



A publication series of the
European Audiovisual Observatory

Audiovisual sports rights between exclusivity and right to information

IRIS *Plus* 2016-2

IRIS Plus 2016-2

Audiovisual sports rights – between exclusivity and right to information

European Audiovisual Observatory, Strasbourg, 2016

ISSN 2079-1062

Director of publication – Susanne Nikoltchev, Executive Director

Editorial supervision – Maja Cappello, Head of Department for Legal Information

Editorial team – Francisco Javier Cabrera Blázquez, Sophie Valais

Research assistant – Ismail Rabie

European Audiovisual Observatory

Authors

Francisco Javier Cabrera Blázquez, Maja Cappello, Gilles Fontaine, Sophie Valais

European Audiovisual Observatory

Proofreading

Lucy Turner

Editorial assistant – Snezana Jacevski

Marketing – Markus Booms, markus.booms@coe.int

Press and Public Relations – Alison Hindhaugh, alison.hindhaugh@coe.int

European Audiovisual Observatory

Publisher

European Audiovisual Observatory

76, allée de la Robertsau, 67000 Strasbourg, France

Tel.: +33 (0)3 90 21 60 00

Fax: +33 (0)3 90 21 60 19

iris.obs@coe.int

www.obs.coe.int

Cover layout – P O I N T I L L É S, Hoenheim, France

Please quote this publication as

Cabrera Blázquez F.J., Cappello M., Fontaine G., Valais S., *Audiovisual sports rights – between exclusivity and right to information*, IRIS Plus, European Audiovisual Observatory, Strasbourg, 2016

© European Audiovisual Observatory (Council of Europe), Strasbourg, 2016

Opinions expressed in this publication are personal and do not necessarily represent the views of the Observatory, its members or the Council of Europe.

A publication of the European Audiovisual Observatory

Audiovisual sports rights between exclusivity and right to information

Francisco Javier Cabrera Blázquez

Maja Cappello

Gilles Fontaine

Sophie Valais





Foreword

Sport and media are two closely connected areas. Most people wishing to watch a game are not always in the position of attending it physically and therefore need a different way of participating in the live experience. Media can be of help in this regard: it can ensure access to first-hand information about the event through the news, but also full direct coverage through live broadcasts.

In order to do so, media providers need to acquire transmission rights, which are, in the case of premium sport events, particularly valuable. This means that they tend to prefer being the exclusive rightsholders of events, so as to profit from advertising revenues and fees from their subscribers. Exclusive rightsholders are not necessarily pay-TV operators, as this is a choice that depends entirely of the business model of the concerned broadcaster, but in such cases the viewing experience is limited solely to subscribers. A similar limiting effect occurs in the case of a broadcaster with limited territorial coverage.

In order to ensure a proper balancing of different interests, including the right to information for the viewers and the right of property for the broadcasters, specific rules have been put in place.

The European Audiovisual Observatory has already explored this topic three times in the last twelve years, namely:

- IRIS Plus on “Sport as reflected in European media law”, in 2004;¹
- IRIS Plus on “Major events and reporting rights”, in 2006;²
- IRIS Plus on “Exclusive rights and short reporting”, in 2012.³

The increasing relevance of audiovisual sports rights, especially given this summer’s European football championship and Summer Olympics, has prompted us to nonetheless carry out a comprehensive exploration of the topic.

The very concrete nature of this topic can be illustrated by an example. Consider a Spaniard who is a Real Madrid fan but lives in France. To watch the matches of his/her favourite team, this football fan would have to pay for access to a particular pay-TV channel, which holds exclusive rights for the Spanish Liga in France. To watch Champions League matches, it would be necessary to subscribe to yet another pay-TV channel. The relevant legal questions would be: “Why is there a

¹ Scheuer A., Strothmann P., “Sport as Reflected in European Media Law – Part I”, IRIS Plus 2004-4, European Audiovisual Observatory, Strasbourg, 2004, <http://www.obs.coe.int/documents/205595/264577/IRIS+plus+2004en2LA.pdf> and Scheuer A., Strothmann P., “Sport as Reflected in European Media Law – Part II”, IRIS Plus 2004-6, European Audiovisual Observatory, Strasbourg, 2004, <http://publi.obs.coe.int/documents/205595/264577/IRIS+plus+2004en3LA.pdf>.

² Schoental M., “Major Events and Reporting Rights”, IRIS Plus 2006-4, European Audiovisual Observatory, Strasbourg, 2006, <http://www.obs.coe.int/documents/205595/264581/IRIS+plus+2006en2LA.pdf>.

³ Matzneller P., “Short Reporting Rights in Europe: European Legal Rules and their National Transposition and Application”, in IRIS Plus 2012-4, “Exclusive Rights and Short Reporting”, European Audiovisual Observatory, Strasbourg, 2012, http://www.obs.coe.int/documents/205595/264635/Iris_plus_2012-4_EN_FullText.pdf.



need to pay?"; "How exclusive can broadcasting rights can be?"; and "Why are there no other options?".

Should our Real Madrid fan not wish to pay money for watching football matches, while still wanting to be informed about the outcome of these matches, the Audiovisual Media Services Directive (AVMSD) provides a set of rules allowing broadcasters to have access to events of high interest to the public which are otherwise transmitted on an exclusive basis by another broadcaster. More precisely, free-to-air broadcasters are allowed to freely choose short extracts from the other broadcasters' signals, which will allow them to inform their viewers about the most relevant aspects of the events concerned.

But should our Spanish football fan have wanted to follow Euro 2016 this summer in France, in particular if Spain reached the finals (which we know was not the case...) the question remains whether it would be fair that people with little money would be unable to see what would be a major event for the whole country. Again, for this special situation there are rules in the AVMSD: member states can compile a list of designated events, both national or non-national, which they consider to be of major importance for society, and for which free-to-air coverage must be ensured for access by a substantial part of the public.

All the above legal issues are discussed in this IRIS Plus. The publication starts from an economic perspective and explains how audiovisual rights are negotiated, which types of rights they cover, and what their legal nature is. These issues are then established within a wider regulatory context, exploring international and European obligations before turning to national frameworks. For the national overview, media regulators across Europe have provided helpful input through the EPRA Secretariat. A special thank you therefore goes to Emmanuelle Machet.

This publication explores European case law and self-regulation, also in consideration of the very special nature of sports organisations, before looking into considerations of the future. Valuable feedback has been provided by several national correspondents for specific questions during the drafting process. Our acknowledgments for punctual expertise go to Joanna Chansel, Christophoros Christophorou, Maria Donde, Persa Lampropoulou, Gábor Polyák and Juraj Polák.

Strasbourg, July 2016

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

European Audiovisual Observatory



Table of contents

1. Setting the scene	7
1.1. Sports rights: new players enter the arena	7
1.1.1. From general interest channels to packages of premium sport channels.....	7
1.1.2. The new ambitions of Eurosport.....	9
1.1.3. Sport broadcasters go online	10
1.1.4. The major Internet players enter the game.....	10
1.1.5. An online direct-to-customer strategy for the sport federations and clubs?.....	11
1.2. The legal nature of audiovisual sports rights	11
1.2.1. Rights in sports events	12
1.2.1.1. Ownership of rights in sports events.....	12
1.2.1.2. Legal basis of rights in sports events.....	13
1.2.1.3. Rights attached to the recording of sports events.....	17
1.2.2. The management of audiovisual sports rights.....	19
1.2.2.1. The symbiotic relationship between sport and media.....	19
1.2.2.2. The licencing of audiovisual sports rights	20
1.2.2.3. The “European model” of audiovisual sports rights licensing.....	22
1.2.3. Enforcement of audiovisual sports rights in a digital context	24
2. International and European legal framework	27
2.1. International conventions related to media and sport	27
2.1.1. The Rome Convention.....	27
2.1.2. The updating of the international protection of broadcasting organisations	28
2.2. The European framework.....	29
2.2.1. The marketing of audiovisual sports rights.....	29
2.2.1.1. EU competition rules	29
2.2.1.2. Competition issues	30
2.2.2. Limitations to exclusive broadcasting rights.....	35
2.2.2.1. Events of major importance to society	36
2.2.2.2. Short news reporting.....	39



3. National legal framework	43
3.1. The marketing of audiovisual football rights.....	43
3.1.1. Germany.....	44
3.1.2. Spain.....	45
3.1.3. France.....	46
3.1.3.1. Canal Plus v TPS.....	47
3.1.3.2. The agreement between Canal Plus & beIN SPORTS	48
3.1.4. United Kingdom	49
3.1.5. Italy.....	50
3.2. The implementation of Articles 14 and 15 of the AVMSD	52
3.2.1. Events of major importance to society	52
3.2.1.1. The mutual recognition mechanism.....	52
3.2.1.2. Dispute settlement mechanisms.....	53
3.2.2. Short news reporting	55
4. Self-regulation	57
4.1. The autonomy of sport organisations	57
4.1.1. A legacy from history	57
4.1.2. The premises of an institutional framework for sport organisations	58
4.1.3. The financial autonomy of sport organisations	58
4.1.4. The structural and functional autonomy of sport organisations.....	59
4.1.4.1. The pyramid of European football governance.....	59
4.1.4.2. The governing structure of the Olympic Movement.....	60
4.1.5. The legal autonomy of sport organisations	61
4.1.5.1. The Court of Arbitration for Sport.....	61
4.1.5.2. The International Council of Arbitration for Sport	62
4.2. Towards a “supervised” autonomy of sport organisations.....	62
4.2.1. The involvement of the EU in the self-governed sport system	62
4.2.1.1. The increasing role of the CJEU in the employment conditions of athletes	62
4.2.1.2. The breakthrough of the <i>Bosman</i> ruling	63
4.2.1.3. The impact of commercialisation on the self-governance of the sport sector	63
4.2.1.4. The recognised competence of the EU in sport policy.....	64
4.2.2. From the pyramidal system to new horizontal forms of governance	64



5. European case law	67
5.1. Decisions of the European Commission	67
5.1.1. UEFA Champions League.....	67
5.1.1.1. The UEFA notification	67
5.1.1.2. The Commission’s decision	68
5.1.2. German Bundesliga	70
5.1.3. Premier League	71
5.2. Case law of the CJEU	71
5.2.1. The <i>Premiere League</i> and <i>Murphy</i> cases	71
6. State of play	75
6.1. The revision of the AVMSD.....	75
6.2. Major sport events in the future	76
Appendix.....	79
Table 1. Lists of events of major interest to the public in the 28 EU member states (June 2016)	81
Table 2. Proposals of lists of major interest to the public still on consultation (June 2016)	93
Table 3. List of the provisions on short news reporting in the 28 EU member states (June 2016)	95





1. Setting the scene

1.1. Sports rights: new players enter the arena

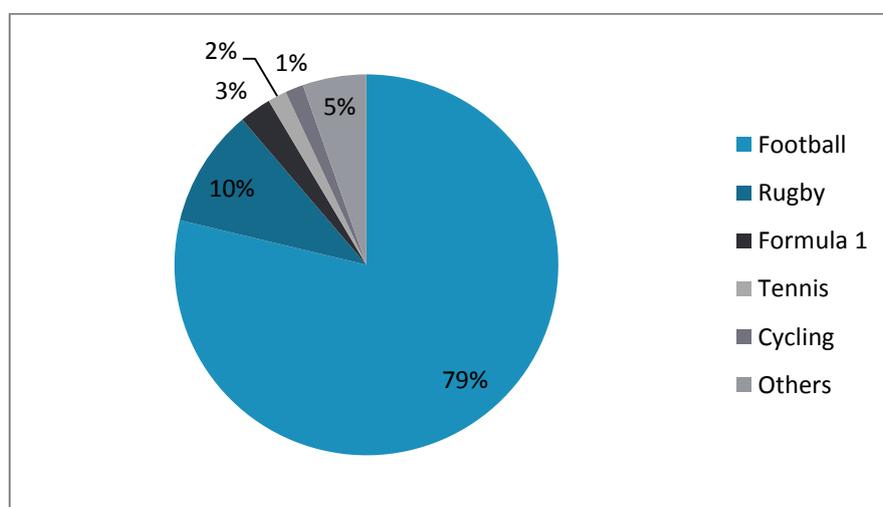
Back in the 1986-1987 football seasons, the BBC and ITV acquired the rights to each broadcast 7 live games of the UK Premier League for a total amount of £3.1m. During the on-going 2015-2016 season, Sky and BT will broadcast a total of 154 live matches for £1bn. These figures show the extent to which the role of sport on TV has changed over the years, and how sport has become premium content for pay-TV. But more changes are on the horizon, as competition between broadcasters over audiovisual sports rights increases, from the new Internet players and also the right holders themselves.

1.1.1. From general interest channels to packages of premium sport channels

Sports events used to be broadcast by the major, general interest television channels, but the shelf space on these channels is limited, and funding the rocketing prices of the main audiovisual sports rights through advertising or public resources over the years became increasingly challenging. The most popular sport, football, has therefore progressively withdrawn from free-to-air television channels, both public and private, and pay-TV has taken over the broadcasting of the national championships. In each country, one pay-package of several sports channels was therefore built around the broadcast of the football national championship, and enhanced with additional sport events.



Figure 1 - Breakdown of broadcasters' sports rights expenses in France – March 2016⁴



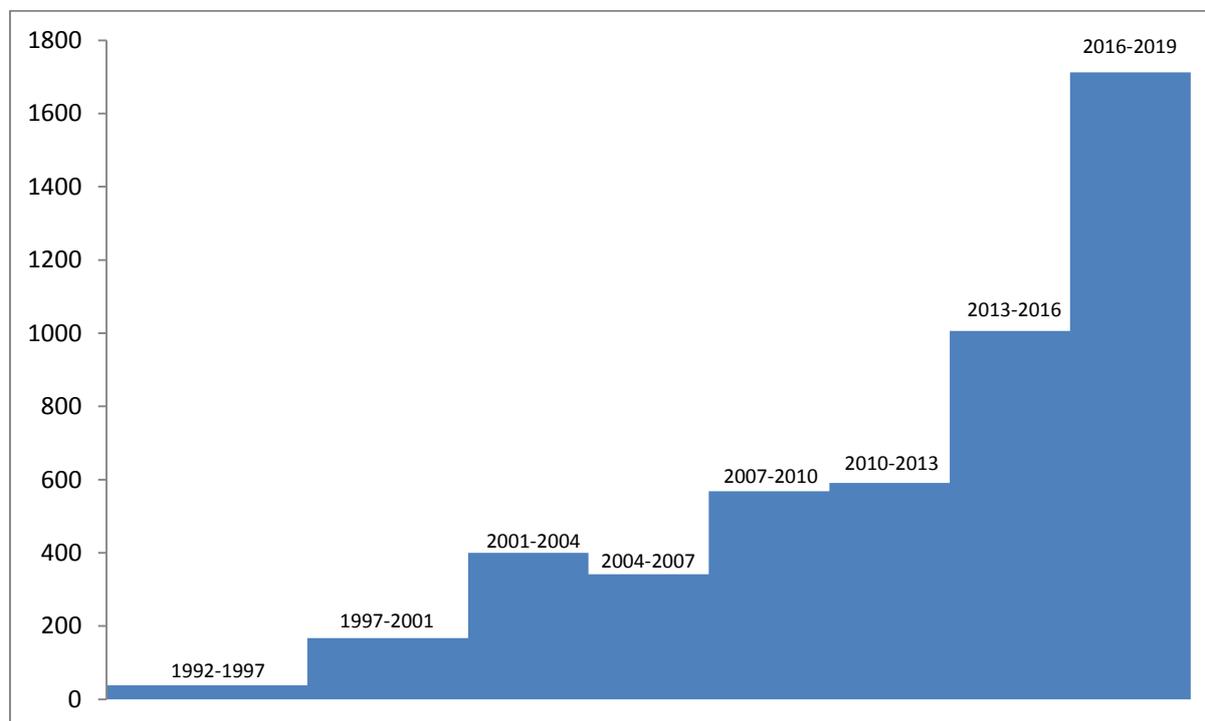
Source: Conseil Supérieur de l'Audiovisuel - "Sport et télévision – Les chiffres clés 2016"

Over the years, the football leagues have constantly tried to enlarge the number of pay-TV operators competing for rights in order to increase the amounts collected, sometimes under the injunction of the Competition authority: in the recent auction for Germany Bundesliga rights, the German Football League had to introduce a "no single buyer" rule in order to guarantee that the rights were divided between at least two players. In the major countries, the rights are now shared between two players: Sky and Mediaset Premium in Italy; Canal+ and beIN Sports in France; Sky and BT Sports in the UK; Telefonica and beIN Sport (Mediapro) in Spain; and Sky and Eurosport in Germany. This policy has indeed led to a sharp increase in audiovisual football rights fees, but has also imposed upon the consumer the need to subscribe to several offers in order to access the full national championship.

⁴ Excluding the rights to the Olympic Games.



Figure 2 - Annual cost of the UK football Premier League rights (domestic rights – m£)



Source: Statista

Although deprived of the football national championships, the free-to-air broadcasters (public and private) still offer strongly appealing events, in particular building on the obligation to offer sports events of “major importance” over free television. But sport can only account for a limited part of the programming, and the advertising business model is at risk as advertising revenues can be strongly linked to the performance of national teams.

1.1.2. The new ambitions of Eurosport

Even if some of the operators of the premium sport TV packages (e.g. Sky, Eurosport, beIN) are active in several countries, the rights for national competitions are negotiated on a country-by-country basis. However, the foreign rights of national football leagues (e.g. the UK Premier League) may be distributed not only to individual national players but also to sport rights agencies or TV groups active in several countries. Sports niche TV channels (e.g. Extreme Sports Channels edited by AMC International) do not compete for the main sport events and are in a better position to acquire European rights and, therefore, reach an audience which covers several countries.

Eurosport may be an example of a more European integrated strategy. Whilst Eurosport used to broadcast only second-class sport events, building on its European wide coverage it entered the competition for premium sport content. Eurosport and its sister channel Eurosport 2 are available in Europe in 17 different linguistic versions and offer a combination of common European programming and local sports. Following the takeover from TF1, the US group Discovery boosted



Eurosport's resources to invest in premium sport content, and the channel was awarded the European rights for the Olympic Games from 2022 (in France and UK) and 2018 (for the rest of Europe). In June 2016, Eurosport was also awarded a minority share of the German national football championship.

1.1.3. Sport broadcasters go online

The increasing capacity of the Internet to handle live video viewed by many simultaneous users has led to more sport being broadcast on the Internet. Piracy has developed to offer live rebroadcast of football games to countries where they are not available, or where only subscribers to a pay-TV service can access them. Periscope, an application from Twitter designed to broadcast any live event, may further challenge the legal exploitation of sport rights, as any user with a mobile phone can rebroadcast a game from a stadium.

However, broadcasters also tend to develop their online offers of sports. Whereas replay services ("catch-up TV") do not seem to bring a significant added value for sport events (except for highlights), the Internet is used to broaden the offer. An example of this is France Télévisions, holder of the Roland-Garros tennis tournament rights, which "broadcasts" additional tennis games on the Internet.

Other players have launched a dedicated online player to broaden the reach of their programming beyond the TV channels and the networks where they are available. Eurosport launched its player as early as 2008 and the service is available in 22 languages worldwide. The player gives access to the programming of the TV channel, but also to less popular content (e.g. as in the case of France Télévisions, to more matches of a tennis tournament). beINSport connect, similarly, makes the content of the beIN channels available on a PC, smartphone or tablet.

More disruptive is the case of Perform Group, which acquired the foreign rights of the UK, Spain, Italy and France's respective football leagues for German-speaking territories. Perform Group plans to launch an Internet "Over-The-Top" only service, "Perform OTT", to exploit them later in 2016.

1.1.4. The major Internet players enter the game

Several major Internet players have made significant moves to enter the sport arena:

- In October 2015, Yahoo tested the worldwide broadcasting of a US National Football League game on the Internet.
- Google has acquired the rights to broadcast the 2015-2016 Spain Football Cup on a pay-per-view or subscription basis in a series of countries, and acquired the rights to broadcast the championship online for free from the Canadian football league.
- Facebook also made an initial move by broadcasting a training session of a US basketball club live.
- In April 2016, Twitter purchased the worldwide rights to broadcast 10 games of the US National Football League.
- BT broadcast the 2016 Football Champions League for free on YouTube.



The Internet players are also strong contenders to enter the new and rapidly developing area of eSports: in May 2016, Facebook and leading videogame publisher Activision Blizzard entered into an agreement to broadcast live eSport tournaments.

1.1.5. An online direct-to-customer strategy for the sport federations and clubs?

Some sport federations and clubs are testing a direct-to-customer strategy, i.e. distributing their events directly on the Internet or over cable and IPTV networks, therefore bypassing the television channels. TV channels established by sport organisations, mostly football clubs, belong to this category. However, as the rights for the live broadcast of their games is held by the major TV channels, they tend to propose only reruns of past games in addition to bonus content on the club and its players.

The major US sport leagues (NBA, NFL, NHL etc.) have launched dedicated online services on the open Internet in order to serve the niche markets of followers of US sports outside the US. These services are highly priced and marketed on a pay-per-game or subscription basis.

Finally, availability online can also be an opportunity for sports without enough popularity to trigger the interest of TV channels. Several championships are, for example, available on YouTube for free.

However, to the major European sport federations and clubs, bypassing the major broadcasters, at least for the near future, may seem a risky move. Still, for EURO 2016, more than half of the games were not purchased by any television channels in Spain and in Venezuela. The organizer of the event, UEFA, therefore made these games available online in these two countries. In the medium-term, some federations could therefore be tempted by the direct-to-customer strategy, at least for specific events or specific territories. Such a move would radically alter the landscape of sports on television.

1.2. The legal nature of audiovisual sports rights

Given the societal role of sports events and the macro-economic impact they have on the economy, defining the limits and scope of the legal protection they shall enjoy constitutes an important challenge for national and European legislators. A growing part of the economic value of sports is linked to intellectual property rights. These rights relate to copyright, commercial communications, trademarks, and image and audiovisual rights. However, there is a great number of diverging views among stakeholders and national legislators as to the form and scope of the protection to be granted to sports events. The plurality of actors and business partners involved in the value chain of organising and exploiting sports events, including athletes, clubs, leagues, federations, sponsors, media, and owners of sport facilities, further add to the complexity of the legal issues raised.

Issues concerning the relationship between sport and media have become crucial, as media coverage is one of the main sources of income for professional sport in Europe. Rights deals are running into millions of euros and are constantly on the rise in the last decade, as far as top events are concerned. Conversely, audiovisual sports rights are a decisive source of content for media operators and an important factor driving the development of new platforms for the distribution of



audiovisual content. This section will present the basic principles related to audiovisual sports rights, including their ownership and legal basis, the conditions for their acquisition and transfer, and the issue of their enforcement.

1.2.1. Rights in sports events

Among the rights that intervene in relation to sport events, property rights and intellectual property rights play an important role. EU law imposes important limits to intellectual property rights, in particular through its provisions on competition and the internal market. However, these rules do not directly regulate the form and ownership of these rights. It is up to the member states to define the beneficiaries of these rights, their content, and their scope, as well as the different exploitation rights attached to them.

Although the main regulations on this subject may vary substantially from country to country,⁵ it is possible to identify the main rights that are commonly attached to sports events in the EU member states.⁶ But, first and foremost, it is necessary to define the owner or beneficiary of those rights, which is typically the sports event organiser, and to appreciate the scope and limits of this concept. Last but not least, intellectual property rights attached to the recording of sports events play a fundamental role in the commercial exploitation of such events, as will be presented in this section.

1.2.1.1. Ownership of rights in sports events

EU law does not provide details as to the ownership of sports events rights, nor does it provide a definition of the concept of “organiser”. It is thus for the Member States to legislate on these issues in their domestic laws. Except for a few countries that have adopted specific laws on sport,⁷ in most of the member states there is no clear concept of the ownership of the rights attached to sports events or the definition of sport events “organiser”.

In principle, the organiser should be defined as the natural or legal person who bears the responsibility for the organisation of the event. Organisers are granted the exploitation rights, based on national legislations that define which rights are concerned and how they shall be transferred, usually under civil law agreements. In practice, sport events are owned by a number of parties with individual and collective rights in connection to the event, and the rights of the event’s owner are neither absolute nor unlimited.

National and international federations usually have an organisational framework for competitive sport, which clarifies responsibilities depending on the type of event considered (series or single sports event organised under the auspices of a federation). For series of regular sport

⁵ For more details on national legal framework, see Chapter 3 of this publication.

⁶ For further details on the EC Regulation in this field, see Scheuer, A., Strothmann, P., “Sport as Reflected in European Media Law – Part I”, IRIS Plus 2004-4, *op. cit.*

⁷ This is the case of French law, for example, which stipulates that the exploitation rights for sports events belong either to the sports federations (“*federations sportives*”) or to the organisers of sport events (“*organisateurs de manifestations sportives*”), Art. L333-1, Code du Sport, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318>.



events involving members of a federation or league (e.g. a professional football league), the home club is usually considered to be the organiser of the event based on the fact that it bears the organisational and financial responsibility. For regular national or international single events organised under the auspices of a federation, the clubs or associations the teams of which participate in the event are sometimes considered co-organisers, due to the economic investment they have provided upstream in the sale of media rights (providing athletes, organising the venue, etc.). In this case, the club may be considered a co-holder of the marketing rights. The same situation can also apply to the relevant national association with regard to individual matches forming part of an international competition.⁸

1.2.1.2. Legal basis of rights in sports events

1.2.1.2.1. Sports events organisers’ “house rights” protection

Sports events are usually held in dedicated venues, for example football games that take place in a stadium. The ownership of these venues generates property rights for the sport organiser. Except for top clubs that possess their own stadium, sports venues are usually owned by public local authorities, such as municipalities. The owners of the sport venues then enter into specific agreements with the sport event organisers or the clubs, which grant them the exclusive-use rights to the venue, limited, most of the time, to that specific event.

The property or exclusive-use rights to sport venues are usually referred to as “house” or “home” rights. House rights vest sport event organisers with the possibility to control access to the event venue in accordance with national private law, and to set out the terms and conditions to it. More importantly, as far as media is concerned, house rights usually serve as a legal basis for sport event organisers to negotiate the conditions and rules for audiovisual production companies and broadcasters to record or broadcast the event.⁹

1.2.1.2.2. Sports events and copyright protection

As mentioned above, there is no harmonised approach at EU and international level as to subject matter and to what may constitute a work of authorship under copyright law. However, in all 28 EU member states, the common principles of copyright law require the existence of an original or creative form of expression in order to qualify as work of authorship. They all consider in their domestic laws that sports events do not qualify as such, due to the absence of any original or creative form of expression, the unpredictability and uncertainty about their execution, and the lack of a script or plot in relation to games or competitions.

