

Management for Professionals

Stefan Walzel  
Verena Römisch *Editors*

# Managing Sports Teams

Economics, Strategy and Practice

 Springer

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# **Management for Professionals**

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Editors

# Managing Sports Teams

Economics, Strategy and Practice

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## Preface

In most team sports competitions, referees must acquire a license in the lower tiers of the game and extend it at certain intervals. The same applies to coaches, but not to the manager of team sports organisations. In light of scandals (e.g. due to corruption, doping, and match-fixing), insolvencies and/or financial problems in various team sports as well as increasingly intense competition for media attention and sponsors, it is surprising that no qualification requirements have been set by sports federations and league organisations to date and that corresponding education and further training courses are offered in part on a voluntary basis, but are not mandatory in team sports.

For more than five years, the German Sport University Cologne, in cooperation with the European Handball Federation (EHF), has been offering a certificate study programme for handball managers in clubs, leagues, and federations in Europe with great success. This offer gives current and former professional players, coaches, and those interested in handball without sports management specific training the opportunity to become familiar with the basic economic, management, communicative, and legal principles of team sports and in this way contributes to the professionalisation of handball.

A particular challenge of the programme's implementation arose from the fact that previous handbooks and textbooks predominantly took a football-specific approach. Even though many basic aspects of football can be transferred to other team sports in a correspondingly scaled form, experience showed that many participants found it difficult to apply. In addition, due to the participants' different starting points of knowledge, we looked for textbooks for self-study that would give the participants a basic and comprehensible insight into the various, fundamental topics of team sports management, unfortunately without the desired success.

Therefore, the aim of this work is on the one hand to present a compact and interdisciplinary handbook for the management of team sports organisations and on the other hand to ensure a direct reference to the field—and not only in regard to handball. Have we succeeded in this? We do not know exactly. As a reader, you may judge that. Therefore, we are happy to receive any kind of feedback (suggestions, criticism, ideas, and proposals for improvement). So do not hesitate to contact us via e-mail at [walzel@dshs-koeln.de](mailto:walzel@dshs-koeln.de) or [v.roemisch@dshs-koeln.de](mailto:v.roemisch@dshs-koeln.de).

Finally, we would like to thank all those who have contributed to the success of this book. First and foremost, the authors expertise in their respective fields, have had a strong influence on this book, and therefore makes it so meaningful. We would also like to thank Vincent Bock, Timo Worm and Niclas Burmeister for their support in the literature research, the creation of figures, and many other formal aspects, and Springer Gabler for their trust, their experienced support, and especially for their patience.

Cologne, Germany

Stefan Walzel  
Verena Römisch

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**Verena Römisch** has been teaching management and organisation and sports management at the German Sport University Cologne since 2005. She completed her doctoral degree on the subject of quality management in the qualification system of organised sports, and in doing so dealt intensively with the training and further training programme of the sports associations. She is the coordinator of the bachelor's programme in sports management and sports communication.

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# Fundamentals of Sports Economics and Sports Management

Stefan Walzel

## Abstract

This chapter offers an insight into the economy of sport and highlights the special economic and business features that are important for understanding, but even more indispensable for decision-makers in sports organisations. The focus here is on team sports organisations, and particularly important topics such as the demand for spectator sports, the intensity of competition in team sports leagues, the economic relevance of sporting events, and sports clubs and federations.

## Learning Outcomes of the Chapter

1. You will understand the economic relevance of sport.
2. You will know about the interfaces between sports economics and sports management, and other sciences.
3. You will know about the special economic features of sports goods, the demand for sports, the supply of sports and sports markets.
4. You will understand the importance of competitive balance for team sports competitions and the regulatory measures that affect them.
5. Service-dominant logic will help you to describe and explain value-added processes in team sports.
6. You will know the characteristics of sports clubs and federations as well as their special features.

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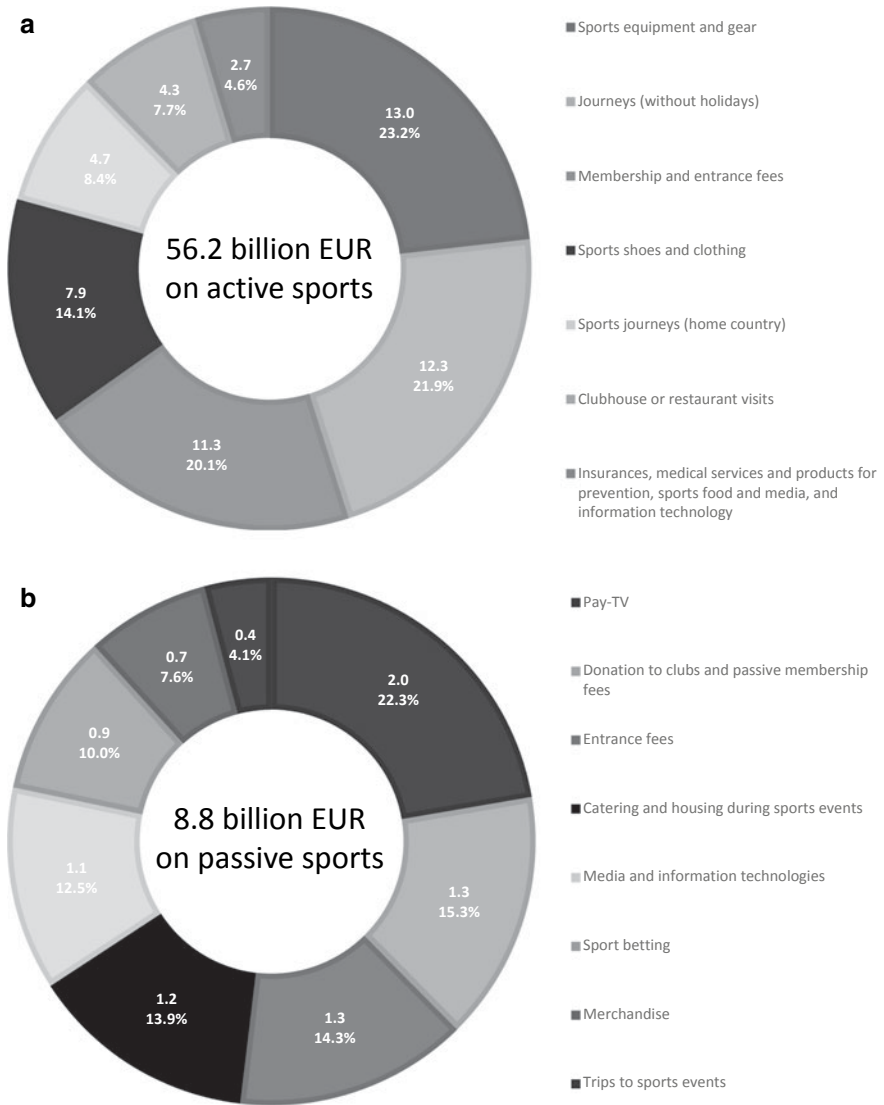
## 1 Basics of Sports Economics

Sport is omnipresent in Europe and many other parts of the world and is an important part of leisure and entertainment culture. It combines elements such as lifestyle, fun and performance, but also promotes health and common welfare. At the same time, this social area of life creates revenue, value and jobs, including tax revenue and is thus of economic importance in modern societies.

In 2015, German households spent a total of 56.2 billion euro on active sports practice and a further 8.8 billion euro on passive sports consumption (see ► Fig. 1), for, amongst other things entrance fees to sporting events, and food, beverage, and accommodation in connection with sports consumption (Federal Ministry for Economic Affairs and Energy 2018). In addition, 24.5 billion euro were spent in 2015 for the construction, modernisation and maintenance of sports facilities in Germany by the state and the private sector, and a further 4.5 billion euro on investments in sports sponsorship, advertising and sports media rights (Federal Ministry for Economic Affairs and Energy 2018). From an economic perspective, the gross value added of sport (as a cross-sectoral sector) amounted to 60.6 billion euro in 2015, accounting for 2.2% of total gross value added in Germany (Federal Ministry for Economic Affairs and Energy 2018). By comparison, Austria's gross value added for sports in 2013 was 17.1 billion euro (5.9%; SportsEconAustria 2015). Another indicator of the economic relevance of sports is employment: 7.8% of all Austrian employees work in the sports industry. Table 1 shows the gross value-added and employment percentage of sports for selected European countries.

These figures suggest that sport has significant economic importance. This importance may justify the promotion of sports economics as an independent academic discipline. Even the term “sports economics” suggests that it has interfaces with at least three disciplines: sports sciences, management and (general) economics. On closer inspection, there is also a fourth essential academic discipline, media studies. The actors in sports, business and the media are also those who, in interaction with one another or precisely because of a lack of interaction, shape the events and the development of sports economics. Bruhn (2018) even speaks of a “magic triangle”, involving these three actors and describes consumers (viewers, recipients and buyers) as their common target.

The economic aspects of sports must be understood as an academic field with interfaces to economics, management, sports and media (see ► Fig. 2; Pawlowski 2014). Sports economics can be defined as an academic discipline that deals with the macro- and micro-economic effects of sports by applying economic theories and methods. “Sport management is the study and practice involved in relation to all people, activities, organisations and businesses involved in producing, facilitating, promoting or organising any product that is sport, fitness and recreation related; and sport products can be goods, services, people, places or ideas” (Parkhouse and Pitts 2005, p. 3).

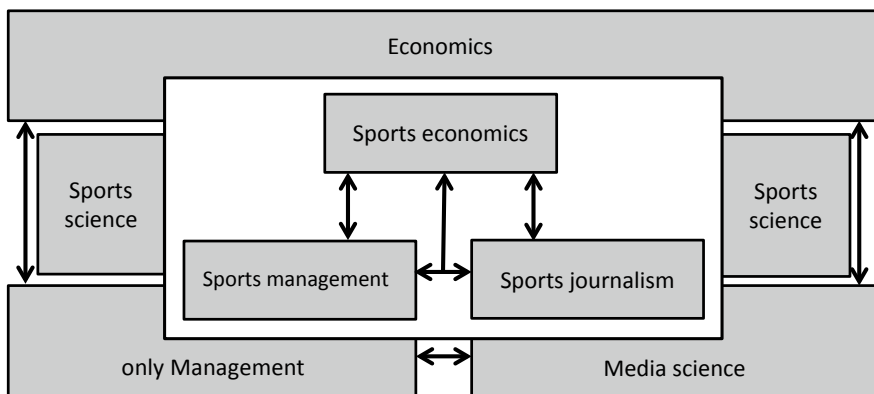


**Fig. 1** Spending on active and passive sports in Germany in 2015 (Federal Ministry for Economic Affairs and Energy 2018, pp. 15, 17)

Another fundamental issue arises from the definition of the term “sport”. The following constitutive variables are often associated with sports: (1) physical activity, of (2) playful character, aiming at a (3) competition, following certain (4) game and competition rules, and based on certain (5) values such as fairness. New forms of play, sports and exercise (fitness, fun, adventure, health, etc.) mean

**Table 1** Overview of the economic relevance of sports in selected European countries (Ahlerl et al. 2018, p. 19)

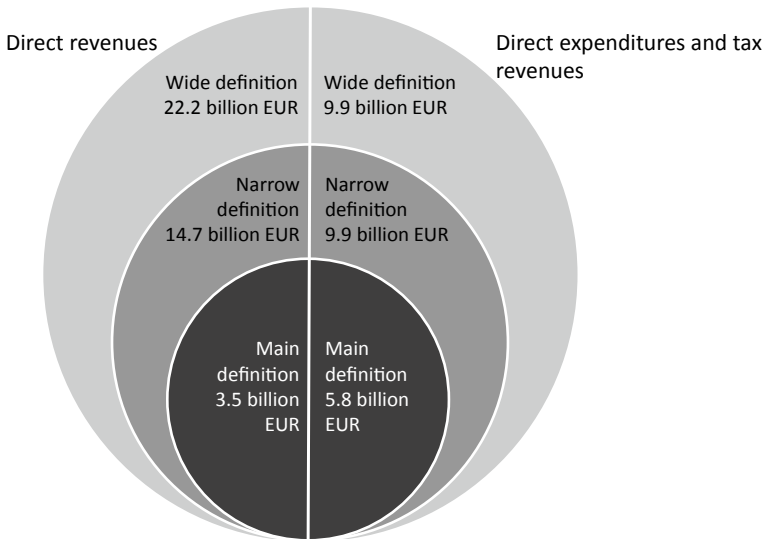
	Cyprus	Poland	Netherlands	United Kingdom	Portugal	Austria	Germany
Reporting year	2004	2006	2010	2012	2012	2013	2015
<i>Employment in thousands</i>							
Sports-related	7	225	150	1070	60	334	1242
% of total	2.2	1.5	1.7	3.5	1.4	7.8	209
<i>Gross value added in billion euros</i>							
Sports-related	0.3	5.3	5.4	39.6	1.7	17.1	60.6
% of total	2.4	2.0	1.0	2.1	1.1	5.9	2.2
<i>Private household consumption in billion euros</i>							
Sports-related	0.3	3.5	7.5	31,1	1.9	N/A	65.0
% of total	3.7	2.1	2.7	3.0	1.7	N/A	4.1



**Fig. 2** Economic aspects of sports in the intersection of economics, management, sports sciences and media studies (Pawlowski 2014, p. 12)

that a clear demarcation and assignment becomes increasingly difficult, and this is particularly clear from the example of e-sports. To what extent is e-sports sport? In sports policy terms, sport has been defined in the European Sports Charter as any form of physical activity aimed at demonstrating or improving physical performance, mental well-being or social relationships, or achieving results in a competition at any level (Council of Europe 1992, Article 2.1).

From a sports economics point of view, there is a different approach to defining sports, which distinguishes three levels and is known as the “Vilnius Definition”. This was developed by an EU Working Group (“Sport and Economics”) in 2007 under the leadership of the European Commission to adequately capture and better distinguish goods and services in the sports industry. The core definition covers



**Fig. 3** Estimated direct sports-related revenues and expenditure/tax revenue shortfalls in Germany (Pawlowski and Breuer 2012, p. 7)

economic activities that provide personal services (see ► Fig. 3). The narrower definition also includes industries which are necessary for the exercise of sports (goods and services upstream in the value chain, including the manufacture of sports equipment, sports goods and sports advertising) (SportsEconAustria 2006). In addition, there are benefits that require sports as an input, which are related to sports without being necessary for the exercise of sports (goods and services in downstream markets, including sports tourism, sports media, sports foods), and these are taken into account in the broader definition of sport (SportsEconAustria 2006).

## 2 Special Features of Sports

Sport is a social area of life that is interesting not only for purely economic reasons, but also because it offers opportunities for the production of important goods such as health, wellbeing and social capital. The state thus promotes sports in the form of sports facilities, school and university sports, sports science, tax relief for sports clubs and through many other measures. In 2010, this accounted for almost 10 billion euro of direct expenditure or tax revenue reductions for sports in Germany (Pawlowski and Breuer 2012). It is important to ask, however, why sports should be promoted by the state. To answer this question, the following sections first address the special economic features of sports (► Sect. 2.1). Sports clubs and leagues (►



Sect. 2.2), as well as spectator sports (► Sect. 2.3), will then be considered from an economic point of view before focusing on sports events themselves (► Sect. 2.4).

## 2.1 Special Features of Sports

Heinemann (1984,1998) justifies sports economics as its own academic discipline of science above all because there are a number of special features in sports that make the blind application of general economic and management theories and methods impossible, or, which if applied, would not lead to the desired result. These special features can be further subdivided into the special features of sports goods, the demand for and supply of sports, and sports markets and institutions.

### Special Features of Sports Goods

Most economic theories focus on *private goods*, which are characterised by the fact that others can be excluded from the use of those goods, as well as rivalry in consumption. The latter means first and foremost that the use of the goods by each additional person reduces their individual benefit per person. Ownership rights for private goods are specifically clarified, and their owner(s) can freely decide the way in which the goods are used. In sports, there are not only private goods, but also (1) public and collective goods, (2) merit goods and (3) club and common goods, which are of particular relevance to their value.

Major sporting events and elite sports can have positive effects in terms of both identification (e.g., the residents with their country) and representation (e.g., perception of Iceland abroad). Since no one can be excluded from the benefits of these positive effects and the individual consumption benefit is not reduced by an additional consumer, sports can also be described as a *public good*, based on the characteristics of public goods by Samuelson (1954). The empirical studies of such relationships are ambiguous. There are reasonable doubts about whether there would be a failure supply in terms of elite sports and major sport events if the state stopped the financial support therefore (Pawlowski and Thieme 2016).

While public goods benefit all citizens, *collective goods* are characterised by their benefits to only one part of the society (sub-collective). The fans of Red Bull Munich and residents of Munich would be happy about winning the German Ice Hockey Championship, but the supporters of the Eisbären Berlin and the Berlin population would gain no benefit from this victory. The problem of producing public goods and, to a limited extent, also collective goods, lies in the fact that, due to the non-exclusion principle of benefits, they are usually only offered by the state and thus characterised by a failure of supply.

The state often intervenes in the case of so-called *merit goods* (e.g., vaccination), even though the exclusion from consumption works and there is a rivalry in consumption (Musgrave 1969). Merit goods are offered and also in demand, but for various reasons (e.g., due to significant externalities or distorted preferences), they are not sufficiently demanded by the consumers from a socio-political point of view, such as sports with the positive health and social effects. To counteract this failure

in demand, the state promotes sports in different ways, for example, in the form of tax concessions for sports clubs and school sports.

Exclusion works for *club goods*, and there is also no rivalry in the consumption up to a certain overcrowding limit. Their similarities to public goods led Buchanan (1965) to also call them as an “impure public good”. General examples include roads or bridges, and an example from sports is sports facilities, because, in principle, a fee may be required for their use, regardless of the owner (company, state, association). The advantage of club goods is that the production costs can be shared, and there can be several users. Not everyone can afford a tennis court or swimming pool.

In addition to the various goods that play a special role in sports, sports programmes are characterised by a variety of services—especially individual-related services. The special features mentioned in this regard, however, are not really peculiar to sports and can also be found in services in other sectors. What distinguishes sports services from other services is the generally desirable uncertainty regarding the course and outcome of a sports competition (Neale 1964; Rottenberg 1956). Sports services differ from other services in this respect, as consumers usually avoid services with uncertain development and undefined outcome.

### **Special Features of the Demand for Sports**

Both active and passive sports are very commonly played in a social community (family, friends), and so demand for sports is often social, rather than for individual consumption. Consumption in the presence and influence of others and peer groups may have an impact on preferences and as positive or negative effects on benefits. Business decisions about supply development, expansion or change should take this into account, for example through the provision of family tickets, or the positive or negative interactions between the fan groups.

The demand for active and passive sports is largely determined by two factors, time and consumption capital. To a certain extent, time and money can be substituted for sports consumption. It is important to build consumption capital in the audience, and thus build a reputation for sports, especially for fringe sports. This can, amongst other things, be achieved through informative television formats (Horch et al. 2014).

### **Special Features of the Supply of Sports**

The sports supply is characterised in particular by the phenomenon of *coopetition*. This means that teams in a league are, on the one hand, opposing each other, and on the other hand they have to cooperate at the same time, for example, to agree on a common place and a time for the game (Downward et al. 2009), but competition goes far beyond team sports. Many clubs bundle their marketing rights together (usually in the league organisation) and thus try to achieve higher marketing revenues for all parties, than the individual club could achieve in total. In single leagues, these marketing proceeds, from the sale of media rights for example, are evenly distributed between all clubs. The winner's contribution to the value creation

is the same as that of the loser (Dietl 2011). Subjectively, one or the other would contradict this statement, but without at least a second team, no added value could be created.

### Special Features of Sports Markets and Institutions

The sports landscape is characterised by a variety of *monopolies and cartels*, with a few exceptions (e.g., in boxing). What should be prevented in other industries, from an economic point of view, is accepted in sports within certain limits (see also ► Chap. 3). In addition to the monopoly situation, there are *market entry and exit barriers* in many sports leagues. From an economic point of view, barriers to entering and exiting a market are avoided as much as possible, or kept it as low as possible, which is not really the case in team sports competitions. In addition to sporting criteria, technical, financial and organisational criteria must be also considered in team sports leagues. There are also a number of *institutional regulations* in team sports (sports regulations, draft system, UEFA financial fair play, etc.), and sports clubs and federations have their own jurisdiction (► Chap. 4). This clearly differentiates the sports market and its institutions from other industries (Horch et al. 2014).

## 2.2 An Economic View of Sports Clubs and Leagues

In the United States, most researchers assume that professional sports clubs—similar to companies—operate with the goal of maximising profits (Noll 1974; Quirk and Fort 1992; Rottenberg 1956). There are doubts about this profit orientation for sports clubs in Europe, and some researchers in the United States also question the profit-maximising behaviour of professional sports clubs and instead assume that sports clubs try to maximise their victories (El-Hodiri and Quirk 1971; Rascher 1997). Késenne (2009) argues that diverging business goals lead simultaneously to divergent results in terms of talent distribution within a league, league rates, optimal ticket pricing and average player salaries. This would theoretically have the following consequences: win-maximising clubs have more talents, which means that they have a higher athletic quality, leading to increased viewer demand, at almost any price. It could be concluded from these arguments that leagues with win-maximising clubs have a higher tendency for competition imbalance.

A central area of research in team sports involves the competitive balance of leagues. This is closely linked to the empirical verification of the uncertainty of outcome hypothesis, which assumes that the uncertainty of the outcome of a sporting competition is an essential parameter in the demand for live and television viewers (Rottenberg 1956; Sloane 1971). Pawlowski (2014, p. 29) speaks in this connection of “two sides of the same coin”. In terms of competitive intensity, Cairns et al. (1986) distinguish between the short-term, medium-term and long-term dimension of competitive balance. The *short-term dimension* refers to the uncertainty of outcome of a single match. Betting odds and positions in the league are often used. The *medium-term dimension* of competition intensity is dedicated to the

uncertainty of the championship and relegation battle in a league and to qualification for higher-level European competitions (e.g., Champions League). The *long-term dimension* consists of a team (performance of individual teams over time) and a seasonal component (comparison of the final tables of successive seasons). The competitive balance ratio (CBR) by Humphreys (2002) has proved to be a comprehensive and well-suited indicator for measuring long-term competitive intensity. This takes values between 0 and 1, where the higher the score, the more balanced is the league. Pawlowski et al. (2010) showed that the intensity of competition in the top-five football leagues in Europe (Germany, England, France, Italy and Spain) has decreased significantly after the turn of the millennium. They explain this phenomenon as due to the massive increase in the revenue of the top clubs in the Champions League. Previous studies mainly refer to football, but an analysis in other types of team sports would be useful and stimulating (Pawlowski 2014).

In addition to the possible negative effects on viewer demand (see also ► Sect. 2.3), low competition intensity also entails the risk of insolvency and of competitive leagues (Michie and Oughton 2004). The top European handball clubs thought about starting their own league in 2015 due to the low-intensity competition in some national handball leagues in Europe (Forum Club Handball 2016).

There are several starting points for shaping the balance of a league competition, and the two most important are presented below. A key factor is the *allocation of resources*. This applies to financial resources, primarily from TV, sponsorship and match-day revenues. While the sharing of those revenues is common practice in major leagues in the US, in European team sports competitions, such revenue sharing is often limited to the distribution of TV revenues; however, it always proves to be problematic according to which criteria the revenues should be allocated. The allocation of resources also affects human resources. So-called ‘rookie draft’ and ‘salary caps’ have been established in the US major leagues (Fort and Quirk 1995). The rookie draft gives teams the right to hire the most sought-after talents in reverse order to their position in the league table. In practice, however, the basic idea is watered down by the practice of losing strategically at the end of a season and by reselling so-called “picks” (first access right). The salary cap is the limit up to which clubs may spend player salaries. This upper limit is linked to the league or club revenues (Dobson and Goddard 2011). Again, problems arise in the implementation, for example, in long-term contracts or one-time payments in the contract obligation. Clubs in the MLB and NBA that exceed the salary cap must also pay a luxury tax. In practice, rich clubs are quite willing to pay these taxes, which in turn is detrimental to the basic idea of increasing the competitive balance. So far, however, only a positive effect on the competitive balance from the rookie draft in the NFL has been empirically demonstrated (Fort and Quirk 1995).

A second fundamental starting point for a more competitive balance within a league is the *design of the competition*. One approach is to find the optimal league size in terms of the number of teams. However, this poses a challenge in practice, as it may, amongst other things, depend on the size of the country, and so there are also economic effects. One solution could be a transnational league, such as the

South Eastern Handball Association League (SEHA) in handball, in which teams from nine European countries have participated so far. While the US Major Leagues are designed as closed-league systems, most European team sports competitions have an open system, with the promotion and relegation of teams and thus a permanent exchange of skill levels. Designing the competition also includes aspects such as round robins (as single, double, triple or quadruple), knock-out matches (such as usual in cup competitions), play-offs and combinations of these (e.g., in many World and European Championships, where after a group stage knockout matches follow).

Professional sports clubs with win-maximising behaviour generally have a greater demand for talent, higher ticket prices and a theoretically justified tendency to imbalance. One must distinguish between short-, medium- and long-term dimensions, concerning the (im)balance of team sports competitions. The intensity of competition can in principle be shaped by various regulatory measures, but their effectiveness is often not given.

### 2.3 The Demand for Spectator Sports

The demand of viewers—whether at the sports ground or in front of the screen—is affected positively or negatively by a number of factors. According to Borland and MacDonald (2003) and Breuer et al. (2012), the key determinants of viewer demand can be summarised in five categories, as follows (the signs in brackets indicate whether this has a positive or negative impact on viewer demand):

1. *Product-related factors*: athletic quality and success of the home team (+), age (-), quality (+) and size of the sports venue (+), match date at the weekend (+), and degree of suspense (+);
2. *Economic factors*: ticket price (-), income (+), number (-), price (+) of available substitutes, population size (+), and travel costs (-);
3. *Socio-demographic factors*: proportion of ethnic minorities in total population (-);
4. *Demand-driven factors*: Fidelity of fans (+);
5. *Exogenous factors*: bad weather (+).

Pawlowski and Anders (2012) examined how the degree of suspense affects viewer demand and initially identified a negative impact from short-term suspense on the number of stadium visitors. They explained this contradictory finding by arguing that there is another effect that overlies it: the attractiveness of the opposing team. This means that the number of stadium visitors increases with attractive teams, measured in terms of a team's brand attractiveness. Coates et al. (2014) also identified a superimposed effect, but argued that fans can take greater advantage of surprise successes, thereby explaining the higher demand for stadiums. This is in line with Szymanski's (2001) view; he differentiates audience demand in more detail. Neutral spectators are interested in the moment of tension, while fans, above

all, want to see their favourite team winning. This results in a trade-off relationship between various spectator interests, which must be considered by the management of the team sports organisations. The findings about the uncertainty of the outcome of the match on spectator demand are ambiguous and can be differentiated into uncertainty regarding the outcome (1) of a single match, (2) one season and (3) in the long run. Investigations examining the impact of initial uncertainty on the demand for viewers in a single match suggested positive and negative significant effects and no significant or inconsistent significant effects. The majority of studies found a positive significant effect for one season, and the remaining studies show no significant effect. Considering 3–5 years, a positive impact could be demonstrated for uncertainty of outcome on spectator demand (Borland and MacDonald 2003; Pawlowski et al. 2019).

Fans would spend more money on their tickets to maintain a degree of suspense, although according to Pawlowski and Budzinski (2013) there were significant differences between the leagues examined in Germany, Denmark and the Netherlands. There is a slight inelasticity in the price of tickets for sports events; however, this should not necessarily be interpreted as an indication of additional price increases. Spectators also generate additional income from their visit (such as food and beverages, merchandising), amongst other things, and that should be included in such pricing decisions (Késenne 2009).

## 2.4 Sports Events and Their Sports Economic Importance

Major sporting events have a particular relevance to research into sports economics. The Olympic Games, the football World Cup and the European Championships or the Super Bowl are major sporting events that not only generate large audience interest, but can also have positive overall economic effects. The exact quantification of these effects is highly complex and prone to error; however, it is not surprising that researchers get very different results from the same sporting event. Two basic approaches should be distinguished: while *economic impact analyses* only considers tangible costs and benefits, *cost–benefit analyses* additionally include intangible costs and benefits. Tangible costs include, for example, bidding costs, costs for the preparation and provision of the infrastructure, security costs and general organisational costs. Income and employment effects are examples of tangible benefits. Emission burdens, increased crime, damage from hooligan vandalism and so on are intangible costs; positive advertising and image effects, strengthening national identification, increased sports participation and so on are examples of intangible benefits.

In the past, cost–benefit analyses were often carried out in the run-up to a bid for major sporting events and usually yielded a positive overall effect, although these could not be confirmed by subsequent empirical studies. For example, Feddersen and Maennig (2012,2013) showed that labour market effects were short-lived and could not identify any long-term effects.

### **In Summary**

From an economic point of view, sport is an interesting field of research with some special features that do not exist in other industries. The competitive intensity in sports leagues is of particular interest to both academics and professionals. Team sports leagues aim to balance sporting competition, and various regulatory measures with varying degrees of success have been introduced. In addition to the suspense, there are a number of other factors with a positive or negative impact on the demand for spectator sports; and knowing them is particularly important for management decisions in team sports organisations.

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## **3 Added Value in Team Sports**

Sports management is different from general management in five major ways (Horch et al. 2014):

1. In addition to many companies with a commercial and partly profit-maximising orientation, there are a large number of non-profit organisations that aim to satisfy customer needs as a priority and thus use utility-maximising behaviour.
2. Manufacturing is the dominant focus in many management textbooks, but sport predominantly involves services.
3. The organisational landscape in sports is characterised above all by small- and medium-sized organisations, which differ from large companies and in the corresponding consequences for their management.
4. Many services are produced for club members and citizens and not for markets and customers.
5. The provision of active and passive sports services can be either entirely or partly offered and produced by volunteers.

The knowledge of value creation and the resulting consequences is of central importance for team sports organisations and is described below. Benner's (1992) model of professional sport is the starting point here, based on the fundamental production functions (procurement, production, sales) and cross-functions (financing, human resource, management); the production model (input → production combination processes → output) is expanded by a fourth level—output marketing. This happens above all against the background that in some cases the product is already being marketed through the sale of sponsorship, media and admission rights before the start of the actual production process. In the meantime, media and sponsorship rights are being sold years in advance, although at this point in time the organising destination and/or the participating teams have not yet been determined, and thus, the quality characteristics of the service to be marketed and corresponding framework conditions are still completely uncertain.

Before presenting a value creation approach for team sports organisations based on service-dominant logic theory, it is important to understand the characteristics of services.

### 3.1 Services in Sports

The process of service provision can be divided into three phases. In the first phase—production readiness—it is important for the service provider to combine all internal factors of production, so that a service can be provided. Taking the example of a handball match, this would mean that the home team ensures that before the start of the season, a powerful team with a well-trained coach, appropriate training facilities, and so on, are available. In the second phase, *one's own willingness to perform* is then combined *with external factors*. In the case of handball, this includes agreeing on a match schedule with the other teams, training referees, selling tickets, sponsorship and media rights, and so on, and continuing until the match day, so that all internal and external factors of production are combined with each other and the actual match—the core service—can take place. In the third and final phase, the actual *production of the service* takes place.

It is characteristic of services that production and consumption take place at the same time, which is also referred to as *Uno-Actu-Principle*. That is, the core service of the athletic competition is used simultaneously by viewers, sponsors, media and others for their own goals and purposes. In order to increase the benefit for the individual user groups, it is necessary to *integrate these external factors* into the service provision process. If, for example, the home club succeeds in mobilising its own supporters (and possibly also those of the visiting team) and motivating them to support the home team, this has a fundamentally positive effect on the service quality. The quality of a service is always *subjective* because of its *immateriality*, and despite being the same service—a handball match—there may be great *differences in the perceived quality* by individuals, for example due to different experiences and expectations. Also in comparison with other handball clubs, the “handball match” service shows a high degree of *heterogeneity*. Both of the latter characteristics are closely related to the sports-immanent uncertainty in the course and outcome of the match (see ► Sect. 2.1). A final essential feature is the *perishability of services*. That is, services that are not provided can neither be stored nor transported to another location with higher demand. In the example of the handball match, this means that the home club cannot sell an unsold seat at a home match again at another match. While an unsold pair of running shoes can be sold tomorrow, next week, or elsewhere with greater demand, this is not the case for services (Horch et al. 2014).

In addition to passive sports services, there is a wide range of active sports services that are predominantly characterised as individual-related services. These can only be provided directly to the person themselves, and not to a third party, as in the repair of a sports shoe (issue-related service). Characteristics of individual-related services, such as the individual training for a handball goalkeeper, are: (1) The producer (here in the example of the goalkeeping coach) is part of the service; (2) the consumer (goalkeeper) is a co-producer (also external



factor)<sup>1</sup>; (3) the service is customised and usually takes place individually or in a small group (Horch et al. 2014).

### 3.2 Value Creation Approach for Team Sports Organisations

One approach explaining value creation for team sports organisations is that of service-dominant logic (SDL) by Vargo and Lusch (2004). This differs systematically from the goods-dominant logic (GDL) in the following essential points (Horch et al. 2014; Woratschek et al. 2014):

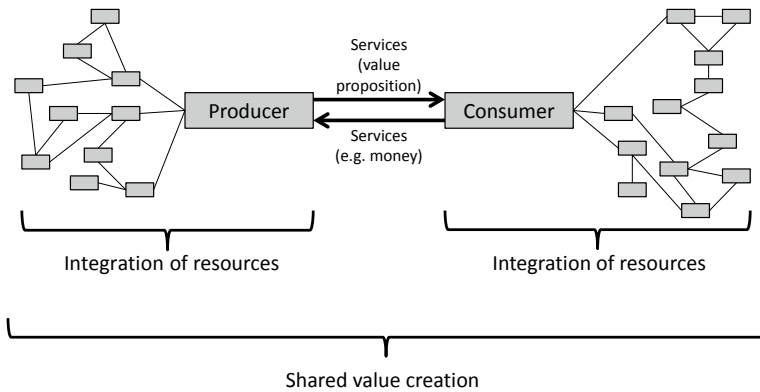
1. *Goal*—The central goal of SDL is not the exchange of values between producer and consumer but the creation of shared value (co-creation).
2. *Object*—While goods and services are the central object from a GDL perspective, SDL is about providing knowledge (services), which is the key source of competitive advantage. Services are to be understood as applications and competences for the benefit of the consumer, because things are not inherently valuable but first made valuable by their use. In this sense, goods serve as distribution forms of services (frozen knowledge). The benefit of fitness equipment arises from the interaction of the manufacturer's competences, possibly the instructor in a gym, and the consumer themselves.
3. *Producers*—The actual value does not come from an internal combination of resources by the producer, but from the integration of a resource network by both consumer and producer (see ► Fig. 4). The consumer takes the role of a co-producer, and the producer merely makes a value proposition.
4. *Values*—There is a change of perspective, in that the focus is no longer on the producer but on the consumer, and the actual value is no longer created by the purchase but by the individual use.
5. *Managers*—They can no longer control service creation alone and independently, but depend on others. The manager's main task, apart from the internal production processes, is to understand the service offer as a platform and to manage it in such a way that the best possible resources from the consumer and producer network come together to create the best possible value creation in common, and for all involved parties.

Based on the SDL approach to value creation, team sports organisations are faced with the following key tasks and challenges:

1. Managers in team sports organisations should be aware that *sporting competition is at the core* of a whole bundle of services (Woratschek et al. 2014). The primary task is to ensure sporting performance and ideally improve it further.

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<sup>1</sup>If the goalkeeper does not participate in the goalkeeping training by deliberately failing to perform exercises or intentionally incorrectly, this will significantly reduce the service quality and the outcome.



**Fig. 4** Basic understanding of service-dominant logic (Woratschek et al. 2014, p. 13)

2. Team sports organisations rely on a variety of external resources or providers for service provision, including, but not limited to advertising agencies, security companies, caterers, sports venue operators, sponsors and media companies. The *selection of the right partners* and a harmonious mix are important requirements. The added value is created by all parties together and will be missing if one or more partners do not provide the desired service.
3. The selected partners and suppliers have *specialist knowledge* in their areas, which has to be *integrated into the added value process*. Managers of team sports organisations should therefore regularly seek discussions with their partners to identify potential for increasing added value. Discussions with the media partners, for example, could consider how to make the sponsors even more visible and in a better way, for the TV audience.
4. It is important to consider *how consumer resource networks can be better used* for greater added value by, for example, offering free Wi-Fi at the sports venue, so that spectators can report on their event experience directly via social media. How can friends and acquaintances of the audience be encouraged to visit the sports event? Who is willing to volunteer to help with the implementation of the home match days?
5. Another task is ultimately to enable *interaction between producers and consumers*. This can be done in such a way that feedback and engagement opportunities can be used by consumers for better value creation (e.g., via customer satisfaction analyses), or to link sponsors more closely and in better ways with the consumers in order to increase the sponsorship outcomes, amongst other things.

The SDL by Vargo and Lusch (2004) in combination with the sports value framework by Woratschek et al. (2014) offer a comprehensive conceptual approach to the basic explanation of the added value of sports services, which is particularly

useful for team sports organisations. This enables a basic understanding of value creation in team sports and at the same time is universally applicable to central problems, for example, in brand management (see also ► Chap. 8).

### **In Summary**

Sports business involves five special features: non-profit organisations that mainly focus on utilise-maximisation; predominant service provision; small- and medium-sized sports organisations; services for members and citizens, not only for markets and customers; and voluntary work. Service-dominant logic and the sports value framework can together describe and explain added value processes in sports.

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## **4 Special Features of Sports Clubs and Federations**

As noted previously, many sporting activities are offered by sports clubs and federations, and most are still partly or entirely led by voluntary officers. Sports federations are also legally registered sport societies and differ in the first place and in that the members are predominantly legal entities and comprised of sports clubs or subdivided sports federations. Individuals are typically members of sports clubs. The characteristics of sports clubs in comparison with commercial enterprises, their financial and fiscal peculiarities and the voluntary work are further discussed below.

### **4.1 Characteristics of Sports Clubs and Federations**

Sports clubs and sports federations are characterised by five constitutive variables.

1. *Association*—There are a voluntary association of persons with equal interests, who pool their resources in the interest of the business and agree to a kind of social contract.
2. *Democracy*—Decisions are made collectively, according to the principle “one person, one vote”.
3. *Volunteering*—The staff in sports clubs works primarily on a voluntary basis.
4. *Voluntariness*—There is no compulsory membership, as is the case in some countries for medical doctors or lawyers. Members can leave the sports club at any time, subject to notice periods.
5. *Autonomy*—Sports clubs and federations want to make decisions autonomously and do not tolerate outside interference. This autonomy also allows sports clubs and sports federations to establish their own jurisdiction (see ► Chap. 4, Horch et al. 2014).

In comparison with business enterprises, sports clubs and federations have some special economic features:

1. *Role allocation*—While in commercial enterprises, the roles of consumer, producer, manager and owner are mostly allocated amongst different individuals, and in sports clubs, individuals may have multiple role identities. A member has the role of an owner, because of their voting rights when it comes to fundamental decisions of the sports club. At the same time, the member might also be the coach of their child who plays hockey in the club and also takes the role of the producer. The same member might also be the sporting director on the board of the club, whereby the person also assumes the role of a manager. If this individual sometimes plays tennis with friends, then all four roles are represented by one individual (owner, producer, manager and consumer).
2. *Control mechanisms*—Exit, voice and loyalty are all possible control mechanisms. In order to exert influence in organisations, individuals can make use of the exit or voice option, depending on the situation. In voluntary associations, such as sports clubs, exit and voice are equally anchored.
3. *Rationality*—Decisions in sports clubs are ideally made according to the aim of satisfying particular needs and not to maximise income or profits (Horch et al. 2014).

## 4.2 Financial and Fiscal Peculiarities

Sports clubs and federations differ from commercial enterprises in some financial tax aspects. In the case of financial flows, non-profit recognised sports organisations can accept donations but at the same time forgo equity capital. Membership fees can be seen as a mixture of purchase and ownership, because on the one hand ownership rights are connected with the membership, but there is no profit distribution to members (Hansmann 1980). Non-profit sports organisations have a wide variety of financial flows, including membership fees, subsidies, grants, royalties, rental and lease income. Cross-subsidisation is found in many sports clubs: recreational athletes in favour of competitive athletes, adults in favour of children and young people, passive in favour of active members, volunteers in favour of non-volunteers and long-time members in favour of new members (Horch et al. 2014).

The non-distribution constraint means that profit is not an incentive for economically efficient activity. In commercial enterprises, the profit is paid to the owners and is at the same time an incentive for efficient economic activity. In short, success is rewarded with profit and failure is punished with loss and bankruptcy. Professional team sports organisations should therefore consider becoming corporations rather than clubs (Franck 1995).

Status as a non-profit organisation is often an essential condition for the receipt of donations and subsidies. This is not automatically given to sports clubs and federations in most countries, and not on a permanent basis. The legally effective entry in the register of associations as a sports club is a prerequisite for obtaining the non-profit status. In many countries, sports associations must apply separately for non-profit status. Management is often monitored at certain intervals on the basis of the annual report, income/surplus calculation or balance sheet.

The state wants to promote the sporting activities of sports clubs and federations, and so all revenues and possible surpluses from these activities (with some exceptions, e.g., sales tax and income tax) are exempt from tax. Other activities, such as commercial activities, which includes income from sports sponsorship, should not be tax deductible, so that sports clubs cannot be compared to privately owned companies, such as fitness centres. The state legislature has also adopted a number of tax exemptions and benefits for sports clubs and federations, such as tax exemptions for honorariums for coaches (e.g., 2400 euro per year in Germany), a tax-free volunteer allowance (e.g., up to 720 euro per year in Germany, and a tax-free amount (e.g., of 5000 euro in Germany) for corporate income tax.

### 4.3 Volunteering in Sports

Volunteering and voluntary work is undoubtedly closely linked with sports clubs and federations. For example, in addition to the 1.765 million employees in German sports (Ahlerl 2013), there are another 1.85 million volunteers, including one million at the level of execution and 850,000 at board level (Breuer and Wicker 2010). There are still some 7 million volunteers in Germany who engage in German sports clubs and federations without concrete function or office. On average, 7.4% of club members volunteer and provide services of an average of 2.2 h per month per member. Schubert et al. (2007) found an added value for this voluntary work of 32 euro per month and member. In other words, with an average monthly membership fee of 15.56 euro, each member would have to pay another 32 euro (together 47.56 euro/month) if there were no volunteers, to completely replace them by paid staff.

Attracting and retaining volunteers is a problem for many sports clubs, especially when it comes to coaches (Breuer and Feiler 2013). A common approach is to pay an expense allowance for volunteer work. Whether this approach is effective in view of the financial problems of many sports clubs is discussed below.

Basically, people do a job—whether paid or unpaid—for intrinsic and extrinsic motives, and there is often a mixture of both motives (Deci and Ryan 2000). Intrinsically motivated actions serve as an end in themselves (Gebert and Rosenstiel 2002) and/or are based on social norms and self-imposed goals (Frey 2002). Extrinsically motivated actions can be characterised as being closely linked to external incentives, tangible and intangible (Deci and Ryan 2000).

Voluntary work is mainly based on intrinsic motives, but what happens when external incentives (such as payment of allowances) are offered for unpaid voluntary work, for example, to remedy the lack of coaches in sports clubs? Intrinsic motives are crowded-out in favour of extrinsic motives due to the financial incentive, and this generally increases with the amount of the money offered. This has the following consequences: (1) The individual has less self-determination and is more controlled and that the monetary incentive thus means that the respective

individual no longer feels that their activity is self-determined, but increasingly externally controlled. (2) There is also an effect of reduced self-assessment; that is, the volunteer perceives external incentives as a meaning they are less respected for personal involvement (Frey 1997).

This so-called *crowding-out effect* has been confirmed in numerous experiments (Frey 1997; Lepper and Greene 1978). As a result, the payment of compensation and its amount has a statistically significant negative impact on the time invested in volunteering (Frey and Goette 1999). Coskun (2014) was also able to provide empirical evidence for the crowding-out effect in sports clubs. Intrinsically motivated coaches are more willing to forgo expense rewards than extrinsically motivated coaches, especially in times of economic difficulty. The payment of an expense allowance for voluntary work is thus not an effective means by which to solve the problem of a lack of volunteers in sports clubs and federations in the long term.

### **In Summary**

Sports clubs and federations are characterised by five constitutive variables: association, democracy, volunteering, voluntariness and autonomy. Sports clubs and federations differ from commercial enterprises in terms of funding, especially in that they may receive donations and collect membership fees. What they lack is equity capital and the associated incentive to act in an economically efficient manner, because profits cannot be distributed to members, but must be used for statutory purposes. The state also promotes sports clubs and federations through various tax exemptions and reductions. The most important resource of most sports clubs and federations are the volunteers; however, the acquisition and retention of volunteers is a major, partially existential, problem. According to crowding-out theory, the payment of allowances leads to short-term success, if it works at all, but in the long term, it is not a problem-solving approach.

### **In Conclusion of the First Chapter**

Sport is of growing economic importance. The sports industry is characterised by a number of special features in terms of goods, demand, supply and markets, and knowledge of it is essential for success. Service-dominant logic in conjunction with the sports value framework can be used to describe a wide range of value creation processes in sports and to explain the possible behavioural patterns of actors. The sports market is also characterised by a large number of non-profit organisations, some of which are fundamentally different from commercial enterprises and subject to different decision-making and action logics. Volunteering is the most important resource for many sports organisations, and at the same time, it is a problem, because many sports clubs and federations have difficulty attracting and retaining volunteers.

## Comprehension Questions

1. What are the economic characteristics of the sports goods, the demand for sports, the supply of sports and sports markets, and which economical decisions do they affect?
2. How is competitive balance relevant to team sports competitions and which regulatory measures can affect it?
3. What are the characteristics of sports associations and the special economic features of sports clubs and federations?

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# State and European Law

Marc Philip Greitens

## Abstract

Although sport is not explicitly mentioned in Germany's Basic Constitutional Law, clubs and federations enjoy constitutional protection through freedom of association, and athletes through freedom of occupation or general freedom of action, which is also subject to certain limits. In comparison, Art 165 TFEU promotes the sport to the status of a constitutional good at European level, which results in further freedom in addition to the freedom of association guaranteed under European law, and the resulting autonomy of associations and federations. However, the freedom granted to sports under European law is not limitless; in particular, the individual rights of athletes must be guaranteed. This was shown above all by the decision of the European Court of Justice in the Bosman case.

## Learning Outcomes of the Chapter

1. You will learn about the extent to which sport, its associations and federations, as well as athletes, are protected under constitutional law, and what barriers have to be taken into account in this respect.
2. You will identify the connections that are necessary for a basic understanding of European sports law.
3. You will know what basic freedoms are granted to athletes.

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## 1 Introduction

Despite the great social and economic relevance of sports, it is not even mentioned in the *Basic Constitutional Law* (Grundgesetz (GG) in German language), the German constitution.<sup>1</sup> There have been discussions about including sports in the GG. Advocates argue that an explicit constitutional anchoring of sports would recognise honorary office, create a legal basis of legitimacy for the state promotion of sports, and make it possible to treat it as a criterion of equal importance to other public interests at the federal level (Singbartl and Dziwis 2014). The overwhelming number of athletes and sports associations in Germany [approximately 24 million organised members (German Olympic Sports Confederation 2018)] could also speak in favour of including sports in the GG. So far, however, it has been rejected, most recently in 2012 (Singbartl and Dziwis 2014). The *constitutions of the federal states* (exception: Hamburg) contain provisions which place sports under special state protection (Singbartl and Dziwis 2014). Art. 18 para. 3 of the Constitution of the State of North Rhine-Westphalia, for example, states: “Sports are to be fostered and promoted by the state and the municipalities.”

Their formulation as state objectives affects legal practice. The relevant state legislature is obliged, within the scope of legislative decision-making and discretion, to take sports-related interests into account. Similarly, the administration, including the state government, must not disregard sports-related issues. Finally, the judges should incorporate the evaluations contained in the sports-related national target norms into the interpretation and application of the law and other legal aspects (Singbartl and Dziwis 2014).

Unlike the German constitutional authority, the mothers and fathers of the unofficial “Constitution” of the European Union (the “European Treaties”) decided to explicitly mention sport (European Parliament 2019) for the first time in 2009 with the “Treaty of Lisbon” (Federal Agency for Civic Education 2009). The “fundamental freedoms” of the European Union also play an important role in the rights of athletes.

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## 2 Fundamental Rights in Sports

Although the GG does not define a fundamental right to sport of its own, athletes are not without protection when it comes to fundamental rights: Article 2 (1) of the GG in the area of recreational sports, Article 12 (1) Sentence 1 of the GG for professional athletes and Article 9 (1) of the GG as an individual and collective fundamental right, which both club members and the sports club as such can rely on, lay down “defensive rights” against state intervention.

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to the different, country-specific legal regulations, deviations may occur in the countries concerned.

In addition to the defensive function, the “protective function” of fundamental rights also applies to the field of sports (cf. as one of many examples from the jurisprudence of the Federal Constitutional Court (BVerfG) in this regard, the decision of 16th November 1993—1 BvR 258/86). Situations are thus conceivable in which the state is constitutionally obliged to protect athletes from non-state influences. The state could thus be obliged to work towards ensuring the physical integrity of athletes, as guaranteed in Article 2.2 Sentence 1 of the Basic Law by granting special protection to athletes in high-risk sports (Singbartl and Dziwis 2014).

Fundamental rights not only prohibit or dictate certain state actions vis-à-vis citizens, but form an overall “objective order of values”. This also affects the relationship between private individuals under civil law (Schubert 2019, para. 53). To the extent that there are no explicit statutory provisions that can be interpreted in accordance with the constitution, the objective legal effect of the fundamental rights is achieved through the “general clauses” of civil law.

These “general clauses” are regulations deliberately formulated by the legislator. They also make it possible to make fundamental rights effective in relations between private individuals. A classic example of such a “general clause” is § 242 of the German Civil Code (BGB).<sup>2</sup>

In this way, fundamental rights with reference to sports can also shape the relationship between the sports participants under private law [“indirect third-party effect” (Kähler 2019, para. 155)]. For example, the civil law regulations of the sports federations (Meier 2018 on the current discussion on the “third gender”) and employment contracts (Fischinger 2018, para. 9ff) of professional athletes are also measured against the constitutional prohibitions of discrimination (in particular, Article 3 of the Basic Law).

## 2.1 Recreational Sports Art. 2 Para. 1 GG

Recreational sports are not anchored in any particular fundamental right, but are protected by the general freedom of action under Article 2 (1) of the GG. It is a subsidiary fundamental right: it only applies if no scope of protection for another fundamental right of freedom is affected.

### Protective Scope

The scope of protection of Article 2 (1) of the Basic Law protects the free development of personality. This can be invoked by all persons, not only EU citizens including foreigners. The material scope of protection includes all freedoms of action. The Federal Constitutional Court (BVerfG) has defined the scope of protection very broadly. In layperson's terms, the BVerfG allows people to do whatever they want. It follows from this that activity within the framework of recreational sports is also guaranteed by this fundamental right. Recreational sports include any

<sup>2</sup>§ 242 BGB reads: “An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.”.

sports, regardless of which sports it is and whether it is practised as a team sports or as an individual sports. It is necessary that sports are not practised in the context of a professional activity, but during time of work, which the athlete can dispose of freely, and where no contractually binding obligations are entered into.

### **Barriers**

Like other fundamental rights, Article 2.1 of the Basic Law is not granted without restrictions. The right to the free development of personality may be restricted to the extent that it violates the rights of others or violates the constitutional order or morality (“barrier triad”) (BVerfG, resolution of 6th June 1989—1 BvR 921/85). These “barriers” formulated in the Constitution itself provide the framework within which the state may intervene, in particular, through regulatory action (i.e., by law, statutory order or administrative act), in the protected civil liberties of citizens. Every state “intervention” must in turn withstand a proportionality test.

An example from the case law of the BVerfG may illustrate this principle of the proportionate restriction of fundamental rights (BVerfG, resolution of 6th June 1989—1 BvR 921/85). This is based on the following facts of a case involving recreational sports:

According to a specific federal state law statute, riding in the forests of this federal state was only permitted on specially marked riding paths. Riding on all other paths in these forests was also prohibited. The state legislator justified this restriction with the argument that the regulation served to protect other recreation seekers by preventing accidents with riding horses. The legislation was also based on environmental considerations. The aim was to prevent the destruction of the forest soil and to protect it from the compaction and erosion caused by horses’ hoofbeats. A leisure rider protested against this regulation and justified their complaint by suggesting inadmissible interference in their general freedom of action, as per Art. 2 para. 1 GG.

The complaint and the constitutional complaint of the leisure rider before the Administrative Court and the Federal Constitutional Court were not upheld. The BVerfG did recognise that recreational sports fell within the scope of protection of the fundamental rights of general freedom of action under Article 2.1 of the Basic Law; however, this was overridden by a triad of barriers considered to be of higher value with regard to the balancing of individual rights and the welfare of the general public. The lawful restriction of freedom was justified by a barrier according to the constitutional order. In this case, the interests of the individual rider were less relevant than the interests of the general public.

The decision clarified the constitutional protection of recreational sports. Riding in leisure time is covered by the scope of protection of Article 2 (1) of the Basic Law. It also clarified the restrictions that recreational athletes have to accept in balance with the interests of others.

## 2.2 Professional Sports, Art. 12 Para. 1 GG

Sports can be practised not only as a leisure activity, but also to earn one's livelihood. Under certain conditions, sport is then subject to the scope of protection of Article 12 (1) Sentence 1 of the Basic Law. Article 12 of the Basic Law contains the fundamental right of freedom to choose one's occupation.

### Protective Scope

In terms of content, Article 12 (1) Sentence 1 of the Basic Law only protects a profession as such. A profession is very broadly defined as a long-term activity, which serves to earn one's livelihood. Contrary to the wording, Article 12 (1) Sentence 1 of the Basic Law protects both the *choice* and *practice* of a profession.

A far-reaching restriction is not made here. Accordingly, a "professional athlete" enjoys the protection of Article 12 (1) Sentence 1. The sole criterion for distinguishing between leisure and professional sports is whether the activity is the athlete's primary source of income. The statutes of sports federations, which distinguish between amateur and contract amateur, are not taken into account in the constitutional concept of occupation.

Professional athletes within public employment relationships—"athletes in uniform"—are a special case. Here, one could assume that on the basis of Article 33 of the Basic Law (the "civil servant article" of the Constitution), the freedom guaranteed by Article 12.1 Sentence 1 of the Basic Law is being restricted for public employees; however, this is not the case. Professional athletes within public employment relationships are protected by the Constitution in the same way as all other professional athletes. If there is a collision with other rights or legal interests, the courts will apply a different standard in weighing up the conflicting legal positions. It would thus be easier to justify interventions in the occupational freedom of professional athletes within public employment relationships than with comparable professional athletes in private employment relationships (in full Nolte 2012, in particular on the occupational freedom of Scholz 2009, para. 1 et seq.).

### Barriers

The limits of the protection granted in Article 12.1 Sentence 1 of the Basic Law are largely determined by the Constitution itself.

According to Art. 12 para. 1 Sentence 2, professional activity may be regulated by law or by virtue of a law. In this context, "regulation" equally means "state intervention/interference" (in full, Nolte 2012, in particular, Scholz 2009, para. 1 et seq.). In accordance with the definition of the scope of protection, the barrier also covers both the exercise and choice of profession (Ruffert 2019, para. 74). In the field of sports, the "three-step theory" also plays a role in the examination of barriers.<sup>3</sup> This is an examination scheme developed by the Federal Constitutional Court (BVerfG) in order to classify interferences with the freedom of occupation

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<sup>3</sup>The "three-stage theory" goes back to the "Pharmacist judgement" of the BVerfG (decision of 11th June 1958—1 BvR 596/56).

according to severity and to determine the necessary justification requirements in each case. Accordingly, a distinction must be made between regulations governing the *exercise* of a profession as a “1st stage”, subjective barriers to the *choice* of profession (subjective admission requirements), and objective barriers to the *choice* of profession (objective admission requirements) as a “2nd” and “3rd stage” of increasing intensity of intervention. The more serious the intervention, the higher the state's burden of justification.

It should be noted that the freedom to choose an occupation can also be restricted by sports federation regulations; however, they neither do meet the definition of “state intervention”, nor are those regulations “laws” within the meaning of Article 12 (1) Sentence 1 GG (more on this below).

### **2.3 Club Sports, Art. 9 Para. 1 GG**

Sport is protected by the freedom of association enshrined in Article 9 (1) of the Basic Law.

Article 9 (1) of the Basic Law is the defining pillar of constitutional sports law, in that the fundamental right establishes a far-reaching autonomy of sports, and thus protection against state intervention and intervention by third parties.

The autonomy of sports manifests itself in the regulatory autonomy of associations and federations. Not only local or regional sports associations, but also the sports federations that set and enforce the sports rules (such as the International Olympic Committee (IOC) or the respective world federations) are associations according to their legal form. The respective national state provides associations with legislative autonomy.

#### **Protective Scope**

With the right to found organisations and associations, Article 9.1 of the Basic Law guarantees the principle of free social group formation in contrast to corporative or purely state-organised orders (BVerfGE 50, 353; 80, 252; 100, 223) and a free association system. The term “association” in the sense of the fundamental right guaranteed by Art. 9 is.

“Any organisation, regardless of its legal form, to which a majority of natural or legal persons has voluntarily joined for a longer period of time for a common purpose and subjected itself to an organised decision-making process” (legal definition of § 2 I of the Association Act).

The fundamental right protects the freedom of organisation of associations. In addition to sufficient autonomy in the statutes (see BVerfGE 83, 358 f. for details), freedom of organisation includes, among other things, the free choice of legal form, the free choice of name (BVerfGE 30, 241), the protection of association data, the self-presentation effective in advertising (BVerfGE 84, 378), the recruitment of members (BVerfG [K], NJW 1993, 1254; BVerwG, NJW 1991, 2037), sports and

competition regulations, including sanctions and the protection of the rights of associations (BGHZ 128, 104–108).

### Barriers

Freedom of association is also subject to restrictions; however, any justification of interference with the freedom of association must derive directly from the constitution. The principle of proportionality applies: the justification will be harder to achieve the more severe the interference. The interests of the common good, which the state legislatively protects for the benefit of other legal interests, must correspond in weight to the intensity of the interference with the freedom of association (BVerfGE 84, 378 f.; 124, 36 f., 42).

Laws aiming at protecting other legal goods of constitutional rank may fulfil these prerequisites. Such regulations may be regarded as constitutionally legitimated measures of state interference with the freedoms guaranteed by Art. 9 (1). The legal goods with constitutional status protected by those laws can in turn include the freedom to choose an occupation under Article 12.1 of the Basic Law or the general freedom to act under Article 2.1 of the Basic Law.

There may thus be a conflict between the freedom of association of the sports club protected by Article 9 (1) of the Basic Law, and the freedom of the (professional) athlete to choose an occupation protected by Article 12 (1) of the Basic Law.

## 2.4 Conclusion

Even if sports is not explicitly mentioned in the Basic Law, it enjoys constitutional protection. The fundamental rights related to sports are defensive rights against state intervention. At the same time, they mandate the state to protect. Finally, the basic rights form an objective value order, which affects how private law is interpreted and applied.

Conflicts of rights may arise in the exercise of fundamental rights by the various fundamental rights holders (in particular, leisure and professional athletes, sports clubs and federations). For example, the constitutionally protected interests of a sportsperson may conflict with the interests of a sports association, which is protected by its own constitutional rights.

It is the task of legislators, administration and courts, but also of the autonomous rule-setting federations themselves, to *balance* the conflicting fundamental rights in a proportionate way.

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## 3 European Law

For a long time, sport was not explicitly taken into account in the legal foundations of the European Union, the European Treaties (Krogmann 2001). This changed with the entry into force of the Treaty of Lisbon on 1st December 2009 (Persch 2010).



EU law has already had a significant impact on sports—especially its “commercial side” (Ruffert 2016, recital 16), and therefore, it makes sense to obtain an initial overview of “European sports law”.

### 3.1 Introduction to EU Law

A distinction is made at national level between *constitutional law* and (*simple*) *laws*, and a distinction is made at European Union level between *primary law* and *secondary law*:

#### EU Primary Law

The (founding) treaties of the European Union (formerly: European Community) in their current version, including the protocols and annexes (cf. Art. 51 TEU), form the “EU primary law”. The treaties today consist of the TEU and the TFEU. The TEU stands for “Treaty on the European Union as amended by the Treaty of Lisbon”. TFEU stands for “Treaty on the Functioning of the European Union”. EU primary law takes precedence over all other EU law and therefore constitutes a kind of *constitution* of the EU. The introduction of an EU Constitution has so far failed due to resistance from individual member states (Federal Agency for Civic Education 2009).

Firstly, Union law binds the EU member states as contracting parties. In contrast to conventional international treaties, Union law can also directly establish rights and obligations for natural and legal persons in the Member States, for EU citizens and companies (Bieber et al. 2016, § 6, marginal 58, Herdegen 2018, § 8, marginal 13, Holtmann 2011, marginal 36). Primary Union law can thus become directly applicable to everyone (Bieber et al. 2016, § 6, marginal 66, Haratsch et al. 2014, marginal 372 f., Zuleeg and Kadelbach 2015, § 8, marginal 5).

Whether a provision of Union law directly creates rights or obligations for citizens or businesses depends on whether its purpose is directly applicable and sufficiently substantive (i.e., enforceable even without a concrete act of transposition). It must also not be in need of transposition (Röben 2019).

A number of provisions in the treaties are deemed to be directly applicable. These include, in particular, the “fundamental freedoms”, which, according to Art. 26 (1) TFEU, serve to realise the EU internal market. The fundamental freedoms are essentially regulated in Art. 28–66 TFEU. These include, in particular, the free movement of goods (Art. 28 ff.), the free movement of workers (Art. 45 ff.), the freedom of establishment (Art. 49 ff. GG), the freedom to provide services (Art. 56 ff.) and the free movement of capital and payments (Art. 63 ff.). These can, for example, also protect athletes (see below).

The EU antitrust law in Art. 101 f. TFEU, which is intended to prevent restrictions of competition through inadmissible company mergers and agreements, and the EU state aid law in Art. 107 ff. TFEU are also directly applicable (see also ► Chap. 3). EU state aid law prohibits the state from favouring individual companies by distorting competition. Antitrust law and state aid law can affect sports

federations and clubs that enter into unlawful agreements or are illegally subsidised by member states.

The TFEU also contains legal remedies, which are directly applicable. According to Art. 263 (4) and Art. 265 (3) TFEU, “any natural or legal person” may bring an action for nullity or for failure to act.

### **EU Secondary Law**

The “secondary law” of the EU is derived from primary law. This includes, in particular, EU regulations and directives. While regulations are always directly valid in the member states pursuant to Art. 288 TFEU, directives require implementation by the member states before they can have any effect on citizens and companies.

## **3.2 Sports as an EU Competence and Political Objective of the EU**

In contrast to the Basic Law, since 2009, EU primary law has explicitly mentioned sport in two places, namely in Art. 6 and Art. 165 TFEU.

Art. 6 TFEU lays down in general terms in the areas of life in which the European Union is responsible “to carry out actions to support, coordinate or supplement the actions of the Member States”. Within this framework, the EU is also responsible for “education, vocational training, youth and sports” in accordance with (Art. 6 lit. e) TFEU.

Art. 165 TFEU defines the objectives, which the EU pursues within the framework of its competence in sports. Art. 165 (1) TFEU (excerpts) states this literally:

[...] 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.

1. Union action shall be aimed at:

[...]

– developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sport, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

2. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, [...].

The EU can achieve its objectives in the field of sports in many ways. For example, fairness could be promoted by the EU (Ruffert 2016, recital 18). Openness could be achieved by opening up sports competitions to citizens of other EU nationalities (Ruffert 2016, para. 18). Another example to achieve these goals

are measures to protect children and young people against certain physical and psychological risks of competitive sports (Ruffert 2016, para. 20).

To implement its sports policy, the EU has drawn up a work plan for 2014–2017 (EUR-Lex 2014) and the “ERASMUS + “ programme (Erasmus + n.d.). The latter is based on an EU regulation and is thus an example of the implementation of sports-related EU primary law through a secondary legal act (EUR-Lex 2013). A “European Week of Sport” (Federal Ministry of the Interior, Building and Community n.d.) was also introduced.

### 3.3 Legal Scope of EU Sports Competence

Art. 165 TFEU creates new European competences for a European sports policy and thus a basis for the promotion of sports by the EU. The Union's goal of promoting sports justifies the effects and powers of the legislative, executive and judicial branches (Wiesner 2008).

Since, according to the wording of Art. 165 TFEU, only the European dimension of sports is affected, the competence of the German Federal Government as an EU Member State and the competence of its Federal States with regard to sports—apart from “loyalty to the community”—remains untouched (Persch 2010; generally for the areas mentioned in Art. 165 TFEU (Fischer 2012, paras. 1, 31).

The objective of Art. 165 TFEU has also been “accepted” by the ECJ (ECJ of 16th March 2010—C-325/08, ECR 2010, I-0—Bernard = NJW 2010, 1733, para. 40). This should be a door-opener for future case law, which, taking into account the special characteristics of sports, might allow sports-specific exceptions to the general EU law.

It has been argued for some time that sports purposes allow exceptions to community law (Pfister 2007; Steiner 2009; Wiesner 2008). The ECJ confirmed this opinion with its decision in the Bernard case (cf. ECJ of 16th March 2010—C-325/08, ECR 2010, I-0—Bernard = NJW 2010, 1733) of 16th March 2010, and thereby resorted to Art. 165 TFEU, but without specifying this provision in more detail.

A measure which affects the free movement of workers may be adopted only if it pursues a legitimate aim compatible with the Treaty and is justified by overriding reasons relating to the public interest. However, in such a case, the application of such a measure must also be such as to ensure the attainment of the objective in question and must not go beyond what is necessary to achieve it [...].

As far as professional sport is concerned, the ECJ has already established that, given the considerable social importance of sports and in particular football in the Union, the purpose of encouraging the recruitment and training of young players must be recognised as legitimate.[...].

In order to determine whether a rule restricting the right of free movement of such players is suitable for ensuring the attainment of that objective and does not go beyond what is necessary to achieve it, account must be taken [...] of the specific nature of sports in general and football in particular and of their social and educational function. The relevance of

these factors is also supported by their mention in the second subparagraph of Article 165 (1) TFEU.

In this context, it should be recognised that—as the ECJ has already ruled—the prospect of obtaining training compensation is likely to encourage football clubs to seek talent and provide training for young players [...]” (ECJ of 16th March 2010—C-325/08 [2010] ECR I-0—Bernard = NJW 2010, 1733, recitals 38 et seq.)

### Competence Limits

According to Art. 6 and Art. 165 TFEU, the EU can and may promote sports; however, it may only do so to a limited extent, otherwise, it would exceed its competence and thus violate the rights to which its member states or their nationals are entitled.

In addition to the general limits of competence (in particular, the general *subsidiarity principle* under EU law and the proportionality principle under EU law), the EU must also observe the sports-related limits of sports autonomy, the priority of society itself taking care of social tasks as a special form of the subsidiarity principle and the prohibition of harmonisation under Art. 165 (4) TFEU (Persch 2010).

In detail:

### European Sports Autonomy

An important sports-related competence limit is that of sports autonomy. The ECJ recognises this form of freedom of association at the European level. For example, in the Bosman case (ECJ of 15th December 1995—C-415/93, ECR 1995, I-4921—Bosman), the ECJ stated the following:

As regards the arguments based on the principle of freedom of association, it must be recognized that this principle, enshrined in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and resulting from the constitutional traditions common to the Member States, is one of the fundamental rights which, as the Court has consistently held and as is reaffirmed in the preamble to the Single European Act and in Article F(2) of the Treaty on European Union, are protected in the Community legal order (ECJ of 15th December 1995—C-415/93, ECR 1995, I-4921—Bosman, para. 79).

Like Article 9 (1) of the Basic Law, the scope of protection at the national level initially comprises the right to found associations and federations, free activity in these organisations and the freedom of collective decision and decision-making on the purpose of the association, the name of the association and the organisation of the association on the basis of autonomous self-determination (Persch 2010, with reference to BVerfGE 38, 281, 305; 50, 290, 354; 80, 244, 252). Furthermore, freedom of association—especially in connection with doping—includes one's own understanding of the ethics and techniques of one's sport (Nolte 2005).

The sports associations and their federations are also responsible for sports legislation, which is expressed in their statutes, association and federation statutes, competition regulations or anti-doping guidelines.

### Subsidiarity Principle

The principle of subsidiarity is intended to protect autonomy and ensure the greatest possible freedom and self-responsibility of associations. The principle of subsidiarity thus establishes the primacy of the responsibility of autonomous sports over the responsibility of the state and therefore has the function of limiting competence (Nolte 2005). The subsidiarity principle thus means the acceptance of sports autonomy without the state completely evading its responsibility for sports (Nolte 2005).

### Harmonisation Ban

The EU must observe the prohibition of harmonisation (“prohibition of standardisation”) in Art. 165 (4) TFEU. This means that their authority to promote sports must not lead to the complete harmonisation of the legal and administrative provisions of the Member States (Niedobitek 2018, para. 61).

If, for example, Art. 165 (4) TFEU wants to exclude any harmonisation of legal and administrative provisions, this is not convincing in view of the global doping problem. Rather, the EU's sports policy activities would fall short of what is necessary in view of the very different degrees of national strictness in the fight against doping throughout Europe (Vieweg 2004), if a pan-European and thus uniform anti-doping policy were not pursued (Persch 2010).

As a result, uniform minimum conditions should therefore be permissible despite Art. 165 (4) TFEU (Fischer 2012, recitals 17 et seq., Persch 2010).

### Conclusion

Art. 6 and Art. 165 TFEU raise the promotion of sports at European level to the level of primary law. The promotion of sports thus (also) becomes an EU task.

## 3.4 EU Basic Freedoms for Athletes

Irrespective of the special consideration of sports in primary Union law, the general provisions on *fundamental freedoms* in sports, in particular the free movement of workers (Art. 45–48 TFEU), the freedom of establishment (Art. 49–55 TFEU) and the freedom to provide services (Art. 56–62 TFEU), are of particular importance.

### General Information

In particular, the fundamental freedoms prohibit discrimination on grounds of nationality against citizens and companies of the Member States. This applies in particular to dependent employment, and the establishment and provision of services (the *principle of equal treatment of nationals*).

The fundamental freedoms thus contain special expressions of the general principle of equality, which is one of the fundamental principles of EU law (cf. also Art. 18, 40 para. 2 subpara. 2, Art. 157 TFEU; ECJ of 14th July 1976—C-325/08, [1976] ECR I-1333—Dona and Mantero, para. 6 f.). The “freedom of movement of individuals” is of particular importance for professional athletes:

It is not without reason that the free movement of workers pursuant to Art. 45 TFEU (ex Art. 39 EC Treaty) and the freedom of establishment and the freedom to provide services pursuant to Art. 49, 56 TFEU (ex Art. 43, 49 EC Treaty) are regulated under a common title. The common objective of these *freedoms of movement of individuals* is the widest possible equality of Union citizens, irrespective of their nationality (Odendahl 1996; Pache 2015, para. 98). References as in Art. 62 TFEU or the use of the same terms (e.g., “public order, security and health” in Art. 45 (3) and Art. 52 (1) TFEU) also subject any restrictions to identical requirements. Nevertheless, structural differences are discernible:

- The *free movement of workers* pursuant to Art. 45 TFEU has central social and political significance beyond its core area: in addition to the general right of residence, the question of the long-term social and political integration of workers from other EU countries is also affected (Haratsch et al. 2014, recital 901, Seifert 2015, recitals 29 et seq., Weerth 2012, recital 7).
- The *freedom to provide services* under Art. 56 TFEU is closer to the free movement of goods in terms of content. In this respect, one speaks comprehensively of the “free movement of products” (Holtmann 2011, para. 226). The freedom to provide services therefore applies not only to the provision of the service, but also to its use. It applies even if neither the service provider nor the recipient literally crosses the borders, and there is only a small cross-border connection (Haratsch et al. 2014, marginal 908, Seyr 2012, marginal 14).
- This cross-border connection would already exist, for example, if a German player’s agent were to refer a German player to a club in another Member State (cf. generally for employment agencies and job seekers ECJ of 11th January 2007—C-208/05, [2007] ECR I-181, recitals 19 et seq., 54 et seq.—ITC).
- The *freedom of establishment* pursuant to Art. 49 TFEU is structurally similar to the free movement of workers (Holtmann 2011); however, this does not affect dependent employment but self-employment (Haratsch et al. 2014, recitals 948 et seq.).

All freedoms of movement of individuals should be accompanied by full freedom of entry and exit for Union citizens. The latter is guaranteed by the regulation in Art. 21 (1) TFEU, which is subject to special contractual or secondary legislation.

### **Free Movement of Employees in Sports as an Example**

The free movement of employees enshrined in Art. 45 TFEU has proved to be a fundamental freedom of sporting significance in the past, and therefore, it should be examined in more detail.

The free movement of employees guarantee gives all EU citizens the right to be employed in any other Member State under the same conditions as that of Member State citizens.

### **Protective Scope**

The ECJ defines the employee in a broad interpretation as a person who “during a certain period provides services subject to instructions for another person for which

they receive remuneration in return” (cf. on the st. rspr. ECJ of 03.07.1986—C-66/85, ECR 1986, I-2121—Lawrie-Blum, 2144). It is decisive that the activity constitutes a part of economic life and therefore an indication of the existence of an employment relationship when an athlete receives remuneration for their services (Schimke 1996). Art. 45 TFEU is therefore relevant for a number of athletes. In team sports such as football, ice hockey and basketball, but also in some individual sports such as table tennis or athletics, the respective professional athletes are employees of their club (ECJ of 15th December 1995—C-415/93, ECR 1995, I-4921—Bosman, paragraphs 73 et seq. (football), ECJ of 13th April 2000—C-176/96, ECR 2000, I-2681—Lehtonen, paragraphs 41, 45 (basketball), OLG Stuttgart of 17th November 1977—3 U 108/77, AuR 1978, 125 et seq. (table tennis) m. Grunsky; Labour Court in Bielefeld of 12th July 1989—2 Ca 2132/88, NZA 1989, 966 ff. (tennis), deviating: Scholz 1996).

In the opinion of the ECJ, only activities “which are so small that they present themselves as completely subordinate and insignificant” are excluded from the scope of protection of the free movement of employees (ECJ of 23rd March 1982—C-53/81, ECR 1982, I-1035—Levin, para. 17). Only athletes who pursue their sports exclusively on a hobby or leisure-time basis are excluded from the scope of application. As soon as remuneration is paid in return for the practice of sports, which goes beyond mere expense allowances, there is nothing to prevent the application of the free movement of employees, even if the athlete concerned is described as an amateur under the federation’s statutes (ECJ of 11th April 2000—C-51/96, C-191/97, [2000] ECR I-2549—Deliège, para. 46, Marticke 1988). According to the ECJ, professional athletes do not provide a paid service in this sense during matches in selected teams such as the national team. The specific character of such encounters allows in this case not to speak of participation in economic life. Players from other Member States may therefore be excluded from such matches (ECJ of 15th December 1995—C-415/93, ECR 1995, I-4921—Bosman, para. 76).

Art. 45 (2) TFEU describes a concrete prohibition of discrimination. On this basis, every citizen of the Union is granted equal treatment with regard to employment, remuneration and other working conditions. It covers all measures which impede the free movement of employees, even if they do not have a discriminatory effect but such an impediment is only possible (Pache 2015). Nationals of the Member States have the right, derived directly from the Treaty, to leave their country of origin if they wish to pursue gainful employment in another Member State (ECJ of 27th January 2000—C-190/98, ECR 2000, I-493—Graf). The freedom to choose their place of work is necessary for the freedom of movement of employees to be exercised at all.

According to the ECJ, a general prohibition of restrictions only applies if it concerns access in the sense of a free choice of place of work, including the possibility of departure. With regard to personal requirements (e.g., professional regulations) and other regulations which only indirectly affect the mobility of the employee in the sense of freedom of movement, the mere prohibition of

discrimination must be upheld (ECJ of 27th January 2000—C-190/98, ECR 2000, I-493—Graf).

### Third-Party Effect

The question of the *third-party effect* of the guarantee of Art. 45 TFEU on private legal relationships often arises. The ECJ has gradually extended the scope of Art. 45 TFEU in this respect.

It was originally assumed that the fundamental freedoms were directed only at the Member States (cf. on the problem of the third-party effect of the fundamental freedoms Herdegen 2018, § 14, recitals 12 et seq., Kingreen 2016, recitals 111 et seq.); however, the ECJ decided in its Bosman ruling (ECJ of 15th December 1995—C-415/93, ECR I-13 1995, I-4921—Bosman) that the prohibition of discrimination based on nationality applies not only to acts of public authorities, but also to other measures containing collective arrangements in the field of work and services (e.g., association rules in the Bosman case (see below), collective agreement rules). The ECJ argued that the removal of obstacles to the free movement of persons between Member States would be endangered if the abolition of barriers of State origin were to be counteracted by obstacles arising from the exercise of legal autonomy by clubs and institutions not governed by public law.

The ECJ thus assumes a comprehensive direct third-party effect of Art. 45 TFEU. In this way, the ECJ wants to prevent restrictions being established instead by private individuals exploiting their contractual freedom. Taking into account the idea of the *effet utile* (“practical effectiveness” of EU law), the direct third-party effect of the fundamental freedoms is intended to ensure the uniform application of Union law in the Member States (cf. on criticism in Kingreen 2016, para. 113 ff.).

### Barriers

Member States may restrict the free movement of employees on grounds of public policy, public security or public health, in accordance with Article 45(3) TFEU.

The concepts of public policy, public security and public health must be interpreted narrowly under Union law (Scheuer and Weerth 2012, Art. 45 TFEU, para. 74). In general, the clause only applies in the case of an actual and sufficiently serious threat to public order and public security, which affects a fundamental interest of society (ECJ of 19th January 1999—C-348/96, ECR 1996, I-11—Calfa); preventive measures without an actual basis are therefore not permissible, because without a serious threat to public order, the restriction of freedom of movement is only permissible within the framework of proportionality.

## 3.5 The Bosman Case

The fact that EU law, particularly in the form of the free movement of employees, can have a decisive effect on sports is illustrated by the ground-breaking “Bosman” ruling of the ECJ in 1995 (ECJ, judgement of 15th December 1995, C-415/93).



In the proceedings *Union royale belge des sociétés de football association ASBL against Jean-Marc Bosman, Royal club liégeois SA against Jean-Marc Bosman and others* and *Union des associations européennes de football (UEFA) against Jean-Marc Bosman*, the ECJ had to clarify, among other things, the extent to which transfer payments and nationality clauses in the regulations of private sports federations were compatible with EU law.

### **The Facts**

The Belgian professional football player Jean-Marc Bosman had rejected an offer to renew a contract of his old club, the Belgian first division club RC Liege (“Royal club liégeois SA”, RCL) and negotiated a new contract with the French second division club US Dunkirk (“USL Dunkerque”).

According to the statutes of the competent federations, the club which the player leaves is entitled to receive compensation for promotion or training. Against this background, the clubs agreed that Bosman should be loaned to the new club and that in return compensation should be paid to the old club; however, the transfer failed because the RCL had doubts about Dunkirk's solvency. The Belgian Football Association prevented the transfer to other French clubs.

Bosman therefore brought an action before a Belgian court against the RCL and the Belgian Football Association for obstructing his transfer. The court hearing the case referred the matter to the ECJ.

Later, Bosman expanded the lawsuit. He attacked the transfer and *nationality clauses* in the regulations of the Belgian association and the international football associations organised under private law, UEFA and FIFA. These restricted the freedom of movement of employees in a manner contrary to EU law, he argued (see Schäfer 2005 on the facts).

### **Essential Statements of the ECJ in the Ruling**

In particular, the following core statements, which are still valid today, can be inferred from the decision of the ECJ, which is now almost 25 years old:

- Sports have a considerable social importance in the European Union.
- Sports fall under EU law.
- Private sports federations must also take EU law into account, in particular with regard to freedom of movement and freedom to provide services.
- Professional football players are employees, and therefore, they can invoke the free movement of employees. The fact that the rules of the sports federations have not been issued by public authorities does not preclude their applicability.
- Transfer and similar compensation is contrary to EU law. There has been a violation of the free movement of employees. Transfer payments are suitable for restricting freedom of movement because a professional football player cannot play for a new club without it paying the transfer payment. This infringement can be justified in principle. In the Bosman case, this was not the case. Even the argument that the compensation promised was necessary, so that clubs could continue to train young players which was not sufficient in this case.

- “Nationality clauses” are also inadmissible. The rules of the sports federations, according to which only a certain number of foreign players may play in an official match, violate EU law. The federations had argued, among other things, that the clauses were justified for purely sporting reasons, since only they could preserve the traditional ties of the club to its country; however, the ECJ argued that a connection between a football club and its Member State was not necessarily related to the sporting activity.

### Practical Implications of the Judgement

The Bosman ruling of the ECJ had far-reaching consequences, including beyond the sports sector.

If the free movement of employees was regarded as a mere prohibition of discrimination before the decision was taken, it is now understood as a general prohibition of restrictions.

The decision also meant that various regulations became inapplicable in all national football federations. Since the ECJ did not set a transitional period, a solution had to be found quickly, especially for the financial compensation mechanism. As a result, a system of long-term fixed-term employment contracts between clubs and players was established. High transfer fees therefore had to be paid if a player was to be *bought out* of a contract.

The Bosman ruling also resulted in a significant increase in foreign players in the European professional football leagues.

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### Comprehension Questions

1. What constitutional fundamental rights can sports associations and federations refer to?
2. Which fundamental freedoms are of particular importance for athletes in sports?
3. What consequences did the “Bosman ruling” have for professional athletes and sports organisations?

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# Sports and Antitrust Law

Frederik Wiemer

## Abstract

The applicability of antitrust law in sports has long been controversial, and even today, legal problems still arise when it comes to the sporting and economic activities of sports clubs and federations. In principle, sports clubs and federations are prohibited from entering into agreements that restrict competition within the scope of their economic activities. The monopoly position of sports federations and leagues gives rise to market dominance abuses. In such cases, sports organisations must obey to the standards of Article 102 TFEU. (Treaty on the Functioning of the European Union.).

## Learning Outcomes of the Chapter

1. You will be familiar with the main features of German and European antitrust law.
2. You will know the extent to which antitrust law applies to sports.
3. You will know the extent to which sports organisations must be measured against the standards of the abuse prohibition of a dominant market position.
4. You will be familiar with antitrust issues in terms of the central sale of media rights in sports leagues.

