

European Union law and electronic sports: the current legal framework and the future perspectives

Diritto dell'Unione europea e sport elettronici: l'attuale quadro normativo e le prospettive di evoluzione

di Flavia Rolando*

ABSTRACT

According to EU law, internal market and competition rules can be applied to e-sports, alongside a framework regulating the video games sector and protecting gamers' rights. Considering the EU competence in both traditional and electronic sports, this paper aims to outline the prospects for a better future of e-sports as both a professional and recreational activity.

Gli sport elettronici sono disciplinati, nel contesto dell'UE, dalle disposizioni in materia di mercato interno e di concorrenza nonché da disposizioni più settoriali mirate a garantire la protezione dei giocatori quali utenti e quindi consumatori. Considerata la competenza dell'UE nel campo degli sport tradizionali ed elettronici, l'autore intende delineare le prospettive future, evidenziando l'impegno delle istituzioni europee nella promozione del migliore sviluppo degli e-sport.

TABLE OF CONTENTS:

1. Introduction. – 2. EU competence in regulating e-sports. – 3. The EU legal framework applying to e-sports. – 4. The EU action to promote the better development of the e-sports and future perspectives. – 5. Final remarks.

* Associate Professor of European Union Law at the Department of Law, University of Naples "Federico II".

1. Introduction

The rapid growth of e-sports has led to the need for a legal analysis of this phenomenon and, more precisely, to the discussion about legal and regulatory measures that the EU can take. To do so, it is necessary first to examine the already existing legal framework that can be applied to this specific sector, considering e-sports both in itself and as a subset of the broader video game sector.

In recent years, EU institutions have adopted various regulatory acts and soft law initiatives and have sponsored several studies concerning e-sports. Nevertheless, the underlying question of what exactly e-sports are and what characterizes them remains pivotal. It is thus necessary to look at it, as it directly affects EU's legal competence in this field.

This paper starts with a brief analysis of the definition of sport in the context of the EU, in order to assess the convergences and divergences between e-sports and the conventional notion of sport. The initial definition will allow to look more closely at EU regulatory measures applicable to e-sports *per se* and video games. Finally, considering the scope of action of the EU within its conferred competences, the paper outlines the perspectives for a better future of e-sports as both a professional and a recreational activity.

2. EU competence in regulating e-sports

It is essential to define e-sports in relation to the broader definition of sport to outline the current legal framework applicable to the former and analyse the European Union's competence in this field.

The definition seems to be an issue by itself, as it has not been established what e-sports are in both the EU's primary and secondary legislation or according to the jurisprudence of the Court of Justice (CJ). This makes e-sports the center of the academic debate.¹

¹ In this article we will refer to e-sports as a general category, as every strictly categorization is not at the heart of the reflections here proposed. About the notion of e-sports see E. ADAMO, *Gli sport elettronici e gli sport tradizionali*, in *Rassegna di diritto ed economia dello sport*, 2022, p. 246; S. BASTIANON, *Dal bridge agli eSports: semplici giochi o vere attività sportive? Prime riflessioni e spunti per un dibattito*, in *Rivista di diritto sportivo.it*, 2020, p. 177; V. DEL GAUDIO-P. RUFFINO, *Gli eSports nel panorama contemporaneo*, in *Journal of Sport and Social Sciences*, 2021, p. 1; J. HAMARI-M. SJABLOM, *What is esport and why do people watch it?*, in *Interne Research*, 2017, p. 2; S.E. JENNY-R.D. MANNING-M.C. KEIPER-

A starting point in defining e-sports could be comparing the latter and the notion of conventional sport. Still, there is no precise definition of sport in the scope of EU's legislation, nor in the more generally accepted meaning of the term.² An interesting reference to analyse is the CJ's case law, which provides an interpretation of art. 132 (m) of the Council Directive 2006/112/EC on the standard value-added tax system, that establishes an exemption for certain services closely linked to sports.³ In the *English Bridge Union* case, the Court was asked to state whether the duplicate bridge game – a card game played competitively at national and international levels – could be considered a sport and, in such cases, could be exempted from tax payments. Even though the CJ noted that it was not asked to define “sport” in general but only to interpret its use in the context of the VAT,⁴ it is interesting to highlight the Court's discussion on whether an activity that involves intellectual effort and skill, but minimal physical effort, could fall within the scope of “sport”. The Advocate General (AG), in particular, referenced definitions of sport given by the SportAccord International Federations' Union, the International University Sports Federation, and the International Olympic Committee. Meanwhile, the judges referred to the definition of the term as being considered in everyday

T.W. OLRICH, *Virtual(ly) athletes: Where esports fit within the definition of 'sport'*, in *Quest. Giur.*, 2017, p. 1; T.M. SCHOLZ-N. NOTHELFER, *Esport, Research for CULT Committee, European Parliament*, Policy Department for Structural and Cohesion Policies, 2022, Brussels.

² About the notion of sport and sport law in the EU legal order see, among others, J. ANDERSON, *Sports Law*, Cheltenham, 2024; J. ANDERSON-B. GARCÍA GARCÍA-R. PARRISH (eds.), *Research Handbook on EU Sports Law and Policy*, Cheltenham, 2018.; S. BASTIANON-M. COLUCCI, *The European Union and Sport Handbook*, Nocera Inferiore, 2024; F. FERRAIOLI, *Sport in European Policies*, Napoli, 2022 E. GREPPI-M. VELLANO (eds.), *Diritto internazionale dello sport*, Torino, 2010; R. MASTROIANNI-F. FERRARO, *Ordinamento sportivo e Diritto dell'Unione europea*, in P. DEL VECCHIO-L. GIACOMARDO-M. SFERAZZA-R. STINCARDINI (eds.), *La giustizia nello sport*, Napoli, 2022, p. 76.

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. The exemption established in the VAT directive is related to the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education. This article has been interpreted by the CJ in the sense that Member States can establish that only a limited number of services closely linked to sport or physical education can be exempted and by a very strictly interpretation of the concept of a ‘non-profit-making organisation’, which constitutes an autonomous concept of EU law. See Court of justice, 13 June 2017, C-633/15, *London Borough of Ealing*; 26 October 2017, C-90/16, *The English Bridge Union*; 10 December 2020, C-488/18, *Golfclub Schloss Igling*.