The Court of Justice of the European Union (CJEU) confirmed this interpretation in 2011 in its judgment in the *Premier League* cases.¹⁰ It explicitly concluded that sporting events themselves, and

⁸ For more details see T.M.C. ASSER Instituut, ASSER International Sport Law Centre, “TV Rights and Sport – Legal Aspects”, Blackshaw, I., Cornelius, S., Siekmann, R. (Ed.).

⁹ T.M.C. Asser Institute, Centre for International & European Law, Instituut voor Informatierecht (IViR), Study on sports organisers’ rights in the European Union, Final Report, February 2014, http://ec.europa.eu/sport/news/2014/docs/study-sor2014-final-report-gc-compatible_en.pdf.

¹⁰ For more details about CJEU case law, see Chapter 5 of this publication.



in particular football matches, could under no circumstances be classified as works for the purposes of copyright at the EU level, as they are not a given ‘author’s own intellectual creations’, within the meaning of the Information Society Directive 2001/29/EC. The CJEU held that to be so classified, the subject matter concerned would have to be original, in the sense that it is its author’s own intellectual creation. According to the CJEU, sports events, and in particular football matches, which are subject to the rules of the game, leave no room for creative freedom for the purposes of copyright, and as such are excluded from copyright protection. This is further extended to exclusion from any other basis in the field of intellectual property rights (including neighbouring rights and database sui generis rights).

However, in its conclusions the Court opened the possibility for member states to afford some type of protection to sports events due to such events’ ‘unique and original’ character. Certain member states, such as France, Bulgaria, Greece, Italy, Hungary, and Romania, have created special forms of protection for sport event organisers in their domestic sport laws.¹¹

1.2.1.2.3. Athletes’ performance and neighbouring rights protection

The traditional neighbouring rights recognised at international level include the artist’s performances, sound recordings, and broadcasts of broadcasting organisations (the EU also recognises the film producer’s right of first fixation of a film). From this, the only neighbouring right that could conceivably apply to sports events would be a performing right of athletes.

However, as mentioned above, sports events do not constitute works of authorship as defined by copyright law, and are not in principle covered by performance rights. This interpretation is further confirmed by the CJEU judgment in the *Premier League* cases, in which sports events were excluded from any form of protection based on intellectual property rights, including neighbouring rights. Consequently, athletes cannot in principle be considered as performing artists whose neighbouring rights could be transferred to the event organisers, except for in certain specific sports that include choreographed moves performed to a certain piece of music (e.g. a synchronised swimming competition).

However, it is worth noting that certain domestic laws in the EU provide special neighbouring rights to sport events’ organisers. For example, in Italy, a new neighbouring right was introduced in 2008 to the Italian law on copyright, to protect organisers of sports events. This right was based on the need to protect the investments that they make (particularly in the football sector) and to secure the possibility of an adequate economic return for investors when negotiating media exploitation rights.¹² With the same aim of protecting the economic investment of the organiser, German law provides the commercial organiser of performances with a specific neighbouring right (*Schutz des Veranstalters*).¹³

¹¹ See T.M.C. Asser Instituut et al., *op.cit.*

¹² Article 28 of Italian Law Decree no. 9 of 9 January 2008 introduces audiovisual sport rights in the area of neighbouring rights under a new Article 78 *quarter* of Italian Copyright Law (*Decreto legislativo 9 gennaio 2008, n. 9 recante disciplina della titolarità e della commercializzazione dei diritti audiovisivi sportivi e relativa ripartizione delle risorse*)

<http://www.wipo.int/edocs/lexdocs/laws/it/it199it.pdf>. See also T.M.C. Asser Institute, Centre for International & European Law, Instituut voor Informatierecht (IViR), Study on sports organisers’ rights in the European Union, Final Report, *op. cit.*

¹³ See Article 81, Gesetz über Urheberrecht und verwandte Schutzrechte of 1965, as amended,

<https://www.gesetze-im-internet.de/bundesrecht/urhg/gesamt.pdf>.



1.2.1.2.4. Protection of sports events organisers under competition law

Under certain circumstances, competition law can protect sports events organisers from misappropriation by third parties. Misappropriation refers to an unfair advantage taken from a competitor's trade value, for example: by copying or imitating its products, goods and services; misleading the public and creating confusion as to the original source of the products and services; or causing damages to a competitor's goodwill.¹⁴ "Ambush marketing" is often referred to in relation to sports events. It consists of unauthorised parasitic marketing activities specifically intended to obtain a commercial or other beneficial association with a sport event and its reputation, identity or goodwill without seeking the organiser's authorisation and whilst not supporting the event and sector, either financially or by other means.

Trademark and other intellectual property enforcement procedures may be ineffective in tackling this type of illegal practices, due to the narrow window of time in which the event and the commercial benefits is realised. In fact, sports events organisers complain that the time necessary to bring proceedings in court may in practice greatly exceed the duration of the event, during which the infringer has obtained the commercial benefit it was seeking.¹⁵

Another legal basis for action is that of "unfair competition". The protection against "unfair competition" might be invoked independently from other areas of law, so it can apply to sports events even though they do not benefit from the protection of intellectual property laws. However, as there is no wide-ranging harmonisation of unfair competition law at EU level, it is for the member states to provide protection in their domestic competition laws, and as such the form and level of protection varies substantially between countries. This is particularly true among countries from continental law systems, traditionally more protective against unfair trade practices and countries from common law traditions that are less interventionist in this field. More often it is national courts that develop the concept of unfair advantage and misappropriation. Its application may depend on the existence of other rights protecting the sports events organiser (e.g. house rights, special neighbouring rights).

1.2.1.2.5. Athletes' image rights protection

The immense interest of the media in football, the status of football players as celebrities worldwide, combined with the advent of new technology, have all given an increased importance to the commercial exploitation of the image of professional football players. Endorsement fees derived from image rights can contribute substantially to the overall revenues of the most famous football players. According to Forbes' 2015 ranking of the world's top 10 highest-paid athletes, the football player Cristiano Ronaldo came in third position, with almost 34% of his total earning deriving from endorsement (USD 27 million).¹⁶

¹⁴ See T.M.C. Asser Instituut et al., *op.cit.*

¹⁵ Sport Rights Owners Coalition (SROC) position paper on the study on sports organisers' rights in the European Union, T.M.C. Asser Instituut et al., *op.cit.*,

http://sroc.info/files/9513/8667/7878/SROC_position_paper_on_Asser_Study_-_08_11_13.pdf.

¹⁶ <http://www.forbes.com/sites/forbespr/2015/06/10/forbes-announces-2015-list-of-the-worlds-100-highest-paid-athletes/#695673815f02>.



More generally, the “image rights” of athletes, also referred to as “personality rights” or “right of publicity”, usually encompass the commercial exploitation of their names, image, voice and all other aspects of their personality, as for example in advertising or merchandising. Personality rights may also have a non-commercial dimension and may include the right to privacy as enshrined in Article 8 of the European Convention on Human Rights (ECHR) and many national constitutions.

Image rights have not been harmonised at EU level and there is a great number of differences in the form and level of protection afforded throughout the EU. In some countries, image rights protection has a strong legal tradition based on the notion of personality rights, which have the dual purpose of both protecting economic and commercial interests (publicity) and non-economic interests (privacy), such as, for example, in Germany. Other legal systems do not recognize image rights as such, but offer actions to protect sport players against the unauthorised commercial exploitation of their image, for example in the Netherlands. In France, the protection of image rights is built mainly on the caselaw concerning the general protection afforded through personality rights under the French Civil Code. In the UK, image rights are not recognised as such in the law, and the image of sport players is protected through different legal doctrines such as privacy, defamation, and tort law.

In most countries, the consent of the depicted person is necessary when his or her image is used for commercial purposes such as advertisement or merchandising, unless there is a prevailing public interest in the information. Most major sports events are considered by domestic case law as public events and as such the images related to them, as well as the images related to the players during the game, will be considered to be part of the public interest.

As the Amsterdam Appeal Court¹⁷ pointed out in a judgement of 2013, professional football players are paid for participating in these matches, and have already received financial compensation for the broadcasting of their image rights in the form of their wages, which are largely financed by income from audiovisual sports rights. The Court also highlighted the fact that the images shown depicted the football players as part of a team, not individually, and that this did not negatively impact their individual portrait (or image) rights. Based on this assumption, the Court considered that no professional football players in the Dutch league had an absolute right to image that would allow them to prohibit any image taken during matches without their consent.

In practice, when entering into an employment relationship with a club, professional football players permit the club to profit from their image rights (or part of them, in the case of top players). This agreement is commonly included in a separate contract for image rights, the term of which can exceed the employment contract. In this case, when the player reaches the end of his employment contract, the former club can request that the new club buy out the image rights contracts.¹⁸

Certain national sport-specific laws refer explicitly to the national federation’s rules on advertising and marketing in accordance with the rules of the national governing body, UEFA and FIFA and their sponsors or commercial partners in relation to the image rights of national level players (as, for example, in Poland¹⁹). Others (e.g. Hungary) provide that the employer must have obtained the player’s prior written consent to use his or her image in sponsorship and

¹⁷ Gerechtshof Amsterdam (Court of Appeal of Amsterdam), 10 December 2013, ECLI :NL :GHAMS ; 2013 ; 4501 (Centrale spelersraad, Vereniging van contractspelers and Proprof v (all) KNVB soccer clubs).

¹⁸ For more details, see Siekmann, R. C. R., “Introduction to International and European Sports Law”, T.M.C. Asser Press, 2012.

¹⁹ Act of 25 June 2010 on Sport, Official Journal of the Republic of Poland, Dz. U. No. 127 position 857, as amended.



merchandising agreements, or that the relevant collective agreement be included in the employment contract between the player and the club (as, for example, in Spain).²⁰

1.2.1.2.6. Audiovisual rights of sports event organisers

In some member states, sports events organisers or sport clubs are entitled by law to the audiovisual rights of the sports events they organise, in compliance with the rules established by the federations themselves, based on the club's membership of the relevant sports federations (e.g. Bulgaria, Greece, Hungary, and Romania). Other member states rely on the self-regulation of the relevant leagues and federations to provide for the rights of sports organisers (e.g. Spain, Czech Republic, Portugal, and Sweden).²¹

1.2.1.3. Rights attached to the recording of sports events

1.2.1.3.1. Recording of sports events and copyright protection

Although sports events as such do not qualify as works of authorship and therefore are not in principle subject to copyright and neighbouring rights, this is normally not so for the audiovisual recordings of sports events such as football games. In practice, national legislations and case law in the EU (with the exception of Sweden), consider that these recordings meet the required level of originality so as to qualify as works of authorship. The number of cameras involved in the filming of football matches as well as the different angles and perspectives chosen are normally considered sufficient so as to distinguish them from simple event documentation, which does not enjoy copyright protection.

EU member states commonly qualify the audiovisual recording of a football match as a film or cinematographic work. Although audiovisual works involve a plurality of co-authors (including the director of the film, the author of the script, the adaptation, the author of the music), in practice, the economic rights of the authors are assigned to the film producer by law or through contractual agreement against a negotiated fee. In the case of audiovisual recordings of football games, the economic rights to the recording would thus normally be held by the sports event organiser, or the club or federation. If the recording were carried out by a third party (a broadcaster or production company), the economic rights would then be contractually licensed to the sports events organiser (or the club or federation). The reproduction, distribution or communication to the public of the audiovisual work requires the authorisation of the rightsholder. Any unauthorised reproduction, distribution, or communication to the public would constitute a copyright infringement subject to remedies.

In addition to the copyright protection attached to the audiovisual recording of a football match, the EU Rental Right Directive²² provides the producer of the first fixation of the film with a neighbouring right, which comes as a reward to the film producer for the financial risk assumed in

²⁰ Royal Decree 1006/1985, of 26 June, regulating the special employment relations of professional sportspeople, http://noticias.juridicas.com/base_datos/Laboral/rd1006-1985.html.

²¹ For more details on self-regulation, see Chapter 4 of this publication.

²² Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ("Rental Right Directive"), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0115&from=EN>.



relation to the realisation of the film. The neighbouring right of the film producer lasts 50 years from the date of first publication or communication to the public of the work. It includes the following rights:

- The exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproductions by any means and in any form, in whole or in part, in respect of the original and any copies of the films;
- The exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access the original and any copies of the film from a place and at a time individually chosen by them (i.e. on-demand).
- The exclusive right to distribute (make available to the public in tangible copies) by sale or otherwise, in respect of the original or copies of their films.

1.2.1.3.2. Broadcast of sport events and neighbouring rights protection

The primary rationale for protecting signals comes from the view that broadcasters need to be able to protect investments in both disseminating program content to the public and in rights and licenses acquisition, as well as to recover operating costs. Based on this assumption, neighbouring rights are granted to broadcasting organisations for the transmission of broadcast signals for public reception.²³ Neighbouring rights on broadcast signals (cinematographic or audiovisual works or moving images) transmission exist even when the content carried by the signal is not a work protected by copyright or neighbouring rights.

The neighbouring rights of broadcasting organisations include:

- The right to prohibit the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcast;
- The communication of television broadcast to the public.

“Broadcasting organisation” generally refers to the entity or person that organises the transmission by wire or wireless means for public reception of sounds, or of images and sounds.

In the case of sports events, the broadcasting organisation can be the club or federation when it autonomously acts as the actual broadcasting entity. The broadcasting organisation can also usually be an entity that professionally operates as a broadcaster and that has acquired the exclusive right to broadcast the sports event. This will be on the basis of contractual agreement signed with the sports event organiser or jointly, depending on factual circumstances. Any unauthorised use of a television broadcast on another TV channel or on the Internet would be considered an infringement of the neighbouring right and would entail remedies.

²³ See Rental Right Directive *op. cit.*; Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (“Satellite & Cable Directive”), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31993L0083&from=FR>; Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (“Infosoc Directive”),

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0029&from=EN>.



1.2.2. The management of audiovisual sports rights

In 2007, the European Commission adopted the first large-scale European initiative on sport through a White Paper²⁴, in which it set strategic guidelines on the role of sport in the European Union, particularly at social and economic level. In the White Paper the Commission recognises the crucial role of television rights as the primary source of income for professional sport in Europe. Conversely, it also acknowledges that sport has been a driving force behind the emergence of new media and interactive television services, and stresses that audiovisual sports rights are a critical source of content for many media operators. The White Paper also addresses the specific requirements of the sale of audiovisual sports rights, in particular in light of EU competition law.

This section will focus on the management of audiovisual sports rights, emphasising the interdependent relationship between media and sport, highlighting some of the key features of audiovisual sports rights and the specificities related to their licencing.

1.2.2.1. The symbiotic relationship between sport and media

1.2.2.1.1. The commercial significance of sports events for media content providers

Premium sports content is particularly valuable for media content providers at various levels. Sports content has a unique potential to attract high audience shares and are not substitutable; viewers who want to see a given sports event are unlikely to be satisfied with the coverage of another event. They also have the distinctive feature of attracting a much-diversified range of viewers, which guarantee media content providers higher advertising revenues. In addition, sports programming is considered to be “advertising-friendly” because it is still primarily consumed in real time, unlike other programming that is increasingly being recorded and watched at a later time, with the viewer presumably skipping through the advertisements instead of watching them.

The live transmission of sports events gives an important value and competitive advantage to traditional linear services that reach mass audiences. Major sports events are also a key driving force in the European pay-TV markets, as they can boost the sale of pay-TV subscriptions. They are a key branding asset for media content providers, and contribute to the promotion of new media services, such as fourth generation mobile networks.

Due to the increased demand for premium sport content and the stable number of premium sports events capable of attracting massive audiences, premium sport content has become a scarce resource, which has contributed to the dramatic increase of rights fees. The acquisition of audiovisual sports rights is an enormous cost for media content providers and pay-TV operators in Europe, and constitutes a large share of their total programming spending.

Among the most significant and attractive rights for media content providers are those for major international and global sporting events, and the top-level championship of major sports as football. These major events generate huge audiences, with the final games and opening and closing ceremonies attracting several million viewers. Other sports events, such as Formula One, rugby, the Olympic Games, and tennis usually come in distant second position in the total spending on

²⁴ White Paper on Sport, COM(2007) 391 final, of 11 July 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l35010&from=EN>.



audiovisual sports rights. In addition, there is a great range of other sports events that are very popular in terms of audience and vary from country to country (e.g. skiing in Austria, cycling in Belgium, handball in Denmark, boxing in Hungary).²⁵

1.2.2.1.2. The commercial value of audiovisual rights for sports events organisers

The attractiveness of broadcast sport is clearly demonstrated by the fees media content providers are willing to pay for the right to offer their viewers a live broadcast of a championship event, a race series, or a regular schedule of live matches over a championship season on their free-to-air or pay-TV channels. Media rights to premium sports events fees have exploded over the last decades; for example, in the case of the FIFA World Cup, increasing by over 900% over the last 20 years.

The selling of audiovisual rights has become one of the main pillars of the revenue stream for professional sport, together with sponsorship, ticket sales for live sporting events, and merchandising. The revenue derived from the sale of audiovisual rights for premium sports content is particularly central in football finance, as indicated in the last financial report of FIFA.²⁶ Over the period between 2011-2014, revenue significantly increased compared to the previous four-year period as a result of higher income from the selling of rights, with 43% of total revenues coming from television (USD 2,458 million).

Although these figures are completely different in smaller leagues, which are less attractive to media content providers and advertisers, media coverage can have other indirect positive effects on professional sports. For example, indirect positive effects include attracting new supporters, increasing the sales of tickets to the event or the value of sponsorship deals, or finding new possibilities through online platforms to reach niche markets.

1.2.2.2. The licencing of audiovisual sports rights

1.2.2.2.1. The specific features of audiovisual sports rights licensing

The sale of audiovisual sports rights includes a number of specific features that must be taken into account. One of these is the notably short duration of these rights, due to the fact that sport's events main interest is directly linked to their live broadcast.

Another important specificity of audiovisual sports rights is their scarcity, due to their concentration in the hands of sport federations. This is particularly true in the case of football, in which leagues determine the number of teams in the league as well as the number of games to be played by teams. This further means that leagues determine the maximum quantity of audiovisual rights that can be sold. The stable number of audiovisual sports rights allied with a growing number of broadcasters accounts in part for the enormous fees attached to these rights, which represent an investment that only a few media content providers within each territory have the financial capacity to make. The availability of audiovisual sports rights is further limited by an increasing number of rights licensing agreements being concluded on an exclusive basis for a long duration, or covering a

²⁵ For more details on the EU legal framework on events of major importance for society, see Chapter 2, Section 2.2.2.1 of this publication.

²⁶ FIFA Financial Report 2014,

http://www.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben_neutral.pdf.



large number of events, which strengthens the market position of the most important media content providers as they are the only operators who are able to bid for all the audiovisual rights sold in large packages.

1.2.2.2.2. Audiovisual sports rights licensing models

The usual audiovisual sports rights business model is such that the organiser of the game or sport event negotiates the licensing of the audiovisual rights with media content providers. In most professional team sports, national audiovisual rights are exploited by the league (and individual teams may retain only certain rights, such as radio rights or some local television rights). For individual sporting competitions, such as tennis tournaments and boxing matches, the event organisers usually exploit the audiovisual rights.

If several operators are interested in the rights a bidding process can take place, which drives up the rights fees. In the case of football, for example, the seller, a league, offers TV rights collectively at a price equal to its reservation price, i.e. the lowest price at which it is willing to sell. On the other hand, the buyers, the broadcasters, bid for these rights and these bids are determined by their “willingness to pay”. Given that the price is determined by the maximum price the broadcasters are willing to pay for rights, price determination will then depend on the number of buyers who compete over TV rights.²⁷

Live audiovisual rights to domestic football are mainly licensed to pay-TV broadcasters, and there are only a few countries in which free-to-air broadcasters manage to retain significant rights to the live games of the top domestic leagues. In some cases, rights to broadcast highlights are included in the live rights package; in other countries there are negotiated separately.

Free-to-air broadcasters have previously held rights to the major national team championships, such as the World Cup and the European Championships. Public service broadcasters usually negotiate the joint purchasing of TV rights through the European Broadcasting Union (EBU), which has long-standing agreements with UEFA or FIFA in relation to top sports events in European countries.²⁸

The same happened with the Olympics, which for decades remained the prerogative of public service broadcasters through the EBU. However, 2015 marked a turning point in the International Olympic Committee (IOC) licensing strategy, with the sale of all TV and multiplatform audiovisual rights in Europe to Discovery and Eurosport for the four Olympics falling within the 2018-2024 period, with the objective to ensure a broader coverage of the Olympic Games across all platforms.²⁹ Tennis has also seen a major shift, but retains some free-to-air broadcasting rights in major events through national legislation on events of major importance for society.³⁰

²⁷ For more details, see Hoehn, T., and Kastrinaki, Z., “Broadcasting and sport: value drivers of TV rights deals in European football”, http://www.city.ac.uk/data/assets/pdf_file/0007/120130/Hoehn_Kastrinaki_Sports_Rights_Feb_2012.pdf.

²⁸ European Broadcasting Union, “EBU awarded media rights for European qualifiers of UEFA EURO 2016 and 2018 FIFA World Cup in 30 countries”, press release, 10 April 2013, <http://www.ebu.ch/fr/contents/news/2013/04/ebu-awarded-media-rights-for-eur.html>.

²⁹ Discovery has acquired the exclusive rights, valued at €1.3 billion, across all platforms, including free-to-air television, subscription/pay-TV, Internet and mobile phones, in all languages across 50 countries and territories in Europe, with the exception of Russia. For more information, see <http://www.broadbandtvnews.com/2015/06/29/discoveryeurosport-win-olympics-rights>.

³⁰ For more details on the EU legal framework on events of major importance for society, see Chapter 2, Section 2.2.2.1 of this publication.



Negotiation of the territory in which the broadcast can or must be distributed is directly related to the negotiation of the license fee, as exclusive rights to sports events causes the fees to increase. Furthermore, audiovisual sports rights may be negotiated as a single bundle for one territory, or may be divided according to the type of rights and media involved e.g. for television, or mobile, or Internet broadcasts. Other key terms in the negotiation of the licensing agreement include the length of the deal, the process for selecting particular games for broadcast, copyright ownership, and sponsorship rights.

Audiovisual sports rights may be divided as follows:

- Live broadcasting: the most important and valuable right. This attracts the highest TV audiences, but interest falls abruptly once the event concludes;
- Webcasting: live streaming on the Internet is gaining greater audiences. Many events are webcast live and in high definition in numerous territories;
- Delayed broadcast/streaming: this format still attracts large audiences;
- Packaging of highlights: commonly used for informational purposes, this has become a popular source of online content. Online users can view their preferred highlights on demand.

The media content provider typically produces the broadcast, arranges for its distribution to the public, recoups its fees and expenses by selling advertising in the game broadcast, and network distribution rights.

In principle different rights arrangements in relation to the production of the sports event content are possible. Such arrangements would be as follows:

- Rights and production deal: the media content provider pays the rightsholder a rights fee, is responsible for all costs and expenses associated with producing the game or event for television, sells all of the advertising time itself, and retains all the revenue;
- Rights-only agreement: the media content provider pays a rights fee and the organiser is responsible for production that must meet media content providers' standards of quality. In these types of agreements, the sport event organiser is entitled to some advertising revenues to help offset production costs;
- Time-buy agreement: the organiser actually buys the time (e.g. in one-hour or two-hour blocks) on the media content provider and, subject to its quality control, is responsible for production and sales.

1.2.2.3. The “European model” of audiovisual sports rights licensing

The European Commission and various national competition authorities have shaped the regulatory framework under which audiovisual sports rights agreements are negotiated in the European Union. In addition, national governments have implemented EU rules concerning events of major



importance for society, which oblige to reserve a percentage of certain listed events to broadcasters that reach more than 90% of the population.³¹

In Europe audiovisual sports rights licensing is characterised by the joint selling of rights and by exclusivity.

1.2.2.3.1. The joint selling (and buying) of audiovisual sports rights

The joint selling of audiovisual sports rights describes the situation where sport clubs assign their rights to their association, which sells the rights on behalf of the clubs. Normally, the associations bundle all the rights in large exclusive packages and sell them to a single broadcaster in each country. Joint selling agreements prevent clubs from competing in the sale of their rights. As a consequence, it may limit competition between broadcasters, thereby limiting consumer choice.

The European Commission has accepted the joint selling of audiovisual sport rights by football associations on behalf of football clubs (as opposed to the sale of these rights by the individual clubs themselves), provided certain conditions are fulfilled. These include, inter alia: the sale of audiovisual sport rights through open and transparent tender procedures; a limitation of the rights' duration (usually not exceeding three years); and the division of the rights into different packages to allow several competitors to acquire rights.³²

Another economic practice in audiovisual sport rights is the joint buying arrangements, when a group of operators that individually would not have the resources to acquire the rights join forces. This practice could have anti-competitive effects depending on the market position of the joint buying group, and both the duration of the exclusivity and the scope of the acquired rights must be examined on a case-by-case basis.

1.2.2.3.2. The exclusivity of audiovisual sports rights licensing

While there are some differences between selling systems in various countries, in Europe the leagues generally prefer to sell audiovisual rights on an exclusive basis. As a consequence, exclusivity is one of the most important issues as regards the joint selling and acquisition of audiovisual sport rights.

Exclusivity may refer to time restrictions i.e. the licensee being granted the exclusive rights to exploit the audiovisual rights for a pre-determined period of time (e.g. the selling of certain deferred audiovisual rights to guarantee the first run exclusivity of more valuable live rights). Exclusivity may also refer in certain cases to the distribution platforms; selling audiovisual rights separately to different retail platforms. However, the traditional audiovisual sports rights model is based on territorial exclusivity, namely the licensee acquires the exclusive right to exploit the audiovisual rights in a given territory.

Both sports organisers and media content providers have strong incentives to negotiate licensing deals on a territorial-exclusivity basis. From the media content providers' perspective, territorial exclusivity enables them to differentiate themselves from their competitors on the market

³¹ For more details on the EU legal framework on events of major importance for society, see Chapter 2, Section 2.2.2.1 of this publication.

