting social and territorial inequalities in terms of access to sports activities and facilities (in generally – amateur sport, the sport for all) (L'Agence nationale du Sport 2022).

### Italy

The autonomy of sport was officially recognised by the Italian legislator in the Law No. 280 of 17 October 2003, which also deals with the potential conflicts between ordinary and sports justice, specifying the areas in which sports bodies have exclusive jurisdiction (Colucci & Candela & Civale & Coni 2018). Prior to the enactment of the above-mentioned act 'the relationship between sports organisations and the national legal system had not been explicitly addressed anywhere, with legal uncertainty resulting.' (Lubrano 2021). The Italian sports law system since has no legal act which addresses the general matters of sports. However, the Italian legislator has adopted certain rules in sport thereby demonstrating its interest in regulating this area of life in the form of: Law No. 426/1942 which established the Italian Olympic Committee, Law No. 91/1981 on labour law aspects, Law No. 586/1996 which liberalized the clubs' market of transfers and the Legislative Decree No. 242/1999, Legislative Decree no 231/2001 which instructed sports club to adopt an internal code of conduct that defines the rights, duties and responsibilities of each member (Colucci & Candela & Civale & Coni 2018).

In the field of general governance guidelines for sports organisations, a breakthrough occurred after enacting the Law No. 190/2012 on the 'Rules for the prevention and repression of corruption and unlawfulness in public administration.'. This has resulted in the introduction by the Confederation of National Sports Federations and Associated Sports Disciplines of the Code of Sporting Conduct, setting out the fundamental, mandatory and binding duties of loyalty, fairness and probity that must be met by each operator in the Italian sports industry (Rocca & Ferriolo & Revello & Tieghi 2021). In addition, a function of the 'guarantor' has been introduced who 'reports any cases of suspected violation to the competent bodies for disciplinary matters.' (Rocca & Ferriolo & Revello & Tieghi 2021).

The Italian government's position is that sports federations should have autonomy of action (Colucci & Candela & Civale & Coni 2018). However, as in any national legal order, regulations enacted by sports federations must remain compatible with the common law and the State's guiding principles for ensuring public order and public security (Colucci & Candela & Civale & Coni 2018). From the point of view of analysing state interference in sporting affairs, we refer in this respect to CONI, which simultaneously plays several important roles for Italian sport. It is both a public law body, recognised by the IOC National Olympic Committee, and, from the public sector's point of view, an organisation that is responsible for the coordination, guidance and monitoring of the entire sports sector (Colucci & Candela & Civale & Coni 2018). It should also be noted that

the Ministry of Sport has no place in the current structural set-up of the Italian Government. The national sport is headed by CONI, which together with sports federations and associated disciplines organises, regulates and governs the sport in Italy (Colucci & Candela & Civale & Coni 2018). It is funded by the state, which on the other hand has the power to control the spending of finances (CONI is subject to supervision of the council minister's presidency, pursuant to art. 1, para. 19 of Decree Law No. 181/2006) (Colucci & Candela & Civale & Coni 2018).