⁴ See also Court of Justice, 21 February 2013, C-18/12, *Město Žamberk*, point 17.

language.⁵ This disagreement led to different conclusions regarding classifying the above-mentioned card game as a sport.

According to the AG, games of chance, where there is no meaningful relation between the effort invested and the outcome, are not to be included in the definition.⁶ Thus, the AG formulates some criteria that an activity needs in order to be classified as a sport based on elements that various sports usually have in common: “(1) [...] require a certain effort to overcome a challenge or an obstacle (and are thus not purely recreational), whether that challenge is competition against an adversary or the surpassing of individual physical or mental limits, (2) the overcoming of these challenges or obstacles (i) trains a certain physical or mental skill and (ii) thereby yields benefits for the physical or mental wellbeing of the persons engaging in the sport, and (3) such activities are usually practised not solely in a purely commercial context. Finally, (4), (local) public perception or international recognition serve as an indication pointing to the existence of a ‘sport’”.⁷ In light of the points mentioned above, it is not compulsory to have a particular physical element; even playing cards can be considered a sport.⁸

As clarified above, the Court limited its interpretation of the notion of sport as for the meaning of the VAT directive. According to the Judges, the concept of sport is limited to activities characterised by a not negligible physical element. It does not cover those activities that may, in one way or another, be associated with that concept.⁹ Therefore, a card game’s competitive nature cannot, *per se*, be sufficient to establish its classification as a “sport”, unless it involves some physical element.

⁵ About the notion of sport and sport law in the EU legal order see, among others, J. ANDERSON, *Sports Law*, Cheltenham, 2024; J. ANDERSON-B. GARCÍA GARCÍA-R. PARRISH (eds.), *Research Handbook on EU Sports Law and Policy*, Cheltenham, 2018.; S. BASTIANON-M. COLUCCI, *The European Union and Sport Handbook*, Nocera Inferiore, 2024; F. FERRAIOLI, *Sport in European Policies*, Napoli, 2022 E. GREPPI-M. VELLANO (eds.), *Diritto internazionale dello sport*, Torino, 2010; R. MASTROIANNI-F. FERRARO, *Ordinamento sportivo e Diritto dell’Unione europea*, in P. DEL VECCHIO-L. GIACOMARDO-M. SFERRAZZA-R. STINCARDINI (eds.), *La giustizia nello sport*, Napoli, 2022, p. 76.

⁶ Opinion of AG Szpunar, 15 June 2017, C-90/16, *The English Bridge Union*, para. 44.

⁷ *Id.*, para. 42.

⁸ *Id.*, see para. 45, 50-52. As some examples, the AG explicitly cites shooting, archery or chess.

⁹ Court of Justice, *The English Bridge Union*, *op. cit.*, point. 22. See also T.L. TAYLOR, *Rising the stakes. E-sports and the professionalization of computer gaming*, Cambridge, Massachusetts, 2012, p. 39.

The same limits can be found in the European Sports Charter of the Council of Europe's definition of "sport". This international non-binding act is mainly focused on the physical aspect of sport, including all forms of physical activity that, through casual or organised participation, aim to maintain or improve physical fitness and mental well-being, form social relationships, or obtain results in competition at all levels. No significantly different approach is envisioned in the ongoing revision process.¹⁰

As mentioned above, there is no precise definition of sport within the EU's legislative scope. Even the European Commission's White paper on sport¹¹ does not provide a definition, but instead refers to this concept as an area of human activity that holds significance for EU citizens and can potentially increase cohesion. Nonetheless, likely due to its release date, the white paper is mainly focused on the physical and active characteristics of sport.

The EU institutions gave their contribution in clarifying this point. The European Parliament, in its Resolution on esports and video games¹² considers e-sports and sport as two different sectors, "not least because the video games used for competitive gaming or esports are played in a digital environment and belong to private entities that enjoy full legal control and all exclusive and unrestricted rights over the video games themselves". Nevertheless, according to the European Parliament, these two sectors can complement one another, resulting in shared values and skill sets.¹³

The numerous similarities between e-sports and traditional sports, as well as the need for overall consistency justify the applicability of Article 165 TFEU. Upon closer review, the qualification of e-sports as a sport does not make a real difference as for the extent of the EU's competence in the matter. According to art. 6 (e) TFEU, in the sport sector, the European Union shall have only the competence to carry out actions to support, coordinate, or supplement the actions of the Member States. According to the CJ, art. 165 TFEU gives specific expression to that provision by specifying both the objectives

¹⁰ See Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter (Adopted by the Committee of Ministers on 13 October 2021 at the 1414th meeting of the Ministers' Deputies), www.coe.int.

¹¹ White Paper on Sport, COM/2007/0391 final.

¹² European Parliament resolution of 10 November 2022 on esports and video games, (2022/2027(INI)).

¹³ In the resolution of 10 November 2022 on esports and video games, *op. cit.*, the European Parliament considers as similar positive values and skills between sports and e-sports fair play, non-discrimination, teamwork, leadership, solidarity, integrity, antiracism, social inclusion and gender equality.

assigned to Union action in the areas concerned and the means which may be used to contribute to attaining those objectives.¹⁴ Art. 2, par. 5, TFEU, makes clear that the EU cannot supersede its competence in these areas and the legally binding acts adopted shall not entail harmonisation of Member States' laws or regulations.

Art. 165 TFEU addresses EU's competence in this sector more specifically.¹⁵ The rationale of this article lies in the desire to increase integration between Member States that is based not only on economic values, but on fostering a high level of education and cultural training.¹⁶ For this purpose, the second part of first paragraph states that 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" and, according to the last point of paragraph 2, the EU shall promote fairness and openness in sporting competitions and protect the physical and moral integrity, especially younger sportsmen and sportswomen. Naturally, it would be ideal to achieve these goals in e-sports as well.¹⁷

Following the insertion of this competence in the instituting Treaty, made by the Lisbon Treaty, starting from 2011 the European Union has adopted work plans focused on sport.¹⁸ The new competence has also led to the development of EU Institutions involvement in this sector.

The Council Conclusions on Sport Innovation adopted in 2021 highlighted the potential of digitalization within the field of EU sport policy, including the use of digital tools such as sports wearables, augmented reality, and digital twins, as well as their combination with gamification principles to provide new opportunities for EU citizens and athletes to be physically active.¹⁹ Digi-

¹⁴ See Court of Justice, 21 December 2023, C-680/21, *Royal Antwerp Football Club*, p. 64.