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## 1 Introduction

Today's antitrust law protects competition from distortions. Agreements and concerted practices between undertakings and decisions of associations that have as their object or effect the restriction of competition, such as price-fixing agreements, territorial agreements and customer agreements, are prohibited. The same applies to abuses of a dominant position to the disadvantage of competitors and customers.<sup>1</sup>

Violations of antitrust law are severely sanctioned by antitrust authorities with fines of up to 10% of the undertaking's turnover. Private individuals can also be fined, and in some jurisdictions, prison penalties are even possible. High claims for damages by third parties affected by cartel infringements usually follow.

Against this background, antitrust law plays a special role within the framework of internal compliance programmes.<sup>2</sup> Today, most undertakings have internal mechanisms in place to prevent antitrust violations.

Whether sports clubs and federations are also subject to antitrust law as undertakings have been discussed for many years. However, today it is clear that there is no legal exception for sport. Sports clubs and federations have to align their economic behaviour with the requirements of antitrust law.

In practice, there have been investigations under antitrust law and court rulings and decisions examining the conduct of sports clubs and federations against the standards of antitrust law. This applies in particular to the (central) marketing of sports events, but also to the conduct of (dominant) sports federations towards individual athletes. Therefore, clubs and federations should align their economic behaviour with the standards of modern compliance.

This chapter outlines the general principles of antitrust law and clarifies the extent to which it also applies to the field of sports. The effects that antitrust law can have in practice are explained on the basis of various cases.

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## 2 Fundamentals of German and European Antitrust Law

For sports clubs and federations based in Germany, the basic principles of antitrust law can be found in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and in Paragraphs 1 et seq. of the Act against Restraints of Competition (ARC). Essentially, three competition rules can be distinguished: the general prohibition of cartels, the prohibition of abuse of a dominant market

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to the different country-specific legal regulations, deviations may occur in the countries concerned.

<sup>2</sup>In management, compliance is understood to mean the regular, lawful and ethically correct behaviour of individuals. Voluntary and individual compliance rules in organisations should help to ensure that the employees of an organisation behave in accordance with and to prevent potential breaches of the rules.

position and the prohibition not to carry out undertaking transactions without the prior approval of cartel authorities.

## 2.1 Applicability of Antitrust Law to Sport

The above-mentioned prohibitions apply to all economically active organisations in Germany and the rest of Europe. Whether and to what extent cartel law also applies to sports clubs and federations, i.e. whether a sector exception should apply in this respect, has long proven controversial. Even today, the difference between purely sporting and economic activities of clubs and federations leads to difficult questions of delineation.

### US Law and Old German ARC

In the United States (US), sports clubs are exempted from the cartel ban under certain conditions. Back in 1922, the US Supreme Court ruled that professional baseball was not subject to antitrust rules (*Federal Baseball Club of Baltimore vs. National League of Professional Baseball Clubs*, 259 U.S. 200, (1922)). The same applies in many cases to the other American major sports leagues (basketball, ice hockey and football), at least as far as the central marketing of television rights is concerned. For example, the US legislator decided with the Sports Broadcasting Act of 1961 that US antitrust law does not apply to the central marketing of television rights by the National Football League (NFL). This law represented a reaction to various court rulings that considered the NFL's central marketing of television rights to be a cartel infringement. In essence, it was determined that the sports clubs participating in a league do not operate in economic competition with each other. The league was to be regarded as a single undertaking that could not be divided into separate undertakings operating independently.

In 1998, an attempt was also made in German antitrust law to exempt sports or the marketing of sports rights from the cartel ban in the long term. For example, Paragraph 31 ARC at the time provided that Paragraph 1 ARC would not apply to the central marketing by sports federations of rights to the television broadcasting of sports competitions organised in accordance with their statutes. The main reason given was that otherwise, financially weak clubs that were not in the central interest of viewers would be disadvantaged. However, this provision was deleted again in the 7th ARC amendment in 2005, with the result that German antitrust law no longer provides a legal exception in this area.

### ECJ: Meca-Medina et al.

The European Court of Justice (ECJ) made it clear back in 1974 that sport is fundamentally subject to community law as far as specific economic activity is concerned (ECJ [1974] ECR 14053 Rz. 4—Walrave). This case law was confirmed in the Bosman judgement (ECJ [1995] ECR I-4921, Paragraph 79—Bosman).

In the Meca-Medina and Majcen case, the ECJ dealt for the first time with the applicability of European antitrust law to sports and categorically rejected a complete derogation for sports (ECJ, judgement of 18th July 2006, Case C-519/04P—

Meca-Medina and Majcen). This case concerned the action of two long-distance swimmers against the anti-doping rules of the International Olympic Committee (IOC) and the swimming federation Fédération Internationale de Natation (FINA). In the opinion of the ECJ, anti-doping rules as rules of federations are part of economic life and therefore not excluded from the scope of application of antitrust law. Anti-doping rules have not only a sporting but also an economic connection, as they could deter affected professional athletes from exercising their economic activities.

Moreover, in its Union of European Football Associations (UEFA) Champions League decision, the European Commission confirmed that antitrust law also applies to central sales of media rights, such as television rights (Commission Decision of 23rd July 2003—UEFA, OJ EU No L 291).

### Sports Immanence

Since then, it has been undisputed that the economic behaviour of sports clubs and sports federations must in principle be compatible with German and European antitrust law (Hellmann 2000, Paragraph 3). Nevertheless, there is still discussion as to when a certain activity is of a purely sporting nature and therefore has no economic connection.

The dogmatic background is the so-called *idea of immanence*. According to this, competition rules that are necessary for the implementation of otherwise competition-neutral contracts do not fall under the cartel ban. In concrete terms, this means for sports that certain agreements between clubs and sports federations are necessary and proportionate in order to be able to hold sporting competitions at all. Excluded from the prohibition of cartels are rules that are exclusively of a sporting nature, such as the rules of the game, which only concern the conduct and organisation of a match.

In this context, the Frankfurt District Court had to examine the applicability of antitrust law to the Players' Agents Regulations of the German Football Association (DFB) and ultimately differentiated between economic and purely sporting parts (LG Frankfurt, judgement of 29th April 2015, 2–6 O 142/15). It first stated that players' agents must fully comply with the DFB's statutes if they do not wish to accept any disadvantages in their professional activities. In this respect, there would be a restriction on the economic freedom of the players' agents to act.

However, some parts of the regulations are not subject to the cartel ban because they are necessary and proportionate for the functioning of the Bundesliga, the top level of German professional football. For example, the obligation to produce a certificate of good conduct by players' agents, the obligation to produce player contracts for the purpose of monitoring compliance with the agreements reached and the prohibition on accepting transfer payments for future transfers<sup>3</sup> are necessary and proportionate and are thus excluded from the application of antitrust law.

In contrast, subjecting players' agents as a whole to the power of the football federations, in particular with regard to sports jurisdiction and the resulting

<sup>3</sup>The latter concerns the case in which a player's agent achieves by contractual arrangement that he is also involved in future transfers. The DFB has rightly prohibited such contractual clauses.



limitation of legal protection before the ordinary courts, are disproportionate and therefore problematic under antitrust law. The same applies to the limitation of flat-rate fees for transfers; the court did not find it necessary to cap mediation fees. Rather, it is the core of every agent's activity that the remuneration is based on the value of the respective transaction.

The Higher Regional Court (OLG) Duesseldorf commented on the distinction between sporting and economic behaviour in a case concerning the German Handball Federation (DHB) and the International Handball Federation (IHF) (OLG Duesseldorf, judgement of 15th July 2015—VI-U (Kart) 13/14 “IHF sending conditions”). This concerned the obligation imposed on handball clubs to delegate national players to international matches. The German handball clubs had complained that the duty to delegate imposed on them was inadmissible under antitrust law as a decision of an association of undertakings. In contrast, the Duesseldorf Higher Regional Court found that the regulation of the secondment did not concern an economic activity subject to antitrust law. In this respect, the handball federations did not act commercially, but rather established regulations exclusively applicable to sports operations.

The ECJ interprets the concept of economic activity rather broadly. In particular, it has established that individual athletes can also be economically active undertakings in terms of antitrust law with regard to the marketing of their sporting services (ECJ; judgement of 11th April 2000—Case C-51/96—Deliège). In the Deliège case, the ECJ ruled that a professional judoka taking part in an international tournament carried out an economic activity even though he was not remunerated for it in the specific case, as participation in such an event usually constitutes an economic activity.

Ultimately, what matters is whether an activity is solely a matter of sporting or also economic competition. In individual cases, it can be difficult to distinguish between the two. According to the view expressed here, in professional sports, taking account of its considerable economic importance today, an economic activity can hardly be denied. Against this background, a large number of federation decisions, statutes and other agreements and regulations concluded between federations and clubs may also have economic effects, so that only measures that are necessary for purely organisational reasons, such as rules of the game, are excluded from the scope of application of antitrust law.

## 2.2 The Cartel Ban

In the following, the cartel ban in Article 101 TFEU and Paragraph 1 ARC will first be examined. The ban prohibits agreements between undertakings and decisions by associations of undertakings that have as their object or effect the restriction of competition.

## **European and German Antitrust Law**

The European prohibition of cartels in Article 101 (1) TFEU applies to restrictions that may affect trade between member states in the European Union (EU) (Article 3 I of Regulation (EC) No. 1/2003). Restrictions with purely domestic effects are covered by the German cartel ban in Paragraph 1 ARC (Article 101 (2) TFEU, Paragraph 134 BGB).

The criterion of cross-border effects applies not only where a particular competitive conduct may have cross-border effects but also where it affects all or a substantial part of a particular member state. Therefore, the activities of sports clubs and federations that are active throughout Germany, such as the DHB and the DFB as well as the respective leagues and sports clubs, should be subject to European law.

The German cartel ban has essentially been harmonised with European law, with the result that there are no longer any serious regulatory differences.

## **Responsibility of the Authorities**

Cartel violations are prosecuted by the European Commission in Brussels or by national cartel authorities, e.g. the German Federal Cartel Office in Bonn. With regard to jurisdiction, it can be roughly said that the Federal Cartel Office always takes up a case if the main competitive impact is in Germany. Therefore, national sports leagues will as a rule fall within the competence of the Federal Cartel Office, whereas international sporting events such as a European Championship, World Cup or the Champions League are likely to fall within the competence of the European Commission.<sup>4</sup> To the extent that the Federal Cartel Office is responsible, it can apply and enforce both European and German antitrust law.

Whether a case is to be pursued at all depends on the dutiful discretion of the EU Commission or the Federal Cartel Office (opportunity principle). However, so-called hardcore violations are consistently pursued and severely sanctioned. The authorities are under no obligation to investigate alleged infringements or even to sanction certain types of conduct. Affected third parties can inform the authorities about conspicuous antitrust conduct and encourage investigations.

## **Sanctions**

Agreements or decisions restricting competition are invalid under civil law and are subject to fines (Article 101(2) TFEU, § 134 German Civil Code (BGB)). The European Commission and the Federal Cartel Office may impose fines of up to 10% of an undertaking's group turnover. In practice, fines of hundreds of millions of euros or more are common.

Furthermore at Europe, the Federal Cartel Office has the power to impose personal fines of up to EUR 1 million on acting private individuals. By contrast, the European Commission cannot impose individual fines. In contrast to US or British

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<sup>4</sup>According to the practice of the EU Commission, an antitrust infringement is generally pursued by the EU Commission and not by the national competition authorities if it affects more than three EU member states.

antitrust laws, prison sentences for private individuals are not provided for in European or German law.

Claims for damages by customers or competitors for antitrust violations are also the rule today. Such claims are governed by German law by § 33ff. of the German Civil Code. ARC which in turn is based on an EU Directive and is intended to protect the rights of damaged third parties (EU Damages Directive 2014/104/EU). Given that § 33ff. ARC, in particular in the version according to the EU Directive, have not been in force for long, civil antitrust suits in Germany do not yet play such a major role as, for example, in the USA. There the North American Soccer League recently sued the United States Soccer Federation in a US civil court for practices contrary to antitrust law (Hoch 2017).

### **Substantive Antitrust Law**

As already mentioned, the cartel ban (in Article 101(1) TFEU or Paragraph 1 ARC) prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect an appreciable restriction of competition. A distinction is made between horizontal and vertical cartel infringements.

#### **Horizontal Antitrust Violations**

Horizontal cartel infringements mainly concern cartel agreements between competitors. This includes restrictions of competition between both current and potential competitors. Classic cartel infringements in particular comprise price agreements, territorial agreements, customer agreements, non-compete clauses and non-aggression clauses. In detail, these include agreements not to undercut certain minimum prices, not to become active in certain areas or with certain customers, not to compete with each other or not to submit competing offers.

In the recent past, the so-called exchange of information between competitors has played a role in antitrust prosecution practice, especially in cases in which competing undertakings have discussed future price developments, sales, market shares or other competition-relevant parameters, for example in the context of federation meetings.

#### **Vertical Antitrust Law**

In addition, the prohibition of cartels applies to so-called vertical restraints of competition, which are agreed between two parties at different market levels (supplier and customer). Specifically, these are exclusive supply obligations, exclusive purchasing obligations and, above all, so-called resale price maintenance obligations, whereby a supplier obligates a distributor to resell the goods in question only at a certain minimum price.<sup>5</sup>

#### **Individual Elements of the Cartel Ban**

The following is a detailed description of the features of the prohibition of cartels:

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<sup>5</sup>Non-binding recommended retail prices are also covered by the prohibition if the parties' market shares exceed 30%.

- *Undertaking*. An undertaking within the meaning of the prohibition of cartels is any entity engaged in an economic activity, irrespective of its legal form and the way in which it is funded (ECJ [1984] ECR 2999, 3016 - Hydrotherm).
- The fact that professional sports clubs are to be qualified as undertakings against this background cannot be seriously discussed against the background of billions in sales in professional sports. Whether in individual cases, an economic or purely sporting activity of the undertaking concerned takes place is to be appreciated within the framework of the sports immanence discussed above. Although the Higher Regional Court of Duesseldorf had examined the question of sports immanence within the scope of the constituent element of an undertaking in the above-mentioned *IHF sending conditions case*, the Higher Regional Court of Duesseldorf had also examined the question of sports immanence within the framework of the constituent element of an *undertaking*. Dogmatically, however, it would be preferable, according to the view expressed here, to generally affirm the corporate status of federations and to make the distinction between purely sporting and economic activities within the framework of the immanence test.
- Accordingly, sports federations are usually associations of undertakings within the meaning of cartel law, as they themselves become economically active through the marketing of media rights or the conclusion of licence and merchandising agreements (Hellmann 2000, recital 28).
- In accordance with the ECJ case law cited above in the *Deliège* case, independent individual athletes can also be undertakings in the economic sense.
- By contrast, individual handball players or football players are not undertakings, as they are employees of their respective clubs. In this respect, they are not economically independent because they are bound by instructions.
- Finally, it should be noted that only agreements between *independent undertakings* are covered by antitrust law. To the extent that different undertakings form one economic unit, for example in a group, the prohibition of cartels does not apply to agreements within this so-called economic unit. In concrete terms, this means that agreements between different subsidiaries of the same sports club or federation are excluded from the scope of antitrust law.
- *Agreements*. The term *agreements* is used very broadly in antitrust law. It includes not only written and verbal agreements, but also implied agreements on conduct<sup>6</sup> (*meeting of the minds*) and the exchange of competition-sensitive information. In particular, the exchange of information requires only contact (direct or indirect) between undertakings and an adaptation of their market behaviour as a result. It is generally presumed by public authorities and courts that undertakings take information received into account when deciding on their market behaviour and that the contact between them therefore affects their market behaviour.

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<sup>6</sup>Conclusive action occurs when the declaration of intent is tacitly expressed and the recipient may conclude from this that he or she is willing to enter into a legal obligation.

- Resolutions of business associations include, for example, statutes of sports federations as well as all other regulations passed by federations, such as those concerning arbitration courts, anti-doping measures and economically relevant transfer rules (cf. LG Frankfurt, judgement of 29th April 2015, 2–6 O 142/15, R. 37 ff).
- *Imputability*. In principle, the conduct of any employee of an undertaking may give rise to antitrust liability on the part of the undertaking. Therefore, it is not necessary for the persons involved in a cartel agreement to be entitled to represent their undertaking in legal transactions. In concrete terms, this means that the conduct of members of the executive committee and executive boards as well as of managers and of sales employees in associations and federations can trigger antitrust liability.

### Exceptions from the Cartel Ban

Article 101(2) TFEU and Paragraph 2 ARC exempt certain agreements or decisions from the prohibition of cartels if the following four conditions are fulfilled.<sup>7</sup> The agreements or decisions must: (a) contribute to improving the production or distribution of goods or to promoting technical or economic progress; (b) allow consumers a fair share of that benefit; (c) not impose concerned restrictions on the undertakings that are not indispensable to the attainment of those objectives; and (d) not enable the undertakings concerned to eliminate competition with respect to a substantial part of the products concerned.

A positive exemption decision by the authorities is not necessary, and undertakings must decide on their own whether the above criteria are fulfilled.

In addition to this abstract exemption, antitrust law provides for the possibility of exempting certain categories of conduct from the prohibition of restrictive practices under additional strict conditions. This is done at the European level by so-called block exemption regulations (BERs), which are issued by the European Commission and also apply in German law by means of a dynamic reference.<sup>8</sup>

However, agreements or decisions that have as their object a restriction of competition (so-called *hardcore cartel infringements*), such as agreements on prices, territories and customers, non-compete clauses, non-aggression clauses and the exchange of information sensitive to competition, are not eligible for exception. Second-hand price maintenance also cannot be exempted.

<sup>7</sup>Cf. the Commission Notice on the application of Article 81(3) of the EC Treaty OJ 2004 C 101/08.

<sup>8</sup>The most important GMOs in practice are:

Commission Regulation (EC) No 1218/2010 of 14th December 2010 on the application of Article 101(3) of the Treaty to certain categories of specialisation agreements;

Commission Regulation (EC) No 1217/2010 of 14th December 2010 on the application of Article 101(3) of the Treaty to certain categories of research and development agreements;

Commission Regulation (EC) No 330/2010 of 20th April 2010 on the application of Article 101(3) of the Treaty to categories of vertical agreements;

Commission Regulation (EC) No 772/2004 of 27th April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements.

**Intermediate Result: Practical Implications for Sports Clubs and Federations**

First and foremost, clubs and federations are prohibited from entering into agreements restricting competition in the course of their economic activities. This includes, in particular, the prohibition to coordinate or discuss prices or price elements or to exchange sensitive competitive information.

For example, clubs are prohibited from discussing contractual elements with each other or within sports federations when selling sponsorship rights. This applies, for example, to prices for jersey and perimeter advertising, hospitality packages and other sponsorship rights (see also Chap. 12).

Furthermore, prices for the distribution of tickets or merchandise items as well as for all other sales-related activities may not be agreed, coordinated or discussed. The mere exchange of information is prohibited.

The joint distribution of products or services by competing undertakings also raises competition concerns and can only be exempted from the cartel prohibition in special circumstances. This includes, for example, the joint, central sale of media rights, which will be dealt with in more detail in the excursus below.

With regard to the acting individuals, these prohibitions apply equally to club directors, managers, presidents and sales employees. In view of the sanction framework described above, the highest degree of caution is required in all discussions within the federations or in bilateral discussions, regardless of which persons take part in them.

In this respect, clubs have a duty to anchor compliance structures in their organisations to inform all employees working in sales and marketing or those appearing externally of their duties in dealing with the representatives of other clubs. Compliance programmes have been established in practice to inform and train employees about the laws and regulations to be observed. Internal codes must be used within the undertaking to make it clear that the relevant club or federation complies with applicable law at all times.

In addition, various other legal issues arise in practice from the application of the prohibition of cartels, which cannot all be illustrated here in detail. However, the central sale of media rights, which will be discussed in more detail below in the context of the excursus, is mentioned as an example.

**2.3 The Prohibition of Abuse of a Dominant Position**

In addition to the prohibition of cartels, the prohibition of abuse of a dominant market position plays a particularly important role. Pursuant to Article 102 TFEU and Paragraphs 18 and 19 ARC, abuse of a dominant market position by one or more undertakings is prohibited.

**Market Dominance**

A dominant position exists if an undertaking is not exposed to significant competition or holds a market position that is superior to that of its competitors (Kling

and Thomas 2017, § 6, recitals 44 et seq.). Such a market position is rebuttably presumed from a market share of 40%.<sup>9</sup>

According to the previous decision-making practice of courts and authorities, sports federations have qualified as market-dominating if they are the only national or international federation organising national or international sports events according to the so-called *one-seat rule* for their respective sports. For the DHB (and probably also the IHF), the Higher Regional Court of Duesseldorf has affirmed the norm addressee status of Article 102 TFEU or §§ 18, 19 ARC in the case of *IHF sending conditions*. To the extent that the federations organise matches or competitions, they are dominant in the market because they operate in the relevant markets (e.g. for admission tickets, television broadcasting rights and advertising rights) without competitors (OLG Düsseldorf, judgement of 15th July 2015—VI-U (Kart) 13/14, “IHF sending conditions”, Paragraph 105).

Whether individual sports clubs can dominate, the market is currently unclear. It is conceivable that a single sports club could dominate a regional market for tickets to Bundesliga matches if no other Bundesliga matches take place in the region in question. However, no decision has yet been made in this regard.

### Abuse

An abuse may involve the unreasonable obstruction or exploitation of other undertakings or market participants, for example the use of predatory pricing strategies, so-called cost-price scissors, discrimination or unjustified non-supply of contractual partners, cross-subsidisation and the use of loyalty discounts or tying transactions.<sup>10</sup> Such abuses can also be sanctioned with fines of up to 10% of the group turnover and, in Germany, even with personal fines.

In previous legal practice, various regulations of federations have been reviewed on the basis of Article 102 TFEU and Paragraphs 18 and 19 ARC.

In detail:

### Sending Conditions for National Players

In the *IHF sending conditions case*, the Higher Regional Court of Duesseldorf examined whether the DHB or the IHF abused the German handball clubs by abusing the sending conditions for national players or hindered competition (OLG Duesseldorf, judgement of 15<sup>th</sup> July 2015 - VI-U (Kart) 13/14, “IHF sending conditions”, Paragraph 106). The Court considered a behaviour that was characterised by the fact that the federation obtained business advantages at the expense of the clubs to be exploited. Such exploitation could not be seen in the terms of the detention.

The court also denied an unfair restriction of competitors because the restraining conditions applied equally to all handball clubs and none of these clubs was placed at a competitive disadvantage in relation to others (OLG Duesseldorf, judgement of

<sup>9</sup>Several enterprises may also be jointly dominant if there is no substantial internal competition between them and they are not exposed to any significant external competition; market share thresholds for joint dominance are contained in Sect. 18 ARC.

<sup>10</sup>The mere holding of a dominant position is not itself objectionable.

15th July 2015 - VI-U (Kart) 13/14, “IHF sending conditions”, Paragraph 107 ff.). A restriction within the meaning of the law could only be established where the conditions of competition between competitors were distorted.

### **Discriminatory Arbitration Rules**

Another case concerned whether the dominant International Skating Union (ISU) had adopted arbitration rules that discriminated against speed skaters. The Pechstein case, which has since become famous, concerned the following facts.

The ISU imposed a doping ban on speed skater Claudia Pechstein in 2009.<sup>11</sup> Within the framework of the sports court proceedings, the Court of Arbitration for Sport (CAS) had confirmed the ban on doping in the last instance, although the blood anomaly in dispute was probably the result of a genetic disposition and not of an illegal doping measure. Pechstein then brought an action for damages against the ISU to the Munich District Court.

The main issue in this civil case was whether the action at the ordinary court was admissible at all. The ISU and Pechstein (as well as all other athletes in speed skating) had agreed on an arbitration clause according to which legal disputes should be heard exclusively at the CAS, not at national courts. Accordingly, the ISU raised the so-called arbitration plea.

Pechstein argued at the Court that the arbitration clause was invalid under antitrust law because it constituted an abuse of a dominant position by the ISU. As a speed skater, she would have had to sign this clause in order to be eligible for international competitions. If she had not signed the clause, the ISU would not have admitted her to competitions. The ISU is dominant and would abuse its dominant position by denying athletes access to ordinary courts and providing an exhaustive list of possible arbitrators with whom, according to Pechstein, in principle the ISU would agree.

In contrast to the Munich District Court, which dismissed the action in the first instance because the CAS decision had the opposite legal force, the Munich Higher Regional Court (OLG) upheld the action and followed the antitrust arguments (OLG Munich, U 1110/14 Kart; judgement of 15th January 2015). It initially confirmed that the ISU was dominant within the meaning of Paragraphs 18 and 19 of the ARC. There was no doubt as to the ISU’s status as an undertaking, because in the present case it was essentially an economic activity, although it also had connections to sports. In particular, the ISU was active on the market for the organisation of international speed skating world championships. In this market, the ISU is the only supplier and therefore a monopolist.

In addition, the Munich Higher Regional Court ruled that the ISU, as a monopolist, was prohibited from demanding fees or other terms and conditions that

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<sup>11</sup>At the World Speed Skating Championships in Hamar, Norway on 7 February 2009, Pechstein was subjected to a blood doping test. The blood samples showed increased reticulocyte values. The ISU attributed this to illegal doping. Therefore, Pechstein was suspended for two years on 1 July 2009 by the decision of the ISU Disciplinary Commission retroactively to 7 February 2009. Her competition results from 7 February 2009 were thus annulled and her points, prizes and medals were withdrawn.



deviated from those that would probably result from effective competition, according to Paragraph 19(1), 4 No. 2 ARC. Arbitration agreements specified by the federation are such terms and conditions. Admittedly, it is not in principle an abuse of a dominant position if a federation agrees an arbitration agreement with the athletes. Rather, there are important reasons for not leaving disputes between the federation and athletes in connection with international competitions to the state courts and instead assigning them to a uniform and specialised sports court, in particular in order to avoid diverging decisions in similar cases. However, in this particular case, an abuse had to be established because the ISU had had a decisive influence on the selection of the arbitrators, for these could only be selected from a list drawn up by the International Council for the Judiciary in Sport. A free choice of arbitrators was not permissible.<sup>12</sup>

The Munich Higher Regional Court ruled that the list of arbitrators preferred the ISU and discriminated against the athletes (Munich Higher Regional Court, U 1110/14 Kart; judgement of 15 January 2015, Paragraph 93). Most of the arbitrators on the list were deemed close to the federation and thus more inclined towards its views in the event of a dispute. There was a risk that the judgements made would ultimately favour the federation to the detriment of the athletes. Accordingly, the court of arbitrations was not neutral. The fact that the athletes would nevertheless submit to this arbitration clause was solely based on the monopoly position of the federation. In this respect, the federation exploited its economic and social superiority. Moreover, the Federal Cartel Office had also shown as a court observer that it, similar to the Higher Regional Court of Munich, saw an abuse in the arbitration rules of the ISU (German Press Agency 2016).

However, in its ruling of 7 June 2016, the Federal Court of Justice annulled the ruling of the Munich Higher Regional Court (Federal Court of Justice, KZR 6/15, ruling of 7 June 2016). In the opinion of the Federal Court of Justice, the CAS is an independent and neutral arbitration body. In particular, there was no structural imbalance due to the list of arbitrators (Federal Court of Justice, KZR 6/15, judgement of 7 June 2016, recitals 30 et seq.). The influence that the ISU had on the composition of the court of arbitration would ultimately not call into question the impartiality of the Court. Overall, the list of arbitrators contained a sufficient number of independent and neutral persons. According to the Federal Court of Justice, foreign arbitral awards would also otherwise only be refused recognition if the violation of the principle of neutrality was absolutely incompatible with the principles of judicial conduct. However, there were no sufficient indications of this in the present case. In the context of a comprehensive balancing of interests, the

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<sup>12</sup>In the concrete case, the list of judges consisted of 20 judges. Four members were appointed by the ISU, four by the National Olympic Committees and four by the IOC. These 12 judges in turn appointed four judges to safeguard the interests of the athletes. These 16 judges, in turn, appointed four further judges, who were to be independent of the aforementioned sports federations.

arbitration regulation was still acceptable and not so disadvantageous that an abuse within the meaning of the law could be established.<sup>13</sup>

Ultimately, Pechstein complained before the European Court of Human Rights (ECtHR) in Strasbourg of a violation of her right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR), as the CAS was not an independent and impartial court. However, the ECHR rejected this and confirmed the legitimacy of the CAS.<sup>14</sup>

### **Advertising Opportunities for Olympic Athletes**

The Federal Cartel Office recently decided that, contrary to the prohibitions of the German Olympic Sports Confederation (DOSB) and the IOC, Olympic athletes may advertise independently during the Olympic Games (decision of 27 February 2019, press release of the Federal Cartel Office of the same day).

According to the Federal Cartel Office, the DOSB and the IOC are dominant on the market for the organisation and marketing of the Olympic Games. In order to be admitted to the Games, the nominated athletes must undertake to comply with the Olympic Charter *vis-à-vis* the federations. According to Rule 40 No. 3 of the Charter, no athlete may use their person, name, likeness or sporting performance for advertising purposes during the Olympic Games or a few days before and after. Indeed, this advertising restriction covers all advertising and social media activities and applies from nine days before the opening of the Games until the third day after the closing ceremony (a so-called frozen period). According to the previous guidelines of the DOSB, an application had to be submitted three months before an exception could be granted; the advertising campaign had to be running and was not allowed to contain any Olympic or Olympic-related terms.

The Federal Cartel Office saw Regulation 40 No. 3 as an abuse that could not be justified under antitrust law. The DOSB and the IOC then undertook to allow the independent advertising activities of individual Olympic athletes to a large extent. In this regard, it is interesting to note that the Office demands that any disputes between athletes and federations be submitted to ordinary courts and not to sports arbitration courts.

### **Intermediate Result**

According to the so-called *one-place rule*, federations can be dominant within the meaning of Article 102 TFEU and Paragraphs 18 and 19 ARC. They are thus subject to the standards of the prohibition of abuse in their relations with athletes, sponsors and other economic participants and must comply.

In the Pechstein case, an abuse by tendentious arbitration rules was ultimately denied, although the final ruling of the Federal Court of Justice came as a surprise to many. Even in the case of the *IHF sending conditions*, an abuse was denied. In

<sup>13</sup>Pechstein has lodged a constitutional complaint against the decision of the Federal Court of Justice on the grounds that the decision violates her fundamental judicial rights, freedom to choose an occupation and the right to a statutory judge.

<sup>14</sup>Decision of the ECtHR of 5 February 2019, File No. 67474/10. Only the refusal of oral proceedings by the CAS was considered unlawful by the ECtHR and granted Pechstein a claim for compensation of EUR 8,000.

contrast, in the DOSB/IOC case, the Office affirmed an abuse. Federations are therefore well advised to examine regulations and resolutions that could have an economically disadvantageous effect on clubs and athletes against the standard of the prohibition of abuse.

## **2.4 Merger Control**

For the sake of completeness, the third pillar of antitrust law should be mentioned in conclusion. In the context of merger control, the acquisition of another undertaking must be notified to the antitrust authorities, examined by them and cleared before enforcement if the undertakings involved exceed certain turnover thresholds. However, as there are no sports-specific characteristics in this respect, the area of merger control is excluded below.

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## **3 Excursus**

### **3.1 Coordinated Sale of Broadcasting Rights**

So far, the antitrust law problem with the central sale of media rights to matches in a sports league has primarily been discussed in football. However, there are no reasons why the same problem and similar proposed solutions as those submitted or demanded in football by the Federal Cartel Office could not be applied to other sports in the future.

As a result, the Federal Cartel Office has taken the view in its long-standing practice that the coordinated sale of media rights by sports or league federations is questionable under cartel law and may only be permitted on the basis of so-called commitments pursuant to Paragraph 32b ARC.

#### **Circumstances**

The following facts form the basis (see most recently German Federal Cartel Office, Case Report of 11 April 2016, B6—32/15). Professional sports gain their economic importance in particular through the sale of media rights and other commercial rights. In football, the domestic rights to the Bundesliga, the 2nd Bundesliga and the Super Cup for four years starting with the 2017/2018 season were obtained for a total amount of EUR 4.64 billion (German Football League 2016).

The league federation has always centrally sold the rights of audiovisual broadcasting of the Bundesliga and 2nd Bundesliga matches in Germany. All clubs in the Bundesliga and the 2nd Bundesliga are united in the league federation. The federation has the exclusive right to sell the audiovisual media rights in accordance with its statutes and contracts. The individual clubs are only authorised to report on the Bundesliga matches of their respective teams on a subordinate and deferred

basis. The league federation uses its wholly owned subsidiary, the German Football League (DFL), for operative marketing.

### Legal Evaluation

The coordinated sale of media rights is equivalent to the joint distribution of goods or services (Schroeder 2015, Article 101 TFEU, Paragraph 653). As described above, joint distribution by competing undertakings is generally questionable under antitrust law.

This presupposes that the respective sports club is regarded as the sole organiser of a (Bundesliga) match and thus the sole rights holder. If the federation were regarded as the rights holder and organiser of an overall Bundesliga package, there would be no joint marketing by several undertakings, only by a single undertaking.

In the legal literature, it has been argued on various occasions that the sports federation and the clubs are jointly organisers and thus rights holders, because the aim is not to sell individual matches but to market the entire Bundesliga product (Hellmann 2000, recital 68). The so-called *single-entity theory* is also applied in the USA, according to which the league as a whole—rather than the individual clubs—is regarded as the economic unit relevant under antitrust law for the production of league sports (Stopper 2008). Accordingly, US courts have denied Major League Soccer (MLS) as a separate legal entity independent of the shareholders and, accordingly, the applicability of antitrust law on the basis of group privilege. However, this only applies to the extent that the league sports is not characterised by clubs operating independently and legally independent of each other (US Supreme Court, judgement of 24 October 2010 - American Needle Inc. vs. National Football League).

By contrast, the German and European antitrust authorities assume that the league operation is not a uniform product, but that the clubs market individually and in free competition the matches in which they or their professional teams participate. According to the Federal Cartel Office, European clubs are not merely operating divisions of the league, but economically independent undertakings. Therefore, the Federal Cartel Office sees no scope for the applicability of the *single-entity theory* (Stopper 2008).

Similarly, the Federal Cartel Office does not recognise the so-called working group concept. According to this concept, undertakings are allowed to cooperate if they cannot offer the respective product individually, but only jointly for objective reasons. It could be argued that a league only makes sense if several clubs participate in it jointly; only cooperation within the league enables the *production* and marketing of the league product. However, the Federal Cartel Office also sees in constant practice a specific demand from media undertakings for only individual league matches, without necessarily requesting the entire Bundesliga package. Therefore, according to the Federal Cartel Office, there would ultimately be no need to combine all league matches into a central rights package.

According to the Federal Cartel Office (and also the European Commission), central marketing by the federation leads to joint distribution by independent undertakings and a corresponding restriction of competition (Commission, decision

of 23 July 2003 - UEFA; OJ EU No. L 291, Paragraph 123f). Consequently, the Federal Cartel Office regards central marketing by the DFL as a restriction of competition between independent undertakings. This affects the sale for national media rights in all-year football competitions in which the Bundesliga and the 2nd Bundesliga clubs participate. The downstream market for pay TV is also affected.

Coordinated marketing of media rights should not be qualified as a *hardcore* restriction that cannot in principle be exempted, as it does not have as its object a horizontal restriction of competition. From the Federal Cartel Office's point of view, any exclusivity planned in particular for the downstream pay TV market (or for Sky) is not eligible for exception. Such an exclusive allocation of marketing rights would foreclose the pay TV market and reduce the supply of rights. This prohibition of the exclusive allocation to a single media undertaking is also referred to as the *no-single-buyer rule*.

Against this background, the Federal Cartel Office regularly requires remedies from the DFL pursuant to Paragraph 32b ARC, according to which a substantial proportion of the television rights must also be awarded to other bidders. A similar regulation had already been adopted by the Commission in the English Football Association (FA) Premier League case (Commission, Decision of 22 March 2006—FA Premier League, COMP/C-2/38.173, Paragraph 28). In addition, the Federal Cartel Office demands the possibility of highlighting reporting on free TV. This would further limit the pricing scope of pay TV providers *vis-à-vis* their customers and allow viewers to participate in the benefits of marketing.

The DFL then issued an invitation to tender for the years 2017/2018 to 2020/21 (i.e. for four years) and sold the marketing rights to Sky, Eurosport, ARD, ZDF, Sport1, Amazon, RTL and the Perform Group for a total of approximately EUR 1.16 billion per season. Sky secured all live rights to the Bundesliga Saturday and Sunday matches as well as all matches in the 2nd Bundesliga. Eurosport acquired the rights to the Friday matches. Amazon acquired audio rights and the Perform Group rights for Internet clips. The delayed highlight reporting will continue to be broadcasted on free TV on ARD and ZDF.

### 3.2 50+1 Rule

Another sports-specific rule that has been discussed for many years under antitrust law is the so-called 50+1 rule of the DFL, which is anchored in the statutes and contractually binds all member clubs in their relationships to third parties. Under antitrust law, this is a resolution of an association of undertakings within the meaning of Article 101 TFEU and Paragraph 1 ARC.

Under the 50+1 rule, member clubs are prohibited from transferring more than 50% of the voting rights in a corporation into which the clubs have outsourced their respective professional teams to a third investor. This means that it is not possible

for third-party investors to take over the majority of votes of professional football teams in Germany.<sup>15</sup> Austria has a similar system. If a club violates these rules, it loses its licence and thus its right to participate in the league operation.

The purpose of the regulation is to prevent large undertakings or other investors (e.g. oligarchs) from taking complete control of professional teams, as has often happened in England in the Premier League and in the NFL in the USA. The sporting interests of the clubs should remain paramount before the economic interests of the investors.

An exception exists in the event that an investor has been promoting the football part of the parent club continuously and substantially for more than 20 years before 1 January 1999. In addition, the investor must support amateur football and may not resell the shares in the corporation. Bayer 04 Leverkusen, VfL Wolfsburg and TSG 1899 Hoffenheim currently benefit from this exception. In addition, the DFL decided in March 2015 that a single investor may invest in a maximum of three undertakings, two of which with a maximum of 10%.<sup>16</sup>

The above-mentioned regulations are criticised by various clubs with the argument that the German Bundesliga is falling behind in financial and sporting terms in an international comparison, as the transfer sums in the professional business (especially for football players) continue to increase. For example, Hannover 96 appealed to the Permanent Arbitration Court for Clubs and Corporations, which issued a ruling on 20 August 2011 (Permanent Arbitration Court, CAS 2011, 334 (335)). As a result, it ultimately only commented on the key date regulation, according to which an investor must have acted as a sponsor at least 20 years before 1 January 1999, declaring this key date arbitrary.

A final antitrust review of the entire settlement was not conducted by the court of arbitration, although antitrust concerns have long been raised. In essence, there are some arguments in favour of the clubs being impaired in their competitive freedom of action by the 50+1 rule and access to the market for participation in football clubs being restricted accordingly, cf. Article 101 TFEU and Paragraph 1 ARC. It must also be taken into account that the regulation was issued by a dominant federation (DFL or DFB) and may lead to an exclusionary abuse within the meaning of Article 102 TFEU or Paragraphs 18 and 19 ARC.<sup>17</sup> A final antitrust clarification in the German or European courts is still to come.

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<sup>15</sup>In contrast, the majority of the capital may be held by private investors.

<sup>16</sup>Volkswagen AG has been granted protection in this respect.

<sup>17</sup>In the past, the fact that money laundering can be prevented in this way has been cited on various occasions as a justification. Whether such a risk of money laundering actually exists is at least doubtful in view of the fact that German football clubs are in the public spotlight all year round.

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## Comprehension Questions

1. Why can sports clubs and federations also be subject to antitrust law?
2. What other examples do you know that could justify a possible abuse of a dominant position by sports federations?
3. Why is the central sale of media rights by sports and league federations problematic?

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# Sports Jurisdiction and Arbitration

Jonas Pust

## Abstract

Decisions are made, in sports, some of which are subject to legal review. While the factual decisions of the referees generally cannot be challenged, appeals against rule violations are possible. In principle, a judicial review is first conducted within the association. The intra-federation sporting jurisdiction in Germany is based on §§ 25 et seq. of the German Civil Code, which is based on Art. 9 para. 1 of the Basic Law, the German Constitution. Accordingly, sports associations and federations can establish their own jurisdiction for disputes falling under sports law on the basis of the federation's code of conduct. As decisions within the associations are not final, it is possible to take legal action either before state courts or before an arbitral tribunal. In exceptional cases—such as interim relief or doping cases—an (arbitration) court can also be called upon directly.

## Learning Outcomes of the Chapter

1. You will learn the difference between intra-federation sports jurisdiction and arbitration.
2. You will understand the advantages and disadvantages of arbitration proceedings.
3. You will understand different jurisdictions.
4. You will understand which requirements for genuine arbitral proceedings exist in accordance with the German Code of Civil Procedure.

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## 1 Introduction

There are many different sports, with different rules, different sporting requirements and different public interests.<sup>1</sup> Of course, there are also differences of opinion in sports that need to be resolved. Due to this diversity, it is advisable that, if possible, differences of opinion are decided by people who are familiar with the sport and the particularities of the rules and regulations. State judges often have—if at all—only basic knowledge of the sport, without knowing the corresponding rules and practiced customs. State courts are also already heavily burdened without adding numerous sports disputes, and sports often require quick decisions, for example, about exclusion or admission to a competition.

Against this background, various sports federations have developed their own intra-federation jurisdiction, which is as versatile as the sports themselves. There are association and federation courts as well as arbitration courts, which deal with differences of opinion. This chapter provides an overview of sports jurisdiction, in particular arbitration. The special features of handball will be taken into account, and a presentation of specific decisions will provide insight into case law considerations.

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## 2 Sports Jurisdiction

Numerous decisions are made every day in sports. Many of these decisions result from the rules and regulations of associations and federations. These can take place directly in the competition, but also in preparation or afterwards.

For example, think about a handball match. A common situation in a handball match involves the referee supposedly failing to take appropriate action against an obvious infringement by the opposing team, or supposedly imposing unjustified sanctions on a team. Often the spectator's assessment is not objective, but because it is necessary to make quick decisions during the match, referees do sometimes make wrong decisions. Since these decisions can have considerable sporting (e.g. suspensions) and/or economic consequences (progress in tournaments, etc.), the question quickly arises of whether legal action can be taken against the referee's decision (► Sect. 4.2.1). In addition to decisions made by referees, there are also decisions made at association or federation level (► Sect. 4.2.2).

A legal review—as far as permissible—can be processed through association and federation courts (► Sect. 4.2.3), or through state courts (► Sect. 4.2.4).

This chapter presents various instances in handball (► Sect. 4.2.5) and some exemplary case law from practice (► Sect. 4.2.6).

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to different country-specific legal regulations, there may be differences in the countries concerned.

## 2.1 Legal Review of Decisions Made by Referees

In most sports federations, the competition rules make a distinction between factual decisions and violation of rules, including the German Handball Federation (DHB) (Fechner et al. 2014; Pfister 2014a). Section 55 (1) of the DHB's legal regulations (RO-DHB<sup>2</sup>) stipulates that decisions made by referees on the basis of their fact-finding or assessment are final, whereas violations of the rules by the referees according to paragraph 2 may lead to a replay if the consequences are decisive for the match. Factual decisions are more common than violations of rules.

A *factual decision* is made when the referee decides on the basis of their observations during the match. Even if the referee subsequently realises, for example, by means of television recordings, that their decision was wrong, the factual decision is usually incontestable (Fechner et al. 2014; Pfister 2014a). However, most sports federations make one exception. A factual decision can be appealed if it is an obvious error on the part of the referee. The decision is erroneous, if the error was immediately and without error perceptible and provable for every spectator (Arnold 2012; Fechner et al. 2014).

In contrast, there is a *violation of rules* if the referee correctly perceives what is happening but incorrectly applies the sports rule provided for this situation (Fechner et al. 2014).

The DHB, like many other sports federations, stipulates that an appeal may be lodged against a violation of a rule if the violation was decisive for the match (Fechner et al. 2014; Pfister 2014a). This is the case, for example, when a match is being drawn and the referee awards a 7-m throw to a team in the last few seconds of that match, although there was no justifiable reason to do so, and a decisive goal is scored as a result.

## 2.2 Legal Review of Other Association/Federation Decisions

A distinction is made between penalty rules and sanction rules. The effect of penalty rules does not go beyond the competition. These are regularly imposed by a referee in a running match, for example, the decision of a referee to award a free throw due to a foul. Sanction rules, on the other hand, go beyond the competition itself. These are no longer regularly imposed by the referee, but at the level of the association or the federation. A sanction rule exists, for example, if a player is not only suspended for the rest of the match, but also for other matches. The enforcement of penalty rules is not usually contestable, whereas sanction rules can, in principle, be legally reviewed (Fechner et al. 2014). The following list is not exhaustive, but is intended to give a brief overview of which decisions in handball can be legally reviewed.

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<sup>2</sup>RO-DHB: The abbreviation refers to the legal regulations of the German Handball Federation (DHB).

- In handball, the decisions of the Disciplinary Commission (*Spielleitende Stelle*), the administrative bodies (governing bodies, committees, commissions) and the Anti-Doping Commission, with the exception of match schedules and referee appointments, are subject to review. In addition, action may be taken against the scoring of a match if the playing surface, arena, match ball, other playing equipment or match clothing is defective; if the referee, timekeeper or secretary has violated the rules that are decisive for the match; or if a player who is not entitled to play, or who is not entitled to participate, has participated.
- Disqualifications may also be partially appealed; however, in the event of an appeal based on incidents during a match, care must be taken that the reasons for the appeal are noted in the match report. If this does not happen, no appeal can be lodged against the decision (§ 34 RO-DHB).
- The imposition of a fine can also be challenged (§ 35 RO-DHB).

### 2.3 Verification by Federation Courts

A legal review of decisions is primarily possible at association and federation level, where sports courts exist in every sports. Often there are even several instances, for example, in handball. Sports courts are also known as legal committees, executive committees, arbitration/federation courts or commissions. Caution is required with regard to the terms used, however. Despite its name, it is not usually an arbitration tribunal in the legal sense (see ►Sect. 4.3), but only an internal body.

The question arises: can sports associations and federations simply establish their own jurisdiction alongside the state courts?

In Germany, the Civil Code regulates the autonomy of associations and federations; for instance under §§ 25 et seq., which is guaranteed by Article 9 para. 1 of the Basic Law (*Grundgesetz* (GG)). Autonomy ensures that the associations and federations are free and independent in the organisation of their own affairs. This also includes the right to determine their own jurisdiction for the enforcement of rights, as competent to address internal differences of opinion within the association/federation. The prerequisite is that this extraordinary jurisdiction is based on the respective statutes of the association or federation.

It is crucial, however, that these internal bodies do not rule out recourse to the state courts or equivalent arbitral proceedings. In this respect, they are not arbitral tribunals in the legal sense (►Sect. 4.3). A final decision can be reviewed by a state court or arbitral tribunal after a dispute has passed through all instances of the federation (Lachmann 2008).

### 2.4 Verification by the State Courts

Although the state courts are in principle available to review the decisions made by federations, they are limited in this ability due to the autonomy of federations, secured in the Basic Law.

### **Admissibility of an Action**

In the context of admissibility, the court must first examine whether it has jurisdiction *ratione materiae* and *ratione loci*. The general rules of the German Code of Civil Procedure apply here.

The court also determines whether the intra-federation legal recourse is exhausted. If this is not the case, the action can usually be dismissed as inadmissible. It is only in exceptional cases that an athlete or sports organisations cannot be ordered to first take legal action within the federation. Such exceptional cases exist if the internal proceedings of the federation are considered unreasonable for the athlete or sports organisation, or if effective legal protection cannot be obtained as a result (Fechner et al. 2014).

### **Merits of an Action**

Due to the autonomy of the federation granted by the Basic Law, the state court may not make its own new decision, but must confine itself to establishing the legality or illegality of the decision of the federation (Fechner et al. 2014). The latter is the case if procedural requirements have been violated, for example, if the person affected by the measure is not at all subject to the power of the association. The decision of the association or federation must also not be arbitrary or grossly unfair and must not violate any law or public policy. The result is only a limited examination of the merits of the case; however, a distinction must be made between decisions by federations with and without a monopoly.

In the case of a decision by a federation, which does *not* have a monopoly, the state court will examine the following points:

- Does the regulatory authority of the federation extend to the athlete or sports organisation?
- Is there an effective legal basis for the sanction in the statutes?
- Were there severe procedural errors which were causal for the decision?
- Were the general procedural principles observed?
- Does the decision violate the law (e.g. is it contrary to public policy/discriminatory)?
- Are there errors in the facts of the case?
- Is the measure arbitrary or grossly unfair? (Pfister 2014a; Schöpflin 2017)

More often, the final decision is taken by a federation with a monopoly position, since all federations have a monopoly position at national level in Germany. Where a federation does hold a monopoly position, the state court must not only examine whether the measure is arbitrary or grossly unfair, but also whether the content of the rules is appropriate. There must be an appropriate balance between the interests of the federation or sports organisation and those of the athlete; however, the court must take into account that the federation has some discretion with its assessment due to its autonomy (Pfister 2014b). Otherwise, the court will also examine the above-mentioned points in these proceedings.

## 2.5 Legal Authorities in Handball

The jurisdiction of the federation is regulated in the legal order of the DHB (RO-DHB). These are not real courts of arbitration, as they do not replace the state jurisdiction, but only precede it.

The structure of the sports jurisdiction of the DHB is shown in ● Table 4.1 (§§ 27, 28, 30 legal order of the DHB):

**Table 4.1** Structure of the sports jurisdiction of the DHB

Legal cases	1st instance	2nd instance	3rd instance
Playing within a federation, Alt. 1	Legal instance of the federation	Appellate body of the federation	Appellate body (on points of law) of the federation
Playing within a federation, Alt. 2	Legal instance of the federation	Appellate body of the federation	Federal court as appellate court (on points of law)
Inter-federation competition, Alt. 1	Legal instance of the disciplinary commission of the match	Appellate authority of the disciplinary commission of the match	Federal court as appellate court (on points of law)
Inter-federation competition, Alt. 2	Legal instance of the disciplinary commission	Federal sports court 1st chamber as appeal instance	Federal court as appellate court (on points of law)
DHB match mode	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Between DHB and federations	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Between federations	Federal sports court 1st chamber		Federal court as appellate court (on points of law)
Proceedings against bodies of the DHB	Federal sports court 1st chamber		Appellate court (on points of law)
Appeals against decisions of the administrative authorities or of the disciplinary commission of the DHB which are open to appeal	Federal sports court 1st chamber		Federal court as appellate court (on points of law)

(continued)

**Table 4.1** (continued)

Legal cases	1st instance	2nd instance	3rd instance
Operation of the league federations	Federal sports court 2nd chamber		Federal court as appellate court (on points of law)
Appeals against decisions of the administrative authorities or the officials of the league federations, which may be appealed against	Federal sports court 2nd chamber		Federal court as appellate court (on points of law)

## 2.6 Judgements of the Federal Sports Court and the Federal Court of the DHB

The following section presents a small selection of decisions by the Federal Sports Court and the Federal Court of the DHB. The aim is to convey a feeling for what can be important in individual cases and which pitfalls can exist in the legal review of decisions.

For the sake of clarity, the decisions were anonymised. The composition of the panels and their jurisdiction are briefly explained.

Numerous other judgments are available on the DHB's Website at <https://dhb.de/der-dhb/service/satzung-und-ordnungen.html>.

### 2.6.1 Federal Sports Court

The chambers are composed of a chairperson and six assessors, with the chambers deciding in the composition of the chairman with two assessors. The chairperson must be qualified to hold the office of judge (§ 46 Statutes of the DHB, as of 28 October 2017).

#### First Chamber

The first chamber is responsible for all legal cases according to the RO-DHB with the exception of legal cases concerning the operation of the league federations (§ 46 Abs. 1 a) Statutes of the DHB as of 28 October 2017).

#### Decision BspG 1K 02/2016—Appeal Against the Result of a Match Rejected as Inadmissible

A match of the 3rd League Men South ended with only a one-goal advantage. The defeated team claimed to have scored a goal two seconds before the end of the match. The referees had allowed this goal, but then, after consultation with the timekeeper, did not recognise it because the match had already ended. In the match report, only the words “Appeal announced, the team which lost appeals against the scoring of the match; reasons will follow” were given.

The first chamber of the Federal Sports Court rejected the appeal as inadmissible. § 34 para. 4 RO-DHB stipulates that an objection to the scoring of a match

may only be lodged if the appellant alleges a disadvantage and it is reported to a referee immediately after the match and noted in the match report. The mere announcement (objection filed, reasons will follow) does not constitute such a note in the match report. Such a note must contain entries relating to the alleged infringement, such as “because of events in the last seconds of the game” or “because of the missing equaliser”. It cannot even be inferred from the match report, however, that the referees first gave an equaliser and then disallowed it (decision of the first chamber of the Federal Sports Court of the DHB of 27 April 2016—BSpG 1K 02/2016).

**Judgement BSpG 1K 01/2016—Appeal Against the Scoring of a Match and the Disqualification of a Player—Admissible, but Only Partially Well-Founded**

A match of the 3rd League Men West ended with only a one-goal difference. The winning goal was scored as a result of a 7-m penalty by Player 1 of Team A (1A). The referees decided that a 7-m penalty had to take place because they assumed in the course of the match that Player 1 of Team B (1B) had torn down Player 2A from behind after a throw on the empty goal from the centre line. Player 1B was disqualified.

Team A appealed against the score of the match to the first chamber of the Federal Sports Court, since it was not Player 1B who tore Player 2A down from behind, but Player 2B. The ball had also been fended off by Player 3B at the 6 m line in accordance with the rules. A goal chance had therefore not existed despite the empty goal.

The referees stated that they had actually accidentally disqualified Player 1B instead of Player 2B; however, the 7-m penalty was still justified because Player 3B bounced in the goal area to defend the ball.

The first chamber of the Federal Sports Court upheld the appeal with regard to the disqualification, but rejected it in all other respects. The reasons given by the Federal Sports Court for this decision were as follows.

The referees’ decision on a 7-m throw is a factual decision. According to § 55 RO-DHB, decisions made by the referees on the basis of their fact-finding or assessment are incontestable. Also, the disqualification represents a factual decision, which is incontestable. However, the incontestability is limited to the course of the match, the result of the match and the penalties within the match. The error of the referees therefore does not lead to a change in the score of the match. However, the disqualification was lifted retroactively, as it could be the basis for further penalties from the Disciplinary Commission (judgement of the first chamber of the Federal Sports Court of the DHB of 8 April 2016—BSpG 1K 01/2016).

**Second Chamber**

The second chamber is responsible for legal cases concerning the match operations of the league federations (§ 46 Para. 1 b) Statutes of the DHB, status: 28 October 2017).

**Judgement 2.K 02–2015—Appeal Against the Decision of the Disciplinary Commission of the League Federation Rejected**

A then-17-year-old player, and her parents as legal representatives, signed an employment contract with a first league (*Bundesliga*) club. When the player turned 18, she played three matches for the Bundesliga club without being eligible to play in adult matches. The third match ended 26:24 for the 18-year-old's club. The Disciplinary Commission judged the third match as lost for the club with 0:2 points and 0:0 goals, on the grounds that § 66 S. 2 of the Rules of Play of the DHB (*Spielordnung—SpO-DHB*<sup>3</sup>) was applicable. The rule states that adult players without a contractual commitment may be used by their club in a maximum of two Bundesliga championship matches per season.

According to § 19 para. 1 h) RO-DHB, a match for the club in which ineligible players have participated as players shall be regarded as lost with a goal ratio of 0:0. Ten days after the Disciplinary Commission's decision, the club applied for the 18-year-old player's eligibility to play. In the context of this application, there were discrepancies as to whether the player was contractually bound to the club. The reason for this is that under § 32 para. 1 S. 2 of the SpO-DHB, a contract for the adult level in a Bundesliga team can only be concluded with a player of at least 18 years of age. Although the sportswoman had already concluded the employment contract at the age of 17, this contract was ultimately accepted and she was granted eligibility to play.

The club also appealed against the decision of the Disciplinary Commission that, due to a lack of contractual obligation, a player without eligibility had played and that the match was therefore lost. Among other things, the club took the view that the player had conclusively confirmed her employment contract by continuing to play for the club as an adult. In any event, there was an effective employment contract between the player and the club. The club had not achieved an unacceptable competitive advantage through the use of the player. The Disciplinary Commission had not raised such concerns before the game. The player was not eligible to play for adults, but the prerequisites for the granting of such an eligibility were given. For these reasons, the club requested the annulment of the Disciplinary Commission's decision and thus the affirmation of the original match result.

The Bundesliga Women's Handball Association took the view that the decision of the Disciplinary Commission was correct, as this was a consequence of the lack of eligibility to play. The club itself was obliged to check the eligibility of its players, not the Disciplinary Commission.

The second chamber of the Federal Sports Court ruled that the decision of the Disciplinary Commission was correct. On the one hand, it was extremely questionable whether an employment contract existed at all, as § 32 para. 1 S. 2 SpO-DHB was intended to prevent the player's parents having power over the decision about which club the player binds themselves, and for how long. An

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<sup>3</sup>SpO-DHB: The abbreviation refers to the play regulations of the German Handball Federation (DHB).



athlete's career is relatively short in comparison with a normal employment relationship, so that third parties (the parents) should not have influence over the athlete's choice of club beyond the age of majority. On the other hand, there was no eligibility to play, so that at least according to §§ 10, 66 para. 1 SpO-DHB the player participated in the match as a non-authorized person. The application for, and verification of, eligibility to play is the sole responsibility of a club and not the Disciplinary Commission. At the time of the match, eligibility to play had not even been applied for (judgment of the second chamber of the Federal Sports Court of the DHB dated 24 May 2015—2.K 02–2015).

### **Judgement 2K 04/2015—Appeal Against a Match-Deciding Rule Violation by the Referees Admissible and Well-Founded**

The dispute concerns the rescheduling of a quarterfinal of the DHB Cup. In the last seconds of the match, the two teams were drawn. Three seconds before regular playing time ended, a player of the applicant team did not put the ball down properly. This delayed the goalkeeper's goal clearance for the opposing team. The player was disqualified, and the opposing team was awarded a 7-m penalty. The opposing team scored a goal and won the match with one point. The applicant took the view that the decision in favour of a 7-m penalty was a decisive violation of the rules by the referees, and therefore, the match had to be rescheduled. The referees and the technical delegate, who were invited to clarify the facts of the case, also stated that the decision was recognised as incorrect from their point of view.

The second chamber of the Federal Sports Court shared the applicant's view and considered it necessary to repeat the match. There was a rule change, which said that in case of illegal behaviour in the last 30 s of a match, a decision for a 7-m penalty is generally justified; however, this was not officially announced. The rule change was only tested in the championship matches of the 2015/2016 season. The Cup matches do not count as championship matches, so that the rule was not applicable here (judgment of the second chamber of the Federal Sports Court of the DHB of 19 December 2015—2K 04/2015).

## **2.6.2 Federal Court**

### **Decision BG 2/2016—Appeal Against a Judgement of the Hessian Handball Federation is Rejected as Inadmissible**

The court of the Hessian Handball Federation had imposed a temporary ban and a fine on a player after a match. The player concerned and their club appealed against this decision. The appeal was rejected by the Court of Hessian Handball Federation, which was appealed against to the Federal Court. However, they transferred part of the required advance on expenses to the Hessian Handball Federation instead of the DHB. According to § 47 Abs. 1 RO-DHB, the timely receipt of the advance payment is a prerequisite for admissibility. Since only a part of the advance on expenses was received, the Federal Court rejected the appeal as inadmissible (decision of the Federal Court of the DHB of 27 May 2016—BG 2/2016).

**Judgement BG 4-2016—Revision is Admissible and Well-Founded**

A player hit an opposing player so hard with his fist into his stomach during a handball match that an ambulance had to be called. The player was disqualified by the referees after 59 min match time. The Disciplinary Commission imposed a ban of five more matches and a fine, and only stated the following facts of the case:

“Particularly ruthless, particularly dangerous, intentional or fraudulent actions against players, team officials and other persons. Reference is made to the entry in the match report”.

The player appealed against this decision. The sports court of the Saar Handball Federation rejected the appeal as unfounded. An appeal to the court of the Saar Handball Federation was also unsuccessful.

The Federal Court considered the appeal to be admissible and well-founded. The Federal Court stated that the decision of the Disciplinary Commission lacked the necessary certainty. The person concerned must know what he is accused of, so it must be clear what exactly is being sanctioned. A mere reference to the match report is not sufficient since the athlete concerned does not know the match report. The match report should have been sent to the athlete at least with the decision of the Disciplinary Commission. The Federal Court therefore overturned the decision of the Disciplinary Commission as well as the judgement of the court of the federation and ordered the amendment of the judgement (Federal Court of the DHB—judgement of 20 June 2016—BG 4–2016).

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### 3 Arbitration

Several questions arise: What is the difference between the legal instances of the federation and genuine arbitration proceedings? What are the advantages of arbitration proceedings? Are there any disadvantages, and, ultimately, how do arbitration proceedings work?

#### 3.1 What Are Genuine Arbitration Proceedings?

The following section outlines the requirements for “genuine” arbitration proceedings, which are governed by §§ 1025 et seq. of the German Code of Civil Procedure. It follows from this that the courts of associations and federations described above, even if they are sometimes referred to as “arbitration”, are not genuine arbitration proceedings. The following prerequisites must be fulfilled.

##### **Exclusion of State Jurisdiction**

Genuine arbitration proceedings effectively exclude the state court jurisdiction. Article 47 of the DHB's statutes states in this respect:

- (1) Doping offences shall be decided by a court of arbitration to the exclusion of the internal instances of the federation as well as the ordinary jurisdiction (*ordentliche Gerichtsbarkeit*).

Arbitration is a genuine substitute for the state courts, as the court of arbitration ultimately replaces them. It must therefore be clear from the statutes of the federation or from the direct arbitration agreement with the athlete that the right of access to state courts is waived (Lachmann 2008). This waiver must be voluntary. High demands must be given, since the right of access to the state courts safeguarded by the Basic Law itself is waived (Article 101 (1) sentence 2 of the Basic Law).

Whether a waiver is really voluntary if an athlete has no other choice than to accept the rules of the federation—including the arbitration clause—in order to participate in competitions is legally controversial. On the one hand, it was argued that the athlete does not voluntarily waive this right, as they must in fact agree to an arbitration agreement if they wish to participate in competitions. The Federal Court of Justice has nevertheless regarded this as a voluntary arbitration agreement, at least for doping disputes at the CAS. It is true that the federation has a monopoly and can in fact force an athlete to sign an arbitration agreement by only admitting the athlete to the competition after signing it; however, a mutual contract is characterised by the fact that one's own positions are abandoned and contractual conditions are accepted, which do not correspond to one's own will but to that of the contracting party. Furthermore, it is not only the federations that benefit from a sports arbitration court, but also the athletes, as they are dependent on fair competition conditions (Federal Court of Justice (BGH), ruling of 7 June 2016, Ref.: KZR 6/15, recital 55, 62 (Pechstein)).

The European Court of Human Rights (ECHR) opposed this rather artificial view in its Mutu/Pechstein decision (Mutu and Pechstein v. Switzerland, complaints no. 40575/10 and 67,474/10, judgment of 02.10.2018).<sup>4</sup> The Court stated that it was impossible to believe that Pechstein's submission to the arbitration clause was voluntary and unambiguous. Rather, consent to CAS arbitration takes the form of “forced” consent. There is a *de facto* structural dependence of the athletes who, in view of the monopolistic concentration of competitions at the ISU, were dependent on integration into the federation. In order not to lose their professional livelihood in the future, they also had to agree to the conclusion of the arbitration clause, which was required for participation in competitions organised by the ISU.

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<sup>4</sup>The proceedings were based on complaints by speed skater Claudia Pechstein and soccer player Adrian Mutu, who appealed against decisions of the Swiss Federal Supreme Court, which had confirmed that a corresponding arbitral award handed down by the Court of Arbitration for Sports (CAS) in Lausanne was unobjectionable from the point of view of the rule of law. The arbitral proceedings concerned disciplinary measures taken by the International Skating Union (ISU) against Claudia Pechstein and the *Chambre de Résolution des Litiges* (CRL) of the International Federation of Football Association (FIFA) against Adrian Mutu. The applicable rules of the federation provide for the possibility of an appeal against disciplinary decisions taken at the CAS (*procédures d'appel*), which had, however, dismissed both complaints as unfounded in substance.

Consequently, the ECHR convincingly concluded that submission to the jurisdiction of the CAS must be qualified as compulsory arbitration in the case of the ISU. It follows from this that the procedural guarantees of Art. 6 para. 1 of the European Convention on Human Rights (ECHR) had to be observed.<sup>5</sup>

### **Independence and Impartiality**

A genuine court of arbitration must be independent and impartial. This must be viewed critically in the context of the composition of sports courts of arbitration, as federations could potentially exert significant influence.

Independence and impartiality requires that the arbitral tribunal may not consist solely of representatives of the federation, and that no organs of the association may form the arbitral tribunal; otherwise, the arbitrators would be acting as judges on their own case (Lachmann 2008; Pfister 2014a).

The federation must also not have any decisive influence on the composition of the court of arbitration (Pfister 2014a). The independence and impartiality of the court of arbitration must be written down in the statutes of the federation (Lachmann 2008; BGH, judgment of the 27th May 2004, Az.: III ZB 53/03). In this respect, § 47 (7) of the statutes of the DHB provides:

[...]

(7) The court of arbitration is **not a body of the DHB**. The members of the court of arbitration are **independent and not bound by instructions**.

The Court of Arbitration for Sport (CAS), for example, is a genuine court of arbitration (cf. the recognition of the CAS by the DHB in § 48 of the statutes). The CAS has a list of between 150 and 200 arbitrators. This list was compiled by the International Council of Arbitration for Sport (ICAS). The ICAS consists of 20 members. Of these 20 members, four are appointed by international sports federations. The international federations thus have minimal influence on the composition of the body that compiles the list of arbitrators.

The German Federal Court of Justice (BGH) regarded the CAS as an independent and neutral body, since both parties could choose an arbitrator from the closed list of arbitrators, and the international federations had no direct influence. Furthermore, according to the statutes of the CAS, the arbitrators must disclose to the parties any circumstances which could possibly affect their independence. It should also be noted that, especially in the campaign against doping, the athletes and the federations do not pursue different interests (BGH, judgement of 7 June 2016, ref. no.: KZR 6/15, para. 27ff. (Pechstein)).

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<sup>5</sup>Art. 6 - Right to a fair trial.

(1) Every person shall have the right to a fair and public hearing, within a reasonable time, by an independent and impartial court of arbitration established by law, of disputes relating to their civil rights and obligations or to a criminal charge against them. The judgment shall be pronounced in public; however, the press and the public may be excluded throughout or from the proceedings if this is in the interest of morality, public order or national security in a democratic society, if the interests of juveniles or the protection of the private life of the parties to the proceedings so require or, if the court considers it absolutely necessary, if, in special circumstances, a public hearing would prejudice the interests of the administration of justice.

The European Court of Human Rights (ECHR) also considered the CAS arbitrators to be independent and impartial, which Pechstein denied (*Mutu and Pechstein v. Switzerland*, complaints no. 40575/10 and 67,474/10, judgment of 2 October 2018). In particular, the ECHR took into account the provisions on the appointment of arbitrators, the length of their mandate, the existence of protective mechanisms against external undue influence and the question of whether the court appears to be independent. As a result, Pechstein's objections failed because the ECHR found that she had not submitted any specific facts that would raise doubts about the independence and impartiality of the specific arbitrators. The mere fact that those organisations, which might be involved in disputes with athletes before the CAS, exercised influence on the appointment of arbitrators at the time did not allow the conclusion that it was solely because of this influence that the list of arbitrators, possibly only by a majority, consisted of arbitrators, who individually, objectively and subjectively could not have been regarded as independent and impartial vis-à-vis the organisations mentioned.

### **Requirements of Rule of Law**

According to the Basic Law, Germany is a state under the rule of law. This means that the constitution legitimises the actions of a government, legislation or administration and safeguards against arbitrary state action through law and order. This also includes the fundamental rights of justice (*Justizgrundrechte*), which include the right to the statutory judge (Article 101 (1) sentence 2 of the Basic Law) and the right to a fair hearing (Article 103 of the Basic Law). Fundamental rights of justice thus guarantee the possibility of legal protection and the observance of certain procedural principles.

The exclusion of state jurisdiction is therefore only possible if the legal protection of a court of arbitration is in no way inferior in quality to that of a state court. It must be ensured in arbitration proceedings that both parties are heard and have the same rights. In addition, the arbitrators must be independent and impartial and parties must have access to legal representation by an attorney (Pfister 2014a).

Insofar as these legally stipulated principles (§ 1042 (1) and (2) German Code of Civil Procedure and the inverse conclusion of § 1036 (1) Code of Civil Procedure) are observed, the German legal system recognises courts of arbitration as party-intentioned alternatives to state jurisdiction.

## **3.2 Advantages of Court of Arbitration**

### **Quicker Decisions**

Quick decisions are necessary, especially in sports. Sometimes decisions have to be made during an ongoing competition or immediately before a competition. Arbitral tribunals can decide very quickly in such proceedings by planning their capacities accordingly.

It should also be noted that an athlete's exercise of professional sports is often limited to a few years (Adolphsen et al. 2012). State courts proceedings may take

years if various instances are used. The state courts can only make quick decisions in summary proceedings (Pfister 2014a). For example, in 2008, the Regional Court of Frankfurt decided on the Olympic nomination of the triple-jumper Charles Friedek (with the result that he was not nominated) in summary proceedings (OLG Frankfurt, judgment of 30.07.2008—4W 58/08; LG Frankfurt, decision of 22.07.2008—2—19 O 210/08). However, a decision in summary proceedings is only a provisional legal protection. This means that no final decision has yet been made and that such a decision is still outstanding. The judgment may not become final until years later. At this point in time, the actual objective of legal protection (e.g. admission to a competition) can no longer be achieved, so that at most a decision on compensation for damages will be made (Pfister 2014a).

In arbitration proceedings, there is often only one instance, which can speed up the proceedings. In handball and in most other sports in Germany, it is possible for the Court of Arbitration for Sport to review the judgement of the German Arbitration Court in an appeal (§ 48 Paragraph 2 of the Statutes of the DHB). In spite of this, arbitration proceedings usually lead to a quicker decision than state courts.

### 3.3 Proximity of the Judges

The relative speed also depends to a large extent on the arbitrator's previous knowledge of the matter in dispute.

In most cases, a state court judge must first become acquainted with the subject matter of sports law, since they know neither the sports-specific structures nor any relevant statutes. For this reason, experienced lawyers or other persons familiar with the applicable rules and regulations of the federation are usually used as arbitrators in arbitration proceedings. Due to their previous knowledge and their own experience, the arbitrators are much closer to the subject matter than state court judges (Pfister 2014a). It is therefore easier to make a proper assessment of the dispute, which does not ignore the realities of practice.

#### Freedom of Arbitral Procedure

The parties can influence the procedure of arbitration proceedings to a larger extent than in state court cases.

A great advantage is already noticeable at the beginning of the proceedings because the parties may choose the arbitrators themselves. In contrast, the state court makes a schematic allocation. Third parties may also be involved as parties in the arbitration if the other parties agree (Pfister 2014a). In state courts, only the claimant and the respondent are provided for as parties. The involvement of third parties is only possible within narrow limits.

The parties and the arbitral tribunal have more liberty in the further proceedings. For example, agreements on further procedure can be reached. Arbitral tribunals are also not bound by the rigid German procedural code and can therefore find flexible solutions for individual cases. This can range from purely written procedures to the use of video conferencing to very tight deadlines for speeding up proceedings and can encompass a variety of measures.

### **Uniformity of Case Law**

Sports decisions should be internationally uniform. This is the only way to ensure the equal treatment of athletes in court decisions. A problem arises if state courts develop different decision-making practices, or different legal systems become applicable. The international sports federations strive to enable uniform jurisdiction, and therefore, they try not to make the jurisdiction of a court of arbitration dependent on the place of residence of the athlete, the place of competition or similar, but to establish a uniform international jurisdiction. For example, the CAS, based in Lausanne (Switzerland), provides the court of arbitration during the Olympic Games (Lachmann 2008).

A German Sports Arbitration Court has existed since 1 January 2008, which is administered by the German Arbitration Institute (DIS) (German Sports Arbitration Court 2018a). The DIS has drawn up a list of lawyers connected to sports and sports law (Pfister 2014a), whereby the parties—unlike in the CAS—may also appoint other arbitrators. This German Sports Arbitration Court only has jurisdiction, however, for federations that have provided for the arbitration court in their statutes. These include, among others, the German Speed Skating Association (DESG), the German Basketball Federation (DBB) and the German Tennis Federation (DTB); but not the German Handball Federation (DHB).

Jurisdiction can also be duly given to an arbitration clause, where the advantages of these administered arbitration proceedings are to be used for a variety of disputes. This also includes contractual or commercial disputes (e.g. sponsoring contracts), corporate disputes (e.g. granting or withdrawing licences or rights of participation) or disputes arising under association or federation statutes (e.g. disciplinary disputes, in particular violations of anti-doping regulations).

### **Increased Confidentiality**

State court hearings are generally open to the public. This means that anyone can attend the court hearing as an observer. In contrast, arbitration proceedings do not have to be public, and nor does the arbitral award have to be published. If the award is not published, however, it may appear as if the court of arbitration does not want to face public criticism. This also prevents a uniform decision-making practice, as precedents are not available.

It should be noted that the public is very interested in many of the decisions made by sports arbitration courts (Pfister 2014a). Many spectators follow sporting events live on location or on television, particularly in professional sports. These spectators naturally also want to be informed about offences committed by athletes and their sanctions. For these reasons, many judgments are published, for example, in the journal *Sport und Recht* (Sports and Law). Some of the judgments of the CAS are publicly available on the Internet site [www.tas-cas.org](http://www.tas-cas.org).

It is also possible that the hearing could take place via video feed, which is only possible in very exceptional cases in the state procedure.

### 3.4 Disadvantages of a Court of Arbitration

Some of the advantageous points are ambiguous as their impact can be either advantageous or disadvantageous.

#### No Legal Aid

It is possible to apply for legal aid for state courts. Legal aid can be granted if a party is not able to pay the costs of the proceedings due to their economic and personal circumstances, or if they are only able to pay them in part or in instalments. This possibility does not exist in principle in arbitration proceedings (Pfister 2014a). This can lead to the situation in which a destitute party has de facto no legal protection; however, the athlete may apply to the German Sports Arbitration Court of the DIS for legal aid in anti-doping disputes (German Sports Arbitration Court 2018b).

#### Involvement of Third Parties Only with the Consent of All Parties Involved

Third parties may be involved in the proceedings in state jurisdiction. Third parties do not become parties to the dispute, but the decision at the end of the dispute may be binding on them. The third parties are referred to as interveners, or side interveners.

In proceedings at a sport's court of arbitration, a third party may be involved in the proceedings only if all parties agree, or if the rules of procedure provide for a corresponding possibility (Pfister 2014a). If this is the case, the degree of involvement as an additional party, as an intervener or of an individually chosen mixed form, can be agreed relatively freely.

#### Few Instances

Decisions of the courts of arbitration can only be reviewed to a limited extent.

As a rule, arbitration is deliberately limited to only one instance. In doping-related matters, there are usually two instances of sports arbitration, but that is fewer than in state jurisdiction, where there are usually three instances.

State courts can only correct the awards of a court of arbitration to a very limited extent in the case of fundamental violations of the law. This is explained in detail in ►Sect. 4.3.9.

### 3.5 Arbitration Clause

It is a precondition for the jurisdiction of a court of arbitration that an arbitration agreement or clause exists (Fechner et al. 2014). An arbitration agreement is concluded in a written form between the parties, for example, all participants in the Olympic Games must commit themselves to referring any dispute to CAS (Adolphsen et al. 2012). In contrast, an arbitration clause is part of a statute. It applies to all members of the federation or association who have submitted to the statutes (Fechner et al. 2014).



### 3.6 Arbitration Procedure

The procedure of arbitral proceedings is not uniform. In principle, the parties can determine how the proceedings will be conducted; however, in sports, there are often rules of procedure, which determine the organisation and conduct of arbitration proceedings.

Also, in the case of a doping offence in handball (§ 47 statutes of the DHB, 28 October 2017):

Here, the court of arbitration is composed of three arbitrators and the chairperson at least must be qualified to hold the office of a judge, that is, be a fully qualified lawyer.

Party (A) wishing to submit a dispute to the court of arbitration shall send a registered letter to the other party (B). The facts of the case must be briefly stated in this letter, and an arbitrator must be appointed. The other party (B) then has ten days to appoint an arbitrator themselves. The two appointed arbitrators shall agree on a chairperson within ten days of the appointment of the second arbitrator. If an arbitrator is unable to act, their successor shall be chosen in the same way as their predecessor. Once the court of arbitration has been fully constituted, the actual hearing on the merits can begin.

Arbitral proceedings are regularly closed by an arbitral ruling (award) or an order (§ 1056 para. 1 Code of Civil Procedure). Unless the parties have agreed otherwise, the court of arbitration shall also decide on the costs of the proceedings (§ 1055 German Code of Civil Procedure). The arbitral award shall have the effect of a final judgment among the parties (§ 1055 German Code of Civil Procedure) and may therefore also be declared enforceable by state courts (Pfister 2014a). Of course, the parties in arbitration proceedings can also reach an amicable settlement.

### 3.7 Arbitration Decisions in Handball

In German handball, doping offences are decided by a court of arbitration under exclusion of the internal instances of the federation, as well as the ordinary jurisdiction (§ 47 para. 1 statute of the DHB).

In handball, arbitration courts are called upon not only in the case of a doping offence. The Handball Bundesliga concludes an arbitration agreement for licensing procedures with each member prior to a season.

For example, the following disputes from the Handball Bundesliga have been submitted to arbitral proceedings for decision in recent years.

#### **HSV Hamburg**

The Bundesliga club HSV Hamburg had not proven its economic ability, so the club was not granted a licence for the 2014/2015 Bundesliga season. In order to obtain a licence, HSV Hamburg took advantage of the possibility of arbitration proceedings (Frankfurter Allgemeine Zeitung 2014). The court of arbitration granted the club the licence under certain conditions. For example, it had to prove

to the Handball Bundesliga that a liquidity gap amounting to millions of euros was covered until 1 July 2014 (Spiegel 2014).

When HSV first obtained the licence, it had to file for bankruptcy. At the same time, it was discovered that the club had submitted untruthful and incomplete documents in order to obtain a licence. As a result, the club's playing licence was ultimately revoked (Frankfurter Allgemeine Zeitung 2016, Liqui Moly Handball Bundesliga 2016). The players became contract-free and were allowed to change teams immediately. The second team, which moved up to the third Bundesliga, played as the first team of HSV Hamburg in the following season.

### **HC Leipzig**

The women's Bundesliga club HC Leipzig was denied a licence for the 2017/2018 season due to debts and a failed financial restructuring concept. In order to defend itself against this, HC Leipzig appealed to the DHB arbitration court. The court decided that the women's Handball Bundesliga had to grant the licence on condition that the club's equity capital was increased by €600,000 by the 14 July 2017. All salaries outstanding until June 2017 were to be paid, but this was not linked to the granting of the licence as a condition. The club was not able to raise a further €600,000 as equity capital. Instead, an application for insolvency was filed at the Local Court of Leipzig after the deadline had expired. This meant a forced delegation to the third league for HC Leipzig (Nößler and Köster 2017).

## **3.8 Appeal Against the Decision of an Court of Arbitration**

There is usually only one instance in arbitration proceedings; however, in doping cases, where the German Sports Arbitration Court is the first instance, an appeal may be lodged to the CAS (Pfister 2014a). The DHB also recognises the CAS as an appeal instance (§ 48 para. 2 of the statutes of the DHB).

The CAS in Lausanne was founded in 1984 and is administered by the International Council of Arbitration for Sports (ICAS). During the Olympic Games, the CAS is the competent arbitration court and decides on disputes arising during the Olympic Games within 24 h. The CAS has already been recognised as a genuine court of arbitration by several state courts, such as the Federal Court in Switzerland, the Court of Appeal of New South Wales in Australia and the Federal Court of Justice in Germany. The ECHR has also recognised the CAS as a court but has stated that it had to meet the requirements of Art. 6 ECHR.

An action for revocation may be brought before the Swiss Federal Supreme Court against the decisions of the CAS. If both parties are domiciled in Switzerland, it is also possible to appeal to the cantonal court for a declaration of nullity. An appeal is also possible if the requesting party subsequently learns substantial facts or finds substantial evidence. For example, Claudia Pechstein appealed to the Swiss Federal Supreme Court in 2010, although the appeal was unsuccessful (Adolphsen et al. 2012).

### 3.9 Review by Ordinary Courts

If an agreement exists under which a genuine court of arbitration takes the place of state jurisdiction (arbitration agreement, arbitration clause), an action before a court of general jurisdiction shall be dismissed as inadmissible.

This presupposes that the respondent raises their objection to arbitration in timely order (§ 1032 (1) German Code of Civil Procedure). An arbitration clause is therefore not automatically observed by the court, but the parties are free to waive the rights and obligations arising from the arbitration clause by mutual agreement at this point in time.

State courts do not review the content of an arbitral award after arbitration proceedings. In rare cases, it may overturn the decision on the request of the losing party. This ensures, among other things, that the procedural principles, which allow the recognition of arbitration as an alternative to state proceedings, are observed. Reasons for setting an award aside include (Pfister 2014a):

- Missing or ineffective arbitration agreement;
- Arbitration proceedings on a non-arbitral object (e.g. arbitration cannot be agreed with the athlete's club for labour disputes, as arbitration is excluded in Germany for this purpose) (§ 101 para. 3 German Labour Court Law);
- Breach of the right to be heard, of the equal treatment of the parties or of any other overriding procedural requirement;
- Errors in the formation of the court of arbitration (in the case of a breach of the impartiality of an arbitrator there is no award) and
- Arbitral awards whose recognition or enforcement would violate public policy or other fundamental principles of German or European law.

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## 4 Cases

High-profile cases are also decided outside handball.

### 4.1 Dieter Baumann

The athlete Dieter Baumann tested positive for the substance Nandrolone on 19 October 1999 and on 12 November 1999 in two unannounced doping tests. The substance is a prohibited doping drug. Dieter Baumann explained that he had not taken any doping substances and could not explain the positive doping tests. On the 19<sup>th</sup> November 1999 the Anti-Doping Commission of the German Athletics Association (DLV) decided to suspend Dieter Baumann with immediate effect (OLG Frankfurt, judgement of the 18 May 2000—13W 29/00).