³² For more information on EU competition policy, see Chapter 2, Section 2.2.1. of this publication.



for audience share, and to recoup their investment through advertising sales. From the sports organisers' side, licensing audiovisual rights on a country-per-country basis enhances the value of those rights and ensures a maximisation of benefits.

To guarantee territorial exclusivity, the licensee must agree to eliminate the possibility of the reception and viewing of its transmission outside the territory. Absolute territorial protection means that the licensee is prohibited not only from selling actively in other licensees' territories but also passively, such as by responding to unsolicited demands from customers located in other countries. Typically, this will require the media content provider to ensure that its transmission on a pay and/or pay-per-view basis and by satellite are encrypted; its digital and analogue terrestrial transmissions do not exceed the boundaries of the territory, other than as a natural consequence of using terrestrial transmission systems; and that its transmissions via the Internet are geo-blocked.

In principle, under EU competition law, territorial restrictions fragmenting the EU internal market, such as absolute territorial protection, restrict competition by their very nature (without the need to prove their effects). However, the jurisprudence and decisional practice concerning territorial exclusivity in the agreements between audiovisual sport rightsholders and media content providers has so far been limited, and has been interpreted as allowing such absolute territorial protection.³³

In recent years, audiovisual sports rightsholders have launched some alternative direct-to consumer retail strategies through non-exclusive licensing models. One of these models is directly inspired by the US³⁴ and consists of the self-exploitation by sports organisers of their audiovisual rights through their own dedicated channels, which are then distributed by multiple platforms operators.³⁵ However, due to the high infrastructure and operational costs this model incurs for rightsholders, it only concerns a small minority of them.

Other models are directly linked to the increased availability of broadband access, such as the self-exploitation by sports organisers of secondary audiovisual rights on different platforms, including specific highlights or clips of matches or games in dedicated YouTube channels, or to exploit audiovisual rights in territories where they have not been acquired.

1.2.3. Enforcement of audiovisual sports rights in a digital context

As previously mentioned, a growing element of the economic value of sports is linked to intellectual property rights. However, more sophisticated communications technologies accessible to a wider public have not only enabled people to follow live sport from any location, but have also offered new possibilities for unauthorised commercial exploitation and illegal offerings online. Sports events in all formats, including texts, audiovisual, radio, and webcast, covered by exclusive audiovisual rights licensing agreements, are now streamed on a large scale on the Internet, without the

³³ For more information on EU competition policy, see Chapter 2, Section 2.2.1. of this publication.

³⁴ Since the beginning of the twenty-first century, all the major US sport leagues have started 24-hour cable TV channels devoted to their league: in 1999, the NBA pioneered this approach by launching nba.com TV, which was financially backed by the NBA. Following the NBA's lead, other leagues deployed similar strategies, with the launch of NFL Network (2003), The MTN (2006), Big Ten (2007), NHL Network (2007), and MLB Network (2009). The goal of these networks is to televise live regular season games, taking into account local blackout restrictions. Additionally, the leagues use their own networks as a way of promoting their out-of-market premium subscription packages.

³⁵ For example, Eredivisie Live channels by the Dutch Premier Football League, distributed with all interested platforms (cable, satellite, terrestrial, and IPTV platforms); for more information, see T.M.C. Asser Instituut et al., *op.cit.*



authorisation of the rightsholders involved. This includes publishers, producers, broadcasters and journalists.

Digital piracy and illegal streaming are considered a major problem associated with premium sports content and football matches, in particular due to their huge popular appeal among the public. The Premier League detected approximately 33,000 unauthorised live streams during the 2012/13 season, and about 17,500 for Bundesliga matches.³⁶ These figures have been constantly climbing in recent years. This is due in part to the widespread availability of low-cost technologies that facilitate the illegal retransmission of broadcasts with relative ease and little investment. It is also due to the popular appeal of live football broadcast, which makes it a particular target for unauthorised retransmission on the Internet. The quality of the streams themselves is improving rapidly and their use has evolved beyond the home-user, as they are now found in commercial premises, according to the Sports Rights Owners Coalition (SROC).³⁷

Given the economic investment involved in obtaining exclusive licenses to cover major sports events, infringement of intellectual property rights causes considerable harm to all contracting parties. Right owners are concerned about the scale and impact of digital piracy and its large economic and social repercussions. Signal piracy not only threatens the advertising and sales revenues of the media content providers that have paid for exclusive rights to show live coverage of sports events, but also risks reducing the value of those rights and hence the revenues of sports organisations.

Directive 2004/48/EC on the enforcement of intellectual property rights³⁸ requires all member states to apply effective, dissuasive, proportionate, fair, and equitable measures, procedures and remedies against those engaged in counterfeiting and piracy, and seeks to protect the interests of rightsholders in the EU. However, premium sports content is very specific compared to other audiovisual content such as films or music, insofar as their value lies almost exclusively in live viewing; the real window of opportunity to remove illegal content is almost limited to the duration of the sport event.

The protection and enforcement of intellectual property rights is a real challenge for the sport economy, and an essential part of the health of this sector and traditional notice and take down measures often prove ineffective in tackling the illegal online streaming of live sport content.³⁹

³⁶ See SROC position paper on the study on sports organisers' rights in the European Union, *op.cit.*

³⁷ The Sports Rights Owners Coalition (SROC) is a forum of over 50 international and national sports bodies and competition organisers with a particular focus on rights issues. See <http://sroc.info/>. *Ibid.*

³⁸ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0048R\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0048R(01)&from=EN).

³⁹ For more information on notice and take down procedures in the European Union, see Cabrera Blázquez, F.J., Cappello, M., Grece, C., Valais, S., "Copyright enforcement online: policies and mechanisms", IRIS *Plus*, European Audiovisual Observatory; Strasbourg, 2015, <http://publi.obs.coe.int/documents/205595/8261963/IRIS+plus+2015en3.pdf/890ed458-f2a3-40b1-b4a6-2ac0d6310cbe>.





2. International and European legal framework

2.1. International conventions related to media and sport

At international level, the World Intellectual Property Organisation (WIPO) has indirectly addressed the relationship between media and sports through its treaties and conventions related to the protection of the neighbouring rights of producers and broadcasting organisations.

As mentioned above, broadcasting organisations can produce the recording of sports events, in which case they benefit from the neighbouring rights protection granted to producers of audiovisual works. Their authorisation is then required for the reproduction, distribution and communication to the public of the recording of the sports event.

Neighbouring rights are also granted to broadcasting organisations for the transmission for public reception of broadcast signals. This protection is based on the assumption that broadcasters need to be able to protect investments in the dissemination of audiovisual content to the public and investments in rights and licenses, and recover operating costs. Neighbouring rights on broadcast signals transmission exist even if the content carried by the signal (cinematographic or audiovisual works or moving images) is not a work protected by copyright or neighbouring rights. These rights were included in the Rome Convention in 1961 within the auspices of the WIPO, as will be explained in the following paragraphs.

2.1.1. The Rome Convention

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations⁴⁰ of 1961 (Rome Convention) establishes minimum standards of international protection for broadcasting organisations. Under the Convention, broadcasting organisations have exclusive rights for 20 years to authorise or prohibit certain acts, namely:

- The re-broadcasting of their broadcasts;
- The “fixation” (recording) of their broadcasts;
- The reproduction of fixations of their broadcasts; and
- The communication to the public of television broadcasts if such communication is made in venues accessible to the public in return for the payment of an entrance fee.

⁴⁰ WIPO, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 26 October 1961, http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=289795.



2.1.2. The updating of the international protection of broadcasting organisations

Although the Rome Convention provides a basic level of protection, important developments in technology and the marketplace have taken place since its adoption in 1961 that are not addressed by the Convention. Perfect digital copies of television programmes can be made and transmitted instantaneously around the world, and signal theft has become a big challenge for broadcasting organisations. Following the adoption in 1996 of the ‘WIPO Internet treaties’ on copyright and on performers and producers of phonograms (sound recordings),⁴¹ broadcasting organisations also began to ask that the of the international protection to which they are entitled be updated.

Although elements of content within signals are protected by other measures, broadcasters and cablecasters argue that contemporary unauthorised use of signals makes it difficult for them to fully exploit expensive content, especially coverage of live events, such as sports and concerts. This is due to the fact that the unauthorised uses undermine investments in the transmissions and make cost recovery and profitable operations difficult. Broadcasters and cablecasters argue that protecting signals will enable them to protect intellectual property rights, and request the same protection as phonogram producers with respect to their entrepreneurial activity in producing a phonogram. According to broadcasters and cablecasters, a signal carries audiovisual content and, like a phonogram, is something that requires technical, financial, and organisational investment.

The review of existing international standards was initiated in 1997 by WIPO members in the ambit of the Standing Committee on Copyright and Related Rights (SCCR).⁴² The aim was to create an international legal framework that adequately and efficiently protects against the piracy of broadcast signals.

However, although there is a wide recognition of the need to update the international protection afforded to broadcasters against theft of their signals, WIPO members have so far failed to agree on how this should be done and what further rights, if any, broadcasters should be given. Some important issues are still outstanding, such as the scope of the protection⁴³ and the form that this protection shall take.⁴⁴

⁴¹ WIPO Copyright Treaty (WCT) and WIPO Performance and Phonogram Treaty, http://www.wipo.int/copyright/en/activities/internet_treaties.html.

⁴² The Standing Committee on Copyright and Related Rights (SCCR) was set up in the 1998-1999 biennium to examine matters of substantive law or harmonization in the field of copyright and related rights, <http://www.wipo.int/policy/en/sccr/>.

⁴³ Broadcasters want protection for all means of transmission of their signals (“technology neutral” protection) that would cover new technologies such as digital programme recording devices, on-demand video services and IPTV, which can transmit programmes not only to televisions but also to computers and mobile phones. However, some countries and civil society groups are wary of restrictions affecting Internet transmissions. In 2006, WIPO members agreed to put aside momentarily the issue of webcasting or Internet streaming. However, there are concerns that protecting the Internet transmissions of broadcasters could pre-empt these discussions by giving some protection to webcasters as well.

⁴⁴ Broadcasters want the proposed treaty to contain provisions similar to those of the WIPO Internet treaties regarding the circumvention of technical protection measures. Critics argue that, by restricting what can be viewed on what equipment, as well as inhibiting technological innovation these rules could also block perfectly legal uses of TV broadcasts, such as recording programmes for personal or educational uses.



2.2. The European framework

2.2.1. The marketing of audiovisual sports rights

Both the European Commission and the jurisprudence of the CJEU have confirmed that economic activities in the field of sport fall within the scope of EU law, notably its competition rules.⁴⁵ Of special interest is the *Bosman* case,⁴⁶ in which it was confirmed that sport itself is subject to Community law to the extent that it constitutes an economic activity. This ruling confirmed that sport is subject to all relevant EC Treaty provisions as regards the economic activities it generates, and that those provisions are to be applied on the basis of general principles, taking into account certain special characteristics of the sector. The *Bosman* case has played a significant role in guiding the Commission in its development of competition policy in the sport sector.⁴⁷

2.2.1.1. EU competition rules

Like any other economic activity, the sale and acquisition of audiovisual sports rights in Europe is subject to EU rules on competition, and notably to its prohibition of anti-competitive agreements between undertakings. According to Article 101(1) of the Treaty on the Functioning of the European Union (TFEU),⁴⁸ agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, are prohibited as incompatible with the internal market. Article 101(1) lists explicitly the following forbidden actions:

- Directly or indirectly fixing purchase or selling prices or any other trading conditions;
- Limiting or controlling production, markets, technical development, or investment;
- Sharing markets or sources of supply;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

⁴⁵ See the following judgments of the CJEU: Case T-313/02 *David Meca-Medina and Igor Majcen v. Commission*, ECR 2004 II-3291, para. 44; Case C-519/04 P *David Meca-Medina and Igor Majcen v. Commission*, ECR 2006 I-6991, para. 22; Case 36/74 *Walrave and Koch v. Union Cycliste Internationale*, ECR 1974, 1405, para. 4; Case 13/76 *Donà v. Mantero*, ECR 1976 1333, para. 12.

⁴⁶ Judgment of the Court of, 15 December 1995, Case C-415/93, *URBSFA v. Bosman*, ECR 1995 I-4921, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0415&from=EN>.

⁴⁷ See Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport {COM(2007) 391 final} {SEC(2007)932} {SEC(2007)934} {SEC(2007)936}, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC0935>.

⁴⁸ Consolidated version of the Treaty on the Functioning of the European Union, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.



Actions by undertakings that may be *prima facie* incompatible with the Internal Market may however benefit from the exception of Article 101(3) TFEU if they fulfil the following conditions:

- They contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- They neither impose restrictions that are not indispensable to the attainment of these objectives, nor afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

2.2.1.2. Competition issues

Due to the particularities of this sector, the way audiovisual sports rights are marketed raises two main competition concerns:

- Joint selling of audiovisual sports rights: i.e. arrangements by which clubs entrust the selling of their audiovisual rights to their national or international sports association, which then collectively sells the rights on their behalf.⁴⁹ Joint selling constitutes a horizontal restriction of competition contrary to Article 101(1) TFEU, but may be covered by the exception of Article 101(3) TFEU in certain cases.⁵⁰
- Territorial exclusivity: audiovisual sports rights are normally marketed via territorially exclusive licenses. This can be explained by purely cultural reasons: for example, football fans of a given country will be mostly interested in (and willing to pay for) matches of the national league. This model also allows rightsholders and broadcasters to optimise their return on investment. However, certain exclusivity clauses may interfere with competition concerns.

2.2.1.2.1. Joint selling of rights

Joint selling of audiovisual sports rights has become the dominant practice since three decisions of the Commission (UEFA Champions League in 2003, Bundesliga in 2005, and Premier League in 2006)⁵¹ clarified the legality of such practice, under strict conditions. Before these decisions were made, the National Competition Authorities (NCAs) of various member states had prohibited the joint selling of audiovisual sports rights on the basis of their national competition rules.⁵²

The Commission has consistently ruled that joint selling constitutes a horizontal restriction of competition, and contravenes Article 101(1) TFEU. However, such joint selling arrangements may be covered by the exception of Article 101(3) TFEU because, as stated in the UEFA decision, such joint selling agreements may:

⁴⁹ See paragraph 1.2.2.3. of this publication.

⁵⁰ See T.M.C. Asser Instituut/Asser International Sports Law Centre/Institute for Information Law (University of Amsterdam), “Study on sports organisers’ rights in the European Union”, February 2014, EAC/18/2012, page 70, *op. cit.*

⁵¹ These decisions are explained *in extenso* in Chapter 5 of this publication.

⁵² During the 1990s, the competition authorities of Germany, Italy, the Netherlands, and the United Kingdom had initiated actions regarding the joint selling of football media rights, and found that they were anti-competitive. See T.M.C. Asser Instituut et al., *op.cit.*, p. 75-76.



- Lead to the improvement of production and distribution by creating a quality-branded league-focused product sold via a single point of sale;
- Increase efficiency as they reduce transaction costs for audiovisual operators and clubs, and respond to broadcasters' demands; and
- Bring about marketing advantages, such as the branding of uniform league products and services;
- Allow consumers to profit from the benefits deriving from the agreements.

The Commission also considered that the joint selling of the audiovisual rights to the UEFA Champions League by UEFA is unlikely to eliminate competition in respect of a substantial part of the audiovisual rights in question. Firstly, the UEFA Champions League is one among many other football competitions. In addition, the audiovisual rights of the UEFA Champions League are divided into assorted different rights packages, which allow several media operators to acquire audiovisual rights for the UEFA Champions League. Furthermore, both UEFA and the football clubs sell certain categories of rights on a non-exclusive basis, to ensure that interested buyers have several possible sources of supply from the owners of such rights.

The same principles were applied in the Bundesliga and Premier League decisions. In each of these cases the Commission required different modifications and commitments involving, for example, a short duration and limited scope for exclusive rights, a transparent bidding procedure, retention of sales of certain audiovisual rights by the clubs, and a fall-back clause whereby certain unsold rights may revert to the clubs for individual marketing.⁵³

The following table summarises the main competition issues identified in the three cases, and the types of commitments made to address them.

⁵³ See Global Forum on Competition, Contribution from the European Union, "Competition issues in television and broadcasting", http://ec.europa.eu/competition/international/multilateral/2013_feb_television_en.pdf.



Table 1 - Remedies in UEFA Champions League, Bundesliga and Premier League

Competition concern	Remedy	UEFA	Bundesliga	Premier League
Risk of foreclosure effects in downstream markets	Non-discriminatory and transparent tendering procedure	X	X	X
	Independent monitoring trustee overseeing tender process			X
	No conditional bidding			X
Risk of market foreclosure effects in downstream markets as a result of exclusivity and bundling of media rights	Limitation of scope of exclusive contracts:			
	- a reasonable amount of different rights packages	X	X	X
	- no combination of large and small packages			X
	- earmarked packages for special markets/platforms (new media rights)	X	X	X
	Limitation of duration of exclusive contracts: max. three football seasons	X	X	X
Risk of output restrictions	Fall-back option to clubs for unsold or unused right	X	X	X
	Parallel exploitation of less valuable rights by club	X		
Risk of monopolisation	“No single buyer” obligation			X

T.M.C. Asser Instituut/Asser International Sports Law Centre/Institute for Information Law (University of Amsterdam),

“Study on sports organisers’ rights in the European Union”

The decisions of the Commission in the abovementioned cases have played a prominent role in subsequent decisions of national competition authorities in their own decisions in this area. Recent decisions concerning the most important football leagues in Europe (Germany, Spain, France, the UK and Italy) are discussed in Chapter 3 of this publication.

Of all those remedies, probably the most significant limitation to contractual freedom introduced by the Commission was the so-called “no single buyer” rule. This rule is actually a commitment given by the FA Premier League (FAPL), whereby it ensured that no single bidder would be awarded all exclusive audiovisual rights for live broadcasts by the FAPL. This remedy has been criticised by some commentators on a number of bases.⁵⁴ Firstly, the aim of this remedy was

⁵⁴ See e.g. Chillin’ Competition, “Football, TV rights and the ‘single buyer rule’: in a world of commitment decisions, bad policy dies hard”, <https://chillingcompetition.com/2016/02/11/football-tv-rights-and-the-single-buyer-rule-in-a-world-of-commitment-decisions-bad-policy-dies-hard/>. See also OsborneClarke, “Football broadcasting rights in Europe competition beyond the pitch”, 9 May 2016,



certainly to foster competition in the very concrete case of the UK market, but national competition authorities in other member states have also introduced this rule in their decisions, even if their countries' market structures are different.⁵⁵ However the main criticism of the “no single buyer” rule concerns the penalisation of end users: if applied, this rule means that fans will have to pay at least two subscriptions in order to be able to watch all the matches of a particular sports team.

2.2.1.2.2 Territorial exclusivity

In its Political Guidelines for the next European Commission, the President of the European Commission, Jean-Claude Juncker, declared:

*We must make much better use of the great opportunities offered by digital technologies, which know no borders. To do so, we will need to have the courage to break down national silos in telecoms regulation, in copyright and data protection legislation, in the management of radio waves and in the application of competition law.*⁵⁶

*In practical terms, this has translated into the Commission's Digital Single Market strategy.*⁵⁷

The initial declarations by members of the Commission prompted concerns that the principle of territoriality in copyright would be erased from EU law.⁵⁸ Moreover, the opening of formal antitrust proceedings, to investigate contractual clauses in agreements between Sky UK and major film studios, licensing its film output for pay-TV, raised many questions in the audiovisual industry. However, Competition Commissioner Joaquín Almunia declared that the Commission is “not calling into question the possibility to grant licenses on a territorial basis, or trying to oblige studios to sell rights on a pan-European basis”.⁵⁹ The Commission's investigation “will focus on restrictions that prevent the selling of the content in response to unsolicited requests from viewers located in other Member States - the so-called ‘passive sales’ - or to existing subscribers who move or travel abroad.”⁶⁰

<http://www.osborneclarke.com/connected-insights/blog/football-broadcasting-rights-europe-competition-beyond-pitch/>.

⁵⁵ The most recent case is the decision of the German *Bundeskartellamt* concerning the awarding in Germany of media rights for the games of the 1st and 2nd football leagues from the 2017/18 season onwards. See Chapter 3 of this publication.

⁵⁶ Jean-Claude Juncker, “A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change”, 15 July 2014, http://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines_en.pdf.

⁵⁷ Press release of the European Commission, “A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen”, Brussels, 6 May 2015, http://europa.eu/rapid/press-release_IP-15-4919_en.htm.

⁵⁸ For an in-depth analysis of the principle of territoriality in copyright law and the controversies around it see Cabrera Blázquez F., Cappello M., Grece C., Valais S., “Territoriality and its impact on the financing of audiovisual works”, IRIS Plus, European Audiovisual Observatory, Strasbourg, 2015,

<http://www.obs.coe.int/documents/205595/8261963/IRIS+plus+2015en2.pdf/ad5c5a8f-4e85-4e3c-b763-9c763895da1e>.

⁵⁹ Joaquín Almunia, Vice President of the European Commission responsible for Competition Policy, “Statement on opening of investigation into Pay TV services”, 13 January 2014, http://europa.eu/rapid/press-release_SPEECH-14-13_en.htm.

⁶⁰ For the latest developments concerning this issue see the press release of the European Commission, “Antitrust: Commission seeks feedback on commitments offered by Paramount Pictures in pay-TV investigation”, 22 April 2016, http://europa.eu/rapid/press-release_IP-16-1530_en.htm.



While the abovementioned investigation does not concern the licensing of audiovisual sports rights, the CJEU judgment in the *Premiere League* cases⁶¹ indeed made a lot of noise. In this case, the CJEU ruled that the system of territorially exclusive licence agreements put in place by the FAPL, which forbade the licensees from supplying decoding devices that would enable access to the rightsholder's subject-matter (protected against use outside the territory under the licence agreement), constituted a restriction on competition prohibited by Article 101 TFEU. According to the CJEU, partitioning markets with the sole aim of creating artificial price differences between member states, thereby maximising profits (price discrimination), is irreconcilable with the Treaty. In this case such territorial restrictions did not qualify for an exemption under Article 101(3) TFEU, which provides an exception on the basis of contributing to improving the production or distribution of goods or to promoting technical or economic progress.

This judgment was considered by some as “ground breaking” and “likely to have far-reaching ramifications for current business practices in the broadcasting sector”, not only concerning sports, but also motion pictures and other premium content offered by satellite pay-TV services. This further extends even to web-based television services and other online content services that are territorially restricted through the use of geo-blocking technical measures.⁶² However, so far little seems to have changed. The Premier League responded to the judgment by introducing new contractual conditions that could leave consumers everywhere in the EU in a worse position.⁶³

- Licensees are no longer allowed to offer an optional English language feed to their consumers. They can only transmit Premier League matches with the commentary in the language of that country.
- Non-UK licensees are no longer allowed to transmit more than one live Premier League match on Saturday afternoon.

According to the SROC, this judgment would not call into question the territorial exclusivity principle as such, and deemed illegal only some clauses granting absolute territorial exclusivity and preventing passive selling.⁶⁴ The SROC considers that the main obstacle that its members face in terms of the creation of a digital single market is the lack of a “digital single demand”. SROC argues that sport is territorial by nature, and those from hosting or participating countries watch national matches and competitions more fervently. Accordingly, sport competitions would have a very different value depending on the territory in which they are being watched. Even in the case of football, there is no demand from broadcasters and content providers for the delivery of content on a European basis. A “one-size-fits-all” approach would appear to disregard the diverse consumer demand in the member states, and would inhibit flexibility to provide specifically-required content in each member state.⁶⁵

⁶¹ Judgment of the Court (Grand Chamber) of 4 October 2011, joined cases C-403/08 and C-429/08, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08), <http://curia.europa.eu/juris/document/document.jsf?docid=110361&doclang=en>.

⁶² See e.g. Hugenholtz P.B., “Europe 1 – Premier League 0”, Kluwer Copyright Blog, 9 October 2011, <http://kluwercopyrightblog.com/2011/10/09/europe-1-premier-league-0/>.

⁶³ Van Rompuy, B., “Premier League fans in Europe worse off after Murphy judgment”, <http://kluwercompetitionlawblog.com/2014/05/06/premier-league-fans-in-europe-worse-off-after-murphy-judgment/>.

⁶⁴ Absolute territorial protection means that the licensees are prohibited from not only selling actively into other licensees' territories but also passively, i.e. responding to unsolicited demands from customers located in other countries). See Global Forum on Competition, *op.cit.*

⁶⁵ SROC Contribution to the DG INFSO Consultation “Online Distribution of Audiovisual Works in the European Union”, 18 November 2011,



2.2.2. Limitations to exclusive broadcasting rights

As has been mentioned above, exclusive rights are connected to events that are valuable to broadcast, which is generally the case with live events such as sports events. The exclusion of other potential competitors in the case of sports events is the primary reason for the return on the considerable investments that have been made by the exclusive rightsholders. However, this legitimate interest in holding exclusive rights is sometimes sacrificed in the name of freedom of information, particularly the passive freedom of information.⁶⁶

This potential conflict between fundamental rights of citizens, such as the right to access and receive pluralistic information, and economic principles applicable to the exclusive sale of audiovisual sport rights, such as freedom to enter in to a contract and property rights, was addressed by the Council of Europe (CoE) in the European Convention on Transfrontier Television (ECTT)⁶⁷ in order to limit the conditions for the sale and acquisition of exclusive broadcasting rights. In parallel, similar concerns were raised at EU level, and Recital 48 of the Audiovisual Media Services Directive (AVMSD)⁶⁸ illustrates the rationale of these limitations:

Television broadcasting rights for events of high interest to the public may be acquired by broadcasters on an exclusive basis. However, it is essential to promote pluralism through the diversity of news production and programming across the Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.

The two sets of rules that respond to this need, both in the context of the CoE and the EU, are the legal provisions on the broadcasting of “events of major importance to society” and on the right to short reporting on “events of high interest”. The first implies the coverage of a certain set of events, as identified by the member states, by free-to-air broadcasters. The latter responds to specific information needs in news programmes, and entitles any broadcaster to access to the highlights of events that are of particular relevance, but not necessarily listed.

Both sets of rules, for both major events and short reporting, apply only to linear services and are a restriction to exclusivity: in the case of major events, pay-TV broadcasters are prevented from exercising their rights unless they (offer to) resell them to free-to-air broadcasters (so-named qualified broadcasters); in the case of short reporting, primary rightsholders are prevented from selling reporting rights at market price, and can only claim compensation for additional costs related

http://ec.europa.eu/internal_market/consultations/2011/audiovisual/non-registered-organisations/sports-rights-owners-coalition_en.pdf. See also SROC Paper on the territoriality, cross-border access to content and portability issues, http://sroc.info/files/1914/3228/1420/SROC_position_paper_on_territoriality.pdf.

⁶⁶ See Helberger N., “Controlling Access to Content: Regulating Conditional Access in Digital Broadcasting”, Kluwer Law International, 2005.

⁶⁷ European Convention on Transfrontier Television, 5 May 1989, as amended according to the provisions of the Protocol (ETS No. 171) which entered into force, on 1 March 2002,

<http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007b0d8>.

⁶⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive),

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013>.



to the provision of access. In both cases there is a restriction of contractual freedom in the name of the public's right to be informed about events of relevance to society.⁶⁹

These rules emerged at EU level relatively late, as they were not included in the Television Without Frontiers (TVWF) Directive of 1989⁷⁰. The rules on major events were adopted during the first revision of the Directive in 1997,⁷¹ and those on short reporting were adopted only on the occasion of the second revision which led to the AVMSD in 2007. Equivalent rules were already to be found in the European Convention on Transfrontier Television (ECTT) as amended in 1998, and in several national rules.

2.2.2.1. Events of major importance to society

In order to enforce the right to access events that are considered of particular significance for the public, both the Council of Europe and the EU have foreseen a mechanism according to which certain events have to have ensured free-to-air coverage, live and in full where possible. These events have to be selected in advance by the states that wish to grant access to them, and they must respond to specific information needs that are linked to their societal relevance.

2.2.2.1.1. Article 14 of the AVMSD

As often happens, the introduction of rules somehow reflects historical contingencies. During the first revision process of the TVWF directive, the issue of ensuring adequate coverage of major events was not mentioned in the proposal of the Commission of 1995, but only in a resolution⁷² of the European Parliament of May 1996. The Resolution addressed the issue of “encrypted exclusive rights” (i.e. pay-TV), and pointed to the need of ensuring that the population should be granted unencrypted access to certain types of events.

After the German Kirch Group in July 1996 acquired all rights for the football World Cups of 2002 and 2006,⁷³ in the following October the Culture committee of the European Parliament issued a Recommendation⁷⁴ suggesting that a binding list of events be established at European level, and

⁶⁹ See Schoental M., “Major Events and Reporting Rights”, IRIS Plus 2006-2, European Audiovisual Observatory, Strasbourg, 2006, <http://www.obs.coe.int/documents/205595/264581/IRIS+plus+2006en2LA.pdf>.

⁷⁰ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31989L0552>.

⁷¹ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31997L0036>.

⁷² European Parliament, Resolution of 22 May 1996 on the broadcasting of sports events, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996IP0326:EN:HTML>. See Van Loon A., “Resolution on the broadcasting of sports events”, IRIS 1996-8/9, European Audiovisual Observatory, Strasbourg, 1996, <http://merlin.obs.coe.int/iris/1996/8/article9.en.html>.

⁷³ FIFA, Press release of 5 July 1996, “World Cup TV rights 2002 and 2006”, <http://www.fifa.com/about-fifa/news/y=1996/m=7/news=world-cup-rights-2002-and-2006-70082.html>.

⁷⁴ European Parliament, Committee on Culture, Youth, Education and Media, Recommendation of 31 October 1996 for second reading on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive amending Council Directive 89/552/EEC,



should include Summer and Winter Olympics and World and European football cups, notwithstanding the right of each member state to expand that list.

Whereas the idea of a binding list was rejected, the final version of Article 3a⁷⁵ of the revised TVWF Directive stuck to the principle of subsidiarity, and left the adoption of the lists to each member state, but only as a possible option and on the basis of the principle of mutual recognition. This provision remained substantially unchanged during the third revision process of the Directive, which was concluded in 2007 with the approval of the AVMSD, and has not been mentioned by the European Commission in its current revision proposal,⁷⁶ tabled on 25 May 2016. Article 14(1) of the AVMSD establishes that:

Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television.

If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society.

It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

The options on live/deferred and whole/partial coverage respond to the principle of proportionality, in order not to excessively restrict the exclusive rights of the legitimate rightsholders, whereas the procedure for the adoption of the lists serves the purposes of the mutual recognition mechanism. The European Commission and other member states must be notified of any lists adopted by

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1996-0346&language=EN#Contentd667758e351>. See proposed amendment no. 20:

New Article 3a: "Member States shall ensure, by appropriate legal means, that broadcasters under their jurisdiction which have acquired exclusive broadcasting rights to particularly important events of general interest, both national and/or European, such as, in particular, the Summer and Winter Olympic Games, the football World Cup and European Championships and any other event which a Member State deems equally important, by means of laws or regulations, do not exercise those rights in such a way as to deprive a sizeable proportion of the public in the Member State of the possibility of following such events live, via broadcasts receivable in clear."

⁷⁵ Article 3a as introduced by directive 97/36/EC, <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31997L0036>:

"1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage."

⁷⁶ European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, of 25 May 2016, COM/2016/0287 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1464618463840&uri=COM:2016:287:FIN>.



member states. In addition, the lists must receive the positive opinion of the Contact committee established by the same Directive, and be published in the Official Journal of the EU.⁷⁷

As to the criteria for the evaluation of the lists, the AVMSD does not provide any significant details apart from the very few indications contained in its Recital 52:

Events of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to those events.

The criteria of the implementation of this provision were defined in an unpublished Working Document of the Contact committee⁷⁸ established by the Directive. These guidelines offer four indicators to assess whether an event can be considered to be of major importance for society, two of which have to be fulfilled for the inclusion of an event in a national list:

The event and its outcome have a special general resonance and not simply have a significance to those who ordinarily follow the sport or activity concerned;

The event has a generally recognised, distinct cultural importance for the population, in particular as a catalyst of its cultural identity;

The event involves the national team in the sport concerned in a major international tournament;

*It has traditionally been broadcast on free television and has commanded large television audiences.*⁷⁹

In the practical implementation of these rules it is possible that the transmission rights of the listed events are bought by a so-called unqualified broadcaster (i.e. a pay-TV broadcaster). Article 3a namely is not a restriction on the acquisition of rights, but rather to their exercise. The unqualified broadcaster will in this case have to offer the rights to a qualified broadcaster, but the latter has no obligation to buy the rights. It should be noted that there are no rules addressing this potential

⁷⁷ The lists are also published on the European Commission's website at <https://ec.europa.eu/digital-single-market/en/avmsd-list-major-events>. For further details see paragraph 3.2.1. of this publication.

⁷⁸ European Commission, Working Document CC TVSF (97) 9/3, Implementation of Article 3A of Directive 89/552/EEC, as modified by Directive 97/36/EC. Evaluation of National Measures. This document was never made public by the European Commission, but is referred to in the judgment of the Court of First Instance of 15 December 2005 in the case T-33/01, Infront WM AG v Commission of the European Communities, concerning the adoption of the British list, paragraph 106, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62001TJ0033>, and reported in full in the judgment of the EFTA Court of 3 October 2014 in the case E-21/13, FIFA vs EFTA Surveillance Authority, concerning the adoption of the Norwegian list, paragraph 33, http://www.eftacourt.int/uploads/tx_nvscases/21_13_Judgment.pdf.

⁷⁹ European Commission, Working Document CC TVSF (97) 9/3, Implementation of Article 3A of Directive 89/552/EEC, as modified by Directive 97/36/EC, Evaluation of National Measures, *cit.* As to the definition of the single event, the CJEU considered that the World Cup and the EURO Tournaments must be considered divisible into different matches or stages, meaning that member states must justify to the European Commission why they consider the final stage of the World Cup or the EURO, in its entirety, as a single event. See judgment of 18 July 2013, case C-205/11 P – FIFA v Commission, <http://curia.europa.eu/juris/celex.jsf?celex=62011CJ0205&lang1=en&type=TXT&ancre>.



conflict in the AVMSD, apart from a very general reference in Recital 54 which leaves the resolution of possible conflict to the member states.⁸⁰

2.2.2.1.2. Article 9a of the ECTT

Similar details are to be found in the equivalent regulatory set adopted by the Council of Europe. The ECTT, which was revised at the same time of the TVWF Directive, contains a provision with an almost identical formulation, namely Article 9a.⁸¹ According to this provision, member countries shall take measures to ensure that broadcasters under their jurisdiction do not broadcast events which are regarded by the countries as being of major importance for society on an exclusive basis, in such a way as to deprive a substantial proportion of the public of the possibility of following such events on free television. The member countries concerned shall create a list of designated events, both national and non-national, which they consider to be of major importance for society.

The Standing Committee established by the ECTT adopted the Guidelines for the assessment of the level of importance of such events, which reproduce the wording of the abovementioned Working Document to the Contact Committee under the EU framework.⁸²

2.2.2.2. Short news reporting

For major events, the public is granted the right to access the events in full, where possible, and the events as such have to be listed in order to produce effects. Conversely, the right to short news reporting responds to the right of audiovisual media providers to inform the public of events of high interest in news programmes, and is applicable without any preliminary selection of the events. The events will have to be assessed on a case-by-case basis and the short extracts must in any event not pre-empt the exclusive rights from their commercial value, meaning that they must be limited in their scope.

2.2.2.2.1. Article 15 of the AVMSD

Article 15 of the AVMSD, which remains untouched by the current revision proposal of 25 May 2016, specifically defines the context for the settlement of possible conflicts between two different sets of rights, namely the primary right to transmit the event on an exclusive basis, and the secondary right

⁸⁰ Recital 54 of the AVMSD: “Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union.”

⁸¹ Article 9a of the ECTT states that:

“Each member countries retains the right to take measures to ensure that a broadcaster within its jurisdiction does not broadcast on an exclusive basis events which are regarded by that Party as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Party of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Party concerned may have recourse to the drafting of a list of designated events which it considers to be of major importance for society.”

⁸² Standing Committee of the ECTT, Guidelines for the implementation of Article 9a, adopted on 12-13 December 2001, paragraph 10, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805949d5#search=transfrontier%20television%20guidelines%20major%20events>.



to transmit short extracts during news programmes.⁸³ The events, to which short reporting rights have to be ensured, must be of high interest, but it is up to the concerned member state to define the must-offer conditions of the secondary rights according to its own discretionary power:

*Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.*⁸⁴

As the Directive concerns the circulation of audiovisual media services, Article 15 of course considers possible transfrontier cases. Interestingly, on the application of the country of origin principle, it is mainly Recital 55 that sets up the sequence of applicable laws:

*The country of origin principle should apply to both the access to, and the transmission of, the short extracts. In a trans-frontier case, this means that the different laws should be applied sequentially. Firstly, for access to the short extracts the law of the Member State where the broadcaster supplying the initial signal (i.e. giving access) is established should apply. This is usually the Member State in which the event concerned takes place. Where a Member State has established an equivalent system of access to the event concerned, the law of that Member State should apply in any case. Secondly, for transmission of the short extracts, the law of the Member State where the broadcaster transmitting the short extracts is established should apply.*⁸⁵

Once access has been ensured, the broadcaster wishing to transmit short extracts must nonetheless abide by certain restrictions, as follows:

- The broadcaster is obliged to mention the source of the extracts;
- The extracts can be used solely in news programmes and not in programmes serving entertainment purposes;
- The use of the extracts in on-demand catalogues is allowed only in the case of deferred transmission of the same programme originally available on linear services.

These restrictions respond to the need to avoid the frustration of the primary rights of the exclusive rightsholder. Limitations are justified only to the extent that they respond to other fundamental rights, which is in this case the right to information. Restrictions on exclusivity would on the contrary not be justified in the case of substantially competing programmes, for example where the broadcaster compiles a selection of highlights. Highlights are in fact usually sold separately, as a distinct type of exploitation right.

⁸³ The CJEU has held that this limitation to exclusive rights is in line with the Charter of Fundamental Rights, in particular the right to property. Although it restricts the freedom to conduct a business, such restriction is justified and in line with the principle of proportionality. See judgment of 22 January 2013, case C-283/11, Sky Österreich GmbH v Österreichischer Rundfunk, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CJ0283&rid=2>.

⁸⁴ Article 15(1) of the AVMSD.

⁸⁵ Recital 55, second part of AVMSD.



As to the details concerning the exercise of this right, it is for the member states to ensure “in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined”.⁸⁶ This concerns:

- Compensation arrangements, but which are nonetheless limited to the additional costs directly incurred in providing access;
- The maximum length of short extracts; and
- The time limits regarding their transmission, or so-called waiting periods.

2.2.2.2.2. Article 9 of the ECTT

Until the second revision process of the TVWF Directive in 2007, no provision on short news reporting was foreseen at EU level, but only nationally. This is also true of the execution of the ECTT. Article 9 of the ECTT, as adopted in 1989,⁸⁷ contained a very soft reference to short news reporting, referring to a general duty to balance exclusive rights with the right to information.

In 1991, the Council of Europe issued a Recommendation⁸⁸ of the Committee of Ministers on the right to short reporting on major events, in which it set out the conditions for the exercise of the public’s right to information. In its principles the Recommendation details that limitations should be placed on the property rights of the primary broadcaster (the rightsholder of the exclusive rights), in such a way that the public in a particular country is enabled to exercise its right to information. In particular, the Recommendation establishes that the purchaser of the exclusive rights, or primary broadcaster, is obliged to allow any broadcaster who wishes to acquire information about the event concerned, the “secondary broadcaster”, to provide information about the event in the form of a short report. Two alternatives are suggested as guidelines to member states for the fulfilment of this obligation in their national legislation: (1) filming at the site of the event; or (2) recording the signal produced by the primary broadcaster in order to make a short report.⁸⁹

Following this Recommendation, the ECTT was amended in 1998,⁹⁰ in order to create a right to short reporting of events. However, this right was mentioned only as an example of possible

⁸⁶ Matzneller P., “Short Reporting Rights in Europe: European Legal Rules and their National Transposition and Application”, IRIS Plus 2010-4, European Audiovisual Observatory, Strasbourg, 2012,

http://www.obs.coe.int/documents/205595/264635/Iris_plus_2012-4_EN_FullText.pdf. For further details see paragraph 3.2.2. of this publication.

⁸⁷ Article 9 of the ECTT, ETS 132, of 5 May 1989, available in its original wording at

[http://treaties.fco.gov.uk/docs/fullnames/pdf/1993/TS0022%20\(1993\)%20CM-2178%201989%205%20MAY,%20STRASBOURG%3B%20EUROPEAN%20CONVENTION%20ON%20TRANSFRONTIER%20TELEVISION.pdf](http://treaties.fco.gov.uk/docs/fullnames/pdf/1993/TS0022%20(1993)%20CM-2178%201989%205%20MAY,%20STRASBOURG%3B%20EUROPEAN%20CONVENTION%20ON%20TRANSFRONTIER%20TELEVISION.pdf):

“Each Party shall examine the legal measures to avoid the right of the public to information being undermined due to the exercise by a broadcaster of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of an event of high public interest and which has the effect of depriving a large part of the public in one or more other Parties of the opportunity to follow that event on television.” (Emphasis added)

⁸⁸ Recommendation no. 91(5) of the Committee of Ministers of 11 April 1991 on the right to short reporting on major events, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=571825&SecMode=1&DocId=596324&Usage=2>.

⁸⁹ See Explanatory Memorandum to Recommendation No. R (91) 5 of 11 April 1991, [http://cm.coe.int/ta/rec/1991/ExpRec\(91\)5.htm](http://cm.coe.int/ta/rec/1991/ExpRec(91)5.htm).

⁹⁰ Article 9 of the ECTT, ETS 171, of 1 October 1998,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007b0d8>:



measures (“such as introducing the right to short reporting”) to pursue the abovementioned goal. Article 9 of the ECTT, as amended, calls for member countries to introduce a right of the public to access information, in the form of a right to “short reporting on events of high interest for the public”, the so-called “right to short reporting”.⁹¹

“Each Party shall examine and, where necessary, take legal measures such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster within its jurisdiction of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of such an event.” (Emphasis added)

⁹¹ For further details, see Scheuer A., Strothmann P., *Sport as Reflected in European Media Law*, Part I, *IRIS Plus* Issue 2004-4, European Audiovisual Observatory, Strasbourg, 2004,

<http://www.obs.coe.int/documents/205595/264577/IRIS+plus+2004en2LA.pdf/23909a99-e96b-41c0-9e0a-7fcd0b342807>.



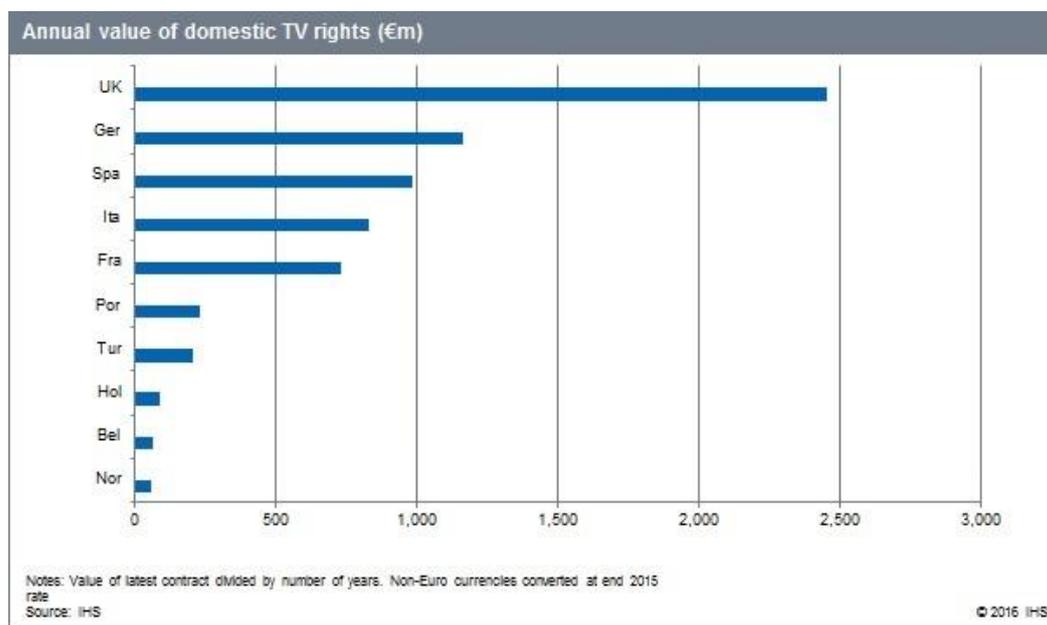
3. National legal framework

3.1. The marketing of audiovisual football rights

In Europe, football is king. There is no sport that rivals its popularity, which makes it very lucrative. The most valuable football team on earth, Real Madrid, is worth USD 3.65 billion. Its most famous player, Cristiano Ronaldo, earned a total of USD 82.1 million in salary and endorsements in 2015 alone.⁹²

But as in any other sport, in football there are winners and losers. The football leagues of five European countries (Germany, Spain, France, UK and Italy) stand out from the crowd: they are by far the most important in terms of market value⁹³ and contain the world's 20 most valuable football teams.⁹⁴ Their financial success is fuelled to a great extent by proceeds from the sale of audiovisual rights. Indeed, the five biggest domestic TV deals in recent times were made by those very same leagues.

Figure 3: Annual value of domestic TV rights



Source: IHS Technology Blog, "Bundesliga TV rights deal analysis", 10 June 2016
<http://blog.ihs.com/bundesliga-tv-rights-deal-analysis>

⁹² See Ozanian M., "The World's Most Valuable Soccer Teams 2016",
<http://www.forbes.com/sites/mikeozanian/2016/05/11/the-worlds-most-valuable-soccer-teams-2016/#197d8d212d04>.

⁹³ See <http://www.transfermarkt.com/?seo=wettbewerb&plus=1>.

⁹⁴ See Ozanian M., *op.cit.*



As explained in Chapter 2 of this publication, joint selling of audiovisual sports rights by national leagues is the dominant practice in most European countries, but raises important competition issues. The following paragraphs describe the most recent competition decisions by national competition authorities concerning the marketing of audiovisual football rights in the five biggest football leagues in Europe.

3.1.1. Germany

On 31 March 2016, the *Ligaverband* (German League Association) and the *Deutsche Fußball Liga* (German Football League - DFL) submitted a list of commitments⁹⁵ to the *Bundeskartellamt* (Federal Cartel Office) concerning criteria for the awarding of media rights for the games of the 1st and 2nd football leagues from the 2017/18 season onwards. The *Bundeskartellamt* has now declared the commitments offered as legally binding.⁹⁶ The list of commitments includes in particular a so-called “no single buyer” rule whereby in future no single bidder will be able to acquire the rights to broadcast all live Bundesliga matches. Andreas Mundt, President of the *Bundeskartellamt*, considers that if there is only one holder of live rights in the market, “there is the danger that innovation competition, especially from internet-based offers, will be restricted. As experience from other countries, e.g. England, shows, such a model does not usually mean that consumers need more than one subscription to be able to view all the games. Rights holders can also grant one another sublicenses. In addition to this there should also be offers which only show some of the live games.”⁹⁷

The “no single rule” proposed by the *Ligaverband* and the DFL means that, if after the auction there are not at least two different successful bidders concerning the rights packages A to E, an additional OTT package will be auctioned. This OTT package includes the rights to the live broadcast in full of three Bundesliga games per match day (102 games in a season). This includes a game on Saturday at 15:30 and the two Bundesliga matches on Sunday at 15:30 and 18:00. The package is offered for OTT-distribution (web and mobile TV) for payment.

This “no single buyer” rule as proposed by the *Ligaverband* and the DFL is, in the eyes of the *Bundeskartellamt*, acceptable even if it is not particularly strict. The fact that the *Bundeskartellamt* did not call for a stricter rule can be explained in particular by the relatively strong position of free TV in Germany and the early broadcasting slot of (near) real-time highlights coverage (currently in the *Sportschau* programme of the ARD TV channel) which DFL's marketing model will maintain. The

⁹⁵ Angebot von Verpflichtungszusagen des Ligaverbandes und der DFL für die Vergabe von audio-visuellen Verwertungsrechten an Fußballspielen der Bundesliga, der 2. Bundesliga und des Supercups für die Spielzeiten von 2017/2018 bis 2020/2021 vom 31. März 2016. The list of commitments is available as annex to the decision of the *Bundeskartellamt* of 11 April 2016 (see *infra*).

⁹⁶ Beschluss des *Bundeskartellamts* (6. Beschlussabteilung), B6 - 32/15, Vermarktung der medialen Verwertungsrechte an Fußballspielen der Bundesliga und der 2. Bundesliga ab der Saison 2017/2018, 11. April 2016,

http://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Kartellverbot/2016/B6-32-15.pdf?__blob=publicationFile&v=2

⁹⁷ Press release of the Federal Cartel Office, “*Bundeskartellamt* approves marketing model for award of Bundesliga rights from 2017/18 football season onwards – DFL undertakes for first time to observe ‘no single buyer’ rule”, 11 April 2016, http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/11_04_2016_DFL%20Abschluss.html;jsessionid=32ABEDED38DCF9F19EE37100528946DC.1_cid362?nn=3591568.



authority also took into account that live sport coverage on the internet is still in the development stage.

After a tender process, Sky will show 572 live matches per season from 2017/18 to 2020/21 across all platforms (93% of all live matches), including full live coverage of Bundesliga matches on Saturday and Sunday afternoons. For the first time, Sky will also become the exclusive live broadcaster for all matches of the Bundesliga 2 regular season, with an additional live match on Monday evenings. Eurosport won the secondary rights package and will air 40 live Bundesliga matches per season, presented exclusively from 2017/18, and has exclusive rights to show regular Friday night prime-time, selected Sunday afternoon and top Monday night Bundesliga matches on Eurosport paid platforms in Germany.⁹⁸

At the same time, Sky has challenged in court the decision of the *Bundeskartellamt*. According to reports in the German press,⁹⁹ Sky does not agree with various parts of the decision, notably the “no single buyer” rule, which is considered by Sky “unnecessary and unlawful in its concrete form”. Moreover, the *Bundeskartellamt*’s delimitation of the pay-TV market “does not correspond to the reality of the market”. In any event, Sky states that this court case should not have an impact on the tender process for the Bundesliga rights.

3.1.2. Spain

Until very recently, in Spain the football audiovisual rights were sold individually by the clubs themselves. The *Liga Nacional de Fútbol Profesional* (Professional Football League - LFP) had managed these rights until the 1997/1998 season, when each club began to negotiate their own rights following an agreement by the General Assembly of the LFP on 12 April 1996. Smaller clubs felt discriminated by this new system of marketing rights. In October 2012, the *Asociación por Nuestro Betis* (ABNP), which was set up by the shareholders and fans of the football club Real Betis, made a complaint to the *Comisión Nacional de la Competencia* (Competition Authority – CNC) with regard to the agreement between Prisa TV and Mediapro, both of whom were rightsholders of the LFP audiovisual rights to the League and the Spanish Cup. ABNP claimed that the agreement discriminated against small football clubs in favour of large football clubs and audiovisual media services operators. On 8 January 2013, the Competition Authority found that the agreement regarding football rights between the two major media corporations, Canal+ and Mediapro, was not in breach of Spanish competition law.¹⁰⁰ The Authority concluded that the agreement was not abusive, nor was it restrictive to smaller clubs opposed to the application of the agreement.

This changed with the adoption by the government of the Royal Decree-Law 5/2015¹⁰¹ of 30 April 2015 on urgent measures in relation to the commercialisation of audiovisual rights of

⁹⁸ Rapidtvnews.com, 12 June 2016, “IHS: new Bundesliga TV deal a game changer for Germany”,

<http://www.rapidtvnews.com/2016061243207/ihs-new-bundesliga-tv-deal-a-game-changer-for-germany.html#ixzz4CIINlKkA>.

⁹⁹ Dwdl.de, „Sky legt Beschwerde gegen Bundeskartellamt ein“, 8 June 2016,

<http://www.dwdl.de/nachrichten/56296/sky-legt-beschwerde-gegen-bundeskartellamt-ein/>.

¹⁰⁰ Resolución del Consejo de la Comisión Nacional de la Competencia de 8 de Enero de 2013 (Expte. S/0438/12, LIGA FUTBOL PROFESIONAL), <http://doctrina-administrativa.vlex.es/vid/-416238014>.

¹⁰¹ Real Decreto-ley 5/2015, de 30 de abril, de medidas urgentes en relación con la comercialización de los derechos de explotación de contenidos audiovisuales de las competiciones de fútbol profesional, http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4780. See



professional football competitions. This Royal Decree regulates the commercialisation of audiovisual rights over broadcast football matches, as well as the distribution of the income generated. It introduces the joint selling of audiovisual rights and entrusts the LPF to manage those rights related to “La Liga” and the *Real Federación Española de Fútbol* (Royal Spanish Football Federation - RFEF) those of the National Cup and the *Copa de S. M. el Rey* (King’s Cup). The distribution of the income generated will be shared among clubs according to criteria such as performance and size. 90% of the revenue will go to first division clubs and the remaining 10% to second division clubs. Each club must make mandatory contributions to a compensation fund to support policies formulated by the LPF, RFEF and the National Sports Council.

The *Comisión Nacional de los Mercados y la Competencia* (National Commission for Markets and Competition - CNMC) is in charge of supervising the agreements between the LNFP and the broadcasters. On 4 November 2015, the CNMC adopted a report on the LFP’s proposal for the joint selling of audiovisual rights for the seasons 2016/2017 to 2018/2019.¹⁰² In this document the CNMC requested some amendments to the LFP’s proposal. Among them, all semi-finals of the *Copa del Rey* must be broadcast on free-to-air TV, the LFP must clarify the way timetables are decided, and must also explain how second division matches are assigned to free-to-air TV or pay-TV. Very importantly, lot 4 (a Real Madrid or Barcelona match every week) must be open for bidding to free-to-air TV operators.

Later on 26 May 2016 the CNMC adopted another report¹⁰³ which clarified the conditions of sale of broadcasting rights for the League and the King’s Cup until 2019. The CNMC takes into consideration the proposal of the LFP for the sale of rights for the next three seasons (2016/2017 to 2018-2019). Among other observations, the CNMC considers that the League should eliminate the possibility that pay-TV operators broadcast the Liga matches of the days 37 and 38 (first division), which are reserved for free-to-air TV. Additionally, the unilateral increase in the number of matches of *Copa del Rey* that pay-TV operators can broadcast could be contrary to the rules.

3.1.3. France

According to a recent study¹⁰⁴ published by the *Conseil supérieur de l’audiovisuel* (Media Authority – CSA), sports media rights in France were worth EUR 1,315 billion in 2015. With the market entry of the pay-TV operator beIN SPORTS in 2012, the structure of the sports media landscape looks close to a duopoly, with Canal Plus and beIN SPORTS sharing 70-80% of the market. Together they hold the

also the press release of the Spanish parliament concerning the legislative confirmation of the Royal Decree 5/2015, “Convalidado el Decreto Ley de comercialización de los derechos de explotación de contenidos audiovisuales del fútbol profesional”, 14 May 2015,

http://www.congreso.es/portal/page/portal/Congreso/Congreso/SalaPrensa/NotPre?piref73_7706063_73_1337373_1337373.next_page=wc_detalleNotaSalaPrensa?idNotaSalaPrensa=16870&mostrarvolver=N.

¹⁰² Informe CNMC sobre la propuesta de LNFP de condiciones para la comercialización centralizada de los derechos audiovisuales de campeonato nacional de fútbol en las temporadas 2016/2017 a 2018/2019, (INF/DC/0002/15), 4 November 2015,

https://www.cnmc.es/Portals/0/Ficheros/notasdeprensa/2015/COMPETENCIA/151104_INF_DC_0002_15_Informe%20LNF.pdf.

¹⁰³ Informe CNMC sobre la propuesta de LNFP de condiciones para la comercialización de derechos de explotación de contenidos audiovisuales en televisión en abierto y en televisión de pago bajo demanda del campeonato nacional de Liga y Copa de S.M. el Rey para las temporadas 2016/2017 a 2018/2019 (INF/CNMC/015/16),

https://www.cnmc.es/Portals/0/Notas%20de%20prensa/INF_CNMC_015_16.pdf.

¹⁰⁴ CSA - Sport et télévision - Les chiffres clés 2016,

http://www.csa.fr/content/download/219625/588524/file/CSA_Sport_t%C3%A9l%C3%A9vision_chiffres_cles_2016.pdf.



broadcasting rights to the great majority of the most appealing sports competitions, particularly football rights.¹⁰⁵ This contrasts with the situation in the period 2008-2012, where 90-100% of the market was shared between four operators: two pay-TV (Canal Plus and Orange) and two free-to-air TV (TF1 and France Télévisions).¹⁰⁶

3.1.3.1. Canal Plus v TPS

The current legislation regarding sports media rights in France is to a certain extent the result of a competition case between Canal Plus and the former satellite TV operator TPS. On 14 December 2002, the French *Ligue de football professionnelle* (Professional Football League - LFP) granted exclusive rights to Canal Plus to broadcast matches in the premier league football championship for the season 2004-2007 on television for the record sum of EUR 480 million per year. TPS complained of abuse of a dominant position and applied for the adoption of protective measures to the *Conseil de la concurrence* (Competition Council),¹⁰⁷ which issued a decision on 23 January 2003 that temporarily suspended the allocation to Canal Plus of the LFP rights.¹⁰⁸

In its decision, the Competition Council acknowledged that the regular football competitions differed in their ability to attract and keep viewers loyal in the long term. Therefore, broadcasting rights for football matches could be considered a separate market. Moreover, regarding the specific characteristics of the French premier league championship, it could not be ruled out that there might be an even narrower market, restricted to broadcasting rights for the matches in this championship. Nor could it rule out the dominant positions of both LFP and Canal Plus in their respective fields of activity. The decision highlights the probability that the fees for broadcasting premier league football championship matches are crucial for the development of pay television and that the exclusive allocation to Canal Plus, as the dominant operator in the pay television market, has a restricting effect on competition. Additionally, the offer made by Canal+, which occupies a dominant position on the pay television market, combined low values per lot with a very high exclusivity premium so that it could be considered as constituting an eviction offer in respect of TPS.

Pending a decision on the merits, the Competition Council suspended the allocation to Canal+ of the rights to broadcast matches in the premier league football championship for the season 2004-2007 on television. After this decision, an agreement was reached extending the allocation of TV rights for one year.

¹⁰⁵ The acquisition of English Premier League's rights by the Altice company is the only exception to this dominance. The Competition Authority considers that and does not prove the emergence of a sufficient and sustainable competition on the market, see *infra*.

¹⁰⁶ See Conseil supérieur de l'audiovisuel, Opinion n° 2016-06 of 13 April 2016 to the Authority of competition on the request for revision anticipated of the injunctions 4 a) and 8 a) pronounced within the framework of the decision n° 12-DCC-100 as well as commitment 11 of the decision n° 14-DCC-15,

<http://www.csa.fr/content/download/219685/588743/file/Avis%202016-06%20relatif%20%C3%A0%20la%20demande%20de%20r%C3%A9vision%20anticip%C3%A9e%20des%20injonctions%20de%20la%20d%C3%A9cision%2012-DCC-100.pdf>.

¹⁰⁷ Currently called *Autorité de la concurrence* (Competition Authority), see:

http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=317.

¹⁰⁸ Décision n° 03-MC-01 du 23 janvier 2003 relative à la saisine et à la demande de mesures conservatoires présentées par la société TPS, <http://www.autoritedelaconcurrence.fr/pdf/avis/03mc01.pdf>.



After this decision of the Competition Council and shortly before the decision of the European Commission in the UEFA Champions League case¹⁰⁹, the so-called “Loi Lamour” concerning the organisation and promotion of physical and sporting activities was adopted.¹¹⁰ The relevant provisions on sports media rights are now codified in Article L333-2 and Article L333-3 of the Sports Code.¹¹¹ According to these articles, joint selling of sports media rights by professional sports leagues is allowed. Rights must be offered through a public and non-discriminatory bidding procedure in different batches for a maximum duration of three years.

3.1.3.2. The agreement between Canal Plus & beIN SPORTS

Canal Plus has traditionally held a dominant position in the pay-TV market, which was enhanced in 2006 with the TPS/CanalSatellite merger and the consolidation of the pay-TV activities of TPS and Groupe Canal Plus (Canal Plus). In order to counteract possible threats to competition, the merger was authorised subject to 59 commitments¹¹² aimed at limiting the power of Canal Plus on the upstream audiovisual rights acquisition markets, the intermediate markets for the production and the commercialisation of paid special-interest channels, as well as the downstream pay-TV distribution market.¹¹³

However, Canal Plus failed to observe ten of these commitments, and the Competition Authority decided in September 2011 to withdraw its decision authorising the operation. After the parties again notified the operation, on 23 July 2012, the Competition Authority granted a new authorisation conditional on thirty-three injunctions aiming at restoring sufficient competition in pay-TV markets.¹¹⁴ The injunctions were issued for a five-year period. The Competition Authority’s decision allowed the Vivendi and Canal Plus groups to ask for the lifting or the amendment of these measures in case of substantial evolution of market conditions.

In February 2016, Canal Plus and beIN SPORTS signed an agreement for the exclusive distribution of beIN SPORTS channels by Canal Plus. However, injunction no.4(a) of the decision made by the Competition Authority constrained Vivendi Universal and Canal Plus to resume the broadcasting of premium channels on CanalSat, in particular sports channels, under non-exclusive distribution. Therefore, Canal Plus had to submit a review request for this injunction in order to conclude a contract concerning the exclusive distribution of beIN SPORTS channels.

In a decision of 9 June 2016,¹¹⁵ the Competition Authority considered that the conditions were not satisfied for lifting the ban on exclusive broadcasting of premium sports channels by Canal

¹⁰⁹ See Chapter 2 and 5 of this publication.

¹¹⁰ Loi n° 2003-708 du 1 août 2003 relative à l’organisation et à la promotion des activités physiques et sportives.

¹¹¹ The French Sports Code regulates the following issues relating to sport in France: organisation of physical and sporting activities; sport actors; sport activity; and financing of sport and rules applicable to overseas departments and territories of France. See *Code du sport*, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071318>.

¹¹² Decision of the Minister of the Economy no. C 2006-02 of 30 August 2006.

¹¹³ For more information on this merger see Nikoltchev S. (ed.), IRIS Special, “Converged Markets - Converged Power? Regulation and Case Law”, Strasbourg, European Audiovisual Observatory, 2012.

¹¹⁴ Décision n°12-DCC-100 du 23 juillet 2012 relative à la prise de contrôle exclusif de TPS et CanalSatellite par Vivendi et Groupe canal Plus,

http://www.autoritedelaconurrence.fr/doc/liste_injonctions_tps.pdf.

¹¹⁵ Press release of the Competition Authority of 9 June 2016,

http://www.autoritedelaconurrence.fr/user/standard.php?id_rub=630&id_article=2785.



Plus. For the Competition Authority, matters of law and fact taken into account at the time of the adoption of decision 12-DCC-100 have not changed sufficiently such that the competition analysis conducted in 2012 requires any amendment. The Competition Authority agrees with the opinion¹¹⁶ issued by the CSA whereby injunction no. 4 is considered impossible to analyse independently of injunctions no. 3, 5 and 6. These injunctions aim to preserve competition in the editing and broadcasting market of special-interests channels, while maintaining consumer choice and access to differentiated offers in terms of content and prices. Any isolated amendment of injunction no.4(a) risks jeopardising the beneficial effects of this range of measures.

The Authority announced that it will reassess all of the injunctions imposed in 2012 in their entirety and define a new framework for the 2017-2022 period.

3.1.4. United Kingdom

On 18 November 2014, Ofcom opened an investigation under section 25 of the Competition Act¹¹⁷ into the joint selling arrangements of the Premier League for live UK audiovisual media rights for Premier League football matches. The investigation followed a complaint from Virgin Media submitted in September 2014, which alleged that the joint selling of live UK television rights by the Premier League was in breach of competition law.

The complaint raised concerns about the number of Premier League matches for which live broadcasting rights are made available. Virgin Media argued that the proportion (41%) of matches made available for live television broadcast under the current Premier League rights deals would be lower than some other leading European leagues. This would contribute to higher prices for consumers of pay-TV packages that include premium sport channels and for the pay-TV retailers of premium sports channels.

On 28 January 2015, Virgin Media requested that Ofcom require the Premier League to suspend the forthcoming auction of audiovisual rights to broadcast live Premier League matches, until Ofcom had reached the next stage of its process in March 2015. In its interim measures application, Virgin Media argued (in summary) that:

- the sale of 2016/2019 rights under the terms set out in the invitation to tender would restrict competition, leading to: (a) significant harm to subscribers of premium sports channels; and (b) harm to the public interest as a result of the damage to competition and to consumers.
- the outcome of the auction would be known before Ofcom reaches the next stage of its investigation in March 2015.
- the outcome of the auction would determine the ownership of, and the amounts paid for, the 2016/2019 rights, leading to contracts being entered into between the Premier League and successful bidders.

¹¹⁶ Conseil supérieur de l'audiovisuel, *op.cit.*

¹¹⁷ The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, <http://www.legislation.gov.uk/uksi/2004/1261/contents/made>.



- the existence of those contracts would adversely impact Ofcom’s ability to remedy any breach of the Act and/or Article 101 established as a result of the investigation.

However, Ofcom rejected the application, as it does not consider that there is an urgent need to intervene to delay the auction.¹¹⁸ According to Ofcom, there would be a significant gap, of around 17 months, between the auction and the start of the 2016/2017 season (August 2016). In the event that Ofcom’s investigation would conclude that there is an infringement, Ofcom could require the Premier League and Premier League clubs to modify the arrangements for the broadcasting of matches before the start of the relevant season. In its submissions to Ofcom, the Premier League confirmed to Ofcom that it will put in place arrangements in contracts with purchasers to address the consequences of a potential infringement decision.

At the time of writing (June 2016), the investigation was still ongoing, involving further information gathering and new consumer research. Ofcom is interested in better understanding how consumers benefit from the way the Premier League sells its rights. It has recently received consumer research from Virgin Media, and will also carry out new consumer research and will be monitoring changes in retail prices of sports channels as the investigation progresses.

3.1.5. Italy

The *Decreto legislativo* 9/2008 of 9 January 2008 (so-called *legge Melandri*)¹¹⁹ regulates the compulsory joint selling of team audiovisual sports rights in Italy. According to its Article 3, audiovisual rights to team sports events are jointly owned by the organiser of the relevant competition and the organiser (the host) of each match pertaining to this competition.¹²⁰ The Decreto Legislativo also regulates the obligation to sell audiovisual rights through public tenders and states the criteria for the offer of different “packages”. It also contains a “no single buyer” rule (Article 9(4)). A particularity of the system lies in the fact that rights are sold by platform and not by product, so that the same match can be shown by different operators, thereby eliminating in practice exclusivity in the market of audiovisual sports rights (Article 8).¹²¹

On 13 May 2015, the *Autorità Garante della Concorrenza e del Mercato* (Competition Authority - AGCM) launched an investigation concerning an agreement on the award of the Serie A broadcasting rights for the seasons 2015/2016 to 2017/2018.¹²² According to the AGCM, the parties

¹¹⁸ Competition Act investigation into the sale of live UK audio-visual media rights to Premier League matches – Case: CW/01138/09/14 - Application for interim measures under section 35 of the Competition Act 1998 - Dismissal Letter, 4 February 2015,

http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/open-cases/all-open-cases/cw_01138/Response_to_Interim_Measures_request.pdf.

¹¹⁹ Decreto Legislativo 9 gennaio 2008 n. 9 (in Gazz. Uff., 1° febbraio, n. 27). - Disciplina della titolarità e della commercializzazione dei diritti audiovisivi sportivi e relativa ripartizione delle risorse,

<http://www.agcm.it/component/joomdoc/normativa/concorrenza/Dlgs9-2008.pdf/download.html>.

¹²⁰ As an exception to this rule, the organiser of a match retains ownership of the “archive rights”, that is, audiovisual recordings of matches that took place at least 8 days before.

¹²¹ For a brief explanation of the Decreto legislativo 9/2008 see Ferrari L., “An Overview of IPR on Sport Events under Italian Law” in EPFL Sports Law Bulletin 11th Edition, October 2012-August 2013,

<http://epfl-publications.com/2013/slb11/files/assets/basic-html/page69.html>.

¹²² Autorità Garante della Concorrenza e del Mercato, procedimento avviato il 13 maggio 2015,



had agreed to alter the outcome of the tenders for the A, B and D lots. On 20 April 2016, the AGCM imposed fines¹²³ on Sky Italia and RTI/Mediaset Premium (the main television operators in the Italian pay-TV market), and on Lega Calcio (Italian Football League) and its advisor Infront Italy.¹²⁴

According to the AGCM, *Lega Calcio* (advised and supported by Infront Italy) engaged in a negotiation with the bidders, aimed at altering the outcome of the tender, which would have awarded Sky all broadcasting rights. The agreement affected the allocation of strategic resources in the pay-TV and advertising markets and was deemed restrictive by the AGCM. As a result of the agreement, both the incumbents were awarded television rights and new market entry was foreclosed as a result of the tender, since Eurosport could have otherwise competed for the awarding of lot D. The AGCM considers that this agreement will also extend its anti-competitive effects in the future, as bid-rigging negatively affects the credibility of future calls for tenders and discourages competition on the merits.

The Lega was fined EUR, 1,944,070.17, Infront Italy EUR 9,049,646.64, RTI/Mediaset Premium EUR 51,419,247.25 and Sky Italia EUR 4,000,000.00. According to the AGCM, Sky was initially strongly opposed to the other parties' initiatives and kept a cooperative attitude vis-à-vis the investigation, but RTI/Mediaset Premium had not been awarded any lots on the basis of its bids and was therefore more keen on joining the collusive agreement, which explains its significantly higher fine. RTI/Mediaset Premium said it would appeal the decision.¹²⁵

There are currently discussions about a possible amendment of the legal framework for the marketing of audiovisual sports rights to be presented to the Italian parliament this summer. The objective of this reform is to create, inter alia, more competition between media operators and eliminate the marketing of rights by platform, in order to allow for exclusive licensing of rights.¹²⁶ The AGCM shares the view already expressed by the national TLC Regulator that "the Guidelines foreseen by Decree no. 9/2008 need to become more effective, in the context of an overarching reform of the applicable regulatory framework, with a view to further igniting competition dynamics in the sector concerned".

http://www.agcm.it/component/joomdoc/allegati-news/1790_avvio.pdf/download.html.

¹²³ Autorità Garante della Concorrenza e del Mercato, Provvedimento n. 25966, 1790 - vendita diritti televisivi Serie A 2015-2018,

http://www.agcm.it/component/joomdoc/allegati-news/1790_chiusura.pdf/download.html. See press release of the AGCM, "A 66 million euro fine imposed on Sky, Mediaset Premium, Lega and Infront by the Italian Competition Authority", 20 April 2016, <http://www.agcm.it/en/newsroom/press-releases/2290-a-66-million-euro-fine-imposed-on-sky,-mediaset-premium,-lega-and-infront-by-the-italian-competition-authority.html>.

¹²⁴ The Lega was fined EUR 1,944,070.17, Infront Italy EUR 9,049,646.64, RTI/Mediaset Premium EUR 51,419,247.25 and Sky Italia S.r.l. EUR 4,000,000.00. According to the AGCM, Sky was initially strongly opposed to the other parties' initiatives and kept a cooperative attitude vis-à-vis the investigation, but RTI/Mediaset Premium had not been awarded any lots on the basis of its bids and was therefore more keen on joining the collusive agreement, which explains its significantly higher fine.

¹²⁵ See Osborne Clarke, *op.cit.*

¹²⁶ See La Repubblica of 27 June 2016, "Calcio e business sui diritti tv, l'Italia del pallone ha perso la partita",

http://www.itmedia-consulting.com/images/AF_def_27062016.pdf.



3.2. The implementation of Articles 14 and 15 of the AVMSD

3.2.1. Events of major importance to society

As seen in Chapter 2, the AVMSD leaves the member states a significant degree of freedom as to the choice of events to be granted full coverage because of their importance to society. While there are no restrictions on sport, Recital 49 of the Directive only mentions as examples the Olympic games, the football World Cup and the European football championship. Member states are also allowed freedom to include events that have no sporting nature (and some members actually have done so), as expressly stated in the Working Document of the European Commission.¹²⁷

3.2.1.1. The mutual recognition mechanism

According to Article 14 of the AVMSD, member states that have adopted a list and wish that not only national broadcasters respect it, but also broadcasters falling under the jurisdiction of other member states, must comply with a specific notification procedure. The notification of the national lists to the European Commission and to the other member states and the approval of the Contact Committee established by the AVMSD are the conditions for the mutual recognition of the national lists at EU level.

This means that member states are not obliged to give notification of their lists, should they be satisfied with their applicability only to national broadcasters. It is only when they wish a territorial expansion of their lists that the notification becomes a requirement, and the effects of the lists become extraterritorial from the moment of their publication in the Official Journal of the EU.¹²⁸

It is noteworthy that whereas almost all EU members have adopted a national list, less than half of them have notified them to the European Commission. The consequence is that the national lists can be enforced only with respect to national unqualified broadcasters (pay-TV operators), but not towards broadcasters established elsewhere. An extraterritorial enforcement is possible only for those member states that have chosen to notify their lists to the European Commission and have successfully completed the assessment by the Contact Committee with publication in the OJ.

At the date of this publication only ten member states have completed the notification procedure (Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Poland and UK), eleven have adopted national lists (Bulgaria, Croatia, Czech Republic, Latvia, Lithuania, Malta, the Netherlands, Portugal, Romania, Slovenia and Spain), five countries are in the process of adopting a list (Cyprus, Greece, Hungary, Slovakia and Sweden) whereas two have opted for having no list (Estonia and Luxembourg). The choices made by the member states are quite diverse: both in terms of chosen events, although sports events dominate, and type of requested coverage, the national implementations of Article 14 of the AVMSD vary widely. As illustrated by Tables 1 and 2 in the Appendix to this publication, which includes only sports events, the possible combinations of

¹²⁷ European Commission, Working Document CC TVSF (97) 9/3, Implementation of Article 3A of Directive 89/552/EEC, as modified by Directive 97/36/EC. Evaluation of National Measures. *Cit.*

¹²⁸ The notified lists (but update only until January 2015) can also be found here <https://ec.europa.eu/digital-single-market/avmsd-list-major-events>.



coverage range from live and full, to partial live, live/deferred, full/partial, live or deferred, and partial deferred.

3.2.1.2. Dispute settlement mechanisms

What also varies across member states is the choice as to possible dispute settlement procedures in case of disagreements between the unqualified rightsholder (pay-TV provider) and the qualified (free-to-air) broadcaster under Article 14 of the AVMSD. This is the case where pay-TV operators, who have legitimately acquired transmission rights of listed events, are not allowed to exercise them unless the transmission rights have also been secured by a free-to-air broadcaster, which satisfies the requirement of covering a “substantial proportion of the public” in the concerned member state.

Since this is an area characterised by contractual freedom, no broadcaster can be obliged to buy transmission rights. At the same time, considering that the events in question are of particular relevance to society, it can be assumed that there would be media operators delivering audiovisual services to the relevant national market that would be interested in transmitting those events. In this regard, the directive foresees a very general obligation:

*Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters after 18 December 2007 in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.*¹²⁹

The obligation of result underlying this provision is that a substantial part of the public in a certain member state has free-to-air access to the listed events. If the transmission rights for these events are held by a pay-TV operator, what could reasonably happen is that the latter would resell the rights for the listed events at a price that is not accepted by a qualified broadcaster. How to react to this situation is left to the member states.

In compliance with the principle of subsidiarity, the AVMSD designates the national legal frameworks as the context within which the member states shall identify the “appropriate means” to settle issues that could result in a frustration of the viewers’ rights, such as possible disputes between broadcasters. As the implementation of this measure is connected to the adoption of lists, specific mechanisms to handle possible disputes have been put in place in the ten member states that have given notification of their lists:

- in Austria, an amicable settlement has to be sought through the *KommAustria* (Austrian Communications Authority). Where this attempt is unsuccessful, each of the parties can seek a binding decision of the *KommAustria*, including on price;¹³⁰

¹²⁹ Article 14(3) of the AVMSD.

¹³⁰ Article 3 of the Austrian Federal Act on the exercise of exclusive television broadcasting rights (Fernseh-Exklusivrechtgesetz — FERG), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L .2007.180.01.0011.01.ENG>



- in Belgium (French Community), disputes, including those over price, shall be referred to the competent administrative or judiciary authorities or to arbitration;¹³¹
- in Denmark, disputes, including those related to price, may be solved by arbitration according to the general Arbitration Act;¹³²
- in Finland, the media regulator FICORA may be asked to decide on the dispute at the request of one of the parties, with the power to determine the level of compensation for the loss of rights;¹³³
- in France, in case no agreement is reached, the exclusive unqualified rightsholder is entitled to exercise its rights without satisfying the conditions foreseen by the law;¹³⁴
- in Germany, the law foresees an arbitration procedure, but in case no agreement is reached, the broadcast may be considered as not possible “under appropriate conditions”;¹³⁵
- in Ireland, disputes can be settled by the Minister for Communications, Climate Change and Natural Resources, who can ask for technical expertise before adopting a decision; in case of broadcasters from other member states being involved, application for interim measures can be made to the High Court;¹³⁶
- in Italy, disputes concerning technical arrangements for broadcasting and the payment of compensation for the loss of rights can be settled by the media regulator AGCOM;¹³⁷
- in Poland, it is enough for the exclusive rightsholder to prove that no free-to-air broadcaster was willing to conclude a contract, and no mention is made of possible conflicts;¹³⁸
- in the UK, exclusive rightsholders may seek the consent of the media regulator OFCOM not to respect the conditions for the unencrypted transmission of the listed events.¹³⁹

as updated by <https://www.rtr.at/de/m/FERG#c29895>.

¹³¹ Article 2a(2) of the Order of the Government of the French Community in Belgium of 8 June 2004, as amended on 17 January 2013, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.059.01.0039.01.ENG.

¹³² Section 8 of the Ministerial Order on the use of television rights to events of major importance for society of 19 April 2015, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1097>.

¹³³ Section 213 of the Finnish Information society code, as consolidated on 18 September 2015, <http://www.finlex.fi/en/laki/kaannokset/2014/en20140917.pdf>.

¹³⁴ Articles 4-5 of the French Decree No 2004-1392 of 22 December 2004 applying Article 20-2 of Law No 86-1067 of 30 September 1986 on the freedom of communication, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.180.01.0033.01.ENG.

¹³⁵ Article 4(1) of the German Interstate Treaty on Broadcasting and Telemedia (Rundfunkstaatsvertrag – RStV), http://www.kjm-online.de/fileadmin/Download_KJM/Recht/18_RAendStV-eng_01-01-2016.pdf.

¹³⁶ Section 1, Subsections 4-5, and Sections 6(1-2)-7(1), of the Irish Broadcasting (major events television coverage) Act, 1999, <http://www.irishstatutebook.ie/eli/1999/act/28/enacted/en/pdf>.

¹³⁷ Article 3 of Resolution of the Italian AGCOM no. 131/12/CONS of 15 March 2012, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.187.01.0057.01.ENG.

¹³⁸ Article 20b(6) of the Broadcasting Act of 29 December 1992, as amended in 2011, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D0163>.

¹³⁹ Article 101(1) of the British Broadcasting Act 1996, <http://www.legislation.gov.uk/ukpga/1996/55/section/101>, as clarified in the Ofcom Code on Sports and Other Listed and Designated Events, http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf.



3.2.2. Short news reporting

Building mostly on the practices already in place at national level, Article 15 of the AVMSD requires member states to adopt rules concerning the modalities and conditions for the provision of short extracts for news reporting, “in particular, with respect to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission.”

As shown by Table 3 in the Appendix to this publication, the national solutions are quite homogeneous.

Article 15 of the AVMSD builds on already existing regulatory traditions across the member states, which are taken into account as an implicit limit to the effects of the Directive itself (“in accordance with their legal systems and practices” – Article 15(6) AVMSD). As a consequence, where the Directive has essentially defined the state of the art, there are no significant differences among national implementations. This is the case of two of the aspects touched upon by the Directive:

- the duration the extracts, which is mostly limited to 90 seconds as suggested in Recital 55 of the Directive, but in some cases extended to 180 seconds;
- the amount of the compensation to the rightsholder, which shall not exceed the costs directly incurred to ensure access to the extracts as foreseen by Article 15(6) of the Directive.

Conversely, when it comes to aspects that are more directly dependent on the nature of the events and on the type of sports programming in place in the concerned country, the solutions foreseen for the time limits (so-called waiting periods) are more varied, and range from 24-36 hours to more general limitations linked to the relevance of the news to be reported on. Where nothing is foreseen at statutory level, the waiting periods are left to contractual arrangements, which means they are defined in agreement by the rightsholders (leagues or clubs) and the broadcasters interested in accessing the extracts.¹⁴⁰

¹⁴⁰ For further details on national solutions to short extracts, see Matzneller, P., “Short Reporting Rights in Europe: European Legal Rules and their National Transposition and Application”, in IRIS Plus 2012-4, European Audiovisual Observatory, Strasbourg, 2012, http://www.obs.coe.int/documents/205595/264635/Iris_plus_2012-4_EN_FullText.pdf.





4. Self-regulation

4.1. The autonomy of sport organisations

4.1.1. A legacy from history

Sport organisations have a long tradition of self-regulation and governance. Historically, they have been able to set out their own rules and regulation in a number of areas including internal functioning and inter-organisations relationships, rules of the games, and financial rules. In addition, they have enjoyed a significant degree of autonomy from the relevant states, not only at the political level but also in the financial, legal and functional aspects.

The quest for the political autonomy of international sport organisations finds its roots in the post-war political context, as a possible solution to the risk of instrumentalisation of sport for policy aims. As an example of this, as the Supreme Authority on all questions concerning the affiliated member organisations of the Olympic Movement, the International Olympic Committee (IOC) has, since its creation in 1894, given a central role to the National Olympic Committees (NOCs), stressing the need for independence from states.¹⁴¹ Still today, one of the Fundamental Principles (No. 5) of Olympism provides as follows:¹⁴²

Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

In most EU member states, NOCs remain in practice politically independent structures. IOC, in addition to the International Federation of Association Football (FIFA), have contributed to establishing the principle of limited interference of the state in other international sports organisations.

¹⁴¹ See Olympic Charter through time,

<https://www.olympic.org/olympic-studies-centre/collections/official-publications/olympic-charters>.

¹⁴² International Olympic Committee, Olympic Charter, in force as from 2 August 2015,

https://stillmed.olympic.org/Documents/olympic_charter_en.pdf.



4.1.2. The premises of an institutional framework for sport organisations

The special autonomy enjoyed by international sports organisations at the political level also manifests itself in the legal aspect, where these organisations have the ability to adopt rules and norms within the national legal framework (e.g. civil law, tax law, and corporate law).

At international level, the Council of Europe was the first international, intergovernmental organisation to recognise the right of voluntary sport organisations to establish autonomous decision-making processes within the law in the 1992 European Sport Charter (revised in 2001).¹⁴³ The European Sport Charter was the result of extensive work conducted by the Council of Europe on the issue of sport. This began as early as 1976, with the adoption of the European Sport for All Charter, which offered an institutional framework for the development of sport at European level, based on the conviction that the values of sports would contribute to the fulfilment of the ideals of the Council of Europe.¹⁴⁴

Based on these developments, the European Council recognised, the special characteristics of European sport, by stating in the Nice Declaration of 2000 that “[...] *with due regard for national and Community legislation [...], it is the task of sporting organisations to organise and promote their particular sports*”.¹⁴⁵

4.1.3. The financial autonomy of sport organisations

The growth of the financial autonomy of the major sports organisations that took place in recent decades is not unrelated to audiovisual sports rights. In fact, the development of the broadcasting sector characterised by an increased competition among pay-TV operators and the rise of new technological means (from traditional terrestrial television to cable, satellite and digital television) have directly contributed to the globalisation of the sports economy and to the dramatic increase of revenues for sports organisations derived from the licensing of audiovisual sports rights. As mentioned above,¹⁴⁶ the sale of audiovisual sports rights today represents one of the most significant sources of revenue for major sports organisations, such as the IOC or the FIFA. Global transmission of major sports events has also directly contributed to the rise of other types of revenues for these organisations, such as the revenues derived from ticket sales to the events venue, marketing and sponsorship incomes, etc. This increase in financial revenues for major sport

¹⁴³ Council of Europe, Recommendation No. R (92) 13 REV of the Committee of Ministers to Member States on the revised European Sport Charter, 24 September 1992,

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804c9d9bb.

¹⁴⁴ The Council of Europe also has a special body for sports: EPAS – Enlarged Partial Agreement on Sport. EPAS was created in 2007 and provides a platform for intergovernmental sports cooperation between the public authorities of member states of the agreement. It also encourages dialogue between public authorities, sports federations and NGOs. EPAS currently counts 34 Member countries, as well as 17 sports organisations, including the EOC, ENGSO and UEFA, which are non-governmental partners of EPAS. The activities of EPAS include standard development (i.e. recommendations); annual ministerial meetings of Council of Europe ministers responsible for sport; sport related reports and studies; and conferences. For more information of the activities of EPAS, see

http://www.coe.int/t/dg4/epas/resources/charter_en.asp.

¹⁴⁵ Declaration of the European Council on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies”,

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l35007&from=EN>.

¹⁴⁶ See Chapter 1, Section 1.2.2.1.2. of this publication.



organisations has been a contributing factor to the strengthening of their independence, in particular from their member federations, which also have an important watchdog function to perform.

4.1.4. The structural and functional autonomy of sport organisations

The autonomy of sports organisations extends to various fields related to their functioning and structure. This includes the setting of technical games rules, competition rules (e.g. by determining the duration of a world championship or the qualifications rules for players), organisational rules, and governing rules. Major sport organisations in Europe are based on a pyramidal model created at the end of the 19th century by the Football Association (FA), the governing body of the game in England to this day. Under this model, the international (non-governmental) organisations act as the governing body's umbrella over a complex pyramidal structure, in which each layer takes on different responsibilities with different functional and/or geographical scope.¹⁴⁷

4.1.4.1. The pyramid of European football governance

The governance of football relies on a set of autonomous, interrelated organisations with the worldwide football federation, FIFA, positioned at the top of the hierarchy. Under FIFA are five continental organisations,¹⁴⁸ which in turn control national associations. All the organisations in the network are responsible for the regulation of football in their own geographical/functional sphere of competence, but are under the supervision and control of the organisations that are situated above them in the network.

For instance, UEFA has to comply with FIFA's rules and regulations,¹⁴⁹ and national football associations in Europe are required to comply with and to enforce UEFA statutes and regulations in their jurisdiction.¹⁵⁰ However, they are also obliged to ensure that clubs and leagues comply with the statutes, decisions and regulations of FIFA.¹⁵¹

¹⁴⁷ Mrkonjic M., Working paper for Action for Good Governance in International Sports Organisations (AGGIS) project, Sports organisations, autonomy and good governance,

[http://www.playthegame.org/fileadmin/documents/Good_governance_reports/AGGIS-report -
_13Sports_organisations_autonomy_and_good_governance_p_133-150_.pdf](http://www.playthegame.org/fileadmin/documents/Good_governance_reports/AGGIS-report_-_13Sports_organisations_autonomy_and_good_governance_p_133-150_.pdf).

¹⁴⁸ AFC (Asian Football Confederation), CAF (Confédération Africaine de Football), CONCACAF (Confederation of North, Central American and Caribbean Association Football), CONMEBOL (Confederación Sudamericana de Fútbol), OFC (Oceania Football Confederation) and UEFA (Union of European Football Associations of Union Européenne de Football Association).

¹⁴⁹ FIFA Statutes: Art. 20(3) a),

http://www.fifa.com/mm/document/affederation/generic/01/09/75/14/fifa_statutes_072008_en.pdf.

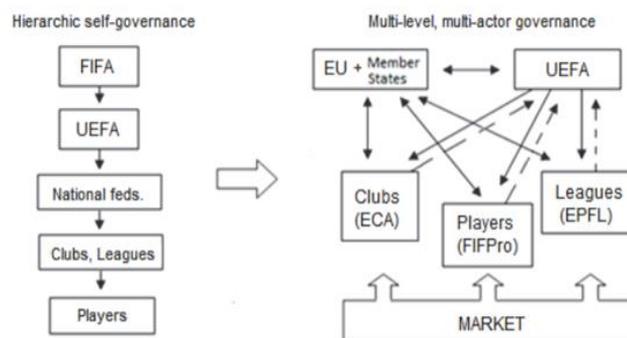
¹⁵⁰ UEFA Statutes: Art. 7 bis b),

http://www.uefa.org/MultimediaFiles/Download/OfficialDocument/uefaorg/WhatUEFAis/02/09/93/25/2099325_DOWNLOAD.pdf.

¹⁵¹ FIFA Statutes: Article 13.1 (d), *op. cit.*



Figure 4: The governance structure in European professional football¹⁵²



Source: Geeraert et al. (2012)

4.1.4.2. The governing structure of the Olympic Movement

Similar structures exist not only in most areas of sports in Europe, but also at a global level, for instance with the Olympic Movement. The Olympic Movement encompasses organisations, athletes, and other persons who agree to be guided by the principles of the Olympic Charter. The Movement comprises three main constituent elements:¹⁵³

- The IOC: the supreme authority of the Movement;
- The International Federations (IFs): international non-governmental organisations dealing with one or several sports at world level and encompassing organisations dealing with sport at national level;
- The National Olympic Committees (NOCs): their mission is to develop, promote and protect the Olympic Movement in their respective countries.

The Olympic Charter¹⁵⁴ is the codification of the Fundamental Principles, rules and by-laws adopted by the IOC. It governs the organisation and running of the Olympic Movement and sets the conditions for the celebration of the Olympic Games. It also sets forth the organisational and procedural rules governing the Olympic Movement and the statutes of the IFs. In this respect, if an IF wishes to join the Olympic Movement and obtain the recognition of the IOC, it must ensure that its statutes, practice, and activities conform with the Olympic Charter.

IFs are also members of associations representing their interests according to their participation in either the winter or summer Olympic Games; the Association of International

¹⁵²Geeraert, A., The governance agenda and its relevance for sport: introducing the four dimensions of the AGGIS sports governance observer,

[http://www.playthegame.org/fileadmin/documents/Good_governance_reports/AGGIS-report - 3The Governance Agenda p 9-21 .pdf](http://www.playthegame.org/fileadmin/documents/Good_governance_reports/AGGIS-report_-_3The_Governance_Agenda_p_9-21_.pdf).

¹⁵³ For more information on the organisation of the IOC, see : <https://www.olympic.org/about-ioc-institution>.

¹⁵⁴ Olympic Charter, in force as from 2 August 2015,

<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.



Olympic Winter Sport Federations (AIOWF)¹⁵⁵ and the Association of Summer Olympic International Federations (ASOIF),¹⁵⁶ respectively. IFs recognised by the IOC are members of the Association of Recognised International Sport Federations (ARISF)¹⁵⁷. Although these three types of IFs maintain their autonomy in the organisation and the development of their sport, membership in these associations requires compliance with their respective statutes as well as the Olympic Charter.

Finally, the National Federations (NFs) dealing with the sports must comply with the statutes of the IFs in order to obtain the recognition and the rights and obligations related to it.

4.1.5. The legal autonomy of sport organisations

The functional autonomy of sports organisations has been strengthened by the development of a legal arbitration system of their own, as a response to the long delays in obtaining final rulings from national courts and the CJEU in relation to sporting disputes. This arbitration system has contributed to the emergence of a transnational autonomous legal order created by the private international organisations that govern international sport, also referred to as “*lex sportiva*”. There are two main characteristics of this arbitration system: first, that it is imposed upon the parties by private contract and the decisions it takes are binding on the parties; and secondly that it is not governed by national legal systems. The legal arbitration system of sports organisation is composed of two main instances, as described in the following paragraphs.

4.1.5.1. The Court of Arbitration for Sport

The importance of sports arbitration has increased significantly since the establishment of the Court of Arbitration for Sport (CAS),¹⁵⁸ an arbitral institution created by the IOC in 1983, with the aim of settling all types of private disputes relating to sport.

The CAS was reformed in 1994 after its independence from the IOC and its impartiality were challenged before the Swiss Federal Tribunal.¹⁵⁹ One of the major new features following the reform of the CAS was the creation of two divisions: an “Ordinary Arbitration Division” for the sole-instance disputes submitted to the CAS, and an “Appeal Arbitration Division”, for disputes resulting from final-instance decisions taken by sport organisations. The CAS performs its functions through intermediary arbitrators (of which there are approximately 150), and with the aid of its court office, which is headed by the Secretary General.

In principle, two types of dispute may be submitted to the CAS: those of a commercial nature, and those of a disciplinary nature. The first category essentially comprises disputes relating to the execution of contracts, including sponsorship and the sale of audiovisual rights, employment contracts, and agency contracts. Disputes relating to civil liability issues also fall under this category

¹⁵⁵ The Association of International Olympic Winter Sport Federations (AIOWF).

¹⁵⁶ The Association of Summer Olympic International Federations (ASOIF).

¹⁵⁷ The Association of the IOC Recognised International Sport Federations (ARISF).

¹⁵⁸ Court of Arbitration for Sport (CAS), <http://www.tas-cas.org/en/index.html>.

¹⁵⁹ Swiss Federal Tribunal, 15 March 1993, *Gundel v. Fédération Equestre Internationale*, Recueil Officiel des Arrêts du Tribunal Fédéral, BGE 119 II S. 271.



(e.g. an accident involving an athlete during a sports competition). These ostensible commercial disputes are submitted to the Ordinary Arbitration Division, which acts as a court of sole instance. Disciplinary cases represent the second group of disputes submitted to the CAS, of which a large proportion are doping-related. Such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and are subsequently submitted to the Appeal Arbitration Division of the CAS, which then acts as a court of last instance.

4.1.5.2. The International Council of Arbitration for Sport

The International Council of Arbitration for Sport (ICAS) is the supreme organ of the CAS. The main task of the ICAS is to safeguard the independence of the CAS and the rights of the parties. To this end, the ICAS supervises the administration and financing of the CAS. The ICAS is composed of 20 members who must all be high-level jurists, well-acquainted with the issues of arbitration of the CAS.

4.2. Towards a “supervised” autonomy of sport organisations

The traditional self-governed pyramid system of sport organisations has shifted in recent years towards new horizontal forms of governance for the sector, mainly due to the commercialisation of audiovisual sport rights, the greater involvement of the EU in sport, and the increasingly empowered stakeholder organisations which interfere in their policy processes.

4.2.1. The involvement of the EU in the self-governed sport system

4.2.1.1. The increasing role of the CJEU in the employment conditions of athletes

The pyramidal governing model of sport became a major source of conflict, since athletes at the very bottom of the system started to challenge the European and international federation’s regulations and decisions as they were excluded from the decision-making process. Whereas national courts often do not have the jurisdiction to challenge the European and international federation’s rules, the CJEU proved to be a suitable venue for unsatisfied stakeholders to challenge the decisions made at the top of the pyramid system.

The first tensions started in relation to football, between the UEFA and the EU, and concerned the employment conditions of professional and semi-professional players. In particular, the pyramidal self-governing structure was affording the governing bodies excessive power over which players each club can hire, through two sets of norms: the so-called “transfer system”¹⁶⁰ and nationality quotas.¹⁶¹ Although athletes are bound by the rules of the sport federations with which they are registered, they also have rights and obligations deriving from ordinary law, which are part

¹⁶⁰ The transfer system regulates the circumstances under which a player can move from one club to another. Previously transfer systems were based on, inter alia, the principle that clubs were entitled to compensation for the transfer of a player even when the player’s contract with the club had expired. This is a principle that restricts each player’s possibilities to move from one club to another.

¹⁶¹ Nationality quotas fix the maximum number of non-selectable players that a club can field in any given game.



of the EU's internal market competence. As a result, athletes began to challenge some of these rules before the CJEU.

4.2.1.2. The breakthrough of the *Bosman* ruling

Pursuant to Article 17(1) of the Treaty on the European Union, the Commission is “the guardian of the treaties”, which means that it “shall oversee the application of Union law under the control of the CJEU”. However, the European Commission has traditionally treated sport matters as a highly politically-sensitive issue, and its approach with regards to the enforcement of EU laws by sports organisations has been rather soft.¹⁶²

In 1995, an important judgement issued by the CJEU in the *Bosman* case¹⁶³ marked a turning point in this trend, by confirming that sport is subject to EU law to the extent that it constitutes an economic activity. The judgment further established that as regards the economic activities it generates sport is subject to all relevant EC Treaty provisions, and that those provisions are to be applied on the basis of general principles taking into account certain special characteristics of the sector. This ruling has played an important role in guiding the Commission in its development of competition policy in the sport sector.¹⁶⁴

4.2.1.3. The impact of commercialisation on the self-governance of the sport sector

The commercialisation of sport, the rising mediatisation of top athletes and the increasing amounts of money involved in the licensing of audiovisual sports rights also played an important role in the increasing EU involvement in the self-governing system of sport organisations during the last decade.

In fact, the entry of sport into the competition arena and into global capitalism brought with it accrued risks of organisational corruption, doping and match-fixing, and contributed to evolving the discourse of national and European policy-makers from an accepted autonomy towards a negotiated one. This was based on an increasing need for more transparency and adherence to principles of good governance in sport.

Although, by recognising the economic and social function of sport, the EU acquired a certain degree of legitimacy in the political steering of sports governance, it was only in 2009 that the EU was granted a direct competence to intervene in sports policy.

¹⁶² See Mrkonjic M., Working paper for Action for Good Governance in International Sports Organisations (AGGIS) project, Sports organisations, autonomy and good governance, *op. cit.*

¹⁶³ Case C-415/93, *URBSFA v. Bosman*, *op. cit.*

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61993CJ0415&from=EN>. For more information on the *Bosman* case, see Chapter 2, paragraph 2.2.1. of this publication.

¹⁶⁴ See Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport {COM(2007) 391 final} {SEC(2007)932} {SEC(2007)934} {SEC(2007)936},

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC0935>. For more information on competition aspects, see Chapter 5 of this publication.



4.2.1.4. The recognised competence of the EU in sport policy

The principle of conferral stipulates that the EU must act only within the limits of the powers conferred upon it by the Treaty. Until the entry into force of the Treaty on the Functioning of the European Union (TFEU) in December 2009, sport was not mentioned in the Treaties and the EU had no direct competence in sports policy. This gave rise to two broad concerns. First, that EU sports policy to date had been guided by the judgments of the CJEU and that internal market laws, such as those concerning freedom of movement and competition, had not sufficiently recognised the specificity of the sport sector. The second concern was that EU sports policy had lacked status and coherence.

Sport has become increasingly associated not only with free movement and competition laws but also with a large number of other EU policy areas, including public health, education, training, youth, equal opportunities, employment, environment, media and culture. As such, an explicit reference to the competence for sport of the EU was added to the Treaty in order to allow the EU to allocate financial resources to this activity and develop a coherent policy on sport. Article 165(1) of the TEU now reads as follows:

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

4.2.2. From the pyramidal system to new horizontal forms of governance

It is now generally assumed that the EU offers sports organisations a degree of “supervised autonomy”. In practice, this means that sport organisations can exercise their autonomy as long as they are respectful of European law and demonstrate a clear commitment to transparency, democracy and protection of the values of sport. This was clearly reaffirmed in 2011 by the European Commission in the Communication on “Developing the European Dimension in Sport”,¹⁶⁵ which stressed that its respect for the autonomy of the sports sector, within the limits of the law, is dependent upon the commitment of the sector to democracy, transparency and accountability in decision-making.

The role of the Commission in the encouragement of the use of good governance principles has relied mainly on the promotion of standards of sport governance through the exchange of good practice and targeted support to specific initiatives. No concrete actions are envisaged due to concerns that sport organisations would not commit themselves to such principles.

After a first phase of intense lobbying of sport organisations by the European Parliament and the member states with a view to reduce the regulatory activity of the Commission to the minimum, sport organisations have accepted the primacy of European law and its application to their activities and a new long-term strategy of policy cooperation with EU authorities has started. New arenas of

¹⁶⁵ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Developing the European Dimension in Sport, COM (2011) 12 final, 18 January 2011, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0012:FIN:en:PDF>.



deliberations which tend to integrate the opinion of a multitude of stakeholders involved sports issues (e.g. sport forums, social dialogue, expert groups, etc.) have been created.¹⁶⁶

An example of this cooperation can be found in the Commission Decision of 14 October 2014,¹⁶⁷ in which the Commission presents the basis for its cooperation with the UEFA. In this Decision, the Commission and the UEFA announce their intention to strengthen their relations and to “facilitate future cooperation on matters of common interest in a regular and constructive manner.”

The basis for their cooperation includes an intention to address the new challenges faced by sport, such as the risks of corruption, match-fixing, financial instability, human trafficking, doping, violence, racism, etc. The cooperation shall also encompass the need to promote social dialogue in sport, to protect fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (e.g. to promote gender equality, to fight against all forms of racism, xenophobia, homophobia and all forms of discrimination).

The Decision reaffirms the principle of self-regulation within sport, to guarantee financial stability, transparency and better governance.

In relation to audiovisual sport rights, the Decision acknowledges that the exploitation of intellectual property rights represents an important source of income for professional football, and is significant for the redistribution of income to lower levels of the football pyramid. It is also a tool to guarantee independent financing of football in Europe, and the Decision also acknowledges that the effective protection of intellectual property rights in this field is important and should be ensured.

¹⁶⁶ Garcia, B., UEFA and the European Union: From Confrontation to Co-operation? JCER Volume 3 – Issue 3, <http://www.jcer.net/index.php/jcer/article/download/52/68>.

¹⁶⁷ Commission Decision of 14.10.2014 adopting the Arrangement for Cooperation between the European Commission and the Union of European Football Association (UEFA), C (2014) 7378 final, http://ec.europa.eu/sport/news/2014/docs/uefa2014_en.pdf.





5. European case law

5.1. Decisions of the European Commission

5.1.1. UEFA Champions League

On 23 July 2003, the European Commission made a ground-breaking decision in the case of the joint selling of the audiovisual rights of the UEFA Champions League.¹⁶⁸ The case concerned the rules, regulations and all implementing decisions taken by the *Union des Associations Européennes de Football* (UEFA)¹⁶⁹ and its members concerning the joint selling arrangement regarding the sale of the audiovisual rights of the UEFA Champions League.¹⁷⁰ UEFA holds the exclusive right to sell certain audiovisual rights of the UEFA Champions League on behalf of participating football clubs. According to the Commission, this joint selling arrangement restricts competition among the football clubs, in the sense that it has the effect of co-ordinating the pricing policy and all other trading conditions on behalf of all individual football clubs producing the UEFA Champions League content. However, the Commission decided that such restrictive rules could be exempted in the specific circumstances of this case.

5.1.1.1. The UEFA notification

On 19 February 1999, UEFA notified the Commission of the rules, regulations and implementing decisions regarding its joint selling arrangement. On 18 July 2001, the Commission issued a statement of objections, in which it stated that the joint selling arrangement relating to the sale of the audiovisual rights, of which it had been notified, infringed Article 81(1) of the Treaty (now Article 101(1) TFEU) and Article 53(1) of the EEA Agreement). It also stated that the joint selling arrangement was not eligible for exemption under Article 81(3) of the Treaty (now Article 101(3) TFEU and Article 53(3) of the EEA Agreement). The notified joint selling arrangement restricted

¹⁶⁸ Decision of the European Commission of 23 July 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (COMP/C.2-37.398 — Joint selling of the commercial rights of the UEFA Champions League), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0778>.

¹⁶⁹ UEFA is the regulatory authority of European football. UEFA has the sole jurisdiction to organise or abolish international competitions in Europe in which member associations and/or their football clubs participate. For more information see www.uefa.org.

¹⁷⁰ The UEFA Champions League is UEFA's most prestigious club competition. It is open to each national football association's domestic club champions, as well as the clubs, which finish just behind them in the domestic championship table.



competition between individual football clubs participating in the UEFA Champions League by prohibiting them from individually supplying audiovisual rights to interested buyers. Accordingly, third parties had only a single source of supply; the UEFA. Moreover, since UEFA sold the free-to-air TV and pay-TV rights in a single bundle on an exclusive basis to a single TV broadcaster per territory for several years in succession, possible efficiencies and benefits that the joint selling arrangement could provide for the TV broadcasting market were negated.

The Commission also claimed that the joint selling of free-to-air TV and pay-TV rights, combined with wide and exclusive terms, had significant effects on the structure of the TV broadcasting markets, as it can enhance media concentration and hamper competition between broadcasters. If one broadcaster held all or most of the relevant football TV rights in a member state, it would be extremely difficult for competing broadcasters to establish themselves successfully in that market.

As explained in the Commission's Decision, UEFA notified the Commission of a new proposal on 13 May 2002, following negotiations. However, the Commission's preliminary approval was subject to the provision of third parties with an opportunity to comment on the proposal. The third party comments prompted the Commission to request that UEFA make further amendments to its joint selling arrangement. UEFA agreed to amend its joint selling arrangement in most, but not all, respects. At a meeting on 4 April 2003, UEFA was informed that the Commission intended to attach conditions to the exemption decision. UEFA was subsequently notified thereof by way of a letter dated 5 May 2003, in which UEFA was invited to communicate its position on the Commission's intention to impose a condition. UEFA indicated in its reply of 15 May 2003 that it would accept the Commission's intention.

5.1.1.2. The Commission's decision

UEFA proposed, as a general principle, that audiovisual rights contracts be concluded for a period not exceeding three UEFA Champions League seasons. The award of the rights contracts followed an "invitation to tender", which contained relevant details of all rights packages together with key terms and conditions and an explanation of the information that interested parties must provide with their bid. UEFA would then evaluate the bids in accordance with a number of objective criteria. UEFA would offer its audiovisual rights in several smaller packages on a market-by-market basis. The precise format would vary depending on the structure of the TV market in the member state in which the rights were being offered.

5.1.1.2.1. The relevant markets

The Commission considered the following markets relevant to an assessment of the effects of the joint selling arrangements:

- the upstream markets for the sale and acquisition of free-to-air TV, pay-TV and pay-per-view rights;
- the downstream markets on which TV broadcasters compete for advertising revenue depending on audience rates, and for pay-TV/pay-per-view subscribers;



- the upstream markets for wireless/3G/UMTS rights, Internet rights and video-on-demand rights, which are new emerging audiovisual markets at both the upstream and downstream levels, and which parallel the development of the markets in the pay-TV sector;
- the markets for the other commercial rights, namely sponsorship, suppliership and licensing.

The Commission considered that the relevant product market could be defined as the market for the acquisition of TV broadcasting rights of football events played regularly throughout every year. This definition would include national first and second division and cup events, as well as the UEFA Champions League and UEFA Cup (now Europa League). The broadcasting of football matches would create a particular brand image for a TV channel, and allow the broadcaster to reach a particular audience that cannot be reached by other programmes. Moreover, football is a main driver of the sales of pay-TV subscriptions. Concerning free-to-air TV, football attracts a particular audience and, consequently, a particular kind of advertising that cannot be attracted by other types of programming.

The Commission considers the geographical scope of the different markets to be national, or at least confined to linguistic regions. Audiovisual rights to football events like the UEFA Champions League are normally sold on a national basis. This is due to the character of distribution, which is national due to national regulatory regimes, language barriers, and cultural factors. Furthermore, pay-TV broadcasters normally only sell subscriptions to viewers in a certain territory. TV advertising is typically adapted to conform to the tastes and languages of a certain territory. The same would seem to apply to new media services.

5.1.1.2.2. Benefits generated by the joint selling arrangement

The Commission considered the benefits generated by the joint selling arrangement when evaluating the restrictions of competition in this case and whether such benefits outweigh the negative effects. The Commission accepted that the joint selling arrangement improved the production and distribution of the UEFA Champions League by enabling the creation of a quality, branded content product and by providing an advantage for media operators, football clubs, and viewers, since it would lead to the creation of a single point of sale for a packaged league product. However, the Commission introduced a condition whereby football clubs would be enabled to sell their live TV rights to free-to-air TV broadcasters, where there is no reasonable offer from any pay-TV broadcaster.

In its consideration the Commission also found that UEFA's joint selling arrangement enables the consumer to enjoy a share of the benefits that are specifically created by the single point of sale, as mentioned above. Media operators, as consumers of football content, acquire easier and more efficient access to this unique content, which in addition carries the UEFA Champions League quality brand label. The arrangement would create efficiencies, and it would likely result in a more intensive and innovative exploitation of the rights for the consumer. The sale of audiovisual rights in separate packages should increase the possibility for more broadcasters to obtain UEFA Champions League content. The UEFA Champions League joint selling arrangement also ensures that companies interested in new media and deferred media rights and archives will have the opportunity to bid for such content rights. Moreover, viewers receive access to better quality media coverage of the UEFA Champions League product, and easier access to deferred media content and archive material that may be of special interest to them.



5.1.1.2.3. Indispensable restrictions

The Commission then considered those restrictions that were indispensable to the creation of a league product sold via a single point of sale. The complexity of producing such a product through individual sales by the clubs could compromise the quality and availability of a UEFA Champions League product, and could be less efficient for media operators, in particular since the UEFA Champions League is a pan-European football tournament involving participants from many different countries. Media products of football leagues are generally aggregated into a media product covering the League as a whole. The Commission accepted that such aggregation seemed necessary in order to present a worthwhile product that interests viewers.

Moreover, it does not seem possible to remove UEFA's exclusivity while simultaneously maintaining the improvements and efficiencies mentioned above. The Commission also accepted that it is necessary that UEFA have the exclusive right to sell the UEFA Champions League live, and to have delayed audiovisual rights outside Europe, as it increases the likelihood of a wider and more efficient distribution of the UEFA Champions League.

5.1.1.2.4. Safeguarding competition

With regard to the requirement that competition is not eliminated, the jointly sold audiovisual rights of the UEFA Champions League are split up into several different rights packages, which are offered for sale in a competitive bidding procedure open to all interested media operators. This allows several media operators to acquire audiovisual rights of the UEFA Champions League from UEFA.

5.1.2. German Bundesliga

On 19 January 2005, the European Commission took a decision concerning the central marketing of audiovisual rights in respect of matches in the first and second national men's football divisions (Bundesliga and 2. Bundesliga) in Germany.¹⁷¹ This decision was taken in view of the commitments¹⁷² made by the League Association following the preliminary assessment and the observations submitted by interested third parties.

Without having conducted a full investigation of the case, the Commission considered that the commitments made by the *Liga-Fußballverband e.V.* (League Association) seemed to introduce competition to the marketing of Bundesliga and 2. Bundesliga rights between the League and the clubs, and allow for new, in particular club-branded, products. The commitments would also reduce the scope and duration of future marketing deals and provide a transparent and non-discriminatory marketing procedure. They also improve the accessibility of content for TV, radio and new media

¹⁷¹ Decision of the European Commission of 19 January 2005 (COMP/C-2/37.214, Joint selling of the media rights to the German Bundesliga), http://ec.europa.eu/competition/antitrust/cases/dec_docs/37214/37214_90_1.pdf.

¹⁷² Details of broadcasting rights commitments made by the German Football League, MEMO/05/16, 19 January 2005, [http://europa.eu/rapid/press-release MEMO-05-16_en.htm](http://europa.eu/rapid/press-release_MEMO-05-16_en.htm).



operators, ensuring that more rights are made available to the market, and thereby contributing to innovation and reducing the concentration tendencies in the media markets.

5.1.3. Premier League

On 22 March 2006, the European Commission adopted a decision¹⁷³ relating to the horizontal joint selling arrangements established by the Football Association Premier League Limited (FAPL) for the exploitation in the United Kingdom of audiovisual rights to Premier League football matches.

After a preliminary assessment by the Commission, the FAPL proposed commitments that were later amended to take account of the relevant observations made by interested third parties. The Commission considered that these commitments were sufficient to address both the concerns identified in its preliminary assessment and the observations submitted by interested third parties.

The commitments introduce greater competition into the marketing of Premier League rights, provide a transparent and non-discriminatory sales procedure, ensure that no single purchaser can buy all live TV rights, improve accessibility of content for television, radio and new media operators, and ensure that all rights are being made available to the market.

The Commitments are binding on the FAPL and applied to the marketing, sale and exploitation of Premier League rights for six seasons, with effect from the 2007/2008 season.¹⁷⁴

5.2. Case law of the CJEU

5.2.1. The *Premiere League* and *Murphy* cases

From a certain perspective, the judgment of the CJEU in the *Premiere League* cases¹⁷⁵ can be seen as constituting the first crack in the wall of territorial exclusivity agreements in the audiovisual sector. The case involved the acquisition and use of foreign decoder cards in the UK, providing access to encrypted satellite transmissions from Greece of British Premier League football matches. These foreign decoder cards are very popular in the UK, since they enable the viewer to watch Premier League football matches on TV and are much cheaper than those commercially available in the UK. People living in the UK who wish to acquire these cards have to resort to deception, such as providing a false identity and address, with the intent of circumventing the territorial restrictions put in place by the legitimate rightsholder.

¹⁷³ Summary of Commission Decision of 22 March 2006 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/38.173 — Joint selling of the media rights to the FA Premier League) (notified under document number C(2006) 868), <https://publications.europa.eu/en/publication-detail/-/publication/3d648d1b-711a-44ac-99a6-8896c991d61e/language-en>.

¹⁷⁴ The FAPL commitments are available at:

http://ec.europa.eu/competition/antitrust/cases/dec_docs/38173/38173_132_7.pdf.

¹⁷⁵ Judgment of the Court (Grand Chamber) of 4 October 2011, joined cases C-403/08 and C-429/08, *Football Association Premier League Ltd and Others v QC Leisure and Others* (C-403/08) and *Karen Murphy v Media Protection Services Ltd* (C-429/08), <http://curia.europa.eu/juris/document/document.jsf?docid=110361&doclang=en>.



The rightsholder of the Premier League's broadcasting rights, the FAPL, concludes licence agreements with broadcasters that grant them exclusive broadcasting rights for the live transmission of the Premier League matches on a territorial basis. The licence agreement includes the broadcaster's obligation to encrypt its satellite signal and prohibits broadcasters from supplying decoder cards to persons not living in the member state for which the licence was granted.

The FAPL initiated two judicial proceedings in order to stop the import of decoder cards from Greece into the United Kingdom.¹⁷⁶ The High Court of England and Wales referred several questions concerning both sets of proceedings to the CJEU for the interpretation of EU law. In her opinion of 3 February 2011,¹⁷⁷ the Advocate General stated that the imposition of exclusivity has the effect of dividing the internal market into national markets, which constitutes a restriction on the freedom to provide services. The Advocate General insisted that the economic exploitation of the rights in question does not require such a partitioning of the internal market, as the charges corresponding to the foreign decoder cards had been paid. According to the Advocate General, that price differences between the member states should be offset by trade forms part of the logic of the internal market.

In its judgment, the CJEU held that provisions in UK law prohibiting the import, sale or use of foreign decoder cards conflict with the freedom to provide services enshrined in Article 56 TFEU. The CJEU considered that such provisions cannot be justified by the objective of protecting intellectual property rights, since the Greek broadcasts were duly licensed by the Premier League and charges for the foreign decoder cards were being paid. Such foreign cards were held not to be "illicit devices" within the meaning of the Conditional Access Directive.¹⁷⁸ According to the CJEU, the definition of an "illicit device" does not extend to foreign decoding devices procured or enabled by the provision of a false name and address, or foreign decoding devices which have been used in breach of a contractual limitation permitting their use only for private purposes. Article 56 TFEU precludes legislation of a member state that makes it unlawful to import, sell and use in that state foreign decoding devices that provide access to an encrypted satellite broadcasting service from another member state, where that service includes subject-matter protected by the legislation of the first state.

However, probably the most important part of the decision concerns the system of territorial exclusive licence agreements established by the FAPL. The CJEU held that clauses that prevent the broadcaster from supplying decoding devices that would enable access to the rightsholder's subject-matter (protected against use outside the territory under the licence agreement) constitute a restriction on competition prohibited by Article 101 TFEU. According to the Court:

The mere fact that the right-holder has granted to a sole licensee the exclusive right to broadcast protected subject-matter from a member state, and consequently to prohibit its transmission by others, during a specified period is not sufficient to justify the finding that such an agreement has an anti-competitive object.

¹⁷⁶ Case C-403/08 concerns civil law actions brought by the FAPL against the use of foreign decoder cards. Case C-429/08 concerns criminal proceedings brought against the landlady of a pub that used a Greek decoder card to show Premier League football matches.

¹⁷⁷ Opinion of Advocate General Kokott, Cases C-403/08 and C-429/08, 3 February 2011,

<http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=1&part=1&mode=lst&docid=84316&occ=first&dir=&cid=678351>.

¹⁷⁸ Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0084:EN:HTML>.



However, partitioning markets with the sole aim of creating artificial price differences between member states, and thereby maximising profits (i.e. price discrimination), is irreconcilable with the Treaty. In this case such territorial restrictions do not qualify for an exemption under Article 101(3) TFEU, which permits exemptions under the auspices of contributing to improving the production or distribution of goods or to promoting technical or economic progress.

According to the Court, copyright law does not guarantee rightsholders the opportunity to demand the highest possible remuneration; such rightsholders are ensured only appropriate remuneration for each use of the protected subject-matter. Such appropriate remuneration must be reasonable in relation to the economic value of the service provided. In particular, it must be reasonable in relation to the actual or potential number of persons who enjoy or wish to enjoy the service. Licence income from encrypted satellite transmissions can be based on actual audiences both in the member state in which the content is broadcast and in other states where the broadcast is received. However, in this case, the rightsholders received a premium payment in exchange for the guarantee of an absolute territorial exclusivity. This, in turn, led to the creation of artificial price differences between the partitioned national markets.¹⁷⁹

¹⁷⁹ Following the CJEU judgment, on 3 February 2012 the High Court of England and Wales ruled that landlords in the UK can legally broadcast Premier League matches using foreign satellite decoders, as long as they can obtain a clean feed of the games, they broadcast sound during live play only, and do not charge an entrance fee. Also, on 24 February 2012, the High Court overturned the conviction of Karen Murphy. For a brief description of these two decisions, see Angelopoulos Ch., “United Kingdom - High Court Issues Ruling on Satellite Decoder Case”, IRIS 2012-4/27,

<http://merlin.obs.coe.int/iris/2012/4/article27.en.html>.





6. State of play

6.1. The revision of the AVMSD

The provisions on major events and short news reporting are enshrined in some of the very few articles of the Audiovisual Media Service Directive that remain untouched¹⁸⁰ by the revision proposal tabled by the European Commission on 25 May 2016.¹⁸¹ In the Ex-post REFIT Evaluation¹⁸² accompanying the proposal, the Commission mentioned the public consultation that took place from July to September 2015¹⁸³ and the overall positive assessment on the functioning of these two sets of rules from various points of view, stating (emphasis added):

- The rules have proven to satisfy the requirements of *relevance* and *effectiveness* for sustaining media pluralism and right of information;
- The rules have delivered an EU added-value through the system of mutual recognition in cases of major events, and by being an important corollary to the free circulation of AVMS in the case of short news reporting;
- There has been no evidence of a lack of proportionality between the cost resulting from the application of these provisions and their objectives, so the requirement of *efficiency* has been satisfied;
- The rules function in a complementary framework with member states' legislation and therefore satisfy the requirement of *coherence*.

¹⁸⁰ For a synopsis of current rules of the AVMSD and the Commission's proposal, see the table prepared by the University of Luxembourg, http://www.de.uni.lu/recherche/fdef/droit_des_medias/audiovisual_media_services_directive/avmsd_reform_proposal_2016.

¹⁸¹ European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, of 25 May 2016, COM/2016/0287 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1464618463840&uri=COM:2016:287:FIN>.

¹⁸² European Commission, Ex-post REFIT evaluation of the Audiovisual Media Services Directive 2010/13/EU of 25 May 2016, SWD(2016) 170 final, <https://ec.europa.eu/digital-single-market/en/news/ex-post-refit-evaluation-audiovisual-media-services-directive-201013eu>.

¹⁸³ European Commission, Synopsis report of the Public consultation on Directive 2010/13/EU on Audiovisual Media Services (AVMSD) - A media framework for the 21st century, <https://ec.europa.eu/digital-single-market/en/news/report-public-consultation-review-audiovisual-media-services-directive-avmsd>.



As further developed in the Impact Assessment¹⁸⁴ accompanying the proposal, the Commission registered support across stakeholders for maintaining the status quo as regards these rules. The solution proposed responds therefore to the option “status quo” laid out in the Inception Impact Assessment¹⁸⁵ which was adopted to launch the revision process: “*On events of major importance for society, short news reports and right of reply options include either maintaining the status quo or “other” options that the respondents can indicate.*”

Option “status quo” implies that no regulatory option is put forward for these two regulatory sets in the Commission’s proposal. Should the revision process result in a confirmation of the Commission’s proposal with regard to coverage of major events and short news reporting rights, the scope of Articles 14 and 15 would remain limited to broadcasters established in one of the member states. On-demand services would remain outside of the scope – which would respond to the fact that the premium value of these events is connected to the fact that they are live and are therefore appealing when they are performed (an exception is made for deferred coverage in case of a significant time shift). However, extraterritorial rightsholders would also remain excluded, which could raise interpretative issues.

6.2. Major sport events in the future

The recognition of the significance of major sport events in society has recently been recalled by the Council of the European Union,¹⁸⁶ which stated that:

Major sport events can play an important role in the development of the region or city and garner a great deal in terms of economic, social and environmental impact, if this is carefully planned from the earliest possible stage. The legacy and sustainability of major sport events may have significance both for the legitimacy of and support for major sport events.

The recognition of the positive effects that major sport events can have on society implicitly emphasises the relevance of their broadcast, since it is unlikely that everyone who is interested in an event will physically attend it. This implies that free-to-air live coverage of the most relevant of such events remains an important gateway for the effective realisation of the objectives underpinning the right of citizens to information.

Until now the role of ensuring audiovisual access to major events has traditionally been played by national broadcasters. The pan-European channel, Eurosport, the existence of which has been turbulent since its inception in upon the initiative of the European Broadcasting Union in 1989, has never been active in purchasing rights for premium events.

¹⁸⁴ European Commission, Impact Assessment accompanying the Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU of 25 May 2016, SWD(2016) 168 final, and Executive summary of the Impact assessment, SWD(2016) 169 final, both available from <https://ec.europa.eu/digital-single-market/en/news/impact-assessment-accompanying-proposal-updated-audiovisual-media-services-directive>.

¹⁸⁵ European Commission, Inception impact assessment of October 2015, http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_cnect_006_cwp_review_avmsd_ia_en.pdf.

¹⁸⁶ Council of the European Union, Conclusions of the Education, Youth, Culture and Sports Council of 31 May 2016 on enhancing integrity, transparency and good governance in major sport events, <http://data.consilium.europa.eu/doc/document/ST-9644-2016-INIT/en/pdf>.



However, in 2015, when the ownership of the channel was acquired by the US-based Discovery Communications, Eurosport won the multiplatform rights across Europe to the Olympic Games from 2018 to 2024 in 50 countries, i.e. all territories in Europe except for the Russian Federation.¹⁸⁷ For France and the UK the rights were bought only for the 2022 and 2024 Games, and in the UK the free-to-air rights were sublicensed to the BBC for the 2022 and 2024 games, while gaining the pay-TV rights for the 2018 and 2020 games.¹⁸⁸

Since Eurosport falls under French jurisdiction the provisions of the AVMSD apply,¹⁸⁹ and this also explains the numerous sublicensing deals with free-to-air broadcasters across Europe, many of them public service broadcasters;¹⁹⁰ but it cannot be excluded that in the future a third party company enters into the acquisition of sports rights that fall under the lists of major events of all EU countries, both notified and national. How this will impact on the fulfilment of the objectives of media pluralism and right of information under the new Audiovisual Media Services Directive remains to be seen.

Should Articles 14 and 15 of the AVMSD remain unchanged during the revision process, in the case of purchase of broadcasting rights by audiovisual media service providers not falling under the jurisdiction of any of the member states, the mechanisms foreseen by the Directive, created in order to balance exclusive broadcasting rights with the citizens' rights to access information through the coverage of the events, could risk remaining inapplicable. This is, however, unless the third parties where the exclusive rightsholder is based are signatories of the European Convention on Transfrontier Television (ECTT). For short news reporting, in addition to the provisions of the ECTT, the general provisions on copyright exceptions could provide adequate protection towards third parties that are signatories to the Berne Convention.¹⁹¹

¹⁸⁷ Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France,* Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom,* Vatican City State. See IOC (International Olympic Committee) News, "IOC awards all TV and multiplatform broadcast rights in Europe to Discovery and Eurosport for 2018-2024 Olympic Games", 29 June 2015,

<https://www.olympic.org/news/news/2015/09/23/15/12/53/ioc%20awards%20all%20tv%20and%20multiplatform%20broadcast%20rights%20in%20Europe%20to%20discovery%20and%20eurosport%20for%202018-2024%20olympic%20games>.

¹⁸⁸ BBC Media Centre, "BBC and Discovery Communications sign long-term Olympic Games partnership", 2 February 2016, <http://www.bbc.co.uk/mediacentre/latestnews/2016/olympics-rights>.

¹⁸⁹ See Dupont-Calbo J., "Eurosport change de dimension en misant plus d'un milliard sur les JO", Les Echos, 29 June 2015, http://www.lesechos.fr/29/06/2015/lesechos.fr/021172329694_eurosport-change-de-dimension-en-misant-plus-d-un-milliard-sur-les-jo.htm.

¹⁹⁰ See for instance the cases of ORF in Austria, <https://corporate.discovery.com/discovery-newsroom/discovery-communications-and-orf-sign-olympic-games-agreement/>; HRT in Croatia, YLE in Finland, Czech TV in the Czech Republic, <https://corporate.discovery.com/discovery-newsroom/discovery-communications-and-croatian-radiotelevision-sign-olympic-games-agreement/>; RTÉ in Ireland, <https://corporate.discovery.com/discovery-newsroom/discovery-communications-partners-with-rte-to-secure-free-to-air-rights-for-2018-and-2020-olympic-games/>; NOS in the Netherlands, <https://corporate.discovery.com/discovery-newsroom/discovery-communications-and-nos-sign-olympic-games-agreement/>; TV Norge in Norway and Kanal 5 in Sweden, <https://corporate.discovery.com/discovery-newsroom/discovery-communications-unveils-olympic-games-coverage-plans-in-norway-sweden-starting-with-pyeongchang-2018/>; SRG SSR in Switzerland, <https://corporate.discovery.com/discovery-newsroom/swiss-viewers-to-enjoy-enhanced-olympic-games-coverage-following-new-discovery-communications-and-srg-ssr-agreement/>; BBC in the UK, <https://corporate.discovery.com/discovery-newsroom/bbc-discovery-communications-sign-long-term-olympic-games-partnership/>.

¹⁹¹ WIPO, Berne Convention for the protection of Literary and Artistic Works, 9 September 1886, as revised in 1971, http://www.wipo.int/treaties/en/text.jsp?file_id=283698.





Appendix





Table 1. Lists of events of major interest to the public in the 28 EU member states (June 2016)

Additional information on type of coverage where specified in national legislation

	Live and full	Partial live	Live/deferred - Full/partial	Live or deferred	Partial deferred								
						Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
Austria ¹⁹²		X	X			X	X	Opening match, semi-finals, final and games of the national team (men)	Opening match, semi-finals, final and games of the national team		The final of the Austrian Football Cup	FIS World Alpine skiing championships, World Nordic skiing championships	Notified
Belgium ¹⁹³		X						Finals Tournament (men)	Finals Tournament (men)		Belgian Football Cup Final (men)	Football: all matches involving the Belgian men's team Tennis: Roland Garros and Wimbledon, quarter finals, semi-finals and finals involving a Belgian player; The Davis Cup and the Fed Cup, quarter finals, semi-finals and finals involving the Belgian team. Belgian Formula 1 Grand Prix	Notified

¹⁹² See www.ris.bka.gv.at/GeltendeFassung_wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001484 and <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007D0477>.

¹⁹³ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0479>.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
(FL) ¹⁹⁴							Cycling (men): Tour de France, Liège-Bastogne-Liège, Amstel Gold Race, Tour of Flanders, Paris-Roubaix, Milan-San Remo, Belgian professional Road Cycling Championships, World professional Road Cycling Championships.	
					Matches involving Belgian clubs; finals and semi-final		The Belgian and World men's professional Cyclo-cross Championships Tennis: Australian Open and US Open, quarter finals, semi-finals and finals involving a Belgian player	
(FR) ¹⁹⁵		X			Matches involving Belgian clubs		Cycling: Paris-Tours and Tour of Lombardy World Athletics Championships with Belgian athletes Ivo Van Damme Memorial	
Bulgaria ¹⁹⁶	X	X	Opening match, semi-finals and games of the national team Final	Semi-finals and final and games of the national team Final		Bulgarian football Cup Final	International meetings of the Men's Basketball and Volleyball national teams; World Cup skiing (alpine skiing); World Championship Wrestling; World Cup gymnastics and World Cup	

¹⁹⁴ See www.vlaamseregulatormedia.be/sites/default/files/decreet_17_januari_2014_2.pdf.

¹⁹⁵ See www.csa.be/system/documents/files/200/original/CAV_Avis_20001011_arrete_evenements_interets_majeurs.pdf?1299596328.

¹⁹⁶ See www.cem.bg/downloadFile.php?file=74d33c971d.pdf.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
Croatia ¹⁹⁷	Opening and closing ceremony, all finals, all competitions with national representatives	Opening and closing ceremony, all finals, all competitions with national representatives	Opening match, final and all matches involving the national team	Opening match, final and all matches involving the national team	Matches of Croatian teams, including qualifiers		<p>Any finals competition involving national athletes;</p> <p>Football: all national team games</p> <p>Basketball and Handball: Semi-finals and finals and national team's games of World and European Championships</p> <p>Water polo: finals and national team's games of World and European Championships, EHF Champions League games with Croatian teams from quarterfinals onwards</p> <p>Swimming: finals involving Croatian athletes in World and European Championships</p> <p>Tennis: finals of US Open, Australian Open, Roland Garros and Wimbledon involving Croatian athletes; finals of ATP and WTA tournaments held in Croatia</p> <p>Skiing world cup races held in Croatia</p>	Only national
Cyprus								List being discussed

¹⁹⁷ See http://www.e-mediji.hr/files/podzakonski/2009_41.pdf.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
Czech Republic ¹⁹⁸	X	X	All matches of the national team; semi-finals and final	All matches of the national team; semi-finals and final			Ice Hockey world cup (all matches of the national team; semi-finals and final); World Athletics championship	Only national
Denmark ¹⁹⁹	The games in their entirety, including the opening and closing ceremonies	The games in their entirety, including the opening and closing ceremonies	All matches involving Denmark including qualification games, plus the semi-finals and finals (men)	All matches involving Denmark including qualification games, plus the semi-finals and finals (men)			Handball World and European Championships: all matches involving Denmark, plus the semi-finals and finals, and qualifying matches (men and women)	Notified
Estonia								No list
Finland ²⁰⁰	X	X	Opening match, semi-finals, final and the matches of the Finnish team	Opening match, semi-finals, final and the matches of the Finnish team			Men's Ice Hockey World Championships final: semi-finals, final and games of the Finnish team	Notified
			Quarter-finals	Quarter-finals			Men's Ice Hockey World Championships other games; Nordic World Ski Championships; World and European Championships in Athletics;	

¹⁹⁸ See www.zakonyprolidi.cz/cs/2001-233.

¹⁹⁹ See www.retsinformation.dk/Forms/R0710.aspx?id=169537 and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1097>.

²⁰⁰ See www.finlex.fi/fi/laki/alkup/2007/20070199 and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L..2007.180.01.0038.01.ENG>.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
France ²⁰¹	X	X	Opening match, semi-finals and final	Semi-finals and final	Champions league final; UEFA Cup final where a French team is playing	French football cup final; French Rugby Championship final;	<p>Football: official matches of the French national football team in the FIFA calendar;</p> <p>Rugby: Six Nations rugby tournament; semi-finals and final of the Rugby World Cup;</p> <p>Tennis: the finals of the men's and women's singles of Roland Garros;</p> <p>Where a French team or athlete is playing: European Rugby Cup final; semi-finals and finals of the Davis Cup; the men's and women's finals of the World and European Basketball and Handball Championships;</p> <p>Formula 1 French Grand Prix; Paris-Roubaix</p> <p>The World Athletics Championships</p> <p>Tour de France</p>	Notified
Germany ²⁰²	X	X	Opening match, semi-finals, final and all matches involving the national team	Opening match, semi-finals, final and all matches involving the national team	The final of any European football club competition with German participation	The semi-finals and the final of the German Football Association Cup	The home and away matches of the German national football team	Notified
Greece								List being discussed

²⁰¹ See www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000786247 and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.180.01.0033.01.ENG.

²⁰² See www.gesetze-bayern.de/Content/Document/RFunkStVertr-4?AspxAutoDetectCookieSupport=1 and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007D0476>.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
Hungary								List being discussed
Ireland²⁰³	X		Ireland's home and away qualifying games and in the final tournament; opening games, the semi-finals and final	Ireland's home and away qualifying games and in the final tournament; opening games, the semi-finals and final		The All-Ireland Senior Inter-County Football and Hurling Finals; The Nations Cup at the Dublin Horse Show	Each of Ireland's games in the Six Nations Rugby Football Championship Ireland's games in the Rugby World Cup Finals Tournament; The Irish Grand National and the Irish Derby	Notified
Italy²⁰⁴	X	X	Cup final and all matches involving the Italian national team	Cup final and all matches involving the Italian national team	Final and semi-finals of the Champions League and the Europa League when an Italian team is involved		Football: all matches involving the Italian national football team, home and away, in official competitions; Giro d'Italia; Italian Formula One and Moto GP Grand Prix; When the Italian national team is involved: the finals and semi-finals of the world championships of basketball, water polo, volleyball and rugby, Six Nations rugby, Davis Cup and the Fed Cup, Italian open (Italian athletes); Bicycle road racing world championship	Notified

²⁰³ See www.irishstatutebook.ie/eli/2003/si/99/made/en/print and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.180.01.0017.01.ENG.

²⁰⁴ See www.gazzettaufficiale.it/eli/id/2012/04/19/12A04305/sg;jsessionid=EwzMQFFIsB1H-BEG+9Lywg_.ntc-as1-guri2a and



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
Latvia ²⁰⁵	X	X	Finals tournament	Finals tournament		Latvian Olympiad opening ceremony	World Hockey Championship Finals; World and European championships that take place in Latvia	Only national
Lithuania ²⁰⁶	Opening and closing ceremonies, semi-finals and final of the basketball and football tournaments and competitions in which national athletes take part	Opening and closing ceremonies and competitions in which national athletes take part	The semi-finals and finals	The semi-finals and finals			World and European championships semi-finals and final and all matches involving the Lithuanian national men's basketball team; and Qualifying matches of the basketball tournaments for the Olympic Games, the World Championship and the EuroBasket; ULEB Men's basketball League: games involving Lithuanian teams	Only national
Luxembourg ²⁰⁷								No list
Malta ²⁰⁸	Opening ceremony and national		The opening ceremony, the opening game, the	The opening ceremony, the opening game, the	Final and semi-final games of the Champions League and UEFA Cup		The Maltese national football team's competitive home and away matches;	Only national

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0394>.

²⁰⁵ See <http://m.likumi.lv/doc.php?id=225272>.

²⁰⁶ See www.rtk.lt/content/uploads/2015/09/LRTK-ataskaita-2013.pdf.

²⁰⁷ A specific list of national events is in place under the public service remit of the only channel with national coverage, namely RTL Télé Lëtzebuerg.

²⁰⁸ See www.ba-malta.org/file.aspx?f=105.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
	participation		quarterfinals, the semi-finals, the game for third place and the final	semi-finals, and the final			The opening ceremony and the finals taking place on the last day of the Games of the Small States of Europe; The March and September regattas	
Netherlands ²⁰⁹	X	X	The entire final tournament	The entire final tournament	Champions League and UEFA Cup: the games of Dutch clubs and finals regardless of Dutch participation	National cup matches, the semi-finals and the final; Elfstedentocht (ice skating tournament)	Tennis men and women Wimbledon and Roland Garros: the singles matches of the Dutch participants, the semi-finals and finals regardless of Dutch participation	Only national
						Cycling (tour de France, World championship, the Classics); TT Assen Motor cycle race		

²⁰⁹ See www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2005/10/14/vragen-van-raak-sp-over-definitie-evenementen/kamervragen-2004-antwoorden-9272.pdf and <https://zoek.officielebekendmakingen.nl/stb-2015-375.html>.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
						All matches in the top division of national professional football; national cup matches, the quarter-finals	<p>Summer and Winter Paralympic games;</p> <p>Athletics (men and women): outdoor World Cup and European Championships;</p> <p>The matches of the Dutch team:</p> <ul style="list-style-type: none"> - Swimming: men and women's World and European Cups - Hockey: men and women's World and European Cups <p>Tennis (men and women): Wimbledon, Roland Garros, US Open and Australian Open, the singles matches of the Dutch participants</p>	
Poland ²¹⁰	X	X	Semi-finals and final and games of the national team	Semi-finals and final and games of the national team	Matches with the participation of Polish clubs within the Champions League and		Football: football matches with the participation of the Polish national team in official tournaments	Notified

²¹⁰ See www.krrit.gov.pl/en/for-journalists/press-releases/news,1595,krrit-has-submitted-notification-of-a-list-of-major-events-to-the-ec.html and <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D0163>.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
					UEFA Cup		<p>Volleyball: matches involving Polish national teams in the men's and women's World and European Championships, including qualifying matches; men's World League matches played in Poland;</p> <p>Handball: semi-finals and finals and matches involving the Polish national team, including qualifying matches of the Men's World and European Cups;</p> <p>Nordic World Ski Championships; Ski Jumping World Cup competitions; women's Cross-Country World Cup (skiing) competitions; the World Championships in Athletics</p>	
Portugal ²¹¹	Opening and closing ceremonies, competitions in which national athletes take part		Opening and closing ceremonies as well as opening games, quarter-finals, semi-finals and final	All matches of the national team	<p>Finals; one game per round of the knockout stages in the Champions League (starting from the quarter-finals for the Europa League) with Portuguese clubs</p> <p>The European Super Cup</p>	<p>Final of the Portuguese football Cup; one game for each match day of the League I (2nd division) national football championship (involving one of the top 5 teams of the previous season)</p>	<p>Volta a Portugal (cycling race); Participation of Portuguese athletes and national 'A' teams in the final stage of the World and European Championships of different sports;</p> <p>Final of official international club competitions involving Portuguese teams in handball, athletics, basketball, roller hockey and volleyball</p>	Only national

²¹¹ See www.gmcs.pt/pt/despacho-n-138782013-lista-dos-acontecimentos-de-interesse-generalizado-do-publico-que-devem-ser-transmitidos-pela-televisao-em-sinal-aberto.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/competitions	Other sports events	State of EU notification by 30 June 2016
Romania ²¹²	X	X	Games involving the national team, including qualifiers	Games involving the national team, including qualifiers				Only national
Slovenia ²¹³	X	X	All matches of the Slovenian teams (including qualifiers), the opening match, semi-finals and final. If the Slovenian team fails to qualify: 10 selected games	All matches of the Slovenian teams (including qualifiers), the opening match, semi-finals and final. If the Slovenian team fails to qualify: 10 selected games			Skiing: World Championships and World Cups in the Alpine and Nordic disciplines and biathlon; Basketball and Handball: World and European championships - all matches involving Slovenian teams, semi-finals and finals, qualifying matches of the Slovenian team; World and European Championship of Athletics, Gymnastics, Swimming and Cycling	Only national
Slovakia								List being discussed
Spain ²¹⁴						Copa del Rey final and semi-finals; one match per day of First Division Professional Football League		Only national
Sweden								List being discussed

²¹² See www.cna.ro/HOT-RARE-Nr-47-din-16-ianuarie.html.

²¹³ See www.mk.gov.si/fileadmin/mk.gov.si/pageuploads/Ministrstvo/Zakonodaja/Predpisi_v_pripravi/2014/najpom_dogodki.pdf.

²¹⁴ Pending the creation of an independent State Council for Audiovisual Media (CEMA) foreseen by Law no. 7/2010 (www.boe.es/buscar/act.php?id=BOE-A-2010-5292), the listed events are only those foreseen by the Sixth transitional provision of the Law.



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of EU notification by 30 June 2016
UK ²¹⁵	X	X	Finals tournament	Finals tournament		The FA Cup Final; The Scottish FA Cup final (in Scotland)	<p>The Grand National; The Derby; Wimbledon Tennis finals; Rugby: League Challenge Cup final and the World Cup final</p> <p>Rugby: All other matches in the Rugby World Cup Finals Tournament; Six Nations Rugby Tournament matches involving home countries; Non-finals play in the Wimbledon Tournament; Cricket: World Cup (the final, semi-finals and matches involving home nations' teams) and Test matches played in England; World Athletics Championship; Commonwealth Games; Ryder Cup; the Open Golf Championship</p>	Notified

Source: European Audiovisual Observatory from public sources

²¹⁵ See http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/ofcom_code_on_sport.pdf and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2007.295.01.0012.01.ENG.



Table 2. Proposals of lists of major interest to the public still on consultation (June 2016)

	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of the art by 30 June 2016
Cyprus ²¹⁶	X		Final Phase (MUNDIAL)	Final Phase (EURO)	Final games and games of Cypriot teams; Qualifying games of Cypriot teams	Cypriot football Cup Final	Tennis: Quarter-finals, semi-finals and finals of Wimbledon, Australian Open, Roland Garros, Flushing Meadows, with Cypriot participation	After the revocation in 2010 of a list adopted in 2001, consultations are still ongoing
Greece ²¹⁷					UEFA Europa League Final Champions League Final	Greek Football Cup Greek Basketball Cup Superleague - The classification match for the emergence of the champion in case of a barrage match)	If Greek teams or athletes are participating: Final 4 – Euroleague (basketball); Final 4 Champions League (men’s water polo); Len Trophy; – If Greek teams are participating Final 4 – Euroleague (women’s water polo); European Championship Water-polo (men’s and women’s); Champions League Handball (men’s and women’s); Volleyball Cup – Final (men’s and women’s); Volleyball Champions League (men’s and women’s); Volleyball European Championship (men’s and women’s); Tennis International games; Classical Marathon; Rally Acropolis; European and International Championships in team and individual sports	A list is currently being discussed at governmental level. The events listed in this table were included in the ministerial decision No 26683/26.8.2014 (Official Gazette B 2350/1.9.2014) by which they determined the events of major importance for the years 2014-2015. The decision has been recalled because the procedure was not followed.

²¹⁶ See <http://www.sigmalive.com/sports/football/cyprus/a-league/52766/se-anoixti-zoni-athlitika-gegonota-meizonos-simasias>.

²¹⁷ See

<http://www.et.gr/idosc->

[nph/search/pdfViewerForm.html?args=5C7QrtC22wE4q6ggiv8WTXdtvSoClrL8FT0YGU25CRp5MXD0LzQLf7MGgcO23N88knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJb0x1LldQ163nV9K--td6SiuZAYCGKN95k6PXE2F37b59V9wLk8zQMqjo9Ru4QA_1Et](http://www.et.gr/idosc-nph/search/pdfViewerForm.html?args=5C7QrtC22wE4q6ggiv8WTXdtvSoClrL8FT0YGU25CRp5MXD0LzQLf7MGgcO23N88knBzLCmTXKaO6fpVZ6Lx3UnKl3nP8NxdnJ5r9cmWyJWelDvWS_18kAEhATUkJb0x1LldQ163nV9K--td6SiuZAYCGKN95k6PXE2F37b59V9wLk8zQMqjo9Ru4QA_1Et).



	Summer Olympic Games	Winter Olympic Games	FIFA Football World Cup	UEFA European Cup	UEFA Champions League and Europa League	National cups/ competitions	Other sports events	State of the art by 30 June 2016
Hungary ²¹⁸	X	X	The FIFA men's soccer World Cup	UEFA European Football Championship	Finals of the UEFA Champions League and the UEFA Champions League and Europa League qualifying round, group matches of the knockout stage involving Hungarian teams	Men's soccer national team matches	When involving Hungarian teams or athletes: Matches in the men's and women's handball World and European Championships; men's and women's handball matches of the EHF Champions League and European Cup Winners' Cup; Matches in the men's water polo World and European Championships; matches in the men's water polo LEN Euroleague and LEN Cup involving Hungarian teams; men and women's basketball matches from World and European Championships; the men's and women's basketball international leagues; the men's hockey World Cup matches; the canoeing world and European championships; the swimming world and European championships; the Hungarian Formula 1 Grand Prix race	Consultations are ongoing
Slovakia ²¹⁹	X	X	Semi-finals and finals and all matches of the Slovak national team	Semi-finals and finals and all matches of the Slovak national team	Semi-finals and finals of in the case of participation of Slovak a team		Matches of the Slovak national team at the World Hockey Championship	Consultations are ongoing
Sweden ²²⁰	X	X	Qualifying games and final tournament matches with Swedish participation, and semi-finals and finals (men and women)	Qualifying games and final tournament matches with Swedish participation, and semi-finals and finals (men and women)		Vasaloppet	Skiing: the FIS Nordic World Ski Championship; the Alpine skiing World Championship; Athletics: the IAAF World Championships; Ice Hockey: the IIHF World Championship for men: matches with Swedish participation, and semi-finals and finals	Consultations are ongoing. A proposal has been tabled by the Media Regulator to the Ministry of culture

²¹⁸ See http://mediatanacs.hu/dokumentum/3140/1314771562kiemelt_esemenyek_meghallgatas_elokeszito_dok_final.pdf.

²¹⁹ See www.rvr.sk/cms/data/modules/download/1192638978_material.pdf.

²²⁰ See www.radioochtv.se/documents/uppdrag/evenemangslista%202016/evenemangslista%20160229.pdf.



Table 3. List of the provisions on short news reporting in the 28 EU member states (June 2016)

	Maximum duration	Time limits regarding transmission	Compensation
Austria ²²¹	Shall be determined by reference to the time needed to convey the news content of the event and, unless otherwise agreed, shall be no more than 90 seconds	No more than 7 days after the event	Unless otherwise provided for, the television broadcaster subject to the obligation may only claim compensation for the additional costs incurred directly through the provision of access
Belgium (FL) ²²²	Limited to the time that is needed to broadcast the necessary information about the event; For sports competitions: 6 minutes per sport	No limit as long as there is a “connection with the event or rebroadcast in overview programmes” May be archived	Shall not exceed the additional costs directly incurred by providing access
Belgium (FR) ²²³	90 seconds		Shall not exceed the additional costs directly incurred by providing access
Bulgaria ²²⁴	90 seconds	Second use of the report shall be inadmissible, except by way of exception for marking theme events and overview May be archived	Shall not exceed the additional costs directly incurred by providing access
Croatia ²²⁵ 226	90 seconds		Shall not exceed the additional costs directly incurred by providing access

²²¹ See Article 5 of the Austrian Federal Act on Exclusive Television Broadcasting Rights, www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2013_I_84

²²² See Chapter VI of the Flemish Act on radio and television broadcasting, www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf

²²³ See Article 3 of the French decree on audiovisual media services,

www.csa.be/system/documents_files/1440/original/D%C3%A9cret%20SMA%20coordonn%C3%A9%20au%2012%20mars%202015.pdf?1431957507

²²⁴ See Article 19 of the Bulgarian Radio and Television Act, www.mtitc.government.bg/upload/docs/Radio_and_Television_Act_en.pdf

²²⁵ See Article 45 of the Croatian Electronic Media Act, www.e-mediji.hr/files/repozitorij/ELECTRONIC_MEDIA_ACT_12_December_2009.pdf



	Maximum duration	Time limits regarding transmission	Compensation
Cyprus	180 seconds	May not be repeated more than 3 times during the 24-hour period from the end of the event	Shall not exceed the additional costs directly incurred by providing access
Czech Republic ²²⁷	90 seconds		Shall not exceed the additional costs directly incurred by providing access or delivery of the recording
Denmark ²²⁸	90 seconds with exceptions in “special situations”	Only after the transmission of the event May be used for as long as they are newsworthy	No remuneration for expenditure related thereto
Estonia ²²⁹	90 seconds	Conditions to be fixed in the agreement between the television service provider holding exclusive rights and the television service provider using the short extract	Only for additional expenses directly connected with the ensuring of access to the event and signal
Finland ²³⁰	90 seconds		
France ²³¹	90 seconds per broadcasting hour 180 seconds per competition day (for regular competitions, the limit is per competition day) and 30 seconds per game If the event lasts less than 6 minutes, the duration shall not	Only after the first transmission by the rightsholder	

²²⁶ See Article 28b of the Cypriot Radio and Television Stations Law no. 7/98, <http://www.obs.coe.int/documents/205602/8490558/RTSA+2010+%28INFSO-2011-00133-00-00-EN-TRA-00%29.DOC>.

²²⁷ See Article 34 of the Czech Radio and Television Broadcasting Act no. 231/2001, www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/Act-on-RTV-broadcasting-reflecting-AVMSD.pdf (the English translation erroneously refers to 90 minutes instead of 90 seconds as in the original version, www.rrtv.cz/cz/static/cim-se-ridime/stavajici-pravni-predpisy/pdf/231-2001.pdf).

²²⁸ See Danish Executive Order on Short News Extracts From Events of Great Interest to the Public no. 106/2010, <http://www.obs.coe.int/documents/205602/8490558/Ex.+Order+on+Short+News+Extracts+-+EN.doc>.

²²⁹ See Article 50 of the Estonian Media Services Act of 16 December 2010, www.riigiteataja.ee/en/compare_original/506112013019.

²³⁰ See Article 48 of the Finnish Government proposal to the Parliament amending the Law on Broadcasting and the Copyright Act no. 87/2009, www.edilex.fi/he/20090087.

²³¹ See Resolution no. 2014-43 of the French CSA on the conditions for broadcasting brief excerpts of sports competitions and events of high interest to the public other than sports events www.csa.fr/Espace-juridique/Deliberations-et-recommandations-du-CSA/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-n-2014-43-du-1er-octobre-2014-relative-aux-conditions-de-diffusion-de-brefs-extraits-de-competitions-sportives-et-d-evenements-autres-que-sportifs-d-un-grand-interet-pour-le-public.



	Maximum duration	Time limits regarding transmission	Compensation
	exceed 25% of the total time or be less than 15 seconds		
Germany ²³²	90 seconds		Only an admission fee and “for any necessary expenses incurred as a result of the right being exercised”
Greece ²³³	90 seconds		Shall not exceed the additional costs directly incurred by providing access
Hungary ²³⁴	May not exceed 10% of the total length of the programme concerned, but 50 seconds at most; Contractual agreements may permit longer duration		Shall not exceed the additional costs directly incurred by providing access
Ireland ²³⁵	The modalities and conditions are defined by a self-regulatory code		Shall not exceed the additional costs directly incurred by providing access
Italy ²³⁶	90 seconds		Shall not exceed the additional costs directly incurred by providing access
Latvia ²³⁷	90 seconds	Only for 30 days following the events	Shall not exceed the additional costs of transferring (transmitting) or copying the materials.
Lithuania ²³⁸	90 seconds		Only for additional costs

²³² See Article 5 of the German Interstate Treaty on Broadcasting and Telemedia as of 1 January 2016,

http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/18_RAendStV-eng_save.pdf.

²³³ See Article 16 of the Greek Presidential Decree no. 109/2010, <http://www.obs.coe.int/documents/205602/8490558/PD+109-2010.doc>.

²³⁴ See Article 19 of the Act CLXXXV of 2010 on Media Services and Mass

Communication, http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf

²³⁵ See Article 17 of the European communities (audiovisual media services)

Regulations 2010, www.irishstatutebook.ie/eli/2010/si/258/made/en/pdf

²³⁶ See Resolution no. 667/10/CONS (<http://www.agcom.it/documents/10179/539483/Allegato+17-12-2010+2/a2112eaa-b20a-4389-a2d2-a602a103570f?version=1.0&targetExtension=pdf>) as amended by Resolution no. 392/12/CONS (<http://www.agcom.it/documents/10179/539475/Delibera+392-12-CONS/5f3cc048-3a43-4f81-8e26-91b77a26d45b?version=1.0>) of the Italian Agcom on the transmission of short news reports of events of great public interest.

²³⁷ See Article 49 of the Latvian Electronic Mass Media Law of 28 July 2010, www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Electronic_Mass_Media_Law.doc.

²³⁸ See Article 38 of the Lithuanian Law on the provision of information to the public of 2 July 1996, as amended in 2012,



	Maximum duration	Time limits regarding transmission	Compensation
			Shall not exceed the additional costs directly incurred by providing access
Luxembourg ²³⁹	90 seconds		Shall not exceed the additional costs directly incurred by providing access
Malta ²⁴⁰	90 seconds	Shall not be screened later than 24 hours after the event	Shall not exceed the additional costs directly incurred by providing access
Netherlands ²⁴¹	90 seconds If the competition-determining sporting moments of the event together last longer than 90 seconds and the presentation is limited to those sporting moments, short extracts can as an exception last a maximum of 180 seconds	May be repeated an unlimited amount of times within 24 hours	
Poland ²⁴²	90 seconds	Within 24 hours	Shall not exceed the additional costs directly incurred by providing access
Portugal ²⁴³	90 seconds	Within 36 hours Except where subsequent inclusion in reports of current events is justified by the purpose of the information being covered	Shall not exceed the additional costs directly incurred by providing access
Romania ²⁴⁴	90 seconds	Within 24 hours since the initial broadcasting	Shall not exceed the additional costs directly incurred by providing access
Slovakia ²⁴⁵	90 seconds	Within 24 hours after the first broadcast of the extract	Shall not exceed the additional costs directly incurred

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458157&p_tr2=2.

²³⁹ See Article 28ter of the Luxembourg Law on Electronic Media of 27 July 2001, as amended in 2013, http://alia.lu/_dbfiles/lacentrale_files/300/337/Presse-et-Medias-electroniques.pdf.

²⁴⁰ See Maltese Subsidiary legislation 350.28, Broadcasting (short news reporting) of 1 July 2007, www.ba-malta.org/file.aspx?f=87.

²⁴¹ See Article 5.4 of the Dutch Media law as amended on 10 December 2009, <https://zoek.officielebekendmakingen.nl/stb-2009-552.html>.

²⁴² See Article 20c of the Polish Broadcasting Act as amended in 2011, www.krrit.gov.pl/Data/Files/public/Portals/0/angielska/Documents/Regulations/broadcasting_act_28022013.pdf

²⁴³ See Article 33 of the Portuguese law no. 8/2011, <http://www.obs.coe.int/documents/205602/8490558/Law+no+8+2011.docx>.

²⁴⁴ See Article 85 of the Romanian Audiovisual law, www.cna.ro/The-Audio-visual-Law,1655.html.



	Maximum duration	Time limits regarding transmission	Compensation
			by providing access
Slovenia ²⁴⁶	90 seconds		Shall not exceed the additional costs directly incurred by providing access
Spain ²⁴⁷	180 seconds		Only for the necessary costs of providing the news report
Sweden ²⁴⁸	The excerpt may not be longer than is necessary for the purposes of providing information.	May not be reproduced at a time after the event that is longer than is justified by the public's interest in the current event	
UK ²⁴⁹	Fair dealing	Fair dealing	Fair dealing

Source: European Audiovisual Observatory from public sources

²⁴⁵ See Section 30 of the Slovak Law Act no. 308/2000 on Broadcasting and Retransmission, <http://www.obs.coe.int/documents/205602/8490558/act+308-2000.pdf>.

²⁴⁶ See Article 33 of the Slovenian Audiovisual Media Services Act of 27 October 2011, <http://www.obs.coe.int/documents/205602/8490558/Audiovisual+Media+Services+Act+EN.doc>.

²⁴⁷ See Article 19 of the Spanish General Law No 7/2010 on Audiovisual Media, <http://www.obs.coe.int/documents/205602/8490558/LGCA+EN+version.doc>.

²⁴⁸ See Article 48a of the Swedish Act on Copyright in literary and artistic works as of 5 March 2013, <http://www.wipo.int/edocs/lexdocs/laws/en/se/se124en.pdf>.

²⁴⁹ See Section 30 of the British Copyright Designs and Patents Act 1988, <http://www.legislation.gov.uk/ukpga/1988/48/section/30>.