¹⁵ The sport was introduced as an EU competence by the Lisbon Treaty. However, sport was mentioned in Declaration No. 29 annexed to Tr. Amsterdam, which emphasised the social function of sport and the important role it plays in forging identity and bringing individuals together, as well as the need to listen to the associations working in the field and to take into account the specific characteristics of amateur sport.

¹⁶ See D. SAVY, *Art. 165*, in A. TIZZANO (ed.), *Trattati dell'Unione europea*, Milano, 2013, spec. p. 1495.

¹⁷ About the conformity of the e-sports to the Olympic values see G. BEVILACQUA, *La conformità degli sport elettronici ai principi fondamentali dell'Olimpismo moderno: alla ricerca di un adeguato modello di governance internazionale*, in this *Review*, 2024, p. 1662.

¹⁸ See the first Work Plan for Sport (2011-2014), OJ C 162, 1 June 2011.

¹⁹ Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on Sport Innovation, (2021/C 212/02), point 23.

tal transition has also been framed as a tool that can reduce the risk of injuries in sport and can increase the engagement of citizens, athletes, coaches, sport staff, and fans, and leading to a fast development of new products and services in sport.²⁰ The European Parliament has also contributed through its resolutions and studies towards preparing the sports sector for the digital transition. Moreover, the European Commission explicitly highlighted the synergies between its research and the European Parliament cited resolution, recognising the potential of the video game sector to contribute to growth and innovation.²¹

In 2024, the EU adopted its fifth Work Plan for Sport, spanning from 1° July 2024 until 31 December 2027. This document sets out priorities and strategic objectives, built around three main priorities: integrity and values in sport; socio-economic and sustainable dimensions of sport; participation in sport and health-enhancing physical activity. In this work plan, for the first time, e-sports have been included within this framework dedicated to the socio-economic and sustainable dimensions of sport, in the key topic dedicated to the Innovation and digitalisation.²² It is not established a specific output, at now the goals are limited to exchange of best practices, knowledge-building and awareness-raising. However, it marks a step forward in the definition at EU level of what e-sports is and of the common elements between e-sports and sports. Moreover, e-sports have been considered as eligible for financial support in the Erasmus +²³ program.

Therefore, even if the recognition of e-sports as sports would entail the application of art. 165 TFEU, this kind of competence does not mark a real power on the European Union in defining the functioning of e-sports and e-sports competitions. In this regard the CJ has stated that the EU does not have the competence to regulate sport, and this has not changed with the introduction of supporting competence in sport by art. 165 TFEU.²⁴ The limits of the EU competence in regulating sports – and e-sports if we consider this latter as

²⁰ *Id.*, point 22.

²¹ European Commission, Directorate-General for Communications Networks, Content and Technology, ECORYS and KEA, *Understanding the value of a European video games society – Final report*, Bruxelles, 2023.

²² See Annex I, p. 22 and 23.

²³ Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013.

About the inclusion of sport in Erasmus+ program, see also Council Recommendation of 13 May 2024 ‘Europe on the Move’ – learning mobility opportunities for everyone.

²⁴ Opinion of AG Ćapeta, 14 September 2023, C-115/22, *NADA e a.*, para 88.

sports – have been stressed in the recent *European Superleague Company (Superleague)* and *Royal Antwerp* case law.²⁵ According to the Judges, the European Union cannot pursue a “policy” in sport but may only undertake actions in this area that support, coordinate, or supplement those of the Member States.²⁶ This is also highlighted by the insertion of this within the part of the Treaty dedicated to “Union Policies and Internal Actions”, rather than among the provisions having general application – as those promoting a high level of employment, the environmental protection and the consumer protection as well as those fighting against any discrimination. As a consequence, art. 165 TFEU is not a general cross-cutting provision.²⁷ The different elements and objectives listed in the article shall only be considered when EU institutions adopt incentive measures or recommendations in the area of sport.²⁸ This appears to mark a *revirement* from earlier case law, according to which the specific characteristics of sport and its social and educational function shall inform the broader application of all the EU rules.²⁹

²⁵ Court of Justice, 21 December 2013, C-333/21, *European Superleague Company*; 21 December 2013, *Royal Antwerp*, *op. cit.*; see also 21 December 2023, C-124/21 P, *International Skating Union v Commission*. For an analysis see, between the others, S. BASTIANON, *Le sentenze Superlega, ISU e SA Royal Antwerp FC: una prima lettura*, in *BlogDUE*, www.aisdue.eu; G. BELLENGHI-M. CORREIA DE CARVALHO, *Final Whistle in Luxembourg? Royal Antwerp as yet Another Reminder of EU law’s Demand for Better Sports Governance*, *id.*; F. FERRARO, *Evoluzione o involuzione del diritto della concorrenza nella sentenza Superleague?*, *id.*; R. PARRISH-A. CATTANEO, *The Court of Justice moves and then fixes the goalposts on how EU law applies to sport*, 2024, www.eulawlive.com; A. SCETTINO-A. CONI, *La governance dello sport e le regole antitrust alla “var” dei giudici UE: I casi di European Superleague company e International Skating Union*, in *Il Diritto dell’Unione europea*, 2024, p. 383; S. WEATHERILL, *The impact of the rulings of 21 December 2023 on the structure of EU sports law*, in *The International Sports Law Journal*, 2023, p. 409.

²⁶ See *Royal Antwerp*, *op. cit.*, point 67 and *Superleague*, *op. cit.*, point 99.

²⁷ See *Royal Antwerp*, *op. cit.*, point 68 and *Superleague*, *op. cit.*, point 100. The Advocate general Rantos, in its opinion delivered on 15 December 2022, C-333/21, *European Superleague Company*, para 30, affirmed that Article 165 TFEU gives expression, moreover, to the “constitutional” recognition of the “European Sports Model”, which is characterised by a series of elements applicable to a number of sporting disciplines on the European continent. On this point, S. Weatherill affirmed that in its judgement the CJ moved art. 165 TFEU to the sideline and is downplayed. See S. WEATHERILL, *The impact of the rulings of 21 December 2023 on the structure of EU sports law*, *op. cit.*, p. 410. In these terms also F. FERRARO, *Evoluzione o involuzione del diritto della concorrenza nella sentenza Superleague?*, *op. cit.*

²⁸ See *Superleague*, *op. cit.*, point 101.