In terms of the most important sports organisations operating in Italy, the following should be mentioned – firstly The Italian Olympic Committee which is the highest authority of the Italian sports system, defined as the Confederation of National Sports Federations and Associated Sports Disciplines (Rocca & Feririolo & Revello & Tieghi 2021). It is the entity which is responsible for the development and management of sports activity in Italy – its transformation of legal position was best explained by A. Rocca, F.V. Feririolo, E. Revello and M.V. Tieghi: ‘Established by Law No. 426 of 16 February 1942 as a private body, with the Melandri Decree (Legislative Decree No. 242 of 23 July 1999), CONI became a public entity, but is incorporated under private laws. With the issuing of the Pescante Decree (Legislative Decree No. 15/2004), CONI became a 'confederation'. Following the enactment of the Budget Law 2019 (Law No. 145 of 30 December 2018), the Italian government established a public company, Sport e Salute SpA, with the main objective of providing general services in favour of sport, according to the directives and guidelines of the government and not of CONI. This new entity has been preliminarily considered by the IOC as a potential interference in sport politics, thus threatening the autonomy of CONI in breach of the Olympic Charter. Therefore, in accordance with the IOC request, the Italian authorities enacted Law Decree No. 5 of 29 January 2021 to guarantee CONI's autonomy from any political influences and to ensure Italian athletes' participation in the Tokyo Olympic Games.’ (Rocca & Feririolo & Revello & Tieghi 2021). There are several types of member associations of CONI: national sport federations, associate sport disciplines, promotional organisations and betterment organisations. The national Sport Federations and associate sport disciplines are ‘non-profit associations with legal personality regulated under private laws with their own regulations and statutes in compliance with the provisions of the affiliated international sports federations, the Olympic Charter and the directives issued by the International Olympic Committee and CONI’ and they ‘must obtain recognition by CONI to manage – on an exclusive basis – a sport discipline in Italy and represent it abroad’ (Rocca & Feririolo & Revello & Tieghi 2021). The sport clubs also need a certain legal form in order to participate in a given sports discipline – for instance, in the Federazione Italiana Giuoco Calcio Statute (article 7) it is stated that clubs entering into contracts with professional athletes should be joint-stock companies or limited companies (Colucci & Candela & Civale & Coni 2018). In general however, ‘the main stakeholders of the Italian sports industry are the associations and clubs, both professional and amateur, in addition to the athletes, managers, coaches, athletic trainers and sporting doctors’ (Rocca & Feririolo & Revello & Tieghi 2021).

## Spain

The Spanish legislator - in line with the French legislator - has decided to regulate the entirety of the most important issues for sport in the form of a statutory act – Act 10/1990 which, in addition to fairly extensive sports law provisions, also contains an extensive preamble, a solution that is unique in Europe. The following issues are regulated under the above-mentioned Act: 1) General principles; 2) The Superior Council of Sports; 3) Sports Associations; 4) Form of competitions; 5) The Spanish Olympic Committee; 6) High-Level Sport; 7) Sports research and teaching; 8) Control of prohibited substances and methods in sport and safety in sports practice; 9) Prevention of violence at sporting events; 10) Sports installations; 11) Sports discipline; 12) General Assembly of Sport; 13) Extra-judicial reconciliation in sport. Juan de Dios Crespo Perez even indicates that ‘Spain is nowadays one of the most important countries in Europe in sports’ (Crespo Perez 2021). The enactment of the Sports Act 10/1990 has been followed with the creation of other – more specific – sports related legal acts, such as: Act 1835/1991 on the Spanish Sports Associations, Act 1251/1992 of Sport Discipline and other several ones associated with anti-doping matters (Crespo Perez 2021).

Good governance guidelines come from both the legal regulations and the internal rules of sports entities (Batet & Moraga 2021). First of all, when it comes to the state regulations, the Spanish Criminal Code should be mentioned – as it includes a specific offence of corruption for managers, employees and collaborators of sports entities as well as referees and athletes for conduct aimed at predetermining or altering, in a deliberate and fraudulent manner, the result of a sports competition of special sporting or economic relevance (Batet & Moraga 2021). What's more there is another legal act, which could be of use in terms of determining the matter of good governance guidelines – Act 19/2013 on transparency, access to public information and good governance which also relates to the sports market as a whole (Batet & Moraga 2021). The mentioned act requires certain sports entities to share information about their: 1) Functions; 2) Regulations; 3) Organisational structure (which includes an updated organigram of the bodies they are composed of and the profile of persons belonging to them (Batet & Moraga 2021). In the scope of sports organisations and their interior regulations, the case of La Liga comes to mind. On 21 July 2005, the Code of Good Governance was approved by the Extraordinary General Assembly of LaLiga. It was later revised and adapted to the statutory and organisational reality of LaLiga and the latest legislative reforms in the field of transparency and good governance, and its latest

