

The scope of intervention of the competition law of the EU into the self-regulatory autonomy of the sports federations - summary

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The main aim of the conducted research is to assess the possibility to intervene in the self-regulatory autonomy of sports federations in the European sports model by applying the competition law of the EU to their self-regulatory actions.

The dissertation is divided into 7 chapters. The first chapter presents the evolution and current characteristics of the European sports model. The second chapter includes an analysis of the dimensions of the autonomy of sports federations and discusses the legal character of the regulatory system created by the federations - *lex sportiva*. The third chapter presents the legal basis for the self-regulatory autonomy of sports federations and the place of *lex sportiva* in the pluralistic legal order of the EU, as well as the main features and stages of the EU sports policy. The fourth chapter contains the main general principles of applying the law of the EU to sports, as well as a more detailed approach in the selected areas of the EU law. The fifth chapter applies the theoretical and conceptual framework of the competition law of the EU to the activity of sports federations and elaborates on the justification for applying these provisions to the matters related to sports. The sixth chapter discusses procedural questions and the hitherto practice of the Commission and the CJEU in the context of the effects of the application of the competition law of the EU to the self-regulatory autonomy of the sports federations. The seventh chapter lines out the possible remedies and assesses the effectiveness of the actions of the institutions of the EU against the background of the EU sports policy objectives and the goals of the competition law.

Sport may be regarded and analyzed in various dimensions – cultural and societal, economical, organizational, or legal. These dimensions remain intertwined and the activity of various stakeholders *via* formal and informal institutions (including institutions of the EU) led to the creation of the European model of sports. Its main characteristics are regulatory monopoly of one federation for discipline, voluntary (private) character, pyramidal structure of the organization, amateur (grassroots) and professional levels of participation, the existence of exclusive and mandatory arbitration clauses, and entanglement of commercial and regulatory functions of the federations. As these factual characteristics have their legal consequences it was necessary to present them to provide an accurate analytical framework in the context of existing solutions.

The autonomy of sports federations has political, personal, organizational, and legal dimensions. As the legal aspects are overwhelmingly related to the self-regulation issues of the federations, this dimension is particularly scrutinized. This autonomy is legally enshrined and protected in the fundamental freedom to associate, which under the Charter of Fundamental Rights of the EU is recognized also in the EU law. Furthermore, it finds its basis in the concept of the specificity of sport recognized by the EU in the Art. 165 TFEU. Sports federations, therefore, have relatively loose strings attached to their self-regulatory activity which may be framed as adopting and executing *lex sportiva*.

This notion is subject to intense debate in the literature, but according to the adopted understanding, *lex sportiva* covers self-imposed regulations, general principles of law, and *principia sportiva* developed and incorporated by the Court of Arbitration for Sport. It is based on the *sui generis* constitution of the sports movement – Charter of the Olympics and characterized by heterarchical and pluralistic structure. The unity and coherence are ensured by common axiological grounds (reflected in the fundamental principles and values of the Olympism) and harmonizing judicial activity of the CAS. The axiology and fundamental importance of the value and meta-principle *fair play* determines the common teleology of the *lex sportiva*, which should be primarily aimed at ensuring a level playing field, the unpredictability of results, and equality of chances for participants. Other identified objectives are ensuring the integrity of sport, security of athletes and spectators, maintaining an organizational monopoly, and protecting economic interest. *Lex sportiva* is also critically assessed as the legal order against the background of theoretical concepts of the law of H.L.A. Hart, R. Dworkin, and G. Teubner. The main features of this order, which are a contractual basis, autonomy from the public sphere, self-reflexivity, separate and exclusive adjudication system, the existence of societal constitution without a state (Olympic Charter) allow for acknowledging *lex sportiva* as transnational legal order in the broader sense. In the narrower sense, due to the imbalance of powers between federations and individuals, the dual, private-public, character of the authority of federations over athletes, and the global level of activity, *lex sportiva* fulfills the definition of “global administrative law”.