²⁹ See Court of Justice, 16 March 2010, C-325/08, *Olympique Lyonnais*, point 40 and 13 June 2019, C-22/18, *TopFit e Biffi*. In this sense see S. WEATHERILL, *Saving Football from Itself: Why and How to Re-make EU Sports Law*, in *Cambridge Yearbook of European Legal*

Despite the possible extent to which the values of sport can be interpreted, a practical limitation remains. Art. 165 TFEU, together with art. 6 (e) TEU, is the only article in the EU Treaties that explicitly refers to sport. According to the principle of conferral, art. 165 TFEU is the only legal basis that can be used in order to adopt acts specifically related to sport, respecting all the limits that this kind of competence imposes. This does not limit the application of other EU legal rules in the sector of sport, as the paper will show hereinafter. Nevertheless, considering e-sports only through the lens of sport and not also as a video gaming activity, limits EU Institutions' room of action in the adoption of EU legal acts. Specifically, those aimed at user protection.

3. The EU legal framework applying to e-sports

Whether we consider e-sports as sports or seen as a different sector, the rules of primary law, and especially those related to the internal market, are still applicable. Hence, an analysis of EU's legal framework in the broader field of sport is a good starting point for determining EU's law regarding e-sports.

For this, only specific aspects of the principles expressed by the CJ concerning the application of EU law to sport will be analysed. At the core of the discussion, the Court has stated that EU law applies to sport only when it constitutes an economic activity.³⁰ According to EU law, the notion of undertaking is rather broad and does not coincide with the various national classifications, since it includes any entity "engaged in an economic activity, regardless of its legal status and the way in which it is financed". Consequently, all sporting activities of an economic nature fall under the notion of undertaking. Likewise, sports federations are considered as associations of undertakings. Sports bodies, clubs, agents, or other entities engaged in the sports sector fall within this definition, as long as they carry out activities consisting in the provision of goods or services.

Studies, 2022, p. 4, spec. p. 9. The same Autor in *The impact of the rulings of 21 December 2023 on the structure of EU sports law*, *op. cit.*, p. 410, states that "The novel treatment of Article 165 does not transform the structure of EU sport law: it simply directs us to the Court's own case law, rather than Article 165, as the main source of the notion that sport is (sometimes) special".

³⁰ See, recently, *Superleague*, *op. cit.*, point 83 and, previously, Court of Justice, 12 December 1974, 36/74, *Walrave and Koch*, point 4, and *Olympique Lyonnais*, *op. cit.*, point 27.

Conversely, the CJ has gradually developed the notion of the so-called *sport exemption*, i.e. the applicability of purely sporting rules, which means rules relating to questions of solely sporting interest and, as such, having nothing to do with economic activity. As stated in the *Superleague* case, these rules must be accounted for solely on non-economic grounds and must address topics strictly inherent to sport *per se*.³¹

Where no such exemption applies, the conduct of the actors involved in sport comes falls under the scope of art. 45, 49 and 56 TFEU, i.e. the rules about free movement of workers, free movement of services and right of establishment. This means that e-sports athletes should be protected in case of violations by the federations.³²

Competition rules also apply. According to art. 101 TFEU, all agreements between entities considered as undertakings – as well as decisions taken by associations of undertakings, such as sports federations – that may affect trade between Member States and have as the object or effect the prevention, restriction, or distortion of competition within the internal market shall be prohibited. Moreover, according to art. 102 TFEU, one or more undertakings in a dominant position within the internal market or in a substantial part of it have special behavioural obligations and cannot abuse of their dominant positions. This is also applicable in the case of impeding competitors at an earlier stage through the establishment of market entry barriers or any other means unrelated to competition based on merit.³³

At the same time, federations are recognised as having a key role in defining the rules of sport, as they are in the best – and, sometimes, the only sometime solely – position to define the rules of the sport competition they represent. However, it is required that these rules comply with the principle of ob-

³¹ The Court of Justice so stated in point 84 of *Superleague* case, *op. cit.*, and expressly refers, as an example, to the exclusion of foreign players from the composition of teams participating in competitions between teams representing their country. See, about the sport exemption, Court of Justice, *Walrave and Koch*, *op. cit.*, point 8; 15 December 1995, C-415/93, *Bosman*, points 76 and 127; 11 April 2000, C-51/96 and C-191/97, *Deliège*, points 43, 44, 63, 64 and 69.

³² See *Bosman*, *op. cit.*, points 75, 82 – 84 and 87 and *Olympique Lyonnais*, *op. cit.*, points 28 and 30. See also Court of Justice, 4 October 2024, C- 650/22, *FIFA*, and the comments by S. BASTIANON-M. COLUCCI, *The Evolution of FIFA Transfer Football Regulations: Challenges, Opportunities, and Innovative Approaches in the Wake of the Diarra Judgment*, in *Rivista di diritto ed economia dello sport*, 2024, p. 1 and A. SCHETTINO-A. CONI, *The Football Transfer System Under EU Judicial Scrutiny: FIFA Called Offside Once Again in the Diarra Case*, in *Eurojus.it*, 2025.

³³ See *Superleague*, *op. cit.*, point 131.

jectivity, transparency, non-discrimination, proportionality, and are based on the sport's merits. Any other rule that could impede access to sport competition in violation of these principles or not based on sport merit shall not fall in the sport exemption and shall be evaluated in the light of art. 101 and 102 TFEU as in this way a federation (association of undertakings) or an undertaking in dominant position could impede the access of sports athletes or of clubs (both of which are considered as undertakings according to EU law) in the sport competitions (that are part of the internal market).³⁴

From a general standpoint, equating e-sports with sport would not limit the application of the Treaty rules. In both cases, economic activities are present. This implies that EU competition and State aid rules are applied in the terms summarized above. Legal provisions related to the functioning of the internal market apply to the e-sports athletes, while competition law applies to the federations and to the industries connected to the e-sports – notwithstanding some specific features, which will be outlined below.