During a house search, a toothpaste tube was found containing the doping substance. Dieter Baumann filed a criminal complaint against unknown persons because he was of the opinion that someone wanted to harm him by doing so. Shortly thereafter, a second toothpaste tube of another brand, but with the same doping substance, was found on the 17 December 1999.

On 22 January 2000, the DLV Presidium ordered a continuation of the suspension. Dieter Baumann submitted an urgent motion to the Legal Committee of the DLV with the aim of lifting the suspension. This was rejected on 25 February 2000. In response, he applied to the Regional Court of Darmstadt for an interim injunction against the suspension; however, the Regional Court also refused to lift the suspension due to their suspicion. The Higher Regional Court Frankfurt/Main as second instance did not lift the suspension either (Higher Regional Court Frankfurt, judgement of 18 May 2000—13W 29/00). On the 30 May 2000, the public prosecutor's office declared that its investigations had remained unsuccessful.

The DLV Legal Committee acquitted Baumann on 13 July 2000. It came to the conclusion that Baumann “did not knowingly use doping, but was made to appear positive by an unknown third party on the occasion of a competition in order to shake the credibility of an uncomfortable fighter of doping”. In addition, there had been default in connection with the collection, storage and transport of the two positive urine samples. The IAAF Council considered the acquittal to be a wrong decision and initiated arbitration proceedings at the competent Arbitration Court of the Federation. On 18 September 2000, the judgement was announced; Dieter Baumann was suspended retroactively for two years. The CAS, the court of last instance in sports arbitration, also regarded the suspension as lawful.

Dieter Baumann filed a lawsuit against the IAAF for damages, as well as, in a further proceeding, for a national starting permit to be granted in German state courts. In the appeal hearing on 18 April 2001, the Higher Regional Court of Frankfurt/Main rejected Baumann's application for the granting of a national starting permit. He did not receive the right to start competing again until 5 December 2001 from a commission of the IAAF Council. In April 2002, the District Court dismissed the claim for damages (Dreis 2002).

## 4.2 Claudia Pechstein

Claudia Pechstein was subjected to a blood doping test on 7 February 2009 at the World Speed Skating Championships in Hamar, Norway. The blood samples showed increased reticulocyte values. The International Skating Union (ISU) attributed this to illegal doping. The ISU relied on indirect evidence because it considered fluctuating blood levels to be an indication of doping. Later, international haematologists proved that Pechstein's reticulocyte values were due to an inherited anomaly. Due to the increased reticulocyte values, Claudia Pechstein was suspended retroactively from 7 February 2009 for two years by the decision of the ISU Disciplinary Commission on 1 July 2009, her competition results of the 7 February 2009 were cancelled, and the points, prizes and medals were withdrawn.

The German Speed Skating Association (DESG) informed her in writing on the 19 July 2009 that due to the suspension, she was also excluded from training measures and her status as a member of the squad of the Olympic Winter Games 2010 was suspended.

The DESG and Claudia Pechstein appealed to the CAS. The CAS rejected the appeal, although the beginning of the ban was postponed to the 8 February 2009.

Claudia Pechstein filed an appeal against the award with the Swiss Federal Supreme Court; however, the appeal was rejected by a judgment on 10 February 2010. An appeal lodged by Claudia Pechstein was also rejected by the Swiss Federal Supreme Court on 28 September 2010. On 11 November 2010, she brought an action before the European Court of Human Rights against Switzerland (Pechstein v. Switzerland (No. 67474/10), Duve and Rösch 2014). The Court recognised the possible dependence of the arbitrators on the associations, however, without specific indications, a bias could not be assumed. The CAS's refusal of oral proceedings alone was unlawful, and Pechstein was awarded compensation in the amount of €8000.

In addition to her efforts to legally challenge the original ban, Pechstein brought an action before the Regional Court of Munich seeking a declaratory judgment that the doping ban was unlawful and seeking payment of damages and compensation for pain and suffering. Although the Regional Court regarded the arbitration clause as ineffective due to the lack of voluntary submission, it dismissed the action in a judgment dated on the 26 February 2014. A decision by the court on the question of whether the ban on doping was unlawful was precluded by the legal force of the CAS's decision.

Claudia Pechstein appealed against the dismissal to the Higher Regional Court of Munich. On 15 January 2015, the Munich Higher Regional Court decided that the appeal regarding damages and damages for pain and suffering was admissible. The Higher Regional Court, however, also considered the arbitration clause to be invalid, as it violated mandatory antitrust law. According to the provisions of the German Act Against Restraints of Competition (GWB), dominant companies are prohibited from demanding terms and conditions of businesses that deviate from those that would most probably result from effective competition. However, the appeal regarding the determination of the illegality of the imposed doping ban was dismissed. Although the CAS's award was denied recognition on the grounds of a violation of German public policy (*ordre public*), the court did not make a more far-reaching decision on the merits of the case, as it intended to wait for a ruling by the Federal Court of Justice (BGH) first.

The ISU now appealed to the German Federal Court of Justice. The BGH rejected Claudia Pechstein's entire appeal on the grounds that the arbitration agreement was effective because the CAS was a genuine court of arbitration within the meaning of the German Code of Civil Procedure. The arbitration agreement would completely exclude ordinary jurisdiction. The action before the Regional Court of Munich was therefore inadmissible (BGH, judgment of 7 June 2016, file no.: KZR 6/15; LG Munich I in SchiedsVZ 2014, 100). Claudia Pechstein has lodged a constitutional complaint against the ruling of the Federal Court of Justice

because she is of the opinion that the ruling violates her fundamental rights of justice, freedom to choose an occupation and the right to a statutory judge (Krämer 2016). A decision of the Federal Constitutional Court (BVerfG) is still pending (as of July 2019). Based on to the decision of the European Court of Human Rights, a successful constitutional complaint would be a surprise.

### 4.3 Katrin Krabbe

In 1992, a doping test showed that the former German sprinter Katrin Krabbe had taken Clenbuterol. Although this drug was not on the doping list at the time, the DLV Legal Committee suspended her for 12 months due to an unfair and unsportsmanlike use of medication with the sole aim of improving her performance. The International Association of Athletics Federations (IAAF) also imposed a two-year ban, which meant that Katrin Krabbe was banned for a total of three years. She filed a lawsuit with the Regional Court of Munich I. She requested a finding that the suspensions were illegal, as well as damages (Nolte 2012; Spiegel 2001).

On 17 May 1995, the Regional Court of Munich I ruled that the additional two-year suspension of the IAAF was invalid and that the sprinter was entitled to a claim for damages in an amount not yet quantifiable (judgment of the Regional Court of Munich I 7 Chamber for Commercial Matters of the 17 May 1995—7 HKO 16,591/94).

The Munich Higher Regional Court confirmed this judgment by arguing that a three-year suspension in total constituted a particularly intense interference with the athlete's freedom to choose an occupation, since a sprinter could only exercise this occupation for a short period of time (Nolte 2012, judgment of the Munich Higher Regional Court of 28 March 1996—U (K) 3424/95).

In its judgement of the 27 June 2001, the Regional Court of Munich I awarded the sprinter a claim for damages against the IAAF for lost profits (judgement of the District Court of Munich I 7th Chamber for Commercial Matters of the 27 June 2001—7 HKO 16,591/94, Spiegel 2001). The IAAF appealed against this. During the appeal, the parties reached a settlement (Frankfurter Allgemeine Zeitung 2002). Since the damages were lost profits, Katrin Krabbe would have had to pay tax on them; however, she failed to do so and was therefore sentenced to a fine for tax evasion in 2008 (Schweriner Volkszeitung 2009).

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#### Comprehension Questions

Why may sports associations and federations have their own jurisdiction in addition to the state courts?

Which requirements must genuine courts of arbitration fulfil in accordance with the Code of Civil Procedure?

What are the advantages and disadvantages of arbitration proceedings?

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# Strategic Management of Team Sports Organisations

Stefan Walzel

## Abstract

After a brief introduction to the relevance of strategic management for team sports organisations and the presentation of some particularly relevant features of sports, a distinction is made between an individual and an organisational perspective. The individual phases of the organisational strategic management process, as well as related tasks and success factors, are presented. Finally, key features of change management are introduced, which are useful for the successful implementation of a strategy in team sports organisations.

## Learning Outcomes of the Chapter

1. You will understand the importance and benefits of strategically oriented management for the success of team sports organisations.
2. You will be introduced to different analytical approaches to team sports organisations and their environment.
3. You will know the tasks associated with each phase of the strategic management process and the success factors in each phase.
4. You will learn the importance of change management in the context of strategic management, and which factors play a crucial role here.

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## 1 Introduction

*Strategy* has existed as a term since antiquity and comes from the military. It is based on the fundamental principle that different options for action are to be weighed against one another in order to achieve a (military) objective. The most promising alternative is ultimately chosen, taking into account the available information and framework conditions. If this is applied to the strategic management of team sports organisations, it is essentially a question of dealing with the different ways and options with which the objectives can be achieved, based on the internal and external framework conditions of a team sports organisation and previously defined objectives. The chosen strategy forms a goal-oriented framework for the successful implementation of measures to achieve the goals.

Team sports organisations—irrespective of their legal status and whether they are associations or league organisations—are confronted with a multitude of different challenges, which are often mutually dependent and also occur simultaneously in time (Wilson and Anagnostopoulos 2017). This expresses itself, among other ways, in different objectives (sporting success, securing liquidity, building a strong brand, extending the youth academy, demonstrating social responsibility, etc.) or in the number and heterogeneity of the stakeholder of team sports organisations, which have different and sometimes contradictory interests. All these elements increase the complexity of the tasks to be accomplished and at the same time make it clear that only a strategically well thought-out approach promises success (Hoye et al. 2012). Any other approach would be random and characterised by a lower probability of success. A strategic approach, or the existence of a strategy, increases the chances for the team sports organisation to (also) be successful in the future and in the long term.

In view of the high dynamics and fast pace of sports, there are always voices claiming that systematic, strategic management is impossible in the industry today (Hoye et al. 2012). However, the two factors (dynamics and fast pace) can be much better used as arguments for a strategic management approach. Rather than responding reactively to the issues—often under tight deadlines (and often financial restrictions)—sports managers with a strategic orientation are more likely to successfully manage the team sports organisation they work for in a proactive way. This requires, among other things, a good knowledge of the specific features of the sports market, the institutions of sports and the supply of, and demand for, sports (see also ► Chap. 1). This can be demonstrated by the different types of goods, as well as the different and interdependent sectors.

Sports can be characterised as public, merit, private or club goods based on its purpose and use. On the one hand, winning the 2016 Men's European Championship in Poland by the German national handball team is a public good, because no German can be excluded from enjoying the title and being proud of their country. Such sporting successes and their effects (including sports participation, national pride) are important arguments in favour of public sports funding. It is therefore partly a management task to ensure that the positive effects of sporting

success are produced as a public good and ideally maximised. Only when the manager of a team sports organisation is aware that the state considers the sports a public good, can they go further—under the objective of more or constant state sports funding for handball—even long before the onset of sporting success, to take measures to create positive effects (e.g. public victory celebration for the fans, free access to TV broadcasting and creating conditions for sporting success in the future).

At the same time, however, sporting success is also in a way a private good, because the directly involved sports actors (especially players and coaches) can increase their income and this title puts the German Handball Federation (DHB) in a position to increase its marketing revenues. Other athletes (volleyball players, basketball players, track and field athletes, etc.), as well as other team sports organisations (German Football Association, German Ice Hockey League, etc.) will not benefit from this or might even be affected negatively (e.g. by shifts in sponsor budgets in favour of handball). Another task for strategic management (from the point of view of the DHB), for example, is to carefully decide on sports sponsorship (with respect to contract terms, premiums for sporting success, time for contract negotiations, etc.).

The three sectors in sports are also closely connected with the different types of goods: the non-profit sector with its many non-profit organisations (clubs, federations, foundations), professional sports as a private sector (mostly in the form of for-profit organisations (clubs, marketing agencies, media)) and the public sector with its various state organisations (Hoye et al. 2012). Clubs, leagues, associations, federations, agencies, sponsors, media and the state pursue different interests and are subject to different logics of action and decision-making. It is the task of strategic management to consider these in the sense of achieving the team sports organisation's own goals, if necessary to coordinate them, to identify synergies and proactively address potential problems and conflicts.

The purpose of this paper is to provide an overview of strategic sports management, especially for team sports organisations, and to clarify their relevance for the successful leadership of team sports organisations. To this end, the basic concepts and correlations of strategic management are first presented (► Sect. 2). The strategic management process and its application to team sports organisations are described (► Sect. 3). The chapter will also offer an insight into change management (► Sect. 4). After all, strategic decision-making processes are often associated with changes for an organisation and its stakeholders, which must be successfully implemented. Finally, the most important findings are summarised.

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## 2 Strategic Management Decisions in Team Sports

Strategic management differs from operational management primarily in its holistic approach to the organisation (structure, products/services, processes, procedures, etc.) and the surrounding environment. Strategic management is therefore

understood both as a way of thinking and as a process (Hoye et al. 2012). While the latter refers primarily to the organisation, and is discussed in more detail in ► Sect. 3 strategic management as a mindset focuses primarily on individuals and their perspectives, and approaches to decision-making. Strategic decisions are distinguished by the following characteristics:

1. There is a clear understanding of the organisation's business (in terms of products, businesses, markets, etc.) and its environment.
2. There is clarity about how the organisation wants to compete successfully with other players in the marketplace.
3. There is a clear understanding of how to make recurring decisions and how to make efficient use of resources (Hoye et al. 2012).

Strategic management as a mindset is approached from a *helicopter perspective* by looking holistically at the organisation, with the central goal of how the organisation can differentiate itself from its competitors, ideally in the sense that a sustainable competitive advantage is generated and cannot be imitated or copied by a third party. The prerequisite for this is a good understanding of the organisation and its environment, as well as the consequences of decisions (Johnson et al. 2008). Above all, this strategic thinking should lead to:

1. Reducing the risk of wrong decision-making,
2. Creating scopes of action in order to avoid time and material constraints,
3. Reducing complexity by stabilising behaviours and expectations and
4. Integrating individual decisions into a comprehensive overall concept, taking into account the given action interdependencies (Daumann and Römmelt 2015; Kreikebaum et al. 2018).

Considering the available resources and the defined objectives, it is important to develop a strategy from the possible options for action in order to achieve the objectives in the best possible way. A strategy is a medium- to long-term (flexible) orientation framework for future action. In this sense, strategies are the link between objectives and operational decisions (measures). Objectives are therefore the normative reference point. Measures are developed to transform strategic policy (directional) decisions into concrete actions (Backhaus and Schneider 2009). A strategy is not to be regarded as a rigid framework, however, but rather provides a basic framework for orientation, which must be adapted to changing conditions.

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### 3 Strategic Management Process

As highlighted earlier, strategic management involves thinking at the individual level as well as being a process at the organisational level. The latter is the focus of interest below.

Strategic management includes strategy and planning and ultimately unites both in a common process. Strategy involves understanding the direction and scope of team sports organisation activities, taking into account the ability of an organisation and its environment, whereas planning involves documenting each decision on what, by whom, with the use of which resources and when action is to be taken. The strategy is the result of an analysis process to ensure the long-term success of a team sports organisation. Planning builds on the defined strategy and determines the necessary measures and activities in order to successfully implement the strategy (Hoye et al. 2012).

### 3.1 Analysis

The aim of the analysis phase is to make a systematic and objective assessment of the current and future situation. Here again, a distinction is made between internal analysis, which considers the capacities, potentials and deficits within the respective team sports organisation, and an external analysis, in which the environment of the team sports organisation is analysed in more detail. The results of the analysis phase are of fundamental importance, since they are the basis for further planning and decisions. Insufficient time for analysis, a lack of, or missing, important information and misjudgements in the evaluation of information are common causes of the failure of strategies.

The literature offers a number of methods and approaches to situation analysis. Among the most important are (1) PESTEL analysis, (2) stakeholder and customer needs analysis, (3) competitive analysis, (4) Porter's Five Forces analysis and (5) SWOT analysis.

#### **PESTEL Analysis**

PESTEL analysis provides a structured and extended approach to the external environmental analysis of a team sports organisation. PESTEL is an acronym for the (1) political, (2) economical, (3) sociocultural, (4) technological, (5) ecological and (6) legal factors of the environmental analysis of a team sports organisation. In the context of political and environmental factors, it is primarily about an analysis of political stability in the acting countries and regions, possible trade restrictions, the security situation and the subsidy policy. Possible criteria for the analysis of economic factors are aspects such as general economic growth, the economic situation, interest rates, currency exchange rates, employment and other similar factors. Values, norms, lifestyles, population growth and income distribution are used to analyse the sociocultural environment of a team sports organisation. Technological factors include, among others, research expenditure, product life cycles and the ability to innovate. The analysis of ecological factors is increasingly important, which include, for example, waste disposal, effects on global warming and emission regulations. Finally, the legal situation, including legislation, tax guidelines, competition regulations, and so on, will be analysed. A PESTEL analysis is a comprehensive analysis of the environmental conditions of a team sports organisation

and provides information on the possible opportunities and risks in each market in which it operates (Lynch 2006).

### **Stakeholder and Customer Needs Analysis**

A clear understanding of the importance of each stakeholder to the team sports organisation, and their desires and needs, is another prerequisite for successful strategy development. Stakeholders can be any person, group of people or organisation that has an interest in the team sports organisation. In the broadest sense, this includes employees, players, coaches, sponsors, the media, patrons, shareholders, fans and so on. The wishes and needs of the individual stakeholders can sometimes be in conflict, and it is therefore important to determine exactly what significance the individual stakeholders have and the wishes and needs of stakeholders that are seen as a priority (Hoye et al. 2012). Member and audience surveys, and interviews with other stakeholder groups, are widely used methods to uncover needs and expectations. In practice, it has also proven useful to involve individual representatives of stakeholder groups in the process of strategy development.

### **Competitive Analysis**

Equally important as analysing the needs of their own stakeholders and customers is the analysis of the competitive environment of the relevant team sports organisation. Here, it is important to identify competitors in their own sports but also in other sports and in other areas of society, such as music or art, in the immediate and wider environment. Hoye et al. (2012) suggest analysing the following eight dimensions for each individual competitor: (1) geographic scope (origin and overlap), (2) intentions and vision, (3) objectives, (4) market share and position, (5) strategic direction, (6) resource allocation, (7) target markets and (8) marketing approach. An assessment should be made on this basis as to how far the identified competitors represent opportunities or risks for achieving the team sports organisation's own objectives.

### **Porter's Five Forces Analysis**

An extension of competitive analysis is Porter's (1980) developed industry structure analysis, using five forces. The fundamental approach here is that the market's attractiveness is determined by its market structure. The market structure can be characterised, according to Porter (1980), by the following five criteria. Basically, the stronger the individual forces, the less attractive the market entry, and the more difficult it is to achieve a sustainable competitive advantage.

1. *Entry of new competitors into the market:* In closed team sports leagues, the entry of new competitors into the market is much more difficult, and thus, the barriers to entry are much higher than in open team sports leagues where the entry and exit of new competitors are the rule. In addition to the sporting qualification criteria, many other team sports leagues also have to meet financial, technical and organisational requirements (usually within the framework of a licensing procedure). Entry into a closed league system is thus fundamentally more difficult than in open team sports leagues. However, if a team sports

organisation is already part of a closed league gaming operation, this generally increases the attractiveness. Due to the monopolistic character of many sports federations and leagues, the establishment of alternative leagues and sports venues is also much more difficult, but from a sports economics point of view, this also has advantages (see ► Chap. 1).

2. *Bargaining power of suppliers*: Compared to other sectors, the resources for team sports organisations are not found in fossil resources, such as in the chemical or steel industry, but rather in the form of sports facilities for training and competition or well-trained players, coaches and managers. If individual suppliers have a particular bargaining power, this can significantly influence the strategic orientation. For example, only a few team sports organisations have their own match day venue and in some cases share this with other users. This sometimes creates considerable problems in securing the venue for home matches. For example, the handball players of the Rhein-Neckar Löwen often had to play their home matches in Frankfurt am Main or St. Leon-Rot. Sports federations and league organisations also have a special bargaining power due to their monopoly position.
3. *Bargaining power of customers*: In addition to spectators, the sponsors and the media receive special attention. Dependencies on individual sponsors or the dominance of a single sponsor can often be observed in team sports organisations. This is problematic in two respects: there is a risk that sponsors, due to their bargaining power, will interfere with the operational decisions of the team sports organisations and may threaten to disqualify them if they are not taken into account. On the other hand, a possible non-contract extension—for whatever reason—could bring existential problems for the team sports organisation. The media are also a significant customer group for team sports organisations, as the sale of media rights and the resulting revenues and the associated media coverage for the sponsors are important success factors. The number of potential media customers with appropriate willingness to pay is much less than the number of providers who would like to see their sports competitions broadcast as regularly and as extensively as possible on TV. This results in a certain bargaining power for the free and pay-TV channels.
4. *Danger from substitutes*: Another threat arises from possible substitutes that could replace all or part of the corresponding product or service. Here, for example, e-sports should be mentioned, to which young target groups are attracted above all and increasingly visit or follow on the screen more e-sports events. Taking into account their limited time and monetary resources, there is a risk that younger audiences will attend and pay for e-sports competition instead of attending a basketball, ice hockey, football, handball or volleyball match. Cultural events and other leisure activities are also potential substitutes.
5. *Rivalry among market participants*: In many other industries, high levels of competition are disadvantageous and dissuasive for new entrants, but this is not necessarily the case in sports. According to *coopetition* (see ► Chap. 1), market participants compete with one another in sports but at the same time must cooperate with one another in the sense of product creation, since a market

participant alone cannot produce a sporting competition and offer it for sale. Rivalry is therefore conducive and desirable to a certain extent in team sports, because this makes team sports competitions attractive.

### SWOT-Analysis

SWOT stands for *strengths, weaknesses, opportunities and threats*. This analysis approach combines internal (strengths and weaknesses of the team sports organisation) and external analysis (opportunities and threats). As a first step, an internal analysis of the strengths and weaknesses of the team sports organisation concerned is carried out. This relates to the organisation as a whole (e.g. organisational structure, management, stakeholder relationships) and to individual business areas (including resources, costs and revenues, product portfolio, etc.). Afterwards, the environment of the team sports organisation—the opportunities and threats—is analysed in more detail. Here again, a distinction is made between the micro and macro environment. The micro environment includes, for example, consideration of the industry structure, the stakeholders and competitors, how these relate to the team sports organisation and how the future development presents itself. Analysis of the macro environment includes general economic, political-legal, technological, social and ecological contexts and developments. Following an internal and external analysis, the results are transferred to a strategy grid (● Table 1) in order to develop appropriate strategies based on these findings. By reconciling the external opportunities and threats that cannot be influenced with the internal strengths and weaknesses that can be influenced, potential chances of success and competitive advantages can be identified, as can be seen especially in Quadrant I. The strategy of *hedging* is recommended in Quadrant II, because the internal strength(s) of external threats mean that few if any negative effects have been registered for the team sports organisation so far. Aspects identified for Quadrant III reveal development potential, which internally does not (yet) meet the requirements within the team sports organisation. This could, for example, be opportunities for digitalisation, when there is a lack of human resources with IT expertise. The results in Quadrant IV provide clear indications of a strategy for dealing with external threats combined with internal weaknesses, so the strategy recommendation here is very clear: *avoiding* (Hoye et al. 2012).

**Table 1** Strategy grid as a result of the SWOT analysis to identify competitive advantages and derive strategies

Internally (can be influenced)	Externally (cannot be influenced)	
	Opportunities	Threats
Strengths	I Strategy recommendation: <i>expanding</i>	II Strategy recommendation: <i>hedging</i>
Weaknesses	III Strategy recommendation: <i>catching up</i>	IV Strategy recommendation: <i>avoiding</i>



## 3.2 Planning

Based on the results of the analysis phase, the aim of the planning phase is to develop appropriate strategies to ensure the long-lasting existence of the team sports organisation. The associated task is characterised by a long-term perspective, uncertainties regarding the future development of the organisation and the environment and a focus on a few important aspects. The planning process initially focuses on formulating an overall strategy for the team sports organisation and can then be subdivided into strategy planning for individual business areas, such as sponsorship or ticketing and specific product–market combinations (e.g. sale of media rights in America).

Hoye et al. (2012) subdivide the planning phase further in terms of strategy direction (vision, mission, objectives) and strategy formulation (strategy options). The strategic direction is largely determined by the vision and mission, and by appropriate objectives and the definition of key performance indicators (KPIs).

The purpose of the vision is to describe what the team sports organisation will ideally look like in the future and to give the reader a visual representation of the organisation, this means to *draw* a visionary idea. At best, this vision should not be longer than a sentence and should express the ambitions the organisation has in the medium to long term. By comparison, the mission ideally provides information about the purpose of the organisation; this means answers to the central questions: (1) Why does the organisation exist? (2) What services does it offer and (3) for whom? The mission statement should be short and precise and clearly demonstrate the intentions and responsibilities of the team sports organisation (see also Example below).

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### Example

The SV Fortuna '50 Neubrandenburg is a semi-professional sports club in the north east of Germany, which is, in addition to other amateur sports offerings, especially dedicated to handball. The club has not developed steadily in the last 20 years due to a lack of strategic orientation, among other things, and there have been many ups and downs, such as the rise of the 2nd Women's Bundesliga, 3rd Men's Bundesliga, and the youth national team players, but also major problems with talent identification and development, and major financial difficulties. As part of its strategic direction and in the context of strategic brand management, the club came to the following conclusions, which can serve as an example and orientation for other team sports organisations.

Vision:

On the basis of an authentic and sustainable working approach, the members of the SV Fortuna '50 Neubrandenburg inspire non-members, partners and friends of the sports club and a fair social coexistence, in order to permanently be the most successful sports team in Neubrandenburg.

**Mission:**

Inspiring people, the social tasks of a sports club and living the ideals of sports is our daily drive at SV Fortuna '50 Neubrandenburg.

**Objectives:**

1. Together with our fans, partners, sponsors and supporters, we want to permanently establish handball as the number one spectator sports in Neubrandenburg.
2. Our aim is to be the most successful handball club in Mecklenburg-Western Pomerania by 2015, both in female and male youth teams.
3. Our goal is to increase volunteer involvement in the club and to raise the voluntary engagement rate among members from 7% (2013) to 15% by the end of 2020.

**Guiding Principle:**

We, as SV Fortuna '50 Neubrandenburg, see ourselves as a modern sports club for the entire family, which is proud of its tradition and feels committed to sustainable development. Together with our fans, partners and friends, we also take on social responsibility outside the sports for members and non-members in the Neubrandenburg region.

**Guidelines/Brand Attributes:**

*Modern:* As members of the SV Fortuna '50 Neubrandenburg, we stand for a contemporary sports club, which faces the current challenges of dynamically changing environmental conditions and develops creative and innovative solutions, together with partners and friends of the club.

*Familiar:* We, the members of the SV Fortuna '50 Neubrandenburg, see ourselves as a large family, in which people regardless of age, gender, ancestry, race, origin and religion are warmly welcomed to participate in or experience sports together in a fair and respectful way.

*Rich in tradition:* As members of the SV Fortuna '50 Neubrandenburg, we are proud of our history and rich tradition. This is an incentive and an obligation at the same time, to achieve sporting success in the future under fair conditions and thereby help the club to achieve honour and recognition.

*Sustainable:* We, the members of SV Fortuna '50 Neubrandenburg, feel especially committed to future generations and align our actions holistically with sustainable development, ecologically, economically and socially. This applies equally to sports and outside of sports.

*Social:* As members of SV Fortuna '50 Neubrandenburg, we not only take responsibility for our own actions but also engage ourselves for other members and non-members altruistically, both inside and outside the sports club.

Based on the central brand image attributes, the following claim was developed: "One family. My happiness!"

After formulating the vision and mission of a team sports organisation, the next task is to subordinate them to organisational objectives that should be visionary but also realistic and achievable. These objectives can be seen as intermediate stages on the way to achieving the vision. An objective should be formulated for each of the most important operational fields of activity, for example, an objective regarding the sporting performance of the top team in the club, a central objective for the youth academy and so on. Further operative business areas for the objective formulation may include finance, marketing, ticketing, sponsorship or infrastructure. Inseparably linked to the objectives is the definition of key performance indicators (KPIs). These define the criteria used to measure the achievement of objectives and when a goal can be achieved (Hoye et al. 2012). Team sports organisations in particular often come up against conflicts between sporting and economic objectives. There is agreement that sporting and economic success are mutually causative. An initially given (partial) objective harmony can be transformed into (partial) objective competition by overinvestment (in the sporting field). These conflicts of objectives are sometimes life-threatening for team sports organisations, as sporting success is difficult to predict and depends on a number of factors that cannot be influenced (injuries, strength of other teams, etc.). Economic success is often (unfortunately) considered a side effect of sporting success, according to the motto: *Maximising sporting success while avoiding insolvency*.

The second part of strategic planning includes the strategy selection. In principle, an organisation has several strategy options available to achieve their vision and the associated objectives. Among the best known are the price leader, quality leader, time leader and differentiation strategies. The aim of the price leader strategy is to be perceived by the consumer subjectively as the cheapest or most expensive provider, or as acceptable or unacceptable. An organisation can be considered a quality leader if it succeeds in connecting the product or service with a certain quality dimension, such as Miele products. The time leader strategy can be characterised firstly by the fact that the consumer has less time to spend on the value-for-money, and secondly because the supplier provides certain offers and solutions faster than the competitors, such as mobile phone tickets. The fourth fundamental strategy option (differentiation strategy) is based primarily on brand image, whereby buyers, despite comparable product qualities, rely on a particular supplier (e.g. Apple). The fifth strategy option is a hybrid strategy, which does not focus on a single dimension, but aims to achieve a balance between multiple dimensions (e.g. price and time, quality and price, price, time and quality) (Hoye et al. 2012).

### 3.3 Implementation

Based on strategy formulation and the strategy choice, the chosen strategy must now be implemented in relation to the products, services and activities of a team sports organisation. This means making tactical and operational decisions in all areas so that they contribute to the achievement of the organisational strategy. This

often includes decisions to allocate resources within the organisation, changes in organisational structure, how services are produced and sold, and/or changes in organisational culture or leadership. According to Thompson and Strickland (1998), the implementation of a strategy comprises the following tasks:

1. Design of an appropriate organisational structure,
2. Allocation of resources and budgeting,
3. Creating strategy support instructions and policies,
4. Ensuring processes that enable continuous change,
5. Establishment of supporting communication and information systems,
6. Development of an incentive and reward system,
7. Building a supportive organisational culture,
8. Development of leadership competence that promotes strategy implementation.

These eight areas of responsibility can be further differentiated into subject-related and behaviour-related tasks. The former serves to implement the strategy and the latter to enforce it. The following success factors have been identified for the implementation of a corresponding strategy: (1) organisational structure, (2) organisational culture, (3) management system and (4) personnel and executives (Welge et al. 2017). The success of a chosen strategy requires the right structures and processes in an organisation. It is therefore necessary to examine the extent to which the existing organisational structures and processes meet the requirements for the successful implementation of the strategy and may need to be adjusted. Organisational culture means the common values, norms and attitudes which decisively influence the decisions, actions and behaviour of the members of an organisation. Organisational culture is attributed a behavioural control function that determines the success or failure of a strategy implementation. In this sense, it is important to record the existing organisational culture (actual culture) and to coordinate it with the desired target culture to be derived from the strategy. The third success factor is the management system. The main aim here is to develop a fine-tuned incentive system in line with the strategy, which acts as a steering and motivating function for the behaviour of persons involved in the team sports organisation. In addition to physical (financial and/or non-financial) incentives, consideration should also be given to intangible incentives (such as home office, freedom of design, responsibility), which are often underestimated. The challenge of the *right* incentive is illustrated by the Example below, of the *cobra effect*.

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### Example

#### The Cobra Effect

At the time of the English colonial administration, there were too many cobras in India. To master the plague, the governor offered a premium per delivered cobra head. The Indians should capture cobras. How did they react? They bred cobras to collect the premium (Siebert 2001).

The fourth factor of success (staff and managers) involves the task of examining, in quantitative and qualitative terms, whether the human resources are in line with the strategy and, if this is not the case, to undertake appropriate staffing measures (e.g. release, recruitment, education and/or training).

If it is not possible to implement strategies efficiently, then the strategic management is ineffective and is a mere *intellectual gimmick* (Welge et al. 2017). Implementation is central to the overall strategic management process, because making the right decisions for implementation is not just a matter of resources. At least in this phase, it can come to greater resistance, because unpopular decisions must be made. This often affects people, and although decisions should always be taken on their merits, affected individuals may take them personally. The design process for changes (see ► Sect. 4) is therefore extremely important.

### 3.4 Control

The final phase of the strategic management process involves monitoring and evaluation (see also ► Chap. 15). This is often a difficult undertaking for team sports organisations, as sporting success in many cases overlays other aspects of the organisation (e.g. successful sponsorship acquisition) (Hoye et al. 2012). Control involves the extent to which the defined KPIs have been achieved and also the extent to which the defined measures for the implementation of the strategy have been successfully implemented. Before premature and possibly wrong conclusions are drawn on the basis of monitoring and controlling results, it is urgently recommended that they be evaluated, both internally and externally, on the basis of selected criteria with other team sports organisations (benchmarking). An objective evaluation of the overall situation is only possible on this basis.

The traditional view of strategy control—usually in the form of a result check taking a past analysis approach—precludes strategic monitoring and control, which proactively supports the management of a team sports organisation in its successful implementation of the strategy. In this sense, strategic monitoring and control is continually providing management with relevant information, which provides proactive support in decision-making processes. It can also check the sustainability of the strategy and ideally identify possible threats early. Strategic monitoring and control is characterised by the following features: (1) simultaneous planning and control, (2) dominance of a feedforward control direction, (3) uncoupling of monitoring and planning, (4) triggering of strategic decision-making processes and (5) influencing strategic and goal-oriented behaviour (Welge et al. 2017).

#### In Summary

Strategic management process can be divided into four phases: analysis, planning, implementation and control and looks holistically at the team sports organisation. A comprehensive analysis is a prerequisite for successful strategy formulation and planning. An erroneous and/or insufficient analysis means that the probable success of the strategy to be formulated disappears from the beginning. Based on the results

of the planning phase, the necessary decisions for the successful implementation of the strategy are made in the implementation phase. The following four success factors have been identified for this phase: (1) organisational structure, (2) organisational culture, (3) management system and (4) personnel and managers (Welge et al. 2017). Control is the fourth and final phase of the strategic management process and is distinguished from traditional control approaches not by a backward, but by a forward-looking perspective. This phase is also referred to as strategic monitoring and control.

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## 4 Change Management in Team Sports Organisations

The successful implementation of strategies, especially when it comes to strategic directional changes in an organisation, depends significantly on how the members of the organisation accept them and are prepared to implement them. One of the tasks of strategic management is therefore to think from the outset about how strategies can be implemented with the intended success. The design of change processes and the development of a positive attitude towards changes in organisations is called change management. The organisation-specific features must be taken into account in particular, for the successful implementation of changes. Sports clubs and federations are subject to different logics as business enterprises in their structures and processes and are even more dependent on the willingness and motivation of volunteers, especially in the case of voluntary leadership.

According to Lewin (1951) and Schein (1996) in terms of model theory, change management in organisations can be described as a three-stage process. In the first stage (*unfreeze*), the rigidity is removed, that is, structures, processes, goals and so on are critically scrutinised and put to the test. This stage is about arousing the motivation for change. This is necessary from time to time in the face of a very dynamic environment, which requires constant adjustment and change. To make matters worse, there is the complexity of social, economic, technological and political factors in which sports organisations are located, and these factors are also constantly changing. Compared to business enterprises, sports organisations are influenced by a greater number and heterogeneity of stakeholders, so changes in the stakeholders (such as ownership changes to the main sponsor) can have far-reaching consequences for a team sports organisation. It is undisputed that reactions to change and the management of change processes are important for the long-term success of team sports organisations. A positive culture of change and adaptation in an organisation is therefore of particular importance. The second stage (*change*) is about implementing the necessary changes, which is the core of change management. The third and last stage (*refreeze*) involves the stabilisation of the changes, before, after an indefinite period, a period of critical reflection (*unfreeze*) follows, and the process is run through again (McGraw et al. 2012).

As already mentioned, strategic decisions can lead to uncertainties regarding the consequences that result and thus create resistance and demotivation for persons acting in a sports organisation, which hinders the successful implementation of a strategy. In order to proactively address potential resistance to change, it is important to empathise with the situation of the individuals concerned and to ask about the changes for the individuals concerned, such as: how are the roles and/or positions of actors in the organisation challenged with the changes? What new tasks are assigned to the persons concerned and do they have the necessary competencies? To what extent are there shifts in power and decision-making powers? These similar questions could raise concern and, depending on the answers to the questions, lead to resistance. McGraw et al. (2012) suggest developing a change plan that clearly and unambiguously explains why changes are necessary, and how these changes affect groups of people or individuals in the organisation. This task is primarily reserved for the management team, and therefore, change management is also regarded as a top-down management process. The following eight steps are recommended for proactive resistance management (Kotter 1996; Kotter and Cohen 2002; McGraw et al. 2012):

1. Develop sensitivity to necessity,
2. Establish a strong leadership group,
3. Develop a vision,
4. Communicate the vision (understandably),
5. Allow others to act based on the vision,
6. Plan and develop short-term successes,
7. Maintain focus and momentum,
8. Institutionalise new approaches.

In summary, change management is a demanding task for the top management of an organisation, and its success is not automatic. The dynamic world of sport requires continual change in team sports organisations. Being open to change is a fundamental requirement for long-term success, but the management of change is often underestimated, and the consequences of a failed change process can be catastrophic for the team sports organisation. Good and proactive change management can help team sports organisations better leverage opportunities for the future development of the organisation and reduce risk and impact. Five aspects of organisational change are seen as important for success: (1) motivate the actors in the team sports organisation to change, to be willing to accept changes and proactively confront possible resistance; (2) create a common vision; (3) develop a supportive base; (4) successfully manage the transition from the known to the new and secure the commitment of employees and stakeholders and (5) secure change through support, incentive systems and recognition (McGraw et al. 2012; Waddell et al. 2000).

## 5 Conclusion

A strategic approach is essential for the long-term success of a team sports organisation. At the individual level, strategic management means that decisions are strategically thought out and therefore characterised by a certain way of thinking. At an organisational level, strategic management means looking at the team sports organisation from a holistic perspective and increasing the chances of success in a systematic process. This process can be divided into the four phases: analysis, planning, implementation and control, each of which involves specific tasks. In sum, they aim to ensure the success of a team sports organisation despite a dynamically changing environment. The implementation of the strategy is of particular importance in order for strategic management not to remain an *intellectual gimmick*. Resistance must be expected, at least in this phase, which can have a lasting effect on the overall success of the organisation. Proactively managing change that involves all levels of a team sports organisation is therefore indispensable.

### Comprehension Questions

1. Which two perspectives of strategic management can be distinguished?
2. Which tasks arise in the individual phases of the strategic management process, and which success factors exist in them?
3. What is meant by the term “change management”, and which five aspects are considered relevant for change management in team sports organisations?

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# Labour Law in Sports

Thomas Schulz

## Abstract

This chapter is a compact introduction to labour law in sports. It shows the effects that labour law has in the world of sports. In particular, it describes the characteristics of employees and the resulting legal consequences. The specifics of labour law in sports as regards the athletes themselves and the clubs are presented. These relate, among other things, to employment claims, limitation of the terms of employment contracts and contractual penalties.

## Learning Outcomes of the Chapter

1. You will be able to identify the characteristics of employee characteristics.
2. You will understand the conditions under which athletes are entitled to employment.
3. You will learn the extent to which employment contracts in sports can be limited in time.
4. You will know what kind of sanctions a club can impose on its players.

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## 1 Introduction

Labour law and sports inevitably belong together; so that the term sports labour law is also often used.<sup>1</sup> Just as in the normal working world, a large number of employment contracts are concluded, here between clubs and players, and especially in professional sports. Employment contracts between office employees and supervisors of teams and clubs, whose remuneration is significantly lower than that of the professional players, can also be compared. The number of legal disputes between clubs and players, however, is lower than those in the normal world of work. When legal disputes arise in this area, they arouse high levels of interest—and not only among the legal public. The following sections therefore highlight issues that are particularly important from the point of view of labour law, as regards the relationship between clubs and players. The question naturally arises as whether a highly paid professional sportsperson actually has the same need for protection as a normal employee. This fundamental question gives rise to further questions of labour law, which are clarified in the following.

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## 2 Employee Characteristics in Team Sports

The question of employee status in sports remains the subject of many court proceedings. When considering occupational health and safety law as a whole, it is important not to dismiss the question of whether an athlete should be seen as an employee or a self-employed individual. In defining an employee, the legislator recently followed the criteria of the Federal Labour Court (Federal Labour Court, judgement of 11th August 2015, Case No. 9 AZR 98/14), which was developed under settled case law, to determine the status of an employee, and issued this as a legal definition in § 611a BGB.<sup>2</sup> According to § 611a Abs. 1 German Civil Code (BGB), therefore, an employee is a person who is obligated by their employment contract in the service of another to the achievement of instruction-bound, heteronomous work, in personal dependence. The right to issue instructions may involve the content, execution, time and place of the activity. Those who are not essentially free to organise their activities and determine their working hours are bound by instructions. The degree of personal dependency also depends on the nature of the activity in question. An overall view of all circumstances must be taken in order to determine whether an employment relationship exists. If the actual execution of the contractual relationship shows that it is an employment relationship, the designation in the contract is irrelevant. According to § 611a para. 2 BGB, there is also a need for remuneration for the activity.

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. As there are different, country-specific legal regulations, there may be deviations elsewhere.

<sup>2</sup>Inserted on 1st April 2017 by art. 2 of the law of 21st February 2017 (BGBl. I p. 258).

In contrast, according to § 84 (1) sentence 2 of the German Commercial Code (HGB), those who are essentially free to develop their activity and determine their working hours themselves are self-employed.

These characteristics must thus be applied to persons in the field of sports, taking into account all circumstances, including the nature of the activity. Many people are involved in team sports, so that a closer look at the involved parties will be taken in the following.

## 2.1 Team Athletes

According to the criteria of § 611a Abs. 1 BGB, the different career stages of an athlete must be considered in a differentiated way. Leisure and amateur players are generally active without a contractual obligation. The player themselves decide whether, or the extent to which, they participate in training and game operations. Even the lack of a contractual obligation to practise the sport precludes the assumption that an employee status exists (Walker 2015).

However, it is a different matter when amateur athletes carry out their activities on the basis of a contract. These contracts can transfer various obligations to the athletes, such as the obligation to participate in training, in competitions, on courses and in training camps (Bepler 2016; Walker 2015). Similarly, the contracts often contain further instructions from the clubs that athletes should avoid certain risky sporting activities that are prone to injury in their leisure time. Further instructions in the form of compliance with the tactical specifications of the trainer or certain training tasks are also common (Walker 2016a). In return, the players receive an agreed remuneration in accordance with § 611a para. 2 BGB. It is irrelevant whether the athlete pursue their activity full-time or part-time, and whether they thereby earn their living from it (Stuttgart Higher Regional Court, judgement of 17th November 1977, Case No. 3 U 108/77). According to the legal definition in § 611 a BGB, a contract player in the amateur sector is to be assessed as an employee if they are bound by instructions and are employed by a third party for the club (Walker 2015).

Professional athletes must be assessed as employees under the above criteria. Professionals are subject to the same obligations as amateur players regarding compliance with training and match schedules. There are also numerous other instructions, such as those for sports medical examinations, performance tests, wearing certain clothes on and off the pitch, and even instructions regarding behaviour outside working hours (Walker 2016a). In return, top athletes generally receive extremely generous salaries. If one follows these arguments, the employee status of professional athletes is undoubtedly confirmed (Federal Labour Court, judgement of 19th January 2000, Case No. 5 AZR 637/98). The extremely high salaries of professional athletes mean that their employee status cannot be called into question (Schimke and Menke 2007). It is argued that such high salaries and the accompanying economic independence cause a clearly lower protection worthiness of the professionals (Walker 2016a). After the constant jurisdiction of the

German Federal Labour Court, the income level plays no role with the classification as an employee. The employee status of professional athletes is to be confirmed according to prevailing opinion without problems (Federal Labour Court, judgement of 19th January 2000, Az. 5 AZR 637/98; Wüterich and Breucker 2007, Rn. 114).

This means that even highly paid athletes can benefit from the full range of employee protection. For example, clubs as employers must apply the rules of the law on protection against dismissal if—as can be assumed—more than ten employees are employed. Clubs must also observe regulations such as those in terms of holidays, and part-time and fixed-term employment. This will be explained in more detail below.

## 2.2 Coaches

In sports, especially in team sports, the position of the coach is of paramount importance. When classifying a trainer's ability to work, several parallels can be drawn with that of the player (Walker 2015). As with the player, the coach undertakes, in the service of their employer, and with the club underwriting their contract, to work in accordance with instructions and under the control of a third party against the payment of an agreed remuneration. It is therefore undisputed that coaches in professional sports are also employees (Fritzweiler et al. 2014, III 1, marginal 69).

## 2.3 Referees

The employee status of referees in top-class sports has not yet been finally clarified. The criteria of § 611 a BGB must also be applied when classifying a referee as an employee or self-employed individual. A contract must therefore first exist between the federation and the referees. Using football as an example, the referees of the licensed leagues act on the basis of a referee framework agreement with the German Football Association (Deutscher Fußball-Bund), which also includes the payment of a fee. The designation of the contract is irrelevant according to § 611 a para. 1 sentence 6 BGB, since it is the actual execution of the contractual relationship is important. Accordingly, it is whether referees are personally dependent on the federation and whether they are integrated into the working organisation and subject to the instructions of the federation that is decisive. Some studies take the view that referees are bound by instructions in terms of time and place, as they have to perform their duties according to the time and duration of the appointments scheduled by the DFB and in the specified stadium (Köhler 2016). In contrast, case law judges that inclusion in a duty roster and the timely indication of periods of absence are necessary components of the tasks assumed (Federal Labour Court, judgement of 20th May 2009, Ref. 5 AZR 31/08). Accordingly, the temporal and local presence and duties of a referee do not represent any further instructions, but

merely result from the assumed task, its activity as a referee (Labour Court Frankfurt/Main, judgement of 14th September 2016, ref. 6 Ca 1686/16). Referees are also generally not obliged to take over refereeing matches; rather, they themselves decide in advance whether they are available to act as referee.

A technical instruction bond with regard to the content of the activity is also to be rejected (Köhler 2016). A referee is subordinate to the rules and regulations of the federation in their refereeing, but this does not yet result in a professional—labour law—obligation to give instructions (Walker 2016a). Rather, as an impartial, they are not subject to direct instructions from the federation during the match; the rules and further regulations of the federation merely serve as a legal basis for the proper performance of the services owed (Walker 2016a).

It can only be assumed that referees are bound by instructions regarding their duties under the respective refereeing rules of the federation. Possible obligations include the production of match reports, participation in courses, wearing certain clothes, maintaining their own performance and attending medical examinations; however, none of these duties leads to the exercise of their main duty to perform as an impartial party in accordance with instructions. The contractual character of their role, with regard to their main obligation to perform, thus remains undirected (Walker 2016a).

There are far more convincing arguments against the employee status of referees, as referees only act without instructions within the framework of an agency agreement (so also Hessian Labour Court, judgement of 15th March 2018—9 Sa 1399/16; Labour Court in Verden, judgement of 15th January 2019—2 Ca 227/18).

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### 3 Employment Entitlement in Professional (Team) Sports

The secondment of an athlete to a second team is common in professional sport as a business. As a rule, a player is no longer included in a coach's current squad planning or is transferred to a second team (compulsorily) in the form of a sanctioning measure. Such transfers are not legally possible without further measures being in place; however, as the players as employees have corresponding protective rights.

Employees have specific entitlements according to §§ 611a, 242 BGB, under constitutional evaluations from art. 1, 2 German Basic Constitutional Law (GG). This also provides an employment requirement for professional athletes (Menke 2006). It is undisputed that an employment entitlement for team athletes can only logically refer to their participation in training and not in matches (Federal Labour Court, Judgement of 22nd August 1984, Az. 5 AZR 539/81). The stake depends not only on the personal characteristics of the player, but also on the tactical considerations of the coach. A player's entitlement to participate in training in turn results from their contractual obligation to participate in each training session (Labour Court in Mannheim, Judgement of 28th August 2013, Az. 10 Ga 3/13). This is even the case if the employment contract does not include explicit information about the

training (Labour Court in Berlin, judgement of 26th September 2006, Az. 36 Ga 16919/06).

Other rights or obligations generally arise from the employment contract, which is subject to control by the general terms and conditions. According to § 305 para. 1 sentence 1 BGB, general terms and conditions are all contractual conditions pre-formulated for a large number of contracts, which the user provides to the other party when concluding a contract. The labour law specifics of the general terms and conditions law must be observed. Accordingly, the user, as a rule the club, does not have to refer to the general terms and conditions in the employment contract. The employer would like to regulate further contract details by the use of general terms and conditions. These clauses are subject to strict control for the protection of the employee.

According to current case law, the secondment of a professional athlete to a club's second team requires an effective secondment clause in the employment contract. Without an effective secondment clause, such a secondment is only admissible in the outermost individual case, for example where there is sufficient reason for suspension (Walker 2016a). The Labour Court in Bielefeld ruled that suspension clauses are generally not surprising in the sense of § 305 c BGB (Labour Court in Bielefeld, judgement of 16th February 2011, Ref. 6 Ga 7/11). A termination clause was also clear and determined with regard to content, so that an ineffectiveness according to § 307 para. 1 BGB is to be excluded (Labour Court in Bielefeld, judgement of 16th February 2011, ref. 6 Ga 7/11). Furthermore, the Labour Court in Bielefeld states that the said termination clauses regulate the main obligations of the parties and are therefore excluded from content control pursuant to § 307 para. 3 sentence 1 BGB (Labour Court in Bielefeld, judgement of 16th February 2011, Ref. 6 Ga 7/11). The clause still stands up to a content check; however, when the contract does not refer only to a specific league, for the purpose of the contract is then merely to employ an athlete for remuneration and this purpose is also fulfilled in the second team (Labour Court in Bielefeld, Judgement of 16th February 2011, Az. 6 Ga 7/11).

Similarly, the Labour Court in Berlin does not recognise any infringement of § 307 para. 1, 2 BGB (Labour Court in Berlin, judgement of 17th February 2014, file no. 28 Ga 2145/14) in the event of a termination clause. Rather, the circumstances accompanying the contract have to be taken into account when examining inappropriate discrimination pursuant to § 307 (1), (2) BGB, because professional athletes have many more opportunities to co-determine the submitted contract modalities than classical employees (Labour Court in Berlin, judgement of 17th February 2014, Az. 28 Ga 2145/14). Well-paid professional athletes usually have professional advisors, so that they are less in need of protection with regard to an employment clause as soon as they sign the employment contract, including the employment clause, despite their advisor (Walker 2016a).

In contrast, the Labour Court in Münster saw an unreasonable disadvantage pursuant to § 307 Para. 2 No. 2 BGB in an abandonment clause obliging a player to participate in the games and training of the second team, when the latter was in a significantly lower division. The player's employment contract was limited

exclusively to the first two divisions. The Labour Court in Münster pointed out that the right of direction under § 106 German Trade, Commerce and Industry Regulation Act (GewO) was restricted by individual contractual conditions, which led to the invalidity of the suspension clause. The transfer of a professional athlete to a second team is therefore not permissible if the player's employment contract is directed exclusively to the first team.

In summary, employment termination clauses in sports employment contracts are generally considered admissible by the courts as long as no individual agreements conflict with the employment termination clauses. The mere existence of an effective suspension clause, however, does not automatically lead to the admissibility of any transfers to lesser or separate training groups. The secondment represents an exercise of the employer's right to direct according to § 106 GewO. Such a right is subject to equitable discretion (§ 315 BGB), so that further factors are necessary for the admissibility of secondments. In summary, this means the following.

After a secondment to a second team, a player must continue to be offered comparable team-specific training by qualified coaches, which serves to maintain and further develop the player's athletic qualification (Higher Labour Court in Hamm, judgement of 28th November 2011, Az. 11 SaGa 35/113). Similarly, the jurisdiction requires that a club must also offer perspectives to the player, so that they have the opportunity to participate in a qualified competition (Labour Court in Mannheim, judgement of 28th August 2013, Az. 10 Ga 3/13). A transfer to a second training group, which serves exclusively to maintain playing skills but not qualitative competition, is therefore inadmissible (Labour Court in Mannheim, judgement of 28th August 2013, Az. 10 Ga 3/13). The actual league membership of the second team is not decisive for the admissibility of the secondment; rather, it depends on the difference in performance between the first and second team (Labour Court in Muenster, judgement of 20th August 2009, Az. 1 Ga 39/09).

It should be noted that the assignment of a professional athlete to a second team does not conflict with the athlete's right to employment as long as an effective assignment clause has been agreed and the above-mentioned general conditions apply to the second team.

Considering the events around Borussia Dortmund and the professional player Ousmane Dembelé, a contrasting view of the employment entitlement is extremely exciting. The player Dembelé had made change requests to Borussia Dortmund; however, the BVB did not initially agree on a sale of the player to the player's desired club, FC Barcelona. In order to apparently exert pressure on the negotiations, Dembelé missed a training session without a valid excuse. It should be noted that a player not only has the right to participate in training, but is also obliged to participate in the training (Ebert and Rybak 2017). Unexcused absence from team training is therefore not only uncooperative behaviour towards the players and the club, but also a breach of contract on the part of the player. Clubs may respond differently to such behaviour. A club shall not pay that player any salary for the days of absence from training or play (Boemke 2017, marginal 465). This is because the exchange ratio (performance in return) is unilaterally disturbed by the



player's absence from training and/or play. Furthermore, if a corresponding contractual penalty provision is included in the employment contract, a corresponding contractual penalty could be imposed, which could be offset against the gross salary of the player. The club may also attempt to impose a suspension in response to the player's conduct. It should be noted, however, that suspension requires a justification that the club's legitimate interests outweigh the player's interest in employment. This ultimately depends on the player's conduct in violation of the contract; however, the club would have to continue to pay the player during the suspension (Düe 2015, § 157, para. 11). In order to be able to react appropriately to such behaviour, it is advisable to include a contractual penalty provision in the employment contract.

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## **4 Fixed-Term Employment Contracts in Professional Sports**

Temporary employment contracts are an everyday reality in professional sports and did not require any further justification for decades. This changed abruptly in 2015 when Heinz Müller, the former Bundesliga keeper of 1. FSV Mainz 05, was successful in a deferment action at the Labour Court in Mainz (Labour Court in Mainz, judgement of 19th March 2015, ref. 3 Ca 1197/14). The Higher Labour Court of Rhineland-Palatinate then changed the judgement after an appeal by 1. FSV Mainz 05 and dismissed Heinz Müller's complaint (Higher Labour Court of Rhineland-Palatinate, judgement of 17th February 2016, ref. 4 Sa 202/15; confirmed by Federal Labour Court, judgement of 16th January 2018—7 AZR 312/16). The limitation of employment contracts in professional sport is therefore still an evolving topic in literature and case law.

The permissibility of fixed-term employment contracts for professional players, as for any other employee, is governed by the Part-Time and Fixed-Term Employment Act in Germany (TzBfG). The different possibilities for fixed-term employment are dealt with in more detail below.

### **4.1 Fixed Term Without Objective Reasons (§ 14 Para. 2 Sentence 1 TzBfG)**

According to § 14 para. 2 sentence 1 TzBfG, an unfounded time limit is possible up to a maximum total period of up to two years. Within this period, the time limit can be extended three times. It should be noted that time limits without a material reason are inadmissible in the presence of a so-called ready-to-pre-employee relationship pursuant to § 14 (2) sentence 2 TzBfG. Accordingly, a professional player may not have been employed by the same club within the last three years in order to guarantee an unfounded time limit (Müller-Glöge 2017, § 14 TzBfG, para. 92–100). It can already be seen from these restrictions that an unfounded time limit is

indeed applicable in professional sport, but does not regularly fit the actual circumstances of the sport. In this case, clubs generally prefer longer contract terms in order to retain talents or generate high transfer fees. The fact that in many places players and coaches are again obligated after some time makes an unfounded time limit difficult, because the player may not—as previously explained—have already been employed with the club in the last three years, in order to make an unfounded time limit possible.

## **4.2 Fixed Term with Objective Reasons (§ 14 para. 1 TzBfG)**

If a club wants to limit a player's sports employment contract to a period of more than two years, only a time limit on the grounds of facts pursuant to § 14 (1) TzBfG can be considered. In § 14 (1) sentence 1 no. 1 to no. 8, TzBfG lists various material reasons which permit fixed-term employment contracts to be concluded for more than two years. There are also further unwritten substantive reasons (Müller-Glöße 2017, § 14 TzBfG, para. 78). These must be based on the standards of value expressed in Nos. 1 to 8 (Federal Labour Court, judgement of 18th March 2015, Ref. 7 AZR 115/13). Only a few written reasons for the limitation of time limits are seriously considered for the limitation of sports employment contracts, namely the factual reasons of § 14 (1) sentence 2 no. 4 and no. 6 TzBfG (Beckmann and Beck 2015; Walker 2016a). A factual reason for the representation of another employee (§ 14 (1) sentence 2 no. 3 TzBfG) may be considered, but it is relatively rare in professional team sport and therefore does not require further consideration (Beckmann and Beck 2015).

### **Objective: Reason in the Person of the Employee (§ 14 para. 1 sentence 2 no. 6 TzBfG)**

Only a player's own and serious request to fix a time limit for the contract can be considered a personal reason. According to the case law of the Federal Labour Court, such a time limit on the grounds of fact is only permissible if the employee has not concluded the employment contract without the regulated time limit (Federal Labour Court, judgement of 19th March 2005, Az. AZR 97/04; judgement of 5th June 2002, Az. AZR 241/01). A top-class athlete who insists on a time limit to an employment contract and would then not complete this time is extremely rare. Athletes prefer logically unlimited contracts of employment, under which they enjoy high protection against dismissal, but under observance of the tidy periods of notice from the contract can separate, in order to change so approximately the club.

### **Objective: Character of the Work Performance (§ 14 para. 1 sentence 2 no. 4 TzBfG)**

A basic time limit is possible on the basis of the nature of work performance, pursuant to § 14 (1) sentence 2 no. 4 TzBfG. The Higher Labour Court in Nuremberg saw sufficient grounds for recognising the reason for a professional player's individual work performance in the need for variety on the part of the public, as well as due to age-related increases in physical deficits and dwindling

performance capacity (Higher Labour Court in Nuremberg, judgement of 28th March 2006, Case No. 7 Sa 405/05). Whether these justifications are sufficient to assume the individual character of work performance was discussed controversially in large parts of the literature (Beckmann and Beckmann 2011; Bitsch and Müller 2015; Walker 2016a).

Other reasons for a peculiarity of work performance in professional sports must be examined independent of this reason. It should be noted that professional sports is generally a closed market which it is extremely difficult for outsider to penetrate, and in which market participants submit to their own regulations. The peculiarities of professional sports compared to everyday working conditions can best be illustrated by the most popular sport, football. In professional football, it is standard practice to conclude employment contracts for a limited period of time. The national and international football system is designed to generate high transfer fees through fixed-term contracts. The abolition of fixed-term contracts would lead to unlimited contracts that athletes could terminate at any time, subject to the applicable notice periods. An athlete's intention to change would inevitably lead to the player's own termination. The clubs would have no ability to recoup investments made in training a player through their resale (Bepler 2016). Clubs are also regularly active on the international transfer market. This would result in an enormous competitive disadvantage for German clubs in the event of inadmissible time limits on the sports employment contracts (Walker 2016a). While German clubs would have to buy out players abroad for huge sums from their fixed-term contracts, their own players would be able to change without having to pay a fee (Beckmann and Beck 2015).

A further argument for the admissibility of fixed-term employment contracts in professional team sports is the prevention of a national distortion of competition. Otherwise, players could be eliminated or bought in at the end of the season (Walker 2016a). Although transfer periods under federation law could prevent a change in competition decision phases, possible own terminations would at least severely weaken the losing clubs in explosive seasons, from which the competing clubs could in turn benefit (Walker 2016a).

Another argument is that time limits are customary in the sports industry and that professional athletes cannot be regarded as particularly in need of protection due to the level of their remuneration (Walker 2016a).

In summary, none of the arguments listed can justify a time limit alone (Walker 2016b). It should be noted that the arguments presented are far more relevant in the sports world than in large parts of normal working life. The Rhineland-Palatinate Higher Labour Court concluded as a result that the points of view do not justify the particular nature of work performance in professional sports on their own, but very well in their entirety (Rhineland-Palatinate Higher Labour Court, judgement of 17th February 2016, Ref. 4 Sa 202/15; confirmed by Federal Labour Court, judgement of 16th January 2018—7 AZR 312/16).

A basic time limit for employment contracts in professional sports is thus possible pursuant to § 14 (1) sentence 2 no. 4 TzBfG, because the overall view of

actual work performance is to be considered on an individual basis. Current jurisdiction might provide relief for clubs and federations. The long-term practice of limiting sports employment contracts beyond the duration of two years, or several times, can be continued (Federal Labour Court, judgement of 16th January 2018—7 AZR 312/16). Accordingly, clubs do not have to fear any distortions in competition due to the ineffectiveness of long-term time limits and can act like international competitors when drafting contracts.

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## 5 Social Media Conflicts Between Clubs and Athletes

Conflicts have arisen in professional sports when dealing with the social media. Almost all professional clubs use social media channels to inform fans of the latest news about the team, and also to market the club themselves. The same behaviour can be observed among professional athletes, who use social media for personal snapshots, but also specifically for self-marketing. This interplay between a player's own marketing and club marketing as a whole has recently led to completely new conflicts.

The problem can best be illustrated using an example: professional handball player Z is equipped by outfitter A, while their club has an equipment contract with the sports equipment manufacturer B. Z posts a photograph on social media from the player's changing room after a game, in which they hold shoes from manufacturer A to the camera and add the brand name of A as a hash tag under the picture.

According to the usual standard employment contracts, players must comply with the duties of faithfulness and loyalty under labour law when making statements on social media. This means that there is a fundamental restriction on attracting sponsors from outside the club. Insofar as the employment contract does not refer to behaviour in social media, the professional player is obliged to take into account the legal interests and interests of their employer, at least pursuant to § 241 Para. 2 BGB (Seip 2017). In the example above, it is problematic that the picture posted on social media contains an evaluative statement in which the player shows that they like the shoe. This means that the player's advertising measure is covered by freedom of expression (Federal Constitutional Court, decision of 19th November 1985, Ref. 1 BvR 934/82). A player's freedom of economic activity is also protected by Article 12 (1) GG (Federal Labour Court, judgement of 20th January 2009, Ref. 1 AZR 515/08). Balancing the interests of both parties' arguments is in a club's favour, however (Seip 2017). On the one hand, the players are already remunerated for granting and exploiting the overall marketing rights in accordance with the usual professional contracts, which is why they must refrain from competing advertising. On the other hand, such advertising posts are regularly made directly after a match, or training in the changing room or on the training ground. The player here is abusing the club environment and the club infrastructure in order to achieve even greater reach. This means that the player is being very disloyal to

their club and cannot invoke freedom of expression to justify their actions. The focus of the player is more on making a profit than on actually expressing their opinion (Seip 2017). The above example shows that the player has behaved contrary to their duty.

A club has various sanctions available to it, including contract termination, injunctive relief, removal and damages. In the final analysis, the club could seek termination for an important reason in accordance with § 626 (1) BGB; however, this does not appear to be practicable, since replacing a player with someone of same quality is unlikely to be either simple or inexpensive. The club would also have to dispense with the expected high transfer fee for the then non-contractual player. The use of injunctive relief and removal claims seems much more reasonable. § 241 para. 2 BGB in connection with §§ 823, 1004 BGB should be applied analogously, according to which a player has to eliminate the obligation-violating condition (Federal Court of Justice, judgement of 28th July 2015, Az. VI ZR 340/14). Injunctive relief can be used by a club to demand that the player does not re-post the non-compliant picture on social media.

The club may have also a claim for damages pursuant to §§ 280 para. 1, 241 Para. 2 BGB in conjunction with the employment contract. The basic condition for this is first of all the existence of a damage (§ 249 BGB). An example would be the termination of sponsor relationships on the basis of the player's social media entry. Such a procedure is very unusual and causes high evidentiary difficulties (Seip 2017). Ultimately, the club has the ability to impose a contractual penalty, if such a penalty was agreed in the employment contract. Injunctive relief and removal claims against the player are also recommended.

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## 6 Contractual Penalties in Sports Employment Contracts

The majority of sports employment contracts include contractual penalties (Wüterich and Breucker 2007, recital 573). The *catalogue of penalties* can vary widely. A contractual penalty may relate, for example, to unpunctual attendance at training or other events, the use of a mobile phone during team meetings or negative statements made to the public. Internal club punishments are also particularly considered if a player receives a dismissal and/or a federation-legal punishment.

As already stated, a contractual penalty is to be assumed if a player agrees in their employment contract to pay a certain amount to their employer in the event of non-performance or the non-performance of their obligations. Such a clause in a formal employment contract is usually subject to an examination under general terms and conditions law (§§ 305 ff. BGB), and therefore, this is explained in more detail here.

Contractual penalties shall be ineffective if a player is unreasonably disadvantaged due to contractual provisions contrary to the requirement of good faith (§ 242 BGB). Furthermore, a player must be sufficiently informed in the employment contract about which conditions could result in a penalty payment. The contractual

penalty regulation must accordingly be transparent and comply with the principle of certainty (Federal Labour Court, judgement of 28th May 2009, Ref. 8 AZR 896/07).

A decision of the Higher Labour Court in Duesseldorf (Higher Labour Court Duesseldorf, judgement of 11th March 2006, Az. 4 Sa 1568/05) shows the problems that can develop in connection with a the punishment regulations in a contract. This court stated that a contractual penalty provision in a licensed player contract, according to which a reference, exclusion from club events and/or fines up to one month's salary can be fixed as a contractual penalty in the event of a player violating their contractual obligations, violates the transparency requirement of § 307 (1) sentence 2 BGB and moreover constitutes an unreasonable disadvantage in the sense of § 307 (1) sentence 1 BGB. This means that the corresponding breaches of duty must be specifically described in the design of a contractual penalty in order to fulfil the requirement of certainty. Furthermore, the catalogue of contractual penalties to be listed may not be unlimited, because a club's interest in such a comprehensive regulation would not be legitimate. If any breach of duty by the player were sanctioned with a contractual penalty, the result would thus be a global promise of punishment. The consequence of this would be that the player could not recognise what was ultimately expected of them in their individual case of a breached of contract. In this context, the Higher Labour Court in Duesseldorf also points out that the club must always have a corresponding material interest, so that the player is obliged to fulfil their agreed employment contract obligations through the corresponding sanctioning option. A contractual penalty provision must not ultimately result in the player being put under pressure as subject to a contractual penalty for every possible breach of contract (Beckmann 2006).

The ruling of the Higher Labour Court in Duesseldorf shows that clubs should concentrate their efforts on determining contractual penalties which ensure that only the violation of elementary labour obligations is punishable by appropriate sanctions. If, however, even marginal breaches of contract were placed under a contractual penalty in a global contractual penalty regulation, this would ultimately speak against the effectiveness of a contractual penalty.

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## 7 Courts of Arbitration in Sports

Courts of arbitration (see also ► Chap. 4) have long been commonplace in the world of sport, but the case of the famous speed skater Claudia Pechstein upset this situation for a time. Mrs. Pechstein defended herself against a two-year doping ban imposed by the federation. The District Court Munich I and the Higher Regional Court Munich held the dispute-deciding arbitration clause to be invalid, whereas the Federal Supreme Court considered the clause to be admissible and dismissed the complaint as inadmissible on 7th June 2015 (Federal Supreme Court, judgement of 7th June 2015, file no. KZR 6/15). Courts of arbitration can become interested in

the field of labour law if an attempt is first made to arbitrate within the federation at a public dispute before the labour courts.

A distinction must be made between so-called *genuine* and *non-genuine* courts of arbitration. An internal club court of arbitration, which is anchored in the respective statutes, is referred to as a *non-genuine court of arbitration*. These judges decide exclusively on questions of the law which the association or federation has made itself in its own statutes. The decisions are fully reviewed by ordinary courts. The judges of *non-genuine courts of arbitration* act on an honorary basis and are elected by the association or federation.

In contrast, there are *genuine courts of arbitration* pursuant to §§ 1025 et seq. of the German Civil Process Order (ZPO). These courts of arbitration completely exclude state legal recourse. Accordingly, the prerequisites for recognition as a *genuine court of arbitration* are high. First, the parties must conclude an effective arbitration agreement in accordance with § 1031 ZPO, usually between a federation and an association or athlete. A special characteristic of the arbitration agreement is that it must be concluded voluntarily (Münch 2013a, para. 42). It is therefore disputed as to whether the signing of an arbitration agreement is still voluntary if an athlete or club is only admitted to competitions, or to the federation's league operations, by signing the agreement. The District Court Munich I considered this to be a *de facto* obligation and therefore not a voluntary signing (District Court Munich I, judgement of 26th February 2014, 37 O 28331/12). The Federal Supreme Court pointed out that an external determination in the sense of *de facto* coercion does not lead to invalidity and therefore voluntariness still exists (Federal Supreme Court, judgement of 7th June 2015, file no. KZR 6/15).

The courts of arbitration must also be independent and impartial bodies in accordance with the statutes (Federal Court of Justice, judgement of 27th May 2004, file no. 3 ZB 53/03). Courts of arbitration are not permanently composed courts. Accordingly, the parties involved must be able to exert a fair and equal influence on the composition of the arbitrators (Federal High Court of Justice, judgement of 23th April 2013, ref. no. 2 ZR 74/12). There is regularly a three-member court of arbitration within the meaning of § 1035 (1) ZPO. Each party selects an arbitrator qualified for the office of arbitrator, who in turn jointly agree on a presiding arbitrator. In general, the principle of arbitral neutrality applies, which is especially true for the chairman of the tribunal (Münch 2013b, para. 42). A disadvantage will be assumed according to § 1034 para. 2 sentence 1 ZPO if one party is favoured in the selection of the arbitrators (Federal Court of Justice, judgement of 1st March 2007, Az. 3 ZR 164/06).

In the Pechstein case in question, the Higher Regional Court Munich did not regard the International Court of Sport (CAS) as impartial (Higher Regional Court Munich, judgement of 15th January 2015, ref. no. U 1110/14). The CAS's arbitrator list is arranged predominantly by sport federations and members of the International Olympic Committee, who could apply strong and unauthorised interference to the courts of arbitration. The Federal Supreme Court rejected this argument of structural imbalance (Federal Supreme Court, judgement of 7th June 2015, file no. KZR 6/15); rather, the federations and athletes were not

fundamentally opposed to each other, but followed the same interests on both sides, such as combating doping. According to the case law of the Federal Court of Justice, the ultimate predominance of the federations is balanced by the fact that the CAS guarantees sufficient individual independence and neutrality of the arbitrators through its rules of procedure (Federal Court of Justice, judgement of 7th June 2015, ref. no. KZR 6/15).

Courts of arbitration are fundamental for the sport and have clear advantages for federations and athletes over *ordinary* courts. On the one hand, courts of arbitration regularly decide much more quickly and cost-effectively than *ordinary* courts, and on the other hand, as a rule, competent judges, who are very familiar with the decisive statutes and regulations of the respective sport, pass judgements. The hearings of courts of arbitration are also not public, so that disputes within the federation do not have to be settled within the public eye, as is the case with *ordinary* jurisdiction. Judgements also remain secret on the grounds that they are trade secrets.

In contrast to *non-genuine courts of arbitration*, *genuine courts of arbitration* can also deal with the entirety of labour law, which is of particular interest to federations and clubs due to the short duration of the proceedings and confidentiality within the federation.

### Comprehension Questions

1. What are the characteristics of an employee?
2. What conditions must be met for a club to second a player to a second team?
3. What is the most likely factual reason for setting a time limit for a sports employment contract?
4. What sanctions are available to a club against its players?
5. What is the difference between a genuine and a non-genuine court of arbitration?

### Discussion Questions

1. How do you assess the admissibility of the fixed-term employment contracts of professional athletes?
2. Are referees employees or not? What is your opinion?

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# Consumer Behaviour in Team Sports

Sebastian Urich

## Abstract

This chapter focuses on team sports consumers from a market-oriented perspective. The description, explanation and prediction of the behaviour of passive sports consumers is essential for systematic marketing activities targeting this important stakeholder group. The chapter presents and discusses both external and internal determinants of consumer behaviour in team sports. It also highlights ways how team sports organisations with limited resources can gain important information about their consumers and use it as the basis for systematic decision-making in strategy development and operational activities.

## Learning Outcomes of the Chapter

1. You will understand which internal and external factors determine the behaviour of team sports consumers.
2. You will be familiar with different motives for the consumption of team sports.
3. You will understand how consumer insights can be gained with limited resources in a team sports organisation.

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## 1 Consumer Behaviour in Team Sports—What is It About and Why Should We Deal with It?

Team sports generates value for a number of different stakeholders. Spectators enjoy watching games in arenas and stadiums on site, or via the different media channels. For media companies, team sports provide interesting content for their information and entertainment services. Advertisers use it as a platform to achieve their communication goals. From the team sports organisation's perspective (here synonymous for team sports clubs/leagues/associations), all these stakeholders represent consumers. These consumers and the value generated for them are of central importance to team sports organisations, as in turn they also generate value for the team sports organisations, for example when spectators pay entrance fees and create atmosphere in the stands, the media reports on match encounters, or when sponsors meet their financial obligations. Consequently, it is of interest to team sports organisations to develop the best possible understanding of their consumers and their behaviour in order to align their activities with consumers and their respective needs and interests. The relevance of consumer behaviour is evident in many everyday issues of team sports organisations. For example, a small amateur club might be interested if an extended catering service on game days would push viewership upwards, what measures could be taken to get the local newspaper to report on the games, or why their search for a sponsor has not yet been successful.

The scope of the present article is limited to the behaviour of only one consumer group, but a very important one: the end consumers, who as private individuals and groups consume team sports primarily as an entertainment offer and in their role as a spectator or fan. The behaviour of business customers, such as sponsors (see ► Chap. 12) or media companies (see ► Chap. 16), and the behaviour of active athletes is not considered in this article.

An end consumer in team sports can act in different roles: as a spectator on site, as a user of the club's own Facebook page, as a merchandising buyer or as a subscriber to a club's own Web TV channel. This article takes a broad perspective on consumer behaviour in spectator sports; that is, the focus is not only on the most obvious facets of consumer behaviour, such as the behaviour while watching a game at the venue, wearing merchandise or making a comment on the club's online message board. Rather, the term also includes behavioural aspects beyond actual consumption. For example, the team sports consumer demonstrates relevant behaviours before their very first stadium visit or jersey purchase (e.g. through their search and information behaviour), goes through decision-making processes (e.g. when choosing a seat category when buying tickets) and engages in post-purchase behaviours (e.g. complaints or recommendations, sharing stories about a game visit with friends or colleagues). This broad view is necessary, especially in the field of team sports, as the relationship between club and consumer often lasts a lifetime, and there are many episodes and touchpoints beyond transactions and other obvious forms of consumer behaviour. Regardless of which aspect of consumer behaviour is in the centre of attention, team sports organisations often are often interested in questions such as the following:

- Who exactly are our consumers (place of residence, gender, age, income, interests etc.)?
- What do our consumers think about our organisation, and how do they respond to specific activities we have undertaken or want to carry out?
- What do consumers like about our services, what do they like less, and what are the behavioural consequences?
- How, when and with whom do consumers use our services or generally engage with our organisation?
- What is the core value of team sports consumption from the point of view of our consumers, and what motives could cause other people to use our services as well?

These exemplary questions demonstrate that consumer behaviour includes descriptive (e.g. who are the consumers, which services are used, and how often?), explanatory (e.g. why do our consumers choose to visit a home match, or buy a season ticket or jersey? What keeps potential consumers from doing so?) and predictive (e.g. how do they respond to specific actions?) elements. The better an organisation is able to provide the most accurate description, explanation and prediction of consumer behaviour, the better it will be able to control its activities in the interests of the consumer and thus generate value for itself in turn. The consideration of consumer behaviour is part of an organisation's marketing activities, because consumer orientation is at the core of marketing. The study of consumer behaviour therefore serves to implement a consumer-oriented organisational strategy (Balderjahn and Scholderer 2007). It should be noted that consumer orientation is not always necessarily associated with commercial goals. Even a non-profit association can pursue the goal of creating the greatest possible entertainment value for its spectators, who may not even have to pay admission fees. Commercially irrelevant aspects of consumer behaviour may also be at the centre of attention (e.g. healthy eating habits or environmental behaviour during a stadium visit).

The topic of consumer behaviour includes not only the observable facets of a person's behaviour, but the consumer's subjective experience is also considered, that is, the psychological processes that precede behaviour, accompany behaviour and occur as a result of behaviour. Considering psychological processes results in a better understanding, a better explanation and prediction, of the consumer's behaviour. Examples of such processes include emotions (e.g. the joy after one's favourite team wins a match, or anger while waiting at the catering stand), individual perceptions (e.g. 'I don't think the arena is very crowded today') and evaluations (e.g. 'I find the new fan forum on the team's website entertaining').

The aim of this chapter is to provide a basic introduction to the topic of consumer behaviour in team sports. For this purpose, the key determinants of consumer behaviour will be classified as external and internal factors in ► Sect. 2. This classification is not specific to the team sports context, but applies to consumer behaviour in general. ► Sections 3 and 4 then present the most important internal and external determinants of consumer behaviour in team sports settings. Knowledge of these factors is the basis that team sports managers use to influence the

behaviour of their consumers in a way that is beneficial for the organisation. ► Section 5 deals with the question of how team sports organisations can obtain specific information about their consumers. The chapter concludes with a short summary.

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## 2 Overview of the Determinants of Consumer Behaviour

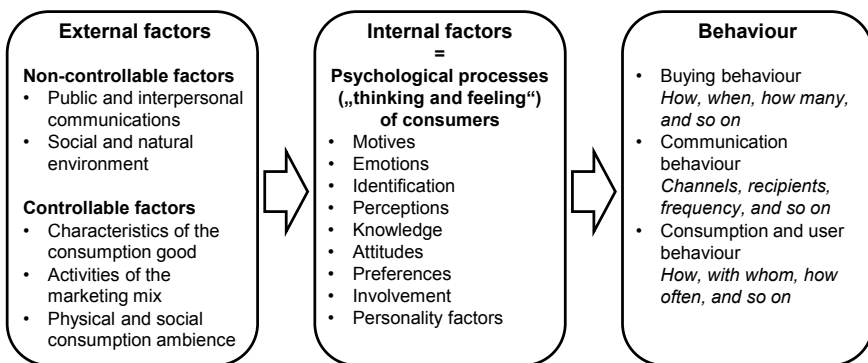
In the traditional view, consumer behaviour can be explained primarily by factors outside the person. According to this view, consumers are exposed to external factors (environmental stimuli) and then show certain behavioural reactions. An example of such a simple stimulus-response pattern is the price reduction in a merchandising assortment, to which consumers respond directly in the form of additional purchases. However, this approach to explaining consumer behaviour is obsolete, because consumers show very diverse behavioural responses to specific environmental stimuli (e.g. a price reduction or increase). There must therefore be other determinants of behaviour than external environmental stimuli alone. As mentioned above, the behaviour of consumers can be explained and predicted much more accurately when internal determinants (i.e. psychological processes) are also taken into account. These internal factors are primarily psychological processes and characteristics that, in a somewhat simplified way, reflect the thoughts and beliefs, the evaluations, interpretations and perceptions, of consumers. Actual behaviour is in most cases not a direct consequence of environmental stimuli, but a consequence of how these environmental stimuli are psychologically processed by the person or how the effects of these stimuli are influenced by individual characteristics of the person. For example, a price increase for a new fan scarf might be a sign of higher quality in one consumer's perception, while another may interpret this as an attempt by the organisation to increase its revenue or profit. Accordingly, the behavioural responses—buy or not to buy—can be very different for the same stimulus (i.e. the price increase).

Influences on consumer behaviour can thus be categorised into external and internal factors. External factors can be further subdivided into factors that are within the sphere of influence of the team sports organisation and factors that cannot be influenced. Among those factors that can be controlled by the team sports organisation are marketing mix activities (e.g. communication and pricing), characteristics of the products and services (e.g. the design of merchandise, the entertainment program during halftime) as well as the physical and social consumption environment (e.g. ease of orientation in the arena, number and behaviour of spectators or security personnel). External factors that cannot be influenced are public (e.g. through the media) and interpersonal communications, the wider social and natural environment of consumers and situational conditions (e.g. time and money constraints).

Internal determinants of consumer behaviour are often classified into those factors that are more concerned with reasoning and knowledge (cognitive processes) and those factors that refer to the emotions and sensations of a person (affective processes); however, this distinction is more of theoretical interest because the majority of relevant determinants are quite complex (such as attitudes, team identification, satisfaction) and include both cognitive and affective processes.

The consideration of external and internal determinants of consumer behaviour corresponds to the stimulus–organism–response model (SOR model). The SOR model assumes that consumer behaviour is a function of external and internal factors (see ● Fig. 1). Since external stimuli often trigger psychological processes, which subsequently lead to a behavioural reaction, the SOR model is usually presented as the following causal chain: stimulus (external stimulus) → organism (psychological reaction) → response (behavioural reaction).

The relevant behavioural reactions in a specific context may include a variety of different aspects: facets of purchasing behaviour, for example the channels through which tickets and merchandising are bought, how much is bought, how often consumers buy and so on. The consumer’s communication behaviour related to team sports consumption is also relevant, that is the channel (online, offline, club-owned channels, private channels) through which they communicate with whom (the club, other consumers) how often and about which communicative content (topics, opinions, etc.). Other significant behavioural aspects relate to the use of services or the consumption process itself. These aspects include with how many and with what other people a person uses a service, how consumers behave during consumption (e.g. active fans vs. passive viewers, arriving at the venue two hours or 10 min before the start of the match). All of these behavioural aspects can be subsumed under the concept of fan engagement, which summarises all interactions between a consumer and their favourite team (Yoshida et al. 2014).



