

## II. Research Papers

### GOOD GOVERNANCE IN NATIONAL SPORTS ORGANIZATIONS: THE NEED FOR THE INTERNAL DISPUTE RESOLUTION PROCEDURES

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**Abstract:** *One of the latest documents on the EU sports policy based on the values proclaimed in the European Sports Charter, EU White Paper on Sports and all three EU Working Plans on Sports is the Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council on promoting the common values of the EU through sport (2018/C 196/06) that, among other policies, (1) address an invitation to take an action in implementing the common European sport values to three addressees: the Member States, European Commission and Sports Movement; (2) asks the Member States to encourage and, where possible, support sport organizations in strengthening good governance, within their organizations and, where appropriate, address these values in their ethical guidelines or equivalent documents.*

*According to the Author, this document indicates that in the European Union, sport is, first of all, considered to be an instrument to promote shared values throughout the union and, secondly, it indicates that the common sports values are to be established in the EU. Confirmation of this is also found in the following EU sports policies: Sport and Integrity, Sport and Economy, Sport and Society. The Author supposes that compliance with these guidelines on the national level will contribute to the development of internal dispute resolution procedures within the sports organisations in Latvia undoubtedly contributing to the good governance in national sport organizations. Good governance in sports organizations, in its turn, is an illustrative and obvious asset to sports society and sport industry at all levels.*

*The article aims to provide an overview of EU recommendations regarding good governance in national sports organizations and its correlation with internal dispute resolution procedures.*

**Keywords:** *good governance, internal dispute resolution, sports organizations*

*“Where law do not rule, there is no constitution” Aristotle, The Politics, Bk IV  
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## I. Good governance = “rule of the game”

Before referring to the topic stated in the title, Author would like to emphasize the importance of good governance as a principle that underpins the existence of a successful organization of any kind, whether it is a private sector or public.

As stated by Grindol, governance is widely understood, when used with regard to government or the public sector, to refer to the institutional underpinnings of public authority and decision-making. In this way, governance encompasses the institutions, systems, “rules of the game” and other factors that determine how political and economic interactions are structured and how decisions are made and resources allocated. Clearly implicit in the general concept is the notion that good governance is a positive feature of political systems and that bad governance is a problem that countries need to overcome.<sup>1</sup>

Whether an entity is private or public, the smooth running of the business ultimately depends on the quality of the team and the processes in place<sup>2</sup>. Hence, good governance constitutes well-structured and transparent processes of organizations functioning and decision making.

Thus, in the bundle of good things that have come to be understood as good governance, qualities of institutions are often combined with expectations about the promotion of particular kinds of policies.<sup>3</sup>

Based on the above, Author supposes that good governance is critical to the development of an entity, its credibility, reputation, hence good governance in sports organizations is deemed to be a demonstrable asset to the sports society and sport industry.

A brilliant example of a sports organization that demonstrates that effective governance is a key element in ensuring a proper functioning of its governance bodies is Union of European Football Associations (hereinafter- UEFA) that among other amendments discussed during the Congress in Helsinki on 5 April 2017, included a specific article to make ethics and good governance a statutory objective of UEFA. These important reforms were positively commented on by the European commissioner for education, culture, youth and sport, Tibor Navracsics: “We have all seen how failures in governance have tarnished the image of sport. Football has been particularly vulnerable, although it is by no means

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1. Grindle, Merilee S. 2010. Good Governance: The Inflation of an Idea. HKS Faculty Research Working Paper Series, RWP10-023, John F. Kennedy School of Government, Harvard University. Available from: <https://dash.harvard.edu/handle/1/4448993> [viewed 28.10.2021.].

2. Why good corporate governance still matters in private companies. EY report. Available from: [https://www.ey.com/en\\_gl/assurance/why-good-corporate-governance-still-matters-in-private-companies](https://www.ey.com/en_gl/assurance/why-good-corporate-governance-still-matters-in-private-companies) [viewed 28.10.2021.].