As for the application of rules about free movement of workers, free movement of services and right of establishment, a strict definition of the e-sports athletes does not appear to be mandatory. The reason is that core protection rights apply to both employed and self-employed workers (including e-sports professionals).³⁵ The main focus here is on individuals who have a specific contract with publishers, gatekeepers or organizers of a competition. This means that also e-sports professional and semi-professional competitors are protected by the violations made by the federation in this regard.

In such a case, the application of the sport exemption is, in general, a limitation of the rights of athletes in favour of federations or clubs – or, eventually, publishers – with the aim of better developing of the sport because of its relevance. Therefore, the principles expressed by the CJ may be applied considering the features of the e-sports and of the e-competitions. For instance, in the *Bosman* case a specific contract clause impedes the freedom of transfer in

³⁴ About the relevance of Art. 106 TFEU in the sport, see F. FERRARO, *Evoluzione o involuzione del diritto della concorrenza nella sentenza Superleague*, *op. cit.*

³⁵ For an investigation about the physical activity in e-sports see S. BASTIANON, *Dal bridge agli eSports: semplici giochi o vere attività sportive? Prime riflessioni e spunti per un dibattito*, *op. cit.*, p. 194, where the Author concludes that excepting for MBVG (Motion Based Video Games) the video games are not characterized by a physical activity as in the general concept of sport; P. RIATTI-A. THIEL, *The role of the body in electronic sport: a scoping review*, in *German Journal of Exercise and Sport Research*, 2023, p. 369. About the qualification of the e-sports athletes see, above others, C. DE MARTINO, *La specialità del lavoratore sportivo*, Bari, 2024, spec. p. 146 ff; P. RUFFO, *Il lavoro sportivo tra teoria della subordinazione e ambigue novità legislative*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2023, p. 127.

another sport society. The CJ stated that a sport exemption could be recognised in a sport activity as football due to its social importance. Precisely, one that aims at maintaining a balance between clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players.³⁶ A similar exemption could also be applied within the scope of e-sports only if (i) to the e-sports will be recognised the same value relevance as in the sport and (ii) the same necessities of admitting the restriction of the e-athletes' rights are necessities in order to find a balance between the different clubs (or teams or a similar structure) and the encouraging of recruitment and training of competitors.

Considering that e-sports values have been pointed out by EU institutions, as well as the relevance of video games for the developing of various skills and knowledge, a tailored e-sports exemption could be adapted. This will not necessarily require legal or definitive classification of e-sports in relation to the broader world of video games, but only a more adapted and tailored exemption.

In parallel, e-sports sector constitutes economic activity, so EU rules regarding competition inevitably apply. Both articles 101 and 102 TFEU are applicable to undertakings involved in development, publishing or distribution of video games,³⁷ as well as merger rules³⁸ and state aid regula-

³⁶ See *Bosman*, *op. cit.*, point 106.

³⁷ See as an example the decision of the European Commission of 20 January 2021, C(2021) 75 final, relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area Cases AT.40413 – Focus Home, AT.40414 – Koch Media, AT.40420 – ZeniMax, AT.40422 – Bandai Namco and AT.40424 – Capcom. The case concerned Valve (the owner of the online PC gaming platform Steam) and five PC video game publishers (Bandai Namco, Capcom, Focus Home, Koch Media, and ZeniMax). According to the European Commission the undertakings breached art. 101 TFEU for restricting cross-border sales of PC video games as Valve and the video game publishers make an agreement which prevented gamers from activating certain PC video games purchased in eight Member States where prices are generally lower than in other Member States (so-called “geo-blocking”). See also Commission Decision 2003/675/EC of 30 October 2002 in Cases COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega – Nintendo in which the Commission concluded that separate product markets existed for PC video games and games for consoles (per console and manufacturer) as a result of limited demand-side substitution.

³⁸ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). As examples of relevant cases see: European Commission decision of 6 April 2020, Case M.9439 – Warner Bros / Universal / Home Entertainment / JVCommission, C(2020) 2245 final; European Commission decision of 15 May 2023 declaring a concentration to be compatible with the internal market and the EEA

tions.³⁹ Moreover, the organizers' behaviour may fall within the scope of abuse of dominant position if the conditions of participations are not established to ensure equality and non-discrimination. In this case, application of the sport exemption must be evaluated in the light of the conditions mentioned above, with more attention drawn to non-economic grounds.

The issue got even more complex in the context of e-sports competition, since the rules about the management of competitions and about the selection of athletes who can compete are established *a priori* by the developer or by the publisher of the e-game. In this case, the e-sporting rules are closely linked to copyright legal framework⁴⁰ and it seems that a sport exemption will find less room for application.

It is however necessary to take into due consideration those e-games that have already been recognised as e-sports by the International Olympic Committee – Baseball, Cycling, Rowing, Sailing and Motor Sport. These are all cases where partnerships have been established between IOC, five International Sports Federations and game publishers.⁴¹ These partnerships guarantee a better assessment of selection and competition rules and facilitate the possibility of sport exemption. This leads us to highlight the key role of federations in defining the rules of individual e-sports. Federations may also serve as supervisors, ensuring objectivity, transparency, non-discrimination, and proportionality, as well as evaluation of (e)sport merits.⁴²

agreement, Case M.10646 – Microsoft / Activision Blizzard, C(2023) 3199 final; European Commission decision of 27 April 2022, Case M.10218 – Gauselmann / Greentube / JV Kommissionsbeschluss nach Artikel 6 Absatz 1 Buchstabe b der Verordnung (EG) Nr. 139/2004 des Rates und Artikel 57 des Abkommens über den Europäischen Wirtschaftsraum, C(2022) 2892 final.

³⁹ Several support programmes for video games have been set up according to Article 107(3)(d) TFEU, which allows to “promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest”. Member States generally rely on this latter basis to justify State aid schemes for video games. As video games are not covered by the General Block Exemption Regulation, Member States' support schemes for the video games sector require a formal notification procedure.

⁴⁰ See. M. NINO, *The protection of intellectual property rights in electronic sports: problems and prospects*, in this Review.

⁴¹ www.olympics.com.