version was adopted by the Extraordinary General Assembly of LaLiga, on 24 September 2015. It is divided into 6 chapters – 1) Chapter I defines the rules of good governance of LaLiga, establishing the rights of members of LaLiga; 2) Chapter II on remuneration sets out a series of prohibitions, restrictions and reporting obligations for remuneration; 3) Chapter III “*Control and ordinary management*” (article 8) defines the content of the LaLiga’s economic transaction procedures manual, called “*Purchasing and Payables Procedures Manual*” together with 4) Chapter IV, which establishes the criteria for action in relation to the acquisition or supply of goods or provision of services from the time the need for the service/purchase arises until payment is made; 5) Chapters V and VI, in articles 11 to 14 of the Code, deal with the duty of LaLiga to promote sports ethics and form a legal regime that covers claims related to the compliance, or failure to comply, with the Code of Good Governance (La Liga 2021).

The Spanish authorities have extensive power over national sport. This is mainly due to the introduction of a law dedicated to sport into the national legal system, but above all to the constitutional status accorded to state interference in sport – as Spanish Constitution of 1978 ‘explicitly put in the hands of the state responsibility for access to sport’ (Puig & Martinez & Garcia 2010). Article 43.3 of the Spanish Constitution provides that the public authorities shall foster health education, physical education and sport. N. Puig, J. Martinez and B. Garcia point out that there are different levels of the public sector in the Spanish sport: 1) The state level, which includes the Government and Consejo Superior de Deportes (The High Council for Sports, ‘CSD’); 2) The autonomous level which consists of government bodies of the autonomous communities and 3) Local and provincial level where local and provincial councils undertake public sport actions (Puig & Martinez & Garcia 2010). However, the state will remain the area of interest in this article. The central government has responsibilities of a rather general nature – they are responsible for planning of sport facilities, research programmes, overall coordination, etc. and of international representation, whereas the regional/autonomous counterparts are the entities which are responsible for implementing policies within their jurisdiction (Puig & Martinez & Garcia 2010). All of the above-mentioned entities are also responsible for providing funding and support for the sport initiatives of the municipalities (Puig & Martinez & Garcia 2010). Sport is also represented at a ministerial level - in the form of Ministry of Culture and Sport. However, it is another entity that plays practically the most important role for Spanish sport as a whole, namely the CSD. It has competencies on issues which are considered to be of national interest, in the form of professional sport – especially the most popular discipline which is football and ‘the preparation of the Olympic national teams, the development of sport sciences, the construction of large sport infrastructures (facilities) and the promotion of school sport in some concrete cases’ (Puig & Martinez & Garcia 2010). Finally, the government bodies of the autonomous communities are responsible for building funding the construction of regional sport facilities, promoting sport for all, supporting elite sport, school sport, overseeing the education and training of sport technicians and the development of research in sport sciences (Puig & Martinez & Garcia 2010).

In terms of the most important sports organizations, the public entities have been discussed above. In terms of the private entities – from the voluntary sector, the Spanish Olympic Committee, Spanish Sport Federations and sports clubs require a short description. Starting with the Spanish Olympic Committee, it should be described as ‘a non-profit organisation being declared as one of public utility, and its purpose is the development of the Olympic movement’ (Crespo Perez 2021). Its functions in general concern the scope of registration and participation of Spanish athletes in the Olympics and all of the other activities which remain ancillary to them (Crespo Perez 2021). Other significant entities – the Spanish Sport Federations are defined as ‘private entities, with their own legal personality, whose sphere of activity extends to the whole of the state territory, in the undertaking of the competences that are particular thereto, being made up of sports federations of an autonomous nature, sports clubs, sportsmen and women, technical staff, umpires and referees, Professional Leagues’ (Crespo Perez 2021). It is also worth noting that they act as partners of the public authority and thus exercise public functions due to the delegation of an administrative nature, however they still are regarded as private entities (Crespo Perez 2021). The sports clubs that aim to participate in official professional sports competitions of national scope are obliged to take the legal form of a sports limited liability company (SAD) – ‘these companies have a special regime established in Act 10/1990 and Royal Decree 1251/1999 on sports limited liability companies and the Companies Act (the Royal Legislative Decree 1/2010)’ (Batet & Moraga 2021).