The legitimacy of sports federations to create this order is deemed to be of dual “combined” private and public character – it primary results from a consensual act of will (private component) and societal practice to follow and subordinate to the rules and resolve conflicts within the provided procedures (societal component). However, this legitimacy is also conditional and guaranteed by the public institutions as long as *lex sportiva* respects fundamental rights of the individuals such as the right to due process and respect of their dignity (public component). This approach is reinforced by the mutually recognizing and

coherent axiology of fundamental values of the sports movement and freedoms and rights recognized in constitutions, Charter of the Fundamental Rights of the EU, and the European Convention of Human Rights.

It follows from the above that *lex sportiva* has legal character, so the interactions thereof with other legal orders in the EU are analyzed in the light of pluralistic concepts, especially “principled legal pluralism” developed by M. Avbelj. In this context, the EU is presented as the union of autonomous legal orders with heterarchical and interdependent components of both, public and private nature. The order of *lex sportiva* is therefore not subject to scrutiny regarding its conformity with the provisions of the law of the EU. In opposite, the coexistence of both legal orders, mutual respect for the autonomy, and commitment to the whole are sought. It is argued that in this respect the concept of specificity of sport may be a useful instrument to enable protection of the essence of the autonomy of the *lex sportiva* on the one hand, and effectiveness and unity of the EU law on the other.

As the concept of specificity of sport has been developed by the CJEU and enshrined in the EU law in the Art. 165 TFEU, it has been presented how the actions of various EU institutions led to the development of the EU sports policy and inclusion of sport in the Treaty of Lisbon reform. This part of the analysis has been mainly focused on the process of achieving a compromise between the diverging approach to sport and balancing its social role and economical dimension. Subsequently, the evolution of the jurisprudence of the CJEU in respect of the general condition of applying the law of the EU to sports has been presented. The focus was laid on the approach of the CJEU to the economic character of sports competition as a condition for the application of the provisions of the law of the EU and the issue of “special character of sport” from 1974 to 2020. The evolution of the CJEU’s stance was presented on the example of creating and demising the sporting exception and applying the proportionality test to the actions of the sports federations. It was also highlighted, how the horizontal application of provisions of the EU law containing rights of the individuals – covering the citizenship of the EU, anti-discrimination rights, fundamental rights, Single Market freedoms, and competition law – led to the increase of the level of protection of individuals in the EU and expanding the scope of provisions of the Treaty on horizontal relations.

Since competition law is the main research subject in the work, the impact of its application to sports was analyzed in more depth. The rationale for applying the competition law of the EU to sports has been drawn from the observation that the economic and sportive dimensions of the competition in the European sports model become indivisible. Other features of the European sports model that justify the application of the Art. 101 and the Art. 102 to sports competition

are the monopolistic position of the federations and their transnational power, imbalance of the legal position of the federations and individuals, structural conflict of interest of the federations, and the flexibility of the framework of the competition law. Another kind of reasoning is related to the entanglement of commercial and regulatory functions of the sports federations which may result in incentives to commercially exploit the athletes, clubs, national associations, and/or potential sports events' organizers through the self-regulatory activity. The conclusion follows that due to the global, transnational and extraterritorial activity of the sports federations, the EU is the only counterbalancing power that can effectively influence the autonomy of the sports federations and provide a satisfactory level of protection of the fundamental rights of the individuals. The competition law is the most effective instrument, as it can be applied extraterritorially, direct, and with various range of remedies to tackle abusive behavior (from soft measures such as recommendations and formal inquiries to financial fines and structural remedies). Its adaptive framework enables it to cover the activity of the sports federations.

Thus the final focus was laid on the application of the competition law of the EU to matters related to sports itself. Firstly, the division of procedural competencies between the Commission and the Member States has been presented. Secondly, the hitherto practice of the Commission and the CJEU in the context of the sport-related matters was analyzed, which enabled to determine the catalog of the self-regulatory behaviors that may constitute an infringement of the Treaty provisions. Thirdly, the principles related to the justification of infringements on the grounds of Treaty provisions and the *Wouters* test (with particular focus on the possibility to justify infringements for reasons recognized as sport-specific) have been scrutinized. Finally, the critical assessment of the results and remedies at hand has been presented concerning the effectiveness in achieving the identified objectives of applying competition law to sport-related matters.

The conclusion of the analysis shows that the limits of the self-regulatory autonomy of the sports federations are set by the competition law of the EU within the remits of the *Wouters* test and consist of the legitimate objective, inherent and necessary conditions, and the proportionality of restrictions.