⁴² See G. BEVILACQUA, *La conformità degli sport elettronici ai principi fondamentali dell'Olimpismo moderno: alla ricerca di un adeguato modello di governance internazionale*, *op. cit.*, spec. p. 1672 where the Author underlines that the coexistence in the e-sports of multiples bodies such as the Global Esports Federation, the International Esports Federation, the International Shooting Federation, the European Esports Federation and the Interactive Software

The regulatory legal framework applied to e-sports is composed also of specific legal acts, such as the General Data Protection Regulation (GDPR),⁴³ the Digital Services Act (DSA),⁴⁴ and the Artificial Intelligence Act.⁴⁵ These regulations impose specific duties and obligations to the publishers, the developers, and those managing personal data of e-sports competitors. This kind of protection goes beyond the qualification of the playing of the video game as the playing of an e-sport. It applies to protect everyone who plays a video game as a user (or, better, as a consumer). Depending on the online or offline nature of the game, players will disclose data (sets) revealing identifiable information about themselves. This data sets ranges from personal data like e-mail addresses, sex/gender, age, card and other payment details, to performances and habits in gaming. All this information may also be used for commercial use, such as personalising advertising during the playing or better developing of the same or other video games.

This means that developers and publishers must comply with the principles related to the processing of personal data as established in Art. 5 of the GDPR, as well as to all the rules about the processing of data and about the consent given especially by children.⁴⁶ There are several specific issues on this matter: data protection in case of doping,⁴⁷ the rights of players in relation to automated banning system,⁴⁸ or the relations between data protections and in-game communication as chatrooms.

Federation of Europe reveals a very fragmented organization. On this regard, the IOC calls for the establishment of a digital section within the federations of the various sports in order to define in a coherent – even specific – way the rules of the related e-sport.

⁴³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁴⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁴⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). For an overview of the regulatory framework for video games in Europe, see *Understanding the value of a European Video Games Society Final Report, op. cit.*

⁴⁶ See also art. 6 to 9 as well as art. 37 of the GDPR.

⁴⁷ See S. GUADAGNO, *Antidoping procedures and the protection of fundamental rights of athletes*, in this *Review*.

⁴⁸ See art. 22 of the GDPR.

As for the scope of this analysis, it is quite interesting underlining that in such a case, the data protection of e-sports competitors is guaranteed in a more general and effective way because e-competitors are qualified as consumers.⁴⁹

Besides, the GDPR applies for e-sports events to the publisher, specifically if it is also an event manager, or both to the publisher and to the event manager insofar as they process personal data of the players and data related to their performances.

When the game is on a platform or an event is broadcasted via the internet through a platform, then the game *in se* or the event can come within the scope of the DSA⁵⁰ and the Audiovisual Media Services Directive.⁵¹ In this regard, specific duties are imposed on the platforms that meet the threshold established.⁵²

The legal framework applicable to e-sports is wider if we consider e-sports as a part of the video game industry. Even the protection of e-sports competitors broadens to the rights of workers and service providers to those of the users. The notion of video games is broader than the notion of e-games as not all video games can be considered e-sports, but all e-sports can be considered as video games.⁵³ At the same time, most e-sports competitors can be considered

⁴⁹ Consider the application of the GDPR to athletes: according to AG Ćapeta, 14 September 2023, *op. cit.*, the processing of personal data for the purpose of implementing a Member State's anti-doping legislation is not an activity that, as EU law currently stands, brings that processing activity within the scope of such law.

⁵⁰ See the table n. 3 at p. 80 of the report *Understanding the value of a European video games society*, *op. cit.*, for the different categories of digital services to whom the DSA may apply. Therefore, the impact of the DSA on video game providers will depend on a case-by-case assessment of the nature and functionalities provided by the service providers. Video games may also fall under the scope of the DSA due to the online community features they include. This applies to video game networks such as Xbox Live and PlayStation Network, but also to games featuring important in-game interactions. Downloadable games would normally qualify as online digital content when their use does not depend on continuous involvement of the game supplier. In contrast, online games provided in a cloud environment would qualify as digital services.

⁵¹ 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).

⁵² See art. 24 and whereas 76 of the DSA.

⁵³ For an overview of the different categories of the different games, see S. BASTIANON, *op. cit.*, p. 190. About the notion of video games see Court of Justice, 23 January 2014, C-355/12, *Nintendo and o.*, point 23.

sport athletes, as well as product users.⁵⁴ This means that the rights and entitlements provided by the Consumer Rights Directive⁵⁵ and by the Unfair Commercial Practice Directive⁵⁶ apply. Moreover, from January 2022, the Directive 2019/770 can also be applied to video games, including free-to-play games, providing additional consumer protection.⁵⁷ Further additional layers of protections could be guaranteed through voluntary, self-regulatory systems, like the Pan-European Game Information age rating system (PEGI).⁵⁸ This system was introduced following consultations with the industry and civil society to replace national age rating systems with a single European system.

Therefore, considering e-sports as part of video games and then protecting players/users expands EU competence, as it comes within the scope of the functioning of the internal market and allows EU institutions to adopt legal acts on the legal basis of Art. 114 TFEU to harmonise the rules governing the use of video games, taking as a base a high level of consumer protection.⁵⁹

⁵⁴ Exception could be made for those practice e-sports as professionals, as in this case they would lose their status as consumers.

⁵⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

⁵⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive).

⁵⁷ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

⁵⁸ See <https://pegi.info/>. See also the PEGI Online Safety Code (POSC), a set of provisions, integrated into the PEGI Code of Conduct, to promote a minimum level of protection for young people in the online gaming environment.

⁵⁹ Also S. Weatherill has stressed the use of art. 114 TFEU as a legal basis for sport. According to the Author “the most promising source of a legal basis is found in the combination of Articles 53(1), 62, and 114 TFEU, all of which authorise the EU to harmonise laws in order to promote the functioning of its internal market. The argument would run that within the Member States there are disparities between patterns of regulation of sport, that this impedes cross-border economic activity, and that accordingly the EU may intervene by setting common standards that provide a foundation for economic activity within the EU internal market according to the harmonised rules addressing matters such as governance in sport that are selected by the EU. One can readily identify objections”. See S. WEATHERILL, *Saving Football from Itself: Why and How to Re-make EU Sports Law*, *op. cit.*, p. 17.

Art. 114 TFEU has been considered as an adequate legal basis also for the European citizens’ initiative entitled “Stop Destroying Videogames”, submitted to the European Commission on 4 May 2024.