**Fig. 1** Overview of the determinants and central elements of consumer behaviour (Uhrich 2019, p. 158)

### 3 Internal Determinants of Consumer Behaviour in Team Sports

There are many psychological factors that affect consumer behaviour in general, and specifically in the context of team sports consumption. Some of the most important factors are illustrated in Fig. 8.1. For example, the behaviour is determined by how consumers perceive external stimuli (e.g. a communication campaign from their favourite club), the personal relevance (involvement) they assign to certain information (e.g. game results, player squads, club management) and activities (game visit, media use, etc.), their attitude towards certain topics (e.g. ticket pricing, signing of expensive star players) and objects (e.g. home ground) and what knowledge they have in relation to their club. An detailed description of all relevant internal factors is beyond the scope of this chapter, and therefore, only three determinants are described in more detail below: motives, emotions and identification. The selection of these three factors is based on two reasons: first, there are team sports-specific insights into these determinants, and, second, they are particularly important determinants of consumer behaviour in this context (Funk 2008; Green and Costa 2011).

Internal determinants of consumer behaviour do not operate in isolation. Rather, a particular behaviour is usually the consequence of various interacting internal factors.

#### Motives

Consumer motives are among the most frequently discussed internal determinants of consumer behaviour in team sports. Motives are those aspects that drive or initiate a particular behaviour, and they therefore describe why people consume team sports, for instance, what makes them attend a live event or watch a game in the media. Since the list of possible motives is long, consumer behaviour research has attempted to identify a manageable number of motive categories that are as distinct as possible (e.g. Trail and James 2001). Key motives for the consumption of team sports are:

- the affiliation motive, which refers to the human need for social interaction and involvement in social groups.
- the escapism motive, which describes the need of people to escape from their everyday lives and to immerse themselves in a completely different world from time to time.
- the entertainment motive, which refers to the need for sensory stimulation and emotional activation.
- the self-esteem motive, which refers to the need to have as positive a picture of oneself as possible.



- the eustress motive, which describes the need to increase one's own activation level and experience positive stress.
- the conflict/aggression reduction motive, which is the need to experience situations of conflict and reduce aggression.

When persons experience one or more of these motives and have the knowledge that they can satisfy that motive by attending a sporting event, the motivation (the drive for action) is created for a corresponding demand. Accordingly, team sports organisations can influence consumer behaviour in their favour by creating and communicating motivational opportunities.

The specific motives of different consumer segments may vary. For example, some people may prefer to go to a game to meet with their friends, even though they may not be particularly interested in the on-pitch action. The affiliation motive is a key driver for their visiting a sporting event. For others, team sports may provide a unique opportunity to differentiate themselves from others and to project a clear picture of themselves into their social environment (see identification below). This applies, for example, to highly involved active fans, who cheer for their club regardless of the on-pitch performance and thus distinguish themselves not only from non-consumers, but also from less enthusiastic spectators. It can be assumed that complex facets of consumer behaviour (e.g. a game visit) are generally driven by more than one motive. The underlying motive structure for less complex actions, on the other hand, can be quite simple. For example, a negative comment posted on an online message board may only be driven by the desire to reduce aggression.

## **Emotions**

It is clear that emotions play a key role in the consumption of team sports. Defining an emotion has been the subject of controversial discussion for decades (Kroeber-Riel and Gröppel-Klein 2013). For the purposes of this chapter, it is sufficient to define an emotion as a temporary state of psychological arousal that is subjectively experienced and is perceived as pleasant or unpleasant. Discrete emotions of high relevance in team sports consumption include, among others: joy, schadenfreude, surprise, anger, sadness and fury (Königstorfer and Urich 2009). Emotions affect consumer behaviour in many ways, either by directly triggering behaviours (e.g. joy over a goal may initiate a purchase at catering stands), or indirectly through their impact on information-seeking, information-processing, and decision-making processes. For example, the joy that a consumer experiences when remembering the last win of his or her favourite team while browsing in a merchandising store can trigger a purchase decision.

The importance of emotions in team sports consumption is also due to the fact that experiencing emotional states can be the primary goal of consumption. This is especially true for on-site consumption of team sports events. The presentation of the teams, the unpredictable course of events and results, moments of surprise,

controversial decisions of the referees, the half-time entertainment program, the behaviour of the opposing fans and the final result—all these are aspects to which the consumers respond emotionally. That is why many team sports organisations make explicit reference to the experience of emotions when positioning their brands. The creation of intense emotional experiences is not only added value for the consumers, but is often the very core focus of consumption. For this reason, although emotions are relatively short-lived psychological states, they have behavioural relevance beyond the situation. For example, the need for emotional activation (see entertainment motive) in combination with the knowledge of being able to satisfy this motive by attending a team sports event can trigger a ticket purchase.

### **Identification**

The concept of identification is another psychological factor of particular importance in team sports consumption. Team sports consumers often identify very strongly with their favourite club. Generally, identification is defined as the degree to which a person considers their own identity and the identity of a particular identification object (such as a club) as overlapping (Ashforth and Mael 1989). For example, highly identified fans regard their team's victories and defeats as their own victories and defeats (Mael and Ashforth 1992). Fan identification thus means that people use their roles as fans of a sports team to define themselves and show who they are. This phenomenon is often very pronounced in team sports, because the social identity of being a fan of a particular team is central to many consumers, and they never miss an opportunity to openly reveal that identity: having the club logo as a wallpaper on their phone, a team sticker on their car and a scarf during game visits are examples of showing their desired identity.

High team identification promotes numerous behavioural responses that are beneficial for the team. For example, team identification is considered the most important psychological factor explaining game visits (Wann et al. 2001). It also drives merchandising purchases, increases club-related media consumption, promotes loyalty and generally increases engagement with the team. The high importance of team identification can also be demonstrated by the fact that it can neutralise negative determinants of consumer behaviour. This can be explained by considering three factors: on-pitch performance, weather and satisfaction. In general, these are determinants that typically affect the behaviour of team sports consumers. Good on-pitch performance, good weather (at least in the case of outdoor events) and high satisfaction with the last game visit increase the likelihood of a game visit. Strong team identification can over rule the impact of these and other variables. Highly identified fans join their team even in times of relegation, they are not deterred from the match visit by bad weather and their attendance is independent of current satisfaction levels.

Building and maintaining high team identification with as many of their consumers as possible should therefore be a priority for a team sports organisation. The central drivers of team identification are on-pitch performance, an established fan culture, the regional anchoring of a club, tradition, a clear brand profile and the

intergenerational commitment to the club of members of their own family. The identification of consumers with their club can therefore be based on various factors. The task of team sports management is to identify or create those factors that can be the basis for identifying one's own followers. The focus should be on features of the club that make it interesting as an object of identification from the consumer's point of view. Identification is promoted by attractive features, but attractive characteristics such as success or tradition are not available to every club as a basis of identification. Uniqueness can also be achieved in a different way, however, as demonstrated by clubs such as FC St. Pauli in football or the Chicago Cubs in baseball. The latter received attention through decades of poor on-pitch performance, making them loveable losers and making this image the basis of their fans' identification (Bristow and Sebastian 2001; Fetchko et al. 2003).

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## 4 External Determinants of Consumer Behaviour in Team Sports

Analogous to the internal factors, the range of external determinants is also very broad, as it includes all non-human aspects that affect consumer behaviour. ● Figure 1 provides an overview of important categories of these external factors. The wider social, physical and media environment of the consumer includes factors that can affect consumer behaviour; however, these factors are not directly related to the consumption environment. For example, consumers are subject to the influence of media and are part of social structures that have no relation to team sports, but can affect consumer behaviour in this regard. Thus, a team sports consumer could develop a strong preference for items that are produced under fair production conditions through (team sports-independent) social influences. This can ultimately also affect (team sports-related) consumer behaviour in the area of merchandising articles.

Determinants of the wider environment are to be distinguished from external determinants that directly relate to consumption. The latter includes all the characteristics of a product or service and its accompanying marketing activities, as well as the physical and social consumption environment. A detailed description of the external determinants will only be provided for three selected factors for which team sports-specific knowledge exists, and which are particularly relevant in team sports consumption. These include the social influence of reference groups, as well as the social and physical consumption environment.

### Social Influence by Reference Groups

The description of internal determinants has already indicated that other people can exert a significant influence on the behaviour of team sports consumers (see affiliation motive, identification). This influence is often based on reference groups. Reference groups are social systems with which the consumer identifies. These groups often have a strong effect on a consumer's thoughts, feelings and activities.

They determine the way in which consumers perceive themselves and the environment, the knowledge and attitudes they express and how they behave. The following three types of reference groups can be distinguished (White and Dahl 2006):

- Associative reference groups are those groups to which the consumer currently belongs, for example a circle of friends, family or a fan club.
- Aspirational reference groups are groups that are attractive from the point of view of the consumer, with whom they identify, and which they would like to belong to. An exclusive and highly respected fan club, only open to long-time supporters of the club, could be an aspirational reference group.
- Dissociative reference groups are negatively evaluated groups from which the consumer wants to be separated. An example would be the fan club of a rival team. Such groups can also be spectators and fan groups of one's own club, such as the audience on the business seats and in the corporate boxes, which may not be appreciated, or even be despised, by those fans who consider themselves authentic supporters. The rejection of these groups may affect consumer behaviour (e.g. avoiding a restaurant where opposing fans are present, singing derogatory songs, avoiding the insurance brand that sponsors the rival club) (Bergkvist 1992).

Reference groups have a normative influence. That means they provide attitudinal and behavioural standards that are adopted by the group members. For example, the family is an important associative reference group in team sports consumption, where children often take on an interest in a sport and a preference for a particular club from their parents. A consumer who joins a game for the first time in his or her circle of friends will probably adopt the behavioural patterns of this reference group by engaging in typical fan behaviours (e.g. clapping, whistling). People are especially influenced by reference groups when they are uncertain about how they should behave. These groups thus provide a behavioural standard, that is they allow consumers to compare their behaviour with that of others.

Family and friends are primary reference groups with which frequent and intense contact is made and which are particularly influential due to their personal closeness. Secondary reference groups are larger groups that share common characteristics (e.g. interests, leisure activities, clothing style), but with whom—apart from a few members—there is no personal contact. For fans of a club, the entire fan community of the club is a secondary reference group. Such larger and impersonal groups also influence consumer behaviour as they set behavioural standards and facilitate comparison processes.

Most team sports consumption activities involve forms of social consumption that take place in and with groups: game visits, watching a game in the media, discussions on social media platforms about the favoured club or trips to away games are not conceivable without other people. In these situations of group consumption, consumers are guided by the behaviour of others. Hardly any

spectator will sit motionless, when all around them others jump up and clap. Consumers are also under pressure to adapt to the formal or informal behavioural norms established in social media channels (such as the club's own Facebook page or a fan forum). Online messaging boards usually have administrators to enforce formal behavioural norms and ensure compliance with formal norms (e.g. typical length of posts, writing style, content to avoid), while informal norms are enforced through social pressure.

### **Social and Physical Consumption Environment**

In addition to reference groups, the consumption environment, that is the space where consumption takes place, is an important external determinant of consumer behaviour in team sports. From the management perspective, consideration of the consumption environment is particularly relevant when consumer activities take place in the sphere of the clubs. The event venue, the club's social media channels, the club's homepage, club-operated sports bars or club-operated online messaging boards belong to the sphere of the club. These places of consumption are more or less controllable by the club, and therefore, consumer behaviour can be influenced in a systematic way. This idea is also taken into account by (sports) service marketing, in which the four Ps of the classic marketing mix (product, price, promotion, place) are supplemented by three additional Ps: physical evidence, processes and people (Westerbeek and Shilbury 1999). The physical evidence dimension, which embraces the design and characteristics of the consumption environment, is as important an element of a team's marketing instruments as pricing or communication.

Physical (e.g. stadium, VIP room, club-owned bar) and virtual (e.g. online merchandising store, club website, online messaging board) consumer environments are both relevant in team sports consumption. The most important consumption environment for most team sports organisations is the arena or stadium, where consumers watch a match live. This consumption environment and its effect on consumer behaviour will be discussed in more detail below.

Environmental psychology is a field of research that deals with how the specific characteristics of a place influence human psychology and behaviour. When people are at a specific place, environmental stimuli, such as the light conditions, the design, the presence of others, the temperature, odours, and so on, affect people by triggering emotions and behavioural reactions in turn (Mehrabian and Russel 1974). The properties of an environment can be broadly classified into physical (e.g. air quality, cleanliness, light, sounds, colours, design) and social (number, appearance and behaviour of others) factors (Baker 1986).

In terms of consumer behaviour, these environmental factors are important for two reasons. First, the design of the environment can affect economically relevant behavioural responses. For example, a team sports organisation can design a venue in such a way that consumers feel comfortable and extend their stay by arriving early and/or leaving the venue later (which may, for instance, result in additional catering sales). Secondly, a preferential design of the stadium environment contributes to the entire consumer experience, so that experiencing this environment

can become an independent, and in some circumstances even essential, aspect of consumption.

Various studies have focused on identifying environmental factors that are relevant for team sports events. These studies have identified both very specific but also quite broad elements that represent important environmental conditions. These conditions include the architecture, the quality of the scoreboards, the comfort of the seats, the cleanliness, the aesthetics of the sports facility, the perceived spatial constraints and the behaviour of other consumers, which can be regarded as a social element of the environment (Wakefield et al. 1996; Wakefield and Sloan 1995). The favourable design of these factors can lead to positive behaviours, such as longer duration of stay or revisit intentions.

A special aspect of most sports arenas is that the vast majority of visitors seek to experience a stimulating environment that activates them emotionally. High levels of stimulation result from physical (e.g. high volume), affective (e.g. emotional club anthem) and collative (e.g. thrilling gameplay) stimuli (Kroeber-Riel and Gröppel-Klein 2013). For certain spectator segments, the experience of a stimulating environment may be the key motive for consumption (see entertainment motive and stress/eustress motive). Against this backdrop, studies have looked into the environmental factors that generate a good stadium atmosphere (Uhrich and Benkenstein 2010, 2012). Both physical and social environmental factors were identified:

- the ambience (frequent music and anthems, stadium announcers often arouse fans),
- the design (the grandstands are close to the pitch, the acoustics are like those in a covered arena (applies to roofless stadiums),
- the social density (the grandstands are packed),
- the appearance of the spectators (many spectators wear fan clothing),
- the behaviour of the audience (the fans chant permanently, often perform choreographies, etc.).

The presence and behaviour of other spectators are key drivers of a good atmosphere and, therefore, represent an important benefit of team sports consumption. From a management perspective, the question arises as to how the atmosphere-relevant environmental factors can be controlled. Some factors can be influenced in the short or medium term (e.g. music, hymns, the behaviour of the announcer, free tickets to fill empty ranks). Other aspects, such as architectural conditions, can only be influenced in the long term, for example as part of the construction of new arenas and stadiums. Still other aspects, in particular the active involvement of spectators in chants and other typical fan behaviours, can only be controlled indirectly. The active participation of spectators is driven by their relationship with the club, an active and at least partially autonomous fan culture, and group factors (such as cohesion, density etc.). A club may create the necessary conditions to maintain close relationships with their fans and an active fan culture, but ultimately, they are based on largely autonomous group processes and thus largely elude direct control by the team sports organisation.

## **5 Generating Knowledge About the Consumers in Team Sports**

A requirement for making use of the general understanding of consumer behaviour created by the previous sections is the availability of information about an organisation's consumers. Information is needed with regard to fundamental questions (e.g. which consumption motives are relevant for which spectator segments, strength of the fans' identification and the exact object of identification (e.g. player, coach, fan club, club as a whole), image of the club, etc.). More specific information is needed on a regular basis (e.g. how spectators evaluate the entertainment program, what additional services and entertainment elements spectators want, how consumers evaluate different ways to buy a ticket, perceptions of ticket prices).

While team sports managers require information about these and many other aspects, such information is not easy to obtain. A common problem is the lack of financial and temporal resources, and in some cases knowledge, in order to gather the information deemed necessary or desirable. Although generating customer insights requires the investment of at least minimal financial and/or temporal resources, it is possible to obtain information about consumers with relatively little investment. The following sections present some general approaches to doing this.

### **Identification and Evaluation of Existing Data Sources**

As a first step, it makes sense to identify and use the data sources already available in the organisation. The information contained therein must be evaluated or reprocessed in order to draw conclusions about consumer behaviour. Such existing information includes statistics on visit behaviour and merchandising sales, online fan communities and discussion forums, and the club's social media channels. The advantage of these sources is that the data is available without the initiation of a formal market research project. For example, the systematic analysis of spectator data and connecting this data together with other information (e.g. weather conditions, current position in the rankings, opponents) can provide a basic understanding of one's own consumers and the mechanisms of their behaviour.

### **Conducting Consumer Surveys**

Consumer surveys are an option if specific information on a particular issue is needed. Surveys can serve to provide basic information about the consumer (e.g. age, gender, place of residence, frequency of visits), to assess satisfaction levels, to collect consumer opinions, to identify problems from the consumer's point of view or to seek suggestions for improvement. Personal interviews can be conducted before matches or during halftime. Volunteers or students may be recruited as interviewers who receive free admission and/or a small remuneration. Another possibility is to distribute paper-and-pencil surveys on tables in the arena and to motivate the visitors to fill in the survey with the prospect of participating in a raffle. Online surveys that can be distributed via the homepage of the club, its social media channels, mailing lists or newsletters, are also efficient. There are now a number of

software service providers that can be used to create online surveys without prior knowledge and programming skills. Small packages, limited in the number of surveys, questions and answers, and other factors are often provided free of charge. Comprehensive packages with many options are available for less than 1000 EUR per year.

### **Qualitative Interviews with Opinion Leaders and Special Consumer Segments**

Qualitative interviews are an option if the team sports organisation requires in-depth information about a topic that is related to consumer behaviour, for which virtually no knowledge is available. These can be carried out as group interviews with opinion leaders (e.g. fan club representatives) or representatives of specific consumer segments (e.g. young people). Unlike a standardised consumer survey, the aim is not to obtain a representative picture of all consumers, but rather to develop a basic understanding of a particular topic. For example, a club could be interested in how their own events can be made even more attractive to families or younger consumers. To answer this question, it would be useful to uncover barriers of consumption and to develop basic ideas for further development of the service offering (e.g. to the supporting program in front of the arena before and after the match). These aspects could be taken up and discussed in detail in group discussions. The proposals and measures developed in the process could then be submitted to a larger group (e.g. as part of a standardised consumer survey) for evaluation.

### **Observing Online Fan Communities and Social Media Channels of the Organisation**

As mentioned above, online messaging boards and possibly some of the club's social media channels contain valuable insights into consumer opinions. The systematic observation of these channels provides insights into the topics that consumers are talking about, and whether there are positive or negative reactions to specific marketing measures (such as changes in price structure, new jerseys, new half-time programs etc.). The team sports organisation can identify problems, trends and moods and respond accordingly. A disadvantage, compared to a survey, is that topics cannot be actively specified. It should also be noted that the targeted channels and their active users do not necessarily provide a representative picture of all consumer segments. Ideas arising from the topics discussed and their assessment should therefore not be implemented without further consideration and additional information on (counter) measures.

### **Building an Online Community**

In addition to the passive observation of existing online communities, clubs can create such a community for their consumers and get to know consumer behaviour better. At the core of such an online community, benefits have to be available for consumers, so that they are initially willing to join the community. Key features of the community could include online messaging boards for fans, opportunities to connect with other fans (e.g. to organise trips to away games), to get in touch with the club on various aspects or to obtain specific information. The club can also use



this community to regularly ask community members about selected topics. To avoid conducting an excessive number of surveys, only a part of the community could be contacted individually per topic. The members could also be invited to submit proposals for new merchandising items, to evaluate different versions of a new jersey or to report on which aspects of the catering at the venue are positive and which are negative.

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### Conclusion

The consideration of consumer behaviour is an important task for team sports marketing managers who seek to increase the customer orientation of their organisation. Taking customers into account requires an understanding of their behaviour in their roles as team sports consumers. This understanding manifests itself in the ability to describe, explain and predict consumer behaviour.

The determinants of consumer behaviour include external factors, some of which are under the control of the team sports organisation. Internal determinants (psychological processes) reflect the thinking and feeling of the consumers. These external and internal factors jointly determine consumer behaviour, which includes buying behaviour, communication and several behavioural patterns in various consumption spheres.

The better team sports organisations know the key factors influencing consumer behaviour and their specific effects, the better marketing decisions they will be able to make. Obtaining information about consumer behaviour requires the use of financial and temporal resources; however, even clubs with limited resources have various opportunities to improve their knowledge of the behaviour of their consumers and, hence, create the basis for better marketing decisions.

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### Comprehension Questions

1. Which external and internal determinants affect consumer behaviour?
2. Which consumption motives are relevant in team sports settings?
3. Which physical and social elements of the consumption environment affect consumer behaviour?

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# Team Sports Brand Management

Guillaume Bodet and Benoit Séguin

## Abstract

This chapter offers insights into the branding of sports teams. The importance of branding is explained, and a strong sports team brand is defined, by introducing the concept of brand equity. Based on this definition, which identifies the key components of sports team brand equity, the three fundamental stages of team sports brand management, strategic brand management, operational brand management and brand system management, are explained and illustrated.

## Learning Outcomes of Chapter

1. You will understand the main functions of brands.
2. You will know how to define a strong sports team brand.
3. You will know the main components of customer-based sports team brand equity, and how to assess them.
4. You will know the main stages of strategic sports team brand management.
5. You will know the main components of operational strategic management.
6. You will understand the influence of sports team brands' stakeholders and the brand governance approach.

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## 1 Introduction

Numerous observers (e.g. Giulianotti and Numerato 2018; Horne 2006) recognise commodification as a significant trend in sports, particularly in contemporary societies. This process has been defined as “the making into a commodity for sale on the marketplace of items or services which were previously not part of market logic” (Miller et al. 2001, p. 130). This illustrates the transformation of sports and sports organisations that are nowadays considered more than sporting entities, and also true businesses and brands, both the biggest and even those with not-for-profit status. Among the diversity of sports brands, this chapter will focus on “sports club and institution brands” (Bouchet et al. 2013). It is notable that team sports brands present common universal characteristics that can be found in other sports and non-sports brands, but that the detail of their analysis and the branding programmes have specific forms and applications.

In this chapter, we first address the brand concept, defining a brand and its various functions (Sect. 2). We then present and analyse brand equity (Sect. 3), the concept and approach that defines a strong brand, and its various components. After defining customer-based brand equity, we examine the management and development of a team sports brand (Sect. 4) at the strategic level based on the identity of the brand, and then at the operational level. The operational level deals with marketing mix programmes that support the development of brand equity. The concepts of brand experiences, the way fans and spectators live the brand and brand touchpoints, which are the interactions creating these experiences, are key to this stage. Finally, considering the importance of branding for sports organisations and the influence that the stakeholders in sports organisations can have on team brands, we discuss the brand governance approach, which consists of managing the relationships within the brand system, which is the network of relationships between the sports team brand and its numerous stakeholders.

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## 2 The Brand Concept

Traditionally, a brand is defined as “a name, term, sign, symbol, or design, or combination of them which is intended to identify the goods and services of one seller or group of sellers and to differentiate them from those of competitors” (Kotler 1991, p. 442). The direct association of a song, colour, mascot, person, object, place or city with a team sports brand results in a strong branding process, which can result in a powerful brand. In competitive markets, this helps a sports organisation differentiate its offerings from other similar organisations. This original function is often eclipsed by other functions that make team sports brands even more powerful and central to the lives of fans and spectators.

Kapferer (2008) suggests that brands provide different types of benefits for consumers, which correspond to different brand functions. These functions do not operate independently from each other and some may work simultaneously.

The first function is *identification*, which is the initial branding (or ironing) function that differentiates teams and sports organisations in competition. The second function is *practicality*, which consists of simplifying consumer recognition and decision-processes by savings of time and energy. The third function is the *guarantee* function, which provides consumers with a kind of psychological insurance about finding similar levels of quality and/or benefits. The fourth function is the *optimisation* function. It relates to the perceived hierarchy between brands and can relate to various aspects such as performance or experience, and thus identify the brand providing the best offer. For instance, it means that attending a game with brand X should provide more quality and entertainment than one with brand Y. Fifth, the *badge* function is the ability of brands to reflect the self-concept or image that people display to significant others. For instance, a Chinese fan of Manchester United FC revealed that he supported the team because it met his personal ambition for success (Bodet and Chanavat 2010). Sixth, the *continuity* function refers to the ability for consumers to create ongoing relationships with brands and to consequently foster familiarity and intimacy. Seventh, brands possess a *hedonistic* function that involves to the pleasurable experiences and feelings they can bring to consumers. Finally, brands possess an *ethical* function that characterises the level of responsibility and citizenship that an organisation is standing for through its activities. For instance, supporting the English football team Forest Green Rovers means being environmentally conscious and committed to sustainability. The ethical function of numerous team sport brands is also related to community engagement.

These functions demonstrate that brands have moved from their initial utility function of identification to more advanced functions that mean they play a very strong role in consumer lives. As Horne (2006, p. 163) observed, “brands become experiences, offering lifestyles and identities”. Brands can be so important that they can even “take the place of religion in more secular societies” (Horne, 2006, p. 158). It takes more than a few years to reach this status, however, many factors are involved in constructing the brand and its strength. The goal of sports team brand managers will be to first understand the components or factors that make such strong brands and to then set up marketing strategies and programmes to establish and maintain such levels of strength.

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### 3 Brand Equity: The Strength of a Brand

According to Keller (1993), the concept of brand equity involves the marketing effects that are uniquely attributable to a brand and thus provide its strength and its power. He sees two main motivations to focus on this concept. The first is financial and offers an appropriate evaluation of the assets that a brand can represent for a company. This brand valuation can, for instance, be used for acquisition purposes. Considering the development of sports as investment markets, these values are increasingly and regularly estimated and often represent attractive data for the

media, when they do not produce them. This is, for instance, the case for the Forbes Fab 40 that annually publishes and ranks sports brands according to four categories: business brands, event brands, athlete brands and team brands. According to their website, the “Forbes Fab 40 determines the value of the top brands in sports by quantifying the amount the name contributes to the value of the athlete, event, business or team” (Ozianian 2019). The value of team brands is measured by assessing “the portion of the team’s enterprise value not attributable to the size or demographics of the team’s market, the venue or league-shared revenue”. See Table 1 for the 2019 ranking of sports team brands. As illustrated in this table, this valuation can be somehow disconnected from the sporting results.

The outcome of this approach strongly depends on the methodology used. As such, if there is some interest or usefulness in comparing the values of team brands, there is no guarantee of its credibility. If estimations are reliable, these figures do not say a lot about how value—brand equity—is constructed. Another possible reason for using this approach is therefore to improve the equity of the brand, and consequently: “Marketers need a more thorough understanding of consumer behaviour as a basis for making better strategic decisions about target market

**Table 1** 2019 team sports brand value adapted from the Forbes Fab 40 ranking

Team brands	Values in US millions \$	2017–18 and 2018 sporting achievements
1. Dallas Cowboys	1039	10–6 record, 1st in the NFC East, Won Wild Card play-offs, lost divisional play-offs
2. New York Yankees	815	100–62 record, 2nd divisional League, American Wild Card League
3. Real Madrid	725	3rd in la Liga, quarter-final of Copa del Rey, winners of the Supercopa de España, UEFA Champions League, UEFA Super Cup, FIFA Club World Cup
4. Los Angeles Lakers	674	35–47 record, finished 11th in the NBA Western Conference
5. Golden State Warriors	606	58–24 record, 2nd in the NBA Western Conference, NBA champions
6. New York Knicks	563	29–53 record, 11th in the NBA Eastern Conference, did not qualify for the play-offs
7. Los Angeles Dodgers	554	92–71 record, 1st divisional place, lost in the World Series
8. Boston Red Sox	532	108–54 record, 1st divisional place, Winners of the World Series
9. Chicago Cubs	518	95–68 record, 2nd divisional place, lost in the Wild Card Games
10. (t) New England Patriots	465	11–5 record, 1st AFC East, won divisional play-offs, won AFC Championship, won Super Bowl LIII
11. (t) Barcelona FC	465	Winners in la Liga, and la Copa del Rey, runners up in la Supercopa de España, quarter-finals of the UEFA Champions League

definition and product positioning, as well as better tactical decisions about specific marketing mix actions” (Keller 1993, p. 2).

A focus on the way individual consumers perceive the brand is needed in order to nurture this approach. This is what Keller (1993) called “customer-based brand equity” (CBBE). CBBE is defined as “the differential effect of *brand knowledge* on consumer response to the marketing of the brand” (Keller 1993, p. 8). Brand knowledge comprises brand awareness and brand image.

Basically, *brand awareness* corresponds to the responses to two questions. Do consumers and fans know your brand? And if yes, how much do they know about it? This awareness can be assessed by determining whether consumers are able to remember a brand when it is named (i.e. brand recognition), or when asked to name a brand within a specific category—the sports team—or using cues (Keller 1993). It often represents the first and most basic branding element because, without a brand being known to consumers/fans, it is difficult to influence or grow the fan base. In some countries, being known may suffice when no other teams are known. For example, Manchester United seems to have benefited from its pioneer position as an international football team brand (Hill and Vincent 2006) without having to build a strong image to differentiate from other teams. This is primary knowledge, and more advanced knowledge may involve various attributes of the brand (see later brand associations), and demonstrate more subtle levels of awareness. For instance, knowing players, coaches, former players, board members, or even indirect and sometimes anecdotal information such as the name of the mascot, the nickname of the team (e.g. the Gunners for the Football team of Arsenal, or the Pumas for the Rugby union team of Argentina) or the nickname of the stadium (e.g. “the theatre of dreams” for Manchester United FC) demonstrate higher levels of brand awareness, that in turn reinforce brand equity.

It is important to note that, except for few sports teams that have established themselves as global brands (e.g. Chicago Bulls, Barcelona FC, New York Yankees), brand awareness is mostly characterised as from a specific geographic area. This awareness can be local, regional, national, continental or global, but there may also be variations within a certain level. The primary factor affecting the awareness of a team sports brand is linked to its popularity, the level of passion that fans have for the sports, and consequently its visibility. This popularity is first affected by socio-historical reasons, which can vary greatly, depending on the sport and country. For instance, football (or soccer) is probably the most popular sports worldwide, and therefore numerous football clubs and organisations benefit from very high levels of awareness, worldwide. Obviously the most successful teams will benefit from broader coverage and then awareness but unsuccessful teams can also be well known and/or benefit from high awareness, uncorrelated with sporting results, such as Sunderland FC thanks to a series broadcast on Netflix. There are variations between countries, however. Australian football, for example, is not very popular outside Australia, and therefore Australian football teams will not have high levels of visibility outside the country. This does not prevent them from having high levels of brand equity in their domestic market.

Media exposure and visibility are a correlate to this popularity, mainly through the broadcast of competitions, because the most followed and supported teams attract the biggest TV audiences and thus the highest TV exposure. Media exposure can also come from media attention and scrutiny, which can be both positive and negative, if for instance there are scandals, or through particular media programmes. As we will see later in the sections dealing with brand management and governance, the stakeholders of sports team brands, whether they are direct stakeholders such as players and coaches, or indirect such as other sports organisations, can help to increase this level of awareness.

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**Example**

Simple questions to evaluate team sports brand awareness.

- What are the first brands that come to mind when you think of team sports X?
- Have you heard of team sports brand X?
- Which of the following team sports brands have you heard of?
- Do you recognise this logo?
- Do you recognise this motto?
- Do you recognise this mascot?
- Can you name players/athletes associated with this brand?
- Can you name managers or administrators associated with this brand?

The second dimension of CBBE involves brand associations or *brand image*. Brand image is defined “as perceptions about a brand as reflected by the brand associations held in consumer memory” (Keller 1993, p. 3). Brand associations represent the variety of terms, words, ideas and feelings that people have in their mind when thinking about a brand. Keller (1993) categorises brand associations into three types. The first category gathers brand attributes, which are “the descriptive features that characterise a product or service—what a consumer thinks the product or service is and what is involved with its purchase or consumption” (Keller 1993, p. 4). These attributes can be either product-related, such the players, team performance and head coach, or non-product-related, such as the club logo and colours, and the club history. The second category refers to benefits that are the “personal value consumers attach to the product or services attributes—that is, what consumers think the product or service can do for them” (Keller 1993, p. 4). They can be either functional or instrumental, which corresponds to the utility provided by an attribute, experiential and symbolic. Experiential benefits relate to the emotions and feelings generated, and the symbolic benefits relate to the signs and associated meanings carried by the brand and its features. For instance, Bauer et al. (2008) find that nostalgia, escape, socialising/companionship, emotions and entertainment are experiential benefits, whereas pride in place, identification and peer group acceptance are symbolic of team sports brands. Examples of brand association categories used in the context of sports team brands are presented in Table 2.



**Table 2** Team sports brand associations

Authors	Model	Sports	Brand association types
Gladden and Funk (2002)	Team Association Model	Any team	Star player, product delivery, nostalgia, tradition, logo design, affective reactions, success, knowledge, head coach, importance, pride in place, venue, management, fan identification, escape, peer group acceptance
Ross et al. (2006)	Team Brand Association Scale	Professional sports teams	Non-player personnel, success, history, stadium, team characteristics, logo, concessions, socialisation, rivalry, commitment, organisational attributes
Ross et al. (2008)	Spectator-Based Brand Equity		Brand mark, rivalry, concessions, social interaction, commitment, team history, organisation attributes, team success, team play, non-player personnel, stadium
Bauer et al. (2008)		Football teams	Team, head coach, success, star player, team performance, logo and club colours, club history and traditions, management, stadium, club culture and values, fans, sponsor or owner, regional provenance, identification, pride in place, peer group acceptance, escape, socialising, emotions, nostalgia, entertainment
Biscaia et al. (2013)	Spectator-Based Brand Equity	Professional football (soccer)	Brand mark, concessions, social interaction, commitment, team history, organisational attributes, teams success, head coach, management, stadium

The third category of brand associations is brand attitude. This involves the overall assessment or evaluation that individuals make of a brand, which ultimately drives behaviour. For instance, Gladden and Funk (2002, p. 61) measured brand attitude according to three aspects, its importance, which “represents a person’s perception of the psychological significance and value he or she attaches to a sports team”; its knowledge, which refers “to the amount of attitude-relevant that accompanies an individual’s attitude related to a sports team”; and its affective dimension, which “reflects an individual’s feelings about a team”.

Keller (1993) evaluates brand associations according to three dimensions: favourability, strength and uniqueness. Basically, the quality of the brand associations is high if associations are positive (favourable), stable over time (strong) and different (unique).

Brand personality is a popular concept to assess brand image and associations, which is “based on the brand-as-person perspective” (Aaker 1996, p. 112). In the context of professional sports brands, Braunstein and Ross (2010) validated several dimensions: success (e.g. being successful, accomplished, consistent), sophistication (e.g. being attractive, glamorous), sincerity (e.g. being honest, genuine), rugged (e.g. being bold, daring), community-driven (e.g. being authentic, inspirational) and

classic (e.g. being traditional, old-fashioned). More recently, Kang et al. (2016) validated a brand personality model that could be used to characterise brand image or associations via five traits; agreeableness (e.g. being courteous, considerate), extraversion/emotionality (e.g. being enthusiastic, daring), openness (e.g. being creative, original), conscientiousness (e.g. being hard-working, discipline) and honesty (e.g. being sincere, respectful), using the National Football League (NFL) as a case study.

Completing the work of Keller (1993), Aaker (1996) added other dimensions to assess brand equity. The first dimension is *brand perceived quality*. In the context of team sports, perceived quality will often be related to the experience of fans at games. Various researchers have studied perceived quality at sporting events. For instance, Yoshida and James (2011) distinguished between *aesthetic quality* (e.g. game atmosphere and crowd experience), *technical quality* (e.g. opponent characteristics, player performance) and *functional quality* (e.g. frontline employees, facility access and seat space). It is interesting to note that some of these dimensions can appear in the brand associations, in the attributes, benefits or attitude categories. An overall evaluation based on the feelings, emotions and sensory aspects can also be useful, considering the significance of experiences and experiential benefits (Bodet 2016). Perceived quality can also involve merchandised products and peripheral services and experiences (e.g. stadium tours, banking services, travel agencies, official stores), and in this case other quality dimensions specifically related to the products or service at stake will be considered. Finally, it is important to distinguish experienced quality, which is based on one or several experiences of consumptions, from perceived quality which can be established without having experienced the brand games and products. Perceived quality will be strongly influenced by brand reputation, communication and promotion, and word-of-mouth in this situation.

The second added dimension of brand equity is *brand loyalty*. In the context of team sports brands, loyalty is often conceptualised as the degree of attachment that a fan has to a team. Following the seminal work of Dick and Basu (1994), the literature traditionally distinguishes one attitudinal dimension, which is often represented by the psychological commitment of a fan (Funk and James 2001), and one behavioural dimension. The latter can be assessed by the number of games attended and/or viewed (television or other platforms), merchandised items purchased, consumption of club-related media content and wearing the team/club colours (Bauer et al. 2008). True loyalty is usually defined as a combination of both dimensions. Aaker (1996) found that a basic indicator of brand loyalty is price premium, which is the amount of money one consumer or fan would pay for a brand and its products and services in comparison with other brands providing the same products and services. Another indicator of brand loyalty is customer satisfaction. Satisfaction can only indirectly assess the attitudinal dimension of loyalty, however, and does not necessarily transform into loyal behaviours (Bodet 2008). Consequently, brand loyalty can be measured by the number of season-ticket holders, membership of fan groups, number of regular fans, attendance and audience rates, and the number of loyal stakeholders, such as sponsors.

Finally, Aaker's (1991) brand equity model identifies a fifth dimension, other proprietary assets, which involves patents, trademarks and other financially measurable assets. Facilities such as stadiums and arenas, when they are owned by sports brands, and other businesses such as restaurants, stores, medical centres, sports and leisure parks, can be seen as such assets. More recently, team sports and club brands have increasingly invested in other sports brands. For instance, in June 2019, the Olympique Lyonnais Group, the parent company of Olympique Lyonnais, acquired minority shares in LDLC ASVEL and Lyon ASVEL Féminin, respectively, the professional men's and women's basketball clubs based on Villeurbanne in the suburbs of Lyon in France (Olympique Lyonnais 2019), and in December 2019 acquired Reign FC in the USA (Reign 2019). These shares are significant financial assets for the OL brand.

In summary of this section, the strength and value of team sports brands are measured through the concept of brand equity, which characterises the differential value added to the brand. Brand equity is based mainly on four dimensions; brand awareness, brand associations/image, brand perceived quality and brand loyalty. If a team sports brand benefits from a very high level of awareness, if it has favourable, strong and unique mental associations among its targeted audiences and the general population, if it is perceived as offering high quality services and products, and if the brand has a broad and loyal fan base, then it will be considered a strong brand.

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## 4 Managing Team Sports Brands

Having defined a brand and what contributes to a strong brand, we will now review the main steps of brand management. Three main steps will be considered in this section: strategic brand management, operational brand management and the management of the brand system.

### 4.1 Strategic Brand Management

The first step involves defining the *identity of the brand*. Although Keller (1993, p. 9) indicates the importance of “brand identities, such as the brand name, logo, or symbol”, defining brand identity goes beyond choosing or reflecting on the visual aspects of a brand. It integrates the values, history, mission, vision, statutes and the nature of the organisation, or what it stands for. This is particularly important because sports organisations have different natures that will drive various objectives and brand development. For instance, numerous organisations are voluntary-based, with specific identities written into their statutes. Defining this identity with clarity will thus allow the brand management programmes to be shaped. However, it is important to bear in mind that the identity of an organisation, and consequently of a brand, goes beyond the official statutes, and that numerous unofficial or non-explicit

factors can affect this identity. For instance, board members, employees and volunteers shape the identity of an organisation and brand without necessarily being conscious of this influence. Interestingly, former organisation members, such as administrators, coaches, and star players, called “organisational ghosts” by Bazin and Leclair (2019), have a direct impact on the life of organisations and are key to understanding an organisation’s values and identity. The identities of sports organisations are often old and strong—sports clubs sometimes have rich history, which can be a positive and distinctive asset. This history can sometimes be disconnected to what the team currently is, however, and the downside of strong identities is that they can be impregnated by conservatism, which can constrain innovation and new branding development. For instance, changes made by clubs to their visual identities, such as logos and colours, have created tensions, opposition and protests among supporters and fans. This was the case for Italian football club Juventus FC when a “rebranding” exercise led to a change of logo that upset many of its fans in 2017 (Connelly 2017). The challenge is different in the case of league expansions and the creation of new teams, however, as the whole identity of the brand can be defined mostly from scratch.

Once the identity is defined, the next steps are the classical steps of *strategic marketing*, which are *segmentation*, *targeting* and *positioning*. Segmentation is a key factor, especially for maximising attendance and/or maximising revenues when attendance rates are full to maximum capacity. Historically, highly attached fans and supporters were targeted as a priority, but several cases (e.g. Bodet 2009) and studies (Bodet and Bernache-Assollant 2012) have shown the need to first recognise and secondly identify the various segments of spectators and fans in order to properly cater for their needs.

Targeting is the prioritisation of segments. This is important because multiple targeting can be challenging, as fan segments may look for different services and/or experiences that can be in contradiction (Bouchet et al. 2011). This can be the case when die-hard fans become dysfunctional fans (Tapp and Clowes 2002) and create an atmosphere that goes beyond supporting teams (e.g. violent behaviours, fights, etc.) which turns away other committed and/or casual fans (e.g. families). In this case, managing team sports brands relies on managing the customer segment mix to ensure the desired image and associations of the brand are in place. It can sometimes mean using demarketing (Bradley and Blythe 2014). This was the case for Paris St Germain (PSG) football club in 2010 when it decided to reduce the number of season-ticket holders, impose random locations for these season-ticket holders and create a family friendly area. These measures aimed to tackle fan violence, and “pacify and restore the image of PSG” (SoFoot.com 2016).

Conversely, the broadening of a brand and a diversification strategy aimed at attracting new consumer segments can also be problematic, as it can affect loyal and regular fans. They may dislike the fact that a great deal has been done to attract spectators who may not care as much as they do, are less knowledgeable about the sports and may not behave according to their definition of being a good fan (e.g. not singing, not actively supporting the team, spending too much time using their mobile phone, etc.). There is a risk, from a branding perspective, of giving the

impression that a club is followed only by “fair-weather fans” or opportunists fans (Bouchet et al. 2011) who do not create what is traditionally considered great atmospheres, as illustrated by the Stade Français Paris Rugby Club example (Chanavat and Bodet 2014). In other words, a club can become “too commodified” (Giulianotti 2005) in its quest to appeal to broader audiences, and consequently, lose its soul.

Similarly, another contemporary issue regarding segmentation and branding for team sports brands involves the mix between local fans, who can physically attend games, and distant or satellite fans (Kerr and Gladden 2008), who are often foreign fans. Recent examples of sports team efforts to attract new distant fans (e.g. reshaping names and logos, changing a game’s kick-off time, organising games, tournaments and tours overseas, etc.) are not always neutral and can dissatisfy local fans. These examples illustrate the problems of multiple targeting for sports team brands. While an attractive strategy, it should also be carefully planned and implemented to maintain high levels of satisfaction and loyalty among the various targeted segments.

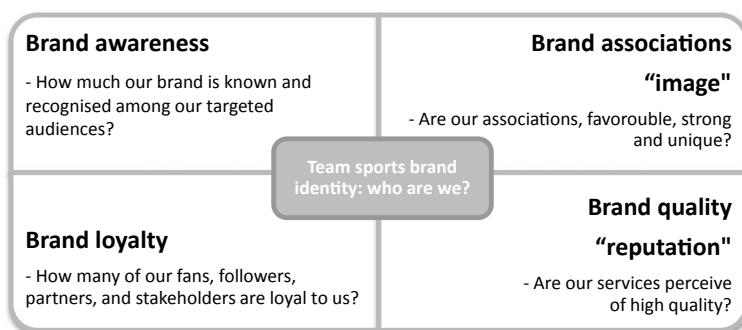
The final step of the strategic marketing process is positioning. This is closely linked to the branding and brand equity dimensions. Positioning involves the way a brand wants to situate and compete with others in the minds of consumers or fans. It involves and also consists of the different factors the brand will put forward so as to be perceived as different by consumers and stakeholders. As previously indicated, positioning is first related to the brand identity that will shape the branding. For instance, the identity of Athletic Bilbao football club is embedded within the Basque identity (Castillo 2007) and the brand’s positioning thus integrates the “localness”, illustrated for instance through the Basque player-only policy, as a differentiating characteristic. Often, sports team brand positioning will be related to key brand associations and brand perceived quality, which will allow the brand to differentiate itself from its main competitors. The main positioning criterion often deals with geographical attachment and proximity, when the team is the only one representing a specific territory. However, what we could call a basic positioning—representing the local community—often has to be refined because of the presence of other sports teams, whether they are from the same sports or not (e.g. Los Angeles Clippers, Los Angeles Lakers, Los Angeles Rams, Los Angeles Dodgers, Los Angeles Kings, Los Angeles Sparks, Los Angeles Galaxy, Los Angeles FC, Los Angeles Chargers). The competition, and consequently the need for differentiation, is especially important for local casual spectators who do not demonstrate any particular involvement in any sports, and for satellite and international fans, considering the globalisation of sports markets and brands (Giulianotti and Numerato 2018).

This section has explained that the primary steps of brand development and management rely first on the strategic dimensions, which consist of defining and/or explicitly characterising brand identity, followed by the strategic marketing process of segmenting, targeting and positioning the brand. The latter includes the main differentiating aspects that the brand will put forward to compete with other team sports brands.

## 4.2 Operational Brand Management

Having defined the strategic orientations of the brand, the next step consists of operationalising these orientations through the development of marketing programmes. This involves marketing mix decisions. The marketing mix is defined by the 4 Ps—product, price, promotion and place—or alternatively the 7 Ps, adding people, process and physical evidence. The 7 Ps may be more adapted to team sports brands considering that they mainly provide service offers. These supporting marketing programmes should focus on developing brand equity in coherence with the strategic plan. As indicated in the brand equity section, this consists of creating promotional and communication programmes to enhance brand awareness among the targeted segments, developing favourable, strong and unique brand associations, increasing perceived brand quality and enhancing brand loyalty (see Fig. 1 for a summary). It is important to note that these programmes should not only be directed towards spectators and fans, but also include other significant stakeholders of the brand, such as partners, sponsors and media.

Keller (1993) explains that managing customer-based brand equity should start by adopting a broad vision of the marketing activities and decisions. This resonates particularly in the context of team sports brands, as sports organisations can sometimes suffer from marketing myopia, underestimate the strength of their brand, and feel that marketing activities are result-dependent (Chadwick and Beech 2007). Although branding is easier when sporting results are positive, it does not mean that nothing can be done when results do not follow. On the contrary, it can be argued that this is when branding management becomes all the more important. Secondly, team sports brand managers should clearly define the type of associations (in relation with identity and positioning) they want fans and followers to hold in mind when they think of the brand. Thirdly, they should consider the broad variety of marketing tactics and techniques they can use, bearing in mind the importance of consistency between the different platforms used. Fourth, they should take a long-term view of their branding, as perceptions are not easy to change, especially



**Fig. 1** Brand equity model for sports team brands

when they are strong, and coherence is an accelerating factor. Fifth, Keller (1993) emphasises the importance of research and evaluation as the only way to properly evaluate the efficiency of marketing programmes. This consists of measuring various brand equity dimensions and comparing them with the same indicators (e.g. brand recognition levels, perceived quality levels) measured before the launch of the marketing programmes. It also helps in setting reasonable and achievable performance objectives for the brand. This dimension is key. Basic techniques such as a simple qualitative approach towards brand targets (see Flying Pig case study, Olberding and Jisha 2005) are useful, and produce relevant foundational knowledge. Finally, based on the strength of the brand equity, marketers should consider brand extensions. Brand extensions, which are defined as “the offering of additional products and services beyond the organizations’ core product (the actual event/game)” (Apostolopoulou 2002, p. 205), are increasingly used by professional sports organisations. In the context of US professional sports teams, brand extension can take five forms: sports-related extensions (e.g. youth leagues, tournaments, merchandise stores), entertainment-related extensions (i.e. team mascots, cheerleaders, bands), media-related extensions (i.e. TV and radio shows, broadcasting stations, pay-per-view programmes), information-related extensions (i.e. team publications, websites), and low-perceived fit extensions (e.g. art galleries, health and fitness clubs, credit cards and banking accounts) (Apostolopoulou 2002). Brand extensions aim to generate additional revenue by building on the strength of the brand, but also by enhancing the emotional connection that fans may have with the sports team brand (Apostolopoulou 2002). According to Apostolopoulou (2002), the key successful factors of brand extensions for professional team brands are: (i) the strength of the parent brand, which is measured via customer-based brand equity, (ii) the perceived fit between the club and the extension, (iii) the promotional support offered by the sports brand, (iv) the quality of the extension product/service, (v) the distribution strategy and (vi) the management of the brand extension. Brand extensions should not be seen as without consequences, however, as a failure of the brand extension could negatively affect the sports team brand, altering its associations, its perceived quality levels and sometimes its brand loyalty.

A key element of this operational stage is the management of *customer experiences*, defined as “a customer’s journey with a firm over time during the purchase cycle across multiple touch points” (Lemon and Verhoef 2016, p. 16). Because customer experience should be seen as a dynamic process integrating pre-purchase, purchase and post-purchase phases (Lemon and Verhoef 2016), it is crucial for team sports brands to identify *brand touchpoints* because they will affect an individual’s perceptions of the brands. However, not all touchpoints are controllable by team sports brands. Lemon and Verhoef (2016) described four categories of touchpoints: brand-owned, partner-owned, customer-owned, and social/external. Brand-owned touchpoints are under the control of the sports organisation and include “all brand-owned media (e.g., advertising, websites, loyalty, programs) and any brand-controlled elements of the marketing mix (e.g., attributes of product, packaging, service, price, convenience, sales force)” (Lemon and Verhoef 2016, p. 77). Partner-owned touchpoints are jointly managed and controlled by the organisation

and its partners. This is, for instance, the situation with security checks at stadium entrances and food stalls, when they are outsourced by the sports team brand. Although they are, from a management perspective, distinct and also require quality control in order to deliver a consistent brand experience, fans and spectators rarely perceive the difference between the brand and its partners, and thus often consider these touchpoints as brand-owned.

Customer-owned touchpoints are the customer actions that are not controlled by the brand and its partners. They are particularly prevalent in the pre- and post-purchase phases. Finally, the social environment (e.g. peers, fans, third-party information sources, social media) creates social/external touchpoints. Although they are often perceived as uncontrolled by the brand, they should not be totally excluded from the management of the brand as they can have a strong effect on fan and spectator experiences. For instance, the PSG demarketing example discussed earlier in the chapter demonstrates the focus of the brand manager on the interactions between supporters and fans. Correctly managing these brand touchpoints, and in turn these experiences, is of great importance, because they will affect customer satisfaction, which will affect perceived brand associations and perceived quality, which in turn will affect brand loyalty, but also the brand awareness, associations and perceived quality of other individuals through word-of-mouth.

In this section, we discussed the operational management of the brand, which should be coherent with the sports team brand identity and its strategic plan and relies on the development of marketing mix programmes to enhance the sports team brand equity. Particularly, we focused on the concept of brand experiences and touchpoints, which are the influential interactions that the fans, spectators and followers will have with the sports team brand, and that, in turn will affect the brand equity for them and for other brand audiences.

### **4.3 The Management of the Brand System: Brand Governance**

Although brand equity has been recognised as fundamental to brand management, several authors, such as Helm and Jones (2010), have called for a move towards a practice of “brand governance”. Brand governance refers to “a system of building a brand that is guided by the vision, mission and values of an organization and that systematically nurtures a brand value to become and remain a long-term strategic asset” (Séguin and Abeza 2019, p. 368). This new approach is justified by numerous factors that are particularly relevant in the context of team sports brands. Particularly, the increasing competitive intensity of markets (e.g. the globalisation of sports has created more competition between team sports brands), more empowered consumers, the proliferation of brand extensions, increasingly more distribution and communication touchpoints (e.g. sporting events can be viewed on various electronic devices), the increased use of strategic partnerships in delivering brands to consumer and social media have been increasingly prevalent (Helm and Jones 2010). Considering the challenges and possible risks these factors have for



brand experiences and for perceived brand equity, it becomes key that “sport organisations’ strategic brand management be based on visionary brand governance, which is externally focused” (Taks et al. 2019, p. 3). This approach is externally focused because it considers the importance that various stakeholders (e.g. players, members, administrators, sponsors, medias, local authorities, fans and supporters, local residents and community members, other sports team brands) can have for brand equity. For instance, in the context of professional team sports brands, choosing a player is not only a sporting decision, it also takes into consideration the possible impact the player can have on the brand via their own image and/or behaviour. This is particularly true for players who have become celebrity brands (Bouchet et al. 2013). Managing the brand should therefore be extended to the governance of stakeholders and their connection to the brand. This is why brand governance should be the responsibility of the top level of an organisation (Board Directors, CEOs) (Taks et al. 2019). This responsibility does not replace middle-management responsibilities and efforts towards developing brand equity strategically and operationally, but rather to preserve it in the long term and to protect it from potential threats, by making sure the actual and future influence of stakeholders on the team sports brand is consistent with the brand identity and the brand equity construction. The brand system represents the network of stakeholders, and the sports team brand is at the core. Brand governance thus consists of anticipating and managing the co-creative relationships and interactions (Grönroos 2011), but also the co-destructive ones (Chumpitaz Caceres and Vanhamme 2003), to maintain and protect brand value in the long term.

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## 5 Conclusion

The branding phenomena, whether from a consumer or organisation perspective, cannot be avoided, as it is now a key aspect of the marketing management of sports team brands, however, sports organisations, especially those who are lacking marketing skills, tend to underestimate the importance and the power of their brand (Chadwick and Beech 2007). The first challenge faced by sports organisations is therefore to be convinced of the *need for a brand focus* to marketing management and its development, particularly as regards of external stakeholders. Several frameworks and tactics are presented in this chapter which can help sports team brand managers in developing their brands; however, the second challenge is to keep *a focus on making a difference*. In a sports world where sports organisations are increasingly globalised and in competition with each other, where marketing tactics and programmes are highly visible and consequently easily copied, uniformity can become a rule. In this context, branding is all the more important as its first function is to make a team stand out of the crowd. In some cases, it will mean less marketing and less bold branding, as commercialisation in the context of team sports can be dividing (Bodet et al. 2018; Giulianotti 2005). Finally, and possibly the most difficult to accept from an organisational perspective, is the fact that a

brand, and consequently the branding, is not only the result of internal planning and activities. As discussed in this chapter, *brands are dynamic social constructs* whose meanings evolve over time and are influenced by their stakeholders. Consequently, the wrong approach would be overly focused on internal capacities and intentions, seeing the perceptions held by brand audiences as wrong, when there is indeed a gap between an organisation's intentions and these perceptions. The right approach is trying to understand how these perceptions are built and what can be done in collaboration with stakeholders to modify them, and make them fit with the brand identity in the long term.

### **Key Points to Take from the Chapter**

- The functions of sports team brands go beyond simple identification and include experiential, social, symbolic and ethical elements.
- The strength of a brand is assessed via the concept of customer-based brand equity.
- Customer-based brand equity includes five dimensions: brand awareness, brand associations/image, brand perceived quality, brand loyalty and brand proprietary assets.
- Brand development starts with strategic brand management which in turn starts by clearly defining the brand identity.
- Brand development then continues by setting operational programmes that focus on the development and reinforcement of the brand equity dimensions. Core to these programmes is the management of brand experiences and touchpoints.
- As brand strategic and operational management mainly focuses on internal capabilities, brands should increasingly be considered as a system wherein various stakeholders can have a positive or negative influence on the brand; this is the brand governance approach.

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### **Comprehension Questions**

1. How can we define a strong sports team brand?
2. What are the main dimensions of customer-based brand equity?
3. Using an existing sports team brand, assess each dimension of the brand equity.
4. What are the key stages of sports team brand management?

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# Sports Sponsorship as a Funding Instrument

Stefan Walzel and Manfred Schubert

## Abstract

For most sport organisations, sport sponsorship represents a significant source of funding and provision of resources. At the same time, it is highly conditional. The success of sponsorship acquisition is largely determined by the construct of congruence, which is to be understood as the perceived fit between the sponsor and the sponsee. Product fit and the fit of target groups have the greatest influence on perceived congruence. The successful use of sport sponsorship involves seven tasks: (1) providing personnel and organisational prerequisites, (2) defining sponsorship principles, (3) specifying sponsorship objectives, (4) determining target groups and the scope of sponsorship, image, and brand profile, (5) compiling the overall tableau of individual services offered and developing corresponding sponsorship packages, (6) designing a stringent overall sponsorship concept, and (7) analysing the relevant market for potential sponsors.

## Learning Outcomes of the Chapter

1. You will understand what are the requirements for the use of sports sponsorship as a funding instrument.
2. You will learn which framework conditions and success factors are important for the acquisition of sponsors in sports.
3. You will understand which steps have to be completed in order to develop a sports sponsorship concept.

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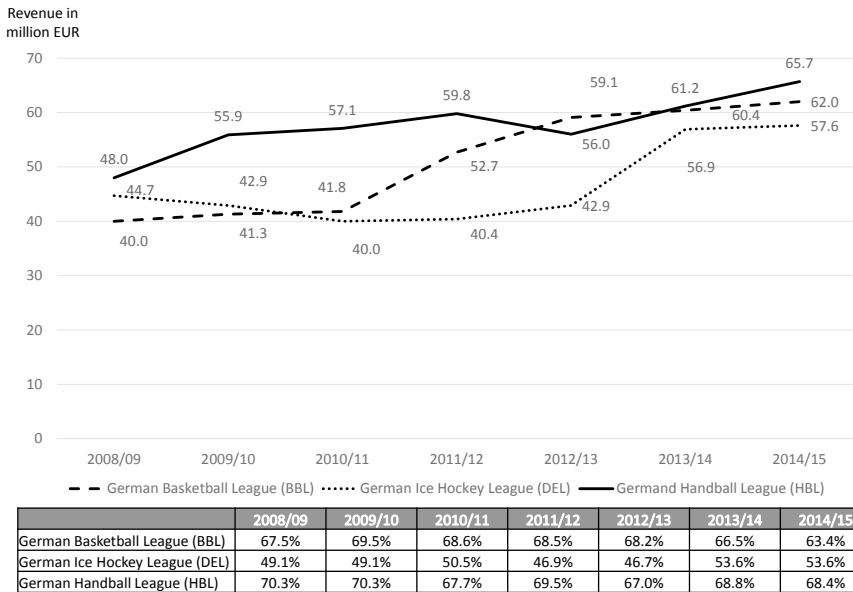
## 1 Introduction

The funding of sports today relies to a greater or lesser extent on the support of sponsors. It is almost indispensable in the field of semi-professional and professional top and spectator sports, and is often the most important source of revenue. Sports events, sports venues, teams, clubs, sportswear, and equipment are used today by a large number of companies to carry advertising messages, and reflect the breadth and variety of manifestations of sports sponsorship. Sport has become a popular and increasingly important communication medium for the business sector in recent decades.

In the 1960s, the first manifestations of sports sponsorship were in the form of surreptitious advertising in the context of sports broadcasts on television (Bruhn 2010; Hermanns and Marwitz 2008). This development continued in the 1970s with the increasing commercialisation in sports. 1972 is considered the birth of sports sponsorship in Germany. The jerseys of the Eintracht Braunschweig football team ran for the first time with the logo of the company Jägermeister, and they received 160,000 DM (about 81,700 EUR, Hermanns and Marwitz 2008).

More than 40 years later, spending on global sponsorship was forecasted to total 62.8 billion USD for 2017 (ESP 2017), and almost 80% of this is accounted for by sports. In Germany too, sport is by far the most important and most common form of sponsorship, as can be seen from the fact that the total volume of sponsorship expenditure in Germany in 2016 amounted to around 5.5 billion EUR, of which 3.5 billion EUR (63.6%) was for sports sponsorship (Repucom 2015b). Most other countries spend similar proportions.

The importance of sports sponsorship as a funding instrument for German team sports can be seen, among other things, when looking at the sales revenues of Bundesliga football clubs. In the 2015/16 season, the 18 clubs of the 1st Football Bundesliga achieved a total turnover of 3.2 billion EUR (DFL 2017). Sports sponsorship, at 772.5 million EUR (24% of total revenue) is the second most important source of revenue for the Bundesliga clubs, after revenue from media rights (933.3 million EUR). The importance of sports sponsorship revenue in the three other team sports leagues is even clearer. Due to low turnover from exploitation of their media rights, the clubs in the German Basketball (BBL) and German Handball Bundesliga (HBL) and in the German Ice Hockey League (DEL) are even more dependent on sports sponsorship income to secure their overall budget. For example, the Bundesliga handball clubs generated more than 68% of their total revenues from their sports sponsorships in the 2014/15 season. The share of sponsorship in clubs in the Basketball Bundesliga is similar to that of the handball league at just over 63%, and the ice hockey clubs show a slightly lower share with almost 54% sponsorship revenue, which nevertheless accounted for the majority of their income (see Fig. 1). Over the last seven seasons, the revenue from sports sponsorship in all three leagues has developed positively in absolute terms compared to the 2008/09 season, but the relative share of total revenue has remained relatively constant (Fig. 1).



**Fig. 1** Development of sports sponsorship revenues (in million EUR) in German basketball, handball and ice hockey sports leagues, and their percentage of total turnover (Walzel and Schubert 2018, p. 15)

In Austria, 90% of companies use sponsorship as a communication tool, 93% of which use sports sponsorship (Sport + Markt and ESB 2013). Austrian companies are mainly active in football and alpine skiing (69% each), followed by ice hockey (31%) and ski jumping (31%), two other winter sports that also underline Austria’s status as a successful winter sports nation, from a sports sponsorship perspective (Repucom 2015a, 2016). Swiss companies make much greater use of cultural sponsorship than companies in Germany and Austria, using 22% of the total sponsorship budget. Sports sponsorship has a share of only 40%. Some 77% of Swiss companies are active in sports sponsorship, however, especially in football (76%), and ice hockey (43%) (Repucom 2016).

In addition to purely quantitative indicators, sports sponsorship is also characterised by a large number of qualitative criteria that underscore its importance and significance both within sponsorship in general, and in comparison with other communication instruments (Walzel and Schubert 2018):

1. Sports sponsorship enjoys a high level of acceptance amongst consumers (Hermanns and Marwitz 2008; Walliser 1995);
2. Sports sponsorship is often characterised by higher contact quality and a wider reach (Hermanns and Marwitz 2008);



3. Sport today enjoys worldwide attention and interest, and is particularly suited to transcending national, cultural, religious, and linguistic boundaries (McKelvey and Grady 2008; Santomier 2008);
4. Sport makes it possible to address consumers in a predominantly non-commercial and emotionally pleasant situation and to reach target groups that can hardly, or only with great difficulty, be reached through traditional communication measures (Bruhn 2010; Hermanns and Marwitz 2008);
5. The high level of attention paid to sports and the good preconditions favour positive image transfer for the sponsors (Bruhn 2010; Hermanns and Marwitz 2008; Walliser 1995).

Sports sponsorship thus offers companies good opportunities to differentiate themselves from their competition, and to communicate directly with their respective target groups.

After explaining the relevance of sports sponsorship, it will be examined in more detail from the perspective of the sponsee. Important theoretical basics will be described (Sect. 2), and then the fundamental sports sponsorship management process will be presented from the view of the sponsee (Sect. 3) before the acquisition of sponsors is the focus of Sect. 4.

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## 2 Theoretical Basics of Sports Sponsorship

Despite a relatively uniform understanding of what is meant by sports sponsorship, many definitions neglect the sponsee's point of view in the definition. The following definition of sports sponsorship is therefore used as a basis for this chapter:

Sports sponsorship is a partnership between a sponsor and a sponsee (sponsored entity) for the mutual benefit of both parties on the basis of a contractual agreement. The principle of services and services in return is characteristic. The sports sponsor strives to use the special, sometimes unique values and characteristics of the sports, as well as the great interest of the consumers in sports for its own marketing and communication objectives. For the sponsee, sports sponsorship is an important funding instrument for achieving sporting goals. (Walzel and Schubert 2018, p. 46)

A sports sponsorship is characterised by the fact that a written agreement has usually been signed in the form of a contract, in which among others, the duration of the contract, benefits, services, and other conditions, may be specified (Bruhn 2010; Hermanns and Marwitz 2008). In order to successfully acquire sports sponsors and for the successful management of sports sponsorship, it is necessary to understand the mode of action of sports sponsorship. A sponsor uses sports sponsorship as a tool to achieve certain communicative effects, particularly advertising effects, on the recipients and their consumption behaviour. Knowledge of the effects and mode of action of sponsorship and the relevant affecting factors is not only important for companies as (potential) sponsors, it also serves as an important source of information for the sponsee, for example, to create sponsorship

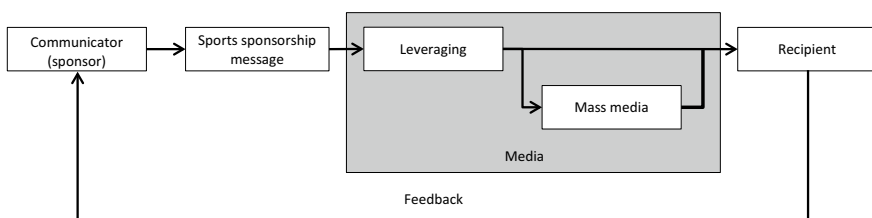
proposals and to determine their prices. The effects that can be achieved with sports sponsorship, how these effects are explained, and which factors influence the strength of these effects, are described below.

## 2.1 Mode of Action of Sports Sponsorship

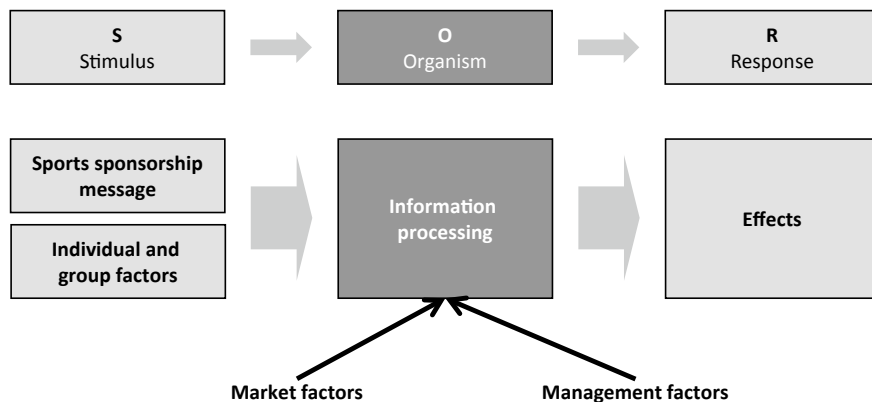
The basic communication process of sports sponsorship (Fig. 2) can be described as follows. The sponsor as a communicator sends out their sports sponsorship message (often only the brand logo, for example, on a jersey or on a board). The manner of presenting the sponsor's brand and any other means of attracting attention to the sponsor are referred to as leveraging (see Sect. 2.3). The media serve as important multipliers of the message. Ideally, the recipients (either live on site or via the media) will perceive the sports sponsorship message and can give "feedback" to the sponsor in a variety of ways, including about its impacts (e.g. interest in further product information or purchase of the sponsor's products).

The outcomes of sports sponsorship can be divided into cognitive, affective, and behavioural (conative) outcomes, which are connected by a causal chain. Cognitive effects are upstream of affective and conative effects, so that the achievement of conative sports sponsorship outcomes is only possible through the levels of cognitive and then affective sports sponsorship outcomes (Cornwell et al. 2005; Pracejus 2004). Cognitive outcomes relate to aspects of perception, memory, and image, or attitude. Downstream affective effects include sympathy, preferences, and emotions with respect to the particular brand of the sponsor. Behavioural outcomes involve behavioural intentions and the actual behaviour of the recipient. A key position in sponsorship measures is the end-of-the-chain purchasing intention and actual buying behaviour, but recommendations (or the intention to) and word-of-mouth communication could also be behavioural outcomes of sports sponsorship (Cornwell et al. 2005).

The upstream process of receiving and processing a sponsorship message is also referred to as a "black box" because whether and how sports sponsorship messages are perceived and processed by the recipient takes place in the form of intra-individual, psycho-emotional and cognitive processes that are not directly observable. It is assumed that the information reception and processing of sponsorship messages



**Fig. 2** Basic communication process in sports sponsorship (according to Drees 1992, p. 175)



**Fig. 3** The process of sports sponsorship using the stimulus-organism-response (SOR) model (based on Walzel and Schubert 2018, p. 78)

depend on the individual characteristics of the recipient (experience, knowledge, involvement and arousal), and are also influenced by characteristics of the social environment or context (see Fig. 3, Cornwell et al. 2005). The recipient's previous experience with the sponsor and their already existing knowledge of the sponsor are thus important predispositions for the subsequent information intake and processing. This also includes the fundamental attitude towards sports sponsorship. A positive attitude has a fundamentally positive effect on sponsorship success.

The recipient's personal involvement with a particular sports, athlete, team, club or sporting event also has an impact on the success of a sports sponsorship. Pham (1992) describes the relationship between the involvement and recognition of a sports sponsorship message as a reversed U-shaped process: the probability of the recognition of a sports sponsorship message increases initially with increasing involvement, but only up to a certain point. Afterwards, the recognition values of sponsors decrease again, despite or precisely because of a further increase in involvement, which is accompanied by an increasing focus of attention on the sponsored object (e.g. the match between two teams, identification with a club).

There are a number of theoretical approaches and empirical findings on the mechanisms and factors affecting the processing of sports sponsorship messages. The three most important are briefly summarised:

1. The *mere exposure effect* is based on the assumption that the repeated presentation of a sports sponsorship message is accompanied by an increasingly positive attitude towards the brand or company. There is also a reverse U-shaped correlation for this effect, however, as already described for involvement. If the sponsorship message is perceived as (too) penetrating or annoying, due to overly frequent repetition, its effect diminishes or may even become a negative sponsorship effect (reactance effect).

2. The *congruence* refers to the degree of similarity between sponsor and sponsee. Sponsorships with a high degree of congruence between the sponsee and the sponsor are better and more frequently perceived and lead to a more positive attitude towards the sponsor by the recipient (Becker-Olsen and Simmons 2002; Pracejus and Olsen 2004; Rifon et al. 2004; Speed and Thompson 2000).
3. The recipient's degree of *identification* with the sponsee also has a significantly positive impact on their intention to purchase the sponsor's products (Cornwell and Coote 2005; Madrigal 2000, 2001).

Cornwell et al. (2005) summarise other influencing factors in two groups: (1) market factors, and (2) management factors. The group of market factors include those factors that are beyond the sponsor's organisation and the sponsee. They can therefore hardly be influenced, if at all. These include, for example, the perceived brand value of the sponsor by the recipient and the so-called "sponsor overload". The more sponsors are present in the recipient's perceptual environment, the more difficult it becomes for the recipient to remember individual sponsors (Cornwell et al. 2000; Mikhailitchenko et al. 2012), and thus for them to achieve further affective and conative outcomes. Cornwell et al. (2005) list the activities of competitors as the third and last influencing factor. Management factors are those aspects that can be influenced by the sponsor and/or the sponsee themselves, such as decisions about sports sponsorship policy (e.g. the number of sponsors) or measures to leverage or activate sports sponsorship.

There are also temporal effects. While it is often possible to achieve the objective of increasing awareness in a relatively short time, the realisation of other objectives, such as improving or modifying the image of a company, requires long-term commitment. Depending on the sports sponsorship objectives set, a corresponding contract period should therefore also be planned for a sports sponsorship.

## 2.2 Congruence Between Sponsor and Sponsee

The concept of congruence indicates the similarity or degree of similarity between the sponsor and the sponsee on the basis of certain characteristics (Cornwell 1995; Olson and Thjømøe 2011; Rifon et al. 2004; Speed and Thompson 2000). A good congruence basically has a positive, reinforcing influence on various sports sponsorship outcomes. It leads to, amongst other things:

1. More positive attitude of the consumer towards the sponsor (Ellen et al. 2000; McDaniel 1999; Speed and Thompson 2000),
2. A better memory of the sponsor (Johar and Pham 1999),
3. Improved image transfer (Becker-Olsen and Hill 2006; Gwinner and Eaton 1999; Meenaghan 2001; Menon and Kahn 2003; Rifon et al. 2004; Simmons and Becker-Olsen 2006), and
4. Greater sympathy towards a particular sponsorship (Haley 1996).

Today, in addition to product and image similarity, there are many more dimensions of congruence known, such as similarity in the personality of sponsor and sponsee (Dees et al. 2010), shared values (Simmons and Becker-Olsen 2006), common target groups (Mayo and Bishop 2010), and similar corporate missions (Cunningham et al. 2009). Olson and Thjømøe (2011, p. 61) identified a total of seven dimensions that describe the perceived (overall) congruence between sponsor and sponsee: (1) “use of brand’s products during a game either directly [...] or indirectly”, (2) “size similarity”, (3) “audience similarity”, (4) “geographic similarity”, (5) “attitude similarity”, (6) “image similarity”, and (7) “duration of the sponsorship relation”.<sup>1</sup>

Neglecting the seventh dimension (relationship duration), four dimensions have a significant impact on the overall congruence perceived by the customer. Product similarity and the audience similarity also have a strong influence. Geographical and attitude similarity also contribute to the overall congruence perceived by the recipients. Altogether, these four dimensions could account for up to 1/3 of overall congruence.

Olson and Thjømøe (2011) found that leveraging measures can increase the perceived congruency of sports sponsorships with poor “natural” congruency by up to 38%. It should be mentioned that a bad leveraging can also lead to negative effects. It seems promising, on the one hand, to show the benefit of sponsorship for the sponsee and, on the other hand, to focus communicative activities on the joint anchoring of sponsor and sponsee in a particular city or region (Woisetschläger et al. 2010).

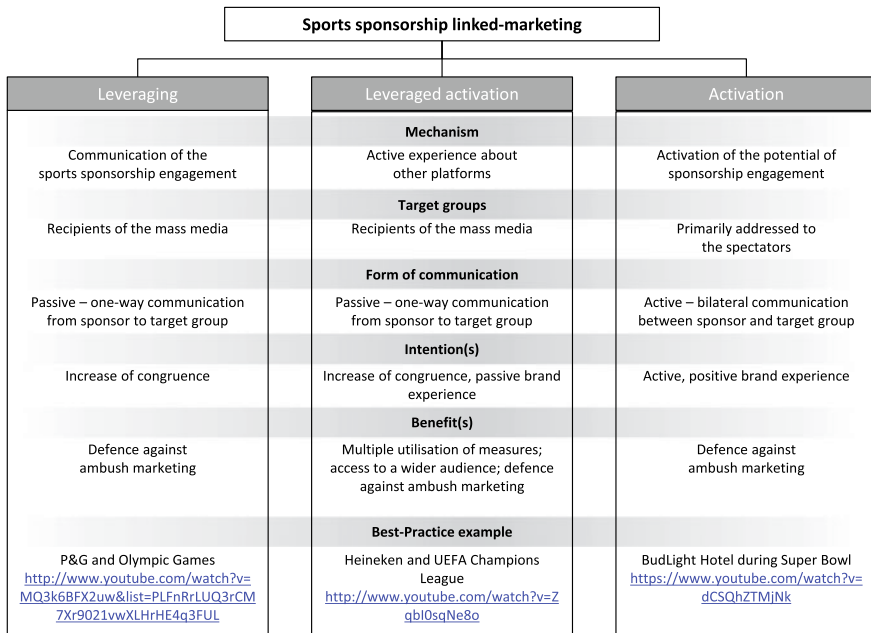
### 2.3 Leveraging and Activating Sports Sponsorships

Additional leveraging and activation measures are required in order to develop the potential of sports sponsorship in the best possible way. This includes all communicative activities that lead the recipient to the formation and mutual transfer of associations between sponsor and sponsee. Cornwell (1995, 2014) differentiates between “leveraging” and “activation”, as well as a mixed form, “leveraged activation” (see Fig. 4).

“Leveraging” means the use of accompanying marketing and communications activities to exploit the marketing potential of the connection between sponsee and sponsor (Cornwell 2014). Sports sponsorship only serves as a starting point for further marketing and communication measures that can increase the outcome of a sports sponsorship. These include advertising, sales promotion, public relations, social media communication, direct marketing and internal marketing. Improving the perception of the sponsor creates associations between the sponsor and the sponsee, and the perceived congruence between the two is increased. This leverage effect is usually achieved through the use of mass media.

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<sup>1</sup>A detailed description of the dimensions is given in Sect. 3.



**Fig. 4** Summary overview of the three forms of leveraging and activation sports sponsorship (Walzel and Schubert 2018, p. 131)

The aim of “activation”, in contrast, is to use communicative measures to directly engage and interact with the target groups of the sports sponsorship (e.g. through participation in competitions, hands-on activities) and in this way to convey an active, positive brand experience (Quester and Thompson 2001; Weeks et al. 2008). In the past, such measures were mostly aimed only at the spectators on site (e.g. through a half-time break program designed by sponsors, promotional stands in the stadium environment, inflatable trampoline for children, and so on). Thanks to social media, sports spectators can now also be addressed directly at home and invited to take part in votings, expressing opinions, competitions for ideas, and so on.

“Leveraged activation” is a hybrid of the two approaches. In this case, post-activation measures are used for consumption via mass media. Even if this does not enable a personal brand experience with the sponsor on site at an event, positive effects, for example, with regard to brand attitude towards the sponsor can still be influenced (Cornwell 2014).

The following studies show the importance of leveraging and activating sports sponsorships:

1. Leveraging and activation measures have a significantly positive influence on the consumer's attitude towards the sponsor's brand (Weeks et al. 2008), and the purchase of the sponsor's products (DeGaris and West 2013).
2. The way in which sponsor signage on perimeter boards is designed (perimeter technology, size, colour selection, and so on) has a significant impact on the perception of the sponsorship message (Breuer and Rumpf 2012, 2015).
3. Sales of the sponsor's products can be significantly increased by including the sponsee in sales promotion measures, for example, at sporting events (DeGaris et al. 2009; DeGaris and West 2013).

The old rule of thumb that for each monetary unit invested in the sponsorship rights an additional monetary unit must be planned for leveraging and activating those rights (Cornwell 2014), can no longer be maintained. The leveraging and activation costs depend on a number of internal (e.g. guidelines of corporate identity (CI) and corporate design (CD) guidelines, defined sports sponsorship principles) and external factors (e.g. frequency and duration of a sports event, possible advertising restrictions). Sport sponsors in Germany, Austria, and Switzerland invest an average of another 1.50 EUR for every Euro paid for the sports sponsorship rights (Nielsen Sports 2016).

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### 3 Sports Sponsorship as a Management Task

A systematic approach to the use of sports sponsorship is indispensable in order to make the best possible use of its potential as a funding instrument in general, and of individual sports sponsorships (Hermanns and Marwitz 2008). The sports sponsorship management process is comparable to other economic decision-making processes and is divided into the four classic phases of analysis, planning, implementation, and monitoring/control. Important components of each phase include generating, editing, and evaluating the necessary internal and external information, which serves as a basis for decision-making (Bruhn 2010).

#### 3.1 The Analysis Phase

A well-founded analysis of the initial situation and the framework conditions is a fundamental prerequisite for successful decisions in the individual phases of the sports sponsorship management process. Sports sponsorship has many prerequisites (Walzel and Schubert 2018). This is probably one of the reasons why 75% of all German sports clubs have no significant revenue from sports sponsorship (Breuer and Feiler 2015). The subject of the analysis is, on the one hand, organisational realities, such as the extent to which sports sponsorship can contribute to the achievement of an organisation's objectives or the extent to which it has the technical and human resources to attract and support sponsors, and, on the other

hand, external organisational framework conditions, including socio-cultural, political-legal, technological, physical and economic factors (Hermanns and Marwitz 2008). It is important to consistently adopt a sponsorship-specific perspective. The results of the internal (e.g. sponsorship-specific resource analysis) and external analyses (e.g. sponsorship-specific competitor, market or macro-environment analysis) can be summarised as internal, sponsorship-specific strengths and weaknesses and external, sponsorship-specific opportunities and risks outside the organisation (Hermanns and Marwitz 2008).

There should be a minimum of attractiveness and opportunity potential available as a prerequisite for the use of sports sponsorship. The most important determinants or prerequisites for this are: (1) A certain degree of awareness and the market relevance of the sponsee, (2) A high degree of market orientation and openness, (3) A clearly defined image and brand outlined as clearly as possible in terms of a unique selling proposition, and (4) The existence of a marketing and management concept. In addition, (5) a corresponding market potential should exist (i.e. a region with a certain settlement density and economic power, or a sufficiently large number of companies), (6) the sponsee has the necessary personnel and organisational capacity to fulfil the tasks of sponsorship management, and (7) to be able to rely on appropriate approval and support within the organisation, among the employees and members, with regard to its sponsorship-related objectives and strategies (Walzel and Schubert 2018).

Insufficient analyses or errors in the analysis often lead to false conclusions and decisions, some of which cannot be corrected. The quality of the analysis is, therefore, fundamental to the success or failure of sports sponsorship (Bruhn 2010).

### 3.2 The Planning Phase

The planning phase follows a well-founded analysis, which includes the definition of objectives, the specification of target groups to be reached through sports sponsorship, and the definition of the sponsorship strategy.

The objectives of sports sponsorship are derived from the sponsee's overarching objectives (e.g. sporting success, promotion, conducting a tournament, and so on). Answering the following questions will help: (1) What are general objectives and expectations associated with acquiring sponsors? (2) Which tasks, business areas, projects, and so on should be funded with the (additional) revenue, and which objectives are to be achieved? (3) What are the objectives in terms of the absolute amount of income from sponsorship and the relative share of the budget or funding mix? It is important here to clearly and unambiguously formulate the corresponding objectives of sports sponsorship and, above all, to operationalise them.

