

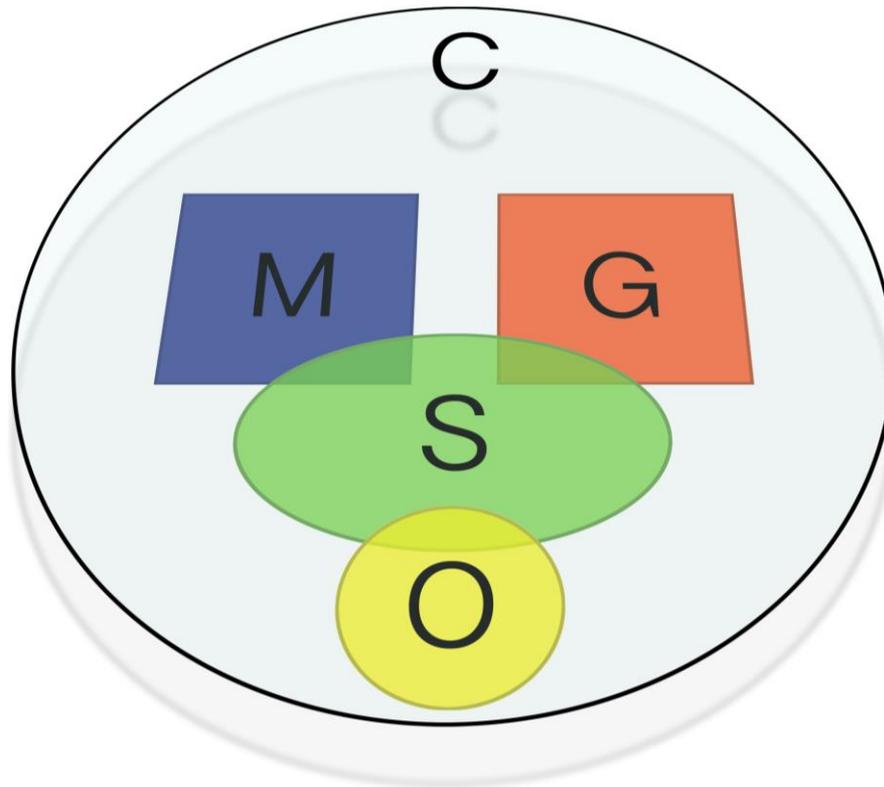
Dilemmas in disciplining and regulating sports: the need for action

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5 sphere model



Treaty on the Functioning of the European Union

- whitepaper on sport, 2007: sport has an economic dimension and fall within the scope of the EU Treaty.
- article 165 of the TFEU, 2009: the EU "shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function."
- Note the explicit recognition of the social logic at work in the world of sports.

Treaty on the Functioning of the European Union

- Paragraph 2 of article 165: action of the EU shall be aimed at "developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen."
- The TFEU supports through article 165 perfectly well the 5 sphere model for sports and especially the spheres defined as Oikos, Social, Governance and Cultural.
- The market sphere M in our model in sport can be found in case law of the European Court of Justice

Case Law ECJ: Economic Impact

- *Walrave and Koch versus Union Cycliste Internationale* (Case 36/74 [194] ECR 1405) : distinction between rules of a purely sporting interest that has nothing to do with an economic activity ("rules of the game") and rules with economic impact on which the Treaty is applicable.
- *Meca-Medina and Majcen versus the Commission* (Case C-519/04 P 18 July 2006): "the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the Treaty the person engaging in the activity governed by that rule or the body which has laid it down."

Sporting Autonomy

- it may be concluded that:
 - the 5 sphere Model goes well together with the TFEU and the ECJ-cases
 - according to the European Court of Justice the specific nature of sport (see article 165 TFEU) provides sport federations with a certain degree of sporting autonomy, which allows them to impose on their members rules that although falling within the scope of EU law, are nevertheless accepted because of the special features of sport, necessary to achieve legitimate sporting objectives and/or that are inherent in the organization of sport.
 - Which is not the same as a sporting exemption
- WHAT DOES THIS MEAN AND WHERE WILL THIS LEAD TO?
 - UEFA Financial Fair Play versus transfer Neymar
 - Third Party Ownership
 - Nationalisation of athletes

Conclusion

- The question is whether the (social) sports federations are able to regulate, monitor and discipline the (financial) operations of their members, even now the TFEU and ECJ provides opportunities thereto. The impact of financial and political interests in the world of elite sport are of such a magnitude that the sports world is becoming weak
- If not: In view of the increasing attention for financial malpractices, inequality, and infringements on competitive balance that have little to do with sports, it is a matter of time for governments to take over the regulation, monitoring and disciplining of elite sports.
- To avoid such interference we advocate forms of partnership between (international) governmental authorities and sports organizations (compare: WADA).