4. The EU action to promote the better development of the e-sports and future perspectives

As previously mentioned, EU Institutions are actively contributing to the development at EU level of the video games sector and, more specifically, of e-sports at the EU level. Several acts highlight the encouraging actions aimed at helping the growth of the EU game industry. This interest is motivated by economic reasons, as this sector holds great potential for job creation and mainly made up of small and medium-sized enterprises and start-ups.

However, non-economic reasons also have relevance. The sector is considered as an integral part of the broader cultural and creative industries, and successfully inspires and draws on other media such as film. Moreover, video games – and especially e-sports – can be important tools to support mental health and well-being and are increasingly being used as valuable ways to promote them, as well as for developing skills that are essential in a digital society.⁶⁰

The European Parliament has adopted several resolutions regarding e-sports and video games. As mentioned above, the Resolution of 10 November 2022 is a key milestone in the call for action to develop e-sports better. More recently, the Resolution of 18 January 2023 mentioned some overlapping issues from the more general point of view of consumer protection in online video games.⁶¹

In the aforementioned resolution, the European Parliament called on the Commission to develop a charter to promote European values in e-sports competitions, in partnership with publishers, team organisations, clubs and tournament organisers. The European Parliament also asked to study the fea-

⁶⁰ See lett. v of the European Parliament resolution of 18 January 2023 on consumer protection in online video games: a European single market approach, (2022/2014(INI)).

See also the European Parliament Resolution of 10 November 2022, *op. cit.*, point 36 where it is highlighted that video games can be a social activity allowing users to socialise and spend time together and it is underlined that the stigma surrounding e-sports and video games is still widespread throughout society and should be addressed.

⁶¹ European Parliament resolution of 18 January 2023 on consumer protection in online video games: a European single market approach, *op. cit.* See also European Parliament resolution of 12 March 2009 on the protection of consumers, in particular minors, in respect of the use of video games, (2008/2173(INI)).

See the Council Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on Sport Innovation, (2021/C 212/02) and Council conclusions on Enhancing the cultural and creative dimension of the European video games sector, in OJ of 30 November 2023, C/2023/1345.

sibility of creating coherent and comprehensive guidelines regarding the status of professional e-sports players.⁶²

At the same time, the European Parliament “warns that intensive video gaming can, in rare cases, lead to addiction and toxic behaviour, as recognised by the World Health Organization” and that e-sports players may suffer from high levels of stress due to the lack of a clearly defined boundary between personal life and work. Moreover, particular attention should be drawn to the fact that e-sports players are more frequently minors⁶³ and that careers in professional e-sports players are often short, which creates issues when it comes to transitioning to another career, especially since, unlike conventional sports athlete, it is more difficult for e-players to continue with a career in coaching.

Moreover, the above-mentioned resolution raised several ethical questions, such as doping and addiction (the use of banned substances and supplements and their public health consequences), foul play, match-fixing and violence, and other organizational issues (lack of ethics, bribery, poor governance and sustainability, abuse and harassment of all type). In recognizing the inherent value of the e-sports ecosystem, the European Parliament’s 2022 Resolution highlighted the need to protect the uprightness of e-sports from issues related to the manipulation of sports results, illegal gambling and performance enhancement (including doping).⁶⁴ Health-related concerns were also brought up, particularly the use of energy drinks, that are generally identified as beverages and mixing powders that provide high levels of sugar, caffeine, and other stimulants such as tyrosine, arginine and creatine, that supposedly improve energy, stamina, cognitive performance, and concentration. In the traditional sport, physical limitations naturally limit the duration of activity. In e-sports, on the other hand, the use of this type of beverages can prolong activity, potentially leading to addiction or detachment.

⁶² European Parliament resolution of 18 January 2023 on consumer protection in online video games: a European single market approach, *op. cit.*, points 30 and 31.

⁶³ As underlined by K. Hollist “many professional players are inexperienced and uneducated in the complexities of contract negotiation – an unsurprising fact when one considers their ages. In League of Legends, players can begin playing professionally at 17. For some other eSports, professional play can begin as early as age 14. Some players retire from the professional circuit at 19 or 20. Most of the industry’s players are either teenagers or in their early to mid-twenties”. See K.E. HOLLIST, *Time to be Grown-ups about video gaming: the rising esports industry and the need for regulation*, in *Arizona Law Review*, 2015, p. 831.

⁶⁴ See European Parliament resolution of 10 November 2022 on esports and video games, *op. cit.*, para 12. See also J.-L. CHAPPELET, *Towards a Global Framework to Fight the Dark Side of Sport*, in J. KRIEGER-S. SASSONG (eds.), *Dark Sides of Sport*, pp. 5-16, Champaign, 2019.

Any action mainly focused on e-sports should rely on Art. 165 TFEU. Considering the limits of the kind of competence attributed in this sector, any action shall not go beyond the supporting, coordination or incentive measures, excluding any harmonisation of the laws and regulations of the Member States. In this stage, this kind of action could mark a relevant step toward the promotion of e-sports values and the diffusion of the best practices regarding the definition of e-sports competition rules. For this purpose, the numerous studies commissioned by EU institutions,⁶⁵ the ongoing dialogue with the stakeholders,⁶⁶ and the research project funded by the EU⁶⁷ confer a solid basis for elaborating and developing new and effective strategies and work plans.

As mentioned above, shifting the focus from the narrower field of e-sport to broader field of video games enables EU institutions to employ the legal basis established by Art. 114 TFEU and, therefore, to introduce harmonising measures.

Several specific issues in video games require a legislative act in order to guarantee the protection of users and e-sports competitors. Even if there already exists a legal framework that assures consumer protection, the evolution and the emergence of different applications and tools associated with the use of video games requires a more adaptable form of protection. For instance, certain online video games offer in-game purchases to obtain items through loot boxes, whose contents are unknown to the user until the payment. The European Parliament required the Commission to analyse the way in which loot boxes are sold, and to take the necessary steps to ensure adequate consumer protection, with specific focus on minors and young children.⁶⁸ More-

⁶⁵ See, among others, J. MITTAG, R. NAUL, *EU sports policy: assessment and possible ways forward*, European Parliament, Research for CULT Committee – Policy Department for Structural and Cohesion Policies, 2021, Brussels; T.M. SCHOLZ-N. NOTHELFER, *Esports*, *op. cit.*; S. GAUŠAS-A. ŠVEDKAUSKIENĖ-B. LEIPUTĖ-E. LANGHAM-T. KING-B. LANGE-C. O'CARROLL-A. LE GALL-S. PETKOVIC, *EU education, youth and sport policy – overview and future perspectives*, Research for CULT Committee, European Parliament, Policy Department for Structural and Cohesion Policies, 2024, Brussels.