## Conclusions

The way in which sport is regulated in a particular country is usually a result of its history and the actual influence of other legislation and international sporting organisations on the sporting organisations operating in that country. It should be noted however, that at the apex of every domestic sports pyramid is the International Olympic Committee (the IOC), which aims to organise and promote sport worldwide (Lubrano 2021).

The German sports law system is built, as in many other European countries, on principles that resemble a pyramid shape. As in any sports pyramid, at the very bottom of the pyramid are athletes - they are associated in sports clubs, which usually take the form of an association (with the exceptions mentioned above) (Krześniak 2016). At the higher - third - level of the sports pyramid in Germany, there are regional or local sports associations, which also take the form of an association. They bring together sports clubs from a given

region - depending on the sport, these associations operate either at a lower (district) or higher (Länder) level (Krześniak 2016). At the higher level of the pyramid is the national sports association, which brings together associations from all of the individual states (Korff 2014, Krześniak 2016).

As E. Krześniak points out, the German system of sports law is 'a classic example of a non-interventionist system in which state coercion, which to some extent can be regarded as any legal rule enshrined in law, is limited to the necessary minimum (Krześniak 2016).

The British sports system also takes the shape of a pyramid in which the national governing body is situated at the top, with the clubs and then athletes connected on its lower levels (Singer & White & Heron 2021). It should also be emphasised that: 'where the governing body is also the competition organiser, the relationship with athletes or clubs is regulated through the governing body's participation agreement or rule book' whereas 'Where the competition organiser is a distinct entity from the governing body (as the Premier League or Premiership Rugby), then a shareholder model may be used to allow participants to engage in collective decision-making regarding the rules of the competition and any commercial arrangements between competitors' (Singer & White & Heron 2021).

The British model of organisation of sport in the assessment of E. Krześniak is a model example of a non-interventionist model of sports regulation, as 'the powers vested in British sports associations do not come from the state', which consents to the establishment and operation of a given sports organisation, but are based solely on the voluntary consent of the members of these organisations to submit to its jurisdiction', which means that the entire structure of British sport is based solely on the construction of voluntarily concluded civil contracts between various entities in the sports sector (Krześniak 2016).

The pyramid scheme of French sport differs from the German one and the British one, due to the fact that the Ministry of French Sport will be situated at the top of the pyramid in France, as the entity which can decide whether such domestic federation can conduct and organise sports competition within a given sport discipline. The pyramid scheme can be analysed based on the example of the French Football Federation. In terms of its domestic legal position – it is a Public Service Delegate of the French Ministry Sports. It is also the member of the French Olympic Committee. The French Football Federation associates clubs from League 1 and League 2 (which are governed by *Ligue de Football Professionnel* as well as 22 lower level leagues, 91 districts and 15,000 amateur clubs (French Football Association 2021). The players – who remain the key actors of any sport performance, are not mentioned in the organisational pyramid of French football, while - as in the German and English sports law systems - they are (despite their significant role) located at the very bottom of the sports pyramid.

In the opinion of E. Krześniak, the model of sport regulation adopted by the French legislator should undoubtedly be qualified as interventionist, as it provides for significant state interference in sport, as the state (in the form of the French Ministry of Sport) has all the legal instruments to allow or forbid a given national sports association to conduct and organise sports competitions in a given sport discipline (Krześniak 2016). In the French model of sport, public-law interference by the state remains fundamental, so it is a fundamentally different way of organising sport than, for example, in the United Kingdom, where sport is based on a private-law series of agreements by individual actors (Krześniak 2016).

The pyramid of sports in Italy consists of the following entities: CONI, which is an organisation dedicated to managing the athletics sector in a complex way. CONI associates a variety of different entities mentioned above of which the national sports federations remain the most relevant to the structure of sport. These in turn bring together sports clubs within their structures who are the employers of the players who are traditionally situated at the bottom of the pyramid.

