

# Good Governance in the Employment Relations of Athletes in Olympic Sports in Europe: Understanding - Evaluating - Improving

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# GOOD GOVERNANCE IN THE EMPLOYMENT RELATIONS OF ATHLETES IN OLYMPIC SPORTS IN EUROPE

UNDERSTANDING - EVALUATING - IMPROVING

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Leanne O'Leary,  
Pawel Zembura,  
Luiz Haas, Thiago Santos,  
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Manfred Lämmer, Sönke Schadwinkel



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of the European Union



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UNIVERSITY OF RIJEKA, FACULTY OF LAW  
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# I. INTRODUCTION

BACKGROUND AND RATIONALE

THE EMPLOYS PROJECT

KEY CONCEPTS, GUIDING QUESTIONS AND STRUCTURE OF THE STUDY



## 1. Background and Rationale

The organisation of work and employment relations is a core issue of social policy, but also touches on fundamental questions of the political and legal order of communities. This field of activity is generally characterised by collective agreements, but also by actions and disputes between employers and employees and their representative bodies. While employment relations have been researched in detail with regard to the general structure of employer-employee relations, there is hardly any information and/or studies available for the specific area of employment relations in sport. In view of current changes in Olympic sport, the field of **employment relations of athletes** is experiencing **fundamental changes** as well. While sport was traditionally shaped by notions of amateurism, voluntary engagement and prestige, the **professionalisation and commercialisation** changed both the structures and perception of Olympic sport. Against this backdrop, the **demands for improvements** of the conditions of the social and professional setting of athletes have been voiced more and more loudly by an increasing number of actors in the past years. This can be explained above all by an ambiguous picture: on the one hand, Olympic athletes are acclaimed stars and public heroes; on the other hand, there are reports of difficult financial situations of athletes and precarious employment conditions.

With more money coming into the system and athletes competing on a professional basis, issues found in classic employment or industrial relations come to the forefront also in sports: these include, among others, labour disputes, protests and strikes, as well as unionisation (Mittag 2018). Consequentially, the International Labour Organization (ILO) includes “athletes and sport players” in its ***International Standard Classification of Occupations*** (International Labour Organization 2012, p. 210). According to this classification, athletes and sport players “prepare for and compete in sporting events for financial gains [...] They train and compete, either individually or as a part of a team, in their chosen sport”. (ibid., p. 210) Exceptionally, the ILO lists elite athletes from sports such as boxing, golf and football, but also skiers and wrestlers. In its Issues paper for discussion, the ILO specifies that it understands “a professional athlete” as “an athlete who gains income through competitive sport and whose activities are controlled by a sports organization, such as a club or federation.” (ILO 2019, p. 1) This definition explicitly includes those athletes “whose only professional activity is sport, either as employees or as contract players of sports clubs” and “athletes who may have other jobs but who spend significant time training and competing in sports competitions from which they derive income, such as athletes in some Olympic disciplines.” (ibid., p. 1) With this definition, **the ILO widens the discussion on work-related issues to Olympic sports** which often only take a minor role in both practice and academia.

The scope of this research, therefore, addresses **elite athletes** who practice, play and compete in sports which are organised **outside of professional leagues** and for whom the **Olympic Games constitute the pinnacle of the sporting stage**. Accordingly, the elite-level athletes of relevance for this study usually do not have an employment contract with a professional club. Other conceptualisations referring to

the athletes of interest, herein referred to as ***athletes in Olympic sports***<sup>1</sup> (cf. *Glossary*) or **Olympic elite athletes**, also use labels such as *semi-professionals*, *elite athletes* or *amateurs*. The scope of the study encompasses an approximate number of **25,000 elite athletes in Olympic sports**. This number includes participants in the last two Olympic Games (winter 2022 and summer 2021) and, where such data are available, athletes of a national elite sport or cadre system, as well as national teams.

As stated above, **academic literature in the field of employment relations in sport is scarce**. In point 13 of its *Points of consensus* which were drafted at the Global Dialogue Forum on Decent Work in the World of Sport in January 2020, the ILO highlights this persisting research gap:

“13. Lack of cohesive statistical data and comprehensive knowledge on the working conditions, social protection, contractual arrangements and other work-related issues makes it difficult to develop evidence-informed policies and measures addressing decent work deficits among athletes.” (ILO 2020, p. 20)

The **limited amount of available research data on athletes’ employment and social relations is particularly visible in the field of Olympic sports**.<sup>2</sup> Currently, the employment related literature in sport considers Olympic elite athletes only insofar as they are subject to WADA’s anti-doping regulations (Skinner et al. 2016). All other studies focus on cases of professional team sports in the United States and Australia, and on European men’s football. Very little is known about topics like the employment status and the above-described labour related issues pointed out by Mittag (2018) in the specific case of Olympic sports (outside professional leagues and club competitions). Organised sport, media, academics, and especially athletes themselves, have so far only limited information on the legal frameworks, the range of established organisations and collective interest groups, as well as the diversity of employment forms and contractual regulations in Olympic sports. Although reports on the financial situation of competitive athletes and on precarious or atypical employment relationships in professional sports are increasingly found in the media (e.g. FIFPro 2016), there is a lack of a comprehensive overview and systematic knowledge on the situation in Olympic sports. Overall, the employment relations of athletes in Olympic sports depict a desideratum in academic literature but are increasingly gaining momentum in the practice of sport politics, sport management, and sport law.

Linking sport with education and vocational training, the employment related situation of Olympic athletes is usually referred to as *dual career*. While this conceptualisation does have its merit, it fails to reflect the current developments in Olympic sports in Europe in some fundamental aspects. It neglects, for example, the **legal and socio-political frameworks** that athletes operate in at the **national and**

1 Throughout this study, several specific terms are used. Terms with a specific meaning are explained in the Glossary and highlighted in *italics and underlined*.

2 The most comprehensive monograph on the employment relations in professional sports in Europe is Leanne O’Leary’s (2017) comparative study on rugby, football and basketball. The *Research handbook of employment relations in sport* published by Barry et al. (2016) includes several case studies, predominantly from North-America and Australia.

**EU level.** It also circumvents **fundamental questions about the activity of elite-level training and competition** as such and about the **nature of the relationships** in which this activity is embedded. This is where this study is anchored. The recent years have shown that issues of employment relations do exist also in Olympic sports (cf. Mittag 2018; Seltmann 2021): to name but a few, issues of self-marketing related to the infamous Rule 40 of the IOC Charter have been raised by athletes, leading to a loosening of the Rule following a decision of the German Federal Cartel Office (Terraz 2020). Athlete agreements and arbitration clauses binding the athlete to the rules of SGBs, as well as matters of participation in decision-making have come to the forefront of the discussion about athletes' welfare in Olympic sports. Additionally, important court decisions by national and EU courts upon the filing of complaints from athletes further put into question the prevailing practices and require academic analysis and practical reflection.

## 2. The EMPLOYS Project

### 2.1. Goals and Target Groups

The project *Understanding, Evaluating, and Improving Good Governance in the Employment Relations of Athletes in Olympic Sports in Europe* (EMPLOYS) receives financial support from the EU's Erasmus+ Sport Programme as a Collaborative Partnership (622796-EPP-1-2020-1-DE-SPO-SCP). All information on the project, the outputs, as well as the events can be found on the [project website](#) and the [European Commission's Erasmus+ Platform](#).

The project is structured around three specific goals with dedicated project phases:

1. In the initial project phase, the Fact Report (Mittag et al. 2022) was produced by the academic partners to this project. The study aims at providing a basic **understanding** and evidence base of the **legal and socio-political situation of Olympic athletes** in different national contexts of **29 states** (EU member states, the United Kingdom and Norway) and beyond. A summary of the results of this study are presented in **Part II** of this report.
2. Building on this research, the project aimed at **evaluating** the current practices in national and EU contexts on the basis of a rights-based **Good Governance Concept and Principles of Good Governance** in the employment relations of athletes in Olympic sports in Europe. Universally applicable and widely accepted Principles of Good Governance (against which an assessment of current practices in the national contexts and on the EU-level was conducted) were formulated. This approach of the project, illustrated in **Part III** of this report, addresses the normative dimension of the topic.

3. Referring to practical policy making dimensions, the final part of the project aimed at **improving** Good Governance in the employment relations of athletes in Olympic sports. On the basis of the evaluation of the current situation and identified **Good Practice** examples, **policy recommendations** were formulated in **Part IV**. These recommendations take into consideration the specific roles of the involved actors, as well as national, trans- and international settings.

The **target groups** of this project included all stakeholders involved in the regulation and implementation of employment relations and athlete welfare in Olympic sports. These are governments and legislators, SGBs and athletes' organisations at all geographic and regulatory levels (see Table 1).

*Table 1: EMPLOYS Target Groups.*

	Governments	Sport Governing Bodies	Athletes' Organisations
Global	<ul style="list-style-type: none"> <li>International Labour Organization</li> </ul>	<ul style="list-style-type: none"> <li>International Olympic Committee</li> <li>International Sport Federations</li> <li>Event Organisers</li> </ul>	<ul style="list-style-type: none"> <li>World Players Association</li> <li>Athletes' Commissions of IFs and the IOC</li> </ul>
European	<ul style="list-style-type: none"> <li>European Commission</li> <li>European Parliament</li> <li>EU Council</li> <li>(European) Committee of Regions</li> <li>(European) Economic and Social Committee</li> <li>Council of Europe</li> </ul>	<ul style="list-style-type: none"> <li>European Olympic Committees</li> <li>Continental Federations</li> <li>Event Organisers</li> </ul>	<ul style="list-style-type: none"> <li>EU Athletes</li> <li>EOC Athletes' Commission</li> <li>FIFPro (Europe)</li> </ul>
National	<ul style="list-style-type: none"> <li>National Governments</li> <li>Ministries responsible for Sport</li> </ul>	<ul style="list-style-type: none"> <li>National Olympic Committees</li> <li>National Federations</li> </ul>	<ul style="list-style-type: none"> <li>National Players' Associations</li> <li>Athlete Commissions of NFs and NOCs</li> <li>Other interest organisations and NGOs</li> <li>Trade Unions</li> </ul>
(Regional)	<ul style="list-style-type: none"> <li>Regional Governments and Ministries</li> </ul>	<ul style="list-style-type: none"> <li>Regional Sport Confederations</li> <li>Regional Federations</li> </ul>	<ul style="list-style-type: none"> <li>Regional offices of sport related interest representation organisations</li> </ul>
Local	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li>Municipal Sport Confederations</li> <li>Sport Clubs</li> </ul>	n.a.

The project also aimed to inform individual athletes about their employment and social rights and their specific situation. It is expected that athletes will benefit from the outcomes of the project as it gives answers to pressing and important questions for athletes in Olympic sports. Hence, the project also aimed to **empower athletes in Olympic sports**.

## 2.2. Project Team and Methodology

The project team consists of members of seven organisations from across Europe. The *academic partners* are members of five research institutes. In addition, representatives of two umbrella organisations of the European sports sector complement the team as *practice-oriented partners*. The consortium is led by **Prof Dr Jürgen Mittag**, Head of the Institute of European Sport Development and Leisure Studies (IESF) at the German Sport University Cologne. **Maximilian Seltmann**, research associate at the IESF, serves as the project coordinator. **Lorenz Fiege**, research associate, completes the research team of the IESF. The academic partners are **Dr Leanne O’Leary** (Edge Hill University/UK), **Associate Professor Dr Vanja Smokvina** (University of Rijeka, Faculty of Law/Croatia), **Dr Thiago Santos** and **Luiz Haas** (European University Lisbon/Portugal) and **Dr Pawel Zembura** (Institute for Sport Governance/Poland). On the practical side, **Paulina Tomczyk** represents the European Elite Athletes Association (EU Athletes). The European Olympics Academies are represented by **Prof Dr Manfred Lämmer** and **Sönke Schadwinkel**.

Throughout the research process, each of the academic partners assumed a responsibility for the data collection in one European region (see Table 2). The data on the 29 European countries was collected with the support of national experts in every country.<sup>3</sup> A list of the national experts is found in Annex 1.

*Table 2: EMPLOYS Academic Partners and Responsibilities.*

Partner	Region of responsibility	Countries included
German Sport University Cologne Professor Dr Jürgen Mittag (Project Lead) Maximilian Seltmann (Project Coordinator) Lorenz Fiege Expertise: Policy & Governance	Central Europe	<ul style="list-style-type: none"> <li>• Germany</li> <li>• Netherlands</li> <li>• Belgium</li> <li>• Luxembourg</li> <li>• Austria</li> <li>• Hungary</li> </ul>
Edge Hill University Dr Leanne O’Leary Expertise: Law, Policy & Governance	Northern Europe	<ul style="list-style-type: none"> <li>• United Kingdom</li> <li>• Ireland</li> <li>• Norway</li> <li>• Sweden</li> <li>• Finland</li> <li>• Denmark</li> </ul>
University of Rijeka Dr Vanja Smokvina Expertise: Law, Policy & Governance	South-eastern Europe	<ul style="list-style-type: none"> <li>• Croatia</li> <li>• Greece</li> <li>• Cyprus</li> <li>• Bulgaria</li> <li>• Romania</li> <li>• Slovenia</li> </ul>

3 For a detailed description of the methodology of the first project phase, please refer to the Fact Report (Mittag et al. 2022), pages 28ff.

European University Lisbon Dr Thiago Santos Luiz Haas Expertise: Governance & Management	South-western Europe	<ul style="list-style-type: none"> <li>• Portugal</li> <li>• Spain</li> <li>• France</li> <li>• Italy</li> <li>• Malta</li> </ul>
Institute for Sport Governance Dr Pawel Zembura Expertise: Governance & Management	Eastern Europe	<ul style="list-style-type: none"> <li>• Poland</li> <li>• Estonia</li> <li>• Latvia</li> <li>• Lithuania</li> <li>• Czech</li> <li>• Slovakia</li> </ul>

The practice-oriented partners (see Table 3) took a key complementary role in ensuring the depth and quality of the academic research. This especially relates to the formulation of policy recommendations derived from the data (third project phase). Furthermore, it is their responsibility to ensure an active participation and critical reflection among the stakeholders of the target groups.

*Table 3: EMPLOYS Practice-oriented Partners and Responsibilities.*

Partner	Main Responsibility	Target Groups
EU Athletes Paulina Tomczyk (General Secretary)	Stakeholder Involvement	<ul style="list-style-type: none"> <li>• Athletes</li> <li>• Athletes' Organisations</li> <li>• Labour Organisations</li> <li>• EU Institutions</li> <li>• Council of Europe/EPAS</li> </ul>
European Olympic Academies Prof Dr Manfred Laemmer (President) Sönke Schadwinkel (Executive Director)	Stakeholder Involvement	<ul style="list-style-type: none"> <li>• National Olympic Committees</li> <li>• National Olympic Academies</li> <li>• European Olympic Committees</li> <li>• International Sport Federations</li> <li>• National Sport Federations</li> <li>• EU Institutions</li> <li>• Council of Europe/EPAS</li> </ul>

This specific composition of the project team was essential for the methodology and results of the project. Next to the analysis of existing literature and the collected data, the discussions among members of the project, as well as jointly adopted decisions of the team constituted the main methodological and analytical feature that led to the results presented in this study.

Over the course of the project period (01/2021-12/2022), stakeholders were consulted in different ways to comment on the data, results, and analysis. While the final decision-making competence, especially in relation to policy recommendations, remained with the project partners, the open



exchange with the many involved actors at all stages of the project had a significant effect on the final outcomes. To facilitate this process, five public conferences (so-called **Multiplier Sport Events** – MSEs) were held with stakeholders from all across Europe and all levels of sport governance.

- At the first two MSEs (October 2021 in Cologne and December 2021 in Lisbon), the **Fact Report** was presented and discussed. All stakeholders were invited to comment on the findings and to engage in a discussion on the implications of the findings.
- MSE3 (March 2021 in Ormskirk), MSE4 (May 2022 in Rijeka) and MSE5 (June and September 2022 in Warsaw) were explicitly designed to define and discuss a **Concept and Principles of Good Governance** in the employment relations of athletes in Olympic sport in collaboration with athletes, SGBs, and national and international policy makers and legislators. These informed the second project outcome, the so-called **Evaluation Report** (published in June 2022).

After the publication of the *Evaluation Report*, stakeholders were also invited to provide their feedback in an **online survey** (see Part III, Chapter 2.2) This process led to the revision of the Good Governance Concept and Principles (Part III of the study) and guided the formulation of specific policy recommendations (Part IV).

### 3. Key Concepts, Guiding Questions and Structure of the Study

#### 3.1. Employment Relations of Athletes in Olympic Sports

Due to the above-mentioned characteristics of most Olympic sports, where athletes are usually not considered employees or workers, related research approaches from the perspective of **employment relations** may be controversial and raise questions over key concepts and methodological approaches of the present project, as well as the findings of this report. While traditionally employment relations refer to the relationship between an employer and an employee and/or to the relationship between capital and the workforce (cf. Barry et al. 2016; Kaufman 2019), it is widely acknowledged that such conceptualisations neglect the ever-changing landscape of economic activity and work of today's political economy (Gall 2019). As a consequence, the field and study of employment relations “covers a dauntingly large and heterogeneous set of topics” which cannot be conveyed by a single, monistic definition or concept (Kaufman 2019, p. 10). Decisive for the approach of this study is the argument that the concept of employment not only reflects formal relationships defined by contracts to carry out specific work roles, but also more informal relationships, as well as broader questions of social policy (Gall 2019; Kaufman 2019). More broadly understood, employment relations are the **networks, institutions, and systems** in which different actors are involved with regard to work related processes

and economic activities. The focus of the study of employment relations is on the **shaping of economic exchange relations and social conflict relations** (cf. Industrielle Beziehungen 2021; Gall 2021).

Building on the above concepts, the traditional academic disciplines (including, among others, economics, law, management, and political science) use different approaches and place emphasis on diverse aspects (Sisson 2020). Therefore, to fundamentally understand the employment relations of athletes in Olympic sport, a wide array of research dimensions must be considered. The composition of the project team and the expertise of the academic partners mirrors this challenge very well as it brings together academic experts from the various relevant disciplines. This enables an **interdisciplinary study approach**. Still, the common core of research on employment relations is its focus on **institutions** which govern the relations of individuals and organisations. The already scarce literature on employment relations in sports, however, predominantly focusses on specific issues and cases, whereas the overarching areas of “governance, institutions and regulation” have only been considered to a minor extent (Barry et al. 2016, p. 3).

Within the framework of this study, the terms *employment relations of athletes in Olympic sports* or *athletes’ employment relations*, shall be understood as **all legal, contractual, financial, and social relationships that enable an athlete to engage in and perform elite sport in their discipline and specific national context, and shape economic exchange relations and social conflict relations** (cf. Glossary).<sup>4</sup>

These complex relationships can be analysed along the lines of **six issue-specific dimensions**: contracts, income, commercial opportunities, occupational safety and health, social protection, and participation and bargaining. To ensure the comparability of the data across all 29 countries included in the project, **four specific actors of the elite sport system** are identified and the relationships they maintain with athletes are examined:

#### **a) National Olympic Committees (NOC)**

In each of the countries included in the study, a NOC exists. While the roles that NOCs play in the different countries may be rather diverse (i.e. in some countries they are also the umbrella organisation of the national sport federations), all NOCs are recognised by the IOC and serve the purpose to advance the Olympic Movement in the national context. Of specific relevance to the athletes is the fact that it is the NOC which officially nominates and sends the team for the participation in the Olympic Games.

#### **b) National Federations (NFs)**

National Federations play an important role in shaping the employment and work-related situation of athletes in Olympic sports. Due to the methodological constraints of the comparative study, not every NF in all 29 countries can be analysed. Instead, the **national athletics federation** of each country, being a member of World Athletics (formerly IAAF), serves as an exemplary NF to be considered in the

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<sup>4</sup> Within this study, the related concept is synonymously referred to as “employment and social relations”.

analysis. Additional data has been collected on some NFs which have specific characteristics relevant to the field of this study.

**c) Public authorities without a generic focus on elite sport** (cf. Glossary)

Previous studies (cf. Breuer et al. 2018; Kuettel et al. 2020) show that, in some European countries, elite athletes can enter into a relationship with a public authority or state entity which, per se, does not have a generic focus on elite sport, like the national **military**, **police** or **customs**. Where these entities play a role in supporting elite athletes, the relationships are analysed accordingly.

**d) Specific Elite Sport Organisations (SESOs)** (cf. Glossary)

In many countries, organisations exist which are specifically created with the mandate and purpose of supporting elite sports. The support of elite sports may be one among many mandates and objectives of these organisations, which can take the form of public (e.g. Ministerial agencies) and private entities (e.g. foundations), as well as public-private partnership organisations.<sup>5</sup>

While for many athletes the relationship with a local club may also be decisive for their employment and social relations, the precise role of clubs cannot be analysed systematically on such large scale and remains a task for future research.

Overall, athletes' employment relations are embedded in legal and socio-political frameworks. These relate to applicable laws and procedures at national, EU and international level. A specific chapter (Part II, Chapter 2) is dedicated to these fundamental characteristics.

Figure 1 illustrates the conceptual model of athletes' employment relations in Olympic sports.



*Figure 1: Conceptual Model of the Employment Relations of Athletes in Olympic Sports.*

<sup>5</sup> If a public agency or state entity is created for the purpose of supporting and financing elite sport, they too fall under the scope of the actors herein referred to as “Specific Elite Sport Organisation”. In contrast, the public authorities and state entities considered under c) only include those actors whose generic task and raison d’être does not relate to the support of elite sport (e.g. the military).

### 3.2. Good Governance

The term “Good Governance” has become a much-noted core concept both in the media and in sports research. Against the backdrop of a growing number of sport-related scandals at the turn of the century, the public started to increasingly associate **high normative expectations** with Good Governance in sport. At the same time governance concepts also began to be developed from a scholarly perspective as a toolkit for sport science analysis (Geeraert 2013; Sobry 2011). The first two comprehensive handbooks on sport governance published two decades later (Shilbury & Ferkins 2020; Winand & Anagnostopoulos 2019) outline as **inventories** the now in-depth engagement with this field; however, they also document that scholarly engagement with Good Governance is characterised by **persistent diversity rather than a high degree of coherence**. The majority of works on the subject are nevertheless based on a common understanding of the term, which understands Good Governance as the responsibility of primarily sports organisations at the most diverse levels for the functioning and integrity of sport through the development, implementation and control of norms and rules.

The starting point for the emergence of Good Governance concepts in sport mark the ongoing **commercialisation, mediatisation and professionalisation** processes of the 1980s and 1990s. At the same time, Sport Governing Bodies (SGBs), guaranteed by the one-federation principle, maintained their monopoly position. During this period, sports federations not only became more important and financially stronger, but also **increasingly susceptible to undesirable developments, such as ethical misconduct and internal governance failures**. Especially in international competitive sports, shadowy aspects such as betting manipulation, doping scandals, bribery and corruption, but also a lack of consideration of social, economic or ethical standards were revealed.

**Governance** is a concept that is as multi-layered as it is complex, based on different academic disciplines and also subject to a continuous change of meaning. The English term governance has its origins in the Latin term “gubernare”, which for a long time was used synonymously in the Anglo-American language area for “governing” or for the political actions of states and governments. With a view to the **inclusion of an ever-larger circle of actors in political decision-making** and the recourse to economic and political science approaches, governance developed into a cipher for the most diverse forms of political steering or regulation. States and governments were no longer the sole point of reference, but markets and organisations, as well as actors beyond the nation state were increasingly included in the light of a more comprehensive coordination of action. As with the concept of governance, there is no uniform definition of the concept of Good Governance (King 2016).

After the end of the Cold War, when the political and economic performance of states was increasingly questioned and civil society was attributed greater importance for social and economic development, states committed themselves to strive for or comply with certain standards of good and ethical behaviour. A similar development was also emerging in large companies and business organisations. The terms corporate governance and good corporate governance, which emerged in this context,

underpinned the responsibility of corporate management towards internal and external stakeholders. The **Good Governance** concepts introduced at that time follow a praxeological approach and included goals such as **transparency, democratic processes, accountability, efficiency, effectiveness, and anti-corruption**. Their usefulness was justified above all by the fact that they guarantee mutual security of expectations between the actors, which ensures collective action in the long run. On the part of academia, corresponding practice-oriented approaches were analytically flanked and theoretically underpinned, but also critically reflected upon, since Good Governance concepts often aim at the establishment of structures, which at the same time form a central prerequisite for the successful implementation of corresponding concepts (Czada 2009, p. 19).

Sports organisations play a key role in the transfer of Good Governance to sport in both practical and academic areas. The starting point here are the changes from largely volunteer-run federations in sport to increasingly professionalised organisations run by remunerated persons or full-time employees. The organisational and management-related governance studies subsequently found their correlate in more systemically oriented works. These studies primarily shed light on the nation-state setting in which state actors began to exert increasing influence on the shaping of sports policy by federations, without questioning the fundamental specificity of the sector or the association monopoly. The governance approach was able to ideally describe and explain the **transformation of sport from a self-governing and non-governmental social sector to a multi-actor network** (cf. Bruyninckx 2012). Soft law methods form an important set of instruments of the governance concept. Instead of hard intervention instruments such as legally binding regulations, sport-related goals are achieved through **soft methods such as negotiations, coordination mechanisms, networking and voluntary agreements between state and association actors** (Hoye & Cuskelly 2006; Hoye, Nicholson & Houlihan 2010).

In practice, the first sport-related Good Governance activities were developed by international sports federations as well as international organisations and non-governmental organisations. The term Good Governance in sport was first used in the Statement of Good Governance Principles adopted by the European Olympic Committees (EOC) and the Fédération Internationale de l'Automobile in 2001 (Chappelet & Mrkonjic 2013). In 2004, Good Governance was included in the Olympic Charter, and in 2008, the Basic Universal Principles of Good Governance of the Olympic and Sports Movement were published by the IOC, setting – on a **voluntary basis** – minimum standards for IOC recognised organisations (IOC 2008).

In 2005, the Council of Europe adopted the *Resolution on the principles of Good Governance in sport*, which was subsequently further elaborated. In contrast to the international level, Good Governance criteria were initially met with little response from national sports federations outside the Anglo-American world. The first national sports organisations to adopt recommendations were UK Sport (2004) with the document *Good governance: a guide for national governing bodies of sport* and Sport and Recreation South Africa (2004) with *Best practice principles of Good Governance in sport*. These

were followed by the Netherlands (2005), associations from the USA (2005), New Zealand (2005), Wales (2006) and Australia (2007). The DOSB, the umbrella organisation of German sport, published *Guidelines for Good Association Governance* in 2007. Not least in view of the demands of the media and a critical sport audience, the federations themselves are now claiming to take greater account of the requirements of Good Governance in the national arena as well (Jack 2018).

At the EU level, the Expert Group “Good Governance” established by the EU Work Plan for Sport 2011-2014 adopted in 2013 “Principles of Good Governance in Sport”. This document **defined Good Governance in Sport** as “the framework and culture within which a sports body sets policy, delivers its strategic objectives, engages with stakeholders, monitors performance, evaluates and manages risk and reports to its constituents on its activities and progress including the delivery of effective, sustainable and proportionate sports policy and regulation” (XXGG 2013, p. 5).

The next EU Work Plan for Sport (2014-2017) established a second Expert Group on Good Governance that considered some issues in detail. The final report highlighted “if good governance principles are firmly embedded in the structures, and culture, of sport governing bodies, they will help restore credibility and people’s faith in sport, and ensure that the integrity and impact of sport is safeguarded for future generations to enjoy” (XXGG 2016, p. 3). Considering methods, the second report underlined that self-evaluation can be considered “an important first step in the process”, however “external monitoring or auditing and follow-up is recommended to ensure that the effect of any likely shortfalls is minimized” (ibid., p. 4). Accordingly, the report called “for the continuous monitoring of how the principles of good governance in sport are being implemented and promoted” (ibid, p. 6). In addition, the report referred also to the role of public authorities stating that “governments and public authorities can play an important role in the implementation and promotion of good governance in sport, with respect to autonomy of sport. Good governance should be a **prerequisite condition for the recognition of the autonomy of sport**” (ibid., p. 5). The report assigned in particular an important role to the EU, concluding that the European Union is “a necessary actor in areas which touch upon good governance and which have a cross-border nature” (ibid., p. 6).

However, Good Governance approaches that go **beyond the organisational level** and have stronger implications for the character of an entire policy field, such as industrial or social relations, have only been examined in rudimentary form.

### 3.3. Guiding Questions and Structure of the Study

In line with the overall goals of the project (see 2.1.1), the following guiding questions are answered in the related parts of the study:

#### UNDERSTANDING

- Which contractual, financial, and social relationships do elite athletes in Olympic sports have at national level that make up their employment relations?
- Which effects do legal and socio-political frameworks of the nation state and of the trans- and international level have on athletes' employment relations?

#### EVALUATING

- How can Good Governance in the employment relations of athletes in Olympic sports be conceptualised?
- Which specific Principles establish a baseline for Good Governance in athletes' employment relations in Olympic sports?

#### IMPROVING

- To what extent do the current practices contribute to Good Governance in athletes' employment relations?
- Which roles and responsibilities do the different stakeholders assume to ensure Good Governance?
- What actions/reforms should be implemented to improve Good Governance in athletes' employment relations?

The study is structured around the three main topics and will systematically answer these guiding questions. Where required, theoretical concepts are introduced and some further information is provided about the applied methods. The study explicitly aims to combine theoretical and methodological approaches from different academic disciplines and seeks to establish a holistic interdisciplinary analysis. The final recommendations, as well as overall roles and responsibilities assigned to the most important stakeholders shall be understood as calls to action to foster Good Governance in athletes' employment relations from an athlete-centred perspective.

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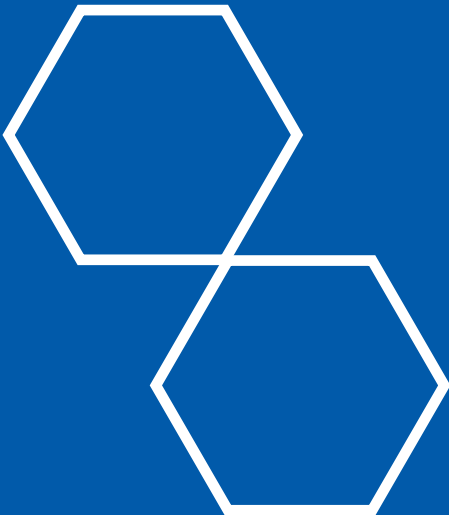
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## II. UNDERSTANDING

KEY FINDINGS OF THE FACT REPORT

LEGAL AND SOCIO-POLITICAL FRAMEWORKS  
OF THE NATION STATE AND BEYOND



## 1. Key Findings of the Fact Report

This chapter summarises the empirical findings on *athletes' employment relations* in 29 national contexts. The data was published in April 2022 (Mittag et al. 2022) and has been revised and updated throughout the project period. The findings address the relationships of Olympic elite athletes with the identified *actors of the elite sport system* at national level (cf. Part I, Chapter 3.1) and is structured along the lines of the six issue-specific dimensions of athletes' employment relations. The influence and analysis of legal frameworks is presented in Chapter 2.

### 1.1. Multi-layered Influencing Factors

1. The framework of the **national welfare and social systems**, as they present themselves in the individual countries of the EU, mark the fundamental background of this field. Despite the increasing Europeanisation and globalisation, the nation state is neither obsolete nor outdated. It remains the central platform for socially just redistribution. Above all, social security is primarily in the hands of the nation states. Accordingly, the liberal-democratic nation state continues to be the form of social organisation that guarantees individual security and social protection. In recent decades, an attempt has been made to systematise the specific European diversity of welfare states through typological approaches. The most important contribution is the typology developed by Esping-Andersen's *The Three Worlds of Welfare Capitalism* (1990), which distinguishes between social-democratic, liberal and conservative welfare states. Subsequently, this approach has been further developed in many ways, but the basic ideas have been retained.
2. The **differences of the individual sport systems** in the EU member states have as well an impact on the employment relations in sport: just as the political systems in Europe differ, so do the sport polity and policy structures in Europe. Around the two core areas of politics (state) and sport (federations and associations), highly diverse constellations of actors and divergent forms of influence can be identified. A widespread view of the complex network of relations between sport and politics refers to the growing interlocking of state entities and sport-related actors. While in some states of the European Union the relationship between sport and politics is characterised as conflict-driven – be it through the cleavages between state sport policy and the autonomy of sport associations or through the tension between public responsibility and deregulation – other sport systems are characterised by a higher degree of consensus. In sport policy research, it was above all the Vocasport model (VOCASPORT Research Group 2004) and its further development by Henry (2009) that initiated a fundamental typology, which was subsequently increasingly referred to and which provided the impetus for more far-reaching comparative approaches. The

specific sport structures identified on this basis sometimes exert an influence on employment relations in sport in a direct form, but sometimes also in an indirect form.

3. In addition to states and sport systems, the **different types of sports** may also explain the variance in athletes' employment relations. Each individual sport exhibits functional differentiation, which is fed, among other things, by different characteristics in the areas of competition format, media publicity and financial regulation. Even if *Olympic sports* are distinguished from commercial team sports with own leagues, a multitude of actors, processes and regulations emerges.
4. The specifics of **sport-related regulations** in the **interplay** of **general labour law** regulations and **individual arrangements** can be considered as the third relevant dimension. Socio-political conflicts of interest in the form of collective bargaining and industrial disputes are among the core areas of industrial relations, which are usually conducted and mostly resolved by trade unions and employers' associations at sectoral level. In elite sport, however, this form of socio-political representation of interests has hardly played a role so far. If one disregards individual groups of players, employment relationships and wage payments to athletes are usually based on specific individual agreements. Other benefits such as sponsorship and support payments also occur with considerable variance. In addition, there is a significant percentage of athletes who pursue competitive sport as a supplement to their actual livelihood in another professional field. Against this backdrop, collective agreements have hardly been used in sport so far.

## 1.2. Contracts and Income

The role of NOCs can hardly be summarised as athletes in only 13 countries have a general contract with the NOC. The fact that NOCs may assume very different roles in their countries reinforce the differences. For example, in some countries the NOC also acts as umbrella organisation of national federations. A clearer picture can be drawn for the contractual relationship during the Olympic Games as it is common for athletes to sign an agreement with the NOC for the participation in the Olympic Games, not least due to the requirements of the IOC (IOC Conditions for Participation Form<sup>6</sup>). The NOCs of 18 countries offer **direct financial support** to athletes, ranging from prize money to a monthly income.

In the majority of countries, athletes sign **athlete agreements or support contracts** with the national athletics federation. According to the current data, in twelve countries, these contracts also include some form of direct financial support exceeding the payment of expenses for sports-related purposes (e.g. training camps, participation in international competitions).

6 The form can be downloaded from < [https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020\\_NOC-Conditions-of-Participation-2021-version\\_ENGLISH.pdf](https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020_NOC-Conditions-of-Participation-2021-version_ENGLISH.pdf) >

*Public authorities without a generic focus on elite sport* play a role in many countries. In 17 countries, athletes can be employed as civil servants – mostly by the armed forces. In each country where public authorities without a generic focus on elite sport play a role, they provide athletes with financial resources – predominantly in the form of regular monthly salaries. Exceptions to this rule are found only in Estonia, where the Ministry of Culture enters into a support agreement with athletes and distributes funding on a project-related basis. In Latvia, besides employment, a scholarship programme is offered, too.

In 18 countries, *Specific Elite Sport Organisations* contribute to shaping the employment relations of athletes in Olympic sports in terms of contracts with and financial support to athletes. Such organisations exist in different forms: private organisations play a role in Austria, Germany (both private foundations) and Norway (branch of the NOC) but are generally less common in the surveyed countries. Public organisations under the auspices of a national ministry exist in 12 countries. In France, Portugal and Spain, Specific Elite Sport Organisations exist in the form of public-private partnership organisations. While the majority of organisations offer financial support or **scholarships** to athletes which do not constitute an employment relationship, the Specific Elite Sport Organisations (public) in Belgium, the Czech Republic and Slovakia also employ athletes as civil servants.

### 1.3. Commercial Opportunities

Sponsorship deals constitute an important source of income for athletes in Olympic sports, particularly during participation in widely marketed international competitions. Overall, the present analysis demonstrates that athletes' possibilities to enter into personal sponsorship contracts depends largely on their legal status. In this respect, in the case of employee status, athletes' sponsorship deals mostly require consent from the employer, whereas most athletes without such an employment relationship have more freedom in acquiring personal sponsors.