⁶⁶ There is a huge variety of stakeholders and their respective intentions further impede coordinated EU actions. See T.M. SCHOLZ-N. NOTHELFER, *Esports*, *op. cit.*, p. 59.

⁶⁷ As mentioned above, the e-sports topic is integrated within the ERASMUS+ funding programme and at least three projects have been awarded funding since 2018 to explore various dimensions of e-sports Erasmus+ Projects 2018-1-FR01-KA203-048203; 2018-1-FI01-KA202-047301; 2020-1-SE01-KA202-077964.

⁶⁸ See lett. K and point 12 of European Parliament resolution of 18 January 2023 on consumer protection in online video games: a European single market approach, *op. cit.* The Euro-

over, the European Parliament pointed out that “some game designs used for in-game purchases are manipulative and exploitative by design, as they use aggressive commercial practices that significantly impair the consumer’s freedom of choice and motivate them to make financial decisions that they would not have taken otherwise”. It hence called for an effective protection of minors’ and young children’s rights from targeted advertising and manipulative practices. It has also emphasized that video games publisher must provide a safe digital environment, for instance by appointing a moderator in charge of controlling the chatrooms in order to decrease the risks associated with the use of hate speech and cyberbullying on online video game platforms.

This kind of evolution of the EU legal framework may concern some aspects connected to the video games industries that are not necessarily inherent only to the video games considered as e-sports. However, the need for a consistent and coordinated approach to protect consumers in European Union between all kinds of gaming and between all Member States to avoid fragmentation of the single market can only be achieved by the harmonisation. There are also areas of protection that are necessary for all forms of video gaming, including e-sports. One example is the reduction of the risk of game addiction, also known as “gaming disorder”.⁶⁹

Art. 114 TFEU could allow the introduction of new protection tools, such as for instance a time limit to be *de facto* imposed on gaming, e.g. by establishing that beyond a certain time gaming activity does not lead to an increase in points or experience for one’s profile. This would lead to the protection of a wider spectrum of players, that ranges from hobbyists to professionals, from the negative effects of the impair priority given to gaming – also in case of playing e-sports – over the other daily activities preventing the negative impact on social relations, work, school drop-out rates, physical and mental health. Time limits could also be differentiated between e-athletes and general users. Traditional sports don’t require a similar time limit, as the problem of addiction is not comparable.

The legal basis examined here allows actions which have as their object the functioning of the internal market, and in the best interests of the consumer

pean Parliament notes that such systems are not without consequences for consumers and that games with a pay-to-win model, in particular aggressive pay-to-win models, or models that lock popular content behind paywalls have attracted negative reactions from gaming communities, leading to negative reviews and even changes to games prior or soon after their release.

⁶⁹ The WHO has classified gaming disorder as a form of addiction characterised by impaired control over gaming, increased priority given to gaming over other activities to the extent that gaming takes precedence over other interests and daily activities, and continued or escalated gaming despite negative consequences.

protection. It could also be used in order to accomplish other ethical issues such as foul play, match-fixing and violence. Nevertheless, some issues about the protection of e-athletes as professional competitors could still remain open, such as working conditions, anti-doping measures, etc. Even rules governing e-competitions could require specific code of conduct, considering that game developers and publishers are also league owners, and therefore have greater control over the players.

At this stage, the numerous studies and literature builds the groundwork for making an impact assessment, which could serve as a stepping stone for various regulatory proposals. Still, a significant contribution to defining the specific principles applicable to e-sports may also come from the CJ jurisprudence. As in the field of traditional sport, even in the absence of a substantial EU legal framework, the Court of Justice may have a leading role in the application of general rules and principles through the case-by-case evaluation of a sport exemption in the e-sports world.

5. Final remarks

Even though the classification of e-sports is widely debated in academic literature, this paper showed that qualifying e-sports as “sports” would enable the EU only a limited room of action. This is because, under to art. 6 (e) TFEU, in the sector of sport, the European Union shall have only the competence to carry out actions to support, coordinate or supplement the actions of the Member States. Moreover, according to Art. 2, par. 5, TFEU, the EU cannot supersede Member States’ competences in these areas and any legally binding acts adopted shall not entail harmonisation of laws or national regulations. Therefore, this kind of competence does not give real power to the European Union in defining the functioning of e-sports and organising e-sports competitions.

However, whether e-sports are considered as “sports” or not, the rules of primary law, and especially rules about internal market, still apply. This entails that EU law related to the functioning of the internal market apply to e-sports athletes and the competition law applies to federations and to industries connected to e-sports, albeit with peculiar features. It may therefore be interesting to explore the application of the sport exemption clause in this area, given its use in traditional sports. A similar exemption arises within the scope of e-sports only if (i) to the e-sports will be recognised the same value relevance as in the sport and (ii) the same necessities of balancing the restriction of the e-athletes’ rights are necessities in order to find a balance between the

different clubs (or teams or a similar structure) and the encouraging of recruitment and training of competitors.

The regulatory framework applicable to e-sports is also shaped by a series of horizontal legislative acts, such as the General Data Protection Regulation (GDPR), the Digital Services Act (DSA), and the Artificial Intelligence Act (AI Act). These instruments impose specific obligations upon publishers, developers, and other entities involved in the processing of personal data of e-sports participants. Such protections operate independently of whether the activity is formally classified as e-sports and aim to safeguard all users – or, more accurately, consumers – engaged in video gaming. Notably, the classification of e-athletes as consumers under EU law ensures a broader and more robust level of protection.

EU Institutions are actively contributing to the better development of video games sector at the EU level, and more specifically, of e-sports. The shift of objective from e-sports to the broader field of video games allows EU institutions to act using the legal basis conferred by Art. 114 TFEU and, therefore, to introduce harmonising measures with new tools of protection.

In addition to legislative initiatives, the case-law of the Court of Justice of the European Union may also play a pivotal role in elaborating the fundamental principles applicable to e-sports.