3. Grindle, Merilee S. 2010. Good Governance: The Inflation of an Idea. HKS Faculty Research Working Paper Series, RWP10-023, John F. Kennedy School of Government, Harvard University. Available from: <https://dash.harvard.edu/handle/1/4448993> [viewed 28.10.2021.].

the only sport affected. It is due to its huge popularity that football is under even closer scrutiny <...> Transparency, accountability and stakeholder involvement are the backbone of good governance principles. <...> Sport must regain people's trust to keep its place at the heart of our societies"<sup>4</sup>

In case of UEFA it acts like an umbrella organization that spreads the right model of good governance to its members and supports the implementation of its ten good governance principles at national level. According to "Good Governance Principles For UEFA Member Associations", the UEFA good governance principles are as follows:

1. Clear strategy

A published strategic plan should ideally be implemented for both the short and medium term. It is recommended to evaluate the strategic objectives on an annual basis, to ensure that the strategy corresponds to the national association's statutes and, for the sake of transparency, to publicly communicate it, ideally through the national association website. Without a strategic plan with measurable objectives, the President and Executive Body/Board cannot be properly held accountable by the members.

2. Statutes

National associations are encouraged to revise and modernise their statutes. It would be recommended to establish fixed terms for both the President and Board/Executive Committee members (e.g. term and/or age limits). In addition, a system of "*checks and balances*" should be in place to avoid excessive concentration of power in one person while, at the same time, adequate arrangements should ensure continuity in the work of relevant bodies. Executive Committees/Boards of the national associations should have balanced gender representation (diversity) and it is, therefore, recommended to have a fair representation of women in these bodies and, ideally, in the corresponding bodies of leagues and clubs as well. The statutes should provide for a clear separation of powers (e.g. legislative/executive, executive/administrative, and independent judicial bodies), a definition of rights and obligations of the members, a clear indication of responsibilities and decision-making bodies, as well as minimum provisions related to ethics. The statutes should also guarantee a democratic process with free elections, stakeholder consultation, regular general assemblies and definition of roles and powers of the President, Board/executive committee and administrative body.

3. Stakeholder involvement

Stakeholders (i.e. clubs, leagues, players, coaches, referees, supporters) but

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4. European Commissioner welcomes UEFA reforms. Available from: <https://www.uefa.com/insideuefa/about-uefa/news/0238-0f8e4fe1f2cc-77d21b664e65-1000--european-commissioner-welcomes-uefa-reforms/?referrer=%2Finsideuefa%2Fabout-uefa%2Forganisation%2Fcongress%2Fnews%2Fnewsid%3D2455627> [viewed 3.11.2021.].

also other interest groups, such as political bodies, media and relevant NGOs, are important partners for the overall development of football at national level. Therefore, it is recommended to recognise and consult them on a regular basis. National associations are free to decide on the precise degree of stakeholder involvement.

#### 4. Promotion of ethical values, integrity and good governance

Ethical values and good governance should be incorporated as statutory objectives. There should be an overall strengthening of ethical principles, in particular, the principles of integrity, honesty, fiduciary responsibility, loyalty, and sportsmanship. Rules should be put in place to avoid, or mitigate (e.g. through disclosure), conflicts of interests, and to tackle the threat of corruption, whether it be as a result of offering or accepting gifts, bribes, or any other abuse of office. National associations are invited to specifically address ethics matters either in their disciplinary rules or via a specific Code of Ethics.

#### 5. Professionalism of committee structures

The standing committees of national associations play an important role as they contribute to the development of the national game. Consequently, national associations should ensure that their statutes and regulations contain clear definitions regarding the work, responsibilities, and composition of the committees, including appointment rules and members' qualifications. It is of outmost importance that a clear mechanism/procedure is in place so as to allow a proper communication flow between the committees and the relevant board/executive committee.

#### 6. Administration

The administration of each national association is the body that delivers the day-to-day business. To guarantee a high quality of work, it is recommended to protect the administration from undue political influence on operational matters and daily decisions. Moreover, it is recommended to have an open, clear and transparent hiring process, to ensure that the most competent candidates are recruited to work in the administration and, in so doing, to protect the overall interests of the national association. As the image of the administration reflects the image of the national association, there should be clear guidelines/regulations in place for the use of social media, confidentiality matters, accepting/offering gifts etc.