While the gathered data furthermore substantiate the assumption that athletes in Olympic sports are confronted with a variety of rules and regulations restricting their self-marketing and commercial opportunities, particularly during the period of the Olympic Games, various support structures and incentives dedicated to generating additional income for athletes have been established.

First and foremost, **restrictions on self-marketing and commercial opportunities** for athletes are rooted in international regulatory frameworks such as the Olympic Charter (e.g. Rule 40) and athlete agreements (e.g. IOC Conditions for Participation Form) related to participation in the Olympic Games to which both NOCs and athletes must comply as part of the structures of the Olympic movement. Legal disputes and / or court rulings have been held only in a few countries, especially in Germany where the decision of the German Federal Cartel Office (Bundeskartellamt) from 2019 spurred international debate on the context-specific implementation of the IOC's **Rule 40** on the national level

which, ultimately, resulted in an amendment of the provisions presented by the IOC Legal Commission in 2019. While athletes have been granted some more flexibility in negotiating individual deviations from the rule in cooperation with their NOCs, the present findings underline that the NOCs of the investigated countries – which now assume a greater responsibility in the rule’s implementation based on key principles outlined by the IOC – approach the adjusted regulatory framework in different ways.

**Support for self-marketing and commercial opportunities** is provided by the NOC, national athletics federation, public authorities and Specific Elite Sport Organisations, ranging from the conduct of educational programmes and career guidance for athletes (e.g. internal courses on entrepreneurship, interview conduct, use of social media, etc.) to financial and legal advice on sponsorship deals. The role of each actor and the scope of their activities highly depend on the national context. Yet, in the present countries, only a lower share of the investigated actors drafts standard / model contracts which athletes might use for sponsorship deals.

Another important concern addressed in the present analysis relates to athletes’ opportunities to carry out **additional work**. While athletes’ possibilities to pursue additional work also depend on their legal status in most of the countries, primarily for those who are under regular employment with a club or public authority (e.g. armed forces), prior confirmation by the employer is usually required. Yet, in some cases, even the participation in scholarship/stipend programmes may lead to restrictions to additional work as for example in Hungary.

## 1.4. Occupational Safety and Health and Social Protection

Next to matters of wages, **occupational safety and health** is one of the core issues of the traditional study and practice of employment relations. Throughout the surveyed countries a mixture of statutory and sport-specific provisions offered by the different actors of the elite sport system is found. Generally, the legal status of an athlete determines whether she or he qualifies for statutory occupational safety and health measures stipulated in national law. In this respect the mentioned employment contracts with public authorities without a generic focus on elite sport or with Specific Elite Sport Organisations are beneficial to the athlete. Irrespective of the national framework of labour law, sport-specific legislation that establishes periodical health checks and accident insurance for athletes can furthermore be found in some countries. Private measures and provisions of the NOC, the national athletics federation and Specific Elite Sport Organisations which aim to ensure a safe and healthy career of elite athletes complement the statutory framework. These measures may include private accident insurance, medical check-ups and services for the prevention of mental and physical health hazards.

Closely related, yet distinct from safety and health, are measures of **social protection**. The focus of the report, here, is on pension schemes, health care, maternity (paternity) protection and parental leave benefits, occupational disability and loss of income insurances as well as unemployment assistance. While different approaches to social protection of athletes are presented in the investigated countries,

again, large differences exist between athletes who have an employment contract and employee status, and those who do not have such a contract. In some countries, sport-related national legislation stipulates specific social protection measures for athletes, like specific maternity protection or athlete pensions. Such provisions, however, are a rare exception and athletes without an employment contract usually benefit from specific measures of the private actors. In some countries, SGBs take a proactive role in supplying social protection measures like health care or maternity protection. Specific Elite Sport Organisations have joined the playing field in some countries, by providing and promoting selected social protection policies. Generally, these measures take on very different forms, vary from country to country and can hardly be summarised. However, most social protection systems rely on the **cooperation and coordination** between SGBs and public authorities. Overall, occupational safety and health as well as social protections of athletes in Olympic sports are highly complex and must be considered in light of the national context.

## 1.5. Participation and Bargaining

The last years have seen an increase in public and academic debate about **participation in decision-making** and **bargaining power** of athletes in Olympic sport. In all 29 countries, **athletes' commissions** exist within the **NOC**. The degree of inclusion of athletes into other decision-making bodies varies. While in many countries athlete representatives also hold a position on the board of the NOC, athletes might also be included in working groups and other commissions. **Athletes' commissions** are less common in **national athletics federations** and exist in 14 countries. The data also indicate involvement of athletes in the decision-making structures of public authorities without a generic focus on elite sport and Specific Elite Sport Organisations. With respect to both actors, no formal athletes' groups are implemented, but athlete representatives often have a voice through inclusion in working groups or a position on the board.

**Trade unions** play only a minor role and are not a common actor to represent the interest of athletes in Olympic sports. Unions that specifically represent athletes from Olympic sports are found only in France and in Slovenia. In Norway, Finland and Belgium, athletes in Olympic sports join the trade unions that represent athletes from professional team sports and employees of other sectors respectively. In some countries, athletes would need to have the legal status of employees and a defined number of people holding such status in order to form unions. According to the current data and the investigated cases, **collective bargaining agreements** do not exist in Olympic sports, not least due to the fact that athletes' commissions generally are not in a position to engage in collective bargaining or social dialogue with the respective SGB, and athletes' commissions, conceptually, have a consultative role within the organisation. However, **independent athletes' organisations** have been established in some countries. Such organisations exist in Croatia, Denmark, Finland, France, Germany, Lithuania, the Netherlands, Portugal, Slovenia and the United Kingdom. In France and Slovenia, these are registered

as trade unions, in the remaining countries, the organisations are associations under national law. Athlete associations take on different forms and assume different roles.

## 1.6. Analytical Perspectives

**Dynamics:** Athletes' employment and social relation in Olympic sport show considerable system dynamics. Sport-related labour relations have not been clarified or adequately regulated either in legal terms or in view of political preferences. Even if the number of open conflicts is still limited, the manifold manifestations with the simultaneous ongoing commercialisation of sport as well as a growing awareness of athletes to socio-political issues point to continuing potential for change.

**Institutionalisation:** Athletes in Olympic sport no longer see themselves as mere individuals, but have begun – to varying degrees – to organise themselves and express their interests collectively. This feature of increased and heightened sensitivity to labour-related issues is a continuing trend across EU member states. However, the avenues and instruments pursued differ considerably. Even though SGBs are usually the first addressees, in almost many countries athletes' efforts to find an independent approach to collective interest representation are evident.

## 2. Legal and Socio-Political Frameworks of the Nation State and Beyond

### 2.1. National Level: Employment Law and Social Policy

#### *Employment Law*

The legal status of an Olympic athlete is determined by national law. It is usually, although not always, underpinned by a contract, which sets the parameters for the relationship between an athlete and a club, the national federation, the National Olympic Committee, or another elite sports organisation. The contract is important when considering employment relations because in most countries access to employment rights is usually determined by the characterisation of a bilateral contract between an employee and an entity that is recognised and accepted as the employer. A challenge for Olympic athletes is that the entity or entities with whom the athlete is in a contractual relationship or which provides the funding, the uniforms, the training materials or the transport, may be a single entity or several entities and may not consider itself or themselves to be an employer. Furthermore, the monetary payments an athlete receives to support their training may not be defined as a salary payment, but characterised as a stipend, scholarship or grant. The atypical nature of the services an athlete provides and the characteristics of the environment in which these are provided mean that establishing worker status can be a challenge at a national level for an Olympic athlete.



This research did not consider in detail the national employment laws of all subject countries. However, the research data disclosed the several key points about the legal status of athletes. First, the legal status of an athlete may be determined by a specific law or by national case law. In **Hungary** and **Italy** there are specific laws on sport that prescribe the status of athletes in Olympic sports *as amateurs* so long as no employment contract exists with a sports club (Hungary: Law on Sport, Act I of 2004, Italy: Law No. 91, March 23, 1981). Legislation in **Lithuania** (Law on Physical Education and Sport 2022, No. I-1151) recognises that an athlete may be engaged under a “sports performance contract” and in **Romania**, legislation recognises that an athlete may be engaged under a “Sports Activity Contract” (Law no. 69 of April 28, 2000, Art. 14). In at least three countries, national legislation addresses matters of social protection in which athletes are expressed as entitled to statutory social protections (e.g. **Luxembourg, Poland, Estonia**). None of the countries recognise an Olympic athlete’s legal status as a worker (or a specific athlete status similar to that of a worker) in national legislation or statute.

In **Austria, Italy, Sweden** and the **UK**, there have been cases before national courts that considered the legal status of an athlete. The case authorities regarding an athlete’s status have not always arisen in the sphere of employment, but also in the area of tax law or personal injury. In those countries, the courts have come to very different conclusions regarding an athlete’s status, based on an interpretation of a contract or the circumstances in which an athlete provides services. In the **UK**, for example, the Employment Tribunal, in the case of *Jessica Varnish v British Cycling and UK Sport* considered that Team GB cyclist, Jessica Varnish, was not an employee or worker of the national federation, British Cycling, nor was she in a trilateral employment relationship that involved UK Sport. UK Sport is the non-departmental public body established by Royal Charter that supports elite athletes and sports to win medals at the Olympic and Paralympic Games. In the Employment Tribunal’s view, Ms Varnish was performing a commitment to train in anticipation of gaining selection to compete for Team GB at the Olympics, for which she received a non-refundable grant from a third party based on an assessment of future potential; she was not providing work or skill in consideration for wages (confirmed on appeal in *Jessica Varnish v British Cycling Federation (t/as British Cycling* [2021] ICR 44 (EAT)).

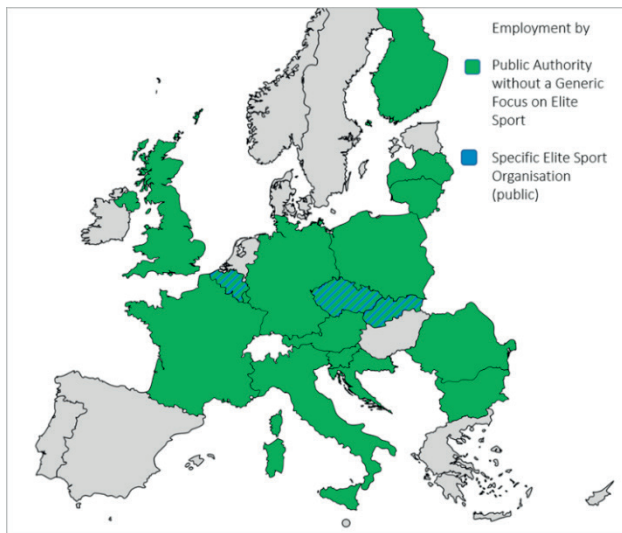
On the other hand, the **Austrian** Federal Administrative Court has held that the accident of synchronised swimmer, Vanessa Sahinovic, at the European Games in Baku was an occupational accident. In 2015, Ms Sahinovic was selected by the Austrian Olympic Committee for the European Games. On her way to training, she was hit by a shuttle bus, operated by the organizing committee, in the Games’ village and suffered an injury that left her permanently paralysed. The regional health insurance fund in Austria refused to recognise her injury as an occupational accident. Her claim was successfully appealed to the Federal Administrative Court, which concluded that Ms Sahinovic suffered an occupational injury and was covered by compulsory insurance under the Austrian Social Law because of her employment with the Austrian Olympic Committee for the period of the event. Her dependency on the Austrian Olympic Committee, the requirement to follow instructions and the benefits in kind received from the Committee were sufficient to establish an employment relationship even if the contract did not (Federal Administrative Court decision of 10 March 2017, BVwG GZ W145 2128879-1).



In **Italy**, the status of athletes in Olympic sports has been decided on a case by case basis. There is case law that confirms that an athlete is an employee of the national federation (Court of Pescara, October 18, 2001). The decisions were based on specific evidence that the amateur athletes were subject to the direction and control of managers of the association, and entitled to receive some sort of compensation. Nevertheless, the Supreme Court and other local courts usually exclude an amateur athlete's status as an employee if a federation does not consider its members to be professionals. Finally, in **Sweden**, a court has concluded that the payments an athlete receives are not payments for work but a stipend for tax purposes (RA2004 ref 33).

Secondly, the research data reveal that the contractual status of athletes prevails in any evaluation as to their legal status and the rights an athlete has or the obligations that a club, NF, NOC or other sports entity owes to the athlete. The project data show that in some countries there are overarching policies for elite athletes drawn up by the regulations of an NOC or a public authority responsible for elite sport. A contract is then guaranteed on the basis of a cadre status. For example, in Germany, the **German Sport Aid Foundation**, a private specific elite sport organisation, has a contract with 4,000 elite athletes. In principle, all cadre/squad athletes in Olympic and Paralympic sports are eligible for support from the organisation, although certain sports may be excluded if an athlete earns sufficient money from a contract with a club.

The data also show that there are opportunities for Olympic athletes to be employed as athletes but this is highly dependent on the national context. In **17 of 29 countries**, an athlete can sign an **employment contract** on the basis of their sporting achievements and for the purpose of a successful career in sport. The main organisation with whom an athlete might enter an employment relationship, is a Public Authority without a generic focus on elite sport e.g. the armed forces or the police. Employment by these entities is available to elite athletes in all 17 countries. In **Belgium**, the **Czech Republic** and in **Slovakia**, besides employment with the armed forces, athletes can also find employment with a Specific Elite Sport Organisation, that is a public organisation under the auspices of the government department responsible for sport. Contracts with other actors in the elite sport system do not qualify as employment contracts despite ongoing legal and academic debate in some countries. The case of the stipend offered by the **Dutch** NOC highlights the complex nature of the legal status of elite athletes. Although it is not an employment contract, the stipend agreement is considered a labour contract for tax and social security purposes. Athletes holding a public scholarship in **Lithuania** and **Poland** find themselves in a similar position.



*Figure 2: Employment Opportunities for Athletes in Olympic Sports in Europe.*

The general conclusion to be drawn is that unless legislation exists which specifically defines an athlete's status, an athlete's status will be determined by the contract and that contract will not always be viewed as an employment contract. The **absence of worker or employee status excludes athletes from important employment rights**. It may also exclude athletes from **social rights** that rely on employment status, for example, a pension or minimum salary protection if a club goes bankrupt. There is also the vexed question of who is responsible for an athlete's health and safety while training and competing.

### **Social Policy**

It is axiomatic that labour law consists of minimum standards prescribed in legislation, and case law that applies and develops those standards and interprets contract terms in individual cases. However, core elements of labour law also include areas such as **co-determination** and **work councils**, which in turn are an expression of social policy. Social policy and employment relations in Europe are primarily based on historically grown national regulations. The historical origins of social policy can be found in private church, company or private sector arrangements at the local level. In the course of the emergence of public social policy and the establishment of various systems of "social security" (above all accident, health, pension, unemployment and long-term care insurance), the concept experienced a stronger focus on dependent employment and working conditions. Social policy in Western, market-based industrial societies generally pursues three goals: 1) **reduction of problems in labour markets** (working conditions, job security) and **social insurance markets** (risks from unemployment, illness, accident, disability, age or death); 2) **prevention of social injustice** (poverty, unequal treatment,

unequal rights of action and decision-making of stakeholders in the labour and social market); 3) **solidarity** between the various individuals and collectives involved.

In light of these basic considerations, employment relations may be viewed as a component of labour law and an expression of socio-political models. In essence, two conflicting political positions can be distinguished, which have also found expression in academic considerations: in the **classical liberal view**, the protection of individual life risks is primarily the responsibility of the individual or private social organisations such as the family or social associations. From this perspective, state social policy is fundamentally complementary to individual responsibility. In contrast, a second, more **social democratic view** perceives social policy as a structural necessity to alleviate or heal the systemic consequences and damage of capitalist competition and the market economy.

For many years, the classic liberal view of individual responsibility applied to the field of sport – not least promoted by the principle of the autonomy of sport. Accordingly, social policy was hardly linked to sport. As a result, general socio-political guidelines were hardly considered, while the institutions active in sport concluded regulations and contracts largely at their own discretion. However, this has changed not only due to the ongoing **commercialisation and professionalisation of sport**, but also as a result of the development of social policy and social partner relations at the EU level since the early 1990s. Above all, the most recent change of the Lisbon Treaty opens up wider perspectives for sport with regard to issues of employment relations and social standards in work-related settings.

The concept of work and the characteristics of a work relationship that create the need for employment laws are **subordination** and **dependence** on another person in relation to the work undertaken, e.g. the degree of control exercised by one entity or person over the work or services performed by another (Countouris 2019). The greater the degree of control, the stronger the argument for classifying that person as a worker. This is the approach adopted at EU level. The following sections summarise some of the key dimensions of the definition of workers under EU law.

## 2.2. European Union: Employment Law and Social Policy

### *Employment Law*

Owing to the social and political importance attached to national employment law and the different approaches across Member States to employment regulation, the power provided to the EU to harmonise laws in this area is limited. **Article 153 TFEU** provides the **EU with a competence in the sphere of employment law to adopt directives** in areas such as health and safety, working conditions, information and consultation of workers and social security and social protections, amongst others. The competence expressly excludes the right to pay and the right to strike. Most EU employment law measures have taken the form of a directive, although there are relevant employment rights provided in the Treaty such as equal pay.

The **concept of worker** is preferred to that of employee in most EU legislation and although it is used in different contexts, it is generally considered that a worker provides services in a contractual relationship that is hierarchical and characterised by **subordination**. The **CJEU** has defined the term worker in the context of a Treaty provision, which guarantees male and female workers equal pay for equal work (at that time, Article 141 of the EC Treaty), as **“a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration”** (*Allonby v Accrington & Rossendale College*, Case C-256/01 [2004] ECR I-873, para 67). The term “worker” does not include “independent providers of services who are not in a relationship of subordination with the person who receives the services” (*ibid.*, para. 68). To determine whether a hierarchical relationship characterised by subordination exists, it is necessary to take account of the objective situation of the individual, all the circumstances of their work, and how the obligations are performed in practice; the interpretation of which should be supported by the objectives of the relevant legislation. It is also necessary to have regard to how relevant obligations are performed in practice (*AFMB Ltd v Raad van bestuur van de Sociale verzekeringsbank* (Case C-610/18) EU:C:2020:565, paras. 60-61). The wording of the contractual documents or express terms, while relevant, are not conclusive and **where there is a conflict between the terms and the actual relationship, an interpretation based on the actual relationship is to be preferred** (*ibid.*).

Under EU law, in various contexts, a football player (*Union Royale Belge des Sociétés de Football Association v Bosman* Case C-415/93 [1995] ECR I-4921; Case C-265/03 *Simutenkov v Ministerio de Educacion y Cultura and Anor* [2005] ECR I-2579; and Case C-325/08 *Olympique Lyonnais SASP v Bernard* [2010] 3 CMLR 14), a handball player (Case C-438/00 [2003] ECR I-4135. *Deutscher Handballbund eV v Kolpak* [2003] ECR I-4135) and a basketball player (Case C-176/96 *Lehtonen v Fédération Royale Belge des Sociétés de Basket-Ball ASBL* [2000] 3 CMLR 409) have been considered workers. The **status of an athlete contracted to a NOC or international federation** for the purposes of participation in the Olympic Games or another World Championship event, and where the athlete invokes an employment protection **has not been considered by the European courts**. There is, however, **case authority** that establishes that the **services which amateur athletes provide fall within the scope of economic activity**, notwithstanding the categorisation of the athletes as amateur under the rules of an international federation. In *Deliège v. Ligue francophone de Judo et disciplines Associeés Asb* (Cases C-51/96 and C-191/97 [2000] ECR I-2549), for example, a case that concerned an international judoka’s challenge under the then Article 59, now Article 49 (freedom to provide services) to a sports federation’s selection rules, the CJEU concluded that Ms Deliège’s classification as “amateur” under the sports federation’s rules, did not prevent the conclusion that the athlete was engaged in providing economic services:

“In that regard, it is important to note that the mere fact that a sports association or federation unilaterally classifies its members as amateur athletes does not in itself mean that those members do not engage in economic activities within the meaning of Article 2 of the Treaty.” (para. 46)

Although the case was unsuccessful for the judoka, it nevertheless recognises that individual athletes may be engaged in services for economic gain whether or not they receive the economic gains directly from the sports organisation, which is consonant with a broad concept of “work” (Centre for Sport and Human Rights 2022; ILO Standard Classification of Occupations ISCO-08, ISCO-88, 3421 and 3475). The concept of work in sport has been considered at an international level following extensive consultations by a panel of up to thirteen experts. The definition provided in the Centre for Sport and Human Rights’ *White Paper on Child Labour in Sport* states that child athletes are considered to be at work “when they are **participating in sport for their own or someone else’s gain** or engaged in intensive training in order to do so in the future” (Centre for Sport and Human Rights 2022, p. 6f.). The ILO defines work as “any **activity performed** by persons of any sex and age **to produce goods or to provide services for use by others or for own use**”. (ILOSTAT 2022)

The legal status of athletes falls within a policy and regulatory debate that is occurring at an international level to define a broader scope of employment law protection that is more in keeping with the nature of modern work practices, and which focuses less on the contractual content but more on the **substance of the arrangements** in light of the protections sought (Countouris 2019, Freedman 2020). This is emphasised in ILO’s *Employment Relationship Recommendation 2006 (No 198)* which states that:

“the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.”

Employment law regulation worldwide makes a distinction between employees whose relationship is often characterised by an imbalance of power and require greater statutory protection and independent contractors who do not. Access to employment rights requires a classification under the contract as employee or worker. If an athlete is not able to benefit from worker protections because of their classification under a private contract that may be drafted by the more dominant party, it creates opportunities for exploitation, and reduces the efficacy of employment laws (Countouris 2019). Furthermore, it may result in factually identical work relationships being underpinned by different types of contract (ibid.). For example: in the situation of a professional club football match between an English football club and a club from Croatia, the players on the English team may be considered employees and players on the other side may be independent contractors (Duval & Van Maren 2017; Smokvina 2016).

Insofar as EU derived-employment rights are concerned, at a national level, the contract should be cast aside and the question asked: **whether there is a hierarchical relationship that is characterised by subordination and for which remuneration is received**, whether monetary or benefits in kind. To answer that question, it is necessary to take account of the **objective situation** of the athlete, all the

circumstances of their work and how the obligations are performed in practice, the interpretation of which should be supported by the objectives of the relevant EU legislation. By discarding the contract and focussing on the right or entitlement, individual athletes may be correctly categorised as workers and the contract adjusted accordingly.

Athletes' services create an entertainment product that is watched globally by millions of people and generates considerable revenue. As part of an Olympic team, an athlete is subject to commercial restrictions, must comply with rules and regulations, and follow team instructions regarding the provision of their services (amongst others). From the data gathered as part of this research, and putting the participation agreements and contracts to one side, it is evident that certainly **for the period of an Olympic Games or international sport event, an Olympic athlete is engaged in economic activity for the benefit of themselves and for others**, within an environment of subordination, and for which they may receive payment, either directly or indirectly. **Olympic athletes can, therefore, be considered as workers.**

### ***Social Policy***

Though European social policy falls under the responsibility of the Member States as far as definitions are concerned, a deepening of the social dimension at the community level of the EU can be observed in the course of the European integration process. An essential aspect here is that national social policy is also characterised by redistribution mechanisms and comprehensively relates in particular to the areas of income, work, health, housing and education. With regard to the protection of European workers, employment relations have been referred to in the following treaty revisions.

- *Beginnings and European Coal and Steel Community (ECSC):* One of the first tasks of integration was “to promote improved working conditions and an improved standard of living for the workers in each of the industries for which it is responsible, so as to make possible their harmonisation while the improvement is being maintained” (Article 3 ECSC Treaty).
- *1950s/60s and the Rome Treaties / European Economic Community (EEC):* The Community was given specific policy-making powers, especially in the area of establishing **freedom of movement for workers** and, in connection with this, in the area of **social security for migrant workers** (Articles 48 and 49 of the EEC Treaty). Article 117 was concerned with the general coordination of social systems between the EEC states; further approaches to EEC social policy were provided by Article 119, which postulates the principle of equal pay for men and women, and the provisions of the EEC Treaty on the European Social Fund (ESF) in Articles 123-128. This treaty already contained fundamental principles such as **equal pay for women and men** or the right of workers to free movement within the Community/Union.
- *1960/70s and ESF:* In the 1960s, the **European Social Fund** was established as foreseen in the EEC Treaty. In the 1970s and 80s, funds were increased. The ESF was mainly aimed at

structurally weak regions and at supporting groups of people disadvantaged in the labor market. Following the so-called “**Paris Declaration**” of the heads of state and government in October 1972, in which the goal of creating a “**European social union**” was explicitly mentioned, the Commission presented the first catalog of measures with the “Social Action Program” on January 1974, which was aimed at harmonising national social policy regulations, improving living and working conditions, and involving the social partners in the adoption of measures envisaged for the end of 1976.

- *1980s and the Single European Act (SEA):* The SEA slightly expanded the European Commission’s social policy competencies. In 1989 the **Charter of the Fundamental Social Rights of Workers** was introduced.
- *1990s (Maastricht and Amsterdam Treaties):* The Treaties introduced the „Protocol on Social Policy” and extended the Community’s competences in the field of social policy, in particular with regard to setting minimum standards in labour law and on social dialogue.
- *Lisbon Treaty (2009) and “Post-Lisbon”:* The Treaty of Lisbon contains statements on social and employment policy in the EU. **Article 151 TFEU** sets out the **objectives that the EU and the Member States pursue together** in the social and employment fields (e.g. promoting employment; improving living and working conditions; adequate social protection; social dialogue; developing human resources with a view to lasting high employment; and combating social exclusion). In doing so, the article also refers to **fundamental social rights** as set out in the European Social Charter signed in Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers.

The **Charter of Fundamental Rights of the European Union**, first proclaimed by the European Council in Nice on 7 December 2000, codifies in a single text, for the first time in the history of the EU, fundamental and human rights within the framework of the EU. However, after the failure of the European Constitutional Treaty, this only gained legal force on 1 December 2009, together with the entry into force of the Treaty of Lisbon. It is based on the European Convention on Human Rights (ECHR), the European Social Charter, the Member States’ constitutions, and international human rights documents, as well as the case law of the European courts. It applies to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law (Vanhercke et al. 2020).

In 2017, the **European Pillar of Social Rights** was proclaimed to ensure new and more effective rights for all citizens and to promote fair and well-functioning labour markets and welfare systems. This pillar is based on 20 fundamental principles and includes a number of (legal) initiatives in three main areas: (1) equal opportunities and access to the labour market; (2) fair working conditions; and (3) adequate and sustainable social protection.



Overall, **Articles 151 to 161 TFEU** focus on two central positions: Firstly, the so-called ***social dialogue*** (see Glossary), i.e. the institutionalised contact between employers and employees, and secondly, the situation of employees and their interests, for the protection of which minimum standards are to be defined and observed. The European Union “shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof” and “shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties” (Art. 153, para. 4). It shall “support and supplement” the activities of the Member States (Art. 153, para.1).

Considering the development of the EU, to date, it can be stated that this rationale can lead to new legal norms, which is all the more likely because enacting “minimum requirements” is expressly mentioned in Article 153 (para. 2.). Additionally, Article 156 (para. 2) speaks of initiatives aimed at establishing guidelines and indicators and elaborating on the necessary elements for periodic monitoring and evaluation. Such activities can lead to directives that create new legal frameworks. Examples include the European Services Directive, the Working Time Directive, the Posting of Workers Directive, the Directive on the Establishment of European Works Councils, and the Fixed-Term Directive, which raised problems for sports federations e.g. with regard to coaching contracts in the case of legal actions. Recently, the Council adopted a Directive on adequate minimum wages to “promote the adequacy of statutory minimum wages and thus help to achieve decent working and living conditions for employees in Europe.” (Council of the EU 2022, p. 1).

Regarding possible effects on the governance of sports in Europe, it should be mentioned that on the one hand some fields of social policy (such as pensions, childcare allowance, unemployment benefits, the right of association, the right to strike, the right to lock out), which are common characteristics of the area of employment and social relations at national level, remain untouched in the Treaty provisions. On the other hand, the following dimensions, among others, fall within the scope of the EU’s activities (Art. 153, para. 1): “improvement in particular of the working environment to protect workers’ health and safety; social security and social protection of workers; protection of workers where their employment contract is terminated; the information and consultation of workers; representation and collective defense of workers’ and employers’ interests, including co-determination [...]; conditions of employment of third-country nationals [...]; equality between men and women [...]; equal treatment at work [...]; the combating social exclusion [...]”.

Moreover, the EU institutions further nuanced their approach to the regulation of sports in Europe. Through the introduction of the principle of **conditional autonomy** (cf. European Commission 2011), a more critical perspective to the self-regulation of organised sports emerged. Yet, to date, the enforcement of the principle of conditional autonomy relies almost exclusively on **case law**,<sup>7</sup> especially by the Court of Justice of the European Union (CJEU) (cf. Weatherill 2022). **Non-binding resolutions and**

<sup>7</sup> In particular, the approach of the CJEU in the cases of Bosman (1995) and Meca-Medina (2006) shaped the concept of “conditional autonomy” (cf. Weatherill 2022).

**guidelines**, such as on the implementation of Good Governance as a pre-condition for the autonomy of sports in Europe (cf. Council of the EU 2021)<sup>8</sup>, to which sport organisations shall comply, have been developed in various dimensions of European sports by EU institutions, academics, and practitioners alike. Strategic measures and systematic policies with the potential to enforce related conditions (principles) in the field of athletes' employment and social relations across EU Member States remain, however, absent. The following section discusses collective bargaining and social dialogue and their relevance to elite sport.

### 2.3. Collective Bargaining and Social Dialogue

*Collective bargaining* is rooted in the **International Labour Organization (ILO) Constitution** and was reaffirmed as such in the ILO's Declaration on Fundamental Principles and Rights at Work from 1998. Furthermore, since the legal frameworks of the ILO Conventions are recognised internationally, two labour law sources shall be particularly referred to: (1) the "Right to Organise and Collective Bargaining Convention" (1949, No. 98) as one of the fundamental ILO conventions with 168 states ratifications; and (2) the "Collective Bargaining Convention" (1981, No. 154) with 50 states ratifications. However, those important legal sources are very rarely (if at all) applied to sports.

#### ***Collective Bargaining and the European Convention on Human Rights (ECHR)***

Article 11 of the ECHR guarantees *freedom of assembly and association*, and includes the right to engage in *collective bargaining*. The right to form and to join trade unions is a sub-division of freedom of association and not a separate right (*National Union of Belgian Police v Belgium* (1979-80) 1 EHRR 578). Everyone has the right to form and join a trade union, which includes everyone in employment, whether under an employment contract or as a self-employed person (Harris et al. 2018, p. 722). Article 11 includes a positive obligation on the state to protect, through legislation, the union rights of workers in the private sector, as well as those employed by the state (Rainey et al. 2017, p. 537). Trade union freedom is an essential element of *social dialogue* between workers and employers, and an important tool in achieving social justice and harmony (*Case of Sindicatul "Pastorul Cel Bun" v Romania* (Application no. 2330/09), para. 130). Athletes who are considered workers are therefore entitled to this fundamental human right.

The **European Court of Human Rights (ECtHR)** has developed case law on the right to engage in collective bargaining. In the case of *Demir and Baykara v. Turkey* ((2009) 48 EHRR 54), the ECtHR recognised that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the "*right to form and to join trade unions for the protection of [one's] interests*"

8 Article 15 of the resolution states that "Good governance in sport is a prerequisite for the autonomy and self-regulation of sport organisations and federations, in compliance with the principles of democracy, transparency, integrity, solidarity, gender equality, openness, accountability and social responsibility [...]."

set out in Article 11 (ibid, para. 154). The right to collective bargaining does not encompass a “right” to a collective agreement (*National Union of Rail, Maritime and Transport Workers v The United Kingdom* (Application No. 31045/10, (2015) 60 EHRR 10), and there is no requirement under the ECHR that an employer enters into, or remains in, any particular collective bargaining arrangement or accedes to the requests of a union on behalf of its members (*UNISON v The United Kingdom* (Application No. 53574/99, [2002] IRLR 497). The essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining on those issues which the union believes are important for its members’ interests (*Wilson and Others v The United Kingdom* (Application Nos 30668/96, 30671/96 and 30678/96, (2002) 35 EHRR 20).

### **Social Dialogue**

Social dialogue can be an extremely important tool in regulating the employment status of athletes since it can be used in multiple ways. The **ILO** adopts a broad working definition of social dialogue, reflecting the wide range of processes and practices to be found in different countries. Its definition includes all types of negotiation, consultation or simply exchange of information between representatives of governments, employers and workers, on issues of common interest relating to economic and social policy (ILO 2022). The European Social Dialogue gives stakeholders the opportunity to establish better employment practices, and achieve greater legal certainty, especially in labour and social security related issues.

The **European Commission** recognises social dialogue as an indispensable component and one of the pillars of the **European Social Model** (ESM), in accordance with Article 152 TFEU, and highlights the EU’s commitment to promoting the role of the European social partners, and supporting social dialogue. In the EU context, social dialogue involves a set of processes and arrangements whereby European-level organisations, representing employers and workers, conduct discussions and negotiations, and are jointly involved in EU decision-making and policy-making. In light of a growing number of challenges to sports governance, social dialogue at the European level can contribute to addressing common concerns of employers and athletes (sportspeople), including agreements on employment relations and working conditions in the sector in accordance with the TFEU provisions (Siekman 2012, p. 192).

**Social partners may adopt agreements** that can be **implemented through a Council Directive**, which makes them legally binding (*erga omnes*) and part of EU law for all employers and workers in the EU once they are transposed into national legislation or collective agreements. The social partners may also adopt **autonomous agreements** to be implemented through customary national procedures.

**Article 154 TFEU** gives the European Commission the role to promote social dialogue; it also gives recognition to social dialogue at European level and it obliges the European Commission to consult the European social partners before submitting proposals in the social policy field. **Article 155 TFEU** provides the opportunity to negotiate agreements that can be implemented in accordance with the

procedure and practices specific to management and labour in each Member State or by a Council Decision for areas that are listed in **Article 153 TFEU**.

There are **no enforcement procedures** possible to implement a voluntarily agreed European collective agreement (Colucci & Geeraert 2012). The agreements are binding only for the signatories and their affiliates, and according to Smismans (2007, p. 343) this “voluntary route” relies on the different structures of industrial relations within the Member States for effective implementation. Such **voluntary agreements are neither binding nor part of EU law**. In this regard, the role of international or European sports federations in the social dialogue process becomes indispensable insofar as those entities have the authority to “oblige” their members (NFs) to implement such agreements in their statutes or regulations at a national level (see, for example, Article 7 of the UEFA Statutes (edition 2020)).

When the **social partners request the European Commission to propose a directive** to the Council and implement an agreement reached following TFEU Article 154 consultations, the Commission first conducts an assessment (Monte 2013, p. 43ff.). The **Commission** checks the **representative status** of the signatory organisations, their mandate and the legality of the agreement’s content in relation to EU law, as well as the provisions regarding small and medium-sized enterprises (SMEs). In this regard, the Commission has the duty to ensure that employment legislation must avoid imposing administrative, financial and legal constraints that would hamper the creation and development of SMEs. Only then can the Commission draft a directive. The **directive** makes the agreement in question **legally binding** across the EU and the agreement is attached as an annex. The Council decides only whether or not to adopt the directive; it does not have the opportunity to amend the agreement’s provisions.

Adoption of the directive means that the Commission halts work on its proposal in the specific areas covered by the agreement. When the social partners reach an agreement following Article 154 consultations, and decide to implement it in accordance with the procedures and practices specific to management and labour in the Member States, the Commission also carries out an assessment in the same way as for agreements that are to be implemented by a directive. While the Commission will halt work on the specific issues dealt with, it also monitors the EU-wide implementation of the agreement, evaluating the extent to which it contributes to achieving the EU’s objectives. If the Commission decides that the agreement does not meet these objectives, it can at any time resume work on the issue in question and, **if necessary, propose legislation**. As to the decision to implement by a directive or by the signatories of EU-level agreements themselves, which is reached following formal negotiations, the general rule is that preference should be given to implementation by a directive when agreements deal with fundamental rights or important political issues, or where it is important that rules must be applied uniformly and completely across the EU, or where the aim is to amend an existing directive (Monte 2013, p. 44).

In September 2022, the **European Commission** took steps to safeguard the **status of solo self-employed persons** which may be beneficial to athletes who are not defined as workers by their national law. The European Commission published new guidelines which clarify when certain self-employed people can collectively negotiate better working conditions without breaching EU competition rules (*Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02)). Very often self-employed status is used by employers to avoid paying social contributions and to get around other labour regulations. The Commission's new guidelines determine that EU competition law, which would deny collective bargaining for self-employed persons, does not apply to solo self-employed people that are in a situation comparable to workers. First, solo self-employed people are in a situation comparable to workers if they are economically dependent on one counterparty. According to the Commission, this is the case if a solo self-employed person "earns, on average, at least 50% of total work-related income from a single counterparty." Second, a self-employed person can also be considered to be in a situation comparable to workers if they work side-by-side with workers, and, like a typical worker, are under the direction of the company they work for. Third, the definition also applies to people who work through digital labour platforms. Two out of three criteria may be applied to sport.

Colucci and Geeraert (2012) define social dialogue as an important element of Good Governance in sports because it contributes to the shaping of employment relations and working conditions in an active and participative way by giving the stakeholders the opportunity to provide their input. In line with that, the European Commission has identified social dialogue as a platform through which dialogue between the sports stakeholders can be promoted and a mechanism through which sport can shape its own regulatory environment without the need for stakeholders to resort to litigation (European Commission 2007, p. 12). By way of example, the following section provides a discussion of social dialogue in the football sector.

### ***Social Dialogue in Professional Football***

In 2001, following the European Court's judgment in *Bosman* and the adoption of the revised FIFA Regulations on Status and Transfer of Players (RSTP), the EU Commissioners invited FIFA and UEFA to encourage clubs to take part in social dialogue (Parrish 2011). It is the first social dialogue which was organised, performed, and produced agreements. In 2008, a **Social Dialogue Committee for European Professional Football** was established in Paris with FIFPro representing players (workers), and the European Professional Football Leagues (EPFL) – now European Leagues (EL) – together with the European Club Association (ECA) representing employers (clubs). The UEFA takes part in the Committee as Chair (Colucci & Geeraert 2012). The establishment of this social dialogue committee illustrates a potential shift of the balance of power in the industrial relations of football from the sole regulatory control of UEFA to the involvement of stakeholders and especially the social partners (Parrish 2011).

By providing a dedicated platform for stakeholder negotiation, social dialogue in professional football

offers the opportunity to **resolve employment-related issues within the sports movement itself**. The provision of such a platform also responds to the European Commission's call, expressed in the White Paper on Sport (European Commission 2007, p. 4) that governance issues in sport should fall within a territory of autonomy and that most challenges can be addressed through self-regulation, which must, however, be "respectful of good governance principles" (see above: "conditional autonomy") such as stakeholder representation (Parrish 2012, p. 729).

On 19 April 2012, in Brussels, the EU social partners in the professional football sector (FIFPro, EPFL, ECA and UEFA) signed an **autonomous agreement** under the auspices of the European Commission high representatives, which provided the agreement with strong political support from the EU. It was a step towards **minimum social standards for players' contracts** and was expected to be implemented in UEFA's (then) 54 member countries situated in and outside the EU. The autonomous agreement was accompanied by a joint letter where all signatory parties committed themselves to implementing it. The transitional period for the implementation was two/three years from the date of signing the agreement, but in the end, it was not implemented as planned (Smokvina 2016).

Importantly, from a labour law perspective, the autonomous agreement provided that **a player's contract was an employment contract between the club and a professional player** (Articles 2.4. and 5.1.). Although the CJEU has repeatedly defined professional players as workers who are afforded protections under Article 45 TFEU (see for example C-325/08, *Olympique Lyonnais SASP v Olivier Bernard, Newcastle United FC*, [2010] ECR I-2177), the **national practice varies across the EU**: some players are defined as **workers**, but there are also Member States where they are defined as **self-employed persons** such as Croatia, Slovenia, Czech Republic etc. In these countries, players do not have a contract of employment, which guarantees them labour law protection, but a **civil law contract** (in the status of self-employed persons) which puts them in a less favourable position. An analysis of the existence of Standard Player Contracts and collective bargaining agreements in the UEFA territory, conducted within the context of the Social Dialogue Committee in Professional Football in 2009, showed that in England, the Netherlands, Belgium, Denmark, Sweden, Latvia, Portugal, Spain, France, Italy, Austria, Greece, and Macedonia, the minimum requirements of the autonomous agreement are implemented in the existing bargaining agreements (UEFA 2009, p. 229). Those were the Member States with fewer implementation problems (Branco Martins 2009). However, in other states, such as Croatia, Slovenia, and the Czech Republic, **implementation problems** are evident. Nonetheless, in professional football, the social partners have also adopted further important acts, such as a resolution on Intermediaries/Agents in 2017, as well as a resolution on a coordinated response to the impact of the COVID-19 on competitions and international guidelines on player health under the "Emergency International Match Calendar – Period 2020 to 2023", both in 2020.

More recently, further steps have been taken regarding social dialogue in football. In September 2022, FIFPRO and the World Leagues Forum (WLF), with the support of the ILO, signed a ground-breaking agreement to take greater responsibility as social partners, as well as to strengthen collectively-agreed

solutions in the football industry and contribute to their viability and growth. The agreement cements the industrial relationships that many leagues and player unions have built in domestic markets. Known as the **“Global Labour Agreement” (GLA)**, it commits to promoting and protecting the basic principles of collective industrial relations between the representatives of employers and employees. The agreement will stabilise the professional football environment by **strengthening employer and employee representatives at an international level** and promoting fair conditions of employment in football. It covers FIFPRO’s network of 66 national player unions, which together represent more than 60,000 professional footballers, and the WLF’s group of 44 national leagues comprising approximately 1,100 clubs. The accord enables FIFPRO and the WLF to address key matters of employment relations between clubs and players at international level, and to actively pursue equitable representation in international decision-making. FIFPRO and the WLF will also collaborate to develop and promote collective bargaining in order for player unions and leagues to take greater responsibility in professionalising football.<sup>9</sup>

### ***Social Dialogue in Other Sports***

A challenge for the sports sector in a broader context is the **absence of a formal sectoral social dialogue in all other sports**. There was an initiative led by several European-level organisations to establish a European Social Dialogue Committee in the sport and active leisure sector. The associations involved were UNI Europa – Section Sport, with its professional sport-related affiliate EU Athletes – on the employee side, and the European Confederation of Outdoor Employers (EC-OE) as well as the European Association of Sport Employers (EASE) and the European Health and Fitness Association (EHFA) on the employer side. The European Commission announced the launch of a test phase of a new **European Sectoral Social Dialogue Committee for Sport and Active Leisure** in December 2012. During a “test phase”, no decision was taken regarding the establishment of a sectoral social dialogue committee, but that specific support is provided for a limited duration (for example, two years) to help the European social partner organisations in the sector prepare a sectoral social dialogue committee (Adam 2013, p. 56). However, it did not result in the establishment of a sectoral social dialogue committee and out of 43 sectoral social dialogue committees in the EU, there is only one in professional sport, and that is in football. A further initiative is in progress, however, with the commencement in June 2022 of a project on social dialogue in sport called *Social Dialogue in Europe for Professional (SDE Pro) Sports*. The partners of the project are EU Athletes, EASE and the German Sport University Cologne, and it aims to map and develop social dialogue in the sports sector across Europe.

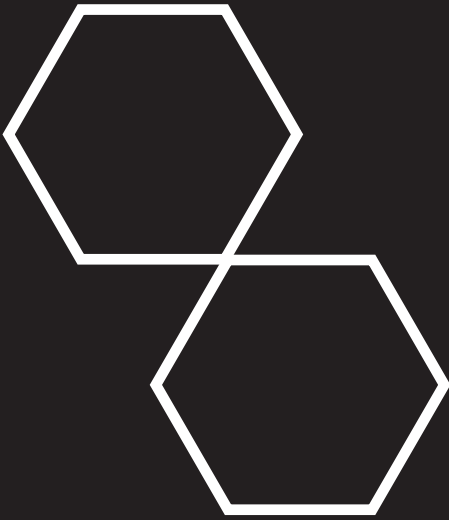
9 Further information is available at < <https://fifpro.org/en/who-we-are/what-we-do/foundations-of-work/fif-pro-and-world-leagues-forum-establish-global-employment-relations-structure-in-professional-football/> >

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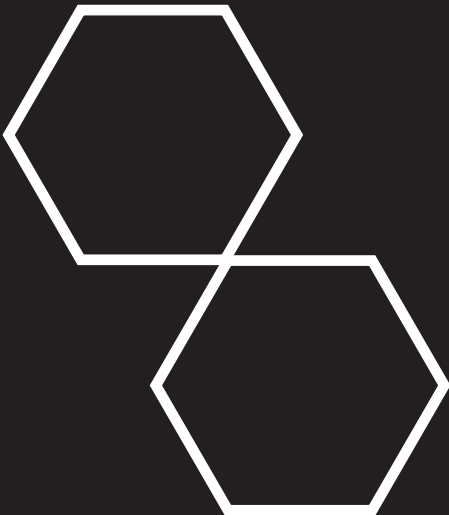
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# III. EVALUATING

GOOD GOVERNANCE CONCEPT

PRINCIPLES OF GOOD GOVERNANCE



## 1. A Rights-Based Approach to Good Governance in Athletes' Employment Relations

### 1.1. Rationale and Approach of the Concept

#### *Key characteristics of athletes' employment and social relations in Olympic sports in Europe*

Since the beginning of the commercialisation of elite sport, Olympic sports have seen a significant increase in the revenues it generates. Exemplarily, in its latest annual report, the International Olympic Committee (IOC) states that from 2017 to 2021, the organisation made revenues of USD \$7.6bn (IOC 2022a, p. 173). This illustrates that international elite sport has a **large economic potential** through the sales of broadcasting rights and sponsorship deals for mega sporting events. In addition to these revenues, existing research (cf. Breuer & Hallmann 2011; Bosscher et al. 2015) and the data of the EMPLOYS Fact Report (Mittag et al. 2022) show that national governments invest substantially in elite sport development to achieve sporting success on the international stage. While the economic system of Olympic elite sports may not purely be understood from the perspective of a market economy, there is significant public and private money involved in it (cf. Windholz and Hodge 2019).

The athletes' contribution to the generation of economic value in Olympic elite sports is undeniable. From the perspective of economic theory, Nufer and Bühler (2010) illustrate that athletes are the first link of the value chain of elite sports. Eventually, it is the athletes' performance that attracts broadcasters and sponsors alike. Seeing the large economic value generated by athletes on the international level, it comes as no surprise that the International Labour Organization includes athletes and sport players in its *Standard Classification of Occupations* (ILO 2012, p. 210). Among other things, the tasks of this occupational group include participation in sport events, regular training practice and adherence to rules and regulations of a specific sport (cf. *ibid.*). This demonstrates that elite athletes in Olympic sports, on a conceptual level, are engaging in an **activity that produces economic gain** – predominantly for sports stakeholders like the IOC and International Federations that market international sporting events. In accordance with the IOC's Solidarity Model, these funds are reinvested into the development of sports on a global scale through funding of National Olympic Committees and stakeholders on the lower levels of governance (cf. IOC 2022a).

However, as illustrated in Part II of this report, the fact that elite athletes perform an activity that produces economic gain through the commercialisation of their skills does not alone qualify athletes as workers. Furthermore, in many cases, athletes' income derived from an individual commercialisation (through sponsorship or self-marketing) does not amount to a level that qualifies them as independent contractors or self-employed workers under national law. Despite the manifold variations of athletes' relationships on the national level identified in Part II, one important characteristic of *athletes' employment relations* in Olympic sports is that **athletes are not considered as workers or employees**

**of those actors who directly or indirectly benefit from the economic value they generate.** Athletes are usually not in a working relationship with the International Olympic Committee or their International Federation. Nor are they currently working for any of the 29 National Olympic Committees or National Federations that may benefit economically from the activities of athletes. Instead, and in order to enable and develop athletes' elite performance, highly specialised policies and practices of financial support and contractual relationships have been established across the continent. The investigated countries maintain **different elite sport/career support programmes for Olympic athletes**, for example through employment opportunities with public authorities, public or private scholarship programmes or athlete support schemes. Furthermore, the analysis shows that athletes' legal and contractual status, i.e. worker vs. amateur, has significant effects on the key dimensions of the employment and social relations of athletes (e.g. contract, income, commercial opportunities, occupational safety and health, social protection, and participation and bargaining, cf. Figure 1). Therefore, while all elite athletes in Olympic sports are involved in the generation of substantive economic value and revenues<sup>10</sup>, most athletes are not in an employment relationship. This **ambiguity** is a systemic key characteristic of Olympic elite sports: on the one hand, **athletes are universally engaging in an activity that produces economic gain** through the performance of largely the same or similar tasks, i.e. the practice of elite sport. On the other hand, this activity is enabled by **various manifestations of employment and other relationships** in accordance with national specificities.

Further key characteristics that have an effect on the position of athletes have been identified in academic literature. On the structural level, the Olympic Movement is strongly characterised by the monopolistic market structures under which national and international organisations govern their sports. The well-established "one-federation principle" (Kornbeck 2020, p. 203) places sport governing bodies (SGBs) in a position of significant regulatory and economic power (Freeburn 2018; Pijetlovic 2015). SGBs that operate largely autonomous from government interference "create, control, and regulate" global markets (Windholz and Hodge 2019, p. 327). Seeing, for example, the low prevalence and importance of (athlete) unions and independent organisations in Olympic sports, the system is strongly characterised by an **imbalance of regulatory and decision-making power** in favour of SGBs.

#### Defining Key Characteristics of Olympic Elite Sport:

- ambiguity between universal activity that produces economic gain and different relationships that enable this activity
- imbalance of regulatory and decision-making power
- high opportunity costs
- specific health risks

On the individual level, and despite the potential to generate large revenues, Breuer and colleagues (2018) illustrate that a career in elite sport exposes athletes to high **opportunity costs** as the level of

10 Arguably, this may depend on an athletes' individual market value respectively the market value of the specific sport (discipline).

personal income derived from elite sports is commonly lower than the income levels of other sectors and industries. Because of the physically and psychologically demanding nature of elite sports, athletes are **exposed to several health risks**, despite positive effects of elite sports on the general health of (former) elite athletes (Runacres et al. 2021).

A holistic Concept for and valid Principles of Good Governance must be able to account for these key characteristics of Olympic elite sports on the individual and systemic level.

### ***Approach to Good Governance***

Established concepts and frameworks of Good Governance in sport usually have as their **empirical-analytical focus** the structures, practices and policies of organisations, mostly sport governing bodies (SGBs) on the national or international level (Parent & Hoye 2018; Thompson et al. 2022). Based on the key characteristics identified above, Good Governance in the employment relations of athletes in Olympic sports must not only refer to the practices of private SGBs but also reflect the **systemic character of governing athlete relations** (cf. Henry and Lee 2004). Actors at multiple levels of governance from both the state and sport sector shape the lives of elite athletes. Different from most of the previous work on Good Governance in sport, the conceptual and empirical focus of Good Governance, here, is not on individual organisations but on a **network of actors** as well as on national, EU and international **legal and socio-political frameworks** at the centre of which the athletes are located. In light of this holistic consideration, the concept seeks to establish a framework for ***Good Governance for athletes***.

Concepts of Good Governance usually rely on a rather **complex methodology** underpinned by a challenging process of operationalisation that commonly ranges from broad dimensions (e.g. transparency, democracy, accountability, etc.) to practical principles and (dichotomous) indicators (cf. Chappelet & Mrkonjic 2019; Geeraert 2018). While no clear methodology and terminology exists in current literature, a similar practice of conceptualising and operationalising Good Governance is being followed throughout most studies (Thompson et al. 2022).

An evaluation against principles of Good Governance is per se **normative**. Yet, normative claims and underlying conceptual reasoning often remain vague, ambiguous, or even neglected. Recent reviews of Good Governance in sport point out that many studies lack a sufficient explanation of the normative justification and premises for the formulation of Good Governance principles (Geeraert 2022; Chappelet and Mrkonjic 2019). Rationales for implementing Good Governance principles can be established on two distinct grounds: most commonly, principles of Good Governance qualify as “good” because they may contribute to broader conceptual notions and outcomes valued in corporate governance, like effectiveness, efficiency, or output legitimacy. In this sense, Good Governance is conceived as “a means to an end” (Girginov 2022, p. 90), implying an **instrumental** justification of the recommended principles. In contrast to this, justifications can also be derived from **moral or values-based reasoning**. Here, Good Governance constitutes an “end in itself” (Geeraert 2022, p. 4),

as it establishes practices of moral values. Such moral/value-based reasoning to justify and explain principles of Good Governance can take place along the lines of the “classic juxtaposition” (Geeraert 2022, p. 5) of ethics: cosmopolitan or universal norms, in principle, apply to all people and entities irrespective of the social and cultural setting. Communitarianist or contextualist values and norms may vary according to the particular setting in which they apply and account for long-established relationships and commonly agreed practices.

As stated, most studies on Good Governance in sport adopt an instrumental approach to establish a normative justification of rules and practices that deserve the label “good”. This, together with the empirical focus on SGBs, strongly ties Good Governance in sport to the broader concept of corporate governance. From the perspective of a values-based approach, the primary objective of Good Governance, however, is not to ensure organisational effectiveness, but to be moral and to live up to the desired values. Adopting this notion of Good Governance, the United Nations Office of the High Commissioner for Human Rights (2022), for example, states that: “The true test of ‘good’ governance is the degree to which it delivers on the promise of human rights [...]”.

### ***Athletes’ Rights***

In recent years, the discussion about **athletes’ rights** has gained significant traction. The World Players Association’s (2017) *Universal Declaration of Player Rights* may be seen as the point of departure for much of the activities and debates. On the European political level, the Council of Europe’s European Sport Charter (2021, p. 5) states that “the human rights of athletes and everyone involved in sport are respected, protected and promoted”. In addition, the current EU Work Plan for Sport 2021-2024 (Council Resolution 2020/C 419/06) for the first time includes “athletes’ rights” as one key topic. Actions shall be implemented that raise awareness, create knowledge and analyse the factual and legal situation. In the world of Olympic sport, several recently published documents illustrate these developments: in 2018, the IOC Session adopted the *Athletes’ Rights and Responsibilities Declaration* which was developed “through a worldwide consultation process, reflecting the views of athletes.” (IOC 2018, p. 1). More broadly, the IOC-commissioned Independent Expert Report *Recommendations for an IOC Human Rights Strategy* (Al Hussein & Davis 2020) strongly refers to the rights of athletes. As a direct result of the report, the IOC’s (2022b, p. 23) *IOC Strategic Framework on Human Rights*, published in September 2022, identifies athletes as one of the four “target populations”.

Seeing these recent developments, this study adopts a **rights-based approach to Good Governance** in Olympic sport that applies to the specific area of athlete employment relations in Olympic sports in Europe.

## 1.2. Conceptualising Athlete Employment Relations Rights

The key characteristics of Olympic sports introduced above guide the concept of Good Governance in this specific area of elite sport policy. As illustrated above, the **ambiguity** between a universal activity performed by athletes that generates economic value and the different relationships that athletes maintain as elite athletes on the national level poses a challenge to the conceptualisation of Good Governance in athletes' employment relations. While not all elite athletes are in relationships that qualify them as workers or employees, all of them maintain some sort of relationship that enables them to perform their elite sport. "Employment relations" in the narrow sense would only address those athletes in a proper *employment relationship* (cf. Glossary), usually with public authorities at national level. The concept of athletes' employment relations rights shall not only apply to those athletes, but shall **cover all contractual and financial relationships** that enable an athlete to engage in and perform elite sport in her or his discipline and specific national context.

Based on the principle of equality in their employment relation rights, the relevant rights of athletes shall apply to all elite athletes in Olympic sports in Europe under the following premise:

***Irrespective of their legal status, contractual relationships, nationality, and sports discipline, all athletes in Olympic sports have equal employment relations rights.***

Within the framework of this study, principles of Good Governance are explained and justified on **moral grounds** to ensure a holistic consideration of rules and practices that place athletes at the centre of sport governance (cf. Figure 2). Seeing the complex empirical reality of athlete employment relations in sport, universalist (e.g. human rights, etc.) and contextualist (e.g. the national settings or the specific structures of the Olympic elite sport system) notions of morality are combined to establish a solid normative foundation for the formulation of Good Governance principles.

This proposed conceptualisation builds on the fundamentals of Marshall's (2009 [1950]) concept of citizenship and the rights associated to it. Traditional concepts of athletes' rights are rooted in human rights and labour rights which derive a universal entitlement from the status of personhood or assign rights based on contracts and the necessity to overcome power imbalances (cf. Mundlak 2007). However, the research data and literature review have shown that athletes also have rights by virtue of their membership in the Olympic system. The concept does not supplant human rights or labour rights of athletes. Rather, it identifies a third layer of rights for Olympic athletes and seeks to establish a framework that combines all applicable sources of rights.

Citizenship theory states that "[c]itizenship is a status bestowed on those **who are full members of a community**. All who possess the status are equal with respect to the rights and duties with which the status is endowed." (Marshall 2009 [1950], p. 149f., emphasis added)

Marshall then distinguishes three different types of rights arising from the status of citizenship:

- Civil rights: “rights necessary for individual freedom” (p. 148)
- Political rights: “right to participation in the exercise of political power” (p. 149) (active right)
- Social rights: “whole range from right to a modicum of economic welfare and security to the right to share to the full in the social heritage.” (p. 149) (passive right)

As to the source of rights and the relevant polity towards which rights can be claimed, firstly, athletes are members of the community of **citizens of a nation state**. As the data of the EMPLOYS Fact Report indicate, the national legal and socio-political framework has significant effects on the employment relations of athletes in Olympic sports. In addition to membership in the community of a nation state, athletes are members in the **community of the European Union and global citizens** (cf. Ong 1999). This entitles them to the fulfilment of rights on a transnational and international level, above all to the fulfilment of internationally recognised human rights.

Building on Mundlak (2007, p. 739, emphasis added), in conceptual terms, “a theory of citizenship requires an account of **who** the **constituent-citizen** and **what** the relevant **community** are”. This is important to the conceptualisation of athlete employment relations rights and shows that the concept of citizenship can also be transferred to contexts of the **private sphere**, leaving behind narrow conceptions of citizenship as membership community with rights towards public/state actors. Exemplarily, this extension has inspired concepts like workplace democracy, where the relevant polity is the private setting of a firm. Such a conceptual extension of citizenship becomes all the more important with a view to Crane and Matten (2005) who argue that actors of the private sphere increasingly assume the roles and responsibilities of welfare states due to processes of privatisation, for example in the provision of social protection services. This reflects the current data which indicate that private actors of the elite sport system assume an important role in the employment and social relations of athletes (cf. Mittag et al. 2022).

The conception of private sport governing bodies forming a regulative regime that can be considered a **uniquely characterized polity** has been developed in literature on sport governance from a political science (cf. Rittberger & Boekle 1996), a sociological (cf. Henne 2015) and a socio-legal perspective (cf. Freeburn 2018, Duval 2018, Cattaneo & Parrish 2020). Analysing the far-reaching effects of the specificities of the elite sport system, Henne (2015) proposes a conceptualisation of “**athlete citizenship**”. She argues that the transnational anti-doping regime makes international elite athletes a “unique caste of citizen subjects” (p. 3) and illustrates the effects of the regime on athletes’ rights.

Applying the citizenship framework to the governance of the employment and social relations in Olympic elite sport requires that athletes must be considered the “constituent-citizen” (Mundlak 2007, p. 739) of the **specific network of relationships they operate in as elite athletes**. Therefore, athlete employment relations rights shall also be understood as **rights derived from athletes’ specific membership status in the elite sport system**. This entitles athletes to **additional rights** vis-à-vis the different actors governing Olympic elite sports. However, the rights of athletes which are derived from



their general memberships in the global and EU communities, as well as their membership in the respective nation state, remain unaffected. Such rights apply to all athletes.

Therefore, athletes in Olympic sports in Europe are in a unique position strongly defined by:

1. Their status as citizens of a **nation state**
2. Their status as citizens of the **European Union**
3. Their membership in the **global community**
4. Their specific (contractual) relationships with stakeholders of the **system of Olympic elite sports** (private and public)

On the international level, the fourth aspect includes the relationships of athletes to bodies like the International Olympic Committee, International Federations, and further transnational actors and event organizers. On the national level, it refers to relationships with the National Olympic Committee, National Federations, local clubs, and any other organisation that strongly affect the lives of athletes.

### 1.3. Governing Athlete Employment Relations Rights

As Henry and Lee (2004) point out, the governance of sport can be understood as having **systemic**, **political** and **organisational** components to it. These distinct yet interconnected types of governance serve as an ordering principle for the fulfilment of athlete employment relations rights. The *systemic dimension* of governance relates to the interaction and “mutual adjustments between organisations” (ibid., p. 27.). *Political governance* refers to processes of steering the sport system “by moral pressure, use of financial or other incentives, or by licensing, regulation and control” (ibid.) of the government and public authorities. Lastly, and most commonly referred to in conceptualisations of Good Governance, the *organisational dimension* encompasses “accepted norms or values for the just means of allocation of resources, and profits or losses (financial or other) and of the conduct of processes involved in the management and direction of organisations in the sports business.” (ibid.)

#### Good Governance in the Employment Relations of Athletes in Olympic Sports:

*systemic, political and organisational measures to ensure the fulfilment of athlete employment relations rights.*

Following this systematisation, *Good Governance in the employment relations of athletes in Olympic sports in Europe* is conceptualised as systemic, political and organisational measures to ensure the fulfilment of athlete employment relations rights.

## 2. Principles of Good Governance in the Employment Relations of Athletes in Olympic Sports in Europe

### 2.1. Rationale, Objectives and Scope

The following Good Governance principles shall be understood as a **coherent whole** and should be read, individually and collectively, in terms of their objective of establishing a **universal but context-specific framework** of athletes' rights in Olympic elite sports. The principles can be **fulfilled through different actions, practices and policies** of individual organisations and collective systems which may result in **functionally equivalent solutions**. Under consideration of distinct legal, socio-political, and economic frameworks, as well as cultural characteristics and political traditions across EU member states, functional equivalents shall respect the universal rights of athletes expressed by the Good Governance principles.

#### Functional Equivalence:

The idea that formally different (social) units may perform the same particular function and fulfil a common purpose.

(cf. Dowling & Harris 2021; Sohlberg 2022)

The aim here is to inspire the adoption of policies and measures (i.e., social units) that may take different forms but perform the same function, namely fulfilling athletes' employment relations rights.

Therefore, the following principles **neither reflect the current status quo**, nor do they establish any **legal obligation** to meet these rights. Rather, their objective is to set a common normative standard for the future of elite sport governance that (1) considers athletes' rights across the different dimensions of athletes' employment and social relations and (2) to encourage multi-stakeholder dialogue. Where a reference to minimum standards (e.g. minimum income or contractual requirements) is made, this shall not prevent the involved parties from seeking higher standards. Furthermore, where reference to national, European or international law is made, in case of conflicting requirements, the higher standards shall prevail.

Against these objectives, the principles mainly **address** those **actors** of the elite sport system that assume an **overarching role in shaping national and international elite sport policies**. While also applicable to actors on other levels (e.g. regional, local, etc.) and other sectors (e.g. the private sector through sponsorship of elite athletes), there might be requirements to adjust the scope and claim of the principles to these actors more specifically.

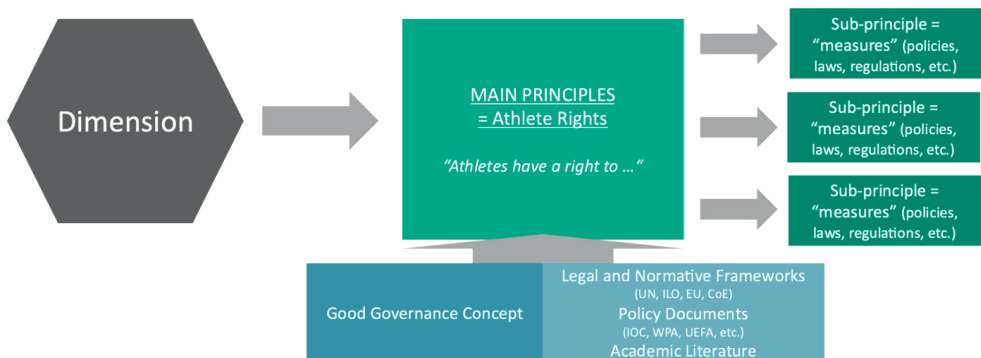
## 2.2. Methodology

In view of persisting conceptual challenges related to the **complex methodology** as well as **practical relevance and impact** of any Good Governance codes (cf. Geeraert 2022; Thompson et al. 2022), a transparent methodological approach has been designed to formulate and present athletes' rights as principles for Good Governance.

Overall, the **operationalisation** of athletes' employment relations rights takes place along the lines of the **six problem-centered and topic-specific dimensions** of the Fact Report, including contract, income, commercial opportunities, occupational safety and health, social protection and participation and bargaining (see Figure 1).

Each **dimension** consists of specific **"main principles"** (27 in total). These are phrased as **athletes' rights**, beginning with the formulation of **"Athletes have a right to..."** as commonly found in declarations and fundamental rights charters. Each principle has a declaration-like character and constitutes a **moral right** which shall be fulfilled to ensure Good Governance in the employment relations of athletes in Olympic sports.

Figure 3: Methodology for Principles of Good Governance.



As part of the **Good Governance catalogue**, it is clearly stated how each main principle is integrated into the conceptual approach and where its relevance and justification (normative justification) lie. In addition, for each of the formulated main principles, **rights category**, **Good Governance dimension**, **level of (sport) governance** and underlying **sources** are clearly specified:

- Each main principle is **categorised as either a "civil", "political" or "social right" of athletes** – combinations of two or three rights categories may, however, occur.
- The main principles are furthermore linked with more **commonly used Good Governance dimensions** in sport-specific literature and policy papers. In this respect, any of the formulated principles shall contribute to fostering broader and widely disseminated dimensions in sports

governance research such as **transparency, democracy, accountability, independence, and social responsibility**.

- In accordance with Henry and Lee (2004), specific **governance levels** (“systemic”, “political”, “organisational”) are proposed at which adequate means and measures by the involved stakeholders are required to fulfil a given main principle (athlete right).
- Ultimately, the **sources** of each main principle are listed, comprising **legal and political frameworks** (e.g. from the UN, the EU, the ILO or national governments), **policy papers** and **academic studies**, inter alia.

To ensure additional analytical profoundness, some main principles are further specified through “**sub-principles**” (58 in total). In practice, these sub-principles refer to the **presence or absence of specific measures such as policies, laws, regulations or practices at national level**.

In addition to **desktop research and literature work**, the formulation of the principles has been revised several times based on **discussions** with the **project partners** and **key stakeholders** of the elite sport system. Public discussions were staged in four **Multiplier Sport Events (MSEs)** hosted in March 2022 (Edge Hill University, Ormskirk, UK), May 2022 (University of Rijeka, Faculty of Law, Rijeka, Croatia), June 2022 (Institute for Sport Governance, Warsaw, Poland) and September 2022 (Józef Piłsudski University of Physical Education, Warsaw, Poland). Moreover, the draft principles were presented and discussed with **international audiences** at the 2022 Annual Sport&EU Conference (Lausanne, Switzerland) and the 2022 Play the Game Conference (Odense, Denmark) both taking place in June 2022. To give stakeholders the opportunity to provide **comprehensive feedback**, the principles were presented to them through a dedicated **online survey**. Here, stakeholders were invited to critically elaborate and comment on the Good Governance concept and the draft principles from their organisation-specific perspective(s). Overall, the survey respondents ( $n = 22$ ) comprise representatives of organisations **from all of the target groups** of the present study (see Table 1, p. 8). Though the representativeness of the current sample is limited due to its rather small size, stakeholders’ most controversial concerns and critical viewpoints were aggregated and discussed thoroughly in the scope of the MSE in Warsaw (see above). This **inclusive research process** informed further revision of the formulations of certain principles.

## Dimension 1: Contract

### Principle 1: Written contract

***Athletes have a right to a written contract.***

#### **Relevance and justification:**

*Irrespective of the contract's categorisation under national law, written contracts ensure the fulfilment of athletes' civil rights as members of the elite sport system, and the rights and obligations of all parties in the relationship. They increase transparency, ensure accountability and prevent the exploitation of athletes.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, (political), (social)	transparency, accountability, (social responsibility)	organisational, (systemic)

#### **Sources:**

- World Players Association 2018: The Economic Rights of Players

### Principle 2: Minimum contractual requirements

***Athletes have a right to a written contract which includes clearly defined provisions of national and international minimum requirements.***

#### **Relevance and justification:**

*Minimum contractual requirements ensure the fulfilment of athletes' civil, political and social rights. They have been collectively negotiated in many professional (team) sports and shall also be applied to elite Olympic sports. They increase transparency, ensure accountability, foster equal treatment and prevent the exploitation of athletes.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, (political), (social)	transparency, accountability, (social responsibility)	organisational, (systemic)

### **Sub-principles:**

- 2.1 All parties involved are clearly identified and applicable laws, rules, and codes of conduct are included.
- 2.2 Obligations and rights of the parties and access to remedy are specified.
- 2.3 Type of contract, start date, end date (duration, extension) and equal rights for the termination of the contract are defined.
- 2.4 Athletes' salary / income, image rights, and commercial opportunities are defined.
- 2.5 Athletes' social protection coverage is defined.

### **Sources:**

- EASE & EURO-MEI 2008: Joint Recommendation on minimum requirements of employment contracts in the sport sector
- UEFA 2012: Agreement regarding the minimum requirements for standard player contracts in the professional football sector
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer

### **Principle 3: Evaluation of legal status**

***Athletes have a right to seek an evaluation of their legal status in accordance with national law.***

### **Relevance and justification:**

*It is the civil right of athletes to address national labour courts and/or independent entities regarding the legal status they obtain under their respective contract(s), irrespective of the contract's categorisation under national law. This evaluation increases transparency, enhances accountability and prevents the exploitation of athletes.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	transparency, accountability, (social responsibility)	systemic, (political)

### **Sub-principles:**

- 3.1 Sport-specific laws and regulations that exempt an athlete from worker status do not exist.
- 3.2 Mechanisms initiating an independent legal evaluation of an athlete's status are available.
- 3.3 Policies preventing retaliations against athletes who are requesting an evaluation of their status are implemented.

### Sources:

- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- World Players Association 2018: The Economic Rights of Players

### Principle 4: **Eligibility criteria of contracts**

***Athletes have a right to the publication of eligibility criteria for any contract and/or membership in national teams or cadre systems.***

### Relevance and justification:

*It is a civil right of athletes to know about the applicable eligibility criteria for membership in national teams and talent development programmes (cadres) which may impact their future career prospects in elite sport. The publication of clearly formulated criteria increases transparency, enhances accountability, and fosters fair and open competition, including equal treatment of athletes. Ultimately, a greater predictability of an athlete's future (sporting) career path is provided.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	transparency, accountability, (social responsibility)	organisational, (systemic)

### Sources:

- Capranica & Guidotti 2016: Research for Cult Committee - qualifications/dual careers in sports (2016)
- EU Expert Group "Education & Training in Sport" 2012: EU Guidelines on Dual Careers of Athletes
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer

### Principle 5: **Collective negotiation of standard contracts**

***Where a standard contract applies, athletes have a right to collectively negotiate the contract terms through an independent process and independent representation.***

### Relevance and justification:

*It is a political right of athletes to negotiate the standard contracts to which they are a party. The formality and extent of the negotiation process may vary. Collective negotiations ensure democratic principles by countering imbalances in decision-making power and foster stakeholder*

*inclusion and participation. Independent processes and independent representation increase accountability, transparency and athletes' independence (see further: Dimension 6 "Participation and Bargaining"). The rights of athletes to negotiate individually remain unaffected.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
political	democracy, accountability, transparency, (independence), (social responsibility)	systemic

#### **Sources:**

- European Pillar of Social Rights 2021: Preamble, Article 08
- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy

#### **Principle 6: Implementation of CBA provisions**

***Where collective agreements or social dialogue outcomes apply, athletes have a right to the full implementation of these into the provisions of individual contracts.***

#### **Relevance and justification:**

*It is a civil right of athletes that the provisions of applicable collective agreements are fully implemented and respected in individual contracts. The implementation of collective agreement provisions enhances accountability, increases transparency and prevents the exploitation of athletes' rights (see further: Dimension 6 "Participation and Bargaining").*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	accountability, transparency, (independence), (social responsibility)	organisational, (systemic)

#### **Sources:**

- European Pillar of Social Rights 2021: Preamble, Article 08
- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus



## Dimension 2: Income

### Principle 7: Non-discrimination

***Athletes have a right to equality of income with regards to income/financial support schemes, and to equal treatment and employment opportunities.***

#### **Relevance and justification:**

*Acknowledging the varying economic and commercial potential of different sports, many athletes receive funding through income/financial support schemes provided by various actors of the elite sport system. Athletes of all genders have a social right to be treated equally with respect to their income and employment opportunities provided by elite sport / career support programmes. Where such programmes exist on a national level and across sports (disciplines), athletes of all sports have a right to be treated equally. This equality meets the social responsibility of the involved actors and fosters key democratic values such as inclusion and diversity. This shall not prevent the prioritisation of some sports (disciplines) depending on athletes' particular needs.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility, (democracy)	systemic

#### **Sources:**

- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- ILO 1951: Equal Remuneration Convention
- IOC Charter, Fundamental Principles of Olympism
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- World Players Association 2017: Universal Declaration of Player Rights
- World Players Association 2018: The Economic Rights of Players
- European Commission, Directorate-General for Education, Youth, Sport and Culture 2022: Towards more gender equality in sport: recommendations and action plan from the High Level Group on Gender Equality in sport

## Principle 8: Adequate minimum income

*Athletes have a right to adequate income that provides a decent livelihood and life of dignity.*

### **Relevance and justification:**

*Irrespective of their contractual relationships, an adequate minimum income is a social right of athletes whose occupation is elite sport. It shall be ensured in a way that provides for the satisfaction of athletes' basic needs in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented. Minimum income prevents the exploitation of the athletes' workforce, fosters social responsibility in the elite sport sector and potentially reduces susceptibility to competition manipulation. This shall not prevent the negotiation of higher wage levels or athletes' accumulating income from different sources to sustain a decent livelihood and life of dignity.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility	systemic, political, organisational

### **Sub-principles:**

- 8.1 When signing an employment contract, applicable national minimum wage levels must be respected.
- 8.2 Athlete stipends, scholarships and support payments of national elite sport / career support programmes shall ensure a level of income that provides a decent livelihood and a life of dignity.
- 8.3 When representing their country in international sporting events, athletes shall receive an adequate (daily) income or financial compensation. **Sources:**
  - European Pillar of Social Rights 2021: Article 2 and 3
  - ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
  - ILO 2012: Standard Classification of Occupations
  - IOC 2022: IOC Strategic Framework on Human Rights

## Principle 9: Eligibility criteria of income/financial support schemes

*Athletes have a right to the publication of eligibility criteria for income/financial support scheme.*

### **Relevance and justification:**

*It is a civil right of athletes to know about the eligibility criteria of applicable income/financial support schemes which may impact their future career prospects in elite sport. Clearly formulated criteria increase transparency, enhance accountability, and foster fair and open competition including equal treatment of athletes. Ultimately, it may allow athletes to better plan their future (sporting) career.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	transparency, accountability, social responsibility	organisational

### **Sources:**

- Capranica & Guidotti 2016: Research for Cult Committee - qualifications/dual careers in sports (2016)
- EU Expert Group “Education & Training in Sport” 2012: EU Guidelines on Dual Careers of Athletes
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer

### **Principle 10: Predictable and transparent income**

***Athletes have a right to an income that is determined through a predictable and transparent structure and procedure.***

### **Relevance and justification:**

*It is a civil right of athletes that a transparent structure and procedure for determining their income is established. This increases transparency, enhances accountability and prevents the exploitation and unfair treatment of athletes.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	transparency, accountability, social responsibility	systemic

### **Source:**

- European Pillar of Social Rights 2021: Article 06
- Geeraert 2021: National Anti-Doping Governance Observer

### **Principle 11: Regularity and periodicity of payments**

***Athletes have a right to receive their attributed payments regularly and on time.***

### **Relevance and justification:**

*It is a civil right of athletes that payments are made regularly and in due time. This becomes even more important since athletes may be required to make sport-specific advance payments prior to (possible) reimbursements (e.g. travelling, equipment, health checks, etc.). Regularity and periodicity ensure mutual accountability and athletes' independence, and prevent the exploitation and unfair treatment of athletes, whilst reducing their susceptibility to engage in corruptive practices (e.g. match-fixing).*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil	accountability, (independence), (social responsibility)	systemic, (organisational)

### **Sources:**

- European Pillar of Social Rights 2021: Article 06
- UEFA 2012: Agreement regarding the minimum requirements for standard player contracts in the professional football sector

### **Principle 12: Involvement in matters of income/financial support schemes**

***Where income/financial support schemes apply, athletes have a right to be involved in the design and development of these through an independent process and independent representation, depending on the nature of the scheme.***

### **Relevance and justification:**

*The amount of money available to an athlete through an income/financial support scheme can vary from a small to a significant contribution, and the nature and extent of athlete involvement may vary as well. The involvement of athletes ensures democratic principles by countering imbalances in decision-making power and fosters stakeholder inclusion and participation. Independent processes and independent representation increase accountability, transparency and athletes' independence (see further: Dimension 6 "Participation and Bargaining").*

Rights Category	Good Governance Dimensions	Level of (sport) governance
political	democracy, accountability, social responsibility	systemic

### **Sources:**

- European Pillar of Social Rights 2021: Article 08
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus

## Dimension 3: Commercial Opportunities

### Principle 13: Commercial freedom and freedom of occupation

***Athletes have a right to their general commercial freedom and freedom of occupation, subject only to reasonable restrictions that are independently negotiated.***

#### **Relevance and justification:**

*Commercial opportunities and work outside of sports constitute important sources of income for elite athletes. Athletes' general commercial freedom and their freedom to pursue an occupation of their individual choice as EU citizens increase athletes' independence. Commercial freedoms of athletes are restricted to varying degrees and under different circumstances. These restrictions must be proportionate, justified and balance the interests of sport stakeholders. The grounding of restrictions in general principles of national and EU law increases transparency and ensures accountability. Furthermore, it is a political and civil right of athletes to negotiate any restrictions to these rights and freedoms freely and collectively. This fosters democracy, increases transparency, enhances accountability and prevents athletes' exploitation.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, political	accountability, democracy, transparency, independence	systemic

#### **Sub-principles:**

- 13.1 Athletes' name, image and likeness rights shall be ensured in line with national and EU law.
- 13.2 Athletes' freedom to engage in private sponsorship activities shall be ensured in line with national and EU law.
- 13.3 Athletes' freedom to pursue additional work shall be ensured in line with national and EU law.
- 13.4 Any restriction of these rights and freedoms shall be grounded in national and EU law.
- 13.5 Any restriction of these rights and freedoms shall be collectively and independently negotiated to balance the interests of sport stakeholders.
- 13.6 Where restrictions to commercial freedom exist, mechanisms that provide access to legal advice and effective remedy are available.

#### **Sources:**

- Charter of Fundamental Rights of the European Union 2012: Article 15
- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- IOC 2018: Athletes' Rights and Responsibilities Declaration

- World Players Association 2017: Universal Declaration of Player Rights
- World Players Association 2018: The Economic Rights of Players

**Principle 14: Name, image and likeness rights usage and profits**

***Athletes have a right to influence and to benefit from the distribution of profits generated by the commercialisation of their name, image and likeness rights.***

**Relevance and justification:**

*It is a civil right of athletes to profit from the commercialisation of their name, image and likeness rights. The commercialisation of their rights and the related profits shall be negotiated with athletes. This enhances accountability and fosters democracy.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, political	accountability, democracy	organisational

**Sub-principles:**

- 14.1 Athletes are involved in the commercialisation of their name, image and likeness rights.
- 14.2 The commercialisation of athletes' name, image and likeness rights requires the free and informed consent of the athletes or their representatives.
- 14.3 Athletes receive a collectively and independently negotiated share of the profit generated by the commercialisation of their name, image and likeness rights.

**Sources:**

- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- IOC 2018: Athletes' Rights and Responsibilities Declaration
- German Federal Cartel Office 2017; 2019: Press Release 21 December 2017; Press Release 27 February 2019
- World Players Association 2017: Universal Declaration of Player Rights
- World Players Association 2018: The Economic Rights of Players

**Principle 15: Support structures and policies**

***Athletes have a right to support structures and policies enhancing their commercial opportunities.***

**Relevance and justification:**

*A career in elite sports exposes athletes to high opportunity costs, especially with regards to*

*the restrictions on commercial opportunities. Support structures and policies on self-marketing, sponsorship and additional work increase athletes' commercial opportunities and fulfil athletes' social rights.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility	organisational, systemic

### **Sub-principles:**

- 15.1 Support structures and policies that assist athletes to commercialise their name, image and likeness rights (self-marketing) exist.
- 15.2 Support structures and policies that assist athletes to obtain sponsorships exist.
- 15.3 Support structures and policies that assist athletes to pursue additional work opportunities exist.

### **Sources:**

- IOC 2018: Athletes' Rights and Responsibilities Declaration
- IOC Athletes' Commission: Athlete 365
- EU Expert Group "Education & Training in Sport" 2012: EU Guidelines on Dual Careers of Athletes.

## **Dimension 4: Occupational Safety and Health**

### **Principle 16: Healthy and safe work environment**

***Athletes have a right to a healthy and safe work environment when training and competing.***

### **Relevance and justification:**

*Elite sport exposes athletes to numerous risks. Irrespective of their contractual relationships and legal status, it is a social right of athletes to practice their sports in a healthy and safe environment. This prevents the exploitation of athletes and strengthens social responsibility in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility	systemic

### **Sources:**

- 1989 European Framework Directive on Safety and Health at Work
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus

## Principle 17: Exemption from financial costs

***Athletes have a right to be exempt from financial costs that relate to occupational safety and health in training and competitions.***

### **Relevance and justification:**

*While acknowledging their own obligations, athletes are exposed to several risks when practicing and competing in elite sports. Elite athletes operate in a complex network of relationships with multiple actors. The costs related to fulfilling health and safety obligations should not be covered by athletes but must be the responsibility of the employer and/or principal. This prevents the exploitation of athletes, strengthens social responsibility in sport and enhances accountability.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility, accountability	systemic, (organisational)

### **Sources:**

- 1989 European Framework Directive on Safety and Health at Work

## Principle 18: Statutory minimum coverage

***Athletes have a right to a minimum of national and EU-level statutory occupational safety and health provisions.***

### **Relevance and justification:**

*Elite sport exposes athletes to numerous risks. Irrespective of their contractual relationships and legal status, it is a social right of athletes to benefit from the minimum provisions under national and EU law and policy on occupational safety and health. This prevents the exploitation of athletes and strengthens social responsibility in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility	systemic

### **Sub-principles:**

- 18.1 In line with national and EU law, working time regulations are respected.
- 18.2 In line with national and EU law, annual leave day regulations are respected.
- 18.3 Variations to applicable national and EU laws that may be required because of the specificities of the elite sport sector are collectively and independently negotiated with athletes.



### Sources:

- 1989 European Framework Directive on Safety and Health at Work
- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- European Commission 2004: Communication on the practical implementation of the provisions of the Health and Safety at Work Directives
- European Commission 2021: EU Strategic Framework on Health and Safety at Work 2021-2027
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus

### Principle 19: **Specific measures of private organisations**

***Athletes have a right to specific measures of private organisations that provide a safe and healthy training and competition environment, and cover the risks associated with their elite sport.***

### Relevance and justification:

*Athletes are exposed to several risks when practicing and competing in elite sports. Elite athletes operate in a complex network of relationships with different actors and principals. Occupational safety and health measures of private Sport Governing Bodies shall address these risks to fulfil the social rights of athletes. Athletes and their representatives are included in the formulation, decision-making and implementation of these policies and measures. This prevents the exploitation of athletes, fosters social responsibility and enhances democracy in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social, (political)	social responsibility, democracy	organisational, (systemic)

### Sub-principles:

- 19.1 The employer and/or principal of the sporting activity takes responsibility to ensure a safe and healthy training and competition environment for athletes.
- 19.2 SGB's competition rules are evaluated against applicable standards of occupational safety and health.
- 19.3 Athletes have access to preventive and protective equipment, regular physical and psychological check-ups and specified medical assistance.
- 19.4 Specific policies and regulations are established to protect and prevent athletes from being exposed to any hazardous conditions, including excessive training and competition load, physical harm, violence, abuse, discrimination, data protection infringements and coercion.

- 19.5 Athletes are provided with information and education schemes on:
- sport-specific risk assessments (associated with the practice of a sport)
  - all relevant safety and health measures in place
  - possible health-damaging consequences of doping practices and dietary supplements
- 19.6 Effective and transparent policies and procedures are established to ensure the participation of athletes in the development of relevant safety and health measures and their instruction / training.
- 19.7 A representative who defends athletes' safety and health interests at competitions is appointed.
- 19.8 Effective and transparent policies and procedures are established to report, remedy, and record inadequate shortcomings and/or infringements of relevant safety and health measures.

#### **Sources:**

- 1989 European Framework Directive on Safety and Health at Work
- European Commission 2004: Communication on the practical implementation of the provisions of the Health and Safety at Work Directives
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- European Commission 2013: EU Guidelines on Dual Career of Athletes

## **Dimension 5: Social Protection**

### **Principle 20: Cover and payment of statutory social protection contributions**

***Athletes have a right to be covered for, and paid, a minimum of statutory national social protection contributions.***

#### **Relevance and justification:**

*A career in elite sport exposes athletes to high opportunity costs, especially with regards to social protection, as well as to high physical and psychological risks. Irrespective of their contractual relationships, it is a social right of athletes to be covered by statutory social protection measures. This prevents the exploitation of athletes and fosters social responsibility in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social	social responsibility	systemic, (political)

### **Sub-principles:**

- 20.1 Statutory health care contributions are paid for elite athletes.
- 20.2 Statutory sickness benefit contributions are paid for athletes.
- 20.3 Statutory old-age and pension contributions are paid for athletes.
- 20.4 Statutory invalidity / occupational disability contributions are paid for athletes.
- 20.5 Statutory unemployment contributions are paid for athletes.
- 20.6 Athletes are covered by statutory measures of maternity, paternity and adoption protections.
- 20.7 Athletes are covered by statutory measures of parental (and/or maternity/paternity) leave.

### **Sources:**

- Council of Europe 1964: European Code of Social Security
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- European Commission, Directorate-General for Education, Youth, Sport and Culture 2022: Towards more gender equality in sport: recommendations and action plan from the High Level Group on Gender Equality in sport

## **Principle 21: Specific social protection measures**

***Athletes have a right to measures of social protection that cover the specific risks associated with the practice of elite sport.***

### **Relevance and justification:**

*A career in elite sport exposes athletes to high opportunity costs, especially with regards to social protection. The specific social risks of elite sport may require additional measures to complement statutory social protection coverage. These measures shall be collectively and independently negotiated with athletes. This prevents the exploitation of athletes, fosters social responsibility and enhances democracy in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
social, (political)	social responsibility, (political)	organisational, (systemic)

### **Sub-principles:**

- 21.1 Specific accident insurance schemes exist for athletes.
- 21.2 Specific injury insurance and health care schemes exist for athletes.
- 21.3 Specific pension and retirement schemes that ensure a safe transition into the post-career phase exist for athletes.

- 21.4 Specific pregnancy, maternity, paternity and adoption protection policies securing athletes' social status exist.
- 21.5 Specific parental leave policies securing athletes' social status exist.
- 21.6 Private social protection measures are collectively and independently negotiated with athletes.

#### **Sources:**

- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- European Commission, Directorate-General for Education, Youth, Sport and Culture 2022: Towards more gender equality in sport: recommendations and action plan from the High Level Group on Gender Equality in sport

## **Dimension 6: Participation and Bargaining**

### **Principle 22: Participation in governance**

***Athletes have a right to participate in the governance of their sport.***

#### **Relevance and justification:**

*As members of the elite sport system, it is a political right of athletes to participate in the governance of their sport. This fosters democratic governance and accountability in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
political	democracy, accountability	organisational

#### **Source:**

- IOC Charter (Rules 2, 21)
- IOC 2018: Athletes' Rights and Responsibilities Declaration
- IOC Athletes' Commission 2017: Guide to developing an effective Athletes' Commission
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer

## Principle 23: Representation

***Athletes have a right to be represented by the people of their own choosing.***

### **Relevance and justification:**

*Following the democratic principle, athletes have a political right to independently choose the people who represent them and their interests in the governance of elite sport. This fosters democratic governance in sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
political	democracy	systemic

### **Sources:**

- IOC Charter (Rules 2, 21)
- IOC Athletes' Commission 2017: Guide to developing an effective Athletes' Commission
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer

## Principle 24: Recognition and effective involvement

***Athletes have a right to be formally recognised as a key stakeholder and to have decision-making power.***

### **Relevance and justification:**

*The formal recognition of athletes and their decision-making power (whether exercised individually or collectively) as citizens, members and key stakeholders of the elite sport system must be codified in SGB statutes and in national sport-specific legislation. It is a civil right of athletes to exercise their political freedoms with reference to clearly stated codifications of their rights and obligations. This fosters democracy, increases transparency and enhances accountability in the governance of sport.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
political, (civil)	democracy, (transparency), (accountability)	systemic

### **Sub-principles:**

24.1 SGB statutes include a paragraph that acknowledges athlete representatives.

- 24.2 National sport-specific legislation acknowledges athlete representatives.
- 24.3 Athlete representatives are formally involved in decision-making processes on issues that directly affect them.
- 24.4 Athlete representatives have effective and proportionate decision-making power in their respective governing bodies.
- 24.5 There are measures in place to prevent and remedy discrimination or retaliation against athlete representatives.

### **Sources:**

- IOC Athletes' Commission 2017: Guide to developing an effective Athletes' Commission
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy
- Geeraert 2015; 2018; 2021: Sport Governance Observer; National Sport Governance Observer; National Anti-Doping Governance Observer
- McNamee 2021: Strengthening Athlete Power in Sport – A multidisciplinary review and framework

### **Principle 25: Independent union / association representation**

***Athletes have a right to be represented by their union / association.***

### **Relevance and justification:**

*Independent athletes' organisations, such as unions or associations, strengthen the decision-making power of athletes by addressing inherent power imbalances. It is a civil and political right of athletes to form or join unions / associations that represent their interests towards other stakeholders. This fosters democracy and ensures independence of athletes as a key stakeholder in Olympic sports.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, political	democracy, independence, (accountability)	systemic

### **Sources:**

- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- European Pillar of Social Rights 2021: Preamble, Article 08
- Charter of Fundamental Rights of the European Union 2012: Article 28
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy
- World Players Association 2017: Universal Declaration of Player Rights

## Principle 26: Recognition of independent athletes' organisations, social dialogue and collective bargaining

***Athletes have a right to form independent athlete organisations and to engage in social dialogue and collective bargaining.***

### **Relevance and justification:**

*Independent athletes' organisations, such as unions or associations, strengthen the decision-making power of athletes. Social dialogue and collective bargaining are well-established tools in most economic sectors. Irrespective of their contractual relationship and legal status, it is a civil and political right of athletes as members of the elite sport system to form associations and to engage in independent and collective negotiations. The recognition of independent athlete organisations and implementation of social dialogue and collective bargaining fosters democracy, ensures independence, enhances accountability and increases transparency.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, political	democracy, independence, (accountability), (transparency)	systemic, (organisational)

### **Sub-principles:**

- 26.1 Independent athlete unions or associations are recognised as a representative body and/or a social partner.
- 26.2 Social dialogue and collective bargaining are recognised and promoted in the sport sector.
- 26.3 There are no attempts to interfere into the establishment, functioning and administration of independent athlete organisations.

### **Sources:**

- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- Charter of Fundamental Rights of the European Union 2012: Article 28
- European Pillar of Social Rights 2021: Preamble, Article 08
- Al Hussein & Davis 2020: Recommendations for an IOC Human Rights Strategy
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
- World Players Association 2018: The Economic Rights of Players

## Principle 27: Independent negotiations and collective agreements

*Athletes have a right to negotiate conditions upon which they are involved in sport and, where independent athlete organisations exist, to negotiate collective agreements with the relevant stakeholder(s).*

### Relevance and justification:

*It is a civil and political right of athletes to negotiate the conditions and relationships with actors of the elite sport system. The relationship between independent athlete organisations and actors of the elite sport system are codified and agreements are negotiated collective to foster democracy, increase transparency and enhance accountability.*

Rights Category	Good Governance Dimensions	Level of (sport) governance
civil, political	democracy, transparency, (accountability)	systemic, (organisational)

### Sub-principles:

- 27.1 Where athlete unions or associations exist, there is a formal collective agreement (MoU or other) between the actors and the athlete union / association.
- 27.2 Collective agreements are recognised and implemented in the elite sport system.

### Sources:

- European Pillar of Social Rights 2021: Preamble, Article 08
- ILO 1998: Declaration on Fundamental Principles and Rights at Work
- ILO 2020: Global Dialogue Forum on Decent Work in the World of Sport – Points of Consensus
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# IV. IMPROVING

EVALUATION RESULTS AND DIMENSION-SPECIFIC RECOMMENDATIONS

ANALYTICAL THESES FOR GOOD GOVERNANCE IN ATHLETES' EMPLOYMENT RELATIONS

OVERALL ROLES AND RESPONSIBILITIES OF THE STAKEHOLDERS



## 1. Evaluation Results and Dimension-Specific Recommendations

The following part evaluates the research data collected throughout the project period against the 27 Good Governance Principles introduced in Part III, Chapter 2. The section is structured according to the six dimensions of the employment relations of athletes in Olympic sports. Within each dimension, the data are evaluated against the relevant principles to provide an overall picture of employment relations, with examples of exemplary institutions, policies and practices. As will become clear throughout the analysis, and from the chosen Good Practice examples, the notion of functional equivalents is essential for the fulfilment of athletes' rights in specific national contexts: institutions, policies and practices that exist and work in the specific context of one country may or may not work in other contexts. Still, the essence and claim of the principles remain: they establish a set of universal athletes' rights that shall be fulfilled in an equivalent manner for all elite athletes in Olympic sport. From the analysis, examples of "Good Practice" from different contexts and institutional contexts are identified. These serve to inform the stakeholders of measures and may serve as a source of inspiration for future reform. Therefore, these examples should not be understood as a blueprint for reforms in all countries and settings, but instead are highlighted because of their specific contribution to fulfilling the rights of athletes enshrined in the relevant Good Governance Principles.

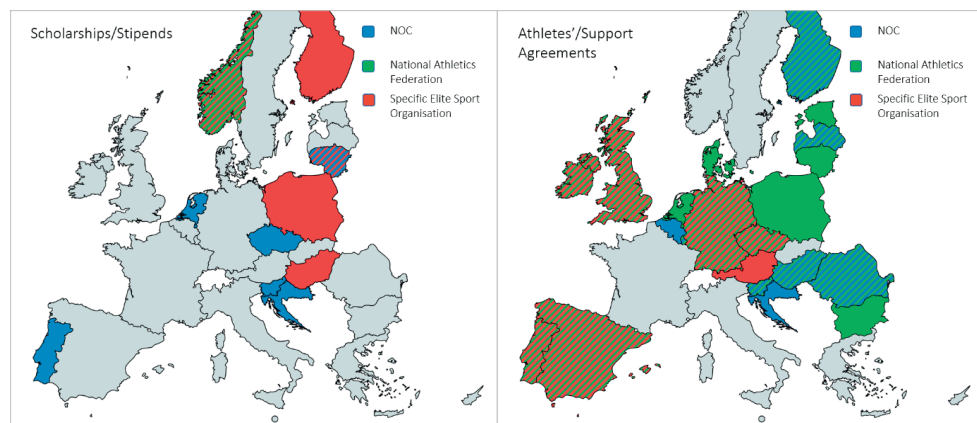
For each dimension, stakeholder-specific policy recommendations are provided. Data about stakeholder responsibilities were also gathered in the stakeholder survey. While the Good Governance Concept and Principles serve as the baseline for these recommendations, from the analysis and evaluation, it is possible to identify the potential responsibilities of the different actors involved in the governance of athletes' employment relations. Some recommendations require that groups of actors are addressed, which underlines the systemic character of the subject matter.

### 1.1. Contract

#### ***Written contract, minimum contractual requirements (Principles 1 and 2)***

As the data of the Fact Report (Mittag et al. 2022) illustrate, athletes in the 29 countries included in the study maintain different contractual relationships to pursue their sports on an elite level. In principle, wherever athletes can enter into employment contracts with a public authority (as is the case in 17 of the 29 countries) these are usually written contracts as defined by law. The sole exception is found in Germany where public servants, including within the military, police, and customs, do not have an employment contract, but are appointed in accordance with the applicable legal acts. These contracts in general abide by nationally prescribed minimum contractual requirements and fulfil the rights of athletes.

Across the countries, NOCs, national athletics federations, and *Specific Elite Sport Organisations* utilise numerous forms of contracts which are not considered employment contracts under national law.



*Figure 4: Scholarship Contracts and Athletes' Agreements by Actor of the Elite Sport System.*

While all of these contracts exist in written form, many of these scholarship agreements, athletes' agreements or sports contracts are not publicly available and can therefore not be evaluated for their provision of minimum contractual requirements. Different contractual provisions can be discerned and minimum contractual requirements are accounted for to varying degrees. The example of the Athlete's Training Support Contract that **Finnish** elite athletes have with the Finnish Olympic Committee and their federation can be identified as an example of Good Practice.

#### **Good Practice – Tripartite Athlete's Training Support Contract:**

- Type of contract: Athlete's Training Support Contract
- Parties to the contract: Finnish NOC, National Federation, athlete
- Applicable laws, rules and codes of conduct: expressly included
- Obligations and rights of the parties: expressly included
- Termination period and rights: expressly included
- Athlete's salary and commercial rights: expressly included
- Athlete's social protection: expressly included (covered: health care and accident insurance)

The national law on sport in **Hungary** (Act I of 2004) establishes that all sports contracts of amateur athletes must be in written form (§ 5 (3)). In **Lithuania**, the Law on Physical Education and Sport (2022, No. I-1151) provides that Sports Activity Contracts must be in writing and set out the rights and obligations of the parties, the remuneration, the liability of the parties in case of non-compliance with the obligations, as well as the duration of the contract (Art. 10 (2)). This illustrates that national legislation can also play a role in ensuring the fulfilment of the athletes' right relating to minimum contractual requirements.

### ***Evaluation of legal status (Principle 3)***

In accordance with labour law, athletes can in principle seek an evaluation of their contract status through public courts or tribunals. All evaluated countries have an established method (legislation and case-law) to evaluate contractual status. The above-mentioned national laws on sport in Hungary and Lithuania are of specific interest. Here, the legal acts introduce a specific contractual category for athletes, for example sports contracts (**Hungary**) and sports activity contracts (**Lithuania**). In Romania, the Law on Physical Education and Sport in Romania (Law no. 69 of April 28, 2000, Art. 14) also introduces the category of sports activity contracts. Attempts to challenge the legal status athletes have under these contracts remain currently unknown. However, the established contractual status under the respective law on sport may undermine an evaluation of athletes' contracts under general principles of labour law. Interestingly, the legal act in **Romania** specifies that "the activity carried out on the basis of the sports activity contract is an independent activity, regardless of the way it is organised and carried out, [...] and the incomes made on the basis of the sports activity contract are incomes from independent activities." (Law no. 69/2000, Art. 14<sup>2</sup>, free translation) Academic opinion is that while labour tribunals/courts may still evaluate these sports (activity) contracts, the existence of this contractual category may pose an obstacle to athletes' worker status.<sup>11</sup> In **Italy**, despite the categorisation as amateurs under the national Law on Sport, some athletes have challenged their legal status before national courts. Of all the cases that have considered an athlete's status, only in one case has the athlete been considered a worker for their federation (Court of Pescara, October 18, 2001), even though the federation is considered an amateur federation pursuant to the Law on Sport (Law 1981/91). In some countries, athletes' contracts<sup>12</sup> or policies establishing these contracts<sup>13</sup> expressly state that the nature of the contract is not an employment contract. However, in accordance with the general practice of labour law, athletes may address courts for an evaluation of the contract's nature and categorisations. The principles and practices set out in Part II, Chapter 2 should apply.

Excluding applications to a national court, specific mechanisms to initiate an independent legal evaluation of an athlete's contract can only be identified in a few cases across Olympic sports. Here, independent athletes' organisations play an important role as they provide athletes with access to legal advice, both in general and potentially regarding their legal status under a contract.

11 For a legal critique of the sports activity contracts in Romania, see Radu (2020).

12 For example, the athletes' agreement that Austrian elite athletes sign with the Austrian NOC for their competition in international events.

13 For example, Sport Ireland's International Carding Scheme Guidelines 2023-2024 (p. 10), available at < [https://www.sportireland.ie/sites/default/files/media/document/2022-10/Sport%20Ireland%20International%20Carding%20Scheme%20Guidelines%202023-2024\\_0.pdf](https://www.sportireland.ie/sites/default/files/media/document/2022-10/Sport%20Ireland%20International%20Carding%20Scheme%20Guidelines%202023-2024_0.pdf) >.

**Good Practice – 1) NL Sporter’s Athlete Support Offers; 2) Athleten Deutschland’s Legal Council**

- 1) Among the different services that NL Sporter provides as an independent athletes’ association is the provision of legal advice to individual athletes. The legal advice includes support for athletes who conclude athletes’ agreements with their federation or other sport organisations, as well as guidance for entering into and concluding sponsorship or employment contracts within a sport. NL Sporter also provides an independent opinion about contracts.
- 2) The independent athletes’ association Athleten Deutschland offers legal advice for its members through its Legal Council. The council comprises four lawyers from the area of sport law, association law, human rights law, and labour law. Athletes can receive an initial pro bono legal consultation on all matters related to their elite sport activities.

Sources: <https://www.nlsporter.nl/wat-we-doen/#anchor1>; <https://athleten-deutschland.org/mitglieder-services/legal-council/>

In **Croatia**, the recently established Centre for Rights in Sport provides legal advice for athletes and other stakeholders. The Centre was established in 2018 as a working unit of the Croatian Olympic Committee.

According to the current data, the evaluation of contractual status is rare in Olympic sports, with only a few court cases that address an athlete’s status under a contract (Part II, Chapter 2). While open questions remain about athletes’ legal status under certain contracts, e.g. the Norwegian and Dutch scholarship agreements, or the consequences of the case of Vanessa Sahinovic (see Mittag et al. 2022, p. 56, 88, 86), only a handful of cases have been identified that determine an athlete’s contractual status, and even then, always on a case-by-case basis. Cases of retaliations against athletes who seek to evaluate their legal status, as well as data on policies that prevent such retaliations, are currently unavailable. Still, the prevailing power imbalances between individual athletes and the stakeholders of the system require that preventive policies are implemented to protect athletes from retaliations. This might particularly be the case in countries where eligibility criteria leave room for interpretation and athletes may, therefore, be subject to arbitrary decisions.

**Eligibility criteria of contracts (Principle 4)**

The data show that the eligibility criteria of contracts for elite athletes in Olympic sports are generally published. A notable exception is the criteria for a contract with the Military Sports Teams, which is the Polish elite sport programme within the armed forces. Selection criteria, however, have remained unknown for a lengthy period, and selection appears highly dependent on the negotiations between national federations and the ministry. A similar observation can be made with regards to an athlete’s eligibility for the programmes of the national training centres in the Czech Republic. In this country there are no clearly defined eligibility criteria, and decisions about athletes’ contracts appear to be at



the discretion of the national federation. In Poland, the system was reformed in 2021, and recently the Central Military Sports Team published selection criteria to become an athlete within the armed forces (Central Military Sports Team 2021). Additionally, the Polish Act on Sport (2010, Art. 31-32) establishes transparent eligibility criteria for the selection to the scholarship programme offered by the Ministry for Physical Culture. Similar criteria are stipulated in the Lithuanian Law on Physical Education and Sport (Art. 24).

In many countries, clearly defined performance criteria are made available to athletes and the general public via the websites of the relevant organisation.<sup>14</sup> Of specific note is the athlete's dependency on their national federation in order to sign contracts: while in many cases, the membership in a national elite squad or national team of the federation is an eligibility criterion for financial support contracts (and the related funding, see section 2 "Income"), in certain countries, a specific recommendation from the NF or the NOC is also required.<sup>15</sup> Therefore, while published eligibility criteria in principle ensure a transparent and accountable selection of athletes for support contracts, scholarships and employment contracts, a requirement for a recommendation from the NF and/or NOC may undermine transparent and accountable access to the same. The data show, however, that a specific recommendation is required mainly for contracts that exist in a limited number and even then, mainly in relation to employment contracts with the armed forces. The need to introduce additional selection mechanisms beyond eligibility criteria is generally coherent and justifiable.

### ***Collective negotiation of standard contracts and implementation of CBA stipulations (Principles 5 and 6)***

As highlighted in Part II, Chapters 1 and 2, the independent negotiation of standard contracts is not a common practice in Olympic sport. As a general rule, athlete agreements, scholarship contracts and employment contracts available to Olympic elite athletes are designed unilaterally by the other party to the contract. Where tripartite standard contracts exist (e.g. between the NOC, the NF and the athlete), they are not negotiated with athletes either. There are two noteworthy cases of independent negotiations. First, in 2019, the Danish Badminton Federation engaged in negotiations with the Danish Badminton Players' Association. The outcome of the negotiations was the new national team agreement that was signed by both the federation and the players' association.<sup>16</sup> A second case of independent

14 See the policies and published eligibility criteria in Croatia (< <https://www.hoo.hr/hr/sportasi/kategorizacija-sportasa> >); the Netherlands (< <https://nocnsf.nl/athlete-services/teamnl-inkomen/Stipendium> >); and in Norway (< <https://olympiatoppen.no/for-stipendutovover/stotteordninger/olympiatoppens-utoverstipend-individuelle-utovover/> >).

15 Eligibility for the elite sport programmes of the armed forces in Luxembourg, Germany and France requires the recommendation of the NOC and/or the NF. For support under UK Sport's Athlete Performance Award, the athlete has to apply through the federation.

16 Further information and the process of the case are detailed in the section on "Participation & Bargaining", see Good Practice, p. 126.

negotiations is found in the United Kingdom. While not represented by an athlete-led organisation, a group of athletes represented by a law firm negotiated with the British Olympic Association (BOA) a new policy specifying the interpretation and application of the IOC Rule 40.<sup>17</sup> Besides from the above-mentioned cases, no collective bargaining agreements (CBA) or social dialogue (SD) agreements exist in Olympic sports between athletes and any of the four actor groups in the respective countries.<sup>18</sup> Therefore, the implementation of potential CBAs or SD outcomes cannot be evaluated.

## Recommendations – Contracts:

**Taking into consideration the above regarding athletes' contracts, we recommend that:**

### ***National Governments:***

- make written contracts for all elite athletes mandatory (e.g. through legislation, regulations or another legally binding instrument).
- avoid codifying a specific contract category for athletes in legislation that prevents athletes' recognition as workers.
- adopt legislation that makes the publication of eligibility criteria for contracts and elite sport/career support programmes mandatory.
- together with the actors of the elite sport system, establish independent mechanisms that provide athletes with (legal) advice on contractual matters.
- support the actors of the elite sport system in establishing processes to independently negotiate standard contracts with organisations that represent athletes (see further: Participation and Bargaining).

### ***National Olympic Committees***

- issue written contracts for the relationships they have with athletes, irrespective of the contract's categorisation under national law.
- employ athletes for the period of the Olympic Games and other international-level events to which they send a team of athletes.
- together with the other actors of the elite sport system, establish independent mechanisms that provide athletes with (legal) advice on contractual matters.
- publish eligibility criteria for contracts with athletes.

<sup>17</sup> See further details in section 1.3.

<sup>18</sup> Collective bargaining agreements and social dialogue outcomes do exist in Olympic sports. However, where they exist, they are usually concluded between athletes' organisations and club associations or leagues in sports that are not the focus of this study (e.g. basketball, volleyball).

- publish standard contracts that apply to athletes.
- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).
- where they have a role as the umbrella association of National Federations, monitor and support National Federations' activities regarding athletes' contracts.

### ***National Federations***

- issue written contracts for the relationships they have with athletes, irrespective of the contract's categorisation under national law.
- employ athletes when they represent the national team in international sports competitions.
- together with the other actors of the elite sport system, establish independent mechanisms that provide athletes with (legal) advice on contractual matters.
- publish eligibility criteria for contracts with athletes.
- publish standard contracts that apply to athletes.
- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

### ***Public Authorities (e.g. the military), where they play a role in elite sport support,***

- issue written contracts for the relationships they have with athletes, irrespective of the contract's categorisation under national law.
- together with the other actors of the elite sport system, establish independent mechanisms that provide athletes with (legal) advice on contractual matters.
- publish eligibility criteria for contracts with athletes, especially for employment contracts.
- publish standard contracts that apply to athletes.
- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

### ***Specific Elite Sport Organisations, where they exist,***

- issue written contracts for the relationships they have with athletes, irrespective of the contract's categorisation under national law.
- publish eligibility criteria for contracts with athletes.
- publish standard contracts that apply to athletes.
- together with the other actors of the elite sport system, establish independent mechanisms that provide athletes with (legal) advice on contractual matters.

- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

### ***Independent Athletes' Organisations***

- enhance their operational capacities in the areas of contract negotiations and legal advice for athletes.
- together with the relevant actors of the elite sport system, negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

### ***the European Union***

- investigates and clarifies the extent to which standards enshrined in EU law and instruments that address contractual matters apply to athletes in Olympic sports (i.e. Directive 2019/1152 on Transparent and Predictable Working Conditions).
- considers adopting specific guidelines/directives on the transparency of athletes' contractual relationships in Olympic elite sport.

### ***the International Olympic Committee***

- publishes the terms of participation or standard contract that applies to athlete participation in the Olympic Games.
- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

### ***International Federations***

- publish the terms of participation or standard contract that applies to athlete participation in international events.
- negotiate all standard contracts with athletes independently and collectively (see further: Participation and Bargaining).

## **1.2. Income**

### ***Non-discrimination (Principle 7)***

In all countries investigated in the study, both male and female athletes are usually treated equally with regards to income opportunities derived from overarching national career support schemes, i.e.

elite sport support offered by public or private entities.<sup>19</sup> In general, this relates to income derived from employment contracts with public authorities as well as from scholarship and elite sport grants. Different treatment of athletes by gender in terms of eligibility for financial support can only be discerned in one case: the **German** Sport Aid Foundation excludes certain sports or disciplines by gender category from their support policy. However, this relates to those sports where athletes of the male category have higher opportunities to generate income and where sports are professionalised to a higher degree. For example, men's volleyball is excluded from funding, while female players may receive funding from the Foundation. While in principle all programmes across the investigated countries are equally open to athletes of both genders, the actual gender-balance per programme in each country remains unknown. Data on the members of the scholarship administered by Olympiatoppen (**Norway**) reveal that over one third of positions are held by female athletes and data from the military sports programme in **Austria** reveal that just under one third of positions are held by female athletes (Norway: 38% female, 62% male; Austria: 33% female, 67% male).<sup>20</sup> Findings from previous research show that male and female elite athletes may derive income from different financial support schemes to differing degrees. As Wicker and colleagues (2021) highlight, income from the German Sport Aid Foundation is, on average, higher for female athletes, while income from programmes of the public authorities (military, police, customs) is higher for male athletes (p. 9ff.).

Prize money and medal bonuses for success in the Olympic Games, World Championships, and other international events offered by actors of the national elite sport system do not differ based on gender. Here, Olympic sports are different from football, for example, where calls for more equal prize money have become ever-louder and only some countries provide equal bonuses for the women's and men's national teams (cf. Berkeley 2020).

Significant differences regarding income opportunities from income/financial support schemes exist across *sports and disciplines*. Elite sport support programmes and structures in many countries prioritise certain sports and disciplines over others, usually on the basis of some kind of prediction of success potential. For example, **UK** Sport provides funding to national federations and athletes based strictly on their potential for medal success, and a UK Sport Athlete Performance Award is not available to all Olympic sports disciplines.<sup>21</sup> However, in **Hungary** and **Finland**, scholarships with the respective ministry or sport organisation are available to athletes from all Olympic sports.

In **Germany**, opportunities for employment with a public authority may be restricted to athletes from

19 Note that principle 7 and the related evaluation do not relate to prize money from event organisers but only to funding and support policies of actors of the national elite sport system, e.g. the NOC, NFs, public authorities or Specific Elite Sport Organisations.

20 Data sources: Austria (< [https://www.bundesheer.at/sport/pdf/ls\\_sportlerliste.pdf](https://www.bundesheer.at/sport/pdf/ls_sportlerliste.pdf) >); Norway (< [https://olympiatoppen.no/siteassets/stipendtildelinger/stipendtildelinger-sommer-2022\\_ny.pdf](https://olympiatoppen.no/siteassets/stipendtildelinger/stipendtildelinger-sommer-2022_ny.pdf) >; < <https://olympiatoppen.no/siteassets/stipendtildelinger/stipendtildelinger-vinter-2022-2023.pdf> >).

21 For further information, see < <https://www.uksport.gov.uk/our-work/investing-in-sport/current-funding-figures> >.

certain disciplines. While the programme of the armed forces is open to athletes from all Olympic sports (plus some non-Olympic and Paralympic sports), athletes from 21 selected sports can find employment within the Federal Police.<sup>22</sup> Athletes from the winter sports of alpine skiing, biathlon, cross country skiing, and Nordic combined are eligible for the programme of the German Customs.

### ***Adequate minimum income (Principle 8)***

#### *Minimum wage*

The level of income that athletes derive from income/financial support schemes varies significantly among different programmes. In accordance with national law, minimum wage levels are respected for athletes who are in an employment relationship with public authorities. Therefore, income derived from this status, in general, is at an adequate level and ensures a life of dignity. For example, in 2019, the average monthly gross income of athletes in the service of a public authority in **Germany** (military, federal police, German customs) was €2,412.40. For athletes in the category of aspirants, the monthly income was as low as €1,200 per month (Deutscher Bundestag 2019, p. 12), which was below the monthly national minimum wage of €1,561 in 2019. Athletes in the military programme in **Croatia** are categorised in the reserve troops. The monthly salary here is HRK 4,000 (approx. €533), which is below the gross national minimum wage (gross HRK 4,687.50 = approx. €624).<sup>23</sup>

#### *Athlete stipends, scholarships and support payments*

Income derived from support contracts or scholarships may take different forms (e.g. one-off payments, allowances, monthly payments) and covers a wide spectrum. At the upper end of the spectrum is the scholarship of the **Norwegian** Athletics Federation which provides national team athletes with an annual income of approximately €40,000. As these athletes are likely also in receipt of a scholarship from Olympiatoppen, the country's Specific Elite Sport Organisation, an adequate level of income is ensured.<sup>24</sup> For elite athletes in **Austria** who are not employed by the military sports programme of the Austrian Armed Forces or the Austrian Police, the financial support scheme of the Austrian Sport Aid Foundation is the main source of income. The maximum amount athletes can receive from the private foundation is €1,000 per month. While Austria does not have a national minimum wage, the costs of living in Austria are at a similar level as those in Belgium (minimum wage: €1,658), Germany (€1,621) or France (€1,603).<sup>25</sup> This illustrates that income

22 For a list of the 21 sports, see < [https://www.bundespolizei.de/Web/DE/05Die-Bundespolizei/10Sportzensport/01Sportarten/sportarten.html;jsessionid=D41BD41C9AE1E793867E0A9AC655D437.2\\_cid334?nn=5931640](https://www.bundespolizei.de/Web/DE/05Die-Bundespolizei/10Sportzensport/01Sportarten/sportarten.html;jsessionid=D41BD41C9AE1E793867E0A9AC655D437.2_cid334?nn=5931640) >.

23 Data for national minimum wages stem from Eurostat (< [https://ec.europa.eu/eurostat/databrowser/view/earn\\_mw\\_cur/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/earn_mw_cur/default/table?lang=en) >).

24 Although Norway does not have a national minimum wage, when relating the amount of money derived from the scheme with the costs of living in the country, it can be argued that the amount may provide an adequate level of income. Data on the costs of living in European countries is retrieved from < <https://www.laenderdaten.info/lebenshaltungskosten.php> >.

25 In 2021, 402 elite athletes were employed by the armed forces, and 60 by the Austrian Police.

derived from this scheme alone does not provide for a decent livelihood for elite athletes.<sup>26</sup>

The data demonstrates that the income an athlete receives from a scholarship or financial support scheme varies significantly according to the athlete's performance level and shows meritocracy. In most of the identified support programmes, the amount of money available for athletes is directly linked to a certain performance category. For example, **Spanish** athletes can receive a scholarship from the Asociación de Deporte Olímpicos (ADO). Athletes in the highest performance category receive €60,000 per year, while the minimum amount athletes from individual sports receive is €5,000 per year. In total, eight different categories – all based on performance or talent – exist. As the national minimum in Spain is €1,125 (= €13,500 per year), athletes in the higher categories are provided with an income above this threshold.

The example from **Cyprus** further illustrates the meritocratic principle underlying elite sport support: the top 30 national athletes in the sport of athletics receive direct funding from the Amateur Athletic Association (AAA). Based on the competition results and sporting achievements, athletes are ranked according to a points-based system. Financial support is awarded in accordance with an athlete's ranking, where the highest-ranked athlete receives €27,000 and the athlete at rank 30 receives €3,000 per year.<sup>27</sup> In the **Netherlands**, in order to be eligible for the scholarship of the Dutch NOC\*NSF, an athlete has to be ranked among the top eight athletes in the world in their sport. Once an athlete makes the programme, the scholarship provides athletes with an income that is directly linked to the national minimum wage. The stipend payment an athlete receives depends on the athlete's age, and ranges from 50% of the minimum wage (aged 18) to 140% of the national minimum wage (age 27 and older).<sup>28</sup> The effect of performance on income opportunities becomes even more visible when turning to medal bonuses and prize money, which are specifically designed to reward the most successful athletes. Medal bonuses and prize money take different forms across the countries and no generalisations can be drawn.

Therefore, while income derived from support programmes might provide an adequate income for the most successful athletes in the countries where support schemes exist, athletes at the lower end of the elite sport performance spectrum might not receive sufficient income from these programmes alone. This reflects the findings of previous research in **Germany** that identifies a significant income disparity among German elite athletes that is dependent on sporting performance and elite squad category (Breuer & Hallmann 2022; Breuer et al. 2018; Wicker et al. 2021). Criticism of this specific funding system which can be found across the European continent has recently been raised in the

26 Data on the costs of living in European countries is retrieved from < <https://www.laenderdaten.info/lebenshaltungskosten.php> >.

27 Cyprus does not have a national minimum wage. It has to be noted that the AAA mentioned throughout the research process that the aim of this scheme is not to provide a living wage for athletes, due to a lack of resources to do so on a large scale. Rather, the system aims at motivating athletes and incentivises performance.

28 A detailed description of the scheme is available at < <https://nocnsf.nl/athlete-services/teamnl-inkomen/stipendium> >.

**Czech Republic**, where no real opportunity to sustain one's life as an athlete in Olympic sports is seen unless an athlete can join the state's training centres and enter an employment relationship with the responsible public authority (Expert Report Czech Republic). In **Hungary**, it has even been reported that Olympic champions have sold their medals as they struggled to make a living (Expert Report Hungary).

In many cases, income/financial support schemes include an income threshold (cap). In the **UK**, for example, UK Sport provides a tax-free, means-tested grant to elite athletes in the form of an Athlete Performance Award (APA). The athlete will not be eligible for the APA if their income from other sources exceeds a particular threshold (which in 2020/2021 was £65,000, including the APA). In the **Netherlands**, an income threshold for the stipend that athletes receive from the NOC\*NSF exists, too. Here, the amount of money earned by an athlete is subject to retroactive control and is capped at €10,000 above the stipend payment.<sup>29</sup> An alternative to income thresholds is stipulated in the contracts that **German** elite athletes sign with the German Sport Aid Foundation: athletes are obliged to pay a solidarity payment of 5% of their annual gross income derived from self-marketing activities to the foundation. The maximum amount is capped at €5,000 annually.

An income threshold supports a characterisation of an income/financial scheme as a form of social security. This, in turn, reinforces the view that an elite athlete is not a worker because the payment is not made in respect of services rendered (cf. Varnish v British Cycling and UK Sport). Although problematic, it is not fatal to establishing worker status, since the characterisation of income is only one factor that is considered when determining the status of athletes (see Part II, Chapter 2). An income threshold also penalises athletes for successfully commercialising their sports performance.

#### *Daily income when representing their country in international events*

As regards compensation for participation in international sports events and competitions (Sub-principle 8.3), the only example available from the data is the *per diem* of approximately €29 per day provided to **Swedish** national athletics team members. While they are competing in the Olympic Games, all athletes on the Olympic team receive this compensation from the Swedish Olympic Committee. Generally, athletes do not receive any direct income from inclusion in the team they represent at the Olympic Games. While NOCs may apply the IOC funding they receive in different ways to support athletes, the data does not disclose that national NOCs apply the funding to provide an income to athletes for the period of the Olympic Games (see further section 3 "Commercial Opportunities").

<sup>29</sup> The payments are calculated as follows: (1) An athlete at the age of 22 is entitled to a maximum annual income of €22,365 from the stipend, if no extra money is earned. (2) The critical income threshold (from other sources) for determining the actual amount of the stipend payment is €10,000. Should an athlete derive income from other sources above €10,000 (e.g. €15,000), the amount of €22,365 is reduced (€15,000 - €10,000 = €5,000 -> €22,365 - €5,000 = €17,365). (3) If an athlete has an income from other sources of more than €32,365 in the given year, they will not be eligible for payments from the stipend.



### ***Eligibility criteria of income/financial support schemes, predictable and transparent structure and regularity of payments (Principles 9, 10 and 11)***

For the most part, the opportunities for elite athletes to be paid for practising their sport are closely connected to the contracts that are available with actors of the national elite sport system. Previously, the report discussed the *Eligibility criteria of contracts*, and the findings there also apply to the eligibility criteria of income/financial support schemes.

Usually funding schemes provided by different actors of the system are clearly defined and publicly available. In **Portugal**, the Portuguese Institute for Sport signs a contract with the Portuguese Olympic Committee (COP) to finance elite athletes for an Olympic cycle. Thus, the government guarantees sufficient resources for the payment of scholarships to the athletes, as well as to the federations that have athletes in the Olympic programme. The contract stipulates the rules and eligibility criteria that guarantee the support of elite athletes in two levels: “TOP ELITE” and “ELITE”. The criteria established for the cycle of the Tokyo 2020 Olympic Games were clearly identified and are publicly available.<sup>30</sup>

The important role of a NF must again be highlighted. Eligibility for funding of income/financial support schemes may depend on the NF’s recommendation and evaluation of an athlete’s medal-winning potential and talent. Explicit and transparent criteria by which actors must abide by the selection of athletes for financial support enable athletes to consistently predict their eligibility and future opportunities for income, which avoids arbitrary selection and abuse of power. Data on irregular, delayed or failed payments are not available on a systematic or anecdotal level.

### ***Involvement in matters of income/financial support schemes (Principle 12)***

According to the data, financial support/income schemes are not collectively negotiated with athletes. If athletes are included in the determination of a funding scheme’s terms, it may be through representation in the decision-making process of the respective organisation. In **Germany**, a member of the DOSB Athletes’ Commission sits on the Supervisory Board of the German Sport Aid Foundation. In addition, delegates of the independent athletes’ association Athleten Deutschland are invited as permanent guests to the Expert and Evaluation Committee, which designs and adopts the funding policy together with the management of the organisation. The extent to which athletes and their representatives are involved in the design and development of income/financial support schemes in other countries remains largely unknown.

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30 The contract is available at < <https://conpaas.einzeln.net/services/mediaservice/api/media/1d-875c524fb2d606938b4f4f8cb0212b4ab78035> >.

## Recommendations – Income:

**Taking into consideration the above regarding athletes' income, we recommend that:**

### ***National Governments***

- ensure the equal treatment of athletes of all genders and across all Olympic sports with regards to income/financial support schemes and employment opportunities in elite sport (e.g. through legislation) by:
  - monitoring, assessing and reporting inequalities with regards to income / financial support schemes.
- ensure a level of income for all elite athletes that is consistent with the level of the national minimum wage; or:
  - where no national minimum wage exists, determine a level of income based on transparent and objective criteria that provides for a decent livelihood and life of dignity for elite athletes.
- ensure that athletes are remunerated for the services provided when representing their country at the Olympic Games and other international sport events (e.g. through increased funding of NOCs/NFs).
- make the publication of eligibility criteria for income/financial support schemes mandatory.
- ensure that athletes are included in the design and development of income/financial support schemes (see further: Participation and Bargaining).

### ***National Olympic Committees***

- ensure the equal treatment of athletes of all genders and across all Olympic sports (disciplines) with regards to income/financial support schemes and employment opportunities in elite sport.
- together with other actors of the elite sport system, ensure a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- advocate for sufficient funding, e.g. from public and/or private sources, that ensures a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- eliminate income thresholds that may exclude athletes from, and/or reduce the amount of money available to them as part of, income/financial support schemes (see also section "Commercial Opportunities").
- adequately remunerate athletes for the time they represent their country (NOC) in the Olympic Games (see section "Contract").
- publish eligibility criteria for income/financial support schemes.

- establish processes to include athletes in the design and development of income/financial support schemes (see further: Participation and Bargaining).

### ***National Federations***

- ensure the equal treatment of athletes of all genders and across all Olympic sports (disciplines) with regards to income/financial support schemes and employment opportunities in elite sport.
- together with other actors of the elite sport system, ensure a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- advocate for sufficient funding, e.g. from public and/or private sources, that ensures a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- eliminate income thresholds that may exclude athletes from, and/or reduce the amount of money available to them as part of, income/financial support schemes (see also section “Commercial Opportunities”).
- adequately remunerate athletes for the time they represent their country in international sport events (see section “Contract”).
- publish eligibility criteria for income/financial support schemes.
- establish processes to include athletes in the design and development of income/financial support schemes (see further: Participation and Bargaining).

### ***Public Authorities (e.g. the military), where they play a role in elite sport support,***

- ensure the equal treatment of athletes of all genders and across all Olympic sports (disciplines) with regards to income/financial support schemes and employment opportunities in elite sport.
- together with other actors of the elite sport system, ensure a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- eliminate income thresholds that may exclude athletes from, and/or reduce the amount of money available to them as part of, income/financial support schemes (see also section “Commercial Opportunities”).
- publish eligibility criteria for income/financial support schemes.
- establish processes to include athletes in the design and development of income/financial support schemes (see further: Participation and Bargaining).

### ***Specific Elite Sport Organisations, where they exist,***

- ensure the equal treatment of athletes of all genders and across all Olympic sports (disciplines) with regards to income/financial support schemes and employment opportunities in elite sport.

- together with other actors of the elite sport system, ensure a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- advocate for sufficient funding, e.g. from public and/or private sources, that ensures a level of income for all elite athletes that is, at a minimum, at the level of the national minimum wage.
- eliminate income thresholds that may exclude athletes from, and/or reduce the amount of money available to them as part of, income/financial support schemes (see also section “Commercial Opportunities”).
- publish eligibility criteria for income/financial support schemes.
- establish processes to include athletes in the design and development of income/financial support schemes (see further: Participation and Bargaining).

### ***Independent Athletes’ Organisations***

- enhance their operational capacities in the areas of collective negotiations of income/financial support schemes and legal advice for athletes.

### ***the European Union***

- investigates and clarifies the extent to which legal applicable standards enshrined in EU legislation and instruments that address remuneration are applicable to athletes in Olympic sports (e.g. EU Directive on adequate minimum wages from 4 October 2022).
- considers adopting specific guidelines/directives on the transparency of athletes’ income/financial support schemes in Olympic elite sport.

### ***the International Olympic Committee***

- provides funds from the commercialisation of the Olympic Games to NOCs for the specific purpose of adequately remunerating athletes for their services during the Olympic Games (see section “Commercial Opportunities”).

### ***International Federations***

- provide funds from the commercialisation of international events to help NFs to adequately remunerate athletes for their participation in international sport events (see section “Commercial Opportunities”).

### 1.3. Commercial Opportunities

#### ***Commercial freedom and freedom of occupation (Principle 13)***

##### *Sponsorship and self-marketing*

An athlete's freedom to self-market and enter sponsorship deals is typically limited by the regulations and (own) marketing practices of other entities in the sports movement. For example, in **Norway**, athletes' commercial agreements with third parties must be approved by the NF. An employment relationship of a sporting nature is only permitted with NFs that fall within the pyramid of the National Olympic Committee of Norway (NIF). In the **UK**, the template athlete agreement supplied by UK Sport contains clauses relating to sponsorship and team clothing as well as personal sponsorship/branding policy. The latter confirms that an athlete may enter into a personal sponsorship agreement subject to certain guidelines, and stipulates that an athlete may not, for example, put any (personal) branding on the athlete's national team kit or racing suit. Similarly, in **Belgium**, in addition to national equipment, the Royal Belgian Athletics Federation (RBAF) adopts regulations for sponsorship that appears on club shirts based on the rules established by World Athletics. The Belgian example demonstrates that athletes who are employed by public authorities face rigid and clearly formulated restrictions that are legally enforced. The Ministry of Defence of Belgium specifies that every elite athlete must get official permission to generate cumulative income, if self-marketing allows them to earn extra money. However, restrictions generally do not exist as long as there are no possible conflicts between the values of the Belgian Defence and potential sponsors, as well as with a third party's activities outside the field of Defence. If these conditions are met, permission is generally granted. Otherwise, prior approval is required. In **Austria**, sponsorship obligations must be pursued outside working time, the Army's concerns and interests must always have priority, and all sponsors and supporters must be reported. Sponsorship agreements of military personnel with civil servant status in Austria are subject to § 56 of the Federal Civil Servants Act (BDG), including reporting obligations on secondary employment. However, in a few other countries, as for example in **Denmark**, restrictions on self-marketing do not exist in the regulations of the Danish NOC (DIF), the Danish Athletics Federation (DAF) or Team Denmark, the country's Specific Elite Sport Organisation.

In all countries, athletes' names, image, and likeness rights are restricted (to varying extents) through international regulatory frameworks (e.g. Olympic Charter) and athlete agreements (e.g. IOC Conditions of Participation<sup>31</sup>). Controversial guidelines such as the IOC's Rule 40 provisions are dealt with differently at national level and are, in some countries, adjusted pursuant to rulings from public authorities. It can be observed, for example, that a rather limited number of NOCs, like the British Olympic Association (BOA) in the **UK**, take advantage of the increased flexibility at national level to

31 The document is available at < [https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020\\_NOC-Conditions-of-Participation-2021-version\\_ENGLISH.pdf](https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020_NOC-Conditions-of-Participation-2021-version_ENGLISH.pdf) >.

implement “adjusted” provisions of the IOC’s Rule 40 following an amendment of the rule by the IOC Legal Commission in 2019. While the BOA Guidelines were the subject of a collective dispute between the BOA and Olympic athletes in 2019 and 2020 (the results of which allowed athletes and their representatives to negotiate the terms of implementation of Rule 40 provisions directly with their NOC, as long as it was within the scope of the IOC’s key principles), in other countries the NOC merely implements the entire set of rules specified by the IOC (see also: “Participation and Bargaining”).

#### **Good Practice – British Olympic Association Guidelines**

Under the adjusted BOA guidelines non-Olympic partners/brands are, inter alia, that permitted to use an athlete’s image during the Olympic Games (if certain conditions are met). Also, an athlete may post “thank you messages” to a sponsor or media (subject to maximum amounts such as a maximum of 10 messages per athlete) throughout the Games period.

Source: [https://assets.ctfassets.net/v8za0ys2pgzt/SPfVgqj72iHSc4lkuFFk4/cbac3355d09b-c851a41a0a53898404f9/Rule\\_40\\_April\\_2021.pdf](https://assets.ctfassets.net/v8za0ys2pgzt/SPfVgqj72iHSc4lkuFFk4/cbac3355d09b-c851a41a0a53898404f9/Rule_40_April_2021.pdf)

Athletes’ self-marketing activities have been addressed by public courts and public authorities in a few countries. Two legal cases in Germany and Norway underline the concerns regarding the proportionality of restrictions on self-marketing. In **Germany**, the decision of the Federal Cartel Office (“Bundeskartellamt”) held in 2018 that marketing restrictions and the collective sales of athletes’ name, image, and likeness rights can only be considered proportionate if the financial support granted by the system in place is sufficiently transparent for the participants (athletes) who contributed their performance. As a result of the Federal Cartel Office decision, the German Olympic Sport Confederation (DOSB) published adjusted guidelines for German athletes, which enables compliance with the IOC’s Rule 40 while still allowing athletes more opportunities for self-marketing (see also: Participation & Bargaining). The example of **Norway** proves how athletes may (successfully) enforce their right(s) to self-marketing through national courts, in cases where restrictions are imposed by SGBs. When considering a complaint brought by alpine skier H. Kristoffersen against the Norwegian Ski Federation, the supranational EFTA court held that advertising restrictions dedicated to funding a solidarity system based on the exclusion of self-marketing opportunities and collective sales can only be considered proportionate if athletes receive a fair share of the revenues generated (E-8/17 *Kristoffersen v Norwegian Ski Federation* [2019] 2 CMLR 6).

In summary, the current data indicate that restrictions for athletes who are workers of a club and/or a public authority may be justified by applicable national law and/or legal regulations. Whether restrictions imposed by private SGBs are justified requires analysis on a case-by-case basis and depends on the nature of the restriction and the rationale for imposing it.

### *Additional work*

Overall, athletes who are workers with clubs or public authorities (e.g. armed forces) are in many cases subject to considerable restrictions with regards to taking up additional work. In countries such as **Austria, Belgium and Germany**, national laws prevent athletes employed with public authorities such as the armed forces, police, etc. from engaging in additional work. In **Belgium**, unless approved, every elite athlete at the Ministry of Defence who wants to perform extra employment activities during their time as an elite athlete cannot continue as an elite athlete within the Defence as well. Moreover, athletes employed by Sport Vlaanderen are asked to consult with the organisation if they might perform additional work.

While such restrictions do not exist in **Germany**, additional work by athletes who are employed as civil servants (e.g. with the armed forces) must be approved by the employer. For soldiers, additional work might not be approved if the working time exceeds 1/5 of the regular weekly working time (more than 8h) or if the remuneration amounts to more than 40% of the annual salary of the soldier, according to § 20 (4) of the German Soldiers Act ("Soldatengesetz") (Federal Law Gazette (BGBl) Part I, 2005-06-07, No. 31, p. 1482-1509). Whether or not and under what precise circumstances such restrictions for public employees necessarily represent unfair practices remains questionable, especially with a view to similar restrictions applying to employees in other sectors.

More rigid restrictions exist in a few countries, such as in **Italy**, where athletes who serve as public employees with the armed forces/state corps are not allowed to have any additional work, regardless of whether it is paid or unpaid. Furthermore, income/ financial support schemes that include income thresholds as an eligibility criterion (see section "Income") pose an implicit restriction to additional work. Scholarship/stipend programmes administered by Specific Elite Sport Organisations may include express restrictions regarding additional work, as for example in **Norway**. To obtain a stipend in Norway, an athlete must declare that doing elite sport is their main occupation and that they are integrated into the elite sport programme of the respective national federation. Any deviation from this rule must be agreed to by the NF and the Norwegian Olympic Committee and Olympiatoppen. Similar approaches can be found, for example, in **Ireland** where an athlete may obtain income from sponsorship and outside employment, subject to certain conditions and restrictions which aim to ensure that an athlete is fully committed to maintaining elite status. Such restrictions are conditions for funding through Ireland's International Carding Scheme (ICS). Accordingly, an athlete's funding may be withdrawn if full-time work restricts their ability to fulfil the criteria of the ICS.

While elite athletes with a sport activity contract (see section "Contract") can generally enter into sponsorship contracts in **Hungary**, they might not be allowed to enter into additional employment contracts outside their club, federation, or status as scholarship holders. Elite athletes with an employment contract may only fulfil additional work engagements with the written consent of the responsible sports organisation (e.g. national federation). Since most athletes are considered amateurs

in **Luxembourg**, with only a few having either professional private contracts (such as cyclists) or the status as sport soldiers, regulations or contract provisions that restrict the athlete from pursuing additional work are rarely applied.

### ***Name, image, and likeness rights usage and profits (Principle 14)***

Aside from those few cases in which athletes collectively disputed rules that impinged on their rights to use their name, image and likeness, the data suggest that elite athletes and their representatives are involved in the commercialisation (e.g. sales process) of their name, image, and likeness rights to a limited extent. Additionally, there are no collective and independent negotiations over a share of the profits for athletes generated through the commercialisation of their rights. Rather, advocacy work and complaints by single athletes and, in a very few cases, their representative bodies and independent athletes' organisations (see Good Practice Box on BOA's amended Rule 40 Guidelines), are initiated to exert external pressure for a greater share for athletes. A detailed analysis of the extent to which athletes are involved in the commercialisation of their rights (Principle 14.1), and directly benefit from these (and other) funds channelled through the Olympic Solidarity Programme (Principle 14.3) remains beyond the scope of the present evaluation. However, among others, with a total budget of USD \$10 million (for the year 2021) as part of its Solidarity Programme,<sup>32</sup> the IOC currently provides funding for 1,836 scholarships for elite athletes. According to the IOC's (2022a) most recent Annual Report from 2021, around 45% of the scholarship holders competed at the Tokyo 2020 Games.

### ***Support structures and policies (Principle 15)***

Specific support structures for athletes' self-marketing and commercial opportunities, for example in relation to sponsorships and dual careers, exist in most of the surveyed countries. The role of each actor and the scope of their activities, however, depends on the national context. **Belgium** provides a positive example of how many different incentives – from educational programmes and career guidance to dedicated workshops on (social) media, interview conduct, and entrepreneurship – can be provided jointly by various actors. Relevant assistance is offered by the Belgian Olympic and Interfederal Committee (COIB), public authorities (e.g. ministries), and Specific Elite Sport Organisations (e.g. Sport Vlaanderen, ADEPS).

<sup>32</sup> The IOC shares a considerable part of its marketing revenue with the IOC, the NOCs, the IFs and other organisations.



### **Good Practice – Belgian Multi-Stakeholder Approach:**

The **Belgian Olympic and Interfederal Committee** (COIB) actively promotes the IOC’s “Athlete 365” activities, which contain a number of modules related to self-branding and entrepreneurship (e.g. sponsorship, sports media).

The **Ministry of Defence** prepares athletes for interviews and other media appearances through specific media training (e.g. internal courses) but does not provide financial support. The aim of this assistance is to ensure that an individual athlete is able to “sell” themselves and obtain additional income.

In cooperation with **Sport Vlaanderen**, tailor-made offers for elite athletes are also provided by the **Belgian public employment service** (VDAB).

**Sport Vlaanderen** and the central administration of sport of the French-speaking community (**ADEPS**) offer educational programmes for athletes on various aspects, which comprise media-training and specific courses on how to use social media, for instance.

Sport Vlaanderen also provides athletes with specific career guidance which is aimed at increasing athletes’ self-knowledge, assessment, and skill development for personal branding and employment purposes.

Source: Export Report Belgium

Moreover, in a few countries, the NOC offers financial and legal advice on athletes’ sponsorship deals, as for example the NOC\*NSF of the **Netherlands**. In some countries, as for example in **Luxembourg**, the NOC (COSL) and national athletics federation (FLA) provide informal support to contact potential sponsors and partners. Standard model contracts are, however, far less common, and only exist in a few countries such as in **Estonia, Romania** and **Slovakia**, where they are provided by either the NOC or national athletics federation. In **Ireland**, the OFI and Athletics Ireland offer a standard or model contract as a service that athletes may find useful for sponsorship deals.

## **Recommendations – Commercial Opportunities:**

**Taking into consideration the above regarding athletes’ commercial opportunities, we recommend that:**

### **National Governments**

- through their relevant ministries and agencies, evaluate applicable legislation/legal regulations as well as SGBs’ rules and policies that may restrict athletes’ commercial opportunities and ability to pursue additional work.
- support the actors of the elite sport system to establish structures and processes to collectively and independently negotiate athletes’ commercial rights and freedoms, particularly related

to possible restrictions.

### ***National Olympic Committees***

- reconsider whether applicable statutes/policies that restrict athletes' commercial opportunities and ability to pursue additional work are justified and proportionate.
- publicly disclose standard contracts for the participation in Olympic Games.
- evaluate standard contracts for the participation in Olympic Games for potential breaches with national and EU law.
- use the increased flexibility to implement bespoke commercial and marketing policies for athletes within the scope of the IOC's amended Rule 40 guidelines.
- engage in collective and independent negotiations with athletes and their representatives over (see section "Participation & Bargaining"):
  - athletes' commercial rights and responsibilities, particularly their name, image and likeness rights; and
  - the design and implementation of possible restrictions prior to and during the period of the Olympic Games.
- specify in standard contracts athletes' commercial rights and responsibilities and the mechanisms for the commercialisation of athletes' name, image, and likeness rights (see "Contract").
- eliminate as eligibility criteria for their income/financial support schemes restrictions to athletes' commercial opportunities that may discourage athletes' successful self-marketing (see section "Income").
- expand their support structures for athletes' self-marketing and sponsorship deals and align them with athletes' specific needs.

### ***National Federations***

- reconsider whether applicable statutes/policies on restrictions of athletes' commercial opportunities and ability to pursue additional work are justified and proportionate.
- engage in collective and independent negotiations with athletes and their representatives over (see section "Participation & Bargaining"):
  - athletes' commercial rights and responsibilities, particularly their name, image, and likeness rights; and
  - the design and implementation of possible restrictions prior to and during the period of international sport events.
- specify in standard contracts athletes' commercial rights and responsibilities and the mechanisms for the commercialisation of athletes' name, image, and likeness rights (see

“Contract”).

- eliminate as eligibility criteria for their income/financial support schemes restrictions to athletes’ commercial opportunities that may discourage athletes’ successful self-marketing (see section “Income”).
- expand their support structures for athletes’ self-marketing and sponsorship deals and align them with athletes’ specific needs.

***Public Authorities, (e.g. the military), where they play a role in elite sport support,***

- reconsider whether applicable legislation/legal regulations on restrictions of athletes’ commercial opportunities and ability to pursue additional work are justified and proportionate in light of the specificities of the national elite sports system and elite athletes’ particular needs.

***Specific Elite Sport Organisations, where they exist,***

- reconsider whether applicable statutes/policies on restrictions of athletes’ commercial opportunities and ability to pursue additional work are justified and proportionate.
- eliminate as eligibility criteria for their income/financial support schemes restrictions to athletes’ commercial opportunities that may discourage athletes’ successful self-marketing (see section “Income”).
- expand their support structures for athletes’ self-marketing and sponsorship deals and align them with athletes’ specific needs.

***Independent Athletes’ Organisations***

- engage in collective and independent negotiations with actors of the elite sport system over (see section “Participation & Bargaining”):
  - athletes’ commercial rights and responsibilities, particularly their name, image, and likeness rights;
  - the design and implementation of possible restrictions prior to and during the periods of international sport events and the Olympic Games; and
  - a share of the profits generated through commercialising the Olympic Games.
- enhance their knowledge and expertise on legal matters in relation to athletes’ commercial opportunities, and expand their financial and legal advice to athletes.
- provide advice to and training for athletes seeking commercial opportunities.

***the European Union***

- investigates and clarifies to what extent applicable legal regulations, as well as SGBs’ rules/

policies on athletes' self-marketing, sponsorships and additional work, are in accordance with EU competition law (i.a. Article 101, TFEU) and fundamental commercial/market freedoms (i.a. Articles 15 and 16, EU Charter of Fundamental Rights; Article 56, TFEU).

- considers adopting specific guidelines/directives on Olympic elite athletes' commercial opportunities and occupational freedoms based on the right to provide services (i.a. Article 56, TFEU).

### ***the International Olympic Committee***

- in cooperation with other actors of the elite sport system, contributes to balancing the commercial interests of the various involved parties.
- ensures alignment of its marketing and commercialisation rules and policies with relevant national and EU law (see above) by:
- actively approaching the European Commission and national competition authorities regarding the proportionality of its Rule 40 provisions to remedy legal uncertainties; and
- within its scope of responsibility, enforcing the proportionality of its rules and policies on athletes' self-marketing and commercial opportunities set out in its key international regulatory frameworks, especially in the Olympic Charter (e.g. Rule 40) and standard contracts (e.g. Conditions for Participation Forms).
- engages in collective and independent negotiations with athletes and their representatives over (see section "Participation & Bargaining"):
  - athletes' commercial rights and responsibilities, particularly their name, image, and likeness rights; and
  - the design and implementation of possible restrictions prior to and during the period of the Olympic Games.
- discloses and details the actual amount(s) of money re-distributed to athletes in Olympic sports as part of its solidarity programme per:
  - type of sports (discipline); and
  - country.
- pays a fair share of the profits it generates through hosting the Olympic Games to participating athletes based on collective and independent negotiations with athletes and their representatives.

### ***International Federations***

- ensure alignment of their marketing and commercialisation rules and policies with relevant national and EU law (see above) by:
- actively approaching the European Commission and national competition authorities

regarding the proportionality of its rules related to commercial opportunities of athletes to remedy legal uncertainties; and

- within their scope of responsibility, enforcing the proportionality of their rules and policies on athletes' self-marketing and commercial opportunities set out in their key international regulatory frameworks and standard contracts.
- engage in collective and independent negotiations with athletes and their representatives over (see section "Participation & Bargaining"):
  - athletes' commercial rights and responsibilities, particularly their name, image, and likeness rights; and
  - the design and implementation of possible restrictions prior to and during the period of international sport events.

## 1.4. Occupational Safety and Health

### ***Healthy and safe working environment (Principle 16)***

Though varying in size and scope across the surveyed countries, all four investigated actors take measures to ensure a healthy and safe working environment for athletes. Positive examples of public and private measures which provide minimum safety and health standards are evident. However, the legal measures are usually part of broader safety and health obligations rather than specific to the situation of an elite athlete.

### ***Exemption from financial costs (Principle 17)***

Olympic athletes are not always (fully) exempt from safety and health-related costs. For example, in **Belgium**, pursuant to the community decree in Flanders, elite athletes can, for example, receive an annual allowance for sports medical screenings. A detailed analysis of whether and under what conditions such medical screenings and/or safety and health-checks are to be paid by an athlete is beyond the scope of the present study. The data show that athletes may, in principle, be liable for costs when the need arises to cover rehabilitation costs following an injury that is acknowledged as a specific risk to a particular sport (e.g. **Austria**). These financial costs can also occur when, for example, specific preventive measures and health certificates are required from athletes (e.g. **Belgium, Cyprus**).

Overall, liability of actors relies strongly on the particular context, and most commonly arises based on contractual relationships (e.g. type of contract), applicable provisions of tort law, and/or the principle of negligence at national level. In **Cyprus**, the Law on Safety and Health in Work (89(I)/1996) may apply to athletes who are employees and if it is proven that the athlete's injury was the result of a breach of duty or a negligent act of their employer. In the **UK**, liability for safety and health at common law arises

under contract (e.g. the implied term of reasonable care in an employment contract) or under tort law, particularly the principle of negligence. The law of negligence applies to cases of sports injuries (*Condon v Basi* [1985] 1 WLR 866), but whether liability arises and upon whom it arises will however depend very much on the circumstances of the particular case.<sup>33</sup>

In **Slovenia**, access to medical services depends on the level of the athlete, and is outlined in the contracts which they sign with the NOC or NFs. The NOC has also established a system of additional insurance. For example, regarding access to medical facilities, the NOC provides special medical treatment for the best athletes. The system provides athletes with a special medical insurance package that includes assistance from medical specialists for treatment in the event of an injury in training or competition, in leisure activities, and in the event of illness. However, athletes must pay a contribution of 25% to receive this assistance.

In the **UK**, athletes participating in a national federation's World Class Programme (WCP) receive insurance cover, including cover for personal injury or loss arising out of, or in connection with, any activities carried out and/or any facilities used by the athlete in connection with the agreement while on team duty and including at events. This insurance also covers third party liability and includes travel insurance.

Overall, if an actor in the elite sports system provides measures to protect safety and health, the financial liability of athletes is limited. Where these provisions do not exist, or do not apply to an athlete, it is likely that athletes are required to cover the financial costs (e.g. costs of medical check-ups).

### ***Statutory minimum coverage (Principle 18)***

An athlete's legal status typically determines whether they fall within the scope of statutory OSH provisions under national law. Since elite athletes are very often considered not to be employees or workers, minimum safety and health standards provided under national law that require employee and/or worker status will not apply to them (see, for example, in **Denmark** where Olympic athletes are considered to have a similar status to students and fall outside the scope of OSH laws that require an employment relationship). According to the data, courts have not yet considered the application of general statutory OSH regulations to a situation involving an Olympic athlete.

Important safety and health provisions for Olympic elite athletes may, however, be enshrined in national sport-specific legislation. In five countries such legislation exists and requires private sports

33 See *Watson v British Boxing Board of Control* [2001] QB 1134 followed in *Wattleworth v Goodwood Road Racing Company Ltd*, *Royal Automobile Club Motorsports Association Ltd (RACMA) and Federation Internationale de l'Automobile* [2004] EWHC 140 (QB). Although not certain, an international federation may be found to owe a duty of care to athletes at a national level, in circumstances of the international federation assuming responsibility for the development, implementation and enforcement of safety protocols for its sport, notwithstanding the potential extensive liability: James 2021, para G1.77.

organisations to adopt measures of safety and health for elite athletes. For example, in **Belgium**, pursuant to community decrees, a general safety and health obligation towards athletes lies with the sports federations. For Flemish athletes, the decree on healthy and ethical sport (from 20 December 2013) includes a number of minimum conditions and incentives for a health-oriented and ethical sports policy of sport organisations and federations at both grassroots and elite sport levels. Among the French community, the decree on the prevention of health risks in sport (from 3 April 2014), which comprises a set of obligations for sports organisations and federations, requires athletes (in particular competing athletes) to have a medical clearance certificate for the practice of a sport. Outside the Olympic Games, the Belgian Olympic and Interfederal Committee (COIB) provides athletes with safety and health services during its training camps and multi-disciplinary competitions, including repatriation. It furthermore assumes civil liability for all athletes and medical liability for physiotherapists and doctors. Medical check-ups are organised by sports federations and are financially supported by the Flemish and French communities.

In **Lithuania**, pursuant to Articles 13, 14, and 15 of the Law on Physical Education and Sport of Lithuania (2022, I-1151), event organisers are required to proactively protect an athlete's safety and health at sports events. The law outlines the safety rules for sports events and the obligations of event hosts before and during events. Furthermore, it specifies that athletes are entitled to periodic health checks, which are financed from the state budget. The example of **Poland** demonstrates how national sport-specific legislation may stipulate that NFs and clubs shall be responsible for providing athletes with accident insurance. All Polish athletes who are a member of a national team or who participate in competitions organised by a Polish federation must have accident insurance in accordance with Article 38 of the Polish Act on Sport (2010). If the athlete is a national team member, the federation is responsible for providing the insurance, whereas for other athletes participating in competitions organised by Polish federations, their club is responsible.

In **Luxembourg**, sport-specific legal provisions on safety and health are integrated into Article 12 ("L'assurance sociale") of the 2005 Sports Law Act. It is stipulated that athletes shall have a contract with at least one insurance company recognised by the state, predominantly with the "Athletes' Mutual Aid Fund" (CSMS<sup>34</sup>), covering liability and accident insurance, among others, adapted to specific sport disciplines. The contract is a complementary health protection that covers services which are not provided for by the compulsory "National Health Fund" (CNS), which is administered by the Ministère de la Sécurité sociale.

### *Working Time*

Overall, entitlements and protections regarding national working time regulations are found in the participating countries' welfare systems as legal acts, laws, or statutes. However, these almost

34 The CSMS was set up by various sports federations in the interest of their licensees. Currently, 41 federations are members of the fund (see < <https://sports.public.lu/fr/sport-competition/assurances/csms.html> >).

exclusively apply only to those athletes who have a regular employment contract (one recognised under national law) and vary from country to country (Belgium =38h vs. Germany 41h). For example, athletes who are employed by the **Finnish** Defence Forces have contracts that provide not only for annual leave/holidays and parental leave, but also stipulate athletes' working time. Athletes' working time is calculated as 7 hours and 15 minutes per day, of which 70% can be used for training and sport. Recent research has shown that open questions remain regarding the working time of athlete officers (cf. Weihnacht 2021). Specific contractual stipulations (similar to those provided in the example of Finland) may help to clarify athletes' rights and obligations on related matters.

As regular employment contracts between NOCs and athletes do not exist in any of the countries, working time is in most cases not expressly mentioned in athletes' contractual relationships with NOCs. In addition, in some countries, athletes who receive stipends/scholarships (e.g. **Netherlands**) and/or sign an athlete agreement with the NOC (e.g. **Luxembourg**) do not fall under the applicable national working time regulations, since the underlying contractual relationships do not constitute an employment relationship in these countries. More commonly, as for example in the **UK**, worker status is required. In **Romania**, a specific situation exists where "sport activity" contracts (based on law no. 90/2018 on physical education and sport) are signed between athletes and the NOC. These special contracts contain a training plan with provisions on the athlete's working time, and this plan is usually made by the responsible coach and approved by the NOC, NF, or the athlete's club. While the gathered data do not allow the determination of how working time is composed in the case of Romania, not only sporting activity but also press conferences and awards ceremonies can arguably be considered as part of working time, as for example in accordance with legislation on professional athletes in **Spain** (Real Decreto 1006/1985, de 26 de Junio).

#### *Annual Leave*

Rights to annual leave are enshrined in national legislation/constitutional statutes in accordance with Article 7<sup>35</sup> of the EU Working Time Directive. However, these do not ordinarily contain sport-/athlete-specific provisions and are, therefore, in principle only applicable to athletes who are considered to be workers.

To summarise, limited statutory coverage of elite athletes exists in certain countries. National sports legislation, which addresses specific safety and health measures for athletes and indicates which actors are responsible and assume obligations, exists only in a few countries.

#### ***Specific measures of private organisations (Principle 19)***

There are positive examples in many countries of safety and health provision from private organisations (e.g. private accident insurance, medical check-ups and services for the prevention of mental and physical health hazards) which cover the specific risks associated with the practice of elite sport.

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35 A minimum of four weeks per year shall be provided.



Overall, these provisions – especially physical health policies, medical check-ups and access to medical facilities (e.g. accident insurance, mental safety and health policies) – vary between providers.

#### *Responsibility of the employer/principal*

Notwithstanding athletes' own responsibilities (see above: "Exemption from financial costs"), the data shows that responsibility under national legislation for an athletes' safety and health can fall on public authorities and Specific Elite Sport Organisations (who have a contract with athletes) and, in principle, also on private SGBs (e.g. NOCs, NFs), clubs, and event organisers. In addition, individual coaches and doctors can also be responsible in some countries.

Overall, actors of the elite sport system in all countries provide specific measures and assume a responsibility for athletes' safety and health, with the exception of **Malta** and **Latvia**, where the current data have not revealed related measures. For example, in **Ireland**, accident insurance and mental health provisions are provided by the OFI and Athletics Ireland; medical check-ups or access to medical facilities are provided by the OFI, Athletics Ireland, and Sport Ireland. In **Norway**, the NOC (NIF) and the Norwegian Athletics Association provide all assessed benefits, from accident insurance to access to medical facilities. In addition, athletes who are in a contractual relationship with the Athletics Association are provided with travel and injury insurance.

As a rule, athletes are required to sign an agreement for participation in the Olympic Games that releases the IOC, its affiliates, and any third parties authorised by them "from any liability for any loss, injury, infectious disease or damage that [the athlete] may suffer in relation to [his/her] participation in the Games" (see IOC Conditions for Participation Form for Tokyo 2020<sup>36</sup>). In terms of which actors are responsible for safety and health, there are key differences between the periods inside and outside the Olympic Games and/or between in-competition and out-of-competition. Academic opinion is that safety and health obligations in **Ireland** commonly fall on the actor responsible for sending a (national) team to sport events. Accordingly, for participants at the Olympic Games, the OFI is responsible, whereas for world championships in individual sports such as cycling, Team Ireland is covered by the respective national federation.

While Danish elite athletes do not automatically qualify for statutory minimum safety and health coverage from the state (see above), during the period of the Olympic Games, an athlete selected to represent **Denmark** will be covered by Team Denmark's accident insurance (if an accident occurs during Team Denmark-related activities). The situation is, however, less clear in other countries, such as the **Netherlands**. While Dutch athletes enter into a formal (contractual) relationship with the NOC\*NSF during the Olympic Games, in the case of an acute safety hazard, it is unclear whether or not the NOC\*NSF can be liable for related damages (some safety and health measures are provided by the NOC\*NSF and KNAU, though, including accident insurance, physical health measures, prevention/

36 The form is available at < [https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020\\_NOC-Conditions-of-Participation-2021-version\\_ENGLISH.pdf](https://olympics.com/athlete365/app/uploads/2021/06/Tokyo-2020_NOC-Conditions-of-Participation-2021-version_ENGLISH.pdf) >.

information, medical check-ups, and access to medical facilities). **German** athletes, for example, receive an insurance package for the period of the Olympic Games from the DOSB, which includes accident, liability, and baggage insurance, coverage for legal expenses, and medical support provided by doctors and therapists both at the event venues and the German accommodation.

Outside the period of the Olympic Games and depending on the contractual relationship, athletes, sports clubs, and Specific Elite Sport Organisations assume a joint responsibility for the safety and health of athletes. Among athlete soldiers, general safety and health obligations fall upon the national government ministries that employ athletes, and include a variety of provisions covered by law (Weihnacht 2021). Outside the period of the Olympic Games, in **Romania**, obligations may fall on the NOC, event organisers, and clubs, depending on the athlete's contract according to the Law on Physical Education and Sport in Romania (Law no. 69 of April 28, 2000). In **Spain**, the intermediate elite sport organisation "ADO", for example, provides medical check-ups and access to medical facilities. Furthermore, it is common in **Germany** that athletes have insurance coverage provided by their sports club during training or travel on behalf of the club. Specific elite sport organisations are also at the forefront in Germany. The German Sport Aid Foundation, for example, offers a comprehensive insurance package for all athletes who receive its support, including accident insurance, liability insurance, legal expenses insurance, and international health insurance.

#### *SGB competition rules*

A point of controversy regarding the protection of athletes' safety and health are SGBs' specific competition rules. While standardised procedures for systematically evaluating SGB competition rules against applicable safety and health provisions have not been found in any of the countries, data indicate that court rulings can be considered an instrument to hold SGBs accountable against applicable OSH standards in a given country. For example, in **Greece**, SGBs, as well as referees and athletes, can be held accountable for an omission to act in the interest of an (other) athlete's safety and health. Following the death of a boxer during an amateur boxing match, in 2004 the Court of Misdemeanour of Patras (case 477/2004) rendered the national boxing federation, the match referee, and the opponent athlete liable. The indictment for the federation was based on failing to meet their obligation to categorise the matches in a way that would keep the athletes safe. The referee was charged for not stopping the match on time and the athlete for negligent conduct against his (now dead) opponent. The administration of the federation was acquitted, while both the referee and the boxer were convicted. A systematic analysis of SGB competition rules against athletes' employment and social relations is an area that requires further research.

#### *Violence and abuse*

Recent research has shown that violence and abuse constitute severe issues in many different sports and represent a major challenge to the governance of sports. Incidences of sexual abuse, maltreatment, and discrimination have frequently been reported throughout the past years (e.g. in **Denmark**,

**Estonia, Finland, Germany, and Greece**). The aim of this project is, however, not to provide a thorough overview of the reported incidents, but to illustrate two cases that have inspired institutional reforms.

For example, in **Denmark**, widespread maltreatment and abuse of athletes in the Danish national swimming team and elite centre between 2003 and 2013 was revealed. Coaches allegedly weighed athletes publicly in front of each other and bullied and humiliated them. An independent report<sup>37</sup> indicated that structural problems, as well as the Danish Swimming Federation's reluctance to investigate into the allegations, were among the root causes of the perpetual incidents. The reported findings resulted in disputes over the composition of the swimming federation's governing boards, and led to Danish swimming clubs calling for new elections for all board positions in the federation through a motion of no confidence (Anderson 2019).<sup>38</sup>

In **Germany**, most recently also in the sport of swimming, several abuse scandals surrounding sexual violence against young/minor athletes have spurred public debate about the social conditions of athletes in both elite and leisure sports (Rulofs et al 2022). Related issues have appeared on the agenda of the German Bundestag's Sport Committee (2021). The establishment of an independent "centre for safe sport" has been included in the current coalition agreement of the German federal government. While a nation-wide contact entity (as part of endeavours to create a centre for safe sport) is still being established<sup>39</sup>, the independent German athlete association Athleten Deutschland e.V. has already established such a contact point, including a specific phone number and email-address for athletes seeking psychological and legal advice, as well as anonymous reporting of incidents of harassment, violence, and discrimination.

Overall, the collected data has shown that the first policies and procedures (e.g. reporting and whistleblowing tools) on safe sport, as well as permanent structures and institutions, are being established as part sport integrity units attached to, inter alia, public authorities, SGBs, national anti-doping organisations, and anti-match-fixing bodies (cf. Hartmann 2022; iNADO 2022).

Here, for example, the **Estonian** Centre for Integrity in Sport that was established by the Estonian NOC (EOC) represents a comprehensive institutional approach to preventing and combating threats to the integrity and ethics of sports, in particular discrimination, abuse, and harassment. In 2021, the new entity established a central contact point to report violence and abuse. The Centre also provides advice and expertise for national federations and commissions research in the area. Funding is provided

37 The report was commissioned by the Danish Ministry of Culture and was published in 2020. It included the results of a survey among almost 130 swimmers.

38 The incidents have been revealed by an investigative documentary ("Swimming Stars – Under the Surface"), and were interpreted by Anderson (2019) (see < <https://swimswam.com/danish-swim-federation-under-fire-for-mid-2000s-public-weighings/> >).

39 This is in parts due to the ongoing discussions about the amount of funding for such an entity at federal government level (see < <https://www.dw.com/de/die-dunkle-seite-des-sports-sexualisierte-gewalt/a-63268547> >). Meanwhile, the association (board of trustees) underpinning the structures of the prospective centre for safe sports has been established at a Conference of the Federal Ministers of Sports in November 2022 (see < <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2022/11/safe-sport.html> >).

by the Ministry of Culture (59%) and the Estonian Olympic Committee (41%) (INADO 2022). Similar developments have recently taken place in **Finland**<sup>40</sup> and **Austria**, where “Safe Sport Austria” was established within the framework of the “Enlarged Partial Agreement on Sports” (EPAS) project *Child Safeguarding in Sport* and in close cooperation with the initiative *Safe Sport International*. The original project has evolved into the establishment of a permanent institution, which shall meet the need for counselling regarding child protection, prevention of sexual violence, and networking with child, youth and victim protection organisations. After merging with NADA Austria, the Centre for Gender Competence (100 % Sport), and the Play Fair Code (combating match fixing and sport manipulation), it is now under the umbrella of a new entity for integrity and respect in sports (“IRIS”).<sup>41</sup>

These centres provide important mechanisms for athletes to report and remedy experienced shortcomings as regards their safety and health. Additional opportunities are provided by SGBs. For example, data show that NOCs and NFs may also act following reports and records of violence in sport. In **Germany**, the German Olympic Sport Confederation (DOSB) has established a dedicated team of ombudspersons for the prevention of sexual abuse and violence, including, inter alia, an anonymous telephone number that German squad athletes can use to report such violations. Under the umbrella of the DOSB, the regional sport associations and NFs furthermore establish specific contact persons to whom any issues related to sexual abuse and violence can be addressed.

On the international level, the Council of Europe has started an initiative (“pool of international experts on safe sport”) to bring together leading experts from governments, academia, civil society, sports, and other involved bodies.<sup>42</sup>

Overall, it can be concluded that the institutional frameworks to prevent and combat violence and abuse currently do not seem to be adequate for the high amplitude of related issues suggested by the collected data and current research. In sum, however, it must be acknowledged that the present study does not in any sense claim to provide a thorough analysis of the sensitive topics of sexual abuse and violence in European elite sports.

### *Information and education*

Information and education on matters of safety and health (e.g. about potential sources of harm and risks associated with the sporting activity, as well as nutrition, dietary supplements, and anti-doping) are provided by all of the investigated actors, including SGBs (such as NOCs and national athletics federations), public authorities, Specific Elite Sport Organisations, and other intermediary

40 The Finnish Centre for Integrity in Sports (FINCIS) was established in 2016 and focuses its work on the prevention of manipulation of sports competitions, spectator safety, and ethics in sport, including the prevention of “various forms of discrimination, harassment, abuse, ill behaviour and bullying” (cf. INADO 2022, p. 2).

41 Retrieved from the website of the Austrian Ministry of Arts, Culture, Public Administration and Sports (< <https://www.bmkoen.at/Themen/Aktuell/Pressekonferenz-IRIS.html> >).

42 Retrieved from the website of the Council of Europe (21.11.2022): (< <https://pjp-eu.coe.int/en/web/pss-experts> >).

bodies. For example, for those athletes selected for the Topp-och Talang in **Sweden**, the SOK provides information and education on potential risks or sources of harm. In the **UK**, the army offers anti-doping and drug testing education for elite athletes selected to the Army Elite Sport Programme (AESP). In **Norway**, Olympiatoppen provides all elite athletes with advice and support in a range of areas such as health, nutrition, coaching, education, post-sport careers and anti-doping. In **Germany**, education on potential risks and sources of harm are usually provided by the Olympic Training Centres. Overall, information/education on anti-doping exists in all of the countries and is commonly provided by all of the investigated actors. Furthermore, terms regarding anti-doping are integrated into individual contractual agreements between athletes and their NOCs and national athletics federations (e.g. **UK, Ireland, Finland, Norway**). The actual extent of the actors' activities and measures, however, differs and depends on a large variety of factors, including an athlete's level of performance, their cadre status, and their contractual relationship with sports bodies, for instance. In Eastern Europe, for example, in three (**Czech Republic, Estonia, Lithuania**) out of five countries, the NOC delivers accident prevention training. In some cases, measures of information and education are enshrined in national legislation.

As regards participation of athletes in the development of relevant safety and health measures, the gathered data indicate that while athletes may not be included, they are provided with instruction and training regarding these policies and procedures. However, the extent to which athletes participate in the design of safety and health provisions remains largely unknown. Additionally, the existence of specific athlete representatives at the national level in the safety and health field is not revealed by the data. By contrast, at an international level, SGBs such as the Union Cycliste Internationale (UCI) consult with athletes and their representatives when, for example, designing the so-called "extreme weather protocol"<sup>43</sup>. Perhaps the increasing ambitions to establish specific institutions, such as sport integrity units or centres for safe sport, may facilitate the appointment of dedicated representatives in the near future.

## Recommendations – Occupational Safety and Health:

**Taking into consideration the above regarding athletes' occupational safety and health, we recommend that:**

### ***National Governments***

- adopt legislation that brings Olympic elite athletes into the realm of statutory working time and annual leave day regulations in accordance with the corresponding EU Directives (i.a. Working Time Directive (2003/88/EC)).
- include sport-specific safety and health standards in national legislation/legal regulations,

43 Retrieved from the websites of the independent association "Cyclistes Professionnels Associés" (CPA) (< <https://www.cpacycling.com/en/projects.asp> >), and the Union Cycliste Internationale (UCI) regulations for road races (< <https://www.uci.org/regulations/3MyLDDrWJCJ0BGGOfzOat#part-ii-road-races> >) (20.11.2022).

including provisions on:

- the protection of athletes against discrimination, sexual violence, abuse, racism, xenophobia and any other sources of harm;
  - the primary responsibility and liability of athletes' principal/employer for upholding applicable measures of OSH; and
  - the exemption of athletes from any financial costs occurring through preventive measures of OSH.
- with the support of the actors of the elite sport system, assume a key responsibility for developing a national framework in which public and private measures may complement each other effectively in order to allow for the highest possible OSH coverage for Olympic elite athletes.
  - together with SGBs and independent athletes' organisations, support the establishment of independent (anonymous) contact points for athletes to report and remedy violation(s) of applicable safety and health standards, including discrimination, sexual violence, and abuse, inter alia.
  - include athletes and their representatives in the design and implementation of safety and health provisions and measures.
  - through national safety and health authorities, oversee the implementation and enforcement of applicable standards.

### ***National Olympic Committees***

- together with national governments, NFs, and independent athletes' organisations, support the establishment of independent (anonymous) contact points for athletes to report and remedy violation(s) of applicable safety and health standards, including discrimination, sexual violence, and abuse, inter alia.
- inform and educate athletes on sport-specific risks and relevant safety and health measures.
- together with other actors of the elite sport system, provide athletes with adequate safety and health measures prior to and during the Olympic Games, including free access to medical screenings/facilities and accident insurance, inter alia.

### ***National Federations***

- in cooperation with IFs, align their sport-specific competition rules with applicable safety and health standards.
- in cooperation with IFs, independent athletes' organisations, and event organisers, develop and improve specific safety and health measures that account for the specific risks associated with the practised type of sport (discipline).

- together with national governments, NOCs, and independent athletes' organisations, support the establishment of independent (anonymous) contact points for athletes to report and remedy violation(s) of applicable safety and health standards, including discrimination, sexual violence, and abuse, inter alia.
- include athletes and their representatives in the design and implementation of safety and health provisions and measures.
- inform and educate athletes on sport-specific risks and relevant safety and health measures.
- within the scope of applicable legislation, specify the safety and health measures and responsibilities (e.g. working time, annual leave, safety provisions at sport events, etc.) for athletes with whom they have a contract.
- together with the other actors of the elite sport systems, including clubs and event organisers, clearly specify what party, and to what extent, covers the financial costs occurring through their specific provisions and measures for athletes' safety and health.

***Public Authorities (e.g. the military), where they play a role in elite sport support,***

- within the scope of applicable legislation, specify the safety and health measures and responsibilities (e.g. working time, annual leave, safety provisions at sport events, etc.) for athletes with whom they have a contract.
- together with the other actors of the elite sport systems, including clubs and event organisers, clearly specify what party, and to what extent, covers the financial costs occurring through their specific provisions and measures for athletes' safety and health.

***Specific Elite Sport Organisations, where they exist,***

- within the scope of applicable legislation, specify the safety and health measures and responsibilities (e.g. working time, annual leave, safety provisions at sport events, etc.) for athletes with whom they have a contract.
- together with other actors of the elite sport systems, including clubs and event organisers, clearly specify what party, and to what extent, covers the financial costs occurring through their specific provisions and measures for athletes' safety and health.

***Independent Athletes' Organisations***

- engage in the design and implementation of safety and health provisions and measures.
- together with national governments and SGBs, support the establishment of independent (anonymous) contact points for athletes to report violation(s) of OSH standards, including discrimination, sexual violence and abuse, inter alia.
- inform and educate athletes on sport-specific risks and relevant safety and health measures.

### ***the European Union***

- investigates and clarifies the application and extension of its legal instruments on matters of OSH (i.a. European Working Time Directive (2003/88/EC)) to the field of Olympic elite sport.
- considers whether its independent agencies, e.g. EU-OSHA, may extend their policies and activities to international/European sport competitions and Olympic elite athletes.

### ***the International Olympic Committee***

- uses its international platforms (e.g. Athlete365) to inform and educate athletes about matters related to safety and health.
- uses its leading role in the Olympic Movement to steer the development, improvement, and implementation of safety and health standards across all Olympic sports.
- together with other actors of the elite sport system, especially NOCs and IFs, provides athletes with adequate OSH measures prior to and during Olympic Games, including free access to medical screenings/facilities and accident insurance, inter alia.
- includes athletes and their representatives in the design and implementation of safety and health provisions and measures.

### ***International Federations***

- in cooperation with NFs, align their sport-specific competition rules with applicable safety and health standards.
- in cooperation with NFs, independent athletes' organisations, and event organisers, develop and improve specific safety and health measures that account for the specific risks associated with the practised type of sport (discipline).
- together with national governments, SGBs, and independent athletes' organisations, support the establishment of independent (anonymous) contact points for athletes to report and remedy violation(s) of applicable safety and health standards, including discrimination, sexual violence and abuse, inter alia.
- include athletes and their representatives in the design and implementation of safety and health provisions and measures.
- inform and educate athletes on sport-specific risks and relevant safety and health measures.



## 1.5. Social Protection

### *Cover and payment of statutory social protection contributions*

In accordance with EU legislation and through additional transnational frameworks like the European Code of Social Security, all countries have laws and policies in place that provide for statutory measures of social protection for their citizens and residents.<sup>44</sup> Depending on the characteristics of the national social legislation and welfare regime, different conditions apply for athletes to qualify for certain (or all) statutory measures of social protection. Athletes in **Norway, Sweden, and the Netherlands** are covered for some measures of statutory social protection by virtue of being a resident or national citizen. For example, in **Sweden**, health care, loss of income insurance, and maternity protection and parental leave benefits are available to all Swedish residents, including elite athletes. However, throughout the subject countries, statutory social protection coverage for the most part requires worker status, and variations in social coverage prevail. In some countries, sport-specific legislation has filled a gap in statutory social protection. In **Bulgaria, Hungary, Italy, Lithuania, Luxembourg, and Poland**, sport-specific legislation determines the statutory social protection of elite athletes.

Athletes within the scholarship programme of the **Dutch** NOC\*NSF are considered taxable persons who pay social protection contributions. Therefore, these athletes are covered by measures of statutory social protection on the basis of their scholarship contracts. As illustrated in section 3 (Commercial opportunities), elite athletes can, in principle, pursue work outside of sport, which may bring them into the realm of statutory social protection coverage. Yet, such a model disregards the need to socially protect athletes in and of themselves.

#### ***Good Practice – Law on Sport in Luxembourg (Loi du 3 août 2005):***

Art. 14 (6) of the Law on Sport in Luxembourg provides that:

“Insofar as elite sportsmen and women are not insured in any other way, the state pays the social security contributions on the basis of the social minimum wage. For elite sportsmen and women who reduce their professional activity so that their income falls below the minimum social wage, the State reimburses the social security contributions calculated on the basis of their actual income.” (free translation)

This provision serves to ensure athletes’ statutory social protection coverage, irrespective of their contractual relationships and income situation.

A similar situation exists in **Lithuania**, where athletes have the legal status of a taxable person who receives social security benefits. Therefore, all elite athletes falling under the definition of the Law on Physical Education and Sport (2022 I-1151) are covered by statutory measures of social protection,

<sup>44</sup> For the purpose of this study, relevant measures include health care, sickness benefits, old-age and pension, invalidity and occupational disability, unemployment benefits, maternity, paternity and adoption protection, and parental leave.

irrespective of their contractual relationships and income. In **Poland**, the Act on Sport regulates that athletes who hold a scholarship with the Ministry of Sport and Tourism are eligible for statutory social protection measures.

In some countries legal acts exempt athletes from paying taxes and social protection contributions as part of elite sport support programmes. Pursuant to a coordinated decree of the German states (the *Länder*) from 1969, the funding athletes receive from the German Sport Aid Foundation is considered an expense allowance and is not subject to taxes and social contribution payments. However, seeing the comparably small amount of money athletes receive from the German Sport Aid Foundation, the established regulations might be in the interest of athletes who receive the funds.

Since worker status is usually required to be eligible for the relevant measures, many athletes who are not employed by public authorities or do not have an income that qualifies them as a taxable person find themselves in a precarious situation in terms of their social protection coverage. As the analysis shows, different models to address these significant shortcomings through national legislation can be identified (see examples above). Meanwhile, calls for additional sport-specific legislation are currently being made in **Austria, Italy, and Spain** (cf. Expert Reports Austria, Italy, Spain). Currently, however, only Italy is likely to introduce new legislation in the near future.

### ***Specific social protection measures (Principle 21)***

Policies designed specifically to protect athletes against social risks are found in many countries and show that athletes' social protection can be addressed by a mix of statutory measures and private schemes. However, sport-specific and private measures should always be considered an additional layer to the statutory social protection of athletes. In some countries, national legislation can be a source for further provisions only applicable to elite athletes and funded from public money. Most commonly, supplementary pension schemes for (retired) elite athletes are introduced through the national laws on sport, as is the case in **Croatia, Hungary, Lithuania, and Poland**. Usually, only the most successful athletes – e.g. winners of medals at Olympic Games or World Championships – are eligible to receive the pension payments, thereby reinforcing the strong meritocratic principle that is evident in the elite sport system. A similar pension scheme can also be coordinated without reference to national law, as is the case in **Estonia**, where the NOC assumes the coordinating role. In **Germany**, elite athletes can receive a subsidy funded from taxpayer money and channelled through the German Sport Aid Foundation when taking out a private pension scheme. The scope of national legislation, however, does not have to be restricted to old-age benefits and pension payments. In **Poland**, the Act on Sport (2010) has recently been amended to also provide protective measures for female athletes during their pregnancy and after giving birth. Article 32 stipulates that the full stipend shall be paid to female national team members during their pregnancy and half of the stipend shall be paid in each of the six months after giving birth, thus introducing a measure of maternity protection and parental leave.

In the elite sport system, there are also positive examples of different actors adopting policies to

implement social protection measures either to fill a gap in the legislation or provide a benefit which enhances existing general or sport-specific statutory provisions on specific social risks associated with an elite sport career.<sup>45</sup>

Since 2020, the matter of maternity protection has gained increasing attention: in the United Kingdom, UK Sport published a comprehensive “Pregnancy Guidance” for both athletes and SGBs.<sup>46</sup> The guidance recommends, amongst other things, payment of the Athlete Performance Award for up to nine months after childbirth, subject to conditions. In Finland, athletes in receipt of a state grant are guaranteed further payments during parental leave and maternity leave. Benefits are also provided by the Finnish Olympic Committee and the Finnish Athletics Federation (as shown in the contract highlighted as a Good Practice in section 1). While scholarship payments may be slightly reduced for pregnant athletes in **Hungary**, athletes in receipt of support from the Hungarian Olympic Committee and the Athletics Federation retain their status and continue to receive payments.

The data shows that NOCs in ten countries provide athletes with health care services.<sup>47</sup> In the case of **Malta**, the private health insurance is complemented by occupational disability insurance. Likely the most comprehensive social protection scheme exists in **Ireland**, with the different actors providing specific social protection measures.

#### **Good Practice – Multi-Stakeholder Approach led by Sport Ireland**

- Accident insurance: taken out by the *Olympic Federation of Ireland* and a *National Federation* for all elite athletes to cover participation during Olympic Games or World Championships

Athletes on the International Carding Scheme, Sport Ireland’s elite sport programme, are covered by the following social protection measures, which are provided by *Sport Ireland* and administered in cooperation with a *National Federation*:

- Maternity protection: 12-month guarantee of funding (6 months into pregnancy + 6 months after giving birth)
- Athlete Career Transition Programme: provides athletes with financial and other service support on retirement; does not include pension payments but provides funding for a prescribed period of time to support the athlete as they transition into a post-sport career

Sport Ireland’s “Athlete Welfare Policy” provides a holistic framework and basis for the different measures.

Sources: <https://www.sportireland.ie/sites/default/files/media/document/2021-08/final-sport-ireland-athlete-welfare-policy.pdf>; <https://www.sportireland.ie/sites/default/files/2020-01/maternity->

<sup>45</sup> Specific accident and injury insurances, as well as specific health care schemes (cf. Principle 21) are referred to primarily in the section on “Occupational Safety and Health”).

<sup>46</sup> The guidance is available on UK Sport’s website (< <https://www.ukssport.gov.uk/resources/pregnancy-guidance> >)

<sup>47</sup> These are the NOCs of Croatia, Estonia, Finland, Greece, Latvia, Malta, the Netherlands, Portugal, Slovenia and Sweden.