There are two different tasks for specifying the target groups. On the one hand, the target groups of the sports services, the spectators, and consumers of a handball game, must be described more precisely on the basis of socio-demographic and psychographic data (see Table 1). This is important in order to be able to point out any similarities with the company's target groups later when searching for and



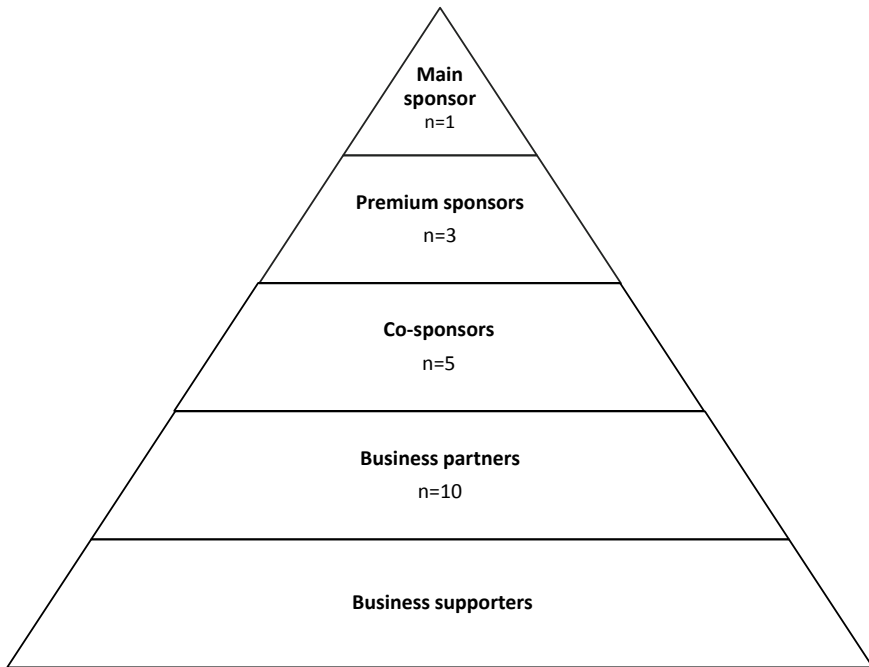
**Table 1** Description of Germans interested in handball and basketball based on selected characteristics (Sportfive 2010)

Characteristic	Handball	Basketball
Interest in the sport	Highly interested 12.0%, interested (overall) 40.0%	Highly interested 3.5%, interested (overall) 22.0%
Age of interested individuals	14–19 years = 48.3% 20–29 years = 36.5% 30–39 years = 37.0% 40–49 years = 40.0% 50–59 years = 41.6% 60–69 years = 42.7% 70 + years = 37.0%	14–19 years = 40.0% 20–29 years = 28.9% 30–39 years = 23.3% 40–49 years = 21.2% 50–59 years = 18.4% 60–69 years = 17.4% 70 + years = 14.2%
Sports broadcast live	I really like to watch = 70.2%	I really like to watch = 37.8%
Subscription to a pay-TV channel	51.6%	29.6%
Freely available income	500 + EUR = 42.1%	500 + EUR = 22.6%
Value milieus and consumption styles	Citizens with higher education = 42.9% Performance oriented = 45.3% Libs <sup>a</sup> = 44.1% Enjoyment-oriented = 42.8%	Citizens with higher education = 27.1% Performance oriented = 25.1% Libs = 24.9% Enjoyment-oriented = 28.8%

<sup>a</sup>“The value dimension of the pursuit of freedom and independence aspirations is embodied by the Libs. They seek room for manoeuvre, are willing to take risks and are oriented towards personal responsibility. No more state than necessary is their motto. The value and personality profile of the Libs is just as pronounced through performance orientation, educational affinity, striving for material success, the willingness to assume responsibility as through a high need for variety. In addition, there is a pronounced body awareness and hedonistic traits” (Sportfive 2010, p. 27)

approaching potential sponsors. On the other hand, it is important to describe and categorise the current and potential sponsors as a target group for sports sponsorship in more detail. Probably the most widespread assignment would be the classification into different categories or types of sponsors, depending on the amount of their financial commitment, such as main sponsor, co-sponsor, sponsor. It is also possible to categorise sponsors according to industries and product categories. Target group classification, can also be approached from the perspective of the sponsee, through freelancers and companies, and according to their company size (smaller, medium-sized and larger companies) (Walzel and Schubert 2018).

Fundamental strategic decisions are made within the framework of the definition of the sports sponsorship strategy, which are considered binding and should last for a longer period of time for the sponsee. This includes a decision regarding sponsorship structure, and about the number of sponsors and their allocation to different sponsorship categories. In team sports, this usually results in a pyramid-shaped sponsorship structure divided into several levels (see Fig. 5). The sponsors are divided into corresponding categories or levels according to their different degrees



**Fig. 5** Schematic presentation of a sports sponsorship pyramid (Walzel 2019, p. 204)

of significance, which is measured according to the respective scope of services provided to the sponsor (number and type of advertising and usage rights) and the consideration provided by the sponsor (amount of payments for the rights). The monetary value of the sponsorship service and the scope of the rights increases towards the top of the pyramid, and the number of possible sponsors decreases in order to grant a few top or premium sponsors, and possibly one main sponsor at the top, as much exclusivity as possible in the advertising presence. Other structural approaches are the “one-level model” and the “single sponsorship model”. In the former, all sponsors receive the same rights and provide the same monetary value. The “single sponsorship model” is rarely found in team sports, but in a single tournament or event it makes sense to assign all sports sponsorship rights exclusively to one single sponsor.

On the other hand, the sponsee should define sponsorship principles for itself as part of its strategic orientation. These may relate to certain cooperation requirements, such as a minimum contract term, or the exclusion of certain sponsors who, for example, are incompatible with the values of the sports or the sponsee. These could include, for example, pharmaceutical manufacturers, weapons manufacturers, alcohol and tobacco manufacturers, or betting and gambling providers.

### 3.3 The Implementation Phase

Decisions are made in the implementation phase, on the basis of previous planning, with regard to the calculation of sponsorship services, the concrete selection of sponsors, and the final development of individual measures.

From the sponsee's point of view, the first step is to calculate the value of the individual sponsorship services that can be offered to the sponsors. This requires an inventory of the quality and quantity of conceivable and feasible sponsorship services (e.g. number of business seats; running metres of perimeter advertising; advertising space in the vicinity of the stadium, on tickets, the homepage, and so on). Appropriate sponsorship packages can then be put together on the basis of the available information.

Sponsees are often faced with the problem of how to determine prices for various sponsorship services. There are basically four different approaches. The cost-oriented valuation approach and the approach of value analysis (conjoint analysis) have gained little acceptance in practice. In the field, however, the approaches of sponsorship pricing using advertising equivalent values<sup>2</sup> and market prices have proven successful. Both approaches are often combined. When calculating the required total income from sports sponsorship, it must be taken into account that often not all sponsorship packages can be sold, or not at the desired price. Sometimes, successful contracts can only be concluded by granting certain discounts. These must be taken into account in the overall calculation as a "buffer" so as not to jeopardise the funding of a sports operation, a sports event or the like. A particular challenge here is the agreement of success bonuses, which can depend on sporting success, audience appeal or audience ratings, and are difficult to predict.

The selection of sports sponsors begins with a pre-selection, the "screening", based on a few important evaluation criteria. The findings from congruence research and the six dimensions<sup>3</sup> can be very helpful here (Walzel and Schubert 2018):

1. Product similarity: The more direct the relationship between a sponsor's product or product program and its use in the context of sports is, the better.
2. Size similarity: It is advantageous if sponsor and sponsee are of similar size (and thus have closely corresponding characteristics such as awareness, market relevance, brand status).
3. Audience similarity: The higher the similarity between the target audience and market segment of the sponsee and the sponsor, the higher the efficiency of the sponsorship is estimated.

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<sup>2</sup>An advertising equivalent monetary value can be calculated based on the media coverage of the sponsor and the advertising prices in the individual media, which serves as an orientation for the price of a sponsorship.

<sup>3</sup>The seventh dimension "duration of the sponsorship relationship" is not considered below, as the focus is primarily on the acquisition of new sport sponsors.

4. Geographic similarity: This is based on the degree of coverage of the market areas of the sponsor and the sponsee, which can also be expressed, for example, in the form of a common origin or home (headquarters).
5. Attitude similarity: If the target groups have similar attitudes towards a sponsor and the sponsee, this has an advantageous effect on the sponsorship outcomes.
6. Image similarity: This dimension reflects the extent to which the image of the sponsor and the sponsee match.

The potential sponsors remaining after the rough selection can be evaluated in detail on the basis of these six dimensions in order to obtain a ranking of sponsors. The ranking based on the total score is the sum of the individual scores per dimension multiplied by the individual weighting factor. This is based on the idea that the higher the overall score or the better the ranking of the respective company in the context of such a screening procedure, the higher the probability of successfully recruiting a new sponsor. With the help of the approach proposed in Table 2, the sponsee can fall back on a systematic procedure that helps to save (above all time) resources when fine-tuning the selection of potential sponsors.

If the sponsor and the sponsee agree on the conclusion of a sponsorship agreement, individual measures are developed in the third part of the implementation phase. These include the conclusion of the contract, the arrangement of agreed leveraging and activation measures, and the calculation of the associated costs. The latter is particularly necessary if an external agency is entrusted with the implementation. The individual measures should be aligned with the objectives and target groups of the sponsor, and primarily include measures to activate the sport sponsorship. Both sides should appoint a permanent contact person (usually the sponsorship manager), who will coordinate and communicate between the sponsor and the sponsee, and, if applicable, the agencies commissioned. The basis for this is the sports sponsorship contract, which should have been worked out in writing and signed by all parties.

### **3.4 The Monitoring and Control Phase**

The fourth and final phase of the sports sponsorship management process involves a detailed analysis and evaluation of an individual sports sponsorship or a fundamental review of the sports sponsorship, from the sponsee's point of view. Above all, the generated insights serve to optimise and adapt future sports sponsorship measures and decisions. A further distinction is made between monitoring the results and the process. While the aim of monitoring the results is to measure the outcomes achieved (e.g. increase in revenues, cost savings, gain in reputation, increase in viewer interest due to the high profile and positive image of a renowned sponsor), the processes and decisions relating to the implementation of a sponsorship are critically reviewed within the framework of the monitoring process. "The combination of monitoring the results and the process is inextricably linked,

**Table 2** Approach for assessing the probability of a potential sponsor's success on the basis of the six congruence dimensions

Dimension	Weighting coefficient	Sponsor A	Sponsor B	Sponsor C	Sponsor D	Sponsor E
Product similarity						
Size similarity						
Audience similarity						
Geographic similarity						
Attitude similarity						
Image similarity						
Total						

because the results achieved usually provide insufficient information about how the result came about" (Walzel and Schubert 2018, p. 64).

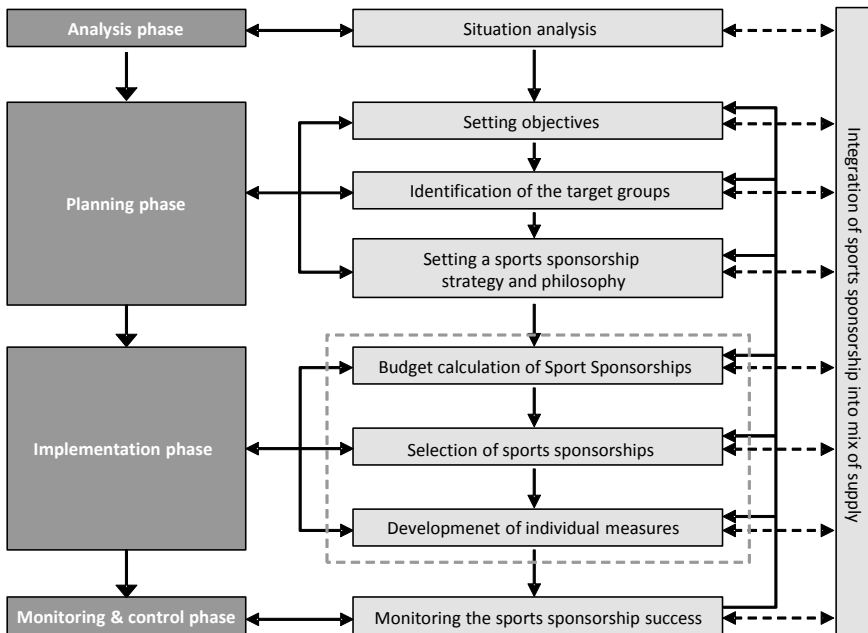
Sponsees should also be interested in the outcomes achieved by sports sponsorship from the sponsor's point of view (increasing the level of awareness, improving their image, and so on). For negotiations on extending the contract, or in the context of a season evaluation, it is important to know which sponsors have achieved their objectives and which have not. Sponsees are repeatedly expected by the sponsors to justify the sports sponsorship. If sponsees in such discussions can ideally point to verifiable positive outcomes for the sponsor, this has a positive effect on the decision of a sponsor to continue their commitment, and thus secures the financial resources for the competition, the sporting event or the like. However, it is also important to know which sponsorship activities have been particularly successful. They are important starting points, and the basis for negotiations on a follow-up contract or a contract extension, which often involves price adjustments.

In Fig. 6, the entire sports sponsorship management process is summarised visually from the perspective of the sponsee, in its individual phases.

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## 4 Sports Sponsorship as a Sales Task

Now that the basic sports sponsorship management process has been introduced, the following section deals in detail with the implementation of the acquisition of a potential new sponsor. This includes preparatory activities, drawing up a contact, presenting of the sports sponsorship proposal and concluding the sports sponsorship contract.



**Fig. 6** Sports sponsorship management process at a glance (based on Bruhn 2010, p. 46)

#### 4.1 Preparatory Activities

Before establishing contact with a potential new sponsor, it is necessary to create an adequate information base about the sponsor market and about the individual potential sponsor. This may involve a great deal of research, and includes—preferably supported by a database—information on the following key features (Walzel and Schubert 2018):

- Basic data on the companies in question (name, legal form, location, number of employees, sector, business fields, product(s) groups, brands, and so on);
- Market position of the company based on turnover, market share, company development, and so on;
- General corporate, business field and marketing objectives;
- Size and structure of the relevant market segments and target groups on the sponsor’s side;
- Geographical distribution or market area of the company;
- Image of the company and/or individual brands;
- Current developments and main tasks of the company (expansion, innovation, change of strategy, and so on);
- Strategies and focal points in the marketing and communication policy of the company (preferred tools, communication style, and so on);

- Sponsorship principles and strategies of the company (if available);
- Former and current (sports) sponsorship commitments of the company (who or what has been, or is currently being, sponsored, to what extent, and in what form?);
- Identification of the right contact person and other relevant decision-makers, including their contact details (telephone, e-mail) and other relevant information (e.g. sports interest, own sporting activities, interests in which kind of sports?).

Publicly available sources of information can be taken into account, such as newspapers, specialist journals, company web sites, publications of the chamber of commerce, business associations and interest groups, and others. Informal sources of information should also not be underestimated. Valuable information can be generated in talks with business representatives, associations, members of executive boards and advisory boards, representatives of local politics, and so on, which is frequently not publicly accessible. Network meetings organised by business associations and other interest groups, such as local marketing clubs, can also be used as sources of important information and are also very suitable as a platform for establishing new contacts or refresh old ones. In principle, comprehensive information on potential sponsors is an important prerequisite for a successful start of contact and the hopefully successful conclusion of the sports sponsorship contract.

## **4.2 Contact the Potential New Sponsor**

Initial contact with a potential new sponsor can be made in a variety of formal and informal ways. Telephone contact with the managing director, board member or sponsorship manager, for example, of a sports club, with a representative of the targeted company is still regarded as promising. The sponsee's representative is faced with the task of making their request clear in a few sentences—the arrangement of an appointment for presenting the sponsorship proposal—and to arouse the interest of the potential sponsor. Since first contact plays a key role as a “door opener”, it is important to prepare well for this situation in advance.

The first attempt to get an invitation to present the sports sponsorship proposal is not always successful. Documents are often requested in advance. Experience shows that the relevant written documents (a “sponsorship folder”) should not yet contain a very concrete offer, but rather refer in a short and concise form to some basic information about the organisation of the sponsee, their sports services, and so on, and to the attractiveness of their use as a communication platform, present some options for their use and express their interest in a meeting. It is important to enquire by telephone after 1–2 weeks whether the documents have arrived and to try again to arrange a meeting. Depending on the situation, it may also be a good idea to invite the contact person to a home match so that they can gain first hand experience.

More informal contact can take place when a third-party (e.g. an existing sponsor who has a business relationship with the potential new sponsor) arranges a meeting. In many cases, the announcement of a telephone call from the sponsorship manager of the sponsee via a third person can also help. The possibilities in the existing sponsors pool should be exhausted and sponsors should be actively motivated to invite business partners to a home match or sponsorship meetings. Of course, this must be agreed and coordinated so that the person responsible for sports sponsorships also has sufficient time to get to know the potential new sponsor in order to arrange an appointment for a presentation of the sponsorship proposal afterwards. Such approaches are particularly important for smaller, resource-poor sports organisations, and those in marginal sports, whose success depends very much on typical “marketing by networking” (Gilmore 2011; Gilmore et al. 2001).

In individual cases, the management of sports sponsorships (from the selection of sponsorships to further planning and implementation) is carried out by an agency commissioned by the sponsor (Skildum-Reid and Gray 2014). The same recommendations apply in this case as for a direct approach to the company.

Contacting potential new sponsors is not only a task for the sponsorship manager or the sponsorship officer of the board in a sports organisation. Players, coaches, and members of the board and advisory board should also be encouraged to make use of existing contacts with potential new sponsors, and in particular to assist in arranging and establishing the initial contact, and to pass on relevant information to the responsible internal contact person.

### 4.3 Presentation of the Sports Sponsorship Proposal

The contact’s aim is to present the sponsorship proposal at a meeting. Further documents should be provided, beyond just the presentation (max. 15–20 min), such as media reports, press reviews, and image or video documentation of the sponsorships realised in the past. In addition to the presentation of the most important facts and figures on the possibilities and framework conditions of the sponsorship coverage, it is particularly important to present the special “spirit” and the appeal to the emotions of the sponsee, reference to sporting successes achieved in the past, strong media coverage, the loyalty and commitment of their members and spectators, well-known identification figures (stars) who shape the event or the organisation, the special flair and ambience of its sports venue, the atmosphere and mood at a home match, and so on.

The relevant success factors at such a meeting are:

- A well prepared and confident presentation;
- Good preparation for critical (follow-up) questions;
- The participation of the “right” people in the meeting on both ends, i.e. the employees ultimately entrusted with the decision and implementation;
- Flexibility, empathy and a pleasant, trustful atmosphere (Walzel and Schubert 2018).



The presentation to be prepared for the sponsorship proposal should contain the following components (IG Sponsoring 2006; Walzel and Schubert 2018):

- The most important characteristics of the sponsee and their achievements and/or service profile (type of sport, performance level, competition formats, sporting successes, and so on);
- The objectives, projects or plans for which the sponsorship funds are required;
- Market relevance of the sports organisation or event;
- Size and structure of the potential and factual target and user groups (e.g. capacity of the sports venue, number of members, average number of visitors, information on visitor structure, key persons/groups with high profile);
- Type, scope, and media coverage, and data on media response;
- Communication services of the sponsee (own advertising, internet presence, media partnerships, and so on);
- Self-image, values, and brand essence, as well as brand image (e.g. by referring to the most important data on a survey and/or representative quotes from viewers, citizens, media representatives);
- The range of services offered to the sponsor in the form of a brief presentation of the various packages with the respective individual services for the different sponsor categories, which should clearly reflect: (1) the possibilities of communicative use, (2) the degree of exclusivity, (3) the degree of visibility and presence of the sponsor on site and in the media, and (4) the opportunities for additional activation measures;
- Information about offering corporate hospitality platforms (visitor arrangements, catering, facilities and use of rooms, exclusive services, e.g. “a look behind the scenes”, networking offers at sponsor meetings, and so on);
- Price expectations for individual rights packages or sponsorship services, or a reference to desired goods or services in return;
- Possible references to successful co-operation in the past;
- Contact person with contact details for queries.

The sponsorship proposal should be modular, so that a specific offer can be put together that is adapted to the interests of a potential new sponsor. Visual representations, which express the integration of the sponsor with the offered sponsorship, have a particularly stimulating effect.

It is also important to know as much as possible about the rational assessment and evaluation criteria of sponsorship proposals, and about the decision-making processes from the potential sponsor's perspective. To an extent that is difficult to determine, corporate sponsorship decisions are still influenced by non-economic motives and the personal preferences of decision-makers. Although there is no empirical data available, their influence is not disputed by academics (Sieland 2013; Woisetschläger 2006). Examples of non-economic, personal motivations of decision-makers in companies include: their biographic or family-related, personal proximity to, and identification with a sports and/or sports club; sympathy and admiration for sporting successes and/or certain athletes; personal prestige and

increased self-esteem as a result of contact opportunities with popular and prominent athletes resulting from a sponsorship commitment; biographically-related, local solidarity with a city/region; power struggles between rival sponsors at a personal level, and so on. Sponsees can use such motives to their advantage in acquiring sponsorships. Knowledge of these non-rational criteria and influencing factors, as well as the associated reflection and communication processes, is, therefore, essential for the successful conclusion of a sponsorship agreement (Walzel and Schubert 2018).

#### 4.4 The Conclusion of the Sports Sponsorship Agreement

Depending on the outcome of the sponsorship proposal presentation, modified sponsorship proposals may be exchanged in the subsequent period in order to come to a joint sponsorship agreement, which then forms the basis for concluding a contract. The object of the negotiations is the types and scope of individual services in particular, or the structure of a rights package, the type and scope of the potential sponsor's consideration, and in particular, the level of payments to be made. In addition to the absolute amount of payments, performance-related, variable premiums are often of interest to sponsors in professional team sports. Such performance-related parameters would include, for example, exceeding a certain number of spectators, more match days/matches due to sporting success in competitions with elimination modes (e.g. cup competitions, play-offs), special sporting successes, extraordinary media coverage or the special sales successes of a sponsor. Depending on the scope and proportion of the performance-related remuneration, such agreements may entail considerable financial risks for the sponsee, as sporting success, audience attendance, media coverage, and so on are either impossible or very difficult to predict, and depend on a number of other factors that cannot be influenced.

If the sponsor and the sponsee agree on the basic services and considerations, these are recorded in a legally binding sponsorship agreement. This forms the basis for future cooperation, and should ideally also provide information on how to proceed in the event of disagreements and disputes. In addition to a number of standard elements, which can be easily procured in the form of model contracts, sponsorship contracts also contain many individual components and additional regulations. The most important parts of the contract are summarised below (Walzel and Schubert 2018):

1. Preamble (preliminary remarks),
2. Services of the sponsor,
3. Services of the sponsee,
4. Exclusivity (e.g. industry exclusivity),
5. Good conduct clauses,
6. Purpose limitation and obligation to provide evidence,
7. Misappropriation, violation of norms, and image-damaging behaviour,

8. Personal service provision and assignability,
9. Limitations of liability and disclaimer,
10. Contractual penalties, premature termination of the contract, reimbursement of services,
11. Entry into force, duration of the contract, options and termination rights,
12. Severability clause, applicable law, place of performance, and place of jurisdiction.

Sponsorship contracts should be carefully drafted under the guidance of persons with legal expertise, however, not all details and eventualities can be included in a contract. Requests from one contracting party in this regard could also be interpreted by the other as expressions of distrust and thus undermine the second essential basis for successful cooperation, apart from the contract: namely trust.

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## 5 Conclusion

Sports sponsorship is an important source of funding for most professional team sports organisations, however, the acquisition of sponsors and sponsorship management pose challenges for the persons involved on the part of the sponsees, which can only be solved with a great deal of experience and well-founded knowledge. The success of sports sponsorships for the sponsor, but also the success of the sponsor acquisition, is largely determined by the construct of congruence. Congruence is defined as the perceived fit between sponsor and sponsee. A high degree of congruence has a positive impact on the achievement of many sports sponsorship objectives. As a global measure of the fit between sponsor and sponsee, it is composed of different dimensions. Product similarity and audience similarity have the greatest impact on perceived congruence, followed by geographic similarity and attitude similarity. If there is no, or a low, “natural” congruence between sponsor and sponsee, this can be positively influenced by communicative measures, and (to a certain extent) achieved, but in the case of poor execution can also lead to contrary effects.

The actual potential of sports sponsorships can only be revealed if it is meaningfully leveraged and/or activated with the help of further marketing and communication tools. Leveraging means designing and using the existing sponsorship rights in such a way that the sports sponsorship message is also perceived by the recipients via mass media. Sports sponsorship also offers the opportunity to interact with consumers and thus create an active experience with the sponsor’s brand that is as positive as possible, which is referred to as activation. This includes, above all, side events, promotions and corporate hospitality. Social media plays an increasingly important role in activating measures. It can also be used to create indirect brand experiences on the basis of media-mediated interaction, also known as leveraged activation.

The sports sponsorship management process can also be divided into four phases from the perspective of the sponsee: the analysing, planning, implementation, and monitoring/control phases. A systematic approach is indispensable in order to optimally exploit the potential of sports sponsorship in general, and the respective individual sponsorship. An important component of each phase is the acquisition, preparation, and evaluation of necessary internal and external information. The quality and quantity of the available information determine the quality of the decision-making process.

The successful use of sports sponsorship as a funding tool involves seven complex tasks. (1) The first step is to create the personnel and organisational prerequisites for successful sponsorship management. Depending on the company's internal resources, it is particularly important to clarify whether, and if so, which tasks are assigned to external service providers or which entire rights packages are sold to marketing agencies. (2) An agreement on certain sponsorship principles, and (3) a specification of the sponsorship objectives are required. Critical factors for success are (4) the target groups and coverage of the sponsorship, and the image and brand profile, for which differentiated data and information should be obtained. In order to formulate the most attractive sponsorship proposal and to exploit the sponsorship market in the best possible way, it is also necessary (5) to compile an overall table of individual services offered, and to tailor them into various packages that are as detailed as possible. In doing so, (6) the self-designed category model of different sponsor levels will serve as an orientation, which considers the different communication interests and financial possibilities of sponsors. The basis for a successful sponsor search is (7) also an analysis of the relevant market for potential demand.

If a logically stringent sports sponsorship concept exists, potential sports sponsors must be identified and evaluated with the help of congruence dimensions, for example, in order to estimate the probability of success. The next step for the potential sponsors with the highest congruence is to initiate contact and then contact the potential sponsor in order to ideally arrange an appointment to present the sponsorship proposal. If the outcome of the meeting is positive, the contract is negotiated and drafted, which ideally results in a sponsorship agreement signed by both parties.

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### Comprehension Questions

1. What different effects can sports sponsorship have on the recipient, and what factors influence the degree of effectiveness?
2. What is congruence? What are the different dimensions of congruence, and to what extent is congruence helpful in the acquisition of sponsors?
3. How does the sponsorship management process look like from the sponsee's point of view, and what individual tasks are involved?

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# Sports Sponsorship Contracts

André-M. Szesny

## Abstract

If the sponsor and the sponsee agree to enter into a sports sponsorship, the services and consideration will generally be recorded in a written contract. What further content should be included in this contract and what legal nature a sponsorship agreement has is explained below. In addition, recommendations for contractual regulations are given in detail, and various disruptions to performance and their consequences are described. Finally, reference is made to the special nature of tying transactions in connection with sports sponsorship.

## Learning Outcomes of the Chapter

1. You will be familiar with the contractual contents and components of a sponsorship contract.
2. You know what forms of performance problems can occur with sponsorship contracts and what consequences these can have.
3. You will know the possible legal consequences of tying transactions in sponsorship.

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## 1 Introduction

Sponsoring is the promotion of a person, group of persons, organisation or other organiser by a company with commercial interests.<sup>1</sup> However, individuals or other organisations can also be sponsors. The benefit for the sponsee is the receipt of money, goods or services. In return, the sponsor seeks a successful marketing strategy by using and projecting a positive image of the sponsee and/or the respective sport.<sup>2</sup>

In order to ensure mutual obligations, sponsorship agreements are concluded. Sports sponsorship contracts are those between athletes, federations, associations, clubs or other event organisers and marketers or sponsors concerning an advertising service or marketing service under which the use of rights to persons and sporting activity is permitted, or by providing additional own activities, known as advertising service contract (Pfister 2014).

In this context, a distinction is made between certain designations:

- *Sponsorship* covers all activities related to raising cash or in-kind services.
- A *sponsorship contract* is the name from the point of view of the sponsor supporting an athlete, federation, association, club or event.
- A *marketing contract* is the name from the point of view of the sponsee (athletes, federations, clubs or other organisers).

*Advertising rights* (Pfister 2014), which are the subject of the contract, can be divided into the following groups:

- The rights to physical property, e.g. a stadium;
- The rights to one's own body, e.g. with regard to clothing or tattoos;
- The rights to intangible property based on the general right of personality, e.g. the right to one's own name or image.

Only such rights that may not be used by third parties without the permission of the rights holder can be marketed by the sponsee (exclusive rights).

In addition, typical contract contents are value-added services and services.

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to the different country-specific legal regulations, deviations may occur in the countries concerned.

<sup>2</sup>In contrast to sponsorship, donations are unilateral contributions by the donor, who cannot expect any kind of consideration in return.

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## 2 Forms of Marketing

The sponsee may market themselves by granting the promotional rights described in greater detail above as well as the associated services or works and rights to objects directly to a company. Alternatively, they may entrust marketing to an agency or their manager (Pfister 2014).

If the sponsee directly grants a company their advertising rights and so on, the company can use the rights for its own advertising without further action. In return, the company pays the sponsee the contractually agreed fee. Special cases are the *kit supplier* or *equipment contracts*. The sponsor achieves advertising effects by providing equipment to the sponsee and the sponsee wearing or using it in public, thereby presenting it to the public.

In addition, the sponsee can commission an agency or a manager to market their advertising rights. The agency or manager either receives a fee from the sponsee or a percentage of its profits for the services rendered. If it concerns the marketing of all possibilities of the advertising use of the rights to different enterprises, this is also called *total marketing*.

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## 3 Legal Nature of the Contract

In practice, two types of contracts are of particular importance when it comes to drafting sponsorship agreements and the content of their regulations (Pfister 2014).

First, if the contract concerns the awarding of advertising rights by the sponsee, for example, the contracting parties will regularly conclude a *licence agreement*. This is a *sui generis* contract. This in turn means that the contractual agreement does not correspond to any of the contract types regulated in Germany by the Civil Code (BGB). In some cases, the provisions of lease and tenancy law correspondingly apply to such licence agreements. Whether or not these provisions are applicable to the individual agreements made in a licence agreement requires a regular examination of the specific case.

Another typical contractual service of the sponsee is the provision of *work and services*. In these contractual constellations, the provisions of the contract for work and services (§§ 631 et seq. BGB) and the service contract law (§§ 611 et seq. BGB) regularly apply.

The monetary services provided by the sponsor do not characterise the contract with regard to a specific type of contract, but make it a mutually binding contract within the meaning of §§ 320 et seq. of the BGB. If the sponsor makes contributions in kind, e.g. the equipment of the sponsee, this part of the contract is to be qualified as a purchase or rental contract so that in the event of defects, the corresponding warranty right applies.

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## 4 Concrete Contents of a Sponsorship Agreement

Certain services provided by the sponsor and the sponsee are regularly the subject of sponsorship agreements (Pfister 2014). The sponsee often commits to the following services:

- Marketing of its goodwill;
- Granting of intellectual property rights for use in advertising (licensing component);
- Active involvement, e.g. at the sponsor's advertising events;
- Provision of advertising space on items in their ownership or possession;
- Provision of the athlete's body as an advertising space, e.g. tattoos, equipment, clothing;
- As a club or federation: admission of the participation of an athlete, e.g. in television commercials, or presentation of the sponsor's business names, especially in the context of sporting activities in public (service or work contract component).

In return, the sponsor usually undertakes to provide cash, in-kind services or a mixture of both.

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## 5 Contractual Provisions in Detail

The following remarks refer to Pfister (2014).

### 5.1 General Information

Before entering into a sponsorship agreement, the parties to the agreement should consider, for example, the following aspects pertaining to the contents of the agreement and contract negotiations:

- What advertising rights are suitable for marketing and what is their scope?
- Are the rights exclusive rights?
- Is the sponsee entitled to dispose of the advertising rights, or do they require the consent of a third party?
- Should an exclusive sponsorship be agreed upon?
- What are the special features of minors as sponsees?
- Is there an international connection?
- Should a framework agreement or preliminary agreement be concluded?
- Are there any restrictions due to federation or club rules?

## 5.2 Agreements Regarding the Performance of the Sponsor

As already mentioned, the services provided by the sponsee typically consist of the allocation of advertising rights, the provision of services and work or the provision of premises, e.g. a stadium.

In this context, the following points shall be contractually regulated (in detail):

- What advertising rights should the sponsor receive exactly (e.g. name and/or image rights)?
- May the sponsee also grant advertising rights to other sponsors and, if so, which advertising rights?
- Is the sponsor authorised to transfer the rights (sublicensing)?

In addition, the extent to which the sponsor may use the rights for themselves must be contractually regulated. Restrictions to certain countries or regions, certain locations or certain types of advertising are conceivable here.

The services and works are usually obligations to participate in advertising campaigns or to wear or use the sponsor's products. Also, in this context, detailed contractual agreements are recommended in order to avoid a later (legal) dispute. In particular, the following aspects need to be regulated:

- What types of sponsor appointments are the subject matter of the contract?
- How many sponsor events does the sponsee have to attend each year?
- Is the sponsor allowed to set the dates unilaterally?
- What legal consequences should any infringements entail?

Possible regulatory points with regard to the provision of premises are

- Where exactly is the advertisement placed?
- Who is responsible for installation, maintenance and dismantling after the contract expires?
- What are the legal consequences of violations and complications?

## 5.3 Agreements Regarding the Sponsor's Services

As a rule, the main service provided by the sponsor is the payment of a fee to the sponsee. If the sponsee is obligated to perform various services, e.g. to grant advertising rights on the one hand and to wear the sponsor's sportswear on the other, it is advisable to regulate in detail which payment the sponsee receives for which service. This also makes it easier to deal with a possible performance disorder and its consequences.

In addition, in the case of long-term contracts, it is advisable to structure the remuneration flexibly, based on successes and failures. For instance, for winning a championship or a major competition, a win bonus can be agreed.

## 5.4 Contract Duration

As a rule, a sponsorship agreement is a *continuing obligation*. The contract can be concluded for an indefinite period, for a certain time or with regard to an event. It ends at the close of the agreed period, through termination or upon the occurrence of a previously contractually agreed condition precedent.

In the case of contracts that are concluded for a longer period of time or for an indefinite period, there is a right to termination without notice if there is an important reason that cannot be contractually excluded. What qualifies as an important reason depends on the individual case. A contract can provide clarity in this respect. In addition, the parties may agree that certain other reasons, which do not constitute important reasons, also entitle the parties to terminate the contract subject to a notice period, e.g. the absence of successes over a longer period of time.

With an open-ended contract, it should also be regulated in the contract when the contract can be terminated for the first time and the deadline for termination. An actual perpetual commitment cannot be achieved by unlimited contracts. These can be terminated by either party after a certain period of time, although there are great uncertainties with regard to the exact rights without contractual regulation.

Option clauses are one way of making contracts more flexible.

## 5.5 Agreements on Jurisdiction and Arbitration Clauses

In principle, it is possible for the parties to agree which court should have local jurisdiction in the event of a legal dispute (agreement on the place of jurisdiction). In addition, the parties may agree that instead of the ordinary state courts, an arbitral tribunal shall have jurisdiction to settle a dispute (arbitration clause). The latter serves to avoid long proceedings and the exclusion of the public.

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## 6 Service Interruptions

The following remarks refer to Pfister (2014).

### 6.1 The Right of the BGB to Disrupt Performance

The statutory provisions of the BGB regulate the rights of the contracting parties in the event of a breach of duty. In particular, the provisions of the general section of

the law of obligations and the provisions on the individual contract types are relevant here. If the parties agree on deviating provisions, these may in principle supplant the statutory provisions. In many cases, it is advisable for the parties to the contract to lay down clear rules in the contract. This applies in particular to the determination of the legal consequences of breaches of duty, especially in the event that the sponsee does not provide services.

With regard to the mostly existing mutual contracts, the following principles result from the BGB:

### **Right of Retention According to § 320 BGB**

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#### **Example**

Athlete X does not wear the clothing of their kit supplier A at press conferences, although this was contractually agreed. As a result, A does not pay the agreed cash benefit.

If one party fails to perform its principal performance in full in accordance with the contract, the other party may in turn retain the principal performance incumbent upon it until complete performance and otherwise sue for the failure to perform as agreed. However, this does not apply if this party is subject to an obligation to perform in advance, because then it is precisely stipulated in the contract that one party shall perform before the other.

### **Impossibility According to §§ 275, 326 BGB**

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#### **Example**

Athlete V is contractually obligated to appear in Cologne and sign autographs at a major advertising campaign of their sponsor N. On the day in question, however, they are stuck at their training facility in London due to a storm.

If it is impossible for a contracting party to render its main service, i.e. if it can no longer render the service at any time, the contracting party's obligation to perform shall also cease to apply. If one party cannot perform, the other party shall not remain obligated. This does not apply in the event that the creditor is responsible for the non-performance of the obligor or the impossibility occurs at a time when the creditor is in default of acceptance.

### **Reduction According to § 441 BGB**

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#### **Example**

Club K allows beverage company W to advertise in its stadium. It has been agreed that advertising banners will be hung during K's matches and that

advertising will be displayed on screens. However, during one match, the screens do not work, so W wants to pay only part of the agreed amount of money.

If the debtor provides only partial performance or defective performance, the creditor may reduce the consideration in accordance with §§ 441 (1), 326 (1) sentence 2 or § 441 (1) BGB.

### Withdrawal and Termination

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#### Example

Athlete L never appears at the agreed advertising dates, thereupon sponsor S seeks to withdraw from the contract.

In the event of non-performance or bad performance, the creditor may, in accordance with the requirements of § 326 Paragraph 1 or §§ 323 et seq. BGB, withdraw from the contract. They may reclaim any consideration already paid. Continuing obligations can be terminated in accordance with § 314 BGB, whereby the special provisions of the individual types of contract must be observed.

### Compensation

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#### Example

Sporting goods manufacturer B equips athlete X with its ski products so that they can race with using them. However, the material proves faulty, causing X to have a serious fall and require treatment for several weeks.

If one party (creditor) suffers a loss due to a delay, non-performance or bad performance by the other party (debtor), it may be sued by the latter pursuant to §§ 280 et seq. BGB. This only applies if the debtor cannot prove that they are not at fault with regard to the breach of duty.

### Disturbance of the Basis of Business According to § 313 BGB

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#### Example

H has already received the World Soccer Player of the Year award several times, which is why they are sponsored by sporting goods manufacturer S. Suddenly, they stop scoring goals and sit on the bench of their club V.

If a circumstance that is the *basis of the contract* changes after conclusion of the contract, the contract may be adjusted or the disadvantaged party may even withdraw from it if they cannot reasonably be expected to adhere to it. However, it should be noted that the adjustment of the contract is the legal rule.

## 6.2 Usual Contractual Agreements

### With Regard to Breaches of Duty by the Sponsee

With regard to the granting of the advertising rights of the sponsee to the sponsor, hardly any cases of default are conceivable.

If the provision of services or work by the sponsee has been agreed, however, some constellations of a breach of obligation are conceivable:

1. *Non-performance of the service.* If the sponsee does not perform an agreed service, the obligation of the sponsor to perform the service in return is also not applicable. If they have already paid the consideration, they can reclaim it. In addition, the sponsor may be entitled to claim damages if the sponsee cannot prove that they are not at fault for their non-performance. In order to avoid evidence problems regarding the amount of damages, it is advisable to contractually fix a lump sum or a contractual penalty.
2. *Disruption of the business basis.* The basis of advertising service contracts is that the image of an athlete, club or federation is so positive or attractive (goodwill) that a company assumes that it can improve its own image by exploiting it, ultimately increasing sales of its products through marketing campaigns with the sponsee. The following conceivable actions can therefore be regarded as the loss of the basis for business: surprising relegation from a league; loss of admission to a major competition of a federation or league; surprising termination of an athlete's career; failure of a television broadcast. The sponsor is entitled to demand an adjustment of the contract, e.g. fewer payments or even the termination of the contract. However, this only applies if the circumstance does not fall within their sphere of risk. Due to the many uncertainties in the interpretation of § 313 BGB, the parties should contractually state what should be the basis of their contract and what circumstances entitle them to adjust or terminate it. This also applies to the provision that the sponsee shall be obligated to participate in certain competitions.

### With Regard to Breaches of Duty by the Sponsor

As far as the *monetary payments* to be made by the sponsor are concerned, the legal regulations are usually sufficient and do not need to be greatly supplemented by a contract. If the sponsor has undertaken to make *contributions* in kind, e.g. equipment, they must rectify or replace the defective performance. In addition, they may be liable for damages, if necessary in accordance with the Product Liability Act. Possible deviating regulations concern the agreement of a subsequent delivery right of the sponsor in case of the delivery of defective benefits in kind or the limitation of claims for damages in case of pure financial losses.



In addition, the case of a disturbance of the business basis is conceivable if the sponsee suddenly achieves special achievements or successes. They should then also have the right to adjust or even dissolve the contract in their favour.

### **With Regard to the Violation of Ancillary Obligations**

Similarly to the disruption of the business basis, the problem with the breach of ancillary obligations is that these are not clear in the event of a dispute and can therefore be very uncertain for the parties to the contract. It is therefore advisable to specify in the contract from which ancillary obligations the parties are to proceed and which sanctions should follow a violation, e.g. *lump-sum compensation* for damages. In principle, damages can be claimed in the case of a culpable breach of an accessory obligation. If the breach of an accessory obligation considerably impairs the relationship of trust between the parties, it may also be possible to withdraw from the entire contract.

Recognised accessory breaches include drug use, doping, suspension, advertising of the sponsee for competing companies and the granting of further licences to other companies even though an exclusive licensing agreement had been reached. In summary, such breaches cover types of behaviour that can damage the advertising effect hoped for by the sponsor.

Sporting failures are normally not classified as (culpable) breaches of an accessory obligation and can therefore not trigger any legal consequences. However, it is possible to contractually agree that long-lasting failures can be the reason for a reduction in the remuneration, or that conversely, sporting successes can be the reason for an increase.

In addition, greatly reduced participation in competitions in comparison with previous years may constitute a breach of an accessory obligation. However, the special features of training plans, e.g. due to major events, must be taken into account. Participation in certain competitions only constitutes a primary obligation if it has been contractually agreed.

### **Contractual Penalties and Liquidated Damages**

Frequently, the problem arises that although the prerequisites for a claim for damages according to the statutory provisions are met, the amount of the damage, in particular in the case of breaches of duty by the sponsee, cannot be precisely proven, such as in the case of a less effective advertising campaign due to a doping scandal. It is therefore advisable to precisely quantify the amount of the reduction in consideration for individual cases in the contract. In addition, there is the possibility of agreeing a lump-sum compensation award or a contractual penalty for certain individual breaches of duty or for the non-fulfilment of the contract as a whole. These measures have the advantage of facilitating the burden of proof with regard to the amount of the damage as well as providing a means of exerting pressure in order to achieve contractual performance by the debtor (Pfister 2014).

## 7 Excursus: Tying Transactions in Sponsorship

The following type of practice-relevant special constellation should be noted at this point:

Tying transactions are those transactions where a customer who buys a product from an undertaking (tying product) also undertakes to purchase another product from that or a third undertaking (tied product). The conclusion of the contract for the tied product is a precondition for the conclusion of the contract for the tying product. Such contract constellations are also known in the field of sponsorship and are regular practice. The conclusion of a sponsorship agreement can, for example, be made dependent on the conclusion of a further supply agreement between the parties (Heermann 2014).

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### Example

Football Club V would like to be sponsored by sporting goods manufacturer S and hopes to conclude a sponsorship agreement for this purpose. However, S makes the conclusion of the contract dependent on V taking 300 training balls from it.

Such tying can be problematic under antitrust, competition and criminal law. In particular, criminal liability risks with regard to bribery and bribery in commercial transactions (§ 299 StGB) and, if the public sector is involved, corruption offences (§§ 331 et seq. StGB) must be kept in mind (Heermann 2014).

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### Questions

Discussion Questions

1. To what legal nature can a sponsorship contract be assigned?
2. What contractual contents should ideally be included in a sponsorship contract?
3. What performance disruptions may occur between sponsors and sponsees and what consequences may be associated with them?

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# Criminal Law and Sports

André-M. Szesny

## Abstract

Following an introduction to criminal law, important punishable offences in sports are presented. The focus here is on economic penalties such as the manipulation of sports competitions, fraud, embezzlement, doping, corruption and the procrastination of insolvency as well as the special risks associated with hospitality measures. Finally, approaches to the prevention of corruption and manipulation in sports are presented.

## Learning Outcomes of the Chapter

1. You will be familiar with basic concepts of criminal law and are able to distinguish between them.
2. You know which penalties are of particular importance in sports, and how they should be assessed from the perspective of criminal law.
3. You will understand the term *compliance*, and how a compliance management system can help prevent corruption and manipulation in sports.

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## 1 Introduction

### 1.1 The Function of Criminal Law

Criminal law is a branch of public law (Joecks 2018b, Introduction, recital 7).<sup>1</sup> It is characterised by the fact that the individual citizen exists in a relationship of subordination and superiority with the state and that the relationship between them is of a sovereign and not a private nature. The function of criminal law is to preserve legal peace within the community and to safeguard certain fundamental values. It is therefore a matter of protecting certain legal interests. Legal assets worthy of protection are goods of life, social values and legally recognised interests of the individual or the public that should enjoy special protection because of their significance for society.

On the other hand, civil law concerns the relationship between citizens and thus has a horizontal effect. For example, it justifies claims for damages and, if necessary, the restoration of property and ownership; it concerns the (financial) compensation of damage caused by the perpetrator or the restoration of the lawful state of affairs.

The main objective of criminal law—apart from its retaliatory and sanction function—is to maintain legal peace. To this end, it has both a preventive and a repressive effect on perpetrators and society. Both the perpetrator and the public are to be deterred from committing comparable criminal offences (Hassemer and Neumann 2017, Vorb. § 1, Paragraph 266 et seq.).

### 1.2 Criminal, Ancillary and Administrative Offences

In addition to the criminal offences defined in the German Criminal Code (StGB), there are numerous new laws, such as the German Commercial Code (HGB), the Medicinal Products Act (AMG) and the Anti-Doping Act (AntiDopG), which also contain criminal offences.

In contrast to criminal law, administrative offences law serves to enforce such provisions, which are based more on considerations of expediency. The aim is to sanction “administrative wrongs” and acts lacking ethical worth (Joecks 2018b, Introduction, Paragraph 8). This means that despite the event of a misconduct, there is no moral reproach. *However, the distinction between criminal law and administrative offence law is not always clear: It is subject to the assessment of the legislator.*

Sports federations and associations must not only observe and obey state law; they are also subject to sports-specific regulations, such as the competition regulations of sports governing bodies or the Olympic Charter, which are drawn up by

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to the different country-specific legal regulations, deviations may occur in the countries concerned.

national and international sports organisations (Fritzweiler et al. 2014). These sports rules, the disregard of which is sanctioned by the sports arbitration court (see also Chap. 3), among others, are the result of club autonomy and sometimes lead to a form of *double jeopardy*.

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## 2 General Part

### 2.1 Three-Step Structure of an Ancillary Action

In criminal law, the offence structure of a malicious act is usually three step; that is, there are three essential elements of an offence, the presence of which is a prerequisite for punishment. These are: offences, illegality and guilt.

#### Facts

An offence is a summary of the actual characteristics that describe the prohibited conduct and distinguish it from permitted conduct. It is composed of the individual elements of the offence. At the same time, facts can be divided into objective and subjective facts.

#### Objective Facts

The objective constituent elements of the offence shall be composed of the individual constituent elements resulting from each paragraph and the two non-codified elements of action and causality. Causality means that there must be a causal connection between the offender's act and the occurrence of damage. According to the recognised *condition sine qua non* formula, an action is causal if it cannot be ignored without the success in its concrete form being lost (BGH NJW 1986, 438 (438–439); Fischer 2017, Vor §13, Paragraph 21).

#### Subjective Facts

In contrast to objective facts, which are composed of outwardly recognisable facts, subjective facts capture what is happening inside the perpetrator. In addition to intent, they also include—depending on the offence in question—the special intentions and/or motivations of the perpetrator.

Pursuant to § 15 StGB, for every offence committed, the offender must act intentionally, unless a criminal liability for negligence has been expressly ordered. Intention is generally understood as the knowledge, and intention of the offender to commit the offence (Fischer 2017, § 15, Paragraph 4). As a rule, a contingent intention (*dolus eventualis*) is sufficient. This means that the perpetrator must seriously consider the realisation of the offence to be possible and accept it with approval (Joecks 2018a, § 16, Paragraph 31). Here, the differentiation from so-called deliberate negligence is particularly difficult. This is the case if the perpetrator considers the realisation of the offence possible, but does not accept it in an approving manner, but as if it is undesirable.

Stronger forms of intent are intention (*dolus directus*, first degree), in which the will of the offender to commit the offence is in the foreground, and direct intent (*dolus directus*, second degree), in which the offender knows that the offence will be committed, even if they are not intentionally aiming to do it. For the question of punishment, the form of intent usually does not play a role, but it may be relevant for the later sentencing.

Intent must relate to all the objective elements of the offence and, pursuant to § 16 (1) sentence 1 StGB, be present at the time the offence was committed. Pursuant to § 8 StGB, an offence is committed at the time when the offender acted.

### Excursus

#### Classification of Offences

Offences can be classified according to different criteria.

Criminal law distinguishes between *misdemeanours* and *crimes*. Pursuant to § 12 (1) StGB, crimes are unlawful acts that are punishable by a minimum term of imprisonment of one year. § 12 (2) StGB stipulates that misdemeanours are unlawful acts that are punishable by a lower minimum term of imprisonment or a fine. For the purposes of classification as a crime or misdemeanour, penalties or mitigations provided for particularly serious or less serious cases shall not be taken into consideration (§ 12 (3) StGB). Whether a criminal offence is a misdemeanour or a crime plays a role in various subsequent questions:

- An attempted crime is always punishable, whereas an attempted offence is only so if it is expressly ordered. If this order is missing, then only the completion of the offence is punishable (§ 23 (1) StGB).
- In the case of crimes, the investigation procedure may not be discontinued due to insignificance (§ 153 German Code of Criminal Procedure (StPO)) or against conditions and instructions (§ 153a StPO).
- The suspicion of a crime can justify more intensive investigative measures than the suspicion of an offence.

A distinction is also made between *offences of commission* and *offences of omission*. The omission of an act is initially punishable if it is expressly described as punishable conduct (e.g. in the case of omitted assistance, § 323c StGB), so-called genuine omission. In the case of offences of commission, i.e. those that are regularly committed by active action, omission is only punishable if the offender has an obligation to intervene (§ 13 StGB). For example, the head of an audit department allows *seeing eye* to see how an employee in the invoice department knowingly creates excessive invoices for customers. The person makes themselves liable to prosecution for fraud by omission (BGH, decision 7th July 2009—5 StR 394/08 (Berliner Stadtreinigungsbetriebe)).

Criminal law also differentiates between *offences relating to activity* and those *relating to success*. The former refers more to behaviour without actual harm or injury (e.g. granting of an advantage, § 333 StGB), whereas successful offences require the infringement or at least the endangerment of a legally protected right (e.g. bodily injury, § 223 StGB). The legislature has a wide margin of discretion in answering the question of where and under what circumstances it intends to intervene under criminal law. Where a mere conduct appears to be punishable and in need of punishment is decided by the legislature within the framework of its competence to legislate under criminal law. For conduct that in my view is not punishable (i.e. not criminal offences, but merely administrative offences), the legislature can still issue fines.

Finally, *offences of infringement* that, as successful offences, require the infringement of a legal right protected under criminal law, must be distinguished from dangerous offences. The latter merely require a threat to the legal interest, which must either be concrete (concrete dangerous offence) or abstract (abstract dangerous offence).

### **Illegality**

The realisation of the offence is only punishable if the offender also acts unlawfully. An act is unlawful, if it is contrary to the legal system without there being any justification. Given that the concept of illegality is used uniformly throughout the entire legal system, grounds for justification may originate not only in criminal law, but also in civil law and public law (Fischer 2017, Vor § 32, Paragraph 3 et seq.).

There is no exhaustive catalogue of justifications. Reasons for justification under criminal law may include, for example, self-defence (§ 32 StGB), the justifying state of emergency (§ 34 StGB), the conflict of duties and the justifying or presumed consent of the injured party.

There is a rule–exception relationship between the offence and these reasons justifying it. If such an exception is not present, then the illegality is already indicated by the elements of the offence according to the prevailing opinion today. It is therefore in principle not necessary to prove the illegality positively.

The elements of an offence and illegality together constitute the injustice of the act.

### **Guilt**

In contrast to injustice, guilt is personal reproach (Fischer 2017, § 13, Paragraph 47). At the level of guilt, the individual perpetrator—and not, as in injustice, the act—is the focus of consideration. For even if the perpetrator acts according to the facts of the offence and illegally, case constellations are conceivable in which a punishment nevertheless does not appear appropriate because the perpetrator could not act otherwise on the basis of very personal preconditions or simply cannot be reproached for it.



First of all, it is relevant whether the perpetrator is generally in a position to recognise the injustice of his/her actions and to make an assessment of these on the basis of their age and mental abilities. Pursuant to § 19 StGB, any person who has passed the age of 13, i.e. who is at least 14 years old, is in principle culpable. According to § 20 StGB, however, culpability can be completely excluded if the perpetrator suffered from a mental disorder when committing the offence. According to § 21 StGB, diminished culpability can be considered if the offender's ability to perceive the injustice of the act or to act according to this insight is considerably diminished for one of the reasons described in § 20 StGB at the time of committing the act. A reduced or complete incapacity to blame according to §§ 20, 21 StGB can also be caused by alcohol or drug consumption.

At the same time, the offender must have an awareness of injustice when committing the offence (Fischer 2017, § 17, Paragraph 3). Awareness of injustice refers to the perpetrator's insight that they are doing wrong. According to § 17 StGB, this is only missing if the perpetrator believes that there is no prohibition norm at all that they are not committing an injustice, and that this error is unavoidable (so-called unavoidable error of prohibition). If the error is avoidable, then the punishment can at least be alleviated.

Even if the perpetrator is guilty, there may be a factor that excuses their actions on the basis of a particular factual situation and excludes criminal liability, although the perpetrator is still committing an injustice. Reasons for excusing include, for example, the emergency defence excess (§ 33 StGB), the exculpatory state of emergency (§ 35 StGB) and the unreasonableness of conduct in accordance with the norm.

### **Perpetration and Participation**

In criminal law, there are different forms of participation in a crime: perpetration and participation.

The perpetrator is anyone who makes a causal contribution to the realisation of the facts. A distinction must be made here between the sole offender who commits the offence alone (§ 25 (1) Var. 1 StGB), the indirect offender who commits the offence through another (§ 25 (1) Var. 2 StGB), and the accomplice who commits the offence together with another on the basis of a joint decision (§ 25 (2) StGB). The type or quality of each contribution to the offence is only taken into account within the framework of the sentencing. In addition, it may be considered that several perpetrators commit an offence independently of each other; in this respect, there is talk of secondary offence.

The participant of a criminal offence makes themselves liable to prosecution because they are involved in a criminal offence that is foreign to them. In this respect, a distinction must be made between aiding and abetting and incitement. An instigator within the meaning of § 26 StGB is a person who intentionally designates another person as their offender. On the other hand, aiding and abetting within the meaning of § 27 StGB are provided by the person who intentionally provides aid in the act of another person.

## 2.2 Act of Negligence

The structure of offences of negligence differs from that of intentional offences. As negligence excludes intentional action, there is no differentiation between objective and subjective facts. In the case of negligence offences, there is no subjective element.

## 2.3 Excursus: Association Fine, §§ 30, 130 OWiG

In addition to the sanctions standardised in criminal law, which apply to the perpetrator or participant of a criminal offence themselves, those responsible for sports federations and clubs are also threatened with fines under administrative offences law. If they violate their supervisory duty and thereby make possible club/association-related misconduct on the part of their employees, a fine of up to one million euros per case is imminent (§ 130 Act on Regulatory Offences (OWiG)).

The federations and clubs themselves can then also be sanctioned with fines of up to ten million EUR per case plus profit skimming (§ 30 OWiG). The prerequisite is that the leaders of the club/federation have committed a club/federation-related offence or have violated a duty of supervision, whereby such an offence (e.g. of a subordinate) was made possible or simplified.

This can be the case, for example, if those responsible in federations and clubs do not create structures, which, among other things, prevent manipulation and doping in sporting competitions or make them considerably more difficult and if the aforementioned behaviours remain (initially) undiscovered as a result.

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## 3 The Most Important Criminal Offences in Sports Law

A distinction must be made between sports criminal law in the narrower sense and sports criminal law in the broader sense.

Sports criminal law in the narrower sense is the criminal law of regulated and organised martial arts. It attempts to protect pure sporting events as far as possible from state intervention or criminal law (Reinhart 2014).

Sports criminal law in the narrower sense distinguishes between *offences in sports* and *offences during sports*. Offences in sports are only those that are essentially determined by the type of sports practised and that are unavoidable within it (Reinhart 2014). The criminal offences that can be privileged in this respect are based on bodily injury offences in accordance with §223 et seq. StGB and damage to property according to § 303 StGB. On the other hand, sporting offences such as financial and property offences or sexual offences, in which only the opportunity of sports to commit an offence is exploited, are to be judged in accordance with general criminal law rules.

The increasing professionalisation and commercialisation of sports means that sporting events are becoming more and more similar to the facts and circumstances known in business life (Reinhart 2014). In sports economic criminal law, so-called criminal law in the broader sense, offenders and participants in criminal offences do not enjoy any privileges. Violations of the law committed by them are prosecuted and sanctioned according to the general principles of criminal law, because sport would lose its positive image if behaviours that are prohibited in the economy were not punishable within sports federations, clubs and so forth.

At the same time, various perpetrator-victim constellations must be taken into account in this context (Reinhart 2014). In addition to athletes, groups of persons who in one form or another are involved in sporting events (e.g. coaches, referees, team doctors), who are present on-site (e.g. spectators), who are jointly responsible in the background for the smooth running of a sporting event (e.g. as organisers or technical officials) or who otherwise come into contact with the sporting event (e.g. betting providers) may also commit a criminal offence in or during sports or participate in such an offence.

### **3.1 Offences Against Life and Limb**

#### **Assault**

Physical injuries in sports and through sports are usually caused by the situation of the competition. A criminal law assessment is determined according to §§ 223 et seq. StGB. Personal injury is defined by law as physical abuse or damage to health, cf. § 223 Paragraph 1 StGB. Consequently, any bruise caused by a fair duel already qualifies as a bodily injury. Depending on the motivation of the opponent, they would be liable to prosecution either for intentional (§ 223 StGB) or negligent bodily injury (§ 230 StGB).

However, according to § 228 StGB, a bodily injury is not punishable if it takes place with the consent of the injured person and if it does not offend against common decency. As the person who takes part in a sports event or a sports regularly tacitly consents to impending injuries, the punishability of the athlete for bodily injury is regularly ruled out. Something else applies only if the consent as such offends against common decency. Whether and when this limit is reached depends on the individual case, in particular on the type of sports practised by the parties involved.

Against this background, bodily injuries in team sports and martial arts are prosecuted in very few cases. On the other hand, violence in sports that is not part of sporting competition is a different matter. For example, spectators make themselves liable to prosecution for bodily injury if they seek physical confrontation with each other or with the referee and so forth.

**Example**

In November 2017, the district football committee of Arnsberg in the Sauerland region cancelled all league matches in the district. The measure was taken in response to physical and verbal attacks against two referees in an eighth division match the previous weekend.

**Doping**

Criminal law played a subordinate role in the fight against doping, because self-doping was not punishable in Germany for a long time. Doping was only punishable under general penal provisions such as bodily injury or fraud. These rules were not originally intended for doping, which led to application problems.

A bodily injury according to § 223 StGB presupposes an act against another person. However, coaches, doctors and officials may be liable to prosecution for external doping if the athlete has not consented to the doping or if it is immoral. Such consent is then immoral (§ 228 StGB) if it is associated with serious health damage in the sense of §§ 226, 227 StGB, for example, infertility or life-threatening risks (Heger 2016; Reinhart 2014).

The phenomenon of doping is by no means limited to bodily injury offences, but has an impact on the areas of property, drug and narcotic criminal law. Particularly in modern professional sports, a great deal of money is often involved, earned not only by athletes but also numerous other participants such as federations and clubs, organisers and the media. Depending on the individual case, the doped athlete and the persons involved in the doping may be liable to prosecution for fraud at the expense of the aforementioned groups of persons by receiving bonuses, salaries, start-up money, sponsorship money and subsidies, which the doped athlete might not have received had their doping been known.

**Example**

At the beginning of 2012, the Court of Arbitration for Sport (CAS) found cyclist Jan Ullrich guilty of doping and consequently denied him all his results since May 2005. Ullrich was also banned from all competitions for two years. The public prosecutor's office in Bonn additionally investigated Ullrich for fraud to the detriment of his former employer and advisor Rudy Pevenage for aiding and abetting and for violating the AMG. On 14 April 2008, the public prosecutor's office discontinued its investigations against Ullrich in return for the payment of a six-figure sum to charitable institutions and the state treasury.

In 2015, the Anti-Doping Act came into force, which also contained specific penal provisions. The penal provision, § 4 Anti-Doping Act, refers to conduct precisely defined in §§ 2 and 3 of the Anti-Doping Act. In this respect, the law prescribes exactly what is punishable. This can be summarised as follows:

According to § 4 para, 1 no. 1 Anti-Doping Act, anyone who manufactures, trades in, or, without trafficking, sells, dispenses, otherwise places on the market or prescribes a doping substance is liable to prosecution. It is also punishable by law to administer or apply a doping substance or a doping method to another

person (§ 4 para. 1 no. 2 Anti-Doping Act), to purchase, possess or transfer a doping substance (§ 4 para. 1 no. 3 Anti-Doping Act), to administer or apply a doping substance or a doping method to oneself (§ 4 para. 1 no. 4 Anti-Doping Act) and to participate in a competition of organized sport using a doping substance if this use is without medical indication and with the intention of gaining an advantage in the competition. For this, the law threatens a fine or imprisonment for up to three years. The offender shall be liable to imprisonment for up to ten years in particularly serious cases as specified in § 4 para. 4 Anti-Doping Act. This includes causing health hazards to a large number of people, causing death threats and obtaining large financial benefits for gross self-interest. The increased penalty also applies to those who supply or prescribe doping substances to minors, and to those who act commercially or as members of a gang.

### 3.2 Sports Manipulation

In the past, the prosecution of the manipulation of a sports event was only possible to a limited extent. A conviction for fraud (§ 263 StGB) was only possible in cases in which the connection to a sports bet, and the occurrence of a financial loss was uncovered and proven. The manipulation of professional sports competitions as such has not been criminalised to date. The influence on players, coaches and referees was also not punishable as bribery in the course of the trade of goods and services (§ 299 StGB), as there was generally no purchase of goods or services.

The legislator remedied this situation by making sports betting fraud and the manipulation of professional sports competitions a punishable offence for the first time on 19 April 2017, under §§ 265c f. StGB. Now an athlete, coach or referee is punished with up to five years' imprisonment if they demand or accept an advantage for themselves or a third party or promise to influence the course of a competition of organised sports in favour of the opponent. The *sports betting fraud* punishable under § 265c StGB covers cases in which bets are placed on a manipulated competition. On the other hand, the *manipulation of professional sports competitions*, which is punishable under § 265d StGB, does not require an unlawful pecuniary advantage for the realisation of the facts. This provision already applies if the manipulation takes place in a professional sports competition in which professional athletes participate who directly or indirectly generate substantial income through their sporting activities. The person who grants the advantage will also be penalised in mirror image.

In special case constellations, those involved in betting fraud or the manipulation of sports competitions may at the same time be liable to prosecution for fraud and other economic offences.

**Example**

In 2009, THW Kiel came under suspicion of having won the handball Champions League title in 2007 by bribing referees. Given that the public prosecutor's office was unable to present clear evidence or crown witnesses in the criminal proceedings against the responsible persons; the regional court in Kiel acquitted the responsible persons in all respects in 2012.

The referee Robert Hoyzer had influenced the outcomes of football matches in which he was involved in order to enable participants in sports betting to win for material and financial benefits. The Regional Court in Berlin sentenced him to two years and five months' imprisonment for aiding and abetting fraud. However, he did not commit the offence of bribery.

### 3.3 Sports Economic Criminal Law

The increasing professionalisation of sports is leading to its greater integration into economic life. As a result, the number of economic crimes committed by athletes, coaches, managers of clubs, federations, sponsors and so forth has increased in recent years, even in supposedly marginal sports.

#### 1. Fraud

In particular, in connection with doping as well as sports betting, but also in other case constellations, the parties involved can make themselves liable to prosecution for fraud according to § 263 StGB.

The prerequisite for fraud is an act of deception on the part of the perpetrator that causes or maintains an error on the part of another. This error must be the cause of an asset order, which in turn must cause financial loss. Such financial loss exists if the economic value of the property concerned is reduced by the disposition of the deceived party according to objective criteria.

The offence of fraud must be committed intentionally. The perpetrator's intention to enrich themselves or a third party must be added to this. The advantage sought from the disposition of assets must be identical in substance to the damage incurred. Furthermore, the enrichment must also be unlawful. In the context of § 263 StGB, unlawfulness exceptionally constitutes an element of the offence which must be positively established. Any enrichment that objectively contradicts the legal system is unlawful.

#### 2. Infidelity according to § 266 StGB

The criminal offence of breach of trust consists of two independent partial offences, namely the abuse offence according to § 266 Paragraph 1 Var. 1 StGB and breach of trust according to § 266 Paragraph 1 Var. 2 StGB.

The purpose of the norm is to protect assets that are not the property of the perpetrator. To this end, the norm prohibits the damaging of others in terms of their assets by exploiting a special position of trust. The owner of such a position of trust is, among others, the executive board or managing director of a sports organisation that is organised as a corporation (Reinhart 2014).

In the variant of abuse, the perpetrator uses the power of representation granted to them at the expense of the represented party, for example, by concluding a transaction that is detrimental to the latter. This is the case, for example, if the transfer fees specified by the shareholders or club members are exceeded in the case of player obligations or if other obligations are entered into that are not covered by their consent.

In the context of the fiduciary offence, which is much broader than the abuse offence, the offender violates an asset management obligation resulting from a relationship of trust. Thus, any act or omission that violates an existing asset management obligation and causes damage to the assets under management can constitute a criminal offence. This includes, for example, the formation of slush funds and the misappropriation of funds for player purchases and so forth. The acceptance of funds from untrustworthy sponsorship measures at least constitutes a punishable offence for participation in unfaithful treatment.

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#### Example

1. In the build-up to the 2006 Fédération Internationale de Football Association (FIFA) World Cup, various seven-figure payments were made to FIFA or individual FIFA officials. Among other things, these funds are said to have been used to buy votes for the World Cup.
2. A preliminary investigation against Reiner Calmund for breach of trust was discontinued at the end of 2006 against the payment of an additional charge of EUR 30,000. He was accused of having paid an amount of EUR 580,000 to the football club for Bayer 04 Leverkusen for a transfer option transaction without receiving or demanding any return service.
3. In 2013, the football club Hansa Rostock dismissed the employee responsible for ticket sales, as he was suspected of having used ticket revenue totalling approximately EUR 250,000 for himself. The district court in Rostock sentenced him to two years' imprisonment in 46 cases for commercial embezzlement, which was suspended on probation.

### 3. Corruption, §§ 299, 300, 331 et seq. StGB

According to § 299 StGB, both (active) bribery and (passive) bribery are punishable by law. § 299 StGB protects not only the functionality of competition but also the employer's interests in the loyal and uninfluenced fulfilment of duties by

their employees. Like the offence of breach of trust, § 299 StGB contains two independent partial offences.

According to the so-called competition model standardised in § 299 (2) no. 1 StGB, anyone who offers, promises or grants an advantage in return to an employee or agent of a company for the purpose of competition in business transactions for the unfair preferential treatment of the donor or another person when purchasing goods or commercial services is liable to prosecution.

In addition, according to the so-called principal model standardised in § 299 Paragraph 2 No. 2 StGB, a person who offers, promises or grants an advantage to an employee or agent of a company without the latter's consent in return for the future violation of an obligation existing towards the company with regard to the purchase of goods and services for the latter or a third party is punished. Relevant obligations of employees may result from law or contract, in particular from supplementary employment contract regulations in the form of internal company guidelines.

According to § 299 Paragraph 1 StGB, anyone who demands, allows oneself to be promised or accepts such an advantage is liable to mirror-image punishment for bribery in business transactions.

Jurisprudence is based on a broad concept of advantage. In addition to so-called kickback payments and other bribes, it can also include dinner invitations or Christmas presents as well as intangible benefits.

Just as the granting of advantages in the business sector, the person who grants an advantage to a public official for the (unlawful) performance of their duties is liable to prosecution for the granting of advantages (§ 333 StGB) or bribery (§ 334 StGB). In mirror image, the official is punished for accepting an advantage (§ 331 StGB) or bribery (§ 332 StGB).

### **Hospitality**

In sports advertising, too, marketing and the general cultivation of business contacts are often associated with the allocation of advantages in the broader sense. In business life, this also includes invitations from business partners to (major) sporting events. In the context of sports and cultural events, companies rent boxes or purchase contingents of tickets for VIP or business seats. The companies then invite their business partners and other contacts to these events and use the special setting, usually combined with (exclusive) hospitality, to cultivate contacts or to initiate contracts.

At the latest, the decision of the Federal Court of Justice in the EnBW case (BGH NStZ 2008, 688) made it clear that the invitation of business contacts and, in particular, the granting of tickets within the scope of a sponsorship commitment may, under certain circumstances, constitute a criminal offence of bribery. In the EnBW case, the former Chief Executive Officer (CEO) of EnBW, Utz Claassen, had to answer for the allocation of VIP tickets to high-ranking politicians for the 2006 FIFA World Cup in Germany. Due to the special circumstances of the individual case, the BGH decided at the time that the parties involved had not committed any criminal offence.



The question of whether an invitation to an event is admissible, or already constitutes a criminal offence is always an individual decision. The definition is subject to considerable uncertainty. However, there is agreement that invitations, travel or VIP tickets constitute punishable corruption if their explicit or implicit aim is to make the invited person inclined to act in favour of the host in the future when fulfilling their duties, i.e. if the invitation is intended to *buy* a decision. There is also agreement on the admissibility rating for invitations where there are no official or business points of contact between the invited person and the host (Pelz 2009; Trüg 2009).

Although those responsible for sports organisations are rarely themselves perpetrators, they can make themselves liable to prosecution as participants by, for example, developing and marketing hospitality programmes specially tailored to companies or by offering discounted ticket quotas for companies or their own sponsors.

### **Allocation of Major Sporting Events**

Irregularities in the awarding of national and international sporting events have also received considerable public attention in recent years. In several cases, officials of sports organisations were suspected of having received or paid bribes. Whether § 299 StGB is generally applicable to the purchase of voting rights for the award of sporting events depends on whether clubs or federations such as FIFA, the German Football Association (DFB) or the International Olympic Committee (IOC) are regarded as companies (Hoven et al. 2016). This is the case if the sports organisations are economically active and thus essentially related to economic life (Hoven et al. 2016). Furthermore, with regard to the sponsorship money generated annually by the sports organisations, their economic activity will in many cases be hardly open to dispute (Hoven et al. 2016; Reinhart 2014). The misappropriation of federations/club funds makes those involved liable to prosecution for breach of trust.

## **4. Delay in insolvency**

Sports federations and clubs that choose the organisational form of a corporation must fulfil special duties in the event of an economic crisis. In particular, those responsible for sports clubs organised as limited liability companies are responsible for ensuring that an application for insolvency is filed in good time. Pursuant to § 15a Paragraph 1 of the German Insolvency Statute (InsO), the insolvency application must be filed with the competent insolvency court no later than three weeks after the occurrence of insolvency or over-indebtedness. The application period of three weeks shall apply even in the case of an intended restructuring of the association. Anyone who violates this is liable to prosecution pursuant to § 15a Paragraph 1, 4 InsO for delaying the insolvency proceedings.

In this respect, it should be noted that the respective insolvency court is *ex officio* obligated to forward the insolvency file to the public prosecutor's office. This office

examines not only whether those responsible have committed criminal offences for the delay of insolvency but also other offences such as bankruptcy (§ 283 StGB).

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**Example**

In June 2017, in connection with the first insolvency of the football club Alemannia Aachen, the regional court in Aachen sentenced Frithjof Kraemer, the long-standing managing director, to a suspended sentence of 18 months and a payment of EUR 50,000. Kraemer, in his function as managing director, had already been compelled to file for insolvency in May 2012, but deliberately refrained from doing so. Almost EUR 60 million was lost due to the insolvency of the then-third division team.

### 5. Miscellaneous offences pursuant to § 331 HGB

In addition, sports organisations that are organised as corporations are subject to the accounting provisions of the HGB. Those responsible who do not fulfil their obligations in connection with the preparation of annual financial statements are liable to prosecution pursuant to § 331 HGB, as are the corporate bodies of a corporation that intentionally misrepresent the circumstances of the company in the balance sheet (§ 331 No. 1 HGB).

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## 4 Criminal Proceedings (Overview)

If there is (initial) suspicion of a criminal offence, the public prosecutor's office must investigate the facts of the case (§ 152 StPO) to the extent that there is an obligation to prosecute. The public prosecutor's office leads the investigation procedure, but makes use of the support of the criminal investigation department, the financial and customs authorities and, in some cases, the capital market supervisory authorities as well.

An initial suspicion that forces the authorities to intervene already exists if there are sufficient actual indications of a criminal offence, i.e. if the commission of such an offence appears possible on the basis of concrete facts. This threshold of suspicion is low. Nevertheless, it entitles the authorities to typical investigative actions such as the interrogation of accused persons and witnesses; the search of the residential and business premises not only of the accused but also of non-suspects, the acoustic surveillance of residential premises, the surveillance of telecommunications, pre-trial detention and the confiscation of property. These measures aimed at determining the facts of the case take place in the first stage of criminal proceedings: the preliminary proceedings against one or more accused persons.

Note: Pursuant to § 8 Anti-Doping Act, the public prosecutor's office transmits the relevant investigation results to National Anti-Doping Agentur Deutschland (NADA).

Once the investigation has been completed, the public prosecutor's office shall decide whether to close the case. The proceedings are discontinued if the initial suspicion has not been confirmed, or if a conviction appears unlikely (§170 (2) StPO) due to insignificance (§153 StPO) or against conditions and instructions (§153a StPO). In addition, there are special provisions that entitle the public prosecutor's office to refrain from prosecuting individual offences.

If the public prosecutor's office does not close the case, it shall bring the case to the competent criminal court. The criminal proceedings are therefore in the interim stage. In the case of an expectation of punishment of up to two years' imprisonment, the accused—who is now referred to as such—is charged before the district court (single judge), in the case of an expectation of punishment of up to four years' imprisonment before the district court (alderman's court, i.e. single judge and two lay judges) and in the case of an expectation of punishment above this before the district court. The court examines whether there is a predominant probability of conviction and then admits the charge or rejects the admission. If the prosecution is admitted, the court opens the main proceedings and the accused becomes the accused. The trial consists of a public trial on one or more days of the trial. The main trial ends with a judgement (conviction or acquittal) or a discontinuation of the proceedings pursuant to §§ 153, 153a StPO.

Instead of the prosecution, the public prosecutor's office can also apply to the competent court for an order of punishment, i.e. an immediate conviction in writing. This alternative serves to make proceedings more effective. If the defendant accepts the order of punishment, the trial ends with his/her conviction without a public trial. As a sanction, the penalty order may pronounce a maximum term of imprisonment of one year, which must be suspended on probation. If the accused lodges an appeal against the order of punishment, the trial is open to the public, and the order of punishment is filed by the public prosecutor.

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## 5 Prevention of Corruption and Manipulation in Sports

In order to prevent the commission of crimes in and during sports, sports organisations must take certain preventive measures, so-called compliance measures.

## 5.1 What is Compliance?

Compliance stands for the observance of national and international laws as well as internal work guidelines and codes of conduct.

The question relates to which regulations sports federations and clubs or their employees must observe. This is determined by the field of duties in which the respective sports federations and clubs are located or operate. The field of duties ranges from general rules, for example, of tax law or acts of corruption, to specific commandments and prohibitions, for example, in the AMG, AntiDopG or in association law. This also includes data protection and antitrust regulations or internal guidelines, for example, on the handling of company assets (company cars, laptops, mobile phones and other equipment). The legal norms applicable to the sports organisation and its employees determine the minimum requirements to be met by all the parties involved. The aim is not only to avoid state penalties within the meaning of the StGB or sanctions under federation law, but also the risk of civil liability for compensation for the damage caused by the breach of duty.

## 5.2 Sport-Specific Risks

Depending on the type of sport, there are risks in sports that do not occur in other areas, or that occur in a different form. The risks specific to handball (similar to the risks associated with other popular team and competitive sports) are, for example, the issuing and acceptance of invitations to sporting events, the misappropriation of club funds and the influence on the outcome or manipulation of competitions.

## 5.3 Compliance Management System

First, it is necessary to develop an overall impression of the sports federation or club and to analyse the sport-specific risks involved. After an initial assessment of the situation, a decision must be made as to how comprehensive the internal rules and regulations that are always required must be. The internal rules and regulations that must be followed by employees are intended to prevent violations of legal and sublegal regulations through concrete guidelines for action, i.e. commandments and prohibitions. The scope and the detail depend on the individual case. In addition to constant communication, within the association or federation, including between individual hierarchical levels, the rules and regulations must be communicated to employees, for example, through training courses. Finally, constant monitoring of the legal situation, and any necessary adjustments to the rules and regulations are part of a successful compliance system.

In addition, case law requires that repressive compliance instruments be introduced. The repressive side of compliance consists of two key elements, namely checking employees' compliance with the rules and regulations, investigating suspected violations and establishing an appropriate response system. Examples include the classic four-eyes principle, spot checks and whistleblower or ombudsman systems.

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### Discussion Questions

1. What penalties in sports are of particular relevance for the managers of team sport organisations?
2. To what extent can a compliance management system help to prevent corruption and manipulation?
3. What preventive and repressive measures can be distinguished within the framework of compliance management?

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# Relationship Management in Sports (Sponsorship)

Stefan Walzel

## Abstract

Professional team sports organisations have a variety of relationships with a wide range of stakeholders. The management of customer and business relationships with these different stakeholders is a central management task. This requires a fundamental understanding of relationship management and its characteristics, as well as the impact factors and determinants. Customer relationships differ from business relationships between two organisations in some of the key features presented in this chapter, which then goes into more detail on the management of sponsorship relationships. Causes for the end of sponsorship relationships are presented and management implications for sponsors and sponsee in the case of a sponsorship termination are introduced..

## Learning outcomes of the chapter

1. You will learn how to analyse customer and business relationships from a strategic perspective.
2. You will know the outcomes and determinants of successful business relationships and will be able to explain the interrelationships.
3. You will know which special features business-to-business relationships have in contrast to business-to-customer relationships, and what consequences they have for management.
4. You will know the most important causes for the termination of sports sponsorships and be able to derive corresponding solutions.
5. You will know how consumers evaluate the termination of sponsors, and what management implications this will have.

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## 1 Introduction

As already explained in Chap. 1, sports organisations are characterised by a multitude of heterogeneous stakeholders (spectators, sponsors, media, league organisations, sports federations, state(s) etc.), some with extremely different interests. Furthermore, taking into account the service-dominant logic, it is important to understand a sports competition as a platform for value co-creation. In addition to selecting the right customers, suppliers and partners for resource integration, this also includes proactively shaping relationships with these stakeholders in order to achieve the best possible added value.

A systematic approach to building and maintaining customer and business relationships is almost indispensable in times of exchangeable products and services and can even be a competitive advantage for professional team sports organisations (PTSO).

In the following, important fundamentals for the understanding of relationship management are presented. Based on these, different conceptual approaches for the analysis of customer relationships will be explained, and the impacts and their determinants will be presented. Subsequently, the special features of business relationships between organisations will be highlighted before the final focus is placed on the management of sponsorship relationships, and concrete recommendations for intensifying relationships with sponsors are presented.

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## 2 Fundamentals of Relationship Management

In general terms, a customer or business relationship is the result of a series of non-random transactions between supplier and customer (Plinke 1997). In contrast to a transaction-oriented view, the relationship-oriented customer or business relationship is characterised by multiple interactions between a supplier and a customer (Diller et al. 2005). The relationship-oriented perspective is characterised by a high degree of individuality in the interactions between the participants and the understanding that the interaction measures are seen as an investment in a long-term customer or business relationship (Diller et al. 2005, Homburg and Sieben 2004).

The paradigm shift from transaction-oriented to relationship-oriented management is accompanied by a stronger orientation towards the wishes and needs of the consumer due to a more homogeneous product and service quality, thereby increasing heterogeneity in customer expectations and hybrid consumer behaviour (Bruhn 2016). The management of customer relationships aimed at enhancing customer retention has thus become the central object of marketing activities (Grönroos 1994; Homburg and Bruhn 2008). The advantages of high customer retention can be demonstrated, for example, by the study of Reichheld and Sasser (1990). In their systematic analysis of case studies across multiple industries, they came to the conclusion that reducing customer churn by 5% could result in an increase in profits of 25–85%, depending on the industry. Palmatier et al. (2006)



examined the success of three different relationship marketing programmes.<sup>1</sup> No short-term, economic success effects could be proven for investments in financial ties. Investments aimed at structural ties showed a return of 23%. Measures to increase social ties had the highest economic impact with a return of 78%. On the basis of the results for the overall sample, Palmatier et al. (2006) recommend using 69% of the budget for social retention and 31% for structural retention measures. Further studies (e.g. Gupta et al. 2004; Reinartz et al. 2005) demonstrated the success of the relationship-oriented management approach.

However, the studies do not allow a generalisation of the findings, and thus, a general departure from transaction management to be derived. This makes it all the more important to be able to differentiate between the two management approaches in order to be able to make a decision for the organisation from a strategic point of view. While in transaction management the individual transaction (e.g. the purchase of a product or a service) is the object of consideration, in relationship management, the relationship between supplier and customer is analysed. The two approaches also differ fundamentally in terms of objective and time horizon. Transaction management is characterised by short-term customer acquisition, whereas relationship management is characterised by long-term customer loyalty. The strategic orientation of the transaction-oriented approach is to be seen in the actual provision of services. Relationship management pursues the strategy of dialogue, whereby the contact intensity is to be estimated as high. Furthermore, it is characteristic of the relationship-oriented management approach that the mutual dependence of supplier and customer as well as the importance of employees for the success of the strategy are high. The opposite applies to transaction management: low contact intensity, low mutual dependency and low importance of employees for the success of the strategy (see Table 1; Bühler and Nufer 2013).

Based on the fundamental characteristics of the relationship-oriented management approach, a more focused view on customer relationships is presented below, which means relationships with end consumers (business-to-consumer (B2C)). In Sect. 2.2, building on the findings of consumer relationships, the special features of business-to-business (B2B) relationships in contrast to business-to-consumer relationships (B2C) are worked out.