The general overview of Italian sports law system can lead to a conclusion that it should be considered as a mixed model of sport leaning towards an interventionist model having both the granted autonomy of sport and therefore a certain independence from the state (which grants CONI total authority to run and organise sport in the country). On the other hand, the State does not completely abandon any legal regulation of this sphere of life and, in spite of everything, is successively introducing new legal acts which concern the various aspects of the practice and organisation of sport in Italy. The state has also left itself open to administrative and financial control of CONI and the national sports federations; in addition, the budget of this organisation is entirely dependent on Parliament (Colucci & Candela & Civale & Coni 2018).

According to N. Puig, J. Martinez and B. Garcia, the Spanish pyramid of sport should be divided first of all into 3 sectors – public, voluntary and commercial (Puig & Martinez & Garcia 2010). At the top of the public sector, the Government itself is situated, with The High Council for Sports a level below – they together create the state level. A level below are located government bodies of the autonomous communities – they create the autonomous level. At the bottom of the public sector, there are provincial and local councils which altogether form a level of the same name. In terms of the voluntary sector – the Spanish Olympic Committee, Spanish Sport Federations, Sport promoting entities, Associations of clubs and professional leagues (which are also a part of the commercial sector) form this sector at the state level. At the autonomous, lower level the voluntary sector is formed by Sport for all associations and Autonomous Federations (which are members of the Spanish Sport Federations). At the local, provincial level only sports clubs (which are members of the Autonomous Federations and Associations of clubs) and local and provincial branches of Sport for all associations. The commercial sector

incorporates the whole sports industry, the professional leagues, and such entities at the local and provincial levels as ltd. sports companies, sport service companies and even fitness centres and gyms (Puig & Martinez & Garcia 2010).

In the general overview, the Spanish sports system is 'occupied' by the public sector, as is the case in many other areas of social life in Spain (Puig & Martinez & Garcia 2010). It is certainly accurate to say that 'The preponderant role of public authorities is clearly evident' (Puig 1999, Puig 2003). The Spanish sports system is considered to be well developed, but still growing and 'being perfected in line with the relatively rapid conversion of sports into a business' (Batet & Moraga 2021). It is also worth mentioning that the transformation of the Spanish sports law system began in 1975 with the transformation to democracy after 40 years of dictatorship of General Franco. An analysis of the Spanish sports law system allows the thesis to be put forward that the sports model adopted in this country most certainly deserves to be called interventionist. This results first of all from the constitutional rank of sport, a number of laws concerning practising and organising sport (including one of the most important ones entirely devoted to sporting matters). As N. Puig, J. Martinez and B. Garcia indicate 'in general terms, it is safe to affirm that the Spanish sport sector has left behind the time of a single >magic< management and organisational model (i.e. heavily relying on the public sector). It is adopting a diversity of structures with the common objective of guaranteeing the social and economic development of the sport system.' (Puig & Martinez & Garcia 2010). On the other hand – trying to end this topic in a more positive way, other authors point that: 'Spain has moved from amateurism in sports to professionalism over the past 25 years and, as usually happens, the law follows the reality. This has meant that a significant number of changes have taken place in recent years to address problems that were unknown decades ago. The tendency in the Spanish system is to continue to evolve to an even greater extent with the aim of harmonising legislation, as far as possible, with the new trends in international sports law.' (Batet & Moraga 2021).

Summarising all the above-mentioned national sports law systems (or which can be called sports models), it should be noted that there is a significant divergence in them. Some countries, such as Germany and Great Britain leave full autonomy to the professional sports sphere, while choosing to regulate certain institutions that they consider important for the state (such as safety in sports arenas, anti-doping matters). Still, others - such as Spain and France - opt for a model in which the state plays a significant role in the custodianship process of 'proper (for the state) conducting and organisation of sporting competitions. Other countries - such as Italy - also *de facto* choose to intervene in this area of life and not to leave it to self-regulation, but adopt a slightly less formalised degree of intervention than the aforementioned Spain and France. Nevertheless, there is no single European model of sport that is imposed from above by the European Union, which recognises that in this respect it is an internal matter for each of the countries of the Union. Therefore, although the countries analysed remain within the same cultural circle of Western Europe, ultimately the manner and degree of regulation of sport remains very different, which remains extremely interesting from a research point of view.

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