#### 7. Accountability

To enhance accountability it is recommended to establish a clear process regarding signatory rights in national associations. In particular, for certain documents of major importance, it is recommended to implement a “*double signature system*” in order to ensure that important contracts cannot be signed off by a single person. Internally, there should be a clear definition of budgets and responsibilities/competence for each division and unit.

#### 8. Transparency in financial matters and corporate documents

Transparency is one of the most important principles of good governance, especially when it comes to financial matters. A national association which is transparent will have a better image and will protect itself more effectively from any accusation of mismanagement or undue influence. This is appealing, both to the general public and to business partners, such as sponsors but also political bodies (both as potential funders and regulators). For this reason, it is strongly recommended to have transparent structures and strict financial controls, both at internal (i.e. the internal control system, including internal audit) and external (i.e. independent company) level.

#### 9. Compliance

National associations are always expected to have a system and resources that check that they comply with their own statutes and regulations, as well as all general civil and criminal laws to which they are subject. All national associations should have a compliance policy and culture. Policies such as respect, transparency, health and safety, equality/ diversity, protection of minors, match-fixing, doping, human rights, fair play and solidarity, and the fight against racism, discrimination, and data protection are of major importance and should be reflected in the national association's strategy and operations.

#### 10. Volunteer programmes

As the overall goal of all national associations should be to stimulate participation in football, it is recommended to have in place volunteer programmes that will increase the number of people active in all different aspects of the game, especially young people. Not only will this lead to a better image of national associations but it will also establish a stronger foundation for the future development of football. Especially the significance of honorary engagements at the grassroots level of football should be emphasized and acknowledged by the national associations.

The implementation of these principles at national level is supported through the organization of workshops and guidance of national association that wishes to go through a good governance reform process upon an individual request.<sup>5</sup>

What caught the eye of the Author is the lack of a clear-cut requirement among the principles stated above for a national association to have a dispute resolution procedure. Although, in practice, if we analyze the Statutes of Latvian Football Federation (hereinafter-LFF), article 62 contains the following regulation:

“1. LFF internal disputes related to Leagues, League Members, Clubs and Club Members, Players and Officials may, at last instance (i.e. after being examined in accordance with all internal LFF procedures), be resolved only by an independent and impartial arbitral tribunal which will render its final decision to

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5. A Guide to UEFA's Good Governance reform. Available from: <https://www.lawinsport.com/topics/features/item/a-guide-to-uefa-s-good-governance-reform> [viewed 5.11.2021.].

the exclusion of the General jurisdiction Court, in so far as it is not specifically prohibited by Latvian law.

2. International or European disputes arising out of or in connection with the FIFA or UEFA Statutes and Regulations may only be referred to the CAS as a last resort in accordance with the relevant FIFA and UEFA Statutes rules.

3. The LFF has jurisdiction to hear internal national disputes, i.e. disputes between parties that are Members of the LFF or related with LFF. FIFA and UEFA have jurisdiction to hear international and European disputes, respectively.

4. The LFF shall ensure that it and all bodies under its jurisdiction fully respect any FIFA or UEFA decision and the final decisions of the impartial Arbitral Tribunals referred to in paragraph 1 above and the CAS.”

Hence, we see a cascading regulation on the dispute resolution, what undoubtedly is a part of good governance.

Another international sports organization of outmost importance promoting good governance is International Olympic Committee (hereinafter- IOC) that has a model in place to ensure organizational integrity<sup>6</sup>.

Given the continuing evolution of good governance practice, the IOC also asked the world-recognized International Institute for Management Development (hereinafter-IMD) to undertake research into good governance at the IOC. The conclusion of the research is as follows:

“The IOC occupies a visible space in the sports world and beyond, and with this comes great responsibility. While in most areas, the IOC is building on the solid governance structures and processes strengthened by Olympic Agenda 2020, introducing reinforced practices in certain

areas will enable it to build its resilience and leadership position, fulfill its mission to society in its fullest and serve as a best-in-class example in a global arena in need of positive governance examples.”

The IOC worked with experts from the IMD’s Global Board Centre to compile the research.<sup>7</sup>

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6. IOC governance model to ensure organisational integrity. Available from:

<https://olympics.com/ioc/integrity/ioc-governance-model-to-ensure-organisational-integrity#:~:text=The%20IOC%20considers%20its%20risk,of%20its%20missions%20and%20objectives> [viewed 5.11.2021.].

7. IOC governance model to ensure organisational integrity. Available from:

<https://olympics.com/ioc/integrity/ioc-governance-model-to-ensure-organisational-integrity#:~:text=The%20IOC%20considers%20its%20risk,of%20its%20missions%20and%20objectives> [viewed 5.11.2021.].

## II. Good governance in sport as a EU value

Having mentioned above the European commissioner for education, culture, youth and sport, author also sees the need to highlight a Report to Commissioner Tibor Navracsics *High Level Group on Sport Diplomacy* prepared in 2016 by the co-rapporteurs, Valérie Fourneyron and Thierry Zintz under the chairmanship of Pál Schmitt and submitted to the European Commission<sup>8</sup>. This report generally is devoted to sports diplomacy and its impact to the positive image of the country/union, which can be seen as a soft power in European external relations and politics. There are several mentions of the importance of good governance in sports:

*“In its dialogue and cooperation with sports bodies, the EU does and should seek to promote its values, including its over-arching concerns of peace, democracy and respect for human rights, and its **sports related values of good governance, fairness, openness, wide participation and solidarity.**”*

When stressing the promotion of EU values in the context of major sport events and Advocacy, report states:

*“The organisation of major sport events is primarily the responsibility of the competent sport governing body (in line with the autonomy of sport). Nevertheless, the staging of major sport events raises a number of issues that connect to EU concerns, including questions of integrity, transparency and **good governance** when staging major sport events, grassroots participation, human rights, children’s rights, labour rights, social inclusion, environmental protection and wider questions of how the staging of major sport events can contribute to the economic growth of the European economy. Major events therefore offer sport diplomacy opportunities.”*

To sum up, the report affirms the importance of good governance in sports and stresses that beneficiaries of sport industry well organized are deemed to be not only sports society and industry, but also member states and/or EU’s external and diplomatic relations.

Below the Author will give an overview of the main EU documents and soft laws on the common policy towards sports, based on the subchapter of its doctoral thesis on the ADR in sports disputes<sup>9</sup>.

The important role of sport in European society and its specific nature were recognised in December 2000 in the European Council’s Declaration on the specific characteristics of sport and its social function in Europe of which account

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8. Report to Commissioner Tibor Navracsics. Available from: [https://ec.europa.eu/assets/eac/sport/policy/cooperation/documents/290616-hlg-sd-final-report\\_en.pdf](https://ec.europa.eu/assets/eac/sport/policy/cooperation/documents/290616-hlg-sd-final-report_en.pdf) [viewed 10.11.2021.].

9. Marina Kamenecka-Usova (2021), Legal Aspects of Alternative Dispute Resolution in Sports law. Available from: [https://dspace.rsu.lv/jspui/bitstream/123456789/4166/1/2021-01\\_Kamenecka-Usova-Marina\\_DT\\_IPD-1151.pdf](https://dspace.rsu.lv/jspui/bitstream/123456789/4166/1/2021-01_Kamenecka-Usova-Marina_DT_IPD-1151.pdf) [viewed 21.11.2021.].

should be taken in implementing common policies (the Nice Declaration). It points out that sporting organisations and Member States have a primary responsibility in the conduct of sporting affairs, with a central role for sports federations. It clarifies that sporting organisations have to exercise their task to organise and promote their particular sports “with due regard to national and Community legislation”. At the same time, it recognises that, “even though not having any direct powers in this area, the Community must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport and making it special, in order that the code of ethics and the solidarity essential to the preservation of its social role may be respected and nurtured”. The European institutions have recognised the specificity of the role sport plays in European society, based on volunteer-driven structures, in terms of health, education, social integration, and culture. The European Parliament has followed the various challenges facing European sport with keen interest and has regularly dealt with sporting issues.

In preparing the White Paper (document containing proposals for community action in the area of sport) highlighted below, the Commission has held numerous consultations with sport stakeholders on issues of common interest as well as an on-line consultation. They have demonstrated that considerable expectations exist concerning the role of sport in Europe and EU action in this area.<sup>10</sup>

The White Paper on Sport consists of two major documents, i.e. the White Paper on Sport (Brussels, 11.7.2007 COM (2007) 391 final) and the action plan “Pierre De Coubertin” – accompanying document to the White Paper on Sport (Brussels, 11.7.2007 SEC (2007) 934). The White Paper contains three policy discussions: the social role of sport, the economic dimension of sport, the organisation of sport.

The White Paper, in its paragraph regarding the organisation of sport, mentions the principle of good governance in sport that should be promoted at EU and national level. It states that the Commission can play a role in encouraging sharing best practices in sport governance. It can also help to develop a common set of principles for good governance in sport, such as transparency, democracy, accountability and representation of stakeholders (associations, federations, players, clubs, leagues, supporters, etc.)<sup>11</sup>. As mentioned before, the Author supposes that the principle of good governance includes in itself the presence of proper judicial procedures. This principle is also mentioned in the document

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10. White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /\* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].

11. White Paper on Sport {SEC(2007) 932} {SEC(2007) 934} {SEC(2007) 935} {SEC(2007) 936} /\* COM/2007/0391 final. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0391> [viewed 18.05.2019.].



entitled Communication on the Promotion of Good Governance in Sport<sup>12</sup>: good governance in sport is a condition for the autonomy and self-regulation of sport organisations. While it is not possible to define a single model of governance in European sport across different disciplines and in view of various national differences, the Commission considers that there are inter-linked principles that underpin sport governance at European level, such as autonomy within the limits of the law, democracy, transparency and accountability in decision-making, and inclusiveness in the representation of interested stakeholders. Good governance in sport is a condition for addressing challenges regarding sport and the EU legal framework. But the most important document regarding the good governance policy in EU sports is the EU Work Plan for Sport 2011–2014<sup>13</sup>. The values proclaimed in the EU Work Plan for Sport 2011–2014 were incorporated in the upcoming EU Working Plans for Sport 2014–2017 and 2017–2020 that contain additional topical issues.

The EU Work Plan for Sport 2011–2014 identifies three main categories of sports organisations, which can be defined as recipients of the recommendations outlined in the document:

1. Grassroots sport organisations. Grassroots sport covers all sport disciplines practiced by non-professionals; individuals who spend most of their time practising sport or who earn most of their income through sport are therefore excluded from this category. Grassroots sport bodies have specific characteristics that need to be considered when addressing the issue of good governance, namely their reliance on volunteers (in cooperation with limited paid staff) and their focus on participation.

2. National sports governing bodies and national umbrella sports organisations. These are the bodies responsible for the organisation of sport throughout all the layers of a single discipline (from grassroots to the elite) at national level. They are in charge of setting and enforcing rules within a given territory and to oversee that those rules are applied consistently under their jurisdiction. They are part of European (continental) and international federations.

3. European and international federations. These bodies have a special role to play in the field of sport. International federations usually set the rules of the game and are in charge of organising major international tournaments. European federations organise continental competitions and are responsible for organisation of sport within their area. This double role of international bodies implies

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12. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Developing the European Dimension in Sport. /\* COM/2011/0012 final \*. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1389190399614&uri=CELEX:52011DC0012> [viewed 16.08.2019.].

13. EU Work Plan for Sport 2011-2014. Available from: [https://ec.europa.eu/assets/eac/sport/library/policy\\_documents/xg-gg-201307-dlvrb12-sept2013.pdf](https://ec.europa.eu/assets/eac/sport/library/policy_documents/xg-gg-201307-dlvrb12-sept2013.pdf) [viewed 16.08.2019.].

that the standards of good governance applicable to them should be higher than those at lower levels of the sporting pyramid. Some national governing bodies and some organisers of sports events should also respond to higher governance standards, on grounds of the commercial nature of their activities and of the diversity of stakeholders involved in the events.

Paragraph 7 on Judicial/Disciplinary Procedures delivers the following recommendations to the sport bodies defined above:

1. Need for appropriate judicial/disciplinary framework.

Sports bodies should put in place a suitable judicial/disciplinary framework that meets their particular needs (and any requirements of its international sporting family). The framework should be proportionate to the size, membership and type of cases on which it is required to adjudicate.

2. Need for a separate judicial/disciplinary code.

It is preferable for a separate judicial/disciplinary code to be developed incorporating clear disciplinary rules, sanctions and procedures. Members, stakeholders and all participants should agree to be bound by the code and sanctions imposed.

Members, stakeholders and participants should, where practicable, be educated on key rules and obligations under the code so they are aware of what is expected of them and the consequences of non-compliance. Interactive web-based initiatives can be used for this purpose.

3. Impartiality of adjudicators.

Adjudicators should be impartial.

Sports bodies should monitor legal requirements in this regard as well as any minimum standards imposed by their international, national or regional bodies.

To mitigate the risk of challenge, appropriate codes of practice can be developed for judicial personnel providing guidance on when it may not be appropriate for them to sit in judgment.

4. Skills and expertise of adjudicators.

Adjudicators must possess the necessary skills and expertise to evaluate evidence, assess credibility of witnesses and make reasoned decisions.

To aid transparency, it is preferable if adjudications are supported by written reasons and where possible made public. Training in disciplinary procedures, the application of rules and production of written reasons should where possible be undertaken by adjudicators.

5. Fair trial.

Basic procedures to ensure the right of the defence should be established in accordance with general principles of law.

6. Appropriate appeal framework.

An appropriate appeal framework should be put in place by sports bodies. This supports overall due process and provides a further layer of risk management as erroneous decisions can be rectified.

Where appropriate, a sports body may also consider appointing an ombudsperson.

Where legal challenges to the decisions of governing bodies in national state courts are likely, a sports body may also consider, subject to applicable national and EU laws, adopting a suitable binding internal arbitration mechanism. Such alternative dispute mechanisms should deliver swift, cost effective, expert sports specific resolutions.

According to the Author, all the regulations of the EU White Paper on Sport and the EU Work Plans on Sport reflect the model of a transparent sport governance system that should be taken as an example by sports bodies in the Member States. Having analysed the recommendations, it is obvious that the EU spreads its policies and influence to the sports sector presumably considering it to be part of the EU economy. The given recommendations regarding the judicial and disciplinary proceedings at the sports bodies are considered to be very important in the context of good governance as a properly built judicial system in the sports body presumes to have a dispute resolution system that is capable of delivering quick and efficient conflict resolution. Hence, the policies proclaimed in the White Paper on Sports, are the most vivid confirmation that the idea of an alternative dispute resolution in EU sport is existing, has been discussed and is deemed to be a right way to develop sports policy in the Member States.

### **III. Internal dispute resolution procedure as a pillar of good governance in national sports organizations**

To sum up all stated above, it should be noticed that a recommendation to pursue and establish good governance in national sports organizations of EU Member States is being stemmed from two sources, i.e., EU soft law and international sports organization of utmost political importance, such as e.g., UEFA, IOC. Both sources not least emphasize the importance of internal dispute resolution procedures that underpin the successful good governance in sports organizations. However, it is worth noting a global significance of IOC to every member of the Olympic movement and policy distribution of UEFA only to national football federations.

Although Author compelled to voice that in Latvia, Author's homeland, national sports organizations still have a long way to go until proper good governance is at the core of every sports organization, still pressure from both sides, i.e., EU policies and international sports organizations, allows to be optimistic regarding the changes in the future.