## 2.1 Outcomes and Determinants of Successful Customer Relationships

Relationships in general have a dynamic character and a basically limited service life; this also applies to customer relationships. From a conceptual point of view,

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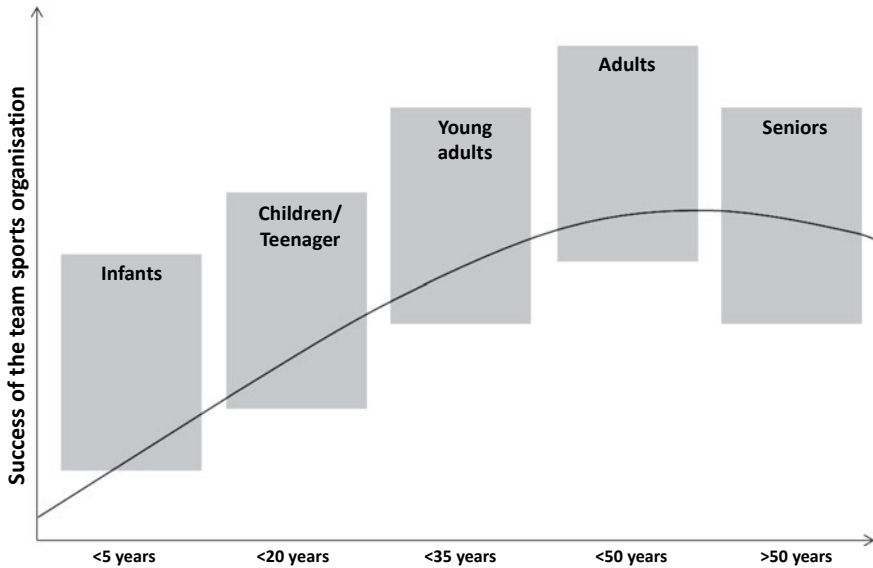
<sup>1</sup>The three programmes are based on three different types of bonds in accordance with Berry (1995): (1) The supplier's granting of discounts, free goods and other financial advantages allows a financial commitment to the customer to be developed. (2) Social ties arise from business meals, special treatment, entertainment (e.g. corporate hospitality measures) and personalised information. (3) A structural commitment exists when the productivity and/or efficiency for the customer is increased as a result of joint investments by the provider and the customer.

**Table 1** Differentiation between transaction and relationship management based on selected criteria (Bühler and Nufer 2013, p. 357)

Criteria	Transaction management	Relationship management
Object	Single transaction	Relationship between supplier and customer
Time horizon	Short-term	Long-term
Objective	Customer acquisition	Customer bonding
Strategy	Service provision	Dialogue
Contact intensity	Low	High
Mutual dependency	Low	High
Relevance of employees for success of the strategy	Low	High

customer relationships can be subdivided into five ideal phases over their lifetime with the help of life cycle concepts: introduction, growth, maturity, saturation and decay. According to Bruhn (2016), the customer life cycle of a handball enthusiast can be illustrated as seen in Fig. 1, the horizontal axis represents the age and the vertical axis the success of the team sport organisation. Already at this point, it should be pointed out that the success of a team sport organisation cannot be measured solely by financial figures in terms of costs and earnings. The contribution of a single person to the success of a team sport organisation is very diverse, and in addition to membership fees, ticket revenues, etc., an individual can also make contributions in the form of volunteer work as a coach, officer, referee, etc. or through sporting success (e.g. winning the national championship with the under-17 team). From a conceptual point of view, the question arises as to how members or customers of team sport organisations develop over the course of their relationship life, and where there are starting points for extending the relationship duration with suitable measures, for developing special offers for certain age ranges and for increasing the contribution to the success of the team sport organisation.

Unfortunately, empirically proven insights for the analysis of member or customer life cycles are not yet available. However, other analyses may be helpful for increasing the success of PTSOs. An example of this is the membership development by age group for the Handball Association Mecklenburg-Western Pomerania in the period 2010–2016. As becomes very clear in Fig. 2, the clubs in this federal state succeed in getting children of primary school age in particular enthusiastic about handball. However, there has been a dramatic decline in the number of members in the age group of young people (15–18 years). Without knowing the exact reasons for this development, which requires further analysis, two fundamentally different recommendations for action can be derived on the basis of these figures. (1) One consideration would be to focus more on quality than quantity in childhood; on the one hand to save resources and on the other to increase member loyalty, which would have a positive effect on the association. The acquisition of

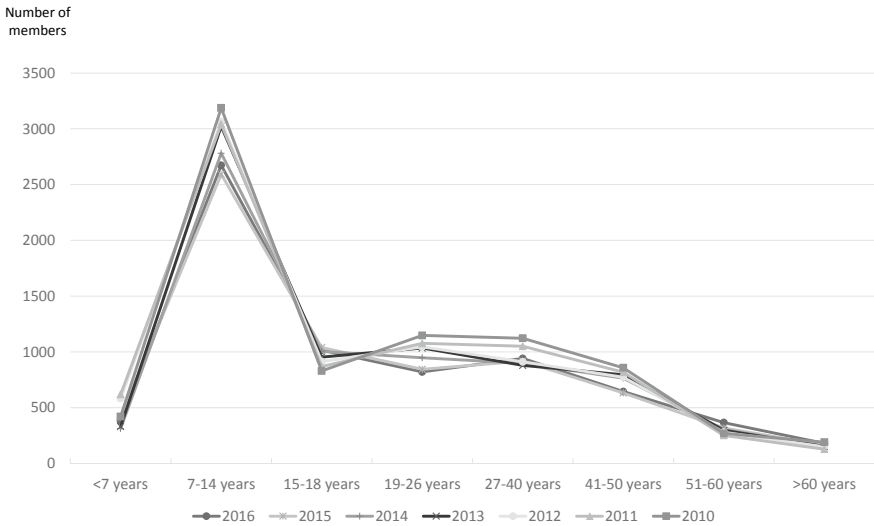


**Fig. 1** Schematic presentation of the customer age cycle of a handball player from the point of view of a handball club (based on Bruhn 2016; Bruhn and Hadwich 2006)

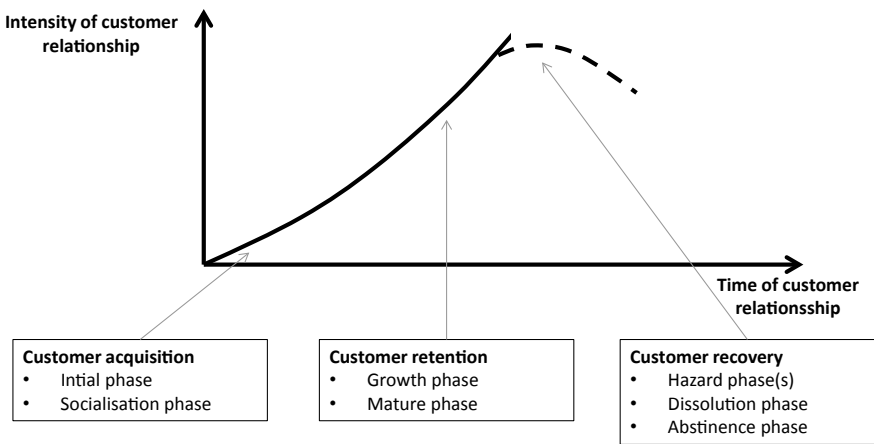
new club members is similar to the customer acquisition associated with increased expenses, which does not pay off in the case of drop-out after a short time. (2) A second consideration would be to initiate targeted measures of retention in the transition from the age range 7–14 to 15–18, in order to prevent members resigning and thereby winning them over in the long term for handball. However, further background information on the reasons for resignation (lack of quality and/or quantity of instructors, unattractive game operation, other interests, socio-demographic developments, etc.) is required in order to design the measures.

Another form of conceptualisation of customer relationships is the customer relationship cycle. This can be subdivided into the three phases of customer acquisition, customer retention and customer recovery (see Fig. 3). Compared to the customer life cycle and customer age cycle, this approach focuses on the duration of the customer relationship (regardless of the age of the customer) and its intensity. The model is based on the fundamental assumption that with increasing relationship duration the intensity of the customer relationship, and thus, customer loyalty increases to a certain point. The third and at the same time most critical phase is customer recovery. It is characterised by the fact that the customer could end the relationship with the organisation. The aim here is to extend the duration of the relationship as far as possible with justifiable effort and suitable measures (Bruhn 2016).

Overall, the relationship management approach is closely linked to the service value chain. From the provider’s point of view, it is assumed that customer satisfaction leads to customer retention, and that this has a positive effect on the



**Fig. 2** Membership development in the Handball Association Mecklenburg-Western Pomerania by age group for the period 2010–2016 ([www.lsb-mv.de](http://www.lsb-mv.de))



**Fig. 3** The phases of the customer relationship cycle (Bruhn 2016, p. 66)

economic success of the organisation (Heskett et al. 1994). Relationship management measures should therefore primarily make a positive contribution to the development of customer satisfaction and customer retention, which is then reflected in the economic success or, in the case of poor relationship management, in the failure of the organisation (Bruhn 2009).

The intensity of a customer relationship can be measured using various psychological, behavioural and economic indicators. Psychological indicators include the perceived service quality or value from the customer's point of view, trust in and familiarity with the organisation, customer satisfaction and customer commitment.<sup>2</sup> Behavioural indicators include actual purchasing behaviour, communication behaviour (including word-of-mouth communication) and integration and information behaviour.<sup>3</sup> Relationship intensity at the economic level can be measured on the basis of the customer contribution margin, customer value, turnover, sales, market share and share of wallet (Bruhn 2016).<sup>4</sup>

The application of systematic approaches to customer retention management can only be found occasionally in European PTSOs. The classic approach of complaint management to identify the need for optimisation, which subsequently leads to greater satisfaction and customer loyalty, has so far been largely ignored in team sport. Bonuses, fan loyalty and loyalty programmes are available in different variations and degrees of development. In addition to cross-club approaches, such as *Fanmiles*, there have also been local or regional single solutions in the past, but these have not been established in the long term. This is partly due to the high introduction and maintenance costs compared to the low short-term yields.

## 2.2 Special Features of Business-To-Business Relationships

PTSOs have business relationships with a number of organisations, which need to be actively managed in the interest of long-term success. Due to some special features of the management of B2B relationships, a separate area for business relationship management has developed within relationship management. These special features (in comparison to the management of relationships with individual customers or consumers) include (Backhaus and Voeth 2007; Eckhardt 2010; Kleinaltenkamp 2000; Plinke 1997, 2000a, b; Walzel and Blaesen 2013):

1. *Derived character of demand*: PTSOs as demanders—e.g. for the use of sport facilities (suppliers) for sporting competitions—are oriented towards the expected spectators' demand when selecting the right sports arena. On the one hand, empty spectator seats have a negative impact on the atmosphere, and on the other hand, fixed costs (e.g. for the rental of the arena) must be allocated to the number of tickets sold, which in a negative case leads to price increases and can lead to further decline in demand. The spectator capacity for the matches of

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<sup>2</sup>Commitment means the strong belief of a customer that the relationship with the company is so important to them that they will make every effort to maintain the relationship (Bruhn 2016).

<sup>3</sup>Integration behaviour reflects the extent to which the customer feels integrated into the service provision process. Information behaviour is expressed, for example, by the degree to which the customer searches for information about the provider's competitors and their services.

<sup>4</sup>From the customer's point of view, the *share of wallet* provides information on what proportion of the purchase volume for a specific product or product category is purchased from the provider.

a PTSO should therefore be geared to the expected demand. In this case, the demand by the PTSO is derived by the demand for tickets.

2. *Multi-personal/multi-organisational decision-making processes:* In PTSOs, purchase or sales decisions are often made not by a single person but by several individuals within an organisation, sometimes by several organisations. These are referred to as *buying* or *sales centres*. If, for example, a player is transferred from Club A to Club B before the end of the contract, not only is the managing director usually involved but also other persons, such as the sports director, the coach and the team doctor (multi-personality). The decision-making process is even more complex if the player is represented by an agent or an agency, and at the end, at least three parties have to agree to the transfer and the contract details (multi-organisational).
3. *High degree of formalisation and individualisation:* Purchasing decisions in organisations are generally made on the basis of clearly defined regulations and guidelines, which is illustrated, among other things, by the fact that, depending on the scope of services and the type of organisation, internal and/or legal procurement guidelines must be observed. Furthermore, B2B services are characterised by a high individual specification, e.g. they are not produced on stock but rather according to the individual needs of the customer and after placing an order. Sport arenas, for example, show great differences in design, equipment and spectator capacity despite the same basic requirements (pitch size, number and size of goals, ground conditions, etc.).
4. *Long-term orientation of business relationship:* B2C relationships normally have a low relationship orientation and are more standardised and transaction oriented. In contrast, B2B relationships are more characterised by individual, non-standardised interactions between supplier and demander. These individual interactions can be regarded as investments in the business relationship and often pay off only for longer-lasting business relationships (Plinke 1989). The long-term orientation in sport can be particularly well demonstrated by sponsorship relationships between a company (sponsor) and a sports organisation (sponsee) (see also Sect. 3). Short-term sponsorship effects—especially on an affective and behavioural level—can hardly be achieved, which is why sponsorship is also more of a medium- to long-term communication tool. The better the understanding of sponsor and sponsee of their individual needs, the larger in principle the value for both sides will be.
5. *Greater rationality in purchasing decisions:* Purchasing decisions on the demand side are often characterised, on the one hand, by high financial investment volume and on the other hand by great significance for the further development and success of the organisation. For this reason, purchasing decisions in the B2B sector are generally more rational (Rese and Herter 2004). Before a construction company is commissioned, e.g. to build a new youth academy, offers and references are obtained and compared in terms of quality

and quantity, experience and expertise, as well as price. The final decision is usually made on the basis of objective evaluation criteria and not on the basis of subjective assessments of individuals.

6. *High degree of interaction between supplier and demander:* Due to the high degree of formalisation and individualisation, as well as the multi-personality and possibly multi-organisationality, there is a more intensive dialogue between supplier and demander than in the B2C sector. The successful activation of sponsorship rights requires a high level of interaction between sponsor, sponsee and possibly involved agencies in order to achieve the highest possible sponsorship outcomes, which is in the interest of all parties and ultimately increases the probability of a prolongation of the sponsorship agreement.

The special features make it clear that measures to successfully shape customer relationships are not necessarily also targeted at business relationships between two or more organisations. The basic knowledge about relationship management, about the outcomes and determinants of customer relationships and about the special features of business relationships serve as the basis for the subsequent, more application-oriented part of the chapter, the management of sponsorship relationships.

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### 3 Management of Sponsorship Relationships

The management of sponsorship relationships is one of the central management tasks in PTSOs. This can be illustrated, amongst other things, by the following points (Walzel and Schubert 2018):

1. Revenues from sports sponsorship are one of the main sources of revenue for most PTSOs.
2. Usually, the sponsorship market is characterised by a large supply but limited demand from sponsors. Therefore, there is intensive competition for the favour of sponsors.
3. From the sponsors' point of view, sports sponsorship is a communication tool that can only fully develop its potential for affective and behavioural outcomes after a few years. In view of this time span, sponsorship relationships are generally more medium- to long-term oriented.
4. The follow-up costs and problems with the termination of a sponsorship are usually significantly higher for the sponsee (imminent loss of income, costs of acquiring a new sponsor, etc.) than for the sponsor.
5. From a company's point of view, sports sponsorships are associated with considerable investment risks, which result from the incalculable sporting success and from the difficulty of controlling the behaviour of athletes, officials, coaches and fans as well as the associated lack of media exposure or negatively connotated media exposure.

6. The considerable costs of sponsorship acquisition (concept development, partner search, negotiations, etc.) amortise only after a few years, so that from the sponsee's point of view the contribution margin<sup>5</sup> basically increases with increasing relationship duration.
7. The involvement of agencies on both sides increases the complexity of the implementation of sponsorships. PTSOs usually have multiple sponsors and possibly additional agencies, which can be regarded as a sponsorship network, which further increases the complexity of the management task.

On the basis of the above-mentioned points, sponsorships in sport can no longer be regarded as mere transactions. The aspects of service and relationship quality are therefore particularly important for the successful management of sponsorship relationships (Woratschek and Horbel 2004).

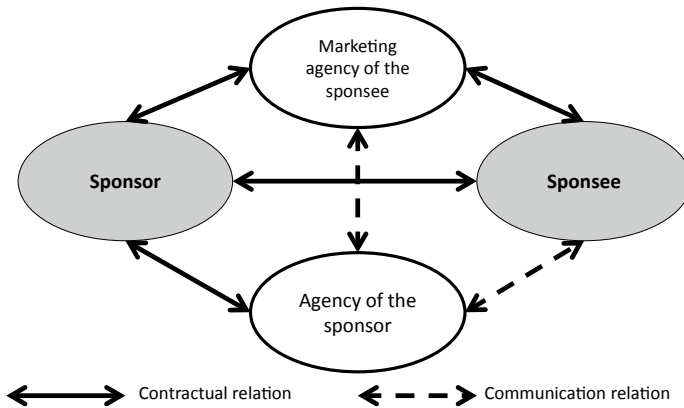
### 3.1 Sport Sponsorship as a Task of Relationship Management

From a conceptual point of view, a single sponsorship relationship can be seen as a dyad (see Fig. 4). There is a contractual relationship between sponsor and sponsee, the contents of which are usually laid down in a sponsorship agreement. Under certain circumstances, further contractual relationships exist with agencies on both sides that undertake certain tasks. These may be on the part of the sponsee marketing agencies that acquire companies suitable for the sponsee for certain sponsorship services, event agencies that take on partial tasks in the implementation of sports events and/or home matches, and/or other agencies that are commissioned, e.g. with the implementation of activation measures (e.g. production of perimeter advertising). The sponsor may also have contractual relationships with external agencies that assume responsibility for these subtasks (e.g. supplementary leveraging and activation measures). In addition to the contractual relationships, there are also various communication relationships between the actors involved (sponsor, sponsee, agencies), which must be managed proactively, as these influence the success of the sponsorship.

As a rule, PTSOs conclude sponsorship agreements with several companies with different scopes in terms of services. In a holistic view, from the sponsee's perspective, the entirety of all relationships with its sponsors and their agencies, as well as its own agency (or agencies), can be seen as a sponsorship network. In Fig. 5, this is exemplarily represented with five sponsors and their agencies. In addition to the various contractual relationships between the sponsor and the sponsee and possibly the marketing agency of the sponsor, further contractual relations with the agencies of sponsors exist. Furthermore, agencies, sponsors and sponsees communicate with each other in the sense of practical implementation of

<sup>5</sup>The contribution margin results from the sponsorship sales revenues less the related variable costs of the sports sponsorship.

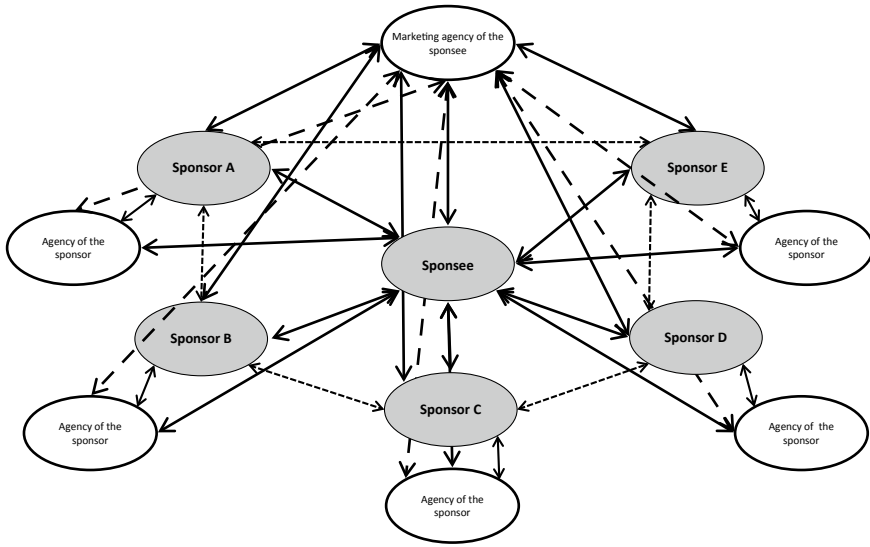




**Fig. 4** Dyadic consideration of a sponsorship relationship

the sponsorships. Additionally, as a rule, the sponsors are also in contact with each other and exchange information on certain aspects relating to the joint sponsorship object or other sports sponsorships. Already at this point, it becomes obvious how complex and diverse the contractual and communication relationships in a sponsorship network are and what an enormous challenge this represents for the sponsee, because it should be its task—in its own interest—to manage this complex network of relationships. Sponsorship relationships should therefore be regarded as multi-organisational business relationships taking into account the special features of B2B relationships (Altmann 2010).

In order to gain a better understanding of a sponsorship relationship, it will be regarded as a dyadic, interorganisational business relationship in the following. The analysis of the sponsorship relationship can take place on four levels: (1) parties involved, (2) environment, (3) relationship atmosphere, and (4) interaction processes between the parties (Hakansson 1982). In terms of the parties involved, a distinction must be made between the organisational and individual levels. This means that a sponsor as an organisation can be analysed on the basis of determinants such as industry, size, available resources and strategy as well as on the individual level of the acting persons of the sponsor (e.g. on the basis of experience, personality and motives). The sponsee is determined by organisational characteristics such as league membership, image of the sport and legal form, as well as characteristics of the individuals concerned, e.g. experience, personality and motives. The analysis of the environment can be carried out on the basis of cultural, political, legal and technological frameworks and market conditions, which, however, cannot be influenced or can only be influenced to a very limited extent. The relationship atmosphere is decisively determined by the factors of the power structure between the parties, the satisfaction of the parties, the relationship intensity and the cooperation behaviour. The interaction process is divided into four stages: product, finance, information and social contacts. The first two stages are



**Fig. 5** Schematic representation of the sponsorship relationship network of a PTSTO

dedicated to the interaction processes during the exchange of services and the associated transfer of financial resources, goods and/or services. Beyond the pure exchange of services, further interactions take place in the form of an exchange of information and, closely related to this, on a social level, between the parties (Altmann 2010). A fundamental understanding of the interaction processes in a sponsorship relationship is an important prerequisite for actively shaping them.

In addition, it is important to know which factors can influence the long-term commitment of sponsors. Although the available findings are partly contradictory, some fundamental parameters for a positive development of sponsorship relationships can be derived:

1. Perceived relationship quality (Bühler et al. 2007; Farrelly and Qvester 2003, 2005),
2. Satisfaction (Altmann 2010; Bühler et al. 2007; Farrelly and Qvester 2003, 2005),
3. Trust (Chadwick 2004; Farrelly and Qvester 2003, 2005),
4. Commitment (Bühler et al. 2007; Farrelly and Qvester 2003, 2005).

Other factors that have only been taken into account in single studies include the relationship atmosphere, which is largely determined by the degree of personal proximity (Altmann 2010), assessment of cooperative behaviour (Altmann 2010) and the perceived quality of cooperation (Bühler et al. 2007). The influencing factors for the long-term sponsorship loyalty described above are based on the fundamental principle of reciprocity. This means that major differences in the

degree of individual factors between sponsor and sponsee are a hindrance to the development of sponsor loyalty.

As the previous remarks have shown, a purely transaction-oriented view of sports sponsorship (mere exchange of services) is not conducive to a long-term commitment of sponsors. The findings from relationship management can significantly help sponsees to develop sponsorship relationships on the basis of communication, and to structure them in such a way that sponsors prolong their contracts after the end of the agreed term or even extend their sponsorship services. Database-supported customer relationship management (CRM) systems can support the management of sponsorship relationships by recording relevant information (e.g. results of discussions, birth dates of decision-makers, special events) over the term of the sponsorship relationship (Walzel and Schubert 2018). In addition, inquiries from sponsors should be answered quickly and completely (Riedmüller 2018).

### 3.2 Causes for Termination of Sports Sponsorship

In addition to rational criteria for terminating a sports sponsorship (e.g. due to financial difficulties of the sponsor or achievement of the expected objectives), there are also relationship aspects that can lead to the end of a sponsorship relationship. The research findings on relationship-oriented reasons for the termination of a sponsorship commitment are comparatively low. Farrelly (2010) identified five major causes in his study that could lead to the end of a sponsorship relationship.

1. *Lack of a common strategic direction*: It is a recurrent problem in business relationships that the expectations of both sides with regard to objectives, roles and contributions are not clearly formulated and formally recorded at the beginning of the sponsorship relationship. This applies in particular to the lack of common orientation and the leveraging and activation of the sponsorship. Therefore, especially at the beginning of a sponsorship, it should be clarified and documented in a joint workshop with representatives of the sponsor and the sponsee what expectations both parties have with regard to the role to be played and the objectives. In addition, regular communication between the sponsor and the sponsee is helpful.
2. *Evolution of the relationship and lack of adaptation*: With an increasing duration of the relationship and changing environmental conditions, usually the objectives and expectations of the sponsor also change. This may lead to a situation where the sponsee cannot or does not want to comply with the changed expectations and further conflicts arise. Sponsors today wish to be more closely involved in the strategic decisions of the sponsee. In addition, they also expect a stronger service orientation from the PTSO. If the sponsee does not succeed in adequately responding to this changed expectation, this is a major cause of dissatisfaction with the sponsorship relationship from the sponsor's point of view. The sponsee can counter this problem above all by actively managing

expectation and investing in the training and further education of the staff responsible for sports sponsorship.

3. *Different perceptions regarding the contribution and desire for proof of success:* The sponsee's own perception of their contribution to the sponsorship relationship differs significantly from the perceived contribution by the sponsor, e.g. with regard to support in the leveraging and activation of sponsorship rights or additional investments in the sponsorship relationship. In such stalemate situations, this is aggravated by the fact that there is no corresponding evidence of success. In addition to open and regular communication, a solution could be to invest more resources in monitoring the success of sponsorships.
4. *Commitment asymmetry:* With increasing commitment on the part of the sponsor (e.g. increase of sponsorship services, additional investments, assumption of risks), the expectation of an increase in commitment by the sponsee rises at the same time. If this increased expectation cannot be met, the sponsorship relationship will be burdened permanently, and this can lead to the termination of the sponsorship.
5. *Lack of performance:* Sponsors often want to improve their competitive position by getting involved in sports. However, if the sponsee does not have the partners and/or capacity to meet these expectations, it will be difficult to justify continuing the sponsorship relationship.

In addition to the relationship aspects presented above, different perceptions and expectations with regard to the service quality can also lead to a termination of the sponsorship commitment. O'Reilly and Huybers (2015) addressed this aspect in their study and identified some considerable differences, especially in the area of leveraging and activation opportunities for sponsorships and opportunities for more intensive dialogue. In order to strengthen the sponsorship relationship with the sponsor, the following possible voluntary services provided by the sponsee may be considered: (1) current data and reports on the exposure and outcomes of the sport sponsorship, (2) joint workshops (if necessary with other sponsors too) to develop creative ways of leveraging and activating the sponsorship, (3) active support in the implementation of leveraging measures, (4) activities to ensure the exclusivity of the sponsor's appearance and to prevent ambush marketing measures.

### **3.3 The Exit of Sponsors—How to Deal with It**

The likelihood of the termination of the sponsorship from the sponsor's perspective is always present. The way in which the sponsee deals with the termination or expiration of the contract is also part of the relationship management. Here, it is particularly important to maintain the chance of renewed cooperation in the future. At the same time, other sponsors will also observe the reactions to the exit and evaluate them for themselves. In the past, there have regularly been situations in which other sponsors have temporarily compensated in full or in part for a possible decline in income or have used this as an opportunity for an upgrade within the

sponsorship pyramid. However, this requires appropriate and impeccable behaviour by the sponsee and its environment to terminate the other sponsor.

In principle, the fans and supporters of the sponsee assess the withdrawal of a sponsor negatively (Schnittka et al. 2017). This also has a negative effect on the attitude towards the sponsor and on the purchasing behaviour towards the sponsor's products (Ruth and Strizhakova 2012). Irrespective of the involvement of consumers, sales- or economics-based reasons for withdrawal have a more negative effect, but the duration of the sponsorship commitment reduces the negative effects for highly involved consumers.

Dick and Urich (2017) were able to show in an experimental research design, moreover, that a voluntary (vs. forced, e.g. due to sponsor's financial problems) exit has a more negative effect on the attitude to the sponsor's brand. If the sponsor's exit has major consequences (vs. minor ones), the negative effect is even more pronounced. Furthermore, the reaction of the sponsee also has an impact on the consumers' evaluation of the sponsorship withdrawal. If the sponsee comments negatively on the exit, this reinforces the negative effects, while statements of gratitude reduce the negative effects on the sponsor's brand attitude. Depending on the sponsee's intention, it can influence the consequences of the exit for the sponsor either positively or negatively.

In another study, Dick (2018) experimentally investigated what aspects might be relevant from the point of view of the sponsee in the case of a possible sponsor exit. The fans and supporters of a PTSO evaluated a complete exit of a sponsor more negatively than a reduced sponsorship commitment. The timing of the announcement (early vs. late) was also taken into account, and the result shows that a late announcement compared to an early public announcement of the withdrawal intensifies the negative effects. This study also took into account the sponsee's response and confirmed the effect of the experiment by Dick and Urich (2017).

The study by Delia (2017) shows that a sponsorship exit does not always have to be perceived negatively. Furthermore, Ryan and Blois (2010) proved in their study that the involved employees on the sponsor's side as well as the sponsee reacted with resistance to the termination of a sponsorship.

The extent to which the termination of a sponsorship is the final end of a sponsorship relationship also depends on the sponsee's response. In any case, the sponsee should establish firm procedures for dealing with a termination and confirming notification of a termination. If the sponsee wishes to continue the sponsorship, it should definitely try to offer an extended rights package for a limited period with the same conditions (Riedmüller 2018). Furthermore, the prospect of renewed collaboration in the future depends to a large extent on how the sponsee comments on the news. Expressions of gratitude and appreciation make this more likely than negative statements, as the sponsee's behaviour also influences the reactions of fans and supporters. From the sponsor's point of view, negative reactions by consumers must be reckoned with in the event of a withdrawal. The intensity of the negative consequences depends above all on the consequences for the sponsee. Therefore, sponsors should prepare an exit strategically and announce

the exit as soon as possible and consider the options for a partial exit in the form of a reduced sponsorship package.

### In summary

A strategically oriented and systematic management of consumer and business relationships can help PTOS to gain a competitive advantage. This requires a fundamental understanding of the interrelationships and effects. From a theoretical point of view, the relevance of relationship management for PTOS is undisputed, especially with regard to important stakeholder groups such as sponsors. In reality, however, the media repeatedly report on problems and conflicts between sponsors and sponsee, which can be traced back to a lack of relationship management. The shaping of the end of a sponsorship relationship should be well planned and considered by both sponsors and sponsee in order to avoid (additional) negative consequences.

### Comprehension Questions

1. What are the differences between transaction and relationship management?
2. What conceptual approaches to the analysis of customer relationships do you know and how do they differ?
3. What are the special features of business-to-business relationships in contrast to business-to-consumer relationships?
4. What causes disruptions in sponsorship relationships and possibly the termination of sponsorships?
5. What recommendations would you give to a sponsee who has just received timely notification of termination from their main sponsor?

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# Accounting and Sports

Tomas Hjelström

## Abstract

This chapter presents the basics of the financial accounting system in sports organisations. It is based on an introduction to accounting terminology. The contents of financial reports and important interrelationships are then explained. This is done using the example of the “Dreaming Sports Club” in order to illustrate the basic contents and relationships in the accounting of sports organisations in a clear and easily comprehensible way. Based on this, the annual accounts of FC Barcelona are examined. Finally, some special features of sports organisations with regard to their effects on the financial reports are discussed.

## Learning outcomes of the chapter

1. You will know the relevance and the advantages of a systematic financial information system.
2. You will understand the financial logic in sports organisations and its limitations.
3. You will get to know accounting as a functional tool, which will help you to understand the organisation better and to improve its financial conditions.
4. You will learn how a good financial information system will help sports managers in the decision-making process.
5. You will be able to interpret the financial figures in terms of the financial performance of a sports organisation.

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## 1 Introduction

Accounting and sports! This is probably one of the most contradictory pairs of words that anyone can present. Accounting is often considered to be an area of order, following rules based on national and/or international laws and regulations. Accounting is furthermore an area that is considered to be a very specific subject that only the initiated understand and if you do not need to get involved you prefer not to do so. Accountants are often considered boring and not very passionate about anything other than numbers. Sports, on the other hand, are more or less defined by passion, emotions and the willingness to do the impossible. The final minutes of a significant match or competition are all about giving that little extra in order to win. This strong desire to win is at the heart of sports.

In today's sports society, the financial conditions are one of the determining factors of success in athletic terms. Clubs invest in player rights to secure success on the playing field. Major media right contracts are signed and the business of selling merchandise is huge. Large teams in football, American football, hockey, baseball, and basketball, among others, are today run as professional financial organisations. The turnover in the major clubs is very high. An example is FC Barcelona, which has total sales of approximately 600 million euros per year. Of course, these are small numbers compared to companies such as Volkswagen with its turnover of 235 billion euros, but still very significant. Moreover, some sports organisations are today listed on stock exchanges with external investors and capital providers requiring financial information due to information asymmetries between insiders and outsiders. The relevance of, and need for, systematic financial information in these large organisations cannot be questioned.

At the other end of the financial spectrum, we find small local organisations like those where local boys or girls kick or throw a ball for the first time. These organisations lack the resources of the large ones but the need to understand the financial logic and limitations is no less. These clubs must have their house in order to survive and, from a nutrition chain perspective, deliver the future stars of the sports world. They must also keep track of their spending on equipment etc. in relation to donations, membership fees and public funding.

Accounting is the financial system of all organisations that handle any kind of financial transactions. Accounting helps us to systematically gather and analyse financial information in order to evaluate outcomes and understand the financial opportunities for the future. Accounting should not be perceived as a necessary evil, but as a functional tool with which the organisation can understand and improve its financial conditions. In a professional sports organisation no one would ever question the ambition to become the best possible and go for the next cup victory. The striving for excellence on the sports field is inherited in the souls of professional sports organisations. There is no excuse for striving for anything less when it comes to financial performance. In order to be the best, your financial system needs to be at its best and the people working with it must match it. This holds both for the individuals in the top management team of sports organisations and sports

managers. Both of them must understand the financial logic and constraints of their organisations. I argue that accounting is the language of business and therefore it should be another language of sports. Everyone involved with professional sports organisations must have at least a basic understanding of this financial language, its words and grammar. If the language and tools are understood, and the organisation can communicate effectively between the administrative/economic function and its sports operations, eventually better decisions will be made and long-term athletic success can be secured.

The regulatory requirements in the area of sports and finance have also been tightened in recent years. Caps on team salaries and minimum equity levels are two obvious examples of where the financial dimensions are crucial to the athletic performance. These requirements are directly related to the accounting systems of sports organisations. Consequently, the decision-makers inside a sports organisation must continuously understand and monitor such parameters. That requires good systems that produce relevant internal reports and the decision-making bodies of the sports organisation to obtain correct and relevant information (see also Chap. 15). This information does not necessarily have the same format and content as the publicly announced financial reports. This is a part of accounting that is sometimes neglected. Neither the public structure of income statements and balance sheets nor the detailed account information is necessarily optimal or even reasonable as a basis for internal decisions. The allocation of financial information to different parties in the organisation is, as a result, a central issue in accounting and internal decision-making.

In addition to the above, a manager of a professional sports organisation must be able to communicate with a broad spectrum of actors outside the organisation. They include owners, banks, suppliers and, not least, fans and followers. These actors are heterogeneous not only in their requirement regarding the multidimensional performance of the sports organisation, but also in their financial literacy. The heterogeneity elevates the demands on the sports manager beyond his/her own understanding of the financial information. The manager must now interpret the information regarding its financial performance and communicate it through various channels to the wide set of recipients. Apparently, the manager must navigate at least a two-by-two matrix of information settings and recipients: the internal–external dimension and the informed–uninformed dimension. The need for a strong understanding of the financial performance by itself and its relationship to the athletic performance is vital to the manager himself/herself and to the well-being of the organisation. Moreover, the balancing act in the matrix requires strong communication skills, particularly if the recipients of the information are more driven by a passion and heart for sports than economic rationality.

The interaction between the increasingly business-oriented sports industry and the traditionally emotional characteristics of sports has not always led to the economically most appropriate decisions in the long run. There are rumours of individuals donating remote assets to clubs in order to seemingly help the club. Other rumours include fraudulent behaviour.

This chapter aims to provide the reader with the fundamentals of the financial accounting system in sports organisations. I introduce the terminology of accounting together with the correlation and content of financial reports. I link the outcome to the underlying actions taken by the sports organisations. I use a small example called the “Dreaming Sports Club” to introduce the basic concepts and relationship. We then move on to looking at the financial statements of FC Barcelona as a point of reference. Finally, we will discuss some special characteristics of sports organisations regarding the effects on the reports of the underlying business properties.

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## **2 The Financial Statements—Three Different Perspectives**

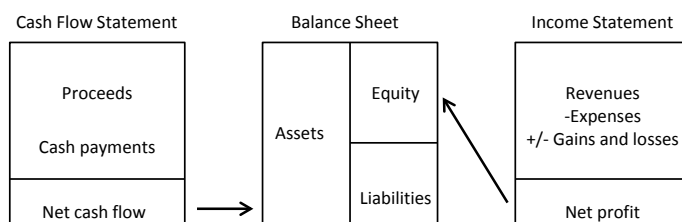
The financial statements and the annual report are the final products of the entire accounting system. Through the accounting system, financial information is collected and structured in ways that enable users to extract various financial reports for decision-making purposes. Decision-making should here be interpreted in a wide sense, which includes everything from confirmation of what has happened to a forward-looking basis for raising, deploying and managing the resources of an economic entity. There are three financial statements: the cash flow statement, the income statement and the balance sheet. The three statements serve three different purposes and therefore provide three different perspectives. The cash flow statement shows the flow of liquid funds in and out of the organisation during a particular period of time. The income statement shows the financial performance and consumption of resources by the organisation during a particular period of time. The balance sheet shows the resources the organisation controls and how they have been financed at a specific point in time. The different perspectives include and require different concepts, i.e. the terminology.

### **2.1 Core Terminology—The Code Name of the “Players” in the Financial Statements**

Understanding the terminology of the different statements is at least as important as understanding the players in the game. The cash flow statement is made up of two components: proceeds (receipts) and payments. These are the cash in- and outflows from the transactions made by the organisation. They can be seen as very trivial concepts, but it is important to recognise that they include a strict perception of cash flows. An example is that if you have bought new equipment for a team, but you have been invoiced with a 30-day credit time, no cash flow has occurred at the time of the purchase even though you are in control and can use the equipment. The same is true if you have delayed payments for acquired player contracts dependent on future performance or future transactions with the same player.

The income statement is made up of another two components: revenues and expenses. Revenues are the value of the performances/deliveries of goods and services that the organisation makes during a defined period. Two examples of this are the total sold ticket value for the matches played and the selling price of all merchandise sold during the period. Expenses, on the other hand, are the value of the goods and services used during the defined period. Examples of this include employees' salaries, a proportion of the acquisition cost of player contracts related to the period, and rent for premises and arenas used. Note that this is not the same as the cash flows related to these items in a specific period. There are another two concepts that relate to revenues and expenses, namely gains and losses. These are the counterparties for unusual transactions like sales of player contracts, property or similar things that are not a part of the ordinary and continuously recurring business. The example below will illustrate the revenue and expense concepts further.

The balance sheet (see Fig. 1) contains three major components: assets, liabilities and equity. Assets are the economic resources controlled by the organisation from which the organisation expects future cash flows. This includes cash, receivables, prepayments made to the organisation, property, inventories and player contracts among other things. Liabilities are obligations that will result in outflows of cash or similar. They include payables, bank loans, taxes, social security for employees, etc. Finally, equity is the difference between assets and liabilities. Conceptually, it is the value at each point in time that belongs to the owners of the organisation dependent on the valuation of the assets and the liabilities. Since the value of these assets and liabilities may change rapidly, so may the value of the equity. This is why there are limitations and requirements for many sports organisations regarding the level of equity in order to obtain licences for playing in organised leagues and cups to secure survival during the coming seasons. The sports organisation needs a cushion to take the hit if it does not make the final rounds or win the league during a particular year. This is to ensure the long-term financial health of sports organisations or to prevent economic doping. An example of this is the UEFA Financial Fair Play (Union of European Football Associations 2018). Below I illustrate these concepts and their relationships with a case study called the "Dreaming Sports Club".



**Fig. 1** A stylised representation of the three financial reports, the cash flow statement, the balance sheet and the income statement and their major building blocks. These are relevant for both sports and non-sports organisations

## 2.2 The Dreaming Sports Club (DSC)—An Introduction to Financial Reporting

Here we encounter the Dreaming Sports Club (DSC). This is a newly started club, which has both ticket sales and sponsorship inflows. The club buys player rights to secure the team's success. On top of this, the club has additional continuous outflows in order to run the operations. There are delays in sponsorship payments to the club and in invoice payments by the club. Moreover, the fans buy season tickets in advance.

The text in the box provides you with the detailed conditions for the example. All numbers are presented in thousand euros.

### The Dreaming Sports Club

A newly founded sports organisation, The Dreaming Sports Club, acquires a set of new players for 1500 thousand euros on 1 January, year 1. The contracts are all for three years.

The team sells tickets and sponsors opportunities. The tickets related to the three years amount to 880, 1200 and 1600 thousand euros each, and 25% of the tickets are presold for the following year. This means that 25% of the ticket sales for the second and third years are sold and paid for in the year before.

The sponsor slots amount to 1320, 1800 and 2400 thousand euros, respectively, during the three years. There is some delay in the payments from the sponsors, which means that a third of the sponsor contributions are paid in the year after.

The team incurs salaries and other costs, which amount to 1800, 2300 and 3000 thousand euros per year. The incurred costs are invoiced with on average 45 credit days, which is equivalent to 15%.

The owners of the club have agreed to invest 1500 thousand euros at the end of year 0.

Below I illustrate the content and development of the three financial statements based on the conditions in the case described above. I start with the cash flow statement, then go through the income statement to the balance sheet. As a conclusion, I focus on the relationships between the statements and what kind of information we can extract and analyse from the three statements.

### The Cash Flow Statement

The cash flow statement should conceptually be the least complicated of the three statements. It contains cash in- and cash outflows during the reporting period.<sup>1</sup> Many individuals in sports organisations, particularly the smaller ones, tend to focus only on this one. An organisation must be able to pay the invoices and the

<sup>1</sup>The expression “cash inflow” is used interchangeably with “proceeds”.

salaries, so cash is everything. It is very hard to argue against this standpoint, but the bigger the organisation becomes, the less core it tends to be, since the immediate concern over short-term payments becomes less urgent.

You can find the solution to the DSC case from a cash flow perspective in Table 1. The case contains four different cash flows: (1) from ticket sales; (2) from sponsorship; (3) from salaries and other operating outflows; and (4) from investments in player contracts. The ticket sales are partly made in advance due to season tickets and partly more closely in time to specific games during the relevant year. The cash flows are recorded when they occur independently of which season, and more specifically reporting period, they belong to. The calculation for year 2 is then 75% of the total sales for year 2 (since 25% is already taken in year 1) plus 25% of the sales of tickets related to year 3. This is  $75\% \times 1200 + 25\% \times 1600 = 1300$ . Notably, the cash flow is higher than the value of tickets related to the games for the second year, 1300 versus 1200, due to the prepayments.

The situation with the sponsorship is reversed in time to the situation for the tickets in the DSC case. Sponsorship agreements are assumed to be signed, but the actual cash contributions from the sponsors are delayed. Intuitively the cash flows ought to be lower than the contractual amounts for each period. In this case, two-thirds of the contractual cash flows occur during the contracted period but one-third is delayed to the following period. The appropriate calculation for the cash flows for year 2 is then  $1320/3 + 1800 \times 2/3 = 1640$ . This amount is lower than the contractual amount of 1800 for year 2. Of course, the DSC has the right to obtain these payments during the coming year but this is not reflected in the cash flow statement.

The outflows are simply related to credit days on the invoicing. Normally, this is not related to salaries, except for any kind of social insurance benefits, withheld personal taxes or any vacation payments for similar things. For the DSC, there is a 15% delay between the years in the payments. The payments for year 2 then become  $85\% \times 2300 + 15\% \times 1800 = 2225$ . As for the sponsors, the payments are lower than the invoices related to year 2, i.e. 2225 compared to 2300. This is due to a combination of growing invoiced amounts and delayed payments.

**Table 1** Cash flow statement of the Dreaming Sports Club

Cash flow statement	Year 1	Year 2	Year 3	Year 4
Proceeds from ticket sales	1180	1300	1200	0
Proceeds from sponsors	880	1640	2200	800
<i>Total cash inflows</i>	2060	2940	3400	800
Payments for salaries and other	-1530	-2225	-2895	-450
Investments	-1500			
<i>Total cash flow for the year</i>	-970	715	505	350
<i>Accumulated cash flow</i>	-970	-255	250	600

The investments are of another character. They represent acquiring something today that is going to be used for a multiple number of periods. The cash flow may or may not occur when the resource is acquired. In our case, the DSC buys player rights for 1500. These contracts represent a three-year contractual period for the players. All of the cash is paid upfront. This means that the entire cash flow emerges at the beginning of year 1 despite the fact that the benefits of having contracted the players will materialise in three years.

The cash flow statement reveals that the DSC runs deficits during the first year, but thereafter the cash generation is substantially positive. Over the three/four years, there is a net positive cash flow of 600 according to the assumptions. Stated differently, the DSC needs to obtain some funding to start up its activities but over the full three-year period the club generates a surplus of 600. If we perceive the initial financing need to be 1500 for the player contracts, the club will be able to return the 1500 to the owners and on top of that an additional 600. Note, however, that we do not know how the club performs financially in the individual periods. This is the topic for the income statement.

### **The Income Statement**

The income statement shows the value of the performances to sponsors, audiences, members, broadcasting entities and other organisations and individuals that benefit from the actions of the club. This is matched by the consumption of resources, such as equipment, employees' time, arenas and players. All of these actions and resource acquisitions are related to cash flows at some point in time, but this is not what we are after here. This is only about whether we have taken the actions or consumed the resources. It is more important whether the game has been played and the audience has attended than if everything has been paid for.

In the DSC case, the club performs one underlying action. It forms teams that create a platform for entertainment and exposure for organisations and individuals interested in the teams. There are two value-creating streams in this. The first is the audience that attends the matches. They buy tickets, so the performance can be seen as the experience they have when watching. The second value-creating stream comes from the sponsors. During the games, in areas, online and through other channels, they become exposed to potential customers. The platform for this exposure is provided by the DSC, so this is a service provided to the sponsors. During each year, it is the value of these services that is included in the income statement as revenue. For year 2, it means that the tickets related to the games during year 2 should be reported as revenue regardless of when they are paid for. The same logic holds for the sponsorships. The amounts are 1200 and 1800, which totals 3000. Compared to the cash flow statement, there are no flows in year 4 at all since the DSC has performed the matches and thereby delivered the experiences and the exposure platforms fully by the end of year 2.

The consumption of resources, known as "expenses" in accounting terms, follows the same pattern as for the revenues above. In the DSC case, we have two



types of consumption/expenses. One is related to short-term resources or services (salaries and other costs) and the other is related to long-term resources where the club only consumes parts of the entire resources each year (player contracts). The salaries and the other costs belong to the period in which they are acquired unless there is anything left in the inventory or if there is any obvious delay in the salary payments. There are no such indications of that in the DSC case. This means that for year 2, the total expenses equal 2300, as is stated in the case.

The second type of expenses is represented by the use of the player contracts. However, arenas, gyms, furniture and similar things are treated in the same way. In the DSC case, the player contracts are signed for three years. This means that the investment in the player contracts is used/consumed over a three-year period. The original investment should consequently be allocated over this period. Another word for this is “amortisation”. Amortisation is used for intangible assets. Intangible assets are rights of various kinds. For tangible assets such as buildings and equipment we call the allocated amount “depreciation”. The depreciation/amortisation is an expense that affects the income statement negatively. For the DSC we assume a linear consumption/amortisation, which is 500 per year.

The difference between the revenues and the expenses is the net profit/net income. The net profit belongs to the owners of the organisation. This is the measure of the net financial performance of the organisation during the defined period. Note that this is different from the cash flows discussed earlier since we focus on the value of what we do during the period rather than whether we necessarily have had cash flows from those activities. Table 2 shows that the DSC had a net negative financial performance during the first year. However, when the club has stabilised during the latter periods, the profits are strongly positive. Another important observation is that the sum of all profits during the three years amounts to 600. This is identical to the cash flows obtained above. Income and cash flows are the same in the long run, but not in individual periods. Stated differently, we cannot affect the total income over time by moving revenues and expenses due to assumption. We can only shift between periods. The next focus is the bridge between the time periods, i.e. the balance sheets.

### The Balance Sheet

The balance sheet is a summary of the resources the organisation has from a financial perspective and the sources of financing, owners and lenders. There are no attempts to measure the fair value or a market value of the assets. What is shown on the balance sheet is the remaining value of what we once acquired the assets for

**Table 2** Income statement of the Dreaming Sports Club

Income statement	Year 1	Year 2	Year 3	Year 4
Operating revenues	2200	3000	4000	
Operating expenses excl. amortisation	-1800	-2300	-3000	
Amortisation	-500	-500	-500	
Net profit	-100	200	500	

after the amount we have consumed. Remember that the consumption is measured in the income statement. The DSC has three kinds of assets: the player contracts, receivables from the sponsors and cash. For each asset, the question is what value remains at the end of each period. As regards the liabilities, the corresponding question is what we owe other parties. These other parties can be suppliers, government, customers, etc. In our case, we have suppliers and customers. Finally, equity is the residual between the assets and the liabilities. The equity is made up of three major components: the original capital contributed by the owners, previous years' net profit that has not been paid back to the owners and this year's net profit. Below I discuss each line item.

The player contracts are acquired for 1500 at the beginning of year 1. The contracts are signed for three years and above we concluded that we consumed the contracts linearly, i.e. by 500 each year. By examining this from the perspective of what remains, there must be 1000 left at the end of the first year, i.e.  $1500 - 500$ . This development continues over the next few years so that after the third year there is no value left. The player has the right to move to another club without any payments to the DSC. Of course, this is exactly the reason why sports organisations want to sign up players before the contract expires or sell them beforehand so that the selling organisation obtains some additional value. The proceeds from selling a player before the end of the contract term is a gain or a loss depending on the price compared to the remaining value of the contract on the balance sheet at the time of the sale. That net would go to the income statement as a gain (treated in the same way as revenue).

The receivables are normally straightforward. They are the difference between what has been invoiced to customers and what has been received in cash. If we do not believe that the customers will pay the invoices fully or partially, we have to reduce the amount of the receivables to the amount we expect to receive. Any reductions due to expected non-payments affect the income statement as an expense. The DSC invoiced 1320 to its sponsors for year 1. A third of them are still unpaid by the end of the year. This means that outstanding receivables at the end of year 1 amount to  $1320/3 = 440$ . Since the sponsors pay during the following year the receivables outstanding at the end of the next year are entirely related to the invoicing for year 2, i.e.  $1800/3 = 600$ . The tickets are not invoiced. They are paid directly in cash, resulting in no outstanding receivables.

The last item on the asset side is cash. According to the case in Fig. 1, the owners invest 1500 in the DSC at the end of year 0. They pay in 1500 in cash, which is put into the bank account of the DSC. This means that at the end of year 0/beginning of year 1, the DSC has 1500 in cash. The development of the cash over time is then revealed in the cash flow statement. Remember that the cash flow statement shows all cash transactions during a period between two balance sheets. This must mean that the difference in the cash position can be entirely explained by the net cash flow. From the cash flow statement, we observe that the cash flow for year 1 is  $-970$  and for year 2 it is  $+715$ . The cash at the beginning of year 1 is 1500. At the end of year 1, given the cash flow of  $-970$ , the cash position is  $1500 - 970 = 530$ . The same calculation can be made for year 2, i.e.

$530 + 715 = 1,245$ . Subsequently, we can add up all of the assets to obtain the total asset value of the DSC for each year. Since what we have must exactly match the financing of liabilities and equity, the focus moves to the financing side.

The payables of the DSC are related to the salaries and other costs outstanding at the end of the year. The suppliers of the DSC send invoices with credit time and the DSC does not pay until the invoices are due. This means that at the end of the year there are unpaid invoices, which is a liability for the DSC. Of the invoices received, 15% are outstanding by the end of each year. In year 1, the DSC received 1800 in invoices, leading to  $15\% \times 1800 = 270$  in payables at the end of the year. For year 2, the correspond calculation is  $15\% \times 2300 = 345$ . As is the case for the receivables, all outstanding invoices at the end of a year are paid during the following year.

The second liability is to the customers. The fans buy their season tickets in advance. That means that the DSC has an obligation to the customers to deliver the games that are promised by the season tickets. All the presold tickets are therefore a liability to the customers/fans. The case assumes that no presales take place in year 0. At the end of year 1, 25% of next year's tickets are presold. This is  $25\% \times 1200 = 300$ . Consequently, the DSC has a liability to the customers of 300 at the end of that year. The corresponding figure to year 2 is  $25\% \times 1600 = 400$ . These customer liabilities are transformed into ticket revenues during the coming year when the DSC plays its games. Please, go back to the income statement calculations and verify that.

Equity represents what belongs to the owners of the organisation. Equity is the net worth of the organisation given how the assets and liabilities have been valued. Equity consists of the contribution from the owners, plus any additions generated by the organisation in terms of net profit minus and payments to the owners from the organisation. At the end of year 0, the DSC received 1500 in cash from the owners. This is the foundation of equity for the DSC. In Table 3, this is shown as owner contribution under equity. For the subsequent years, the additions to equity

**Table 3** Balance sheet of the Dreaming Sports Club

Balance sheet	Dec 31 Y 0	Dec 31 Y 1	Dec 31 Y 2	Dec 31 Y 3	Dec 31 Y 4
Player contracts		1000	500	0	0
Receivables		440	600	800	0
Cash	1500	530	1245	1750	2100
Total assets	1500	1970	2345	2550	2100
<i>Equity</i>					
Owner contribution	1500	1500	1500	1500	1500
Retained earnings			-100	100	600
Profit/loss		-100	200	500	0
Total equity	1500	1400	1600	2100	2100

(continued)

**Table 3** (continued)

Balance sheet	Dec 31 Y 0	Dec 31 Y 1	Dec 31 Y 2	Dec 31 Y 3	Dec 31 Y 4
<i>Liabilities</i>					
Deferred income		300	400	0	0
Payables		270	345	450	0
Total liabilities	0	570	745	450	0
Total equity and liabilities	1500	1970	2345	2550	2100

are the net profits for each year. The most recent year is sometimes displayed separately to further highlight the relationship between the equity on the balance sheet and the bottom line on the income statement. Previous years' net profit that has not yet been paid to the owners is called "retained earnings". A look at year 3 reveals a net profit of 500 and retained earnings amounting to 100. The retained earnings are the sum of  $-100 + 200$ , i.e. the net profits for the first two years, since nothing has been paid to the owners.

### Concluding remarks from the DSC case

The DSC case emphasises the main characteristics of accounting for a sports organisation. The concepts of revenue and expenses vs proceeds and payments are crucial for understanding the three perspectives of financial reporting. Internalising the concept of the balance sheet as the bridge between the periods, but also as a very revealing picture of the status and health of the organisation, is also of the utmost importance. The role of the balance sheet cannot be stressed enough. It shows the financial conditions that set the scene for the period to come and therefore the likelihood of survival. The athletic outcome can vary rapidly and as a result the organisation needs to stay strong financially. The amount of equity is the main buffer for unwanted outcomes in sports and as a result financially. The next step is to analyse a real-world set of financial statements. FC Barcelona will be the reference point in the remaining part of the chapter.

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## 3 Actual Financial Statements—the Source of Financial Information

As stated above, the financial statements are the foundations for a thorough understanding of the financial situation of a sports organisation. Of course, reality is somewhat more complex than our initial DSC case. Nevertheless, the logic and the relationships presented above can be applied to all transactions related to the everyday life of sports organisations. To fully understand the financial statements, the reader has to understand the structure of the organisation it represents. In this section, FC Barcelona is the basis for our analysis. FC Barcelona operates in several sports areas: football, basketball, handball, roller hockey and indoor football. Both

men and women teams are represented at the top level in football. The football section is by far the largest both in terms of athletes and from a financial perspective. The team sports organisation also owns several stadiums, administrative buildings, training camps, etc. Furthermore, FC Barcelona is involved in several activities beyond just the professional sports activities, such as social activities, education, to strengthen even further the brand and recognition of the team sports organisation locally and internationally.

### **The balance sheet of an international team sports organisation**

In this section, we start by looking at the balance sheet. The balance sheet can be said to be the strategic footprint of the organisation it represents. As discussed above, it shows the resources that the organisation controls and how the organisation has financed them. Given our understanding of FC Barcelona, we would expect to see a substantial amount of player rights (contracts), property and some assets related to the sports business in the short term such as receivables and liquid funds. In Fig. 2, the balance sheet of FC Barcelona at mid-2017 is shown. Structurally, we see that the team sports organisation has total assets of about 760 million euros. Of this, 550 million euros are non-current assets, i.e. assets to be used over more than one year, and 110 million euros are current assets, i.e. assets to be used during the coming year. This structure is common among organisations in team sports that have teams at a very high international level. This depends on the existence of an ongoing market for players in team sports and on contracts for player rights normally being multiperiod with high transaction prices. The other argument is whether the organisation owns arenas and training facilities or not. In smaller organisations or in other sports, the balance between non-current and current assets tends to be more even, and for the smallest organisations there are more current assets than non-current.

Barcelona has 245 million euros in intangible assets, almost exclusively player rights. This is the largest item on the balance sheet and reveals the financial content of today's professional sports industry. Trading and securing players for several years are fundamental for athletic success at the top level. At the same time, it requires substantial funding and incurs risk due to player development related to acquired rights. Table 3 explains these player rights. Remember from the DSC case above that the value on the balance sheet is the acquisition cost minus the amortisations during the contract period. In the right-hand column, we see the situation at the end of the year. Barcelona has existing player rights that the team sports organisation has acquired for a total of 429 million euros. Total amortisations of these rights amount to 187 million euros. This is slightly less than half of the acquisition cost, which on average means that slightly less than half of the contract time has elapsed. For 2016/17, Barcelona acquired new rights for a total of 124 million euros (see column 3) and sold rights that the team sports organisation once acquired for 54 million euros (column 4). The ones that were sold had been amortised by 36 million euros (bottom part of column 4). In this particular year, 67 million euros are amortised and 8 million euros are impaired. The impairment

ASSETS	Notes	06/30/2017	06/30/2016	EQUITY AND LIABILITIES	Notes	06/30/2017	06/30/2016
<b>NON-CURRENT ASSETS:</b>				<b>EQUITY:</b>	<b>Note 11</b>		
<b>Intangible assets-</b>		<b>245,069</b>	<b>208,772</b>	<b>CAPITAL AND RESERVES</b>		<b>112,762</b>	<b>94,628</b>
Intangible sporting assets				Social Fund		96,767	67,998
Player acquisition rights	<b>Note 5</b>	236,297	201,576	Social Fund		96,767	67,998
Intangible non-sporting assets				<b>Reserves</b>		<b>(2,139)</b>	<b>(2,139)</b>
Software	<b>Note 6</b>	8,482	6,584	Other reserves		(2,139)	(2,139)
Intangible assets in progress	<b>Note 6</b>	290	612	<b>Profit for the year</b>		<b>18,134</b>	<b>28,769</b>
<b>Property, plant and equipment-</b>	<b>Note 7</b>	<b>146,075</b>	<b>142,847,000</b>	<b>GRANTS, DONATIONS AND BEQUESTS RECEIVED</b>		<b>2,585</b>	<b>2,667</b>
Stadiums and arenas		74,752	78,963	<b>Total equity</b>		<b>115,347</b>	<b>97,295</b>
Other land and constructions		38,683	39,261				
Plant and other PP&E items		15,118	15,904				
Property, plant and equipment under constructions and prepayments		17,522	8,619	<b>NON-CURRENT LIABILITIES:</b>			
<b>Investment property</b>	<b>Note 8</b>	<b>13,165</b>	<b>5,856</b>	<b>Non-current provisions</b>	<b>Note 12.1</b>	<b>3,433</b>	<b>10,197</b>
<b>Non-current investments in group companies and associates-</b>	<b>Note 10.2</b>	<b>208</b>	<b>980</b>	<b>Non-current payables</b>	<b>Note 13.1</b>	<b>47,214</b>	<b>27,758</b>
Equity instruments		10	10	Bank borrowings		20,000	-
Loans to companies	<b>Note 18.2</b>	198	970	Payables to sporting entities	<b>Note 13.3</b>	8,000	3,000
<b>Non-current financial investments</b>	<b>Note 10.1</b>	<b>18,759</b>	<b>6,571</b>	Sports personnel	<b>Note 13.6</b>	1,598	20,095
Loans to sporting entities		8,842	5,580	Other financial liabilities		3,232	4,663
Other receivables		-	-	<b>Deferred tax liabilities</b>	<b>Note 14.6</b>	<b>1,075</b>	<b>1,812</b>
Other financial assets		9,917	991	<b>Non-current accruals</b>	<b>Note 15</b>	<b>5,261</b>	<b>1,836</b>
<b>Deferred tax assets</b>	<b>Note 14.6</b>	<b>19,602</b>	<b>28,108</b>	<b>Total non-current liabilities</b>		<b>56,983</b>	<b>41,603</b>
<b>Non-current trade receivables</b>	<b>Notes 10.3 and 13</b>	<b>107,330</b>	<b>19,434</b>				
<b>Total non-current assets</b>		<b>550,208</b>	<b>412,568</b>	<b>CURRENT LIABILITIES:</b>			
				<b>Current provisions</b>	<b>Note 12.2</b>	<b>13,266</b>	<b>40,628</b>
<b>CURRENT ASSETS:</b>				<b>Current payables</b>	<b>Note 13.2</b>	<b>30,778</b>	<b>22,488</b>
<b>Trade and other receivables-</b>	<b>Note 10.3</b>	<b>112,893</b>	<b>101,338</b>	Bank borrowings		8,132	20,970
Accounts receivable from sporting entities		30,562	40,385	Other financial liabilities		22,646	1,518
Other receivables		34,484	39,840	<b>Trade and other payables</b>	<b>Note 13.3</b>	<b>395,035</b>	<b>312,050</b>
Sports personnel	<b>Note 13.3</b>	46,798	18,122	Suppliers		66,789	71,569
Non-sports personnel		195	108	Other payables		9,431	2,971
Current income tax assets		680	-	Other payables to related parties		3,322	-
Other receivables from public administrations	<b>Note 14.1</b>	48	2,757	Payables to sporting entities		55,793	72,409
Prepayments to suppliers / creditors		126	126	Sports personnel	<b>Note 13.3</b>	186,390	95,080
<b>Current financial investments</b>		<b>2,001</b>	<b>4,055</b>	Non-sports personnel		3,937	2,118
<b>Current accruals</b>	<b>Note 15</b>	<b>2,280</b>	<b>1,412</b>	Other payables to public administrations	<b>Note 14.1</b>	72,144	67,648
<b>Cash and cash equivalents-</b>		<b>92,817</b>	<b>27,111</b>	Customer advances		229	255
Cash		92,817	8,111	<b>Current accruals</b>	<b>Note 15</b>	<b>148,790</b>	<b>32,420</b>
Cash equivalents	<b>Note 10.4</b>	-	19,000	<b>Total current liabilities</b>		<b>587,869</b>	<b>407,586</b>
<b>Total current assets</b>		<b>209,991</b>	<b>133,916</b>	<b>TOTAL EQUITY AND LIABILITIES</b>		<b>760,199</b>	<b>546,484</b>
<b>TOTAL ASSETS</b>		<b>760,199</b>	<b>546,484</b>				

**Fig. 2** FC Barcelona balance sheet at 30 June 2017 (FC Barcelona 2017, p. 238)

means a sudden decrease in the value of that specific right. This could be due to player performance development.

Property, plant and equipment are the second largest component on the balance sheet. This is due to Barcelona owning arenas and training facilities. The stadiums are separated from the land on which they stand, because in practice they could, for example, tear down the stadiums and sell the land separately. Stadiums and arenas amount to 75 million euros and the land to 39 million euros.<sup>2</sup> We can also see that there are several facilities that are under construction. The value of those are currently above 17 million euros. This amount is the invested construction cost up until the end of 30 June 2017. The logic and structure of the value on the balance

<sup>2</sup>The investment properties are buildings that are held for renting out to other parties. This is different from the stadium and arenas, which are held for use by FC Barcelona itself.

sheet are the same as for the player rights discussed above. Smaller organisations normally rent their training facilities. These rented facilities do not show on the balance sheet unless they qualify as leases, which in certain jurisdictions are recognised as assets and a corresponding liability for future lease payments.

The current assets consist mainly of receivables from various counterparties. The largest one is receivables from sports personnel. This is about 47 million euros and it is also a major part of the non-current trade receivables of 107 million euros above. They consist of assigning bonuses to the players directly. These are different from the player rights, which are related to the acquisition cost to the team sports organisation that sold the player. These receivables are transferred into expenses over time. The current ones are to be expensed during the next year. The receivables from other sporting entities include, for example, when the team sports organisation lends players to other team sports organisations and the earned payments from these lending agreements. They are in total above 30 million euros. We can finally conclude that FC Barcelona had almost 93 million euros in cash and cash equivalents (read bank balances) at the end of June 2017. This appears to be good liquidity making up about 12% of the total balance sheet (Fig. 3).

The financing side of the balance sheet contains equity and liabilities. The equity contains the social fund, which is the contributed capital and retained earnings from our case above. This, combined with this year's profit, is almost all equity in line with the DSC case. On top of this, some additional donations have been received that are contributions without a requirement to get something back. The most critical item apart from equity is the financial liabilities, mostly bank borrowings. FC Barcelona has a total of about 28 million euros in bank loans. This corresponds to approximately 4% of the entire balance sheet and reflects the strong position of the team sports organisation. The payables to sporting entities and sports personnel are directly related to the conditions under the specific contracts with other team sports organisations and with the players directly. They are still unpaid. These

	Thousands of euros			
	Balances at 6/30/2016	Additions and charges	Derecognition, disposals and decreases	Balances at 6/30/2017
<b>Cost:</b>				
Soccer	348,899	118,086	(48,548)	418,437
Basketball	2,525	3,553	(1,474)	4,604
Handball	1,460	390	(155)	1,695
Roller Hockey and other sports	459	96	-	555
Advances	5,150	2,000	(3,700)	3,450
<b>Total cost</b>	<b>358,493</b>	<b>124,125</b>	<b>(53,877)</b>	<b>428,741</b>
<b>Accumulated amortization:</b>				
Soccer	(154,004)	(65,128)	35,507	(183,625)
Basketball	(1,692)	(1,595)	811,000	(2,476)
Handball	(858)	(244)	155,000	(947)
Roller Hockey and other sports	(363)	(78)	-	(441)
<b>Total accumulated amortization</b>	<b>(156,917)</b>	<b>(67,045)</b>	<b>36,473</b>	<b>(187,489)</b>
<b>Impairment:</b>				
Soccer	-	(8,564)	3,609	(4,955)
<b>Total impairment</b>	<b>-</b>	<b>(8,564)</b>	<b>3,609</b>	<b>(4,955)</b>
<b>Total net amount</b>	<b>201,576</b>	<b>48,516</b>	<b>(13,795)</b>	<b>236,297</b>

**Fig. 3** FC Barcelona Note 5 on intangible sports assets at 30 June 2017 (FC Barcelona 2017, p. 251)

	Thousands of euros				
	Non-current				
	2018/19	2019/20	2020/21	2021/22 and subs. seasons	Total
Bank borrowings	3,823	3,909	3,998	8,270	20,000
Payables to sporting entities (Note 13.3)	8,000	-	-	-	8,000
Other non-current liabilities:					
Compensation for contract termination	9,807	5,056	1,119	-	15,982
Suppliers of assets	1,333	-	-	-	1,333
Other	99	99	-	1,701	1,899
<b>Total</b>	<b>23,062</b>	<b>9,064</b>	<b>5,117</b>	<b>9,971</b>	<b>47,214</b>

**Fig. 4** FC Barcelona non-current payables at 30 June 2017 (FC Barcelona 2017, p. 264)

payables to sporting personnel include compensation for contract termination for players and coaches as displayed in Fig. 4.

Some additional observations can be made. Other payables to public administration are almost entirely related to withheld taxes for the employees that are soon to be paid to the tax authorities. This is the considerable amount of 72 million euros. There are, of course, a lot of consumables in the athletic and administrative roles of the team sports organisation. There are about 64 million euros outstanding in payables for these kinds of things, called “payables to suppliers”.

A summary of the study of the balance sheet concludes that there are significant opportunities to analyse the current situation as well as the effect of past decisions by examining the balance sheet. A careful reading of the balance sheet in combination with the related notes reveals the financial health of the organisation. Despite the common understanding that the income statement and cash flow statement are the most informative statements, it is the balance sheet that carries most of the long-term information, both forward-looking and regarding the past.

### The Income Statement of an International Sports Organisation

Thinking about the performances and the use of resources in an international sports organisation like FC Barcelona leads most people towards a number of things: tickets, sponsorship, merchandise, broadcasting rights, player remuneration and amortisation, cost of merchandise, arena costs including depreciation and other salaries. Figure 5 shows the income statement of FC Barcelona for the year 2016/17. Note first of all that the fiscal year is from 1 July to 30 June the following year. It is not the calendar year. This coincides with the match year for the most prominent part of the team sports organisation, namely the men’s football.

Total revenue, i.e. performances of goods and services to customers of FC Barcelona, amounted to 579 million euros. This is also called “turnover”. More than 40% of the revenues stem from marketing and sponsorship. The second biggest revenue item is TV broadcasts and media rights. Combined, the two items make up about 75% of the total revenues. This is a good illustration of what top sport is about today. When examining even more deeply the notes (not presented here), it shows that more than 90% relates to the men’s football first team. About 90 million euros are from ticket sales and 32 million euros are from season ticket



	Notes	2016/17	2015/16
<b>CONTINUING OPERATIONS:</b>			
<b>Revenue-</b>	<b>Note 17.1</b>	<b>579,480</b>	<b>556,780</b>
Revenue from competitions		91,705	83,04
Revenue from season ticket holders and membership card holders		50,883	45,543
Revenue from TV broadcasts and TV rights		177,959	168,142
Revenue from marketing and advertising		258,933	260,055
<b>Work performed by the entity and capitalized</b>		<b>1,116</b>	<b>-</b>
<b>Cost of sales-</b>		<b>(6,966)</b>	<b>(6,866)</b>
Consumption of sports equipment		(3,994)	(3,811)
Other consumptions		(2,972)	(3,055)
<b>Other operating income-</b>	<b>Note 17.2</b>	<b>68,738</b>	<b>63,092</b>
Ancillary income		68,369	63,092
Grants related to income		369	243
<b>Employee benefits expense</b>	<b>Note 17.3</b>	<b>(377,934)</b>	<b>(371,735)</b>
Wages and salaries of sports personnel		(334,106)	(330,874)
Wages and salaries of non-sports personnel		(32,035)	(30,386)
Social security costs, et al.		(11,793)	(10,475)
<b>Other operating expenses-</b>		<b>(163,423)</b>	<b>(149,360)</b>
External services	<b>Note 17.4</b>	(104,452)	(108,813)
Taxes		(3,509)	(2,493)
Losses on, impairment of and change in trade provisions	<b>Note 10.3</b>	(1,494)	(638)
Impairment losses on trade receivables		(1,582)	(1,195)
Reversal of impairment losses on trade receivables		88	557
Away matches		(8,596)	(11,029)
Player acquisition expenses		(2,138)	(925)
Other current management expenses		(43,234)	(25,462)
<b>Depreciation and amortization-</b>		<b>(80,224)</b>	<b>(71,796)</b>
Amortization of player acquisition rights	<b>Note 5</b>	(67,045)	(59,699)
Other depreciation and amortization	<b>Notes 6 and 7</b>	(13,179)	(12,097)
<b>Grants related to non financial assets and other grants</b>	<b>Note 11.2</b>	<b>109</b>	<b>109</b>
<b>Impairment losses and gains (losses) on disposal of non-current assets-</b>		<b>(12,193)</b>	<b>47,080</b>
Impairment losses and losses-	<b>Note 5</b>	(33,907)	363
Impairment losses on intangible sporting assets		(8,564)	(4,179)
Reversal of impairment losses on intangible sporting assets		3,609	1,542
Impairment losses on investment property	<b>Note 8</b>	(28,952)	-
Gains (losses) on disposal-	<b>Notes 5,7 and 10.1</b>	21,714	46,717
Losses on property, plant and equipment		-	(539)
Losses on intangible sporting assets		(4,364)	(1,110)
Profit from intangible sporting assets		26,078	48,395
Losses on intangible non-sporting assets		-	(299)
<b>Charges for the year and utilization of provisions and others-</b>	<b>Note 17.5</b>	<b>22,290</b>	<b>(19,001)</b>
Charge for the year and other non-recurring expenses		(6,663)	(24,197)
Utilization of provisions and other non-recurring income		28,953	5,196
<b>OPERATING PROFIT/(LOSS)</b>		<b>30,993</b>	<b>48,546</b>
<b>Finance income-</b>		<b>4,873</b>	<b>974</b>
From marketable securities and other financial instruments		4,873	974
- Of third parties		4,873	974
<b>Finance costs-</b>		<b>(1,996)</b>	<b>(14,152)</b>
Third-party borrowings	<b>Note 17.6</b>	(1,996)	(14,152)
<b>Exchange gains (losses)</b>		<b>(174)</b>	<b>1,642</b>
Exchange gains		200	658
Exchange losses		(374)	984
<b>Impairment and gains (losses) on disposal of financial instruments</b>		<b>(2,311)</b>	<b>(1,171)</b>
<b>FINANCE COST</b>		<b>392</b>	<b>(12,707)</b>
<b>PROFIT/(LOSS) BEFORE TAX</b>		<b>31,385</b>	<b>35,839</b>
Income tax	<b>Note 14.4</b>	(13,251)	(7,070)
<b>PROFIT/(LOSS) FOR THE YEAR</b>		<b>18,134</b>	<b>28,769</b>

**Fig. 5** FC Barcelona income statement of an international sports organisation at 30 June 2017 (FC Barcelona 2017, p. 239)

holders and membership. Since the fiscal year coincides with the match year, there are only limited needs for accruals with respect to the revenue, i.e. allocating payments and contract terms to the correct years as we did in the DSC case. If the fiscal year had been different, the need would have been much greater.

Studying the expense side of the income statement is even more revealing. The distinctly largest expense account is wages and salaries to sports personnel. These are wages and salaries to the players and coaches. They amount to 378 million out of 548 million euros. This figure does not include the amortisation of the player rights, which is an additional 67 million euros. A total of 445 million euros are related to players and coaches. Generally speaking, this is not so different from consultancy firms and other industries that are highly dependent on skilled labour that produces services for their customers.

The income statement of FC Barcelona is relatively detailed at its face. In many other major sports organisations, the level of detail of revenues and expenses is much less and the information needs to be searched for in the notes. This is also the case for small organisations such as local team sports organisations. The details are available in the reporting systems but rarely provided to external parties in those small organisations. We can also conclude that the operations part of the income statement is very extensive compared to the financial items and taxes further down. The operating profit is 31 million euros starting with total revenues of 579 million euros. Thereafter, the financial income and expenses are small and taxes amount to 13 million euros, leaving 18 million euros to the owners. If we look at this from another perspective, we can see that most of the value created for the customers is absorbed by other interested parties than the owners of the team sports organisation in their role as owners, particularly the players and coaches. The owners may of course obtain other benefits from their marketing, but that comes outside their direct role as owners of the team sports organisation.

It is important to stress that the income statement does not reveal anything about the cash flows generated during the observed period. Naturally, the ticket sales and other things generate cash, but in order to analyse the cash generation, the focus must turn to the cash flow statement.

### **The Cash Flow Statement of an International Sports Organisation**

The purpose of the cash flow statement is to explain the changes in cash and cash equivalents between two balance sheet dates. This is the same as saying that it lays out the cash inflows and the cash outflows as we did in the DSC case. However, the structure of the statement is somewhat different in practice compared to how it was presented in the case. Figure 6 shows FC Barcelona's cash flow statement for the year 2016/17. The cash flow statement is divided into three parts or sections: (1) cash flows from operating activities; (2) cash flows from investing activities; and (3) cash flows from financing activities. The cash flows from operating activities include all cash flows related to the day-to-day activities that are automatically performed in the ordinary business. These include tickets, sponsors, salaries, wages, etc. The cash flows from investing activities are the cash flows related to the non-current assets on the balance sheet. This includes acquiring player rights, property, equipment and the like. The cash flows from financing activities are cash flows related to issuing and repaying debt and any flows to and from the owners. Note that interest payments in and out of the team sports organisation are not

	Notes	2016/17	2015/16
<b>CASH FLOWS FROM OPERATING ACTIVITIES (I)</b>			
Profit for the year before tax		31,385	35,839
<b>Adjustments to profit-</b>			
- Depreciation and amortization	Notes 5, 6 and 7	80,224	71,796
- Impairment losses	Note 5	35,401	638
- Change in provisions		3,063	19,001
- Grants related to income	Note 11.2	(109)	(82)
- Gains (losses) from derecognition and disposals of non-current assets	Notes 5,7 and 10.1	(21,714)	(46,717)
- Gains (losses) from derecognition and disposals of financial instruments		2,311	1,171
- Finance income		(4,873)	(974)
- Finance costs		1,996	14,152
- Exchange gains (losses)		174	(1,642)
- Liabilities accruals recognized in profit or loss, net		(413,494)	(365,691)
- Other income and expenses		29,699	20,850
<b>Changes in working capital-</b>			
- Trade and other receivables		(42,876)	677
- Other financial assets		(3,803)	(197)
- Trade and other payables		34,284	2,109
- Inclusion of liabilities accruals		533,289	303,802
- Other non-current assets and liabilities		(54,543)	(196)
<b>Other cash flows from operating activities-</b>			
- Interest paid		(929)	(1,651)
- Interest received		79	91
- Income tax receipts (payments)		(5,964)	(10,596)
		<b>203,600</b>	<b>42,380</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES (II)</b>			
<b>Payments on investments-</b>			
- intangible sporting assets	Note 5	(145,287)	(103,415)
- intangible non-sporting assets	Note 6	(3,882)	(3,153)
- Property, plant and equipment	Note 7	(16,270)	(12,556)
- Investment property		(23,094)	-
- Investments in group companies		(1,466)	(1,314)
- Other financial assets		(12,000)	(2,719)
<b>Proceeds from disposals-</b>			
- Intangible sporting assets	Note 5	52,064	62,642
- Other financial assets		1,000	-
		<b>(148,935)</b>	<b>(60,515)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES (III)</b>			
<b>Proceeds from and payments of financial liabilities</b>			
- Issue of bank borrowing	Note 15	27,820	-
- Issue of other borrowing	Note 13	4,054	-
- Repayment and redemption of bank borrowings		(20,658)	(30,868)
- Repayment of other borrowings		(175)	-
		<b>11,041</b>	<b>(30,868)</b>
<b>NET INCREASE/DECREASE IN CASH AND CASH EQUIVALENTS (I+II+III)</b>		<b>65,706</b>	<b>49,003</b>
Cash and cash equivalents at July 1		27,111	76,114
Cash and cash equivalents at June 30		92,817	27,111

Fig. 6 FC Barcelona cash flow statement 2016/17 at 30 June 2017 (FC Barcelona 2017, p. 241)

considered financing but rather a part of operating activities since they come automatically when the loans have been obtained or funds have been placed in a bank account or similar.

The cash flows from operating activities are a reconciliation from the operating profit or, as in the case of FC Barcelona, profit before taxes to the cash flows from operations. The starting point is the operating profit. Thereafter, a set of adjustments are made. These include removing non-cash revenue and expenses such as depreciation and amortisation.<sup>3</sup> Thereafter, all changes in assets and liabilities directly related to the income statement components are adjusted for. They include primarily receivables and payables. An example from the DSC case is that the sponsorship money is delayed. This gives rise to a receivable that is unpaid by the

<sup>3</sup>Remember that depreciation and amortisation are only the allocation of the initial cash outflow to different periods when the asset is being consumed/used.

end of the year. In year 2, the cash flow is 1640, which can be derived from sales of 1800 and a negative impact of an increase in receivables from 440 to 600. Stated differently, the DSC has tied up 160 in cash in the increase of receivables compared to the sales of 1800, which gives a cash flow of 1640. In the cash flow statement, the two components of 1800 and  $-160$  are reported separately. The same logic holds for the payments that are separated into expenses and payables.<sup>4</sup> Note from the discussion above that an increase in an asset like the receivables above is negative for cash flow. By buying or holding assets we use cash and consequently an increased asset is negative for cash flows. On the other hand, an increase in a liability is positive for cash flows. Not paying your invoices or borrowing from the bank is good for your cash flow. Of course, it is bad for other parts of the analysis, and in many cases the bad part overshadows the positive effect on cash flows.

In Fig. 6, we see that FC Barcelona reports a profit before tax of 31 million euros. The operating cash flow amounts to 204 million euros. The difference between profit and cash flow can mainly be described by two components: (1) the depreciation/amortisation and impairments and (2) the change in working capital, i.e. changes in receivables and payables (unpaid invoices, etc. both in- and out-going). The depreciation and amortisation are not cash flow and they should be removed from the profit to obtain cash flows. The total amount is 115 million euros. The second largest explanation is the increase in liabilities.<sup>5</sup> Trade payables have increased by 34 million euros and the accruals are up net by approximately 120 million euros. Trade receivables consume cash with an increase of 43 million euros. It is hard to directly derive these measures from the balance sheet. They are calculated from much more detailed information sets. Some changes in assets may only be due, for example, to revaluations.

The 204 million euros generated by the operating activities are used to acquire non-current assets (property, player rights, etc.). The amounts of the cash flows consumed by these acquisitions are displayed in the cash flows from investing activities. A total of 149 million euros is spent and the majority of this is due to acquisitions of intangible sporting assets, e.g. player rights. Some 145 million euros are spent here. This might seem like a lot of money, but given the generated cash flows from operating activities the investments seem to pay off. Simultaneously, the team sports organisation sells intangible sporting assets, which generates 52 million euros. Net investments in these assets were therefore 93 million euros for the year 2016/17.

FC Barcelona also invests in tangible assets, such as property and equipment. It spends 39 million euros ( $16 + 23$ ) in total during the year. They are literally the payments to the construction companies performing the construction services. They are related to new constructions as well as improvements on current ones. When all investments are made, FC Barcelona generates 55 million euros ( $204 - 149$ ).