[policy\\_final.pdf](https://www.sportireland.ie/sites/default/files/media/document/2022-10/Sport%20Ireland%20International%20Carding%20Scheme%20Guidelines%202023-2024_0.pdf); [https://www.sportireland.ie/sites/default/files/media/document/2022-10/Sport%20Ireland%20International%20Carding%20Scheme%20Guidelines%202023-2024\\_0.pdf](https://www.sportireland.ie/sites/default/files/media/document/2022-10/Sport%20Ireland%20International%20Carding%20Scheme%20Guidelines%202023-2024_0.pdf)

The extent to which social protection policies are collectively and independently negotiated with athletes remains currently unclear. The current data do not reveal any instances where athletes could independently negotiate the relevant provisions.

## **Recommendations – Social Protection:**

**Taking into consideration the above regarding athletes’ social protection, we recommend that:**

### ***National Governments***

- adopt legislation to ensure that elite athletes are covered by statutory measures of social protection, irrespective of their legal status and contractual relationship(s).
- with the support of the actors in the elite sport system, assume a key responsibility for developing a national framework in which public and private measures may complement each other effectively in order to allow for the highest possible social protection coverage for Olympic elite athletes.
- support the actors of the elite sport system and independent athletes’ organisations to adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase for all elite athletes; and
  - pregnancy, maternity/paternity/adoption protection and parental leave provisions.
- ensure that social protection contributions are paid for athletes.

### ***National Olympic Committees***

- support national governments to formulate and adopt legislation that ensures that athletes are covered by statutory measures of social protection.
- together with other actors of the elite sport system, including clubs, pay social protection contributions for elite athletes with whom they have a contract in line with national social laws.
- together with other actors of the elite sport system, clubs, and independent athletes’ organisations, take a leading role in the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and

- coordinates specific social protection measures.
- together with other actors of the elite sport system, national governments, clubs and independent athletes' organisations, adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase for all elite athletes; and
  - pregnancy, maternity/paternity/adoption protection and parental leave provisions.

### **National Federations**

- support national governments in the formulation and adoption of legislation that ensures that athletes are covered by statutory measures of social protection.
- together with other actors of the elite sport system, including clubs, pay social protection contributions for elite athletes with whom they have a contract in line with national social laws.
- together with other actors of the elite sport system, clubs, and independent athletes' organisations, contribute to the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and
  - coordinates the specific social protection measures.
- together with other actors of the elite sport system, national governments, clubs, and independent athletes' organisations, adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase for all elite athletes; and
  - pregnancy, maternity/paternity/adoption protection and parental leave provisions.

### **Public Authorities, (e.g. the military), where they play a role in elite sport support,**

- support national governments in the formulation and adoption of legislation that ensures that athletes are covered by statutory measures of social protection.
- together with other actors of the elite sport system, including clubs, pay social protection contributions for elite athletes with whom they have a contract in line with national social laws.

- together with other actors of the elite sport system, clubs, and independent athletes' organisations, contribute to the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and
  - and coordinates the specific social protection measures.
- together with other actors of the elite sport system, national governments, clubs, and independent athletes' organisations, adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase for all elite athletes; and
  - pregnancy, maternity/paternity/adoption protection and parental leave provisions.

***Specific Elite Sport Organisations, where they exist,***

- support national governments in the formulation and adoption of legislation that ensures that athletes are covered by statutory measures of social protection.
- together with other actors of the elite sport system, including clubs, pay social protection contributions for elite athletes with whom they have a contract in line with national social laws.
- ***as public (or public-private) entities***, together with other actors of the elite sport system, clubs, and independent athletes' organisations, take a leading role in the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and
  - coordinates the specific social protection measures.
- ***as private entities***, together with other actors of the elite sport system, clubs and independent athletes' organisations, contribute to the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and
  - coordinates the specific social protection measures.
- together with other actors of the elite sport system, national governments, clubs, and independent athletes' organisations, adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase

for all elite athletes; and

- pregnancy, maternity/paternity/adoption protection and parental leave provisions.

### ***Independent Athletes' Organisations***

- support national governments in the formulation and adoption of legislation that ensures that athletes are covered by statutory measures of social protection.
- together with the actors of the elite sport system and clubs, contribute to the development and adoption of a comprehensive policy for specific measures that:
  - clarifies the responsibilities of each party; and
  - coordinates the specific social protection measures.
- together with the actors of the elite sport system, national governments, and clubs, adopt specific policies related to:
  - specific accident and injury insurances;
  - specific retirement schemes and pension plans that are not only applicable to the most successful athletes, but ensure a safe transition into the post-career phase for all elite athletes; and
  - pregnancy, maternity/paternity/adoption protection and parental leave provisions.
- strengthen their operational capacities in the field of athletes' social protection.

### ***the European Union***

- investigates and clarifies to what extent the current situation of athletes' social protection is in line with the principles enshrined in the European Pillar of Social Rights.
- supports national governments through its Open Method of Coordination to adopt legislation that ensures that athletes are covered by statutory measures of social protection.
- commissions its high-level group of experts on the future of social protection and of the welfare state in the EU to address the specific situation of Olympic elite athletes' social protection.

### ***the International Olympic Committee***

- advocates for national legislation to ensure that elite athletes are covered by statutory measures of social protection, irrespective of their contractual relationships.

## International Federations

- No specific recommendations.

## 1.6. Participation & Bargaining

### Participation in governance (Principle 22)

The data show that athletes' participation in the governance of their sports can take many forms, including different levels of representation and decision-making competencies across various types of organisations and countries, among others (see: "Key Findings of the Fact Report"). While independent athletes' organisations are increasingly being established to represent athletes' rights at national level (see further below), traditional athletes' commissions within the governance structures of NOCs and national athletics federations continue to consider themselves as the leading bodies for athletes' representation within the Olympic movement. Though the degree of involvement of the commissions and their representatives may vary, their work is commonly limited largely to advisory/consultative functions (see Principle 24: "effective and proportionate decision-making power"). Accordingly, athletes' commissions exist within the NOCs of **all 29 countries** of the present study. Athletes' commissions in national athletics federations are less common and only exist in **14 of 29 countries**. As regards athletes' representation in public authorities, athletes who are employed by state organisations are entitled to regular participation mechanisms that are anchored in national labour relations regimes that govern the employment of civil servants. To what extent specific mechanisms for athletes' participation exist within public authorities, such as ministries, remains unknown.

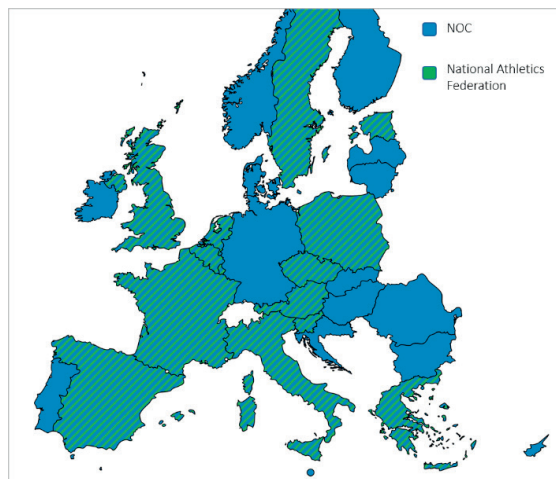


Figure 5: Athletes' Commissions in NOCs and National Athletics Federations.



In terms of athletes' participation in the governance of (private) Specific Elite Sport Organisations, a positive example of representation on board structures exists in **Germany**, where one member of the DOSB Athletes' Commission forms part of the oversight board of the German Sports Aid Foundation, based on §10 of the organisation's foundation constitution. Whereas in **Austria**, two athlete representatives, one for summer and winter sports each, serve as members of the executive management of Sport Aid Austria. The procedure of their appointment/election, however, is not specified. Moreover, in the case of the Flemish Community in **Belgium**, athletes are represented in the organisation of Sport Vlaanderen, as for example in its steering group on elite sport. By contrast, in other countries (such as in **France**), the board of administration of the Agence National du Sport (ANS) does not contain an athlete representative.

### ***Representation (Principle 23)***

The election procedures of athlete representatives within SGBs (e.g. NOC, national athletics federations) and Specific Elite Sport Organisations can be very different, and usually rely on the pyramidal structure of the Olympic Movement. In addition to open election processes, principles of co-optation and *ex-officio* membership which are established in the foundation constitution or association articles of SGBs and Specific Elite Sport Organisations are applied. For instance, in accordance with §5 of the statutes of the **Italian** NOC (CONI), members of the IOC's Athletes' Commission and the EOC European Athletes' Commission, as well as one member of the athlete commissions of the national federations each, are automatically included in the CONI's National Athletes' Commission. Similarly, in **Estonia**, the NOC's athletes' commission is elected once every four years in a meeting where every member federation of the Estonian Olympic Committee is represented by one athlete. Here, however, the degree of democratisation of related procedures clearly depends on how freely athletes of a given sport discipline may choose the person representing their federation. The *ex-officio* membership in NOC Athletes' Commissions (which is obtained through representation on the Athletes' Commissions of the IOC and NOC Continental Associations) is recommended by the IOC Athletes' Commission's (2017) "Guide to developing an effective Athletes' Commission". In **Poland**, members of the Athletes' Commission (known as the "Competitors' Commission") of the Polish Olympic Committee (PKOl) are directly appointed by the management board of the organisation in accordance with Article 24 of its organisational statutes. While a variety of structural internal governance changes were recently approved by the PKOl at its general assembly, including representation of members of its Athletes' Commission on the organisation's executive board in line with IOC guidelines<sup>48</sup>, the appointment of the members of the Commission by the management board seems to prevail up until today.

In some cases, all athlete representatives within bodies of organised sport are elected "by their peers", i.e. by active and/or retired athletes themselves, as for example the members of Athleten Deutschland e.V. and the DOSB Athletes' Commission in **Germany**. Here, the first institutional ties emerge between

48 Retrieved from the website of the PKOl (< <https://olimpijski.pl/pkol/regulacje-i-dokumenty/> >) (18.11.2022).

athletes' commissions of NOCs and independent athletes' organisations, in regard to the athlete representatives' election procedure.

***Good Practice – Athleten Deutschland e.V (Athletes Germany) and the DOSB Athletes' Commission:***

In 2021, for the first time, the DOSB Athletes' Commission was composed based on the elections of the board of the independent athlete association Athleten Deutschland e.V. at its general assembly. Accordingly, the current president of Athleten Deutschland e.V. serves as the chairperson, and all members of its board form part of the DOSB Athletes' Commission. Section §2 ("Zweck und Aufgaben des Vereins") of Athleten Deutschland's constitutional provisions provides that the "financial and operational support of the tasks of the DOSB Athlete Commission" represents one of its main missions. This example illustrates how an increased capacity and a strong position of independent athletes' associations in the national sport system may pressure an SGB to cooperate with them, and inspire future reforms as regards the representation of athletes.

A specific case can be observed in **Slovenia**, where a new legal institution, a dedicated athlete rights ombudsperson, has been established. Under the umbrella of the NOC of Slovenia, upon decision by its executive committee, suggestion by its athletes' commission, and nomination by its general assembly, the ombudsperson was first elected<sup>49</sup> in 2014. Based on the New Slovenian Sports Act from 2017 and a public tender process, the person was nominated for a mandate of five years (2019-2023) and now operates under the Slovenian government. The ombudsperson's activities take place on an informal and confidential basis without any cost to athletes. They shall make athletes aware of their rights and advise them how to protect and enforce these. While not being able to make binding decisions, the ombudsperson may initiate negotiation and mediation processes and/or give recommendations (Kraljić & Drnovšek 2021).

Precise information on whether athletes are formally represented within public authorities (e.g. armed forces) and how they are elected/appointed cannot be extrapolated from the data. In **Austria**, however, a dedicated contact person for athletes ("Bundesheersportfachoffizier") has been established.

Athlete representatives who form part of independent athletes' organisations are elected based on their specific membership structure. In **Slovenia**, for example, the Slovenian Athlete Union's highest decision-making bodies, including its president and board of directors, are elected by the general assembly that is composed of the union members (see further below). As regards the **French** "Union Nationale des Sportifs de Haute-Niveau" (UNSHN), its main decision-making body, the "Conseil d'Administration", is composed of active and former elite and/or professional athletes who are elected by the general assembly for a renewable 4-year term. The general assembly is formed by all members of the union and takes place at least once a year. In the case of the British Elite Athletes Association

<sup>49</sup> Other candidates stood for election.

(BEAA) (formerly the British Athletes Commission (BAC)) in the **UK**, representatives are nominated based on their personal career achievements and membership(s) in talent development programmes (e.g. WCP). Overall, a thorough analysis of the underlying election procedures of specific athlete representatives presented above requires further academic research.

### ***Recognition and effective involvement (Principle 24)***

#### *SGB statutes*

The majority of the countries' NOCs expressly refer to athletes' representation in their constitution, statutes and/or internal regulations, inter alia. The actual level of representation and decision-making competences (e.g. voting rights) may, however, vary.

#### *National sport-specific legislation*

National sport-specific legislation on athlete representatives that acknowledges the role of athlete participation seems to be rare in the surveyed countries. In **Latvia**, the Law on Sport contains legal provisions on athlete representation in the field of anti-doping, which includes a seat for athletes on an appeal commission through which athletes may appeal against measures taken by the "Antidoping Bureau" of Latvia. It furthermore outlines that an athlete's interests can also be represented by sports agents (see: Section 21. "Cooperation with Sports Agents"). In **Spain**, Article 18 of the National Act on Sport (1990) on sports clubs states that public or private entities joining the Spanish Register of Sports Associations must not only establish its legal nature and budget regime, but also "a system of representation for athletes". In **France**, the national Law on Sport requires SGBs to enshrine in their statutes the conditions under which elite-level athletes participate in the decision-making bodies of the organisation. Pursuant to that law, all SGBs are obliged to create an Athletes' Commission composed of elected members. Furthermore, the two members of the commissions, one man and one woman, shall be appointed to sit on the governing bodies of the federation with voting rights (Art. L 131-15-3). The law, however, does not include any reference to independent athletes' organisations. In **Germany**, the distribution of public funds to SGBs by the German Federal Ministry of the Interior is linked, among other criteria, to specifically formulated athletes' rights, including: (1) a seat for athlete representatives at the SGB's highest decision-making body; and (2) their inclusion in sport-specific decisions.<sup>50</sup>

#### *Effective and proportionate decision-making power*

The data show that athletes are involved in the decision-making structures of Olympic elite sports to different degrees. In many countries, members of the athletes' commission of the NOC or National Federations hold seats on the boards of an SGB. However, questions prevail as to the effectiveness and proportionality of athletes' decision-making power through their representation on SGB boards,

<sup>50</sup> The criteria can be downloaded from < [https://www.potas.de/dam/jcr:cdb0c195-40d0-4fec-815e-9c92cdf28c3/PotAS\\_Attributesystem\\_Sommer2019\\_20.pdf](https://www.potas.de/dam/jcr:cdb0c195-40d0-4fec-815e-9c92cdf28c3/PotAS_Attributesystem_Sommer2019_20.pdf) >

and future research should specifically address this matter.<sup>51</sup> While analysis has illustrated that athlete representatives in some cases only hold informal consultative/advisory functions (e.g. within the Norwegian athletics federation), in other internal bodies of SGBs they have full voting rights as members of decision-making bodies (e.g. board of directors of the British Olympic Association; oversight board of the German Sports Aid Foundation). In rare cases, athletes may even be included at the executive level. For example, 10% of the positions of the managing board of the Urhea Sports Academy (a Finnish SESO) are reserved for athletes. However, conclusions on their actual involvement and decision-making power cannot be drawn from the present data. Existing research shows that athlete representatives in Europe only hold a small number of available board positions in SGBs, with only 5.33% of the positions held by athletes in **Germany** and 0.99% in the **UK** (Seltmann 2021, p. 11). The research further illustrates that the effectiveness and proportionality of athletes' decision-making power strongly relies on the institutional position and influence of independent athletes' organisations. The institutional set-up of the above-mentioned best practice example, Athleten Deutschland, which is *de facto* congruent with the DOSB Athletes' Commission, provides athlete representatives in Germany with important access to decision-making structures of the DOSB and other organisations of the elite sport system.

#### *Prevention and remedy*

The need to adopt specific measures and policies to prevent athletes and their representatives against retaliation has been acknowledged by Article 9<sup>52</sup> of the IOC's (2018) Athletes' Rights and Responsibilities Declaration. To what extent these provisions translate into the implementation of concrete measures to prevent and remedy retaliation against acting athlete representatives in the surveyed European countries currently remains unknown. However, one example highlights how SGBs may address related issues through the adoption of whistleblower protection policies and their integration into good governance guidelines. The **German** DOSB has developed dedicated policies<sup>53</sup> and currently maintains a tender process for establishing a central contact point to anonymously report issues of unethical behaviour. Overall, policies from the fields of anti-doping and safe sport may be a source of inspiration.

#### ***Independent union/association representation; recognition of independent athletes' organisations, SD, and collective bargaining; independent negotiations and collective agreements (Principles 25-27)***

Currently, independent athlete associations exist in 8 of 29 countries (**Croatia, Denmark, Finland,**

51 The current project "Strengthening Athlete Power in Sport", funded by the Erasmus+ Programme of the European Union may provide new data and insights. Further information about the project can be found on the project website (< <https://www.playthegame.org/projects/strengthening-athlete-power-in-sport-sapis/> >).

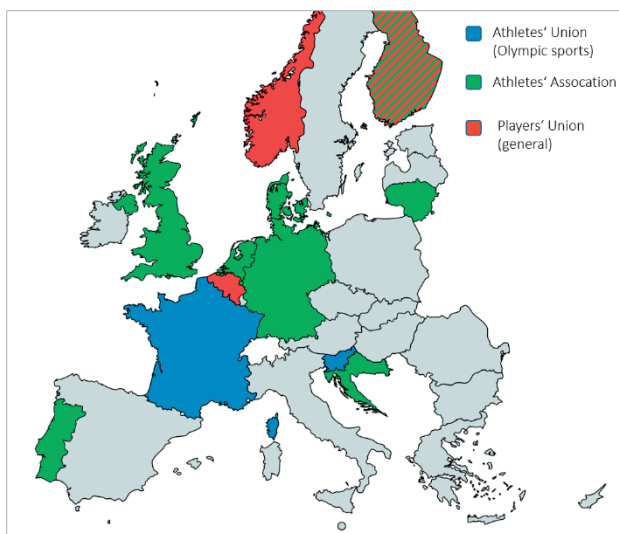
52 Article 9 of the Declaration states that athletes have a right to "report unethical behaviour without fear of retaliation".

53 Detailed information on the policies is available on the website of the DOSB (see < [https://cdn.dosb.de/al-ter\\_Datenbestand/fm-dosb/downloads/dosb/Schutz\\_von\\_Hinweisgeber\\_03.12.2020.pdf](https://cdn.dosb.de/al-ter_Datenbestand/fm-dosb/downloads/dosb/Schutz_von_Hinweisgeber_03.12.2020.pdf) >).

**Germany, Lithuania, Netherlands, Portugal, United Kingdom**). These organisations are not recognised as trade unions and have different legal forms depending on the national context. Most recently, an association in **Finnish** athletics was established (see below). The seven remaining organisations represent athletes across different sports disciplines. The **Danish** Athletes Association (DEF), for example, is a fully independent association of athletes whose aim is to safeguard the interests of all Danish elite athletes. The purpose of DEF is to maintain, protect, and develop the athletic, economic, and social interests of all Danish elite athletes during and after their career. Their work consists of individual guidance and the pursuit of collective interests. In most countries, trade unions representing the interests of athletes in Olympic sports do not play a major role at national level, not least since athletes may be required to have the legal status of workers and a defined number of people holding such a status to unionise themselves (e.g. **Romania, Croatia**). Unions that specifically represent athletes from Olympic sports are found only in **France** (“Union Nationale des Sportifs de Haute-Niveau”, UNSHN) and in **Slovenia** (“Slovenian Athletes Union”, Sindikat športnikov Slovenije, SŠS).

In **France**, the UNSHN was founded in 2015 and aspires to foster the professionalisation of sports through a clearly defined social status and protection of high-performance athletes in individual sports. According to the organisations, around 2000 athletes shall receive full or part-time employment in the short term. The organisation’s activities rely on three key pillars, including athletes’ voice, protection and education/formation, and its services for adhering members are clearly specified on its webpage. In **Slovenia**, the Slovenian Athletes Union (Sindikat športnikov Slovenije, SŠS) is an important stakeholder representing the interests of Slovenian athletes within the country and abroad. Its membership structure comprises athletes registered with sports clubs in the Republic of Slovenia and athletes who are citizens of Slovenia and registered with sports clubs outside of the country who may voluntarily join. The Union’s highest decision-making bodies, including its president and board of directors, are elected by a general assembly that is composed of the union members.

In some countries athletes in Olympic sports may join trade unions that represent athletes from professional team sports and/or employees of other sectors. The Confederation of Christian Trade Unions of **Belgium** (ACV/CSC), for example, offers the opportunity for youth and top-level athletes to become a member within the sector grouping CSC Sporta (United Athletes) and provides support to athletes in negotiations with clubs and federations. In **Norway**, the only organised body that does collective bargaining is the trade union NISO, which fosters collective agreements in football, handball, and ice hockey, but not in individual Olympic sports. However, individual members of NISO – also from Olympic sports – may use the union’s resources to negotiate their collective contracts, as can be seen in the sport of skiing, where marketing rights and insurance for athletes have been bargained collectively. In **Finland**, athletes from Olympic (individual) sports may also join the Finnish Elite Athlete’s Union (Suomen Huippu-urheilijoiden Unioni, SHU) which usually represents players from ice-hockey and football.



*Figure 6: Independent Athletes' Organisations and Players' Unions Representing Athletes in Olympic Sports.*

Compared to the limited influence of trade unions and traditional athletes' commissions within organised sport (which tend to be consultative bodies), newly formed independent athletes' organisations assume a greater role and increasing power within Olympic sports. Some of these, such as NL Sporter in the **Netherlands**, have attempted to pave the way for greater levels of collective bargaining and social dialogue in Olympic sports. However, to date, no collective bargaining agreements have been concluded in Olympic sports in Europe. Also, social dialogue outcomes only play a minor role and are not systematically used in the governance of elite Olympic sports.

#### *Recognition*

The data have shown that recognition of independent athletes' organisations can be ensured through multiple ways, including related provisions in legal/acts, national law, and statutory provisions, funding by public authorities, and/or the involvement of independent athlete organisations in negotiations on relevant sports political issues. Overall, independent athletes' unions/associations that may represent Olympic athletes are recognised in some countries:

The **Slovenian** Athletes Union, for example, is legally recognised by Slovenian law as a trade union. The recognition of Athleten Deutschland e.V. as an independent athletes' organisation has been strengthened considerably by virtue of the "Personalunion"<sup>54</sup> between the members of its board and the DOSB Athletes' Commission, as well as the public funding it receives from the **German** Federal

<sup>54</sup> The term "Personalunion" (German) refers to the number of individuals who are members on both bodies at the same time, e.g. through ex-officio membership (see *Good Practice*, p. 119).

Government. Similarly, pursuant to an audit process of the organisation's structures and activities in 2021, the **French** trade union UNSHN is eligible for government funding. The UNSHN is furthermore a member of the "Fédération Nationale des Associations et Syndicats de Sportifs" (FNASS), the French umbrella body for sport-specific trade unions and athlete associations that was founded in 1993. In the **UK**, the British Elite Athletes Association (BEAA) has a Memorandum of Understanding (MoU) with UK Sport regarding institutional support and general funding principles.

*Good practice:* The **MoU between British Elite Athletes Association (BEAA) and UK Sport**

***Good Practice – MoU between British Elite Athletes Association (BEAA) and UK Sport:***

This MoU, concluded in 2019, "establishes the [British Elite Athletes Association] as an independent and trusted voice of elite athletes and builds a constructive relationship between the two parties." The MoU outlines the key objectives of the cooperation, the responsibilities of each party and establishes quarterly meetings between representatives of the parties.

Source: [https://britisheliteathletes.org/wp-content/uploads/2020/05/BAC\\_UKS\\_MOU-.pdf](https://britisheliteathletes.org/wp-content/uploads/2020/05/BAC_UKS_MOU-.pdf)

Moreover, the case of the **Danish** Badminton players' association illustrates how unionised groups of athletes can become de facto (implicitly) recognised by the Olympic movement by exerting external pressure, for example via the threat of a strike (see Good Practice below).

In short, the current data do not reveal an explicit acknowledgement and recognition of the right to social dialogue and collective bargaining in the Olympic sports sector in any of the surveyed countries. Additionally, legislation does not expressly include provisions on the roles and responsibilities of independent athletes' associations and player unions. Yet, some practical examples in some of the countries outlined above demonstrate how independent athletes' organisations may force SGBs to engage in independent negotiations with the characteristics of social dialogue and collective bargaining.

### *Interference*

Interference with the establishment, functioning, and administration of independent athlete organisations emerge in some countries. For example, in **Germany**, the establishment of Athleten Deutschland e.V. as an independent association provoked conflict regarding the power relations in German elite sport and highlighted tension vis-à-vis the role of the German NOC, the DOSB. In fact, the DOSB initially rejected the foundation of the association beyond the structures of organised sports because it considered its own athletes' commission to be the exclusive and legitimate representative of Olympic athletes. The DOSB even lobbied the German parliament to not provide funding for Athleten Deutschland e.V., although in 2018, the parliament decided to provide funding to the association (Klamet 2019). Overall, data indicate that the provision of public funds seem to be an important enabling factor for independent athletes' organisations to increase their operational capacity and sustain a strong position in the elite sport system.

In contrast to the German case, in **Finland**, the Finnish Athletics Federation played a more supportive role in the establishment of the independent Finnish Athletes Association and contributed to the funding of this new legal entity in the Finnish sport system (Yleisurheilijat ry 2022).

Similarly, at international level, in the sport of rugby (although, as a professional team sport, not the primary subject of this study), World Rugby and the International Rugby Players Association (IRPA) jointly established the Rugby Athlete's Commission (RAC) in 2016. The Commission is recognised by the regulations of World Rugby, and comprises eight representatives who are appointed from IRPA's Player Advisory Group. The recognition and joint establishment of the RAC provide rugby union players with "a framework in which consultation and player participation in World Rugby decision-making processes can take place [...] independent of the national federations" (O'Leary 2017, p. 274).

### *Collective agreements*

Though collective agreements are not concluded in Olympic sports in Europe, some examples can be observed of athlete organisations that have independently negotiated and concluded certain (minimum) standards for the athletes they represent. Data on the actual implementation-related outcomes have, however, not been researched systematically within the present study. One model was practised in **Denmark**.

#### ***Good Practice – Collective and Independent Negotiations in Danish Badminton:***

In 2019, the national team agreement in badminton was independently negotiated between the national federation and the badminton players association established under the DEF (the Danish Athletes Association). Athletes managed to mobilise all elite players except for one and did not sign the new agreement until it was independently negotiated.

Sources: <https://def-sport.dk/badminton-ny-kollektiv-aftale/>; <https://www.bt.dk/sport/jan-oe-joergensen-uenig-med-forbund-det-er-ingen-hemmelighed>; <https://www.dr.dk/sporten/badminton/konflikten-er-afsluttet-badminton-danmark-og-spillere-indgaar-ny-aftale>

The adjusted Rule 40 guidelines represent examples of how pressure from a group of athletes who unite themselves and obtain legal advice can lead to policy reform, especially in **Germany** and the **UK**. Yet, these two cases are fundamentally different. Interestingly, in the UK, the Rule 40 provisions were successfully amended based on direct negotiations and a resulting agreement between British athletes and their law firm on the one side, and the British Olympic Association (BOA) on the other side. By contrast, in **Germany**, the process which ultimately led to the amendment of the Rule 40 guidelines at national level was largely influenced by the decision of the Federal Cartel Office (see Dimension 3) that eventually urged the DOSB to act on this matter. Moreover, representatives from the independent association Athleten Deutschland e.V. were heard by the Federal Cartel Office and thus played a greater role in the underlying process, compared to its counterpart in the UK, the BEAA, which was not formally involved from the beginning of the negotiations. Though it must be acknowledged that the ruling of



the German Federal Cartel Office preceded the debate about the Rule 40 in the UK, the BOA has been more proactive in engaging in negotiations with athletes, while the German DOSB has been more reluctant as regards independent German athletes challenging the IOC's Rule 40 guidelines.

## Recommendations – Participation and Bargaining:

**Taking into consideration the above regarding athletes' participation and bargaining, we recommend that:**

### *National Governments*

- adopt specific legislation on athlete representation in SGBs.
- strengthen social dialogue and collective bargaining to foster democratic governance in the national elite sport system by:
- creating fora for multilateral social dialogue and collective bargaining in Olympic sports at national level together with the actors of the elite sport system and independent athletes' organisations;
- taking a mediating role in multilateral forms of social dialogue and collective bargaining; and
- allowing elite athletes without worker status to form and join trade unions.
- officially recognise and support independent athletes' organisations at national level as a representative body of athletes through:
  - specific legislation;
  - a Memorandum of Understanding; and
  - the provision of funding.

### *National Olympic Committees*

- in cooperation with athletes, adopt specific statutes/constitutional provisions on athlete representation on their internal bodies, taking into consideration the various ways in which athletes may be represented, including clearly defined decision-making competences and election/appointment processes of athlete representatives, by:
  - establishing that all members of the Athletes' Commissions are elected by their peers; and
  - establishing objective criteria for any ex-officio appointment of members of the Athletes' Commission.
- strengthen the decision-making competences of Athletes' Commissions.
- reduce conflicts of interest within Athletes' Commissions.
- give athlete representatives voting rights at the highest decision-making level (e.g. supervisory/oversight board).

- engage in collective and independent negotiations with athletes and their representatives on all matters of athletes' employment relations (see previous sections).
- officially recognise and support independent athletes' organisations at national level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.
- increase dialogue with independent athletes' organisations, where they exist, and engage in cooperation with them, where applicable.
- together with the actors of the elite sport system, national governments, and independent athletes' organisations, create fora for multilateral social dialogue and collective bargaining in Olympic sports at national level.

### ***National Federations***

- in cooperation with athletes, adopt specific statutes/constitutional provisions on athlete representation in their internal bodies, taking into consideration the various ways in which athletes may be represented, and including clearly defined decision-making competences and election/appointment processes of athlete representatives, by:
  - establishing that all members of the Athletes' Commissions are elected by their peers;
  - establishing objective criteria for any (ex-officio) appointment of members of the Athletes' Commission.
- strengthen the decision-making competences of Athletes' Commissions.
- reduce conflicts of interest within Athletes' Commissions.
- give athlete representatives voting rights at the highest decision-making level (e.g. supervisory/oversight board).
- engage in collective and independent negotiations with athletes and their representatives on all matters of athletes' employment relations (see previous sections).
- officially recognise and support independent athletes' organisations at national level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.
- increase dialogue with independent athletes' organisations, where they exist, and engage in cooperation with them, where applicable.
- together with the actors of the elite sport system, national governments, and independent athletes' organisations, create fora for multilateral social dialogue and collective bargaining in Olympic sports at national level.

***Public Authorities, (e.g. the military), where they play a role in elite sport support,***

- engage in dialogue with athlete representatives and, where they exist, independent athletes' organisations on all matters related to Olympic elite sports.
- create/advance opportunities for athletes' representation within their internal structures and governance processes.
- officially recognise and support independent athletes' organisations at national level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.
- together with the actors of the elite sport system, national governments and independent athletes' organisations, participate in fora for multilateral social dialogue and collective bargaining in Olympic sports at national level.

***Specific Elite Sport Organisations, where they exist,***

- give athlete representatives voting rights at the highest decision-making level (e.g. supervisory/oversight board).
- engage in dialogue with athlete representatives and, where they exist, independent athletes' organisations on all matters related to Olympic elite sports.
- together with the actors of the elite sport system, national governments, and independent athletes' organisations, participate in fora for multilateral social dialogue and collective bargaining in Olympic sports at national level.
- officially recognise and support independent athletes' organisations at national level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.

***Independent Athletes' Organisations***

- increase their operational capacities and membership base.
- together with the actors of the elite sport system and national governments, create fora for multilateral social dialogue and collective bargaining in Olympic sports at national level.
- increase dialogue with SGBs' Athletes' Commissions and engage in cooperation with them where applicable.
- foster dialogue among existing independent athletes' organisations and support their establishment in countries where they do not exist.

***the European Union***

- extends policies and activities on social dialogue to the field of Olympic elite sports.
- investigates and clarifies to what extent applicable standards enshrined in its laws and instruments that address social dialogue and collective bargaining are applicable to athletes

in Olympic sports (i.a. Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons (2022/C 374/02)).

- actively promotes EU-level social dialogue in Olympic sport.
- upon joint request from the involved social partners, coordinates and develops a forum for EU-level multilateral social dialogue in Olympic sports.
- officially recognises independent athletes' organisations at European level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.

#### ***the International Olympic Committee***

- strengthens the decision-making competences of its Athletes' Commission.
- reduces conflicts of interest within Athletes' Commissions.
- gives athlete representatives voting rights at the highest decision-making level (e.g. supervisory/oversight board).
- under the auspices of the International Labour Organization, participates in fora for multilateral social dialogue and collective bargaining in Olympic sports at international level.
- officially recognises independent athletes' organisations at the international level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.
- mandates that the European Olympic Committees participate in EU-level social dialogue in Olympic sports.

#### ***International Federations***

- strengthen the decision-making competences of their Athletes' Commission.
- reduce conflicts of interest within Athletes' Commissions.
- give athlete representatives voting rights at the highest decision-making level (e.g. supervisory/oversight board).
- under the auspices of the International Labour Organization, participate in fora for multilateral social dialogue and collective bargaining in Olympic sports at international level.
- officially recognise independent athletes' organisations at international level as a representative body of athletes through a Memorandum of Understanding and/or cooperation agreements.
- mandate their European Continental Federations to participate in EU-level social dialogue in Olympic sports.

## 2. Analytical Theses for Good Governance in Athletes' Employment Relations

Evaluating Olympic elite sport from the interdisciplinary perspective of employment relations yields to several important findings. Arguably, some of the findings are in contrast to principles that have shaped – and still shape – the field of Olympic sports in Europe (e.g. the concept of amateurism, cf. Llewellyn & Gleaves 2016) and might, therefore, become a source for political and administrative controversies. The following sections provide a summary of the research analysis, outline the central theses, and inform general recommendations.

**Thesis 1:** The elite performance of athletes in Olympic sports produces economic gain and is the reason for the spending of substantial amounts of public money.

Elite sport produces significant **economic gain** through the commercialisation of international sport events and the Olympic Games. The significant revenues from TV rights and sponsorships are generated through the performance of elite athletes. Also, across the European continent, **national governments invest** heavily in Olympic elite sports to, amongst other reasons, win medals under a country's flag. Public investment in, and the commercialisation of elite sport is driven by the performances of athletes.

**Thesis 2:** Olympic elite athletes provide their services in an environment of subordination.

Elite athletes in Olympic sports find themselves in a **complex network of relationships**, for example with clubs, national federations, NOCs, and potentially with *Public Authorities without a generic focus on elite sport* and *Specific Elite Sport Organisations*. Within the framework of this study, the sum of these relationships is referred to as *athletes' employment relations* (cf. Glossary). While courts have been reluctant to identify a relationship of subordination with a specific actor, the relationships that elite athletes maintain create a situation characterised by **high degrees of dependency** on, and **subordination** under, the actors. In turn, because of the many obligations arising from the relationships, it is difficult to establish situations and contexts in which elite athletes in Olympic sports are not subject to the direction of others. Still, Olympic elite athletes are currently **only considered as workers** under national law in case of an **employment relationship** with a public authority or in a limited number of specific cases where courts have held that they are workers (cf. Part II, Chapter 2).

**Thesis 3:** SGBs have a significant degree of control over the career of Olympic elite athletes.

For the period of international sport events, the relationship between athletes of the national team and the respective SGB is characterised by subordination and remuneration. Therefore, athletes should be **employed for the period of Olympic Games and other international sport events**. It may be observed that the **monopolistic nature** of the pyramidal model of the Olympic Movement enables SGBs to exert

a high degree of control over the provision of athletes' services including any remuneration derived from those services. Although typically athletes are not considered to be workers of SGBs, they are subject to a high degree of regulation imposed by the national and international frameworks, rules, contracts, and policies of the Olympic elite sport system. The fact that many Olympic elite athletes do not benefit from adequate minimum wages and social protection schemes, *inter alia*, does not always go hand in hand with an increased flexibility for athletes to market themselves or pursue additional work.

**Thesis 4:** The situation of athletes' employment and social relations can be precarious.

Six interlinked dimensions characterise athletes' employment and social relations in Olympic sports. The evaluation of the situation against the rights of athletes expressed in 27 principles of Good Governance reveals that **shortcomings** prevail across all dimensions.

**Contracts:** The contractual situation of Olympic elite athletes is complex. Standard contracts are a common feature in Olympic elite sports, and athletes sign different contracts with the actors of the elite sport system (NOCs, NFs, public authorities, Specific Elite Sport Organisations). In many cases, these contracts subject athletes to a significant degree of control by the respective actor but do not constitute an employment contract. While the details of the contractual provisions of most contracts currently remain unknown, and therefore no general evaluation of athletes' contracts can be carried out, standard contracts in Olympic elite sports are usually adopted unilaterally by the more dominant party. Collective negotiation of athletes' contracts is uncommon. These characteristics, together with the monopolistic structure of, and the inherent imbalance of power within the Olympic Movement, support the conclusion that athlete agreements are not entered into voluntarily by athletes (cf. Freeburn 2018; in respect of arbitration clauses, see *Mutu & Pechstein v. Switzerland* 02/10/2018; OLG Frankfurt am Main 2-06 O 457/19).

**Income:** While in all countries specifically designed income/financial support schemes exist, the research shows that many elite athletes in Olympic sports receive an insufficient income from their practice of elite sport alone to meet their living costs. On the one hand, income/financial support schemes in Olympic sports follow clear meritocratic principles. On the other hand, these schemes are often based on a reward-based social security system in which athletes may become ineligible for funding if they can receive a sufficient income from other sources.

**Commercial Opportunities:** For many athletes in Olympic sports, the Olympic Games constitute the most important stage on which to market themselves. Through the IOC's Rule 40 provisions, and also depending on various other contractual relationships, Olympic elite athletes may be subject to restrictions on commercial opportunities and additional work

outside of sport. Meanwhile, the different stakeholders of the elite sport system at both the national and international level provide support systems for elite athletes to enhance their commercial value and skills beyond the practice of their elite sport.

**Occupational Safety and Health (OSH):** Due to the absence of worker status, statutory provisions of OSH in national law (e.g. working time and annual leave regulations) only apply to a limited number of Olympic elite athletes. Some important measures of safety and health are provided through a combination of state-organised and private measures. However, a systematic coordination and OSH-focused approach to Olympic elite sport remains a matter for further improvement. Recent scandals of (sexual) abuse in sports have dramatically illustrated the ever-increasing relevance of specific measures to protect athletes from harms that arise from practising sport.

**Social Protection:** Coverage and payment of statutory social protection provisions strongly differ depending on both the athletes' legal status (worker, self-employed, or amateur) and the national context. Across the continent, many athletes are not eligible for important provisions, such as statutory pension schemes or statutory maternity/paternity protection. A career in elite sport exposes athletes to several specific risks, and it is characterised by its short length and intense levels of physical activity. Therefore, specific social protection measures -- that secure an athlete's social status and complement (but never replace) statutory social protection measures-- are required in today's Olympic sports.

**Participation and Bargaining:** If athletes are formally involved, it is usually through athletes' commissions within SGBs. The research shows that all NOCs have an Athletes' Commission. Furthermore, in many SGBs, athlete representatives are included in the decision-making structures. However, questions remain regarding the effectiveness and proportionality of athletes' involvement in these structures. The role of general trade unions and independent athletes' organisations, such as athletes' unions and associations, is currently limited. This may also explain why collective and independent negotiations are a rather uncommon phenomenon in Olympic sports. Another reason for this may be the difficulty of determining which organisation would represent the employers' side in collective and independent negotiations. Despite some recent developments at a national level (for example, the increasing pluralisation through the formation and institutionalisation of independent athletes' organisations), athletes' current bargaining power must be considered rather weak vis-à-vis the monopolistic structures of SGBs. When considering the power imbalance between individual athletes and sport organisations, it is clear that there is a real risk of detrimental consequences and retaliation for athletes who challenge the current *status quo*.

**Thesis 5:** Good Governance in Olympic elite sport requires a systemic approach that places athletes' rights at its centre.

Athletes' relationships are embedded in the legal and socio-political frameworks of the nation state and beyond. A multitude of private and public stakeholders shape the employment and social relations of Olympic elite athletes. While the focus of Good Governance in sport usually revolves around the practices of private SGBs, in Olympic elite sport, it should **place at its centre** the moral and normative **rights of athletes** as citizens, workers, and key stakeholders of the Olympic Movement. The design and characteristics of the various relationships between elite athletes and the stakeholders involved in the governance of Olympic elite sport, as well as the legal and socio-political frameworks affecting them, must be evaluated from a rights-based perspective that places the athletes at its centre.

**Thesis 6:** Athletes' employment relations rights can be fulfilled through different ways; while worker status is preferable, the actual practice (of the involved stakeholders) is important.

The above analysis highlights that, in general, the legal **status of a worker**, based on an employment relationship with a public authority at a national level, has **positive effects** on many aspects across the different dimensions. Besides receiving a regular income that complies with national minimum wage regulations, employed athletes are also covered by statutory social protection measures and provisions of OSH. From the perspective of the developed Good Governance Concept (see Part III, Chapter 1), however, the practical characteristics and practices that govern athletes' relationships are also relevant when evaluating the *status quo* and informing future recommendations. Therefore, while athletes who are workers under national law may find themselves in a better position as regards many aspects of their employment and social relations, alternative models and practices that meet the formulated Good Governance principles can be identified. All stakeholders involved in the governance of Olympic elite sport must assume **a joint responsibility** to meet these basic criteria in different ways. At the same time, they should still be able to design policies and measures that account for the specific national contexts and the stakeholders' capacities. While some of the athletes' rights might be fulfilled through a specific action in one country, stakeholders in another country may take **different actions that will provide the same results**, i.e. the fulfilment of the athletes' rights.

**Thesis 7:** Contracts, social dialogue and collective bargaining are important tools of Good Governance in athletes' employment relations.

Applying the context-specific dimensions of the present rights-based Good Governance Concept and the broader dimensions and goals of Good Governance in academic literature (e.g. transparency, accountability, democracy, etc.; see Part III, Chapter 1), our conclusion is that the dimensions of "Contract" and "Participation and Bargaining" are important to achieving Good Governance in athletes' employment relations. Contracts are an important tool to increase **transparency** and enhance **accountability** in Olympic sports. Instruments of athletes' participation and bargaining



(both inside and outside the structures of SGBs) through *collective and independent negotiations* are important measures to foster **democratic governance**. Innovative forms of *social dialogue* and *collective bargaining* are especially essential for the future Good Governance of Olympic elite sport. Such instruments provide a countervailing force to the inherent power-asymmetries between athletes and SGBs, and constitute a way to design policies that account for the specificities of the elite sport sector.

**Thesis 8:** Interaction and coordination between the national and trans-/supranational levels remain a key challenge for effective athlete-centred policies.

Olympic elite sport is an international arena. The Olympic Movement (*private sphere*), which is characterised by its pyramidal governance structure, imposes several *international* regulatory frameworks on athletes with *binding* rules and regulations. In contrast, corresponding socio-political and legal frameworks with *binding* effects for the governance of athletes' employment and social relations have not yet been developed by international or supranational actors, such as the EU, Council of Europe, or the ILO (*public sphere*). However, *non-binding* frameworks and fora developed by these stakeholders at the European and international level play an increasing role.<sup>55</sup> At the national level, SGBs' specific measures, as well as regulations and policies enshrined in national law have a strong influence on athletes' welfare. To date, especially within the public sphere, the national level remains the main point of reference and shapes many characteristics of athletes' employment and social relations. How national, transnational and supranational governance, as well as the public and private levels, may **effectively interact and complement each other** for the benefit of athletes remains a task for policy making and future research.

<sup>55</sup> Relevant frameworks include, inter alia, the Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the key features of a European Sport Model (Council of the European Union 2021), the European Sports Charter (Council of Europe 2021) or the Points of Consensus (International Labour Organization 2020). Fora include the EU Sport Forum, High-Level Expert Groups, the Enlarged Partial Agreement on Sport (EPAS) or the ILO Global Dialogue Forum.

### 3. Overall Roles and Responsibilities of the Stakeholders

Based on the actor-specific recommendations on each of the six Good Governance dimensions of athletes' employment and social relations outlined above, the following sections outline who bears responsibility for their implementation. Drawing on an analysis of the stakeholders' roles and responsibilities, actor-specific recommendations of overarching nature are provided.

#### 3.1. National Governments

It is axiomatic that national governments are the primary **legislators (initiators)**. Sport-specific legislation from national governments may, for example, not only determine athletes' legal status but also whether, and under what conditions, statutory OSH and social protection provisions apply to them.

In addition, governments take a **coordinating role** with regards to the development of a national elite sport system, particularly through public funding policies. To ensure athletes' social protection through an effective, complementary combination of public and private measures, the coordinating capacity of governments (together with leading SGBs) is required.

Moreover, national governments **supervise** the extent to which its legally binding legislative frameworks, e.g. competition/antitrust law, are enforced by the actors in the elite sport system. Through **funding** of elite sport at national level, national governments also provide important incentives for the future development of the elite sport sector, and thereby guide the policy-development process as a leading **agenda-setter**.

Ultimately, national governments **legitimise key actors** (e.g. NOCs, independent athletes' organisations) in an elite sport system through recognising these entities and their mandates in relevant legislation and/or through provision of public funding.

**Taking into consideration the above, we recommend that national governments:**

- not only amend existing sport-specific legislation, but also consider adopting new legislation that specifically addresses athletes' welfare and rights in Olympic elite sport.
- assume a coordinating and guiding role and act as mediator (e.g. in social dialogue processes for athletes' social protection).
- expand monitoring and supervisory competences through relevant agencies (e.g. regarding safety and health, compliance with fundamental athlete rights, and equal treatment).
- put athletes' rights at the centre of national elite sport development (e.g. where they provide elite sport funding to NOCs and NFs, bind the allocation of funds to the consideration of athletes' rights).

- incentivise policy reforms and improvements (e.g. increase of funding to SGBs, specific legislation).
- foster institutional support and recognition of current and emerging actors (e.g. independent athletes' organisations).
- consider expanding elite sport programmes that offer employment opportunities for athletes.

### 3.2. National Olympic Committees (NOCs)

NOCs exercise a high degree of **control over Olympic elite athletes** at a national level, especially through the subordination of athletes under their rules and policies (e.g. eligibility and financial support criteria, contracts or terms of participation) as part of the pyramidal model of the Olympic elite sport system. An example is the exclusive competence of NOCs to send selected athletes to the Olympic Games as part of a national team delegation. An NOC's relationship with athletes during the time of the Olympic Games appears to be characterised by principles of subordination and remuneration or economic gain in accordance with the European Commission's (2010) *Communication on the Free Movement of Workers* that may qualify participating athletes as workers.

Furthermore, NOCs operate as **gatekeepers between Olympic athletes and the IOC, and especially the Olympic Games** (see for example the IOC's solidarity programme and Conditions for Participation Form). Although they benefit in many ways from the IOC's solidarity payments, Olympic athletes do not have a strong voice when it comes to decisions regarding the redistribution of IOC funds.<sup>56</sup> A considerable share of the money is channelled through the NOCs which decide upon its use at national level in accordance with the priorities of the IOC's solidarity programme. Similarly, for participation in the Olympic Games, athletes are required to sign athlete agreements with their responsible NOCs. These agreements are drafted by the IOC and provided in template form to NOCs, and provide almost no flexibility for national context-specific deviations. Another example is the election process for the IOC Athletes' Commission: athletes can only stand for election after they have been presented by their respective NOCs.

The rationale behind the IOC's solidarity programme shows that an NOC is the principal actor responsible for implementing **IOC policies at national level**. Various regulatory rules and policies of the IOC, such as its Rule 40 Guidelines, require NOCs to implement related provisions at national level.

At the same time, NOCs operate as **caregivers** for Olympic elite athletes, a position through which they assume an important role of ensuring athletes' safety and health and social protection, for example through the provision of specific pension and retirement schemes.

<sup>56</sup> The Chair of the IOC Athletes' Commission holds one of 22 seats on the IOC's Olympic Solidarity Commission (see < <https://olympics.com/ioc/olympic-solidarity-commission> >).

In addition, NOCs are a **key coordinator of national elite sport systems and (strategic) policy development**. In the area of elite sport development, NOCs, for example, serve not only as a primary contact for national governments, public authorities, civil society actors, and clubs, inter alia, but they also assume the important role of distributing public and private funds. In some cases, they may even have a direct influence over the use of this money.

NOCs are also **advocates for Olympic sports** through their relations with national governments and actors of the private economy. In competition with representatives of non-Olympic and grassroots sports, they **lobby for greater levels of funding for Olympic elite sport** and their financial support/income schemes for Olympic elite athletes, for instance.

**Taking into consideration the above, we recommend that National Olympic Committees:**

- increase transparency (e.g. with regards to contract stipulations, eligibility and financial support criteria).
- use existing opportunities and take a leading role in creating new ones to empower athletes by:
  - expanding support structures and removing disproportionate restrictions to athletes' commercial and occupational freedoms in order to allow them to fully exploit their commercial opportunities (e.g. amended Rule 40 Guidelines);
  - creating and promoting fora for *collective and independent negotiations* and *social dialogue* with athletes and their representatives over policies affecting them;
  - educating and informing athletes (e.g. facilitate access to IOC information/structures); and
  - lobbying key actors (governments, private sector) for increased funding of Olympic elite athletes.
- critically reconsider their internal institutional structures and governance processes, including:
  - the role of Athletes' Commissions;
  - the inclusion of athlete representatives in decision-making processes; and
  - athlete-centred key policies (e.g. income thresholds *income/financial support schemes*; commercial restrictions; standard contracts).
- increase their operational capacity and adaptability to new governance challenges and emerging policy issues (e.g. contact/cooperation with independent athletes' organisation, safe sport).
- acknowledge their leading role over Olympic elite athletes (e.g. through adequate remuneration of athletes and payments of their social protection), by:

- employing athletes for the period of the Olympic Games and other international-level events to which they send a team of athletes.
- recognise and work together with independent athletes' organisations.

### 3.3. National Federations (NFs)

By virtue of the so-called “one-federation principle”, and their exclusive responsibility to select athletes in their sport discipline for international sport events and to nominate/select them for participation in the Olympic Games, NFs (similar to NOCs) exercise **control over Olympic elite athletes**.

In their role as **recipient and distributor of public funding**, NFs act as **gatekeepers for public funding** available to athletes. For example, athletes typically need the recommendation from their NF to become eligible for related income/financial support schemes.

Moreover, NFs **develop Olympic elite sports (disciplines)** in numerous ways. In this regard, they balance, for example, economic aspirations towards advancing the commercialisation of their sport with their responsibility to uphold relevant safety and health standards. In common with NOCs, NFs are also important **caregivers for Olympic elite athletes**, particularly through specific measures for athletes' OSH that account for the specific risks associated with the particular type of sports carried out, including, *inter alia*, regular medical screenings and assistance.

NFs generally compete with each other for the acquisition of public funds, and therefore act as **advocates and lobbyists** for government funding.

**Taking into consideration the above, we recommend that National Federations:**

- increase transparency (e.g. with regards to contract stipulations, eligibility and financial support criteria).
- use existing opportunities and take a leading role in creating new ones to empower athletes by:
  - expanding support structures and removing disproportionate restrictions to athletes' commercial and occupational freedoms so that they can fully exploit their commercial opportunities;
  - creating and promoting fora for collective and independent negotiations and social dialogue with athletes and their representatives;
  - educating and informing athletes (e.g. facilitate access to IF information/structures); and
  - lobbying key actors (governments, private sector) for increased funding of Olympic elite athletes.

- critically reconsider their internal institutional structures and governance processes, including:
  - the role of Athletes' Commissions;
  - the inclusion of athlete representatives in decision-making processes; and
  - athlete-centred key policies (e.g. income thresholds; income/financial support schemes; commercial restrictions; standard contracts).
- increase their operational capacity and adaptability to new governance challenges and emerging policy issues (e.g. contact/cooperation with an independent athletes' organisation, safe sport).
- acknowledge their leading role over Olympic elite athletes (e.g. through adequate remuneration of athletes and payments of their social protection), by
  - employing athletes when they represent the national team in international sports competitions.
- recognise and work together with independent athletes' organisations.

### 3.4. Public Authorities without a Generic Focus on Elite Sport

Public authorities of a nation state, such as the military/armed forces, police, or customs offices, are the **primary employer and caregiver of Olympic elite athletes in Europe**. In countries where such authorities offer employment contracts to athletes, minimum standards of statutory OSH and social protection provisions in national law are provided. In this regard, they can be considered an important **institutional supporter of elite sport development** that not only creates an environment which fosters the development of an athlete's performance, but also provides them with adequate social security coverage (and potential occupational paths for a successful transition into their post-career lives).

**Taking into consideration the above, we recommend that Public Authorities, where they play a role:**

- identify and address possible shortcomings as regards statutory provisions that shall apply to athletes employed by them under national law (e.g. minimum wage levels, standards of OSH, social protection coverage).
- examine whether applicable statutory provisions adequately account for the particular needs of Olympic elite athletes.

### 3.5. Specific Elite Sport Organisations

Specific elite sport organisations **empower and advocate for Olympic elite athletes** by lobbying national governments, private companies, and civil society organisations, *inter alia*, for greater

investments in elite athlete support, as well as promoting a higher societal value of elite sports as a whole. *Specific Elite Sport Organisations* exist in many different legal forms and their actual tasks vary from country to country. While the following roles and responsibilities are of particular importance for those operating as public organisations, they may equally describe the tasks of other public-private and/or private Specific Elite Sport Organisations.

Where they are registered as public organisations (for example as a national sport centre) that are affiliated with ministries, Specific Elite Sport Organisations may **employ athletes**.<sup>57</sup> Additionally, most of the organisations **distribute funds** from public and private sources and **educate** Olympic elite athletes on, *inter alia*, issues of self-marketing, sponsorships, and personal career development. Overall, Specific Elite Sport Organisations can be described as **flexibly-operating entities** dedicated to the development of bespoke support programmes for Olympic elite athletes.

**Taking into consideration the above, we recommend that Specific Elite Sport Organisations, where they exist:**

- depending on their role in the governance of the national elite sport system, take a (1) leading or (2) complementary role in the governance of athletes' employment and social relations, and:
  - (1) Where they act as public or public-private entities, they shall establish comprehensive policies on athletes' welfare (inter alia. on matters of contract, income and social protection).
  - (2) Where they act as private entities, they shall identify possible shortcomings with regards to athletes' welfare in the governance of elite sport and address them through needs-based specific support policies and measures.
- engage in multi-stakeholder dialogue and increase mutual exchange and cooperation with other key actors of the elite sport system in order to provide athletes with effective support policies.

### 3.6. Independent Athletes' Organisations

There is an imbalance of power in the Olympic elite sport system and *independent athletes' organisations* provide a **countervailing power**. These organisations are comparatively "young" organisations in the governance of Olympic elite sport, and their increasing numbers and institutionalisation challenge the central pillars of the monopolistic pyramidal model of Olympic elite sport. They complement the work of traditional Athletes' Commissions within bodies of the Olympic Movement, and can even replace them (see the example of Athleten Deutschland in Germany). As regards their operational tasks and

<sup>57</sup> This is only the case in Belgium, the Czech Republic, and Slovakia.

duties, independent athletes' organisations operate as a powerful **advocate and collective voice** for the benefit of Olympic elite athletes (for example through representation of their interests and concerns at all governance levels). They **provide services to the athletes they represent**, including information, education, legal/financial advice.

Independent athletes' organisations are an important **caregiver and point of contact for individual athletes** in relation to, *inter alia*, matters of discrimination and abuse. They can be seen as **provocateurs and agenda-setters (change agents)** that, for example, contribute to increasing the public scrutiny of sports governance issues and accountability of other sport organisations through their media presence and cooperation with investigative journalists.

**Taking into consideration the above, we recommend that independent athletes' organisations:**

- extend their reach, visibility, and democratic legitimacy (e.g. through increasing their membership base).
- intensify regular exchange between their representatives and active athletes (members).
- increase mutual exchange and cooperation with other independent athletes' organisations.
- engage in multi-stakeholder dialogue and strengthen their ties with other actors of the national sport system and national governments.
- enhance their operational capacities in all areas (especially on legal matters).

### 3.7. The European Union

Although the EU's **legislative competences** in the fields of employment, social policy, and sports are limited (see Articles 4 and 6 TFEU), the EU can legislate for athletes' employment and social relations through the adoption of legally binding acts where its competence permits. It can be stated for the area of social policy that large parts of labour law were already transferred to the competence of the EU and into the area of qualified majority decisions with the Maastricht Treaty. The areas of employment policy and the protection of workers, which fall within the scope of unanimity, were also transferred to the EU, even though the Member States are still bound to the common consensus by the Council quorum. There is no doubt that with Maastricht the EU's sphere of competence in social policy has expanded considerably. Moreover, there is a substantial overlapping with economy policies. For example, EU legislation on minimum working conditions (e.g. the European Working Time Directive and Directive on adequate minimum wages) applies to the economic dimensions of sport. The extent to which selected provisions in relevant charters/conventions – such as the EU Charter of Fundamental Rights or the European Pillar of Social Rights – may be systematically used to regulate matters of athlete welfare remains a future task for policy-makers and researchers alike.

Nevertheless, the EU may, in principle, have applicable legislative and constitutional tools at its disposal



to improve the governance of athletes' employment and social relations. However, to date, it is not the outcomes of the ordinary legislative procedure that act as the EU's primary lever to regulate sports governance, but rather specific case law of the Court of Justice of the European Union (CJEU) and the European Commission (EC) on sports-related legal matters that touch upon EU competition and/or antitrust law.

Apart from the (potential) use of legally binding instruments described above, the EU also has at its disposal a variety of soft law tools and mechanisms (e.g. Open Method of Coordination, OMC) (Armstrong 2018) as well as policy documents, including communications and resolutions from the European Commission and Council of the EU, that define its sports political position and enable it to act as an important transnational **agenda-setter, coordinator, and networker** on sport policy issues. Through, for example, the current EU Work Plan for Sport (2021-2024) and the Council's (2021) Resolution on the "key features of a European Model of Sport", the EU specifies values-based and morally-driven ethical expectations of Olympic elite sports governance. The principle of "conditional autonomy", which is assessed against the implementation of specific Good Governance dimensions in SGBs, as well as clear reference to athletes' rights, illustrate the extent to which the EU also represents a leading **normative power** in the field of sport governance. As a coordinator and networker, the EU not only promotes the development of multilateral and multi-stakeholder discussion fora and platforms on matters of sport governance and policy (for example through its annual Sport Forum), but, more specifically, it operates as a key **driving force of social dialogue** in the European sport sector in line with the Articles 151-153 TFEU.

Overall, there remain open questions regarding the applicability of legal instruments, including binding (for example, directives) and non-binding instruments (for example, OMC), the political scope of which is limited to EU member states. However, the many commonalities between the IOC's pyramidal governance model and the EU's conception of a European Model of Sports underline that the EU not only serves as a source of legitimation for the Olympic Movement, but has a strong stake in driving and enforcing future reforms that relate to athletes' employment and social relations. Therefore, activities aimed at improving the employment and social relations of athletes in Olympic sports in Europe need to be embedded in the EU's multi-level system.

**Taking into consideration the above, we recommend that the European Union:**

- through the available instruments of its institutions, confirms the legal status of elite athletes.
- widens its understanding and concept of Good Governance in elite sport and puts athletes' rights at the centre of its approaches by:
  - substantiating and specifying its understanding of "athletes' rights" in Olympic elite sport (cf. EU Work Plan for Sport 2021-2024); and
  - developing further provisions in the next EU Work Plan for Sport or in a separate document on the subject.



- examines the extent to which key characteristics of the European Model of Sport are in accordance with universally applicable athletes' rights in the governance of their employment and social relations.
- expands fora for multi-stakeholder dialogue on athletes' employment and social relations, including:
  - the active promotion of EU level social dialogue as a key component of Good Governance;
  - the coordination and development of a (sectoral) social dialogue committee for the governance of Olympic elite sports; and
  - the implementation of a high-level expert group on athletes' employment and social relations.
- based on its principle of conditional autonomy, and through the available instruments of the institutions, holds sport organisations and national governments accountable for implementing and enforcing measures that fulfil athletes' rights.
- through its institutions, investigates and clarifies whether the current instruments need to be adjusted and/or competences shifted to provide for effective mechanisms that ensure compliance with its principle of conditional autonomy through the fulfilment of athlete rights.
- reflects on other proposals, such as those put forward by the European Trade Union Confederation, to introduce a *Social Progress Protocol* that takes stock of the situation and takes account of changes in order to give general priority to social rights over economic freedoms.<sup>58</sup>

### 3.8. The International Olympic Committee (IOC)

The IOC is the **global regulator and rule-setter** of Olympic elite sport, and it holds significant regulatory power and steering competences for the development of the Olympic Movement at an international level. The IOC's harmonisation of regulatory frameworks and governance approaches across all countries and various types of (satellite) organisations within its pyramidal governance model (as for example the creation of Athletes' Commissions in NOCs) demonstrates that it exercises considerable **authority over NOCs, IFs, and NFs**, amongst others. NOCs and IFs rely heavily on the IOC's competence to govern key funding streams and redistribution mechanisms without external interference. According to its annual financial statements, the IOC reinvests a considerable share (90%) of its total revenues into the development of sports (e.g. through its Olympic Solidarity Programme), and is, therefore, a key funder and caregiver for Olympic elite athletes.

58 See < <https://www.etuc.org/en/proposal-social-progress-protocol> >



The United Nations' official recognition in 2007 of the IOC's work, including former General-Secretary Ban Ki-moon's statement that "Olympic Principles are United Nations Principles" (Ban Ki-moon 2009, cited in IOC 2022b) qualifies the IOC as a **universalist actor**. Here especially, the UN's view that the IOC can be an "important enabler" of sustainable development, and may also contribute to the promotion of "inclusive and sustainable economic growth, employment and decent work for all" (SDG 8), assigns the IOC a key responsibility to fulfil athletes' rights (IOC 2017, p. 1). However, systematic forms of cooperation and exchange between the IOC and the International Labour Organization (ILO) (as the primary UN body responsible for labour/work-related issues) have not been initiated to the authors' knowledge. With regards to athletes' rights, the IOC has assumed a role as a **universal harmoniser** through the adoption of universally applicable frameworks and policies, such as its Strategic Framework on Human Rights in 2022 and Athletes' Rights and Responsibilities Declaration in 2018.

Moreover, as owner of the Olympic Games, the IOC is an **economic powerhouse**. The IOC's most recent annual report reveals that it further increased its revenue during the last Olympic cycle, from USD \$5.7 billion to USD \$7.6 billion (IOC 2022a, p.173). At the same time and to the same extent, it is a significant **political powerhouse**. The IOC not only enjoys facilitated institutional access to major political leaders of the world, but is also able to shape the prerogative of key questions and issues related to the development and societal impact of Olympic sports.

**Taking into consideration the above, we recommend that the International Olympic Committee:**

- uses its platform and political power as a global leader in Olympic elite sport to support the fulfilment of universally applicable athletes' rights.
- monitors and steers recognised NOCs and IFs in their activities related to athletes' welfare.
- acknowledges that athletes contribute to considerable economic gain through their performance and the commercialisation of their name, image, and likeness rights within the scope of the Olympic Games.
- reconsiders the distribution mechanisms underpinning the solidarity model aimed at providing Olympic athletes with an equitable share.
- recognises the dependencies it creates for Olympic athletes through its international regulatory frameworks and its caregiving responsibility resulting therefrom.
- engages with athletes that have chosen to organise in independent athletes' organisations.

### 3.9. International Federations (IFs)

International Federations **govern** their respective **sport (discipline)** on a global level. They set binding rules over the game and promote the development of the sport through their activities and those of their member federations at national level. IFs may assume a **harmonising role** for their member

organisations through the adoption of binding rules or non-binding guidelines. Depending on the commercial value of the sport (discipline) governed by an IF, they may also be a strong **economic actor** in international elite sport. For example, in 2021, World Athletics generated revenues of more than USD \$43.3 million from its activities. In addition, the organisation received USD \$39.4 million from the IOC as an “Olympic dividend” (World Athletics 2021, p. 15). Of these revenues, USD \$9 million have been spent on “Grants & Development”. Through their international competitions, IFs also distribute prize money to athletes, which makes them an important **funder** for elite athletes competing at the international level. Besides the provisions of funds, IFs also commission research into, and provide measures related to, athletes’ safety and health. This underlines their role as an important **caregiver** for athletes.

**Taking into consideration the above, we recommend that International Federations:**

- use their platform and political power over their respective sport (discipline) to support the fulfilment of universally applicable athletes’ rights.
- monitor and steer their member federations in their activities related to athletes’ welfare.
- acknowledge that athletes contribute to considerable economic gain through their performance and the commercialisation of their name, image, and likeness rights within the scope of international sport events.
- examine the dependencies they create for elite athletes through their international regulatory frameworks and their caregiving responsibility resulting therefrom.
- engage with athletes who have chosen to organise in independent athletes’ organisations.

### 3.10. The International Labour Organization (ILO)

The ILO acts as a **multilateral networker that translates universal frameworks** on labour rights and working conditions, *inter alia*, into carefully formulated, context-specific guidelines in the area of sport governance. In this regard, it can be considered an important **normative power**. Its non-binding instruments and activities are focused primarily on **knowledge and awareness-raising** as well as **research activities** (see, for example, the scope of its Global Dialogue Forum on Decent Work and Sport that was held in 2020). Notwithstanding the role that the ILO plays – predominantly by means of the *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87), and the *Right to Organise and Collective Bargaining Convention, 1949* (No. 98), which both apply to professional athletes “regardless of their contractual arrangement or employment status” – the ILO acknowledges that it “has not specifically dealt with conditions of work of athletes” during the Olympic Games and in Olympics sports (ILO 2019, p. 4; 25).



**Taking into consideration the above, we recommend that the International Labour Organization:**

- strengthens its ties and cooperation with the IOC and International Federations.
- supports the establishment of independent athletes' organisations on a transnational level.
- develops fora for multi-stakeholder dialogue on athletes' employment and social relations in Olympic elite sport, and:
  - examines its potential role to support the establishment of a sectoral social dialogue committee; and
  - contributes to the identification of social partners.
- considers the adoption of a legal instrument<sup>59</sup> for the governance of athletes' employment and social relations in Olympic elite sport.

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59 Available ILO legal instruments are *Conventions and Recommendations, Declarations, and Resolutions*.



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## **V. Glossary & Annexes**





## Glossary

### Actors of the elite sport system

Organisations at national level that assume an overarching role in the governance of Olympic elite sport. This includes National Olympic Committees, National Federations, *public authorities without a generic focus on elite sport*, and *Specific Elite Sport Organisations*, as well as Ministries responsible for elite sport and national governments.

### Athletes in Olympic sports

Any athlete who practices elite sports in an *Olympic sport* and is a member of a national team or, where they exist, a national elite cadre (synonym: Olympic elite athletes).

### Athletes' employment relations

All legal, contractual, financial, and social relationships that enable an athlete to engage in and perform elite sport in their discipline and specific national context as well as shape economic exchange relations and social conflict relations; this includes the networks, institutions and systems in which different actors are involved with regard to work related processes and economic activities (different from "*Employment relationship*").<sup>60</sup>

### Athlete employment relation rights

Ethically-based and morally-informed rights that all elite athletes in Olympic sports have, irrespective of their legal status, contractual relationships, nationality and sports discipline.

### Collective bargaining

A common form of *social dialogue* at the company, sector, or cross-industry level between social partners that mutually recognise each other and represent their respective constituencies (workers, employers). It can be bipartite as well as tripartite negotiation processes with the involvement of public/governmental authorities. Within this meaning, outcomes are "collective (bargaining) agreements" that may:

- determine working conditions and terms of employment; and/or
- regulate employment relations between employers and workers; and/or
- regulate relations between employers or their organisations and a workers' organisation or workers' organisations.<sup>61</sup> (cf. ILO 2022 Social Dialogue Report).

60 cf. Gall 2021

61 cf. ILO 2022 Social Dialogue Report.

### **Collective and independent negotiation**

Any negotiation between two (or more) parties that have different and clearly defined organisational identities, mandates and purposes. This includes, but is not limited to, social dialogue, collective bargaining and co-decision-making on matters affecting athletes. Based on independent athlete representation, this type of interaction must be clearly distinguished from consultation processes, and athletes' and their representatives' actual decision-making power in the negotiation process may vary.

### **Decent livelihood/life of dignity**

The provision of a basic income that ensures an adequate standard of living and the protection from precarious conditions, including modern slavery and child labour (cf. IOC 2022 Human Rights Strategic Framework, p. 43).<sup>62</sup>

### **Elite sport/career support programmes**

Programmes of overarching nature which are located at the national level and are aimed at (financially and non-materially) supporting elite athletes. Such programmes are usually provided by one or more of the actors of the elite sport system. Standard contracts and income/financial support schemes may be parts of elite sport/career support programmes.

### **Employment relationship**

The relationship characterised by the existence of an employment contract in accordance with national legislation.

### **Income/financial support schemes**

Sources of money with an overarching nature and provided at national level which are available to athletes. These are usually provided by one or more stakeholder group(s), and may include wage schemes from employment contracts, scholarship payments, athlete support grants, etc.

### **Independence**

#### **- Independent athletes' organisations**

Any organisation representing athletes that is structurally independent from an SGB and has a clear organisational identity, mandate and purpose to represent the interests of athletes.

##### **o Athletes' unions**

Independent athlete organisations that are recognised as trade unions under national law.

##### **o Athletes' associations**

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62 ILO 2022 "Decent Work", retrieved from < <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> >; IOC 2022 Human Rights Strategic Framework, p. 43

Independent athlete organisations that are registered as associations.

- **Independent athlete representation**

- Athletes' ability to independently choose the people who represent them and their interests in the governance of elite sport, including the absence of any interference into the establishment, functioning and administration of independent athletes' organisations.

**Olympic sports**

Within the framework of this study, Olympic sports are those sports that are part of the Olympic programme. These are not organised in professional leagues and the Olympic Games constitute the pinnacle of the sporting stage.

**Public authorities without a generic focus on elite sport**

Those Ministries and public agencies whose primary organisational identity, mandate and purpose is not elite sport, but maintain an elite sport programme for athletes in Olympic sports (usually the national military, police or customs).

**Social dialogue**

Social dialogue is a process of negotiation by which different actors in society ("social partners", representing workers and employers) reach agreement to work together on policies and activities. It is mutually agreed upon and based on the right to collective bargaining and on freedom of association. Social dialogue can take place at multiple levels and is adopted based on context-specific circumstances which are diverse in legal framework, power relations, practices, and traditions. Underlying processes may thus not only vary from country to country, but also across sectors and sports disciplines based on the particular mutual relationships and interdependencies in place.<sup>63</sup>

**Specific Elite Sport Organisations (SESO)**

Those organisations at national level that are specifically created with the mandate and purpose of supporting elite sports. The support of elite sports may be one among many mandates and purposes of the organisation. This includes public entities (e.g. ministerial agencies), private organisations (e.g. foundations), and public-private partnership organisations.

**Standard contract**

Any contract that is issued unilaterally by any of the actors of the elite sport system and applies to elite athletes on an overarching scale and level. This includes employment contracts, scholarship contracts, and athlete (support) agreements.

63 cf. ILO 2022 Social Dialogue Report; European Commission 2022 "Social Dialogue" retrieved from < <https://ec.europa.eu/social/main.jsp?langId=en&catId=329> >



## **Worker**

A distinct legal status arising from a relationship of subordination to another party that allows a person (athlete) to pursue an activity of economic value for which remuneration and working conditions are shaped largely by the employer side.<sup>64</sup>

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64 cf. European Commission 2010, COM/2010/0373 final



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Further information about the EMPLOYS Project can be found at  
[www.dshs-koeln.de/iesf/employs](http://www.dshs-koeln.de/iesf/employs)

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