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<sup>4</sup>If some of the purchased consumables have not been used, then the change in inventory needs to be added.

<sup>5</sup>Note that the inclusion of liability accruals is a gross figure. The other part of the change is included as liability accruals further up in the statement. This is a fairly uncommon way of reporting. Normally it is only the difference that is seen.

The cash flow after investing activities can be used for three purposes. The first one is managing the debt position. Some debt must be repaid due to the amortisation plan. The second one is paying cash to the owners in terms of dividends. The third one is adding to the cash and cash equivalents, i.e. the liquidity position. The cash flows from financing activities reveal the development due to the first two alternatives and the residual is the effect on cash and cash equivalents. The cash flow from financing activities includes information about managing the debt position. The team sports organisation repays 21 million euros and takes up new loans for 32 million euros. The team sports organisation borrows more new money than it repays during 2016/17. For the year before there were only repayments. The team sports organisation generates 11 million euros in the financing activities creating in total a positive impact on the cash and cash equivalents position of 66 million euros. This should stand in contrast to the 31 million euros in pretax profits and 18 million euros in net profit. The difference can be explained by advanced and delayed operating payments, investments and borrowing. All of the details are presented systematically in the cash flow statement. From an analytical perspective, the developments in working capital (i.e. changes in current assets and current liabilities) and investments are the key to understanding the cash flow health of the team sports organisation and the implications of growth. If the team sports organisation wants to grow, it costs in terms of cash flow.

### **Summary of the reports**

We have now looked at the three financial statements of FC Barcelona as a frame for the example of the DSC above. The statements provide three very different perspectives on the team sports organisation, three perspectives that are complementary, not exchangeable. They are the financial position (balance sheet), performance (income statement) and liquidity (cash flow statement). What mainly differs from a manufacturing or service-based company is the volatility in revenues and cash inflows together with the strong dependence on intangible assets. Athletic success at the top level generates enormous amounts of cash. The lower levels of sports performance are very different. The revenue consequences are often dramatic when a team sports organisation is relegated to a lower division, i.e. when there is some degree of athletic failure. This does not change the relevance of accounting and financial reports but it puts strong emphasis on the financial forecasting in the context of accounting. Understanding the relationship and content of the reports is therefore crucial. The revenue uncertainty requires financial strength in terms of a stable equity position to secure prosperity, future athletic success and survival.

## 4 Accounting and Sports—A Perfect Match and Opposites Attract

The world of professional sports today is very far from a backyard, idealistic exercise. This is a multibillion-euro industry. The amounts invested in the business by outsiders together with the money spent on athletes, real estate and marketing require control and understanding of the effects of these investments. There is a separation between investors, both in terms of equity and bank loans, and the managers of the sports organisation. The external parties are entitled to regular reports on how their funds are being spent, and particularly so if they are asked to invest even more. Accounting is a system for providing comparable information to these external parties. However, this is not enough. The accounting system also provides useful information for internal decision-making. How financially successful is the team sports organisation in terms of ticket sales, marketing activities and sponsor interactions? What are the financial consequences of the nowadays enormous broadcasting rights agreements? These and many other questions could not be answered without the accounting system. Accounting is not evil and necessarily bad. It is the helpful companion that helps you as a manager to run the commercial sports activities in a sophisticated way. Moreover, an understanding of the accounting system helps you to communicate with investors, banks, suppliers, league organisers and others in an effective way.

All of the arguments should be more than enough to emphasise the role of accounting in professional sports today. On top of this are the financial requirements placed on professional sports organisations. There are salary caps, profit requirements, minimum equity levels and several other kinds of regulations imposed on organisations today. Participation from the athletic perspective requires a healthy and well-run financial dimension among organisations. You cannot escape.

The stylised and real-life examples above have been used to illustrate the concepts and relationships included in the world of accounting. The emphasis is on the relationship between the underlying sports activities and the accounting representation of these activities. The intention is that we should be able to see the important part, namely the development of athletes from a young age and onwards, in the financial figures. The financials create opportunities and limitations in the sports activities and the best we can do is to understand and use the financials to our advantage and to the best of our knowledge. The accounting language is the language of all businesses, including that of sports.

### **As a conclusion to this chapter, the following can be stated**

Sports and accounting today are strongly related. The commercial side of sports organisations is constantly increasing, which puts an increased demand on people engaged in this industry. A fundamental understanding of the financial statements and the financial consequences of actions taken is almost a prerequisite for being successful. The connections between the three

financial statements, income statement, cash flow statement and balance sheet, provide the basis for a good understanding. The need for all three perspectives of the three financial statements cannot be overemphasised. Analysis of the statements provides an understanding not only of the past but also of the conditions for the future. The financial conditions for each sports organisation combined with the financial requirements from national and international sports associations set the limit for the options the organisation has. These options include investments in training and match facilities, purchases of consumables, investments in new athletes, the size of the sports administration, etc. This chapter has provided you with an introduction to financial statements and annual reports with respect to content and interrelationships. Hopefully, it has also triggered a willingness to dig deeper into the subject.

### Comprehension Questions

1. Describe the difference between an income statement and a cash flow statement for a sports organisation.
2. Name and explain the most significant line items in the financial statements of a professional sports organisation.
3. Why could the balance sheet be considered the most important financial statement?

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# Funding of Professional Team Sports Organisations

Kim Lachmann and Johannes Struckmeier

## Abstract

Funding professional team sports organisations (PTSOs) is challenging from several perspectives. Economic and hence financial success is closely linked to sporting success. Success in sport, however, is associated with a large number of uncertainties, such as injuries to top players and the performance of other teams. In addition to dependence on sporting results, there are also major financial dependencies on individual revenues in many team sports, including media revenues, sponsors and patrons. The loss of individual income positions, the insolvency of league competitors, the cancellation of world or continental championships due to bad weather, the danger of terrorism and other reasons can put a PTSO in a financially and existentially threatening situation. However, PTSOs are not only faced with the challenge of financially securing the ongoing operation, but also that of providing sufficient financial resources for investments, such as the construction of a new arena, training facility or youth academy. For this purpose, they can fall back on various internal and external funding instruments. These are presented and discussed in this chapter with their specific characteristics and their advantages as well as disadvantages in the light of other funding instruments.

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### Learning Outcomes of the Chapter

1. You will learn about different forms of internal and external funding of PTSOs.
2. You will be able to compare and evaluate the advantages and disadvantages of the individual funding instruments.
3. You will know what mezzanine funding instruments are and what chances and risks they entail.
4. You will know the basic procedure for the IPO of a PTSO.
5. You will know what asset-backed securities are and why this funding instrument is often used to finance sports facilities.

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## 1 Introduction

Professional team sport organisations (PTSOs) are able to generate substantial revenues in the course of their operations. Through their immense exchange of services, PTSOs have become an economically important factor with new and complementary business segments. This constant growth in importance is due, amongst other things, to the shift to an information and entertainment society, leading to an overall growth in revenues. Growing revenues are accompanied by higher financial requirements and more diverse funding opportunities evolve. This is driven by the fact that even comparatively expensive funding possibilities become an option due to the larger underlying amounts. Generally, a PTSO has two different sources of funding. Initially, in its foundation phase, it requires external funding through equity or debt. The funds for a business can also come from the business itself. If the club starts to create revenues on its own, which represents the start of an established business, it might use sources such as amortisation and depreciation allowances as well as profits not paid out as dividends as a way of fuelling further expansion (Fried et al. 2013). Through this form of internal funding, a PTSO attempts to increase its equity capital by using its inherent resources (Jordan 2014). This part of the funding of a PTSO, the internal funding, will be explained below before considering the external funding.

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## 2 Internal Funding

### 2.1 Operating Cash Flow

The proportion of earnings a PTSO saves in order to fund operations or acquire assets is termed “retained earnings”. For traditional companies, the reinvestment of

retained earnings is generally considered a type of equity funding, especially for stock-listed companies. They choose to reinvest earnings rather than paying them to shareholders as dividends. However, funding a PTSO through the reinvestment of retained earnings should be regarded separately from equity funding. Although profits may be distributed to team owners in the case of a sport corporate entity, in sports they are often used to finance the acquisition of players, improve operations or make other investments (Brown et al. 2016).

This relates to the diverging business objectives between traditional companies and PTSOs. While traditional companies mainly focus on the maximisation of their profits, PTSOs seek to maximise their sporting success while considering the financial background. Considering the financial background means financing the sporting success while maintaining the business in an operational mode. However, a lack of sporting success might lead to negative consequences for the PTSO and thereby result in a potentially distressing situation. Accordingly, it is no wonder that, for example, an empirical model has shown that insolvency is a chronic problem in the world of professional football clubs. A study concludes that the main reason for insolvency amongst football clubs is that their finances are subject to negative shocks—either to productivity or to demand—and that a series of such shocks can lead to insolvency (Szymanski 2012).

Nevertheless, this study focuses on English football—whose clubs have developed very well financially in recent years. Amongst other things and besides the general resurgence of popular interest in football, this can be attributed to a wide range of factors. The two main ones are (i) the rise of pay TV broadcasting and the use of football as a driver of subscriptions and (ii) a more commercial approach to club management (Goddard and Sloane 2014). However, this is not only the case for the Premier League. Most other sport leagues have shown a constant increase in revenues in recent years.

The reason for this positive development in PTSOs can be found in four major revenue streams. The first and most traditional revenue driver of a club is ticketing and thus the gate receipts. The number of tickets available for sale, which depends on the stadium size, and the price, predefines the ticketing revenue. However, tickets can be sold as season tickets and day tickets (Dworak 2010). The PTSO's mission is therefore to determine the right price per seat in order to maximise the resulting cash flow per seat (Sawyer et al. 2004). Additionally, one important price determinant for PTSOs is the availability and quantity of hospitality facilities. Due to the perceived better seating and higher (service) quality, these tickets can be sold at a higher rate than the standard ticket. Often, these hospitality seats encompass additional services such as catering, parking, etc., while hospitality packages are often part of sponsorship contracts. Therefore, the borders generally blur between ticketing and other revenue sources (Dworak 2010).

The second driver is competition-specific media rights fees (see also Chap. 16) for media such as TV, radio, digital media, etc. While those rights could be potentially marketed by the individual clubs separately, the presence of a centralised media rights contract has historically proved to be more efficient, with a predefined profit-sharing model in order to distribute the revenues achieved to the

individual clubs (Cox 2016). The contract is generally negotiated on a multi-year basis (Sawyer et al. 2004). While the sporting premium leagues are able to generate a comparatively high revenue through their media rights, the value diminishes the fewer potential viewers a sport has. As a result, media rights are the main revenue source for the top leagues like the Premier League and the National Football League (NFL), while the total revenue share declines as a league's popularity decreases.

The third driver is sponsorship revenues (see also Chap. 9), which take the main share in most PTSOs. Sponsorship can be achieved through financial funds, providing goods or services, and/or supporting the club in its aims and objectives (Wilson 2011). Therefore, the PTSO gets the benefit of being linked to a successful business partner, while the business firm secures a promotional benefit from being associated with a high-profile PTSO as well as with its supporter and viewer base (Stewart 2015).

The major sponsorship categories are the main sponsor, the kit supplier, co-sponsors and a naming right sponsor (for the PTSO itself and/or for the stadium). A sponsorship offers various potential presentation possibilities, ranging from the use of the sponsor's products, through the presentation of the sponsor's advertisement/logo, up to the inclusion of the sponsor's name in the stadium's or the club's/league's/event's official name (Brose Baskets Bamberg n.d., RedBull Munich n.d., Liqui Moly Handball Bundesliga n.d., Signal Iduna Group n.d.). The more visibility and reach a PTSO has, the higher is the value of a potential sponsorship deal (Dworak 2010). Therefore, the digital activity of the PTSO becomes more and more important (PricewaterhouseCoopers 2014).

In-stadium or arena arrangements are the fourth main revenue driver of a PTSO, which includes various revenue sources that can be found within this field, ranging from corporate box leasing, preferential seat bookings and catering (franchises) to parking (Stewart 2015). In this field, the PTSO is able to use a variety of different revenue streams generated on match days, or even on days without. For example, bigger clubs might offer a stadium tour, in which fans are able to take a tour through the arena areas normally not available to the public, such as the press centre, the changing rooms, and the players' tunnel (Arena Management n.d., Olympiastadion Berlin n.d.).

Merchandise and licences relate to the sale of sports fan articles and are the fifth driver. Accordingly, the sale of merchandise, on the one hand, is a marketing instrument aimed at strengthening the corporate brand as well as the fan loyalty, and on the other hand, it is an additional revenue source for the PTSO (Rohlmann 2012). However, revenues related to merchandise are in most cases subject to significant expenses. Besides the sale of merchandising through the PTSO itself, the PTSO has the possibility of using licencing as another opportunity to generate revenues through merchandise items. This means licencing the brand for some predefined, or even all, articles to an external company. The big advantage compared to its own sales is that generated revenues are not associated with any expenses (Dworak 2010). However, the optimal business model for merchandise, licencing and equipment, has to be evaluated by each PTSO separately according to

**Table 1** Overview of the characteristics of external funding instruments (Gerstenhauer 2012, p. 32)

1	<p>Ticketing</p> <ul style="list-style-type: none"> <li>- Season ticket</li> <li>- Day ticket</li> </ul>
2	<p>Media rights fees (TV, Internet, radio)</p> <ul style="list-style-type: none"> <li>- Regional</li> <li>- National</li> <li>- International</li> <li>- New media</li> </ul>
3	<p>Sponsorships</p> <ul style="list-style-type: none"> <li>- Teams</li> <li>- Arenas</li> <li>- Naming rights</li> <li>- In-stadium/arena (signage official stadium concession brand)</li> <li>- Advertising</li> </ul>
4	<p>In-stadium/arena arrangements</p> <ul style="list-style-type: none"> <li>- Luxury boxes</li> <li>- Hospitality</li> <li>- Personal seat licences</li> <li>- Concessions</li> <li>- Parking</li> <li>- Catering</li> </ul>
5	<p>Merchandise/licences/equipment</p> <ul style="list-style-type: none"> <li>- Branded retail partners</li> </ul>
6	<p>Transfers</p>
7	<p>Other</p> <ul style="list-style-type: none"> <li>- Publications/videos</li> <li>- Congresses</li> <li>- Rent</li> <li>- Membership fees</li> <li>- etc</li> </ul>

the individual strengths and weaknesses. Table 1 provides an overview of the incremental revenue sources of a PTSO.

In addition to the aforementioned, there is one additional source of revenue, namely transfer fees. Recently, this has mainly related to football clubs, but this kind of revenue is becoming more and more important in other sports clubs. Transfer fees are paid by a club for the eligibility to play of the respective player. It should be noted that, since the so-called “Bosman ruling”, transfer fees to the selling party can only be achieved in cases of a remaining contract period between the selling party and the respective player. After the expiry of the player’s contract, the player is considered a free agent and as such is able to choose their new club solely by themselves (Elter 2012).

Other revenues include all remaining revenue sources, such as sales generated through publications/videos, for example with regard to the club’s own PTSO television channel/stream, renting the stadium or parts of it for congresses, and

**Table 2** Financial drivers of a PTSO (Stewart 2015, p. 63 based on Foster et al. 2006)

Driver	Strong	Weak
Level of performance	Regular appearances in final series	Regularly sits in bottom half of league table
Supporter base	Broad national support	Narrow provincial support
Club brand	Broad awareness, strong impact	Narrow awareness, weak impact
Stadium quality and size	New generation—all seats covered, clear sight lines	ageing—limited seating, limited cover
Scale of host city support	Single team in large city	Competing with other teams in same city
Culture and values of club	Primary concern for revenue growth	More concerned with cost containment

membership fees for the PTSO itself. Table 2 shows the financial drivers of a PTSO and their impact on the PTSO's financial performance.

Increasing revenues by generating new revenue streams or improving existing ones is not the only possibility in order to create retained earnings. Other options are to reduce the cost base or the reduction of working capital and the assets. These items have to be considered on an individual PTSO level and cannot be discussed on an operative level in general (Keller 2006). A PTSO itself has to identify the potential cost savings on its own. However, generally the club's personnel expenses are the main expense driver (Deloitte 2015, 2018). Besides the increase in revenues and the reduction of the underlying cost base, PTSOs can use other internal funding methods, such as the aforementioned allowances. These are as follows.

## 2.2 Amortisation and Depreciation

One source of internal financing is to depreciate assets. Depreciation accounts for the declining value of fixed or intangible assets. According to diverse accounting standards (e.g. the IFRS or HGB in Germany as well as the US GAAP), assets with useful lives of more than one year have to be capitalised in a PTSO's or company's balance sheet. An impact on the respective profit and loss (P&L) derives indirectly from the projection of the assets' useful lives. Generally, the depreciation is allocated on a pro rata temporary basis—in line with the useful life. For example, if a club builds a football stadium at an overall cost base of €200m, a proper term for the useful life of the stadium could be 25 years. This would lead to an annual depreciation of €8m. As a consequence of this accounting concept, a club's taxable profit is reduced by the depreciation of assets and leads to lower tax liabilities. This allows a club to keep funds and frees up capital for other investments or club operations.

### 2.3 Accruals

According to multiple accounting standards, accruals have to be accounted for liabilities, which have an uncertain occurrence, amount or time for payment. The financing effect of accruals mainly results from the additions to existing accruals or the set-up of new accruals. Both reduce a PTSO's taxable profit, which leads to lower tax payments (comparable to internal financing via depreciation), and neither is cash-effective until the accruals are used. In particular, long-term accruals are often used for financing purposes, e.g. pension promises to employees. However, PTSOs have very limited options to account for long-term accruals. Pension promises might be an option for the PTSO's administration staff, who are expected to work for a long time (sometimes decades) for the PTSO. In contrast, pensions for individual athletes are not very practicable as these employees are generally contracted for between one and five years.

### 2.4 Sale of Assets

Regardless of the sport(s) (handball, football, hockey, etc.) that a PTSO performs, it holds different fixed assets. Fixed assets, particularly owned by PTSOs, include (i) tangible assets such as training facilities, a stadium, an arena, land and property and diverse sporting equipment, and (ii) intangible assets such as player registrations and trademark rights.

The respective values of these fixed assets vary from PTSO to PTSO and from assets to assets. In some cases, assets are not needed anymore or have to be replaced by new ones. In these situations, a sale could be a good option to receive money that can be used for other purposes. In the past, multiple PTSOs sold major assets such as their stadium in a critical financial situation. A famous German example refers to the football club Borussia Dortmund, which sold 75% of its stadium freehold for an amount of about €75m in 2003 to a real estate trust to collect money to finance the third expansion of the Westfalenstadion and leased the stadium back afterwards (German Press Agency 2003). Until 2006, the year the club bought the stadium back (N-tv 2006), the annual leasing rate amounted to c. €17m (German Press Agency 2006).

It could also be a business model for PTSOs to sell players to generate money. Some PTSOs constantly develop young players or have outstanding scouting departments, which provide opportunities to recruit undiscovered talents on good terms and to sell players on generous terms. However, it has to be said that each sale of a promising player needs to be replaced by a new or another player, which comes along with uncertainty. The outcome of investments in the development of young players is not fully predictable and comprises different risks, such as injuries and a player's motivation.

Nevertheless, the PTSO management has to keep in mind that a sale below an asset's book value leads to a loss in the PTSO's P&L.

### 3 External Funding

Simplified, external financing instruments can be classified into debt and equity. In addition, some financing instruments are hybrid forms of debt and equity, called “mezzanine”. In the following, the different sorts of external financing instruments that might be of interest to PTSOs are explained.

Table 3 provides a general overview of the different characteristics of external financing instruments.

#### 3.1 Loan

##### Bank Loan

Probably the most traditional form of external financing is credit financing through a loan, especially a bank loan. The typical items fixed within the credit contract are the credit amount, the payout ratio, the credit type (annuity, instalment or fixed-rate loan), the amortisation (percentage, rate amount, term, grace period), the fixed interest period, the repayment date(s), the date of payment and the commitment interest rate (Albers 2000), as well as the securitisation and potential other terms directly agreed between the financing and the financed party (Dworak 2010).

**Table 3** Overview of the characteristics of external funding instruments

	Debt financing	Mezzanine	Equity
Liability/investor position	Creditor's liability	To the extent of the convertible claim	Limited to the investment amount; equity partnership
Profit sharing	None, only contracted interest claim	Fixed interest claim and performance-related interests	Profit and loss participation
Asset/liability participation	No	No/yes, if an equity kicker is agreed	Yes
Impact on company/PTSO management	No, only creditor position	Voting and control rights possible	Voting and control rights
Term	Limited	Generally limited	Unlimited
Impact on liquidity	Interests and redemption		
	Interests and (generally) bullet repayments at maturity	Only profit distribution/dividends	
Taxes	Deductible interest payments	Deductible interest payments	Profit and profit distributions are subject to taxes



Generally, the repayment period is agreed individually; however, a good indication can be the amortisation period of the financed asset in terms of a long-term loan if one is financed. Furthermore, banks offer the possibility of short-term loans. Both types of bank loans and their different subtypes are laid out below.

Banks often offer flexible short-term loans ranging from 30 to 60 days or several months (Fried et al. 2013). At its most basic level, the bank provides an overdraft facility on the PTSO's standard bank account to manage short-term cash flow problems. In such cases, interest rates are fixed but much higher than the prevailing bank base rate and compared to the aforementioned term loans (Wilson 2011). The agreed credit line is the maximum amount that can be drawn down from the underlying account (Perridon and Steiner 2004).

Overall, short-term loans are used more often for bridging liquidity gaps, which in terms of PTSOs can evolve, for example, if certain revenues such as sponsorship or other payments have not been received on time. Thus, short-term loans can enable PTSOs to reduce their equity, which they otherwise would need to retain to bridge such gaps in order to avoid a potential insolvency situation. However, in order to finance those revenues a short-term loan, which can be drawn up to a predefined maximum amount, might be favourable to the PTSO. Such so-called revolving credit facilities are repaid through the gained revenues.

Those credits can be considered self-liquidating credits that are continuously renewed and that can thus be regarded as long-term (Braunschweig 1999). Therefore, the revolving credit facility applicant commonly has to undergo an annual review in order to renew the credit line. Hence, the borrower or the bank can withdraw from the agreement at any time. Additionally, the borrower has to pay an annual commitment fee to the bank for the amount not drawn and interest on the used amount (Fried et al. 2013).

If a loan is determined for a longer period, such as several years, it is considered to be a long-term or term bank loan. The central feature of a bank loan is the fact that the PTSO receives cash, while the consideration lies within the fixed payment claim, which is based neither upon (sporting) success nor upon the achieved cash flows. Co-determination rights in particular are not envisaged, or only in case of a (possible) default as a conditional voting right (Hovemann 2010).

Many loans require the use of collateral, which in principle can be anything of value (Perridon and Steiner 2004). Some PTSOs use physical assets such as stadiums or other properties, inventories and equipment. Furthermore, a PTSO can also use intangible assets such as accounts receivable, marketing and brand rights or even player rights. However, the use of intangibles as a securitisation for a loan is often considered riskier. Thus, some banks do not accept such collateral. As a result, the PTSO has to liaise with non-bank lenders for those loans (Fried et al. 2013), often resulting in higher financing costs.

The disadvantage of loans arises from the typically required securitisation, especially regarding banks but also institutional funds. As already described above, loan financing institutions generally rely on fixed or other assets for securitisation purposes. However, as regard PTSOs, most organisations do not have a significant

fixed asset base, with most major values of a PTSO consisting of intangible assets such as the value of its players, marketing rights or the brand name, and which as such cannot be easily used as securitisation items.

One example of collateral based on an intangible asset is the football player Miroslav Klose during his time at 1. FC Kaiserslautern. While the PTSO was in a distressing situation, the transfer right of the individual player was used for securitisation of a €5m loan. In order to function as collateral, certain further conditions with regard to the transfer right had to be agreed, such as a minimum transfer fee, or the use of insurance for the real value of the player (Dworak 2010). This increases the complexity for banks in valuing the potential securitisation through intangible assets, leading to a potentially high discount on the asset value, as those defaulting cannot be divested easily.

Moreover, a lot of PTSOs show a high debt-to-equity ratio or even a negative equity, thereby reducing their credit rating and leading to unfavourable loan terms. Therefore, another possibility in securitisation is the use of alternative securities such as a guarantee issued by a third party like a municipality, a sponsor or a shareholder or an assigned payment entitlement (Hovemann 2010). A typical example is generally the guarantee of a municipality or a federal state in the course of the construction of a new stadium or arena. The federal state of North Rhine-Westphalia stated in 2014 that it had provided ten guarantees for the construction or reconstruction of football stadiums since 2008 (North Rhine-Westphalian Parliament 2014).

The advantage of a bank loan over most other forms of financing is the comparatively low public information and publication requirement, as well as the low level of possible co-determination of a third party in the PTSO's business. Moreover, a bank loan is comparatively easy to manage (Bezold and Lurk 2016).

### **Accounts Payable**

For short-term funding, one of the primary techniques is using a stretching of accounts payable. These represent amounts owed to vendors and suppliers for purchases or services delivered. Usually, these can be paid back immediately after the short-term liquidity gap has been closed. However, the use of stretching accounts payable is comparatively expensive, while having cash discounts in place, which in practice often makes the use of a bank loan cheaper and therefore more attractive. Additionally, a high amount due with only a few creditors might lead to economic dependency, which can be avoided in the case of a bank loan (Perridon and Steiner 2004).

## **3.2 Bonds**

Besides the possibility of using loans as a source of funding, sports corporate entities have another financing possibility. As already described earlier, loans have the disadvantage that they generally require assets for the purpose of securitisation. Additionally, loans in most cases amortise over the term of the loan, highlighting

the character of outside financing. Furthermore, banks and other lenders urge strict financial covenants (e.g. a certain debt-to-equity ratio), leading to higher financing costs or a lower financing volume for loans (Süßmilch 2012).

For this reason, sports corporate entities seek alternative financing options such as bonds. These typically have a long-term investment focus of five to ten years or even longer. In most cases, they allow refinancing, as they only have a final maturity date. This means most bonds do not amortise over time, so the issuer needs to set up a refinancing fund in order to clear of the bond value or another refinancing option such as a new bond (Hasler 2014b). There is a huge variety of bonds available to sports corporate entities, such as zero bonds, floating rate notes, dual currency bonds, etc. as well as convertible bonds, which will be described in the mezzanine financing section (Perridon and Steiner 2004). In this chapter, we only focus on the major bonds used for financing sports corporate entities and do not focus on all individual cases.

Usually, the revenue a sports corporate entity generates through its normal course of business serves as the securitisation of the bond. However, the economic success of a PTSO is highly dependent on its sporting success in the relevant leagues, and it often faces the potential threat of relegation. Both factors can result in a significant decline in revenue volumes, which makes long-term planning for PTSOs more difficult. While having a long-term bond with fixed repayments and interest rates outstanding, significant lower revenues can sometimes lead to situations of financial distress, as historic examples like the German football clubs Alemannia Aachen and Arminia Bielefeld have shown (Hock 2013).

Bonds typically spread widely through a variety of financial backers, while the same applies for the risks involved. This means the issuer needs to consider the interests of a variety of individuals. Accordingly, the issuer has to meet certain minimum requirements concerning the reporting as well as its corporate structures. Additionally, the bond terms have to be aligned with the specifications of the respective capital market requirements, not only in the case of a public placement (Süßmilch 2012).

Those specifications, amongst others, are described within a prospectus, which is required for a bond to be offered on the capital market or to the public, if no exception applies (amongst others (Art. 3 Prospectus regulation (EU) 2017/1129, WpPG, §3 Abs.1 or SEC 424(b)(2))). The prospectus, which often covers more than 100 pages, is summarised in the form of a term sheet. The main intention of the prospectus is to provide all necessary information with regard to the business model, the underlying market, the issuer's competitors and the specifications of the bond. Therefore, the prospectus focuses especially on the bond-related risks. Apart from that, the loan in most cases requires a rating (Hasler 2014b).

Due to the aforementioned requirements, the setting up of a bond leads to high coordination and transaction costs. Coordination costs occur in the course of matching the various interests of the huge number of investors with the intentions of the issuer in order to have a successful placement. Further coordination costs evolve, as the issuer requires a certain standing within the public perception. If such a good public perception is absent or sometimes even additionally, the issuer

requires a rating, which can be considered a transaction-related cost. Further transaction costs relate especially to the setting-up of the prospectus and if required to the execution of the rating process (Bösl 2014; Hasler 2014a).

Thus, the emission of a bond requires a certain capital market maturity on the part of the issuer (Kern 2007a) as well as a certain financing volume in order to compensate for the related fixed costs. Hence, it becomes obvious that only a small number of PTSOs with high revenues and a certain governance structure are able to execute the emission of a corporate bond. Additionally, most public bonds are often more comparable to a promissory note loan as the whole emission volume is placed with only a comparatively small number of investors. In most cases, this happens without using a stock exchange as a mediator. Such bonds are called “private(-placement) bonds”, while bonds listed on a stock exchange are called “public-placement bonds” (Hasler 2014a). Special forms of both bonds are the so-called fan bond and the “asset-backed security”. These four most common types of bond financing within the sport industry are discussed below.

### **Public-Placement Bonds**

The above-described design of bonds holds true for public-placement bonds. However, a public-placement bond is listed at a stock exchange, which means they can be traded more easily. However, this implies certain restrictions for the issuer. It necessarily requires an upfront rating as well as a frequent rating update. Moreover, most listings prescribe a certain scope of periodic reporting as well as a quasi-ad-hoc disclosure of relevant events (Hasler 2014b).

While private-placement bonds in general refer to one specific group of investors, either fans, institutional investors or private investors, public bonds focus on all three groups, as all of them are subject to the emission. Accordingly, it is obvious that a public placement of the bond leads to a huge variety of potential investors and therefore requires a well-planned coordination. Besides, public-placement bonds require a prospectus, while private-placement bonds, depending on the specific constellation, usually provide an information memorandum, which shows the most relevant information about the issuer as well as the risks related to the bond and the issuer (Hasler 2014a).

### **Private-Placement Bonds**

With a private placement, the PTSO issues a long-term bond certificate with a fixed interest rate to private lenders without using public capital markets. These can be either large institutional investors such as insurance companies or pension funds (Howard and Crompton 2004), but also fans (see fan bonds) and other individuals. Sometimes those bonds have more of the nature of a promissory note loan than that of a private bond, showing that the borders between those types of financing can be seen as blurred and in some cases can even be more equity/mezzanine-like.

Contrary to public bonds, private bonds can be amortised over the underlying period, especially if they are pledged with certain recurring revenues such as rent fees for a stadium or even media rights. In those cases, revenues with a respective multi-year contract such as media or naming rights are particularly attractive collaterals for investors. In those cases, private-placement bonds secured by revenue

streams have merely the nature of revenue bond financing (Howard and Crompton 2004). One example of such financing is the case of the owner of the NHL team Philadelphia Flyers, who used a \$142 m private placement to finance the construction of the arena that is now the home of the Flyers and the NBA 76ers (Wells Fargo Center n.d.). The deal was structured with a lifetime of 22 years and according to a spokesperson “frees up more cash each year to go towards the team [...] of an estimated \$35.0 million in annual revenues coming from premium seating, advertising and concessions, \$14.5 million goes to debt service” (Fischl 1997, p. 59).

### **Fan Bonds**

A special type of bond is the so-called supporter or fan bond. As the name suggests, its primary investors are the club’s fans and, thus not institutional or private investors. Hence, the fans are the only ones addressed in the course of the emission of this bond. The potential volume of such a bond is linked directly to the number of fans and their underlying ability and willingness to pay (Bezold and Lurk 2016). Based on the altruistic perception of the sports club, fans compensate for the missing financial rate of return through an intrinsic return rate. As a result, sports clubs are able to offer a bond below the adequate-risk interest rate (Fox and Weimar 2014).

Usually, clubs have the opportunity to undertake stock listings for their fan bonds. However, most bonds have not been listed and therefore have a low fungibility, which means they can be considered illiquid. The main purposes for issuing a fan bond are investments in infrastructure such as a redevelopment or a new stadium or the improvement of the youth academy.

Another major attribute of fan bonds is the fact that they include the real transaction of an effective certificate such as an ornamental loan or artwork bond. Generally, these have comparatively low face values in the range of €100 to €1000 or other values directly linked to the club’s history such as the year of its foundation. In any case, the issuer of an artwork bond speculates that the buyer is willing to keep the specifically designed artwork bond even after its due date and does not require the loan to be repaid. The same applies for the interest coupons, which are often part of the specifically designed artwork, and that a fan would not like to cut off. In such cases, the issuer not only receives the face value as a kind of gift, they can also keep the interest (Hasler 2014b).

One of the first transactions in Germany was conducted by Hertha BSC in 2004, which raised €6m and is so far the only public fan bond, listed at the stock exchanges in Berlin and Bremen (Hintermeier 2004). However, as already laid down, most fan bonds are issued as a private placement, such as that of 1. FC Köln in 2016. The club raised €15.5m, including an artwork bond of €3m designed by an artist (1. FC Köln n.d., Wegerich 2018).

The possibility of raising funds through the issuance of a fan bond generally seems to be a good opportunity for all sports clubs to finance themselves with reduced financing costs compared to traditional funding instruments. However, due to the related financing costs and an often-missing supranational prominence, and correspondingly a smaller fan base, such a financing method is only available to the

top clubs in football, as smaller clubs would face the risk that the placed bonds do not even cover the related financing costs, which often reach six-figure sums. In addition, as with all bonds, it does help to have a certain kind of mid- to long-term financial stability, for example in leagues in which no relegation is possible (Fox and Weimar 2014).

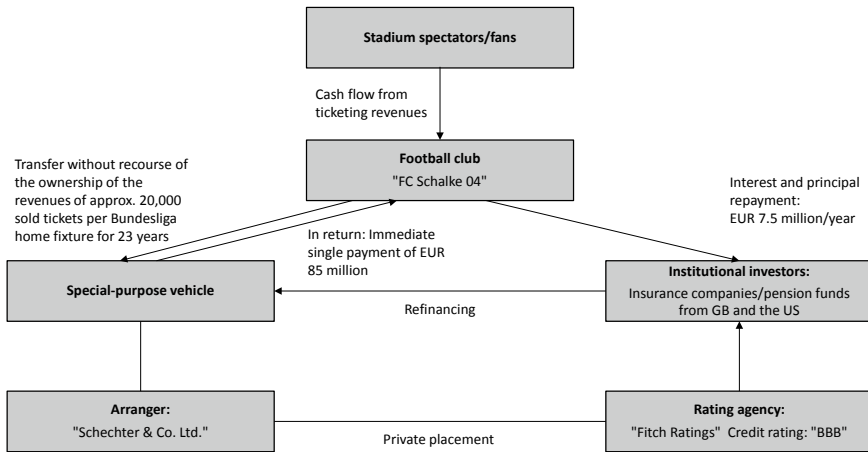
### **Asset-Backed Securities**

Asset-backed securities (ABS) are financial instruments or products that are issued by a special-purpose vehicle that holds a package of low-risk assets and whose cash flows are sufficient to cover obligations to the mostly institutional investors. “From the issuer perspective, securitisation offers several advantages, such as the creation of alternative and often cheaper funding sources, conversion of capital-intensive assets to capital-economising assets, generation of servicing fee income, and in certain instances reduced exposure to interest rate volatility” (Fabozzi and Bhattacharya 1996, p. 6). Compared to a traditional bank loan, such securities also have the advantage for the issuer that other revenue sources besides the one transferred into the special-purpose vehicle remain available for further funding purposes. Additionally, such securities reduce the issuer’s dependence on short- to mid-term loans, as they provide a high planning security (Kern 2007a).

Looking at PTSOs, ABS bundle the most creditworthy revenue streams, open claims or other future cash flows (e.g. from media rights or ticketing revenues) into a financial security (Süßmilch 2012). Thus, the securitisation of assets enables asset originators to broaden their funding sources and often reduces the corresponding funding costs (Fabozzi and Bhattacharya 1996), due to the diversification of the risks through bundling the individual underlying assets.

Usually, ABS is bought by institutional investors. Therefore, the main difference compared to a private bond is that the asset-backed approach does not require that all revenues generated by the issuer are pledged to repay the debt, so that the issuer is able to select only the most relevant sources and bundle those into a special-purpose vehicle (Howard and Crompton 2004). However, this makes an asset-backed security transaction more complex, because the issuer or originator has to transmit the subsequent revenues into this special-purpose vehicle, a specially established company that is isolated from the risks associated with the originator itself. Additionally, for a further improvement of the transaction terms, the originator often provides a guarantee or other securitisation to the special-purpose vehicle (Süßmilch 2012).

However, due to their nature and the corresponding coordination and transaction costs, ABS, like other bonds, requires a certain minimum amount. Within the sports industry, ABS is often used to finance stadium projects like the Staples Center in Los Angeles secured by fixed hospitality lease contracts and the arena’s naming right (Howard and Crompton 2004). Another example and one of the largest ABS ever placed in sports is the \$2b bond placed by Formula One and secured by its broadcasting and sponsorship revenues (Kaplan 1998).



**Fig. 1** Typical set-up of an asset-backed security transaction (Keller 2006, p. 180)

Figure 1 shows the typical set-up of an ABS transaction, indicating the required different parties and therefore the underlying coordination costs, based on the example of the German football club FC Schalke 04. The club implemented a security and received from institutional investors from the USA and England a total of €85m for a period of 23 years in a private-placement ABS transaction. The securitisation is based on the stadium visitor revenues for the underlying period and estimated total revenues including hospitality revenues of c. €15 million, while a maximum of €9 million is planned for interest, amortisation and a reserve fund. The club itself can use the remainder. However, the selected set-up does not allow any access to the stadium itself for the investors (Kern 2007a).

Another option is the example of the Spanish football club Real Madrid, which sold bonds worth \$70 million solely secured by its membership fees (at that time around 75,000 official club members) and ticket sales (at that time around \$40 million p.a.) in order to finance the acquisition of top players. In these cases, Real Madrid was able to increase its revenue base in course of the sporting success caused by the transferred players. Thus, the bond helped Real Madrid to flourish, on a sporting as well as on a financial basis (Kaplan 1998). However, the example of Real Madrid reflects a success in using an ABS structure in order to finance a club. Nevertheless, sporting success is not guaranteed and can be considered a significant risk, as the use of an ABS bond can also lead to bankruptcy, as the example of Leeds United shows (Cathcart 2004).

### 3.3 Equity

In contrast to financing via debt, equity financing describes the sale and purchase of a company's equity shares. Depending on a PTSO's legal structure as well as country-specific laws and regulations, there are different ways to exchange shares or ownership for money. In the following, you will find explanations of three common methods of external funding, which could significantly influence a PTSO's financial position.

#### Private Equity

Equity capital such as private equity is a relevant financing option for a business if necessary capital expenditures cannot be financed by the operational cash flow or traditional bank loans (Hufnagel 2011). Hence, private equity financing is one of the most important financing concepts in European sports. In particular, global football brands (e.g. Paris Saint-Germain F.C., which has been fully owned by the company Qatar Sports Investments since 2012, and FC Bayern Munich AG, which is owned by minor strategic investors such as Adidas AG, Audi AG and Allianz SE, as well as the major shareholder FC Bayern Munich e.V.) used this funding concept to extend their financial resources (Conn 2018, Freitag and Hirn 2005). The key requirement of a PTSO—to use this concept—is the legal form of a PTSO and, respectively, the legal form of its professional sports operations (Neveling 2012). Legal structures such as companies limited by shares allow owners to collect money by selling a portion of the ownership (i.e. company shares) to a group, company or individual. In reality, the collected cash is often used to improve the quality of the team or to develop infrastructure and/or revenue streams.

A special case in this context was the decision of the Spanish government to implement the National Sports Act back in the 90s to oblige professional football clubs to transfer their professional teams into the legal form of sports limited companies (“Sociedades Anonimas Deportivas”; hereafter SADs). This special type of company is limited by shares and has been tailored to the needs of professional sports clubs in Spain, e.g. the transfer of more than 25% of SAD shares has to be approved by the National Sports Council, SADs are not allowed to hold shares of other SADs and SAD shareholders are not allowed to hold more than five per cent equity shares of two SADs (López and Vazquez 2019).

Through its ownership an investor receives different legal rights. Note that these legal rights strongly depend on the legal form and vary from legislation to legislation, in accordance with country-specific laws. For example, the following rights could result from the ownership of a private limited company (Fried et al. 2013):

- Free transfer of the owned shares to third parties;
- Voting rights in shareholders' meetings;
- Dividends (profit participation) and other disbursements according to the owned equity portion;



- Action on behalf of the company against board members (or managing directors) who do not act in the company's best interest; and/or
- Obtaining information from the company to protect the shareholders' investment.

Generally, all PTSOs and companies have various opportunities to strengthen their equity position and collect external, unlimited funding (Gerstenhauer 2012). However, some national and international PTSOs have implemented their own sports-specific limitations and regulations on equity financing. In Germany, the organising body of the top two football divisions in the DFL Deutsche Fußball Liga GmbH (DFL) implemented the 50 + 1 rule in its regulations. Apart from a few exceptions, this rule does not allow external investors to own more than 49% of a club's voting right shares. Another example is the UEFA regulations, which explicitly forbid investors to hold multiple club investments in clubs competing in the same UEFA competitions to preserve the competition's integrity.

### **Initial Public Offerings**

To raise additional capital, it could also be an option for a PTSO (i.e. a company) to go public. The first sale of stocks by a company is called an "initial public offering" (IPO) (Balasubramaniam 2018). To evaluate whether it makes sense for a PTSO to go public, the club management should assess the pros and cons together with an investment bank as well as legal and financial advisors.

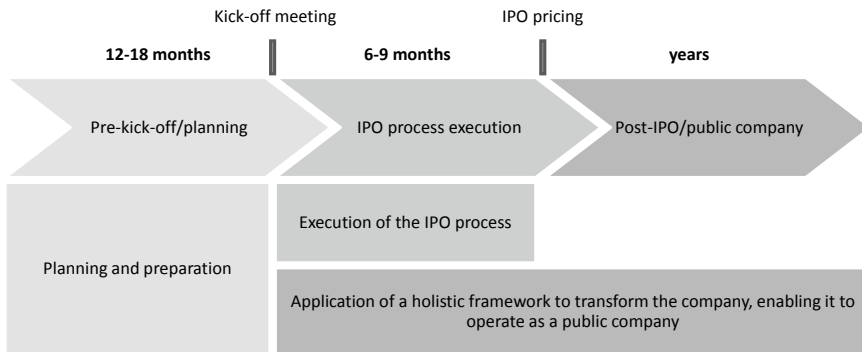
The main pros and cons are as follows (Balasubramaniam 2018, PricewaterhouseCoopers 2017):

- + Financial benefits, i.e. raising of capital;
- + / – Increased public awareness of the PTSO/company;
- + Used as an exit scenario of former investors;
- One-time IPO costs (e.g. underwriter fees and direct offering costs);
- Need for additional disclosure to investors;
- Added market pressure;
- (Ongoing) costs of complying with regulatory requirements (e.g. auditing, financial reporting, legal and investor relations).

Generally, an IPO cannot be considered a short-term solution to collect funds. At least one year of planning and preparation time should be considered. To get an impression of an IPO's potential time frame, Fig. 2 sets out an indicative process timeline.

In the pre-kick-off and planning phase, the PTSO management has to perform a readiness assessment, which determines the PTSO's current level in different IPO-related functional areas. This includes a detailed view on the PTSO's situation and the competitive environment of the PTSO, as well as its potential equity and business strategies.

After 12–18 months, the IPO process execution is expected to begin. During this phase, the PTSO has to apply for a stock exchange approval, needs to prepare the draft IPO prospectus, audit the financial statements and engage underwriters as well



**Fig. 2** Time frame of an initial public offering (PricewaterhouseCoopers 2017, p. 3)

as other advisors to execute the transaction. Further, the PTSO also needs to initiate an internal transformation process to become a successful public company. Part of this transformation should be a holistic framework, which includes a business strategy, governance, leadership, internal controls, accounting, financial reporting, tax, legal issues, human resources, media and investor relations as well as treasury and financial risk management.

The post-IPO phase predominately refers to extended requirements with regard to auditing, financial reporting, and legal and regulatory work, which has to be done by the PTSO. Being public also commits a PTSO to extensive efforts in investor relations and public relations (PricewaterhouseCoopers 2017).

Overall, it can be said that an IPO might come with one-time costs of more than €5m and recurring expenses of more than €300 k p.a. (Wegmann n.d.). Hence, an IPO should be preferably used by large PTSOs with a high financing leverage.

### Mezzanine Financing

Mezzanine financing is typically offered to PTSOs with successful track records and an established reputation, which are not yet ready for capital stock offerings (Hovey 1998). One funding option for these PTSOs is mezzanine financing instruments (Fried et al. 2013). Mezzanine financing is a hybrid of debt and equity financing. Common forms of mezzanine financing in sports are subordinated loans, silent partnerships, convertible bonds and participation certificates. Depending on the PTSO's accounting policies and the individual form of mezzanine financing, it has to be classified as equity or liability on the respective PTSO's balance sheet. With regard to the taxation of a club, it is possible that mezzanine finance could be interpreted as debt, which could lead to a lower tax income (Dworak 2010). In terms of an external rating or balance sheet analysis, mezzanine financing is often classified (or reclassified) as equity (Keller 2006). This is an attractive advantage, particularly if a PTSO plans to fund additional money via bank loans, for which (as previously explained) a higher asset base is beneficial.

### **Subordinated Loans**

Unlike a *typical* bank loan, subordinated loans are not fully secured. This means that the lenders of subordinated loans will be paid after all other senior lenders in the case of bankruptcy (Keller 2006). As this structure bears an additional risk for the lender of the subordinated loan, the borrower (e.g. the club) has to pay an interest premium comparable to a senior loan (Jesch 2002). However, in some cases, PTSOs have convinced current business partners such as sponsorship partners or wealthy supporters (e.g. sports patrons) to become a lender. These types of emotionally attached lenders are sometimes willing to provide money at a comparatively lower interest rate (Keller 2006).

### **Silent Partnerships**

Silent partnerships can also be structured in different ways. One of the most common structures of silent partnerships is that a silent partner invests money and participates in the respective PTSO's profit and loss. Other structures of silent partnerships could also include participation in hidden reserves or the exclusion of a loss participation (Keller 2006). Generally, silent partners are compensated by interest payments on their investments and/or by an equity kicker. An equity kicker is the option to convert the investment to equity shares in line with a predefined valuation (Finsterer and Gulder 2001). This option is an opportunity to increase a silent partner's long-term attachment to a PTSO as the partner directly participates in the potential growth of the PTSO value.

Between 2005 and 2008, the football club TSG Hoffenheim won promotion twice from the Regionalliga (i.e. third division in 2005) to the Bundesliga. This success was mainly financed by the silent partners Dietmar Hopp (the club's patron) and the Golf Club St. Leon-Rot Betriebsgesellschaft mbH & Co. KG (the company's managing director was Dietmar Hopp), who provided €28.9m and €111.2m, respectively, as stated in the club's management report for the fiscal year 2009/2010. In 2018, the club qualified for the first time in its history for the UEFA Champions League group stage.

### **Convertible Bonds**

If a PTSO is operated as a stock company, it can issue convertible bonds to collect money. Besides the typical redemption and interest payments, the holder of a convertible bond owns the option to convert the bond to equity shares. Depending on the respective country's regulations for convertible bonds, different parameters have to be considered. In Germany, a majority of at least three-quarters in the shareholders' general meeting is required to issue convertible bonds (Keller 2006). The latter, together with some uncertainties in the financial planning following the conversion option and a potential freedom of the management decisions (due to the shares' voting rights), are reasons why this financing instrument is not very popular in the sports industry (Schneider and Karlin 2016). An example of convertible bonds in professional sports is Newcastle United FC, which issued a volume of c. €45m in convertible bonds in 2000. The bond holders had the chance to convert the bonds into a total of 10% equity stakes within five years (Kern 2007a).

### Participation Certificate

To monetise the supporters' emotional attachment to a club, participation certificates are a good financing option in sports. These securitised rights are in an intermediate position between a share and a bond. Additionally, they are tradable. According to the securitisation, creditors can claim for the repayment of the nominal value at the end of the participation certificate's term and the agreed interest (Schneider and Karlin 2016). The main advantages of participation certificates for the issuer are: (i) no impact on the PTSO's ownership structure (in contrast to equity); (ii) dividend payments reduce the club's taxable income; and (iii) the correlation between sporting and economic success can be considered in the underlying terms (Dworak 2010, Schneider and Karlin 2016).

To strengthen its professional team, the German football club 1. FC Köln collected about €7.5m in 2012 bearing a fixed interest rate of five per cent p.a. and a potential upside of an additional five per cent p.a. depending on the club's success (e.g. participation in UEFA competitions) (Haubrichs 2012).

### 3.4 Subsidies

Subsidies can be defined as a form of financial aid or support provided to private sector producers and/or consumers for which "the government receives no equivalent compensations in return, but conditions the assistance on a particular performance by the recipient" (Clements et al. 1995, p. 1–2). The key input factors for the production of sports are labour, (sports) infrastructure and infrastructural support services, which need special financing considerations (Büch et al. 2009). This enables a lot of governments to promote sports activities and infrastructure around sports by granting subsidies. Selected arguments for the promotion of sports include the support of health conditions, international representation of a country, integrative and educational functions as well as economic impacts (Martens 1989). For example, the German Ministry of the Interior sets out that the promotion of professional sports serves to obtain the national sports federations optimum training and competition conditions as well as to secure the country's reputation in international sports (Federal Ministry of the Interior, Building and Community n.d.).

In practice, subsidies for PTSOs mainly focus on the creation and retention of sports infrastructure, hosting national and international sport events, and rescue aid for PTSOs for economic reasons. PTSOs' management regularly argue that they provide employment, generate tax revenues, contribute to social cohesion and do many other useful things (van der Burg 2014). From the European Union's perspective, bear in mind that national subsidies might violate European regulations for fair competition, which has to be examined in each individual case. Accordingly, PTSOs often take contracts that can be considered subsidies to the relevant EU regulative bodies for approval.

### 3.5 Guarantees

A guarantee is defined as a “legal agreement in which a person or organisation promises to pay back a loan if the person or organisation that originally borrowed the money cannot” (Cambridge Dictionary n.d.). Guarantees are often used when PTSOs need to finance substantial assets like a stadium, youth academy or training ground and cannot offer enough securities for bank loans. A guarantee reduces the risk for a lender that debt might not be repaid and improves the credit rating of a PTSO (Breuer and Hovemann 2006).

In 2001, the German football club FC Schalke 04 moved to its new stadium, the *Arena Auf Schalke* (since 2005, the Veltins-Arena). The construction of the stadium was financed via bank loans of €225m, which have been secured by guarantees of 80% provided by the state Nordrhein-Westfalen (Guratzsch 2001).

Guarantees can also be provided by private individuals, companies or public institutions, which is especially the case for smaller sports infrastructural projects (Breuer and Hovemann 2006).

### 3.6 Factoring

For some PTSOs, it might be too expensive to employ someone for credit management and collections (Fried et al. 2013). However, these PTSOs may sell their accounts receivable directly to a financial institution—known as a *factor* (Whittington 2013). Such a contract generally includes a notification to the debtor to forward future payments to the factor and transfer the receivables to the factor without recourse. Therefore, the factor assumes the potential contingency risk of the accounts receivable (Whittington 2013) and typically deducts this risk from the receivables (Fried et al. 2013). The PTSO and the factor have to agree on the credit terms for each debtor and the factor collects the debtor’s payment.

In its fiscal year 2007/2008, Borussia Dortmund took advantage of factoring when the club sold a debt claim against a sports agency to a factor (Borussia Dortmund 2008). In 2014, the football club 1. FC Köln sold a receivable resulting from the transfer of the player Christian Clemens to FC Schalke 04, worth c. €3m, to a factor (Hedtstück 2014).

### 3.7 Hire Purchase

A hire purchase agreement is generally used to buy expensive goods on credit. Usually, the buyer makes an initial down payment and pays further instalments (incl. interest). At the end of the term, after the last instalment has been paid, the ownership of the assets is transferred to the buyer. Hire purchase is not a very common financing instrument in sports. However, some PTSOs have used this instrument, e.g. to build or buy a stadium. Hire purchase is an option for PTSOs that do not have the necessary capital to fully purchase expensive assets initially.

Another aspect to be considered is potential tax advantages resulting from a hire purchase, because the payments are generally accounted as expenses. However, the overall costs of a hire purchase might be higher in the long term, due to higher interest and administration expenses.

The German football club Spielvereinigung Greuther Fürth financed the building of its new stadium (investment volume of about €30m) in 2013 using the hire purchase concept (German Press Agency 2012).

### 3.8 Leasing

“Leasing is, ostensibly, a contract between two parties for a specified time period of an asset [...]” (Wilson 2011, p. 241). For PTSOs, major leasing or buying decisions referring to stadium, training and/or office infrastructure as well as corresponding land might have significant financial impacts. In particular, investments in infrastructure come along with high start-up costs, which are expected to be paid off in the long term. Most PTSOs are not able to cover such an investment from operating cash flows. Hence, a PTSO would need long-term funding if they wanted to become the owner of a stadium, training ground or offices. Depending on a PTSO’s financial track record and future business plan, it is not always an easy way to get long-term funding for sports infrastructure that will be used by one club. Another option might be to lease a stadium, training ground or offices. Of course, this is highly dependent on the PTSO’s needs and the availability of these assets in a club’s surroundings. This is why in each individual case the PTSO management should perform a buy-or-lease analysis. Therefore, the net present value of the cash outflow associated with the lease option is compared with the cost for buying the property (Fried et al. 2015). Assuming that all conditions of the property and usage are the same, the option with the lower present value is preferred (Cotts and Lee 1992).

Besides the above-mentioned sale and lease example of Borussia Dortmund, several PTSOs lease major assets such as stadiums or training grounds from funds, communities and other real estate owners. Moreover, PTSOs sometimes also decide to strengthen their team by *sending players out on loan*, which could be interpreted as a leasing of intangible assets (i.e. the player registration).

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## 4 Summary and Reflections

The part above can be seen as an overview of the common internal and external financing sources for PTSOs.

As laid out in Sect. 2, internal financing provides different funding instruments. However, the strongest impact results from a PTSO’s operating cash flows, which are generally driven by revenue streams such as ticketing, media rights fees, sponsorships, in-stadium/arena arrangements, merchandise and transfers. In sports, operating cash flows are heavily influenced by a PTSO’s sporting success, fan base

and management strategy. PTSO management should understand that the total operating cash flows have to be positive to cover capital needs, interest payments or the redemption of external financing instruments as well as for the execution of investment activities. Other internal funding instruments, such as amortisation, depreciation and accruals, have lower impacts on the financial position of a PTSO. In many cases, these instruments are an outcome of business-related management decisions. A special case is the sale of fixed assets (which can also include transfer revenues), which goes hand in hand with a non-recurring cash inflow. In the past, fixed asset sales were regularly performed when clubs had to generate money in the short term (e.g. sale of stadiums, land or valuable players).

All of the described external funding options (Sect. 3) have to be seen in the context of the respective PTSO's situation and financial needs. In any case, the respective PTSO management has to answer the following major questions:

- What has to be funded (e.g. stadium, training facilities, player registration, licences, operating cash flow shortfall, etc.)?
- What funding volume will be needed?
- What amount of financing costs (i.e. redemption, interest, dividends and, if applicable, administrative costs) can be covered by the PTSO's future cash flows?
- Is it preferable to have recurring interest and redemption payments or would profit-related dividend payments be a better option?
- Is it acceptable that external individuals/companies will influence the PTSO's management decisions?
- Might the financing instrument lead to rumours in the PTSO's environment (e.g. rumours within the traditional fan base when the club sells equity shares to external investors)?
- How will the funding instrument impact my tax payments?

If an asset should be acquired:

- What is the useful life span?
- What is the asset's return on investment?
- What is the projected redemption term?

The answer to these questions might lead the PTSO management to identify the best funding option.

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### Comprehension Questions

1. What internal and external funding instruments are available to a PTSO in principle?
2. What are the advantages and disadvantages of the individual funding instruments?

3. What are the specific characteristics of mezzanine funding instruments and what are the chances and risks associated with their use?
4. What phases of a PTSO's IPO can be distinguished and what are its main tasks?
5. What are asset-backed securities and why are they solely used to finance sports facilities?

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# Controlling in Professional Team Sports Organisations

Claudio Kasper

## Abstract

This chapter deals with the special features of controlling in professional team sports organisations (PTSOs). The target system, in particular the sporting dimension, is identified as the essential framework for the design of the controlling system in PTSOs. Subsequently, the specifics of industry controlling at functional, institutional and instrumental level are worked out. By describing selected fields of action, detailed insights into the concept and instruments will then be provided.

## Learning Outcomes of the Chapter

1. You will be familiar with the special features of the PTSO target system, in particular with regard to sporting objectives and the weighting of the various economic target dimensions.
2. You will get to know the special features of team sport controlling on a functional, institutional and instrumental level.
3. You will know which challenges are associated with strategic planning and control in PTSOs and which instruments are used.
4. You will learn the special features of operative and liquidity planning and how these planning calculations interact with each other.
5. You will learn the conception and the instruments of personnel controlling in PTSOs.

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## 1 Introduction

Team sports, in particular *King Football*, have become a business worth billions over the last 20 years. The European leagues are rushing from record to record in terms of turnover, driven mainly by the exponential development of media revenues. At the same time, professional management structures have found their way into the clubs. Even for financially strong investors, team sport is increasingly becoming an investment object, although it is often unclear whether it is primarily emotional, branding or hard economic interests that are decisive for participation in a PTSO.

Nevertheless, negative reports about the financial difficulties of individual PTSOs continue to shake the industry. Sustainable sporting and economic success is the exception. For more than a decade, PTSOs have been working to establish professional controlling structures. The aim of this chapter is to present a condensed overview of the special features of controlling in team sports (for a detailed description, see Kasper 2016).

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## 2 Special Features of the Target System of Team Sports Organisations

The design of a controlling system must always take the special features of the industry and organisation into account, so that controlling can make a significant contribution to achieving the organisational objectives. For controlling in a PTSO, the special features in the target system of the PTSO represent the most important framework condition. The primary objective of a PTSO is to secure the existence of the organisation in a highly competitive environment. The PTSO target system can therefore be differentiated into sporting, economic and social objectives (● Table 1 shows in detail the formation of targets in team sport; Kasper 2012, 2016).

The definition of team sports is the existence of the sporting dimension in the target system of a PTSO (Keller 2008). The purpose of each PTSO is to participate in sporting competitions. The sporting objectives can thus be regarded as the most important ones for the PTSO. The marketability of the other products in the PTSO's range of services is strongly determined by the sporting performance of the first team. The task of the PTSO management is to develop a clear vision of the short-term sporting objectives and the long-term development potential of the team. Depending on the sporting objectives, short-term measures, such as the commitment of a player or the dismissal of a coach, and long-term measures, such as the establishment of a youth academy and the development of a PTSO-specific playing philosophy, must be defined and implemented.

In addition to sporting objectives, PTSOs pursue economic objectives that reflect the PTSO's desired financial development. These are usually expressed in terms of specific targets for financial indicators such as turnover, profit, profitability and liquidity. In principle, it makes sense for PTSOs to seek to maximise revenues

**Table 1** Prioritisation of target dimensions in the target system of team sports organisations (according to Kasper 2016, p. 370)

Please evaluate the goals listed below according to their priority in your club's target system	Relative frequency					n	Median	Average value	Standard deviation
	1	2	3	4	5				
Sporting goals	2.0%	0.0%	0.0%	14.3%	83.7%	49	5.00	4.78	0.65
Economic goals—success (profit etc.)	4.1%	6.1%	20.4%	44.9%	24.5%	49	4.00	3.80	1.02
Economic goals—securing liquidity	2.0%	0.0%	4.1%	28.6%	65.3%	49	5.00	4.55	0.77
Social goals—promotion of popular sport	14.3%	36.7%	30.6%	8.2%	10.2%	49	2.00	2.63	1.15
Social objectives—promoting youth	0.0%	10.2%	20.4%	44.9%	24.5%	49	4.00	3.84	0.92

Theoretical ranking from 1 to 5; 1 = very low priority, 5 = very high priority

(Teichmann 2007). In professional team sports, the marginal costs of production are almost zero, as only marginal additional costs are incurred, e.g. by the attendance of an additional spectator until the capacity limit of the venue is reached (Franck 1995). Consequently, higher proceeds from the sale of an additional ticket or the sale of the TV signal already produced to another TV station should have a direct positive effect on PTSOs' results. An objective that is limited to maximising revenues only carries the risk of disregarding the development of expenditure.

A large proportion of sales revenues is directly dependent on sporting success. As a rule, sporting successes lead to higher sales. In contrast, however, there are higher expenses, primarily related to players. It is immediately apparent that at a certain point, the increase in sales can no longer keep pace with the increase in the costs to be incurred for the squad. The result is a negative impact on earnings (Keller 2008). In the case of profit and profitability objectives, the expenditures are included in the analysis of a PTSO's economic development. Achieving surpluses creates the basis for investments in the (licensed) player squad or infrastructure.

Against the background of safeguarding the organisation's existence, guaranteeing a sufficient supply of liquid funds at all times is a key financial objective of PTSOs. The particular importance of this target category is underlined, among other things, by the fact that the licensing procedures of the leagues are primarily aimed at ensuring that the participating PTSOs have sufficient liquid funds at their disposal to be able to guarantee match operations during a season. In addition to the funds that can be generated from the PTSOs' internal funding, liquidity objectives also

take into account the disbursements for investments and incoming and outgoing payments from or to investors (Teichmann 2007).

Social objectives are very important for many PTSOs (Dörnemann 2002). The main reasons for this are probably the development of many PTSOs from popular sports PTSOs and the close emotional ties to their fans. At a PTSO with the legal form of the registered association or club, social objectives are usually anchored in the statutes, which represent an essential basis for the actions of the PTSO management.

The target dimensions listed above have mixed interdependence relationships that are characterised by partial target complementarity or competition (Keller 2008). It is the task of the PTSO management to balance the different objectives in such a way that the highest possible achievement of objectives is achieved in the field of sport without negatively influencing the other target dimensions to such an extent that the balance in the target system, and in extreme cases the existence of the PTSO, is endangered.

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### 3 Special Features of Team Sports Controlling

#### 3.1 Functional Perspective

In principle, controlling in professional team sport organisations fulfils the same functions as in other organisations, which have to use scarce resources effectively and efficiently in order to achieve their objectives. As a service provider for club management, it supports the preparation and enforcement of decisions (decision support function), coordinates the planning, monitoring and information supply systems in the PTSO (coordination and information supply function) and contributes by creating appropriate structures to align the behaviour of the employees with the achievement of the objectives of the PTSO<sup>1</sup> (behaviour control function).

The primary goal of controlling is to support the management of a club in securing its existence. Based on the basic premise of securing the club's existence, the clubs define further club-specific objectives depending on their framework conditions. In addition to the economic objectives already described above, controlling in PTSOs must also deal with sporting and social objectives. It can be assumed that the sporting objective will be given priority over the other target components. Club-specific controlling must take this fact into account by integrating the sporting perspective into the corporate management system. This requirement makes controlling in PTSOs significantly different from controlling systems in other organisations. Characteristic of the sporting component in the target system of the clubs is their lack of predictability and the great effects that

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<sup>1</sup>This article attempts to meet the demand to reflect the diversity of team sport organisations (clubs, federations and leagues). Unfortunately, this is not possible in its entirety; therefore, it becomes clear in some places that this contribution is argued from a club perspective due to the professional background of the author.



missing or exceeding sporting objectives have on the other components in the target system of the club (similar to Haas 2006).

The goal of controlling in a PTSO must therefore be to demonstrate the effects of sporting successes on the economic and social objectives of the club and to adjust the controlling system in all its parts in such a way that it can do justice to the high variance of sporting successes (Dörnemann and Kopp 2000, Keller et al. 2006). Since the management of a PTSO is primarily measured by the achievement of the sporting objectives, decision-relevant information is required above all with regard to the different scenarios of the sporting performance (participation in international competitions, qualifying for the next round in the national cup or the effects of relegation). A characteristic feature of this type of information is that it is usually forecast information, which is subject to a high degree of uncertainty and often has to be made available at relatively short notice. Detailed historical information, in contrast, is of secondary importance. This fact leads to the matter that the requirements for controlling in PTSOs with regard to forecasting and scenario capability as well as the flexibility and speed of corporate accounting systems are comparatively high (similar to Dörnemann 2002).

In order to meet these requirements, controlling should fulfil the following tasks:

- (1) Within the framework of *strategic planning*, controlling must above all be able to answer the question of what level of resources can be invested in the long-term development of the squad in order to achieve the sporting objectives. Strategic investments in a PTSO's infrastructure must be evaluated against the background of possible sporting scenarios in the coming years.
- (2) *Revenues and cost transparency*: Controlling should know the costs of a match or a training camp, the use of goods in catering, the price components in ticketing, the effects of advancing to the next round of the national and international cup competition, etc. with sufficient precision.
- (3) *Forecast and scenario calculations*: The transparency of revenues and costs required under (2) is a prerequisite for high flexibility and scenario capability in controlling. If the revenues and costs of a match are known, another home match can be easily integrated into the planning by reaching the next round in the cup competition, for example.
- (4) *Reporting*: Controlling will only be able to fulfil its information-providing function with efficient reporting. The decisive factor for the acceptance of controlling will be to align the reports with the primacy of sporting objectives. The reporting system will mainly contain plan/actual and forecast calculations, since comparisons with historical data—due to different sporting courses—are often not particularly meaningful.
- (5) *Budgeting and cost responsibility*: The task of controlling is to anchor cost awareness in all areas of the PTSO. It can be assumed that business management knowledge is less widespread, especially in the field of sports. However, it is precisely here that a large part of the costs is incurred. Controlling is responsible for making the effects of sporting decisions transparent. The introduction of PTSO-wide departmental budgets makes it clear to those

responsible that they have room for manoeuvre and thus indirectly serves the objective of securing their livelihood by monitoring budget compliance.

- (6) *Risk management*: In order to be able to meet the objective of safeguarding the company's existence, controlling must set up an efficient risk management system. Opportunistic behaviour by decision-makers, especially due to the high fluctuation in management and the high sums paid to players and agents in the context of transfers, as well as risks in match operations (stadium safety) can very quickly take on dimensions that threaten the continued existence of the company. The task of controlling is to catalogue, analyse and evaluate risks (similar to task catalogues in Dörnemann 2002).

The main tasks listed above are reflected in the specific fields of action of controlling in PTSOs. Their structure depends on the framework conditions of the respective PTSO and the development status of the controlling system. Section 4 deals with a selection of the most important fields of action for controlling in PTSOs. Within the scope of this chapter, the above-mentioned tasks are worked out in more detail.

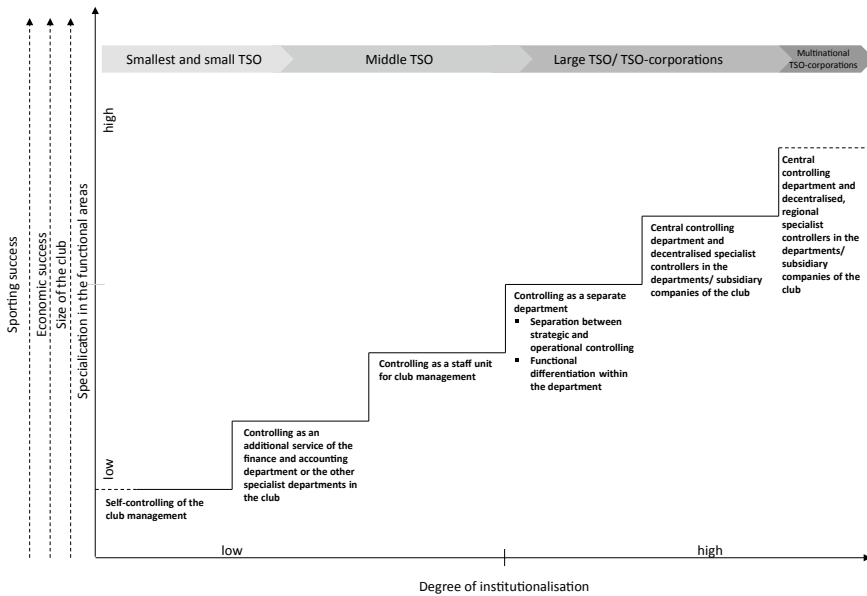
### 3.2 Institutional Characteristics of Controlling in Team Sports

Studies show that the topic of controlling has arrived in team sports (see the results in Kasper 2016; Eisermann and Roßbach 2011; Dörnemann and Kopp 2000). However, this does not mean that controlling job positions have been created in every club (Haas 2012, otherwise Keller et al. 2006). As already mentioned above, the framework conditions of an organisation determine the degree of institutionalisation of controlling. Basically, it can be assumed that complexity and coordination problems greatly increase with the increasing size of the organisation, division of tasks and specialisation as well as the dynamics of the corporate environment. After a certain point in time, management can no longer efficiently carry out the planning, monitoring and information supply tasks itself and thus passes them on to specialists.

Therefore, it can be assumed that different institutional forms of controlling can be found due to the different framework conditions of the PTSO. For example, the club sizes in team sports range from small clubs with three to five permanent employees in the office to sports enterprises with several subsidiaries and well over 300 permanent employees.

● Figure 15.1 shows idealised phases in the institutionalisation of controlling in sports depending on the framework conditions of success, size and division of tasks (for detail see Kasper 2016).

Controlling in PTSOs places high demands on the professional and social skills of the controller in the clubs. In addition to an in-depth education in all facets of corporate accounting, they need extensive industry knowledge of their respective team sport and the different business models that have to be worked on within the



**Fig. 1** Idealised phases of institutionalisation of the controlling function in team sports organisations (Kasper 2016, p. 206)

service provision processes of a PTSO (sports, marketing, merchandising, etc.). In order to establish controlling as a service provider to the PTSO management and for other areas, the controller must have a high level of communication skills and flexibility in order to be able to cope with the fast pace of the sport business and the frequent changes in management. In the PTSO environment, jobholders must have a certain social sensitivity, as not all activities can be evaluated with economic efficiency standards (a similar catalogue of requirements for controllers in sports can be found in Graumann and Thieme 2010).

### 3.3 Tools of Controlling in Team Sports

Controlling in the application manifests itself above all in the instruments used. Controlling instruments can be defined as a subset of management instruments that transform data into controlling information on the basis of objectively comprehensible rules. Consequently, they are catalysts of information processing with which complexity can be reduced and information can be prepared for decisions. In principle, controlling instruments are used for a specific purpose. The application purpose is determined by the user, in this case the controller or the PTSO management.

Team sport is still a young field for controlling. The requirements for scenario capability and the flexibility of controlling are high. In terms of content, there are fields to be worked on that are not to be found in classic industries. The tool repertoire developed comprehensively for other industries can only be used to a limited extent.

Consequently, it is reasonable to assume that a number of new instruments or forms of existing instruments need to be developed for controlling in team sports. In the pioneering work on controlling in team sports, various suggestions were made in this respect (see the works of Dörnemann 2002, Ebel 2006, Haas 2006, Kasper 2016). Within the framework of the analysis of selected fields of action with team sport controlling, a number of adequate team sport instruments and their forms are presented.

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## 4 Selected Fields of Action of Team Sports Controlling

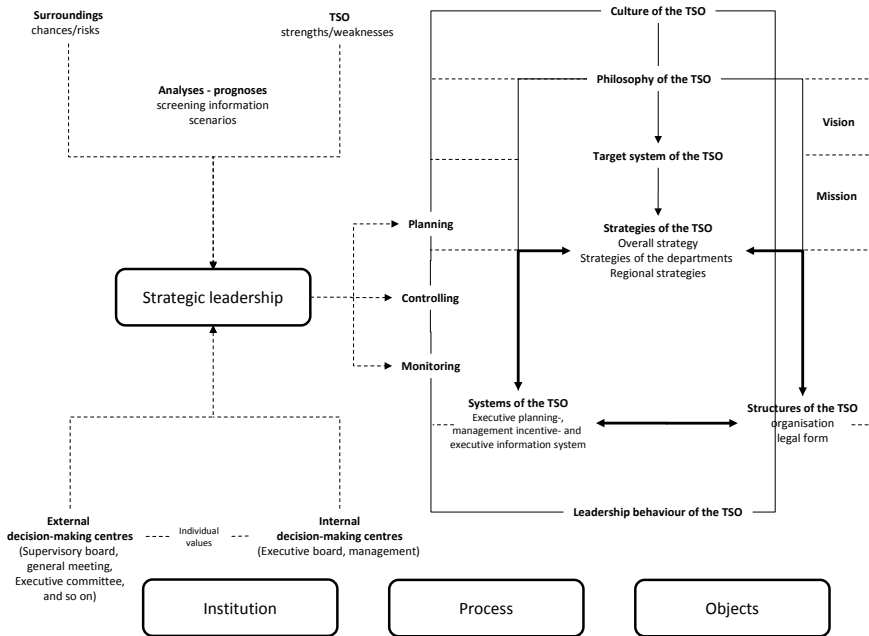
### 4.1 Strategic Planning and Controlling

#### Characterisation of Strategic Leadership in PTSO

The implementation of a strategic planning system and the linking of strategic and operational planning can be seen as the most urgent controlling task in a PTSO (Dörnemann 2002). Strategic planning is embedded in the strategic management system of a PTSO. Strategic leadership can be understood as a process of decision-making and enforcement in relation to strategic objectives (Hahn 2006a). © Figure 2 shows the institution, process and objects of strategic leadership.

The task of strategic leadership is incumbent on the PTSO management. The executive board or management of a PTSO acts as an internal decision-making centre. In the performance of their duties, these bodies are generally advised and monitored by a controlling body. Depending on the legal form and statutory regulations, this function may, for example, be the responsibility of a supervisory board, advisory board or shareholders' meeting. Strategic decisions are made as a result of discussions between the external and internal decision-making centres. The following potential strategic fields of action for PTSOs have been identified in the literature (Keller 2008, and the overview in Teichmann 2007):

- the composition of the players' squad, coaching staff and functional staff,
- the composition of the highest operational management body,
- the legal structure,
- the management of the PTSO brand,
- the design of marketing activities, in particular with regard to the depth of added value,
- potential diversification opportunities,
- the design of the infrastructure, in particular with regard to the PTSO venue, and
- the strategic design of club funding.



**Fig. 2** Institution, process and objects of strategic leadership in team sports organisations (own presentation based on Hahn 2006a, p. 34)

In terms of content, strategic management is responsible for developing an organisational culture, defining the PTSO philosophy, formulating the PTSOs’ long-term target system, defining strategies for achieving the objectives at the level of the PTSO as a whole and in the specialist areas, taking decisions on the design of the organisational structure, the legal form and the strategic personnel planning. In team sports, this concerns decisions on filling positions in the PTSO management as well as strategic decisions regarding the composition of (licensed) player squads.

Within the framework of strategic management, the vision, the mission statement and the leadership principles fulfil orientation, order and integration tasks. At the same time, they are the result of strategic considerations (see the detailed description of the vision and mission statement in Hinterhuber 2004). The process of strategic management includes planning, monitoring and control tasks, i.e. not only strategy formulation and planning, but also implementation. Strategic planning is a prerequisite for the two subsequent steps and includes the strategic decision-making process.

**Functional Perspective**

Based on the general overall objectives of the PTSOs, strategic planning is to be understood as the planning of the achievement of objectives. Within the framework of strategic planning, a systematic decision-making process takes place with regard

to possible options for achieving the highest formal, material and social objectives. These basic alternative approaches to organisational development are called “strategies”. They are aimed at shaping the direction, extent, structure and bearers of business development (Hahn 1996).

In addition to the primary objectives of the PTSO, the systematic and regular analysis of the PTSO environment as well as the strengths and weaknesses of one’s own organisation forms a further starting point for strategic planning (Dörnemann 2002). On the basis of this information, possible strategic alternatives are to be identified and discussed in the management committee. In addition to the long-term product and service programme to be created by PTSOs, the focus is on identifying and exploiting existing potential for success.

Potentials can arise from the use of operating resources or human resources. Following discussion on possible strategic alternatives, these must be subjected to a systematic evaluation using suitable instruments (Dörnemann 2002).

At the end of the decision-making process, it is up to the PTSO leadership to identify those of the evaluated strategic alternatives that promise the greatest contribution to achieving the goals set. A characteristic feature of strategic decisions is that they are characterised by a high degree of uncertainty. These are uncertain primarily because of their long-term time horizon and the difficulties involved in forecasting the impact of decisions.

The biggest challenge in the context of long-term strategic planning in a PTSO lies in forecasting sporting success over several periods. If the sporting course and its monetary effects can be depicted relatively comprehensively in different scenarios within a season, then possible alternative sporting courses can quickly multiply into a multitude of imaginable scenarios in multi-year observations. This is problematic insofar as the occurrence of a worst-case scenario, such as relegation from the top division, can have serious effects on the financial resources and sales potential of the PTSO.

The fact that sporting successes are difficult to plan must not be an excuse for foregoing strategic planning activities. Rather, Dörnemann (2002) recommends project-related planning within the framework of strategic planning activities in order to develop PTSOs’ potential for success in the long term. The advantage of this planning methodology is that strategic projects can be formulated, planned and monitored in a sufficiently concrete way. Discussion of potential risks during project implementation leads to a common understanding of the interaction of environmental factors and the development of a PTSO. Scenario analyses can be used to forecast and discuss the effects, especially of alternative sports, on the success of the project. If desired, the individual projects and their effects can be integrated into a multi-year plan, for example, on the basis of an average sporting scenario, and further, conclusions can be drawn from this on the development of PTSOs’ assets, financial position and earnings when implementing the strategic projects.

The strategic planning is followed by the implementation of the strategy and the monitoring of the achievement of the desired effects. Strategic controls must be designed in such a way that they are future oriented and parallel to planning and

implementation, so that potential risks for the desired achievement of objectives can be identified at an early stage and corresponding degrees of freedom can be used to take adjustment measures. Within the framework of strategic monitoring, premise, consistency and implementation checks are used.

*Premise checks* (on premise controls see Alter 2013, Hahn 2006b) examine the extent to which the initial assumptions in the strategic planning continue to be valid. If deviations are found, it must be examined whether the plans drawn up can still be used, whether they need to be adjusted or whether they should be completely replanned.

*Consistency checks* (for details see Hahn 2006b) can be further divided into methodological and content checks. As part of the methodological consistency check, the extent to which strategic planning has been derived on the basis of sufficient information is checked. Furthermore, it is critically questioned whether the instruments used were suitable for processing the information. In addition, the strategic plans must be checked to see whether they were derived logically and comprehensibly from the available information. Content consistency checks should ensure that the results of the strategic planning are consistent with the general objectives pursued, the culture of the PTSO and the subordinate functional area strategies. In addition, a consistent derivation of the operative from the strategic considerations must be monitored.

The purpose of *implementation checks* (Alter 2013) is to monitor the progressive implementation of a strategic plan (Hahn 2006b). The starting point is the definition of strategic milestones as intermediate objectives on the path of plan implementation. The strategic measures defined as projects provide the starting points for this. As part of the implementation control, comparisons are made at certain points in time between the planned interim results and the realised values. Possible deviations must be examined before the question is posed as to whether the planned achievement of objectives can nevertheless be achieved by suitable measures. Depending on this, a decision has to be made as to whether the existing plans should be adjusted or whether new planning is necessary.

### **Instrumental Perspective**

A large number of instruments have been developed for strategic planning. A selection of instruments will be outlined below. The selection was made on the basis of expert discussions, their discussion in the team sports literature as well as author's considerations regarding their suitability for controlling in team sports.

*Mission statements* (for team sport, see Keller 2008) concretise and complement the vision of an organisation. While the vision is directed outwards, the addressees of the mission statements are the actors within the organisation. Mission statements contain principles of conduct and values vis-à-vis external stakeholders and customer groups as well as with regard to cooperation within the organisation. They serve as guidelines for employees when assessing decision alternatives and resolving conflicts. The mission statement must always be adopted by the PTSO management. The involvement of the employees in the discussion is conducive to the acceptance of mission statements. Due to a PTSO's special ties to its fans,

members and fans should be involved in the creation of a mission statement in order to give the mission statement a greater integration effect.

One of the core tasks of controlling is to support the PTSO management in achieving the PTSO objectives. In practice, the setting up of *target systems* (for details see Littkemann 2006) has established itself as an instrument for documentation, hierarchisation, prioritisation and mapping of causal relationships. A target system represents a conscious order of several objectives (for details see Littkemann 2006). The pursuit of several objectives is unproblematic as long as they are complementary. In the ideal case scenario, a hierarchy with upper and lower objectives and rules for linking the objectives with each other can be formed on the basis of logical considerations. It becomes problematic if objectives are pursued at the same time as they are in competition with each other. In this case, the target system must make a clear statement on the prioritisation between conflicting objectives.

*SWOT analysis* (Derfuß and Littkemann 2006) is a tool for strategic analysis. It links environmental analysis, in the form of opportunities and threats that can affect the organisation from the outside, with an internal analysis of strengths and weaknesses. It contains a description of the current status quo but focuses on the future by identifying opportunities and threats. It thus offers a good introduction to a strategic position analysis. The clear comparison of the results of the integrated partial analyses provides starting points for the derivation of strategies. However, their strength lies not in the identification of concrete strategies but rather in the delimitation of the space of strategic options. Some examples of SWOT analyses in team sports have already been published (see, for example, Dörnemann 2002).

The *Balanced Scorecard (BSC)* (for details see Kaplan and Norton 1996, Kasper 2007) was developed by Kaplan and Norton in the early 1990s (Kaplan and Norton 1996). It was conceived as an instrument at the interface between strategy formulation and strategy implementation. The concept of the BSC was introduced in the following decade in many companies for strategy implementation. The basic idea of the balanced reporting form was to provide the management with a condensed but balanced overview of the status of strategy implementation from several perspectives. It is balanced in the way that short- and long-term objectives, monetary and non-monetary indicators, late and early indicators, earnings figures and performance drivers are viewed from different perspectives. The BSC only offers a framework that has to be filled individually for each organisation.

An inherent part of the BSC concept is the translation of the vision and strategy with the help of a top-down process. For this purpose, strategic goals are derived from the vision and strategy for each perspective. These are then concretised by key figures and objectives, which enable the achievement of objectives to be monitored. In addition, operational measures and those responsible are determined so that the implementation of the strategy results in concrete measures. With the stringent implementation of this process, the company can be consistently aligned with the strategy pursued. It becomes transparent for employees how they can contribute to the achievement of operational and strategic objectives. Of particular importance here are the causal relationships between the individual key figures and perspectives



that represent the strategy and are mapped using *strategy maps*<sup>2</sup> in the course of the discussion (for team sport see Dörnemann 2002; Eisenberg and Schulte 2006). The BSC underwent various extensions and a wide variety of variants was produced in the course of the discussion. For example, BSCs were presented for certain functional areas, for non-profit organisations or the management of risks. The instrument has also been adopted for team sports (Galli and Wagner 2002; Eisenberg and Schulte 2006).

## 4.2 Operational Planning and Monitoring

### Functional Perspective

Operational planning is based on the results of strategic planning and general organisational objectives (Hahn 1996). Operational planning is primarily geared toward the efficient exploitation of existing potential for success within a defined period of time (Hammer 2011, Weber and Schäffer 2006). A characteristic feature of operational planning is that it deals with relatively well-structured, often repetitive problems, for the solution of which limited options are available. It does this against the background of largely given potentials. Medium- to short-term time ranges are typical for operative planning. As a rule, operational planning covers one fiscal year of the organisation concerned (Weber and Schäffer 2006). Due to the lower level of uncertainty, it has a comparatively high level of detail, often covering all subareas of the organisation. The results of operational planning are expressed in key operational metrics, such as profit or liquidity ratios. In contrast, key figures that include the corporate environment, such as market shares and growth rates, are more likely to play a role in strategic considerations (similar characterisations can be found in Hahn 1996, Hammer 2011).

Operational planning is usually an objective and value-oriented planning. Whereas with objective-based planning, for example, sales and production quantities are planned, value-based planning specifies planning parameters for sales, profit or return. In the literature, the functional objective-oriented part of operative planning is also referred to as action planning and value objective-oriented planning as budgeting (Horváth 2002).

With regard to the derivation direction of the planning, a distinction can be made between top-down, bottom-up and counter current planning. With the *top-down approach*, the highest management authority sets targets for the achievement of the operative plan parameters. The subordinate departments must draw up their subplans accordingly and coordinate them with each other. The advantage of this plan derivation lies in the high level of consistency between the highest organisational objectives and the downstream subplans of the divisions. The low consideration of

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<sup>2</sup>A strategy map shows the cause-and-effect relationships between the different perspectives and goals of a balanced scorecard, so that it becomes clear how monetary and non-monetary goals as well as early and late indicators interact with each other.

the knowledge of decentralised areas in the planning process is likely to have a negative effect, which may result in unrealistic specifications. In the *bottom-up approach*, subplans are created at the lowest level without top management requirements and are integrated and aggregated at the next hierarchy level until an overall plan is created. The advantage of this approach lies in the high level of involvement of the operational managers, so that a high quality of the resulting plans can be expected. The problem with this plan approach is the lack of consistency between the partial plans and between them and the overall organisational objectives, the limited scope for the top management to intervene, and the associated time-consuming coordination and review processes. The *countercurrent procedure* tries to combine both approaches in such a way that the disadvantages of the respective procedures are reduced (the empirical results for football can be found in Mazurkiewicz and Jahnke et al. 2014).

The general statements on operational planning made above also apply in principle to operational planning in team sports. In the following, the relevant special features will be worked out. First of all, you should refer to the sport component in the planning system. Due to the limited predictability of sporting success, a PTSO's planning is characterised by great uncertainty, but—as Haas (2006) further explains—comparatively low complexity. Especially in the run-up to a season, it is difficult to estimate what position will be reached at the end or how far the club will get in national and international cup competitions. Basically, however, the effects of a given sporting scenario can be predicted very well, at least for one season. The main revenue streams, such as sponsorship revenues, TV revenues and ticket revenues, can usually be estimated on the basis of existing contracts or experience. The main expenses can also be planned on the basis of historical data: for example, depending on the number of matches. Personnel expenses are also predictable on the basis of players' contracts and the targeted sporting success level. For example, it is conceivable in the run-up to a season that a reliable plan calculation can be presented for each potential table position.

The main problem with operational planning in team sports is the estimation of the probability of occurrence of sporting success (Haas 2006). This is particularly problematic for teams that “commute” between two divisions as *elevator teams* or can be regarded as aspirants for international competitions. Another requirement for operational planning in team sports is therefore a high degree of scenario capability. Controlling must be able to show the effects of deviating scenarios at all times. As a rule, it is not a matter of a high level of detail but of the speed with which resilient scenario calculations are available, so that the PTSO leadership can quickly grasp the effects of a play-off or cup game, for example, and present them in communication with stakeholders (Dörnemann 2002).

An essential prerequisite for meeting the requirements for high scenario capability is precise knowledge of the cause-effect relationships in the PTSO business model. Consequently, operational planning must be structured in such a way that the causal relationships become clear. Better utilisation of the venue leads to higher sales in terms of ticketing, merchandising and catering, but also to higher costs for security and the use of goods. Better sporting performance can result in higher

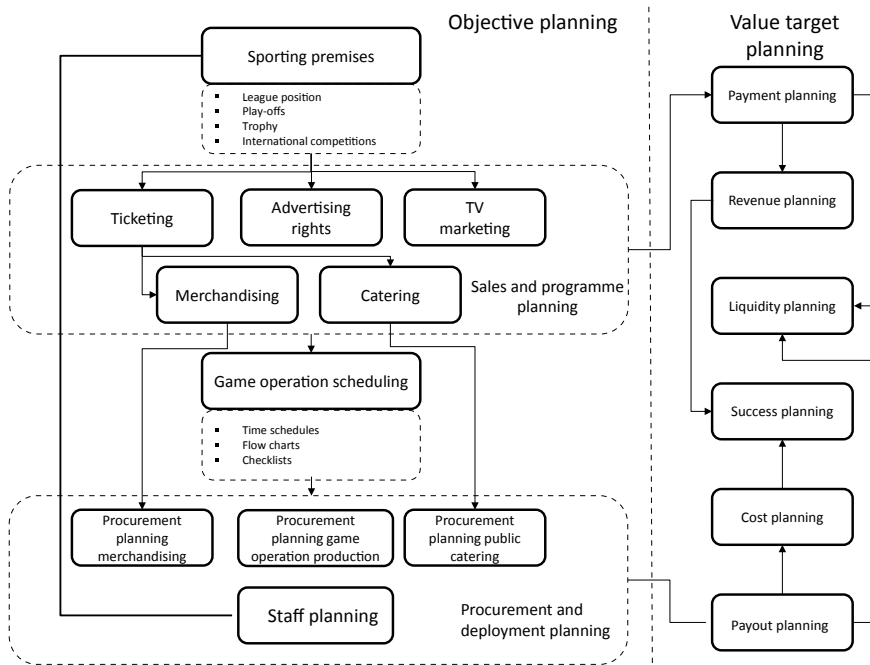
participation in the league's TV revenues. In team sports, the difficulty in implementing this requirement lies in the fact that the business models of the various areas of a PTSO differ significantly. Thus, the business model in the merchandising sector is certainly similar to that in the textile retail trade; in addition, however, there is a different business logic in the sponsorship, ticketing, catering and sports sectors. This diversity of business models represents a major challenge for PTSO management and operational planning. When drawing up operational planning, the assumed causalities must be formulated transparently and well documented. This creates an essential prerequisite for later deviation analyses and the initiation of learning processes.

The planning horizon for operational planning is likely to be limited to one or a maximum of one and a half seasons. As a rule, competitive conditions in team sports are relatively stable for such a period. Revenues and expenses for a season can be well predicted on the basis of existing contracts with sponsors, players, associations, etc. The competitive conditions are generally relatively stable for such a period. A planning horizon over several seasons is problematic insofar as the previous season often determines the following season to a considerable extent, for example, if the qualification for a European competition was successful or promotion could be realised. In the case of multi-periodic considerations, many potential alternative sporting processes thus arise even with an observation horizon of only two seasons, so that detailed planning for such a period does not appear to be expedient (Haas 2006; Dörnemann 2002).

The comments on the significance of sporting success for operational planning and the statements on the configuration of the target system of PTSOs already indicate that operational planning in team sports is likely to be primarily oriented towards objectives. ● Figure 3 shows a potential procedure for deriving operational planning.

The starting point is the definition of the sporting premise by the PTSO management. Based on the short- and medium-term sporting objectives, the potential of their own team and the assessment of the competitors, the management of the PTSO has to make specifications regarding the desired table position in the sporting competitions for the planned playing time. In view of the uncertainty of the sporting success, the PTSO leadership can define further worst- or best-case scenarios to be calculated on the basis of the sporting premise at this point in time. A by-product of the discussion on the sporting premise is a detailed calendar of events for the season, which primarily includes the number of home matches in the sporting competitions. It can be supplemented by additional events such as friendly matches or other events (e.g. concerts, trade fairs, conferences).

Based on these specifications, detailed sales and programme planning is carried out in the functional areas of a PTSO. On the basis of the number of events and the predicted sporting success, the PTSO ticket manager must be able to make a forecast regarding the demand of spectators and the capacity utilisation of the venue in the seating, standing and hospitality areas. Furthermore, the relations between season tickets and day tickets must be planned. In sponsorship, the design of the advertising rights portfolio and the compilation of the rights into attractive



**Fig. 3** Basic scheme of operational planning in team sport organisations (Kasper 2016, p. 234)

sponsorship packages must be carried out. On the basis of existing contracts and a selling prediction, the paragraph on the advertising rights is to be predicted. The revenues from marketing the media rights are essentially determined by the sporting performance of the PTSO. The number of events and the planning of the spectators' demand are, in turn, essential framework conditions for sales and programme planning in merchandising and catering in the venue. The sales and programme planning of the functional areas forms the basis for payment and revenue planning within the framework of value target planning.

Based on the business event calendar and the results of sales and programme planning, the (match operation-oriented) schedule planning takes the form of action planning. Here, the necessary steps for the match operation production during the match time are to be worked out by means of scheduling, flow, training plans and checklists.

This is followed by procurement and supply planning. For catering and merchandising, the use of cost-of-sales ratios in relation to planned sales is likely to be appropriate. The same applies to the procurement of the necessary means of production for the production of matches, depending on the type and number of events and the scheduling. At the heart of this planning step, however, is the detailed planning of personnel expenses for the (licensed) player squad. This is essentially determined by the availability of financial resources resulting from the previous

planning steps and from the targeted sporting success. The procurement and deployment planning functions as input for the payment and cost planning on the part of the PTSO's value target planning.

The results of the objective planning form the input for the value target planning. The planned seasonal surplus/deficit results from the difference between cost and revenue planning. Payment and disbursement planning form the basis for liquidity planning, which is discussed in more detail in the following section. The chosen presentation here provides the value target planning as the result of the upstream objective-oriented planning steps. This corresponds to the relevance of the sporting success for the PTSO. Of course, there are close links between the two types of planning. The distinction chosen here for reasons of comprehensibility and conceptual differentiation is likely to be of secondary importance in practice. Rather, there will be many interdependencies and much feedback between the individual planning steps, especially if the sectoral objective planning leads to undesirable results in the amount and liquidity planning.

### **Instrumental Perspective**

Operational planning and control are inconceivable without *plan/actual variance analyses* (for details on deviation analyses see Klenger 1997). They form the basis for the introduction of countermeasures, of learning processes related to the causes of deviations and thus the improvement of planning quality for subsequent periods. Within the framework of plan/actual variance analyses, plan or target figures are compared with the actual figures realised in a period in relation to a cost centre or a project/cost object. The prerequisite for this is that the operative planning and the recording of the actual values are carried out according to the same structure in order to make comparisons possible. If significant deviations between actual and planned values are found, the comparison is followed by a systematic analysis with the aim of identifying the cause of the deviation and derived measures. This is problematic to the extent that the total deviation is usually made up of several partial deviations, the effects of which are partially superimposed.

Another classic instrument of operational planning and control is *contribution margin accounting* (for details on the concept of contribution margin accounting see Kilger et al. 2012). It exists in many different forms, so that in the end, it is not possible to speak of a single contribution margin accounting. Contribution margin accounting is basically a partial costing method that compares the variable costs and revenues for a product to determine the contribution margin that the product contributes to cover the company's fixed costs. In the single-stage contribution margin accounting, the contribution margins of the product portfolio are calculated and the fixed costs are deducted en bloc. A further development is the multi-stage contribution margin accounting. Here, the fixed costs are further broken down and an attempt is made to allocate them to the various products using suitable keys (e.g. via machine occupancy or set-up times). The aim is to obtain better information for the decision regarding the design of the product range. This approach is also the subject of criticism of contribution margin accounting. Depending on the share of fixed costs in relation to the total costs, contribution margin accounting can only be used

to a limited extent to generate decision-relevant information. In addition, it ignores cost-influencing factors in addition to employment (Horváth 2002).

As already described above, *budgeting* (for details on the instrument of budgeting see Horváth 2002) should be understood as the value-oriented part of operational planning (Horváth 2002). The budget determines the financial resources available to achieve the measures defined in the sectoral objective planning. Both parts of operational planning are interdependent and must be coordinated. In practice, both area-specific budgets (e.g. for sports, the youth academy or administration) and function-specific budgets (e.g. investment or purchasing budget) exist. The budget fulfils various functions:

- Planning function: When you create a budget, the system carries out formal goal-oriented operative planning for a particular area of responsibility in a defined period of time.
- Coordination function: During budgeting, various sub-budgets are created for certain areas of responsibility; the sub-budgets are reconciled with each other.
- Approval function: After approval of the budget by the PTSO management, the individual responsible for the budget can act independently within the scope of their budget.
- Motivation function: Performance requirements and results become visible by means of the budget.
- Control function: Deviation analyses are possible by comparing planned and actual figures.

In recent years, the classical budgeting concept has faced strong criticism. The main focus was on the elaborate preparation and coordination process, the rigidity of most budget objectives and the associated low adaptability and flexibility with regard to changes in the framework conditions. In response to this criticism, more recent concepts such as *Better* and *Beyond Budgeting* have been developed (for the *Better* and *Beyond Budgeting* concept see Wallander 1999).

*Cost and activity accounting* forms an essential information basis for operational planning and control (Dörnemann 2002). Implementation of an individually adapted cost accounting system is also necessary for a PTSO (Dörnemann 2002).

Cost and activity accounting consists of the subsystems of cost types, cost centre accounting and cost unit accounting. *Cost-type accounting* records all costs (and services) completely, unambiguously and without overlap according to their factual reference (e.g. personnel costs, travel expenses). It is based on the financial accounting figures and supplements their figures with imputed costs if necessary. *Cost centre accounting* answers the question of in which organisational unit the costs were incurred (for example, in the youth academy). It is thus the prerequisite for the allocation of success and failure to the subunits of the PTSO. The cost centre accounting component is the link between cost element accounting and the last partial accounting component, cost object accounting. While the costs that can be directly assigned to a cost object (direct costs) are entered directly there, the costs that cannot be directly assigned (overhead costs) are apportioned via the cost

centres using suitable keys. *Cost object accounting* attempts to answer the question of what the costs were incurred for. It is output oriented. The match days are the possible cost objects for a PTSO (Dörnemann 2002). The design of the cost and performance accounting must always take into account an appropriate quality of information and the effort required to record it.

### 4.3 Liquidity Planning and Monitoring

#### Functional Perspective

Within the framework of the discussion on the PTSO target system, the general overall objective was formulated as securing the existence of the PTSO. An essential prerequisite for this is ensuring that the PTSO has sufficient solvency at all times to avoid illiquidity.

The term “liquidity” is not uniformly used in the literature. In the context of this chapter, this is to be understood as the ability of organisations to meet their payment obligations at all times. From this results the demand for the maintenance of the financial equilibrium. The comparison of pecuniary claim and payment obligations must at all times show that the latter can be covered by cash and cash equivalents plus incoming payment claims (for details on the different meanings of the concept of liquidity see Bonn 2006). According to Mühlhaupt (1976), only this meaning has a target character. The core task of liquidity management is therefore to ensure the financial stability of the organisation at all times (Perridon and Steiner 2002). In this sense, securing liquidity is an ongoing task of management, which must be complied with at all times as an absolute secondary condition in order to secure the company’s existence. This core task can in turn be divided into three subtasks (Perridon and Steiner 2002):

1. Situational safeguarding of liquidity: This involves the daily safeguarding of liquidity by reconciling the cash inflows and outflows.
2. Short- and medium-term funding: On the basis of the free internal funding volume and the planned investment activity, the inflow of equity and debt capital must be coordinated.
3. Structural safeguarding of liquidity: This involves the development and implementation of a funding structure for the organisation that is appropriate to its strategy.

These basic liquidity management tasks are to be structured in accordance with the framework conditions of the PTSO and, if necessary, supplemented by further tasks (e.g. currency management) (Horváth 2011). The art of managing liquidity is to align it with the organisation's profitability and other objectives (Jehle 1976). With regard to team sports, this means that an expensive transfer should be avoided if the means of payment to be used for this purpose jeopardises the financing of match operations in the coming season. In contrast, it also means that a high level of

financial resources is not a positive signal per se, especially if there are more profitable investment alternatives or if the free resources could be allocated to the squad in an appropriate way to achieve the sporting goals.

As part of systematic liquidity management, liquidity planning and its counterpart, liquidity control, are of great importance (see the comments in Franz and Hochstein 2011). Anticipating future events in terms of their impact on solvency is intended to ensure that sufficient means of payment are available at all times. Liquidity planning should identify future liquidity bottlenecks and define potential measures to avoid them. It should also make it possible to uncover free liquidity and provide an overview of the period and amount of free funds available for low-interest investments. Within the framework of liquidity planning, the actions and measures defined in the objective planning as well as funding measures already taken are analysed with regard to their consequences for liquidity in the planning period. Liquidity planning is therefore the result of the previous planning of specific objectives and return objectives and at the same time a restriction on these planning steps if the specified liquidity objectives cannot be achieved. In accordance with the planning horizon, Franz and Hochstein (2011) distinguish between long-term capital requirement planning, which mainly deals with the task of structurally securing liquidity, liquidity planning in the narrower sense, which is intended to cope with short- and medium-term financing against the background of largely unchanged framework conditions, and daily liquidity planning, which fulfils the task of situational liquidity protection. This contribution focuses on liquidity planning in the narrower sense.

The preparation of a liquidity plan requires integrated planning consisting of a planned profit and deficit statement, balance sheet planning and liquidity planning. The planned profit and deficit statement shows all transactions affecting net income in the planning period. This is where the target for the profit to be achieved is manifested. Not all items in the income statement lead to incoming or outgoing payments (such as depreciation) in the period under review. It must therefore be supplemented by balance sheet planning. Balance sheet planning and the forecast of the development of the balance sheet items have further effects on liquidity (e.g. the borrowing or repayment of loans) that cannot be derived from the planned income statement. You must derive the liquidity plan consistently from these two plan calculations.

The general statements on liquidity planning made in the previous paragraphs also apply in principle to PTSOs. However, the team sports business model has three special features that have a significant influence on liquidity planning: firstly, this is the special structure of cash flows in team sports; secondly, the improbability of sporting success in the future; and thirdly, the general objective of providing as much liquid funds as possible for the (licensed) player squad.

A characteristic feature of a large number of team sport business transactions is the fact that their registration of earnings in the income statement differs significantly from the time at which they are paid in and out. For example, payments from season tickets, boxes and business seats are largely made at the beginning of a season, but are only recorded as income in the course of the season after the home



matches have been played. In sponsorship, it is common for most sponsors to make half-yearly payments in advance. In some cases, high single payments, so-called signing fees, are due when contracts are concluded. Revenues from the sale of players, in contrast, are fully recognised in income at the time of the player's transfer, while cash inflows are often made in several instalments, sometimes even over several seasons. Similarly, instalment agreements are also common for the purchase of players. Signing bonuses, team and individual bonus payments as well as severance payments in connection with the remuneration of players and function personnel may also deviate significantly from their income registration. The actual progress of deposits and withdrawals must be analysed depending on the general conditions of the individual PTSO and may differ from club to club and between the individual team sports. Nevertheless, the outlined examples quickly show that a general, indirect approach to PTSO liquidity planning would rarely be appropriate.

Rather, consideration of individual facts and detailed knowledge of corresponding contract contents should be of essential importance for the development of adequate liquidity planning. Despite or because of the comfortable situation that many payments are made well in advance, there is a latent danger that the clubs will *spend tomorrow's money today*. The example above shows that it is characteristic at least for football that the bank accounts of the clubs are full to bursting at the time of the two transfer periods. As a result, there is a great temptation when another star is obliged to spend the money that was actually collected to finance matches in May of the following year at the beginning of the season. These situations in particular require efficient liquidity planning and appropriate expenditure restraint. The planning horizon for operational liquidity planning must cover at least one to one and a half seasons.

The imponderables of sporting success present great challenges for liquidity planning. In order to cope with these challenges, it is first necessary to gain knowledge about which inflows and outflows are largely independent of sporting success and which positions fluctuate depending on sporting performance. On the basis of this knowledge, the effects of different (sporting) scenarios on the planned variables in liquidity planning can be analysed. The result of these scenario analyses should be detailed knowledge of sensitivities in different sporting processes. In addition, appropriate measures to secure liquidity during critical sporting events should be tested and discussed in the PTSO leadership, so that appropriate preparations for coping with such a scenario are made when it occurs. In the course of the planned season, additional adjustments are to be made on a rolling basis on the basis of target/actual comparisons and knowledge of new circumstances.

Another special feature is derived from PTSOs' objective to be as successful as possible in sports. This objective is closely linked to the resources that can be allocated to the (licensed) player squad. This dominance of the overall sporting objective should also be reflected in a PTSO's liquidity planning in order to take account of the particular business logic of sport. Ultimately, the aim is to generate sufficient liquid funds from the PTSO's other activities that can be invested in the team for salaries, consulting fees and transfers. ● Figure 4 shows a possible schematic structure of such a team sport-adequate liquidity calculation.

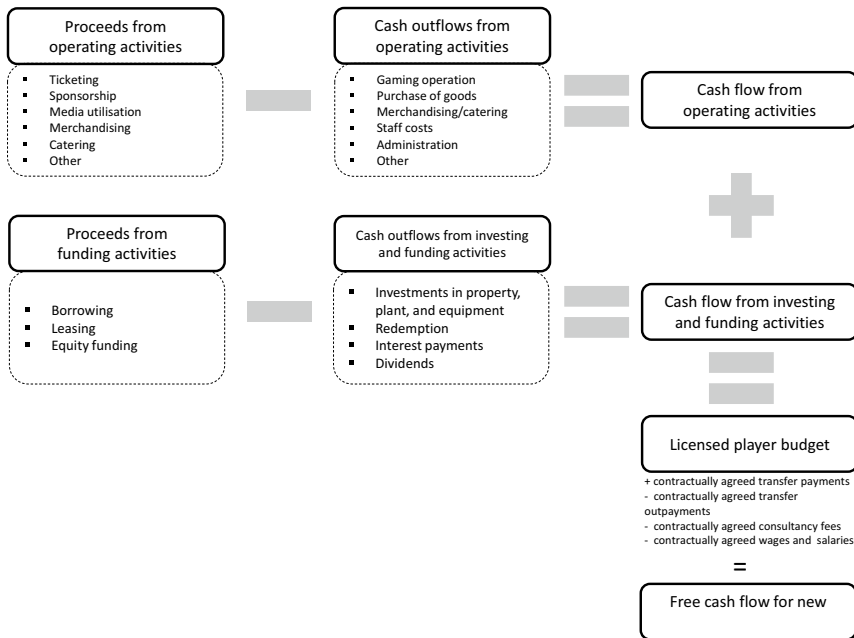


Fig. 4 Schematic representation of liquidity planning in team sports (Kasper 2016, p. 247)

First, the internal funding power of the PTSO should be predicted on the basis of the underlying sporting scenario. For this purpose, the corresponding payments are to be deducted from the cash inflows from operating activities. In order to make a clear distinction between the sports division and the PTSO’s other activities, cash flows directly attributable to the (licensed) players’ squad should not be included in the calculation at this point. The difference results in the cash flow from operating activities. The general goal of the PTSO should be to optimise this cash flow figure.

The next step is to determine the cash flow from investing and funding activities in the period under review. To this end, cash inflows from new loans, equity measures and other funding instruments must be compared with cash outflows for investments in the club’s infrastructure, for the repayment of debt and interest.

The sum of the two cash flow figures results in the liquid funds available for allocation to the (licensed) players’ squad. If the contractually agreed transfer payments are added to this and the funds already tied up in existing contracts for transfers, broker fees and salary payments are subtracted, the residual figure is the free cash flow for new obligations.

Such an approach to liquidity planning offers a number of advantages. On the one hand, it clarifies the special features of the business model in sport. On the other hand, it should facilitate communication with the sporting unit, since it emphasises its central importance and makes it clear that the common objective is to promote

sporting competitiveness. If the desired funds for the (licensed) squad are not released on the basis of the preliminary planning, the model can quickly identify potential starting points in order to generate corresponding cash flows.

### **Instrumental Perspective**

With regard to the instrumental perspective of liquidity management, various instruments can be applied (see overviews in Prätisch et al. 2012). In the following, the direct cash flow statement, the indirect cash flow statement and the team sport-specific liquidity scheme in accordance with the licensing regulations of the German Football League (DFL) are briefly presented.

Standardised calculation schemes exist for both *direct* and *indirect cash flow statements* (Prätisch et al. 2012). Both instruments distinguish between cash flows from operating activities and cash flows from investments and funding.

A team sports-specific form of a direct cash flow statement has already been explained in detail in the last section. It supplements the three segments of the classic cash flow statement with the cash transactions in the (licensed) players' squad. In this way, the special features of the industry can be taken into account and the informational value of the calculation can be increased. The individual items in the segments of the cash flow statement can be planned in great detail by means of assumptions at the time of the payments or knowledge of the contractually agreed payment dates. It quickly becomes clear that the disadvantage of the method lies in the high required effort to prepare it. However, in team sports, this is probably justified by the resulting transparency.

The indirect method, in contrast, determines the operating cash flow from the result for the period. This is adjusted for depreciation, amortisation and changes in inventories, receivables, provisions, liabilities and prepaid expenses. When used in liquidity planning, this instrument therefore requires a budgeted balance sheet.

The total of the operating cash flow, the cash inflows and outflows from investing and financial activities and the cash balance at the beginning of the period results in the closing balance for the period under review. Compared to the direct method, the advantage of this instrument is that it can be calculated comparatively simply if a planned income statement and a budgeted balance sheet are available. Due to the indirect derivation of cash flow figures, this method is less transparent than the direct method. The liquidity calculation schemes of the leagues' licensing procedures represent a team sports-specific form of the indirect method. In all team sports, the assessment of the economic performance of the licensees focuses on the extent to which a licensee has sufficient liquid funds to ensure match operations. In view of the significance of this assessment for PTSOs, the calculation of liquidity according to the prescribed scheme and the assessment of the results should have an influence on PTSO management. ● Table 2 shows an example of the liquidity calculation scheme for the German Bundesliga (see also the comments in Brast and Kasper 2012).

**Table 2** Schematic representation of liquidity planning in team sports (Kasper 2016, p. 247)

Liquidity calculation		€
+ Securities, cheques, cash in hand, bank balances 31.12.t - 1		
- Restraints on disposal		
+ Receivables and other assets 31.12.		
- Receivables and other assets 31.12. t - 1, due after 30.06.t + 1		
- Accruals 31.12.t - 1		
+ Provisions 31.12. t - 1 that fall due after 30.06.t + 1		
- Liabilities 31.12. t - 1		
+ Liabilities 31.12. t - 1 falling due after 30.06.t + 1		
<b>= Subtotal 1</b>		
± Surplus/deficit	P/L statement 01-06/t	
+ Write-offs	P/L statement 01-06/t	
+ Resolution prepaid expenses	P/L statement 01-06/t	
- Resolution deferred income	P/L statement 01-06/t	
± Net cash provided by/used in investing activities	P/L statement 01-06/t	
± Net cash provided by/used in financing activities	P/L statement 01-06/t	
± Corrections P/L statement 01-06/t by league federation		
<b>= Subtotal 2</b>		
± Surplus/deficit	P/L statement 07/t-06/t + 1	
+ Write-offs	P/L statement 07/t-06/t + 1	
+ Resolution prepaid expenses	P/L statement 07/t-06/t + 1	
- Resolution deferred income	P/L statement 07/t-06/t + 1	
± Net cash provided by/used in investing activities	P/L statement 07/t-06/t + 1	
± Net cash provided by/used in financing activities	P/L statement 07/t-06/t + 1	
± Corrections P/L statement 07/t-06/t + 1 by league federation	P/L statement 07/t-06/t + 1	
<b>Cross-game liquidity effects</b>		
+ Revolving credit (50% of 1/12 personnel expenses play time t/t + 1 (total planned income statement 6.))		
+ 100% of the value for tickets reported in the deferred income of the balance sheet as of 30.06. t - 1		
<b>= LIQUIDITY as at 30.06.t + 1</b>		

## 4.4 Personnel Controlling

### Functional Perspective

In the following, personnel controlling is to be understood as the provision of information to the PTSO's management with decision-relevant information on the human resource management process as well as the coordination of planning and monitoring of controlling objects in relation to human resource management in the PTSO. The human resource management process in the sports area of the PTSO is given special consideration. Personnel controlling supports the PTSO management in decisions regarding current and future human resource requirements as well as human resource development (Eisenberg et al., 2006). With regard to the overall organisational objectives, an adequate fit between the objectives of human resource management and the objectives of the PTSO must be ensured.

The controlling field of "human resources" has some special features that have to be taken into account when implementing a personnel controlling system. Human resource management is a cross-sectional function that is carried out in all areas of PTSOs. An existing human resources department supports the managers of the specialist departments, especially in questions of personnel administration and remuneration. Due to this close integration of the personnel function, there are numerous interfaces to the other functional areas. In addition to the collection of quantitative data, such as the number of employees, fluctuation rates and personnel costs, the human factor also means that a large amount of qualitative data, such as the description of the intellectual capital in a PTSO, must also be processed as part of personnel controlling (Wickel-Kirsch et al. 2008). This personnel information must be supplemented by sports performance indicators, which can also be quantitative (e.g. assists, penalties, goals) or qualitative (e.g. forecast information on the development potential of talents).

On the basis of these preliminary considerations, personnel controlling supports PTSO management in all phases of decision-making and implementation. Within the scope of the target formation phase, the PTSO management must first define the guidelines and the objectives of human resource management. The guidelines for human resource work should contain general statements on the significance of human capital, a value system for dealing with employees and PTSO-specific guidelines for conduct. For the sports sector, the playing philosophy described above can be understood as a personnel concept with a guideline character. The objectives are to be derived from the overriding PTSO objectives. The short-, medium- and long-term sporting objectives are of decisive importance here. It is immediately clear that different sporting objectives require a different use of resources. The definition of a strategic target level for the amount of resources to be invested in the squad can be the result or starting point of strategic potential planning across all areas of PTSOs. The task of personnel controlling in the target formation phase includes the guarantee of an optimal coordination of the human resource management objectives with the organisational objectives as well as the provision of instruments for the target formation process.

The target setting phase is followed by the planning phase. This can in turn be divided into a strategic and an operational planning phase. In team sports, a team investment strategy should be at the centre of strategic considerations (Schulte 2009). For example, such a strategy could be to train most of the players yourself. This strategy implies measures to improve the infrastructure of the youth academy and to recruit professional coaches. The team investment strategy must be long term, as decisions must be made to implement it that tie up resources over the long term, for example, in setting up a farm team. The team investment strategy should be supplemented by a team disinvestment strategy as a prerequisite for well-founded separation decisions (Schulte 2009). As part of professional management, the composition of the team and the contribution to success of individual players and coaches must be analysed at regular intervals. The team disinvestment strategy must also be formulated on a long-term basis and independent of any individual. Within the framework of the strategic planning phase, controlling is responsible for providing comprehensive information to prepare decisions. In addition, it must ensure the coordination of strategic planning in the sport and personnel areas with the strategic planning of the other specialist areas and the overall planning. In addition, controlling supports the planning process by providing appropriate analysis tools and technical handling.

This is followed by operational personnel planning. The focus of operational personnel planning in PTSOs is the concrete planning of the composition of management for the operational planning horizon. The starting points are a detailed analysis of the current contract portfolio and the gross demand for players and coaches to be derived from the objectives and strategy. The comparison of the two figures results in a possible net requirement or surplus of team members. According to the result of the demand analysis, measures for recruitment or release are to be planned (Schulte 2009).

While the right mix of age, experience, different nationalities and abilities has to be found for the squad configuration from a sporting point of view (for details see Gaede et al. 2012), from an economic point of view, the most important question is what financial resources can be allocated to the team. The effects of the recruitment and release measures, the contractually agreed parameters for salaries, bonus payments, payments to players' agents and transfer payments as well as the sporting objectives for the planning horizon form the basis for a detailed planning of personnel expenses and payments and the determination of the personnel budget.

In addition to the recruitment and release of players, the design of the remuneration system is the second central field of action for human resource management in a PTSO. From the PTSO's point of view, the objectives of the remuneration system can be formulated, on the one hand, as gaining sufficient flexibility with regard to different sporting scenarios. On the other hand, the remuneration should be designed in an incentive-optimal way without negatively influencing the need for cooperation within the team. Particular attention should be paid to the relationship between basic salary and bonus payments. Additional sporting success generally leads to revenue increases in most of a PTSO's revenue areas. When designing the bonus system, care should be taken to ensure that the optional team and individual

bonuses do not exceed the additional net revenues that can be generated. In the event of a negative sporting performance, in contrast, the revenue base may melt rapidly. In the sense of a risk-adequate structure of personnel remuneration, it is appropriate here that it can be quickly reduced in line with declining revenues. ● Figure 5 shows a generic example of a risk-adequate remuneration and incentive system. Personnel expenses were chosen as the target figure in relation to total sales (Dörnemann 2002).

The tasks of controlling in operational personnel planning include the provision of suitable instruments for personnel requirements analysis, the preparation of decision-relevant information on the workforce, support in the project planning of recruitment and redundancy measures, the calculation of various sporting scenarios and the coordination of operational personnel planning with the other subplans.

The planning phase is followed by the implementation phase. With regard to personnel management in the sport area of the PTSO, this can be roughly divided again into the phase of squad composition and the concrete team management during the season. In the squad formation phase, the focus is on implementing the planned recruitment and release measures. For controlling, it is particularly important to point out methods for evaluating player and coach alternatives and to provide information in order to objectify the decision-making process and make a well-founded choice of alternatives possible.

In the course of the team management phase during the season, the training, the tactical attitude of the team and the team configuration must be designed in such a way that the desired sporting objectives are achieved. The performance of these tasks is mainly the responsibility of the head coach and their team, the monitoring

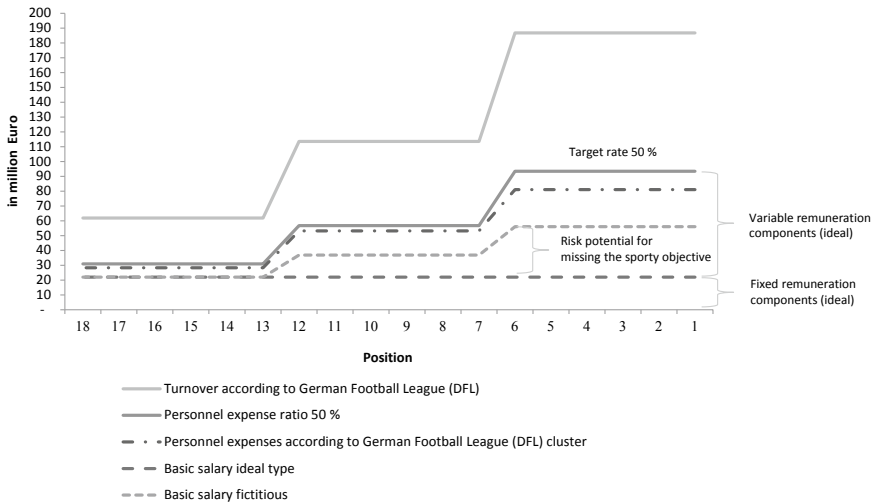


Fig. 5 Deal-typical remuneration system design in team sports (data partly taken from German Football League 2014, p. 32)

of the achievement of objectives by the sports management of the PTSO. If there is a danger of missing the sporting objectives, adjustment decisions regarding the composition of the squad and/or the training control must be made if necessary. In this phase, operational control actions dominate on the part of controlling. Thus, budget compliance must be monitored on an ongoing basis. The development of bonus payments must be reviewed to determine whether the assumptions underlying the calculation of the variable remuneration components for the course of the sport and the team composition are still valid.

As the above remarks show, monitoring actions must be carried out in parallel with processes in order to fully exploit their controlling potential. In the target formation phase and the strategic planning phase, the focus is on premise monitoring; consistency monitoring dominates with regard to the plan coordination of personnel planning with the PTSO overall planning and the subplans of the other areas; in the course of the implementation phase, plan/actual comparisons are mainly used.

### **Instrumental Perspective**

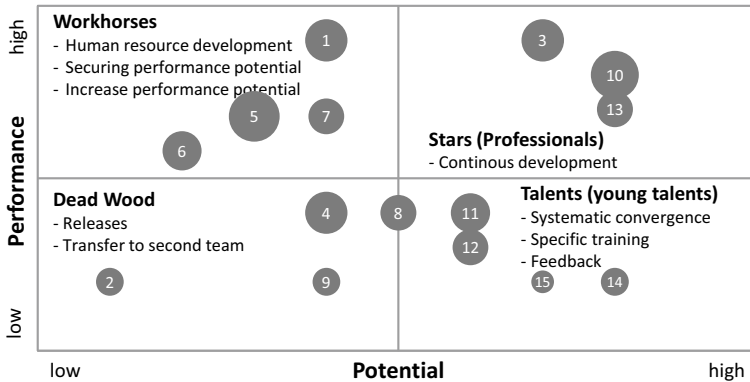
With regard to the instruments of personnel controlling, various lists and structuring approaches exist (Eisenberg et al. 2006). In the following, some selected instruments will be presented in more detail.

Within the framework of strategic personnel planning, *portfolio analyses* (Markowitz 1959) provide a structured overview of the available players and the derivation of standard strategies. The approach to portfolio analysis is always the same: two characteristics define a two-dimensional space in which the objects under investigation are placed according to their characteristics (for fundamental information on portfolio analyses and their fields of application see Derfuß and Litkemann 2006). A further dimension can be added, for example, by depicting the viewing objects as circles with different large areas. Standard strategies can be derived by dividing the space into different fields. ● Figure 6 shows an example of a personnel portfolio of a fictitious PTSO (Schulte 2009). The two-dimensional space is formed by the properties of “power” and “potential”, which are measured high and low, respectively. The players’ current performance can be determined, for example, by means of expert assessments or measurable sporting performance data.

The assessment of the future potential of a player could be carried out by the scouting department using a scoring model. As an additional dimension, the remuneration costs are included; a large circle area therefore means a high remuneration package. The players can be identified by their shirt numbers. Individual measures can be derived from the classification of the players in the portfolio. Ultimately, however, such a personnel portfolio only provides clues for potential decision options to examine possible action alternatives on a case-by-case basis.

Key figures and key performance indicator systems are central instruments for measuring efficiency in human resources (Holtbrügge 2010). Decision-makers should be enabled to gain a quick and comprehensive overview of their decision-making area by means of key figures (Eisenberg et al. 2006). Basically, absolute and relative key figures can be distinguished. Absolute key figures can be





**Fig. 6** Personnel portfolio of a team sports organisation and standard strategies (based on Schulte 2009, p. 154)

collected as mean values (e.g. duration of membership in the association), sums (e.g. number of employees) or differences (e.g. absences) (Holtbrügge 2010). A distinction is to be made between relative key figures as follows (Holtbrügge 2010, Littkemann 2006):

- Classification figures represent a partial figure in relation to an overall figure (e.g. personnel expenses in relation to sales);
- Relationship figures relate different variables, which, however, are logically related, to each other (e.g. average premium payment per player); and
- Index figures reflect the ratio of similar variables to each other, although they differ in time and place (e.g. sickness rates of several seasons compared to a base season).

In order for key figures to develop their full controlling effect, they must be collected regularly and ideally integrated into a PTSO individual key figure system (for basic information on indicator systems see Horváth 2002). In a key figure system, several key figures are systematically compiled in such a way that they complement or explain each other. If the top key figures move within the desired value range, this information is often sufficient as control information for the PTSO management. If deviations are detected, detailed deviation analyses can be carried out quickly due to the hierarchical structure of the key figure system. Due to their importance in team sports, the personnel expense ratio, the bonus per point indicator and sporting indicators will be explained in more detail below.

Dörnemann (2002) has already referred to the importance of the *personnel expense ratio* as a quotient of personnel expenses and a PTSO’s total sales. A discussion of their steering effect has already taken place above. As a key performance indicator, it provides a good indicator of the extent to which the PTSO

succeeds in making the remuneration system so flexible that personnel expenses develop in relation to sales in different sporting scenarios.

A major challenge in personnel controlling is the calculation of variable salary components. This task becomes more complex the larger the number of performance-related remuneration components that have now been developed in team sports. As an indicator for the planning and analysis of the target-conforming development of the variable remuneration, the key figure *bonus per point* can be collected. This figure is calculated as the sum of all contractually agreed bonus payments that can be traced back to the number of points achieved in sporting competition. This key figure can be used as the basis for calculating variable pay in the run-up to a season. Past experience should be used and supplemented with information from the current contract portfolio. In addition to the sporting objectives, the premise for this are above all assumptions about the composition of the squad and the individual players' share of the game on match day. In the course of the season, the development of the ratio can be checked after each match so that deviations that do not conform to the objectives can be identified at an early stage.

A further challenge of personnel controlling in team sports lies in the combination of sporting and economic key figures. Decisive for the decision as to whether a player is to be recruited, deployed or released should be sporting performance measures. Especially for the acceptance of controlling in the sport sector, it should be beneficial if it is possible to integrate *sport performance indicators* into the PTSO performance indicator system in such a way that cause-effect relationships between sporting success and the development of economic performance measures become transparent. On the one hand, controlling has reservations about only looking at costs that are easy to analyse; on the other hand, this will sharpen the understanding of the mechanisms in team sports. The difficulty does not lie in the availability of data and the collection of key figures. For team sports, there is a multitude of individual (goals and baskets scored, assists, minutes of play, mileage, penalties received, duels won, rebounds) and team-related performance measures (points scored, possession of ball, overpayment, minutes without conceding a goal) that are publicly available or can be acquired at a comparatively low price. The challenge is to identify the key figures from the large amount of sporting information that allow a comprehensive overview of the achievement of objectives in the field of sport.

A further basis for efficient operational personnel controlling is detailed *contract controlling* (on the demand for professional contract controlling in team sports, see Schulte 2009). The cooperation between players, coaches and PTSO is codified in a number of contracts. The focus is on the employee's employment contract. In addition, further contractual regulations can exist around the (licensed) player squad, for example, in the form of transfer and player agent contracts. The core task of contract controlling is initially to prepare the economic information contained in the contracts in a decision-oriented manner. This thus forms the basis for the planning of fixed and variable remuneration, the planning and control of personal payment flows and the monitoring of contract performance by the contractual partners. Contract controlling focuses on the monitoring of deadlines and payment

dates. From the prepared contract information, initial conclusions can be drawn about the structure of the (licensed) player squad.

Personnel decisions can be seen as investments. This makes them accessible to *investment calculation methods*. Investment calculation instruments are used to assess the advantages of investments, to select between several options and to decide on the optimum replacement time (Schulte 2009, Schulte and Littkemann 2006). The *full financial scheme (FFS)*<sup>3</sup> should be particularly suitable for the challenges of personnel controlling in PTSOs. Characteristic features of an FFS are the linking of investment and financing decisions, so that PTSO management must consider for each period how surplus payments can be invested and financed, and the presentation in tabular form, which promotes traceability and clarity of the procedure. The final value serves as a measure of the advantageousness of the considered investments. The instrument impresses with its great depth of detail and flexibility (Schulte and Littkemann 2006). ● Figure 7 shows the use of an FFS to calculate the advantage of a player's investment. In addition to the listed parameters, further PTSO individual criteria can easily be added. In view of the performance of existing spreadsheet programmes, the basic FFS model can be easily programmed and repeatedly used. In addition, the assumed premise can be adapted immediately in the discussion of investment alternatives, so that the model becomes accessible for sensitivity and risk considerations.

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## 5 Summary and Outlook

This article has provided a condensed view of controlling in team sports. Based on the special composition of the sporting, economic and social dimensions in the target system of the PTSO, the special features of team sport controlling in selected fields of action were then worked out. Due to the brevity of the presentation, it was not possible to discuss further fields of action, such as controlling of match operations, controlling of youth academies, sponsorship controlling. Future challenges for the controller work in PTSOs arise from the progressive internationalisation of the sport industry, the forthcoming disruptive changes in PTSOs' business model due to the digitalisation of essential business areas (sponsorship, communication via social media, content production and distribution, etc.) and the emergence of new competitors for the favour of viewers, such as Esports. Team sports controlling must take these developments into account and integrate them into PTSOs' figures in order to make its contribution to achieving individual PTSO objectives.

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<sup>3</sup>The concept of full financial scheme (FFS) was developed by Heister (1962) and Grob (2006).

**Complete financial plan (player Mustermann)**

*Installment repayment evenly over remaining term*

Debit interest (s)	10%	10	▶
Credit interest (h)	5%	5	▶
Tax rate (g)	40%	40	▶

	t=0	t=1	t=2	t=3	t=4	t=5
payment series (current deposit payout)	- 5,500,000 €	- €	2,117,000 €	4,412,000 €	2,747,000 €	5,822,000 €
+ Borrowing	5,500,000 €	990,000 €	- €	- €	- €	- €
- Loan repayment		1,100,000 €	1,347,500 €	1,347,500 €	1,347,500 €	1,347,500 €
- Loan interest		550,000 €	539,000 €	404,250 €	269,500 €	134,750 €
- Investment		- €	39,300 €	1,498,329 €	625,129 €	2,569,733 €
+ Interest from financial investment			- €	1,965 €	76,881 €	108,138 €
- Tax payment		- 660,000 €	191,200 €	1,163,886 €	581,753 €	1,878,155 €
<b>Net lending/borrowing</b>		- €	- €	- €	- €	- €
<i>Stock sizes</i>						
<b>Loan</b>	5,500,000 €	5,390,000 €	4,042,500 €	2,695,000 €	1,347,500 €	- €
<b>Credit</b>		- €	39,300 €	1,537,629 €	2,162,758 €	<b>4,732,490,61 €</b>
<i>Tax calculation</i>						
Deposit -payments		- €	2,117,000 €	4,412,000 €	2,747,000 €	5,822,000 €
- Interest charges		550,000 €	539,000 €	404,250 €	269,500 €	134,750 €
+ Interest income		- €	- €	1,965 €	76,881 €	108,138 €
- Write-off		1,100,000 €	1,100,000 €	1,100,000 €	1,100,000 €	1,100,000 €
= Basis for assessment		- 1,650,000 €	478,000 €	2,909,715 €	1,454,381 €	4,695,388 €
Tax payment		- 660,000 €	191,200 €	1,163,886 €	581,753 €	1,878,155 €

**Fig. 7** Example of a full financial scheme (FFS) for a player investment

**Comprehension Questions**

1. What target dimensions does the PTSO target system include, and what weight is given to these target dimensions in the management of a PTSO?
2. What functions does controlling fulfil in PTSOs? What are the tasks of controlling in PTSOs?
3. How can the institutional development of controlling in PTSOs be described?
4. What are the interdependencies between strategic, operational and liquidity planning in the PTSO planning system?
5. How can the imponderability of sporting success be reflected in PTSOs' planning system?
6. How should a remuneration system be designed in professional team sports?

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# Media Strategies in the Sports Media Sector

Christoph Bertling

## Abstract

What happens behind the scenes of the sports media world and what connections exist here, usually remain hidden. With the help of the theoretical approach of the new institutional economics, the backstage of the sports media complex is analysed, taking into account various theoretical perspectives such as principal-agent theory, transaction cost theory, property rights theory and public choice theory. Finally, based on the results of the analysis, the implications for sports, media and economy are provided.

## Learning Outcomes of the Chapter

1. You will know various communication strategies used by the actors in sports media and can explain their basic patterns.
2. You will be able to analyse the sports media complex from different theoretical perspectives of the new institutional economics.
3. You will know what consequences are connected with increasing strategic, economically motivated communication in mediated sports for the individual subsections media, sports and business.

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## 1 Introduction

Similar to a theatre, one can differentiate mediated sports between front and rear stage. While the media presentation of sports to the public occurs on the front stage, the actual strategic decisions of the backstage are reserved for the acting officials. On this so-called backstage, which is not visible to the public, numerous interest groups—such as media managers, journalists, sponsors, sports officials, sports managers and rights owners and sellers—all try to enforce their interests on media platforms communicatively and strategically. In recent years, numerous shifts of great importance have occurred on this backstage. In particular, actors with economically motivated communication strategies have increasingly come to the fore.

A closer look at this development not only reveals newly developed media rules, but also that the portrayal of sports is less and less controlled by independent journalists (Kiefer 2011, 2017). Rather, other actor groups, mostly operating in secret, have gained considerable influence in the media attention arenas. Journalists now seem to be mere teammates and no longer game masters. This development is entrepreneurially attractive, but at the same time holds social explosive power. The deliberative, politico-legal and socially integrative functions of media-mediated sports are in serious danger (Habermas 1990; Imhof 2006). Classic boundaries between commercial and journalistic communication have increasingly been postponed or broken up (Karmasin 2013; Ruß-Mohl 2009). For example, media-marginal sports build up their own digital media platforms and production units (e.g. Sportdeutschland.tv) and enter into strategic network cooperations to increase their media presence. Prototypical businesses like Red Bull are building vertically integrated media companies. Here, new sports are invented, distributed globally on companies' own media channels and controlled. On the one hand, high-quality media products are used to build up businesses' own communication worlds; on the other hand, companies try to direct mass media journalistic selection criteria in their favour by means of interesting supplies of media products. In addition, there are more and more intermediaries—such as legal agencies, production agencies and advertising agencies—that influence media coverage in a stronger way.

In this chapter, the connections that exist on the media backstage are outlined and explained. It should be highlighted here that strategic positioning is indispensable for every actor if he or she wants to increase his or her media presence in this strategic network of relationships.

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## 2 The New Institutional Economics as a Theoretical Approach

An appropriate interdisciplinary approach is required to adequately capture the complex context of action and context on the media backstage. Instead of undertaking piecemeal research and solely focusing on small subareas, as is often the case



in the communication and social sciences as well as in media science and economics, a more comprehensive approach is necessary. The new institutional economics (NIE) is a theoretical approach to media economics, which sees itself as a sub-discipline of journalism and communication science and enables such an interdisciplinary overview.

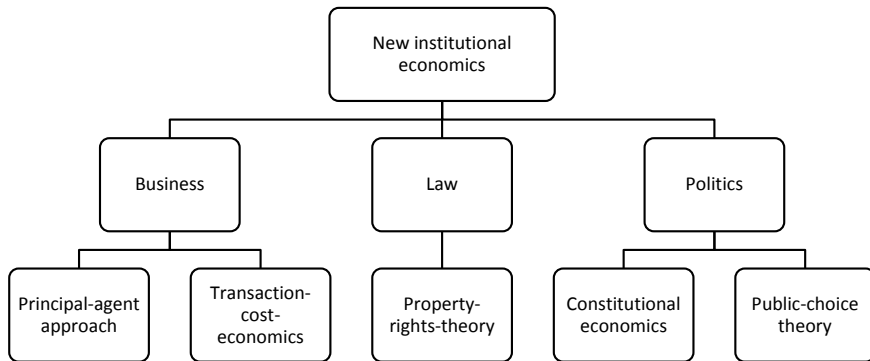
In contrast to neoclassical economic theory, the NIE explicitly includes social and political contexts in its analysis. It developed out of the “discomfort of individual economists towards the friction-free neoclassical model world” (Oppé 2001, p. 602). The NIE does not represent a closed theoretical building, but consists of different approaches with specific commonalities and basic convictions, presenting itself as a “house that offers room for many related theories” (Oppé 2001, p. 602).

There is a consensus in the NIE that “one can no longer just assume simple relationships of economic agents in markets; rather, these relationships are interspersed and interwoven with diverse organisational relationships. One has to consider the relationships if one wants to come to the right statements about the economy of today” (Kiefer 2005, p. 59). Any consideration of external allocation efficiency (market orientation) must also take into account internal allocation efficiency (organisations, companies). The main focus is on institutions that influence human behaviour. In the basic assumptions of the NIE—in analogy to methodical individualism—institutions go back to human action. Decisive here is the explicit consideration of transactions. Only the NIE’s assumption that costs arise in the ‘use of an economic system (transactions) makes the quality of existing institutions an essential determinant of economic development’ (Oppé 2001, p. 603).

There is also consensus within the NIE about the assumption of individual rationality (*homo economicus*), which is also represented in neoclassical theory, although it is often deemed limited. Individuals tend to act rationally in their actions, but ‘due to limited cognitive ability to perceive, filter and evaluate information’, they ‘generally do not have all the information they need’ (Oppé 2001, p. 603) and thus lack the correct valuation basis. As a result, opportunistic behaviour as well as economically inefficient behaviour (or deviations) can be integrated into the theoretical framework.

According to Kiefer (2005), the principal theoretical approaches of the NIE are: (a) property rights theory; (b) principal–agent theory; (c) transaction cost theory; (d) constitutional economics and (e) public choice theory. These approaches can be assigned to the three areas of business, law and politics (see Fig. 1).

Principal–agent theory mainly deals with the division of labour between the principal and the agent. A central role is played by the suboptimal control and monitoring possibilities that owe to information differentials between the (contract) parties. Transaction cost theory essentially deals with information and communication costs (search costs, negotiation costs, enforcement, value assurance and control costs) and assumes imperfect information processes, distributions and knowledge. Property rights theory deals with property rights, which are considered under the aspect of scarce resources. Such scarcity results in room for manoeuvre and incentives among the owners of the resources as well as alternative uses for non-owners. The assignments or distributions of property rights have a major



**Fig. 1** Strands of development and classification of the new institutional economics (Bertling 2019, p. 344)

impact on social well-being in a society. Constitutional economics examines the emergence or choice of rules, whereas the public choice approach deals more with behaviour under given rules (choice within rules).

Using these five approaches, it is possible to explain in their basic patterns the communication strategies that take place in secret, that is, behind the media front stage. In the following, four approaches to the sports media complex are described in detail using (1) principal–agent theory, (2) transaction cost theory, (3) property rights theory and (4) public choice theory. In a final step, the article attempts to derive implications for media, sports and society.

### 3 The Sports Media Complex with Special Consideration of the Principal–Agent Approach

In sports journalism, there is a growing degree of advertising infiltration of sports coverage in numerous countries around the world. Increasingly, for example, so-called brandcasting can be observed. The term is composed of the words ‘brand’ and ‘broadcasting’ and refers to the combination of editorial content and advertising cooperation. An early example of branding on German and British television was a thirteen-part sports soap called *The Road to Sydney*, produced by sporting goods maker Adidas for the Sydney Olympics in 2000, where the Adidas brand was strongly positioned. The sports format was broadcast in the course of the Olympic coverage of Eurosport and ZDF. An indication of an infomercial, which it was finally, did not exist. Another phenomenon of advertising infiltration into journalistic contexts is bartering or programming. Here, a production company exchanges a programme produced by it without payment against a slot provided by a media company. A TV station is thus only a platform. Such a deal took place at the triathlon event Ironman Frankfurt: The organiser took over the production costs and the TV station the transfer. At the contribution level, such strategies are being

implemented by Red Bull, Fédération Internationale de Football Association (FIFA) and Formula One to a large extent. These associations and companies have created their own media houses to produce high-quality content.

Regarding these communicative practices, the question arises: Why are advertising companies and associations able to use sports journalism so economically for their own interests in this way? Why are such practices possible?

An explanation is provided by principal–agent theory. In this approach, the principal is understood to be the customer and the agent the contractor. There are a number of different principal–agent relationships in the area of the problem illuminated here. On the one hand, it is above all the recipient (or consumer) who is the principal of various agents, namely the economy (e.g. consumer goods companies, the media and journalists). The consumer commissions them and expects certain products from the companies. From the journalistic media and journalists, the consumer expects information, transparency, enlightenment, honesty, timeliness, objectivity and so forth, which these agents are supposed to produce or deliver (Ruß-Mohl 2009). At the same time, advertising companies and the media are also principals that commission other agents: The business commissions the journalistic media to publish advertising and public relations (PR) content, while the media commissions journalists to create media content.

The commissioning of an agent by a principal usually involves a knowledge advantage of the agent, which is either the reason for its commission or its result. For either the agent knows a priori more, is therefore a specialist, and is instructed on the basis of this additional knowledge of the principal, or the agent achieves this knowledge advantage by this (subsequent to the principal) more intense and specific preoccupation with the topic. This information asymmetry between the principal and the agent can be used in favour of the former.

In favour of journalists, for example, this information asymmetry is used when it creates transparency through its additional knowledge of the principal. However, an information asymmetry can also have negative consequences. In this context, one speaks of a constant moral danger. Given that the principal cannot fully and adequately monitor the agent, the latter may be tempted to take advantage of breaches of contracts and standards, thereby not acting in a desirable way from the point of view of the principal. This occurs, for example, when the agent integrates the unverified statements of advertisers intended as PR and advertising content into the editorial offer and camouflages them as editorial information, which is not verifiable by the recipient.

If one looks at the principal–agent relationships of the sports media complex in general, the impression of coexistence of several generally balanced principal–actor relationships arises between the groups of actors from the media, sports, business and recipients. This impression is misleading. The economic impact that the advertising industry has on the media, and the media on freelance and permanent journalists is disproportionately higher. As a rule, recipients have less direct influence on the various actors.

There is a direct, process-related communication structure between the actor groups companies, the media and journalists, on the one hand controlling such influences and on the other verifying their respective success. By contrast, the

information asymmetry between recipients and the other three groups of actors is much higher, and there is no direct institutionalised communication structure. A possible influence here is only possible very indirectly, if at all. Ultimately, in the practice of sports coverage this means that advertisers, the media and journalists, in line with their own economic benefits, tend to assess and modulate sports coverage as best as they can afford it (Schierl and Bertling 2015).

The transparency of the recipient's information is therefore only seemingly created where it does not run counter to the economic interests of the various interest groups. PR and advertising interests are hardly noticeable to the recipient. Journalism is increasingly being replaced by directly or indirectly paid PR. On the one hand, PR departments produce media products and then offer them to the media, before journalistic editors finally take over the content almost unchanged. On the other hand, all PR programmes are integrated into the journalistic programme for remuneration. The media only acts as a media platform or distribution channel.

In addition to the actual societal problem of a lack of transparency and informedness, this leads to another economic problem that of adversarial selection (Akerlof 1970). Given that the problem for the sports coverage market owes to the existing information asymmetry between recipients on the one hand and the media and journalists on the other, high- and low-quality sports coverage (based on the criteria of neutrality, balance, criticism and transparency) is indistinguishable to the recipient. Thus, recipients or consumers tend towards the cheapest deals, which are usually those largely funded by open but also covert PR and advertising. As a result, lower-quality products come to dominate the market, because good-quality products cannot be identified by the recipient. As the consumer cannot recognise the better quality, he or she is unwilling to pay more. Consequently, the overall quality in the market is bound to drop, even though recipients may well be prepared to pay a higher price for better quality.

Due to the high level of media non-transparency, a strong PR infiltration is very likely and thus has a strong influence on the editorial selection criteria used, these often no longer being based on journalistic principles. In difficult economic times, as are currently being experienced in many editorial offices worldwide, an even stronger influence can be assumed. One may conclude that journalists have lost much of their influence over editorial content.

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## **4 The Sports Media Complex with Special Consideration of Transaction Cost Theory**

At the reform summit in Monaco in December 2014, the plenum of the International Olympic Committee (IOC) decided to instal an IOC-owned Olympic channel. According to the plan, this channel would be fed into 200 national TV markets in the near future. IOC President Thomas Bach explained the project idea, whose first implementation was valued at United States (US) USD 100 million, claiming that a

platform should be built for all Olympic sports broadcasting, 365 days a year, seven days a week. This step towards becoming a TV channel of its own was particularly noteworthy as it further fuelled the Olympic vision of a vertical media group (Bertling 2016).

The strategy behind the TV channel can be seen by analysing how the IOC has positioned itself in the media in recent years. For media companies, the most important core competences are: (1) content sourcing (=winning input for content production); (2) content creation (=producing successful media content); (3) promotion competence (=gaining public awareness of media products); (4) exploitation competence (=providing content via one's own channels) and (5) technology competence (e.g. to control distribution channels technologically and logistically). These core competences have been successively integrated into the IOC in recent years, as shown in Table 1.

As an association, the IOC also acts as a media company (Bertling 2016). Looking at this development, the following questions arise: Why is such integration possible? What effects does it have on mediated sports?

Such questions are the focus of transaction cost theory. One transaction is the transfer of property rights to goods and services. This transfer usually precedes the material exchange of goods in time (Picot 1982). Transactions are thus in principle the explicit and implicit (contract) negotiations on goods and services between at least two actors.

Transaction cost theory claims that every item of analysis that can be described as a contract problem can be analysed. Two main types can be distinguished: *ex ante* transactions are information, negotiation and contract costs, i.e. contract initiation and negotiation costs, whereas *ex post* transactions analytically consist of the costs of monitoring, enforcing and retrospectively adjusting the terms of the contract, i.e. control and adjustment costs (Picot 1982).

In situations, where the transaction is characterised by the absence of specific investments, and the agreed benefits are easily measurable and controllable, transaction theory recommends the market as an institutional arrangement. On the other hand, the hierarchy as a form of coordination is the comparatively more efficient institutional arrangement when transactions involve specific investments, and/or the resulting benefits are subject to relatively high uncertainty, as they are difficult to measure and control.

**Table 1** Media value added and media products using the example of the IOC

Media value added	Media production
Content sourcing	Founding of olympic broadcasting services (OBS)
Content creation	Olympic news channel (ONC)
Technological expertise	Olympic data feed (ODA)
Utilisation expertise	Olympic channel (OC)
Promotion expertise	Olympic channel (OC)

What basic requirements can now be found in the media sector? For media companies, these are:

1. Difficult to assess the quality of media products/production;
2. The required production volume of media products is barely visible in advance;
3. A recurring production pattern exists;
4. Environmental determinants (timing and number of important events) are hardly controllable and
5. A special time pressure (actuality pressure) always exists.

Accordingly, many advantages of vertical integration can be exploited:

1. The fixed costs associated with providing inputs at various levels (e.g. in the area of technology development, marketing, content production) can be shared across the enterprise;
2. Through multimedia reuse, what are often very high first copy costs can be distributed in the media sector;
3. Vertically integrated companies benefit from fixed-cost degression effects as the number of product copies increases, using existing synergies (Kiefer 2005);
4. A vertical integration strategy also provides quality controls by giving the company more internal review options while minimising uncertainty about contractors;
5. A visual recognition value in the sense of a uniform product design can be designed, which favours the image generation with customers (Kiefer 2005) and
6. The search for possible business partners and information, the negotiations themselves as well as the monitoring of contract operations are associated with the costs that can be saved.

Accordingly, there are numerous integration efforts with media companies, or so-called make (as opposed to buy) decisions. This is especially noticeable in the highly lucrative sports sector. For example, vertical integration can be seen in the international associations or companies FIFA, the Union of European Football Associations (UEFA), the IOC, Formula One and Red Bull.

The strong integration efforts in the sports media complex are causing numerous effects. To Heinrich (2010, p. 248), these include (1) the obstruction of competition (=squeezing) and (2) the establishment of barriers to entry. In order to activate the strongest possible fixed-cost degression, an attempt is made to realise the highest possible output. This leads to strong displacement effects for other sports content. The situation can be described as a ruinous competition or winner-takes-all market. Random sports are becoming increasingly marginalised in their media attention.

Accordingly, there is a high degree of cutthroat competition in the sports media market. Sports federations or companies that do not have similar structures increasingly run the risk of being perceived by the public as inferior. Moreover, before even reaching this stage, there is the danger that they will not be noticed at all, because TV broadcasters no longer take them into account due to their low

public appeal and lower quality standards. There is also the fact that in large parts under the guise of journalism; own views are distributed worldwide, but many recipients will be scarcely (if at all) conscious of this. We are dealing with covert PR (or PR journalism).

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## 5 The Sports Media Complex with Special Consideration of Property Rights Theory

Property rights theory deals with rights of disposal, which are considered under the aspect of scarce resources. Such scarcity results in room for manoeuvre and incentives among the owners of the resources as well as alternative uses for non-owners. The allocations or distributions of property rights have a significant influence on the level of prosperity in a society.

The rights of disposal of open, democratic societies (Popper 2005) can basically be divided into private property and common property. There is always a shift between these two types of law in a modern society. On the one hand, private law may have a larger or smaller sphere; on the other hand, in direct interdependence, public law. This interplay of rights of disposal and the associated implications is illuminated by property rights theory. Property rights can thus be defined by definition as 'rights of disposition that pull the line between unauthorised and allowed actions in a society' (Erlei et al. 2007, p. 294). The dispositional approach has the task of proving 'that the content of the rights of disposal affects the allocation and use of economic resources in a very definite and statistically predicted way' (Richter and Furubotn 1996, p. 66).

Property rights theory has so far been neglected in journalism research. On the one hand, this has to do with the low importance of property rights in many media sectors (e.g. print); on the other, it owes to the low importance of property rights in the majority of classic resorts (e.g. politics, economics and the arts). Information is almost exclusively freely available. In few cases are rights costs (e.g. for exclusive wedding photos of celebrities) paid.

This is not the case in the TV coverage of sports. Journalistic approaches to major sports events are usually not free in far-reaching sports leagues and events, but a million-dollar, exponentially rising rights market (Heinrich 2010; Schafmeister 2007, Schellhaaß and Fritsch 2007). The changing relationship between viewers and rights costs is very interesting: While the number of viewers remains almost the same (it seems that market exhaustion is reached), rights costs have risen exponentially (Bertling 2009). For the right-acquirer, the economic pressure of refinancing is thus growing. Consequently, the purchase of TV broadcasting rights is increasingly a risk investment for the respective rights holder, whose refinancing is becoming less and less likely.

The difference to other ministries can be shown with regard to the production logic of the following dimensions. In the classic departments of politics, economics and the arts, journalists create journalistic content and address two interconnected

markets: On the one hand, the advertising market, as it seeks an attractive environment in media products; On the other hand, the recipient market, on which recipients buy the media product in order to obtain information or to talk. In the sports sector, a third market, the procurement market, also plays a major role. Since the 1980s, the so-called sports law market has become increasingly important in many European countries in the sports media complex and media production logic.

For this purpose, the dualisation of broadcasting in the early to mid-1980s and thus the commercial opening of the media system is responsible for the media side in many European countries, as an ever wider bidder market is emerging. New private broadcasters are trying to attract attention throughout Europe with what are known as battery ram strategies. With such battering ram strategies, the exclusive rights of particularly audience-attractive sports are used to penetrate the market with a particularly attractive range of sports media. Sports events are increasingly being understood as exclusive goods that have to be secured for their own media company or institution. As this development plays a decisive role in the audiovisual sector, there is a split in the media system. In the TV sector, there is an ever greater understanding of product policy, while printed products are classified as less and less important, as no direct (but rather only limited indirect revenues) are expected, such as image gain and awareness and consequently ticketing and merchandising (Kruse 2002). The countermovement in the print sector is a rather critical, subtle journalism (Bertling and Thylmann 2005).

This media split is also energetically promoted by decisions in the sports sector. The sports system is increasingly geared towards the sports law market as an important source of income. In addition, far-reaching transformations in world sports policy in the early 1980s pointed the way to a much stronger, broad-based commercial orientation (Bertling 2009; Bertling and Wassong 2016). World sport was becoming increasingly commercial and dropped the rigid amateur principle. Between sports and the media system, a new kind of DNA matrix thus emerged. Numerous new, commercially oriented sporting events were created, setting an inflation at the start-up of leagues and competitions in numerous sports.

After the turn of the millennium, there was a further sharp increase in the price spiral in the sports law market. It can now be observed that the association, and rights agency side is increasingly trying to become active in the field of media production, distribution and exploitation and to remove attractive media content from the public, journalistic discourse. For example, TV pictures are to a large extent no longer produced in editorial offices but by legal agencies and sports associations. Journalistic production is thus increasingly influenced by bartering procedures and programming deals as well as the procurement market. Therefore, contributions are made by companies, and the mass media only acts as a distribution platform. Journalists benefit from reduced production costs and companies benefit from the dissemination of business-friendly reporting. There is an expansion of the sports law agency and association sector, which is increasingly taking over media production and distribution, while the journalism sector is becoming weaker.



It can be said at the production level in today's production and distribution of a strong tendency towards journalistic bypassing and inbound marketing procedures. Bypassing attempts to circumvent journalism altogether. Media products are specially produced, and own journalistic platforms are used as distribution channels. Through social media channels and their own classic TV channels, journalists are bypassed as informative gatekeepers and producers. This was evident, for example, in the Men's Handball World Cup 2017 in France. In Germany, this tournament was broadcast by the Deutsche Kreditbank (DKB), i.e. the current sponsor of the German national handball team. A journalistic preparation of the live games in the classic TV area did not take place.

In content marketing, which alongside search engine optimisation (SEO) and social media constitutes a pillar of inbound marketing, self-produced media products are offered to journalistic platforms and are often presented under the guise of journalism. Measures in the area of SEO and social media, in contrast to outbound marketing, try to get in contact with the interests of the consumer. The company no longer acts as an initiator in contact with potential customers, but tries to attract attention with content thematically. Applications can again be found in influencer marketing. This method does not communicate as a business, but encourages other, often private individuals (including through financial compensation) to communicate as a proxy to the company. Here, the connection between influencing persons (=influencers) and companies is obscured to the public.

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## **6 The Sports Media Complex with Special Consideration of Public Choice Theory**

A view of private law and public law, as is true of the public choice approach, seems in the media sector to constitute an interesting perspective and promise high knowledge gain. Media products are always public and private goods in democratic, market-oriented societies with a liberal media system. Kiefer (2005) refers to this by classifying media products with regard to their system rationality, leading values, control elements, contributions to society and institutionalisation (see Table 2).

The above tabular listing makes it clear that media products cannot be understood as purely cultural or economic goods. Rather, they are both cultural (public) and economic (private) goods. By belonging to the two organisational systems of economics and journalism, a logical consequence seems to be that there are numerous exploration processes and conflicting goals. In fact, a closer look shows that the sports and media system in conjunction with the political and legal system repeatedly encounters difficult negotiations of the sport as a form of economic or cultural property. This can be illustrated by two groundbreaking media policy decisions.

**Table 2** Media products as public and private goods (Kiefer 2005, p. 21)

	Economy	Journalism
Elements of system rationality	Self-interest orientation; economic competition	Public orientation; attention competition
Conductance	Efficiency, profitability	Enlightenment; democratic control
Controls	Money	Publicity
Contributions to society	Goods and services	Public opinion
Institutionalisation	Business enterprises	Media companies

1. The strong tendency to use sports as a medium-sized asset and increasingly to claim exclusivity for the broadcasting of sports events has led to concerns in European politics that sport is threatened as a public good. Accordingly, in 1989, the Council of Europe and the European Community (EC) adopted agreements on the regulation of cross-border television. In Article 9, the Council of Europe called for 'public access to major events'. Exclusive rights (private property) were thus restricted for the first time and general information rights (public goods) were strengthened.

Throughout Europe, there have been significant changes in media law. A right to free, short news coverage of public events and events of general interest has been established (Holtz-Bacha 1997). In the media policy decision to implement the short news report as a free media asset, the protection of the news public interest in information, the common good of the interest in information and the diversity of information were all in the foreground.

2. The European Parliament approved the long-disputed European Union (EU) *Television Without Frontiers Directive* in 1997. The TVWF Directive guarantees that high-profile sporting events such as the Olympic Games or the FIFA World Cup can be received unencrypted and without extra fees such as pay TV or pay-per-view within the EU. This decision was based on the concern that major sporting events were only accessible to small sections of the population. In many countries, new media law framework conditions were adopted in the following years. In Germany, for example, a list of protected events was adopted and put into effect on 1 April 2000 via the fourth Amendment to the Broadcasting Treaty.

The newly inserted § 5a RStV contains in paragraph 2 an enumeration of the 'major events' to be transmitted on free-to-air television. They are subject to the condition that they may be broadcast on encrypted pay TV only if the broadcaster itself or a third party, on reasonable terms, allows the event to be broadcast freely available and generally accessible; this means at least two thirds of all households can actually receive it (§ 5a I RStV) (Selmer 2000, p. 1).

The main political arguments for the protection list were: (1) the strengthening of freedom of information; (2) the strengthening of external effects and merit goods (such as national identity and international understanding); and (3) compensation for state subsidies for sports (Kruse 2002). Selmer (2000, p. 14) refers to the enormous importance of this new regulation, pointing out that it no longer just 'reports on outstanding sporting events themselves. With their complete and simultaneous transmission, the information aspect falls significantly behind the entertainment value associated with the broadcast of the event' (Selmer 2000, p. 14).

At a time when sport is increasingly being positioned as a media asset on the rights, procurement and production markets, there is a countermovement at the political level. In this field of conflict between cultural and economic assets, sport continues to move in many open, democratic countries to this day.

## 7 Implications

What does this development mean for the sports media complex? The consequences are serious for sports, the media and the economy (see Table 3):

1. The journalistic way of working has changed a lot due to new communicative constructions. Journalists find it increasingly difficult to clearly outline their journalistic tasks and responsibilities. Due to the often high investment costs in the procurement sector (especially in the television sector), journalistic reporting objects are turning into media-mediated products.

**Table 3** Consequences of increasing strategic, economically motivated communication in media-mediated sports, divided into sections

Media	Sports	Society
Threat of journalistic logic	Justification and financial issues if not followed	Threat of sports as a socialisation agent
Dilution of journalistic self-image	Public pressure during (continuous) media observation	Loss of sport's integration, representation and health function for society
Danger of losing journalistic standards	New (media) decision-making basis for sports officials	Loss of cultural anchoring of sports
Risk of journalistic reputational damage	Loss of control through mediatisation	Loss of cultural diversity of sports in society
Danger of loss of credibility and trust	Risk of loss of social engagement	
Risk of loss of journalistic access	Risk of loss of state subsidies/benefits	

2. Due to increasing interdependencies in the production sector, economic and journalistic overlaps (interpenetrations) can hardly be controlled. There is a growing 'amalgamation of journalistic roles as an information producer and service provider' (Kiefer 2017, p. 699).
3. Editorials are increasing in the area of tension between economic calculus and journalistic responsibility. This field of tension is particularly pronounced in the sports media sector due to very strong economic links in the procurement and production sectors. The traditional role models of the journalist, as they are described in Max Weber's ethical approach to the professional field, are (not only) in sports severely shaken because of strategic communication links. A debate on media ethics has long existed in this regard in the sports media sector, and it provokes some strong insecurities among the people acting. Here, it is not negligible that the danger of reputational damage often resonates; as in society, journalistic responsibility is not (directly) associated with economic profit-seeking, but rather with enlightening, investigative functions.
4. Through strategic alliances, it seems increasingly difficult for the majority of sports players to find appropriate consideration through their genuine sporting performance in the mass media. This not only creates financial problems, as sponsorship and advertising fees are more difficult to generate; motivational problems also have to be considered.
5. The existence of some sports areas is under threat. They learn that ignoring strategic communication has profound implications. Internally, associations initiate change management processes that better integrate communication and marketing departments. Other sports sectors that have received a great deal of attention from the mass media must increasingly orient themselves strategically in a global media market in order to negotiate worthwhile negotiations with international media corporations.
6. As the reporting concentrates on a few actors in a particularly substantial way, a situation of permanent monitoring arises. The strong interest that a flood of reports can cause leads to an increasing dissolution of the private and the public. The private affairs of some actors are increasingly moved to the public space and negotiated there. This can place significant psychological pressure on sports actors, who are particularly under media observation.
7. For national and international politics, the recognition of strategic communication is important in order to be able to assess the possibilities of sports as a socialisation agent (e.g. in terms of its ability to integrate and understand nations). The extent to which reporting operating under the primacy of the economy can lead to socially desirable effects represents a key issue in sports promotion policy.
8. Sports officials are increasingly finding that their decision-making operates not only under a sports-related logic but also a media logic. Through communicative strategies, many genuine logics of action in the sports sector have been broken. Successful, profound decisions must be thought through in the media due to the increasing mediatisation of the sport in question in the competition event, the event organisation and the control or steering of associations.

9. The sports system, as a particularly heavily mediatised social sector, must increasingly combine its sporting logic with a media logic in order to be successful. There is a risk of increasingly becoming involved in media dependencies. Sporting institutions need to intensively focus on the production, selection, interpretation and staging logic of the media in order to generate attention, adapting to the situation. This implies an action that is increasingly geared to media visibility and narrativity, corresponding to the 'fashion cycles of media products' (Imhof 2006, p. 20). As a result, the focus is progressively shifting from internal communication to media-focused external communication.
10. Public subsidies require social reassurance as to which economic and social benefits they provide. From a social perspective, it is important to live up to the assumptions of an integration, representation and health function. From an economic perspective, the question arises about the economic value of sports.
11. A loss of credibility cannot be ruled out by the considerable extent of strategic communication, and the large number of intermediaries for media companies, as these structures can become aware of the public, and a suspicion of deliberate steering or manipulation may arise. A particular danger here seems to be a loss of confidence in journalistic quality. As much of the media is trusted, such a loss of credibility can have serious consequences.
12. The sports media sector shows strong shifts between PR and journalism. The number of PR professionals has increased dramatically in recent years in mass media public sports. Meanwhile, many editorial offices are having to make staff redundant. The media system seems to be facing an increasingly powerful PR system. This can create existential problems for sports journalism.
13. The strong shifts between PR and journalism ensure an ever-increasing infiltration or interpenetration of externally, commercially oriented communication partners. The danger of the loss of journalistic standards rises sharply, even if the ability to control wears off. This especially seems to be the case as the boundaries between commercial and journalistic elements in individual media products become increasingly blurred. For example, on the association side or in business enterprises, image production is provided, and journalism commentary is attached.
14. Sport in society and sport in the media seem to be becoming more and more removed. While sport in the media strongly focuses on a few small parts (e.g. commercial high-performance sports), sport in society is primarily anchored in amateur sports and volunteering.
15. Strategic communication, which is highly commercial-oriented, runs the risk of seriously neglecting socialisation messages. As a result, sports can communicate its important integration, representation and health function only marginally.

In recent years, many democratic, open societies have created a strategic, communicative construct that is likely to create new laws, new power relationships and new challenges for the sports and media system and society. Recognising and

reacting to this development is likely to be an existential one for many media edge sports in the future. As noted earlier, in sports media in recent decades, sport has increasingly been treated as an asset, with many more media-neglected sports still referring to the logic of treating sports as a cultural asset and thus a state-subsidised asset. While some sports are more market-oriented, the majority of sports in countries with a dual broadcasting system (i.e. public service and private broadcasters) have held back an active position. Such rather restrictive sports or associations refer in a media context to the so-called representative principle of public service broadcasters.

This logic claims that each sport must be aired in the media because of its cultural significance, rather than its range or demand. However, this logic has become increasingly fragile in practical terms over the past decades. In competition with private stations, public law institutions have increasingly moved away from this sports-cultural logic and have instead oriented themselves according to the relevance principle. The most popular sports content is that which is primarily broadcast. This (new) basic orientation of the media strategy may be explained by the fact that sports content with high demand has greater relevance for large parts of the population. Without relevance, no audience would be reached, so no socialisation messages can be conveyed. This position should not be considered as uncritical, as it does not directly coincide with public preambles. In order to serve the universal service mandate as effectively as possible and to persist against private media companies, a double strategy has been chosen by public media agencies. Other sports are increasingly addressed only in small, especially informative media messages. Critical topics (such as doping) have been pushed into low-profile broadcast formats. Many sports have lost more and more of their media presence as a result of these years of practice. As a result, sponsorship, ticketing and merchandising have continued to shrink. Numerous sports have come into existential hardship.

In order to secure their future, media-neglected sports must be increasingly open to the principle of relevance. In other words, a product policy viewpoint needs to be followed more closely. Whether one offers a product at all, (if so) how to market such a product and with which projects one can position oneself, should all be questioned. It seems increasingly necessary to implement a product and communication policy and media and project management as core competences in the association. In this way, volunteering and its replacement in certain areas by full-time staff will probably be put to the test in the future.

In general, it should be noted that repositioning can be a very risky strategy for many sports federations. Many sports receive their largest budget share from state sports funding. However, these support measures should only be used until the sport proves financially viable and should be cut short if it exceeds a budget specially acquired in the market economy. Thus, first of all, a certain economic power has to be developed, and it must be remembered that safe state revenues are being replaced by unsafe, market-based sources of revenue.

In this contribution, the connections that exist on the media backstage have been outlined and explained. The article has not only shown which changes of power and influencing factors have been observed in media-mediated sports in recent years, but also how important it has become for all involved actors to develop and consistently pursue an intelligent, well-balanced communication strategy.

### Comprehension Questions

1. Why are journalists increasingly losing influence over the editorial content of sports coverage?
2. What is meant by the term 'covert PR' or 'PR journalism', and how does it come about?
3. How are sports media products a public or private good?
4. What implications can be derived from the analysis for the media, sports and the economy?

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# Between the Dissolution of Boundaries and Distinction

Christoph Bertling

## Abstract

On the basis of selected actors in the sports media complex, the new mechanisms and logics that have developed are highlighted here. These include shifts between public relations and journalism and resulting new resonant and decision-making spaces. Furthermore, a typification of new media actors is made, and the strategies used to accelerate the internationalisation of the sports media complex are explored. Subsequently, the increasing importance of non-journalistic actors is shown, and finally, the implications for sports media management are derived.

## Learning Outcomes of the Chapter

1. You will know what is meant by the dissolution of boundaries and distinction in the context of sports media and what challenges result from it.
2. You will know different types of media actors and can describe them.
3. You will be able to derive various implications for the actors in the sports media complex.

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## 1 Introduction

Until just a few years ago, it was sufficient to look into the (sports) editorial offices of respective countries and to analyse journalistic selection criteria in order to understand mass media attention production. Journalists were considered gate-keepers, determining what information to pass on to the public. This was an extremely influential position as it was almost monopolistic. Indeed, without journalistic attention, topics and people could not be communicated to the general public.

Today, such an analytical look into national editorial rooms is insufficient. Only in a few subareas do journalistic selection procedures and editorial decision-making processes decide on the information flow of sports in the media. Instead, numerous new communicative resonant and decision-making spaces have emerged.

Based on a few key players, this chapter illustrates the new mechanisms and logics in the sports media complex. This connection comprises (a) recent shifts between public relations (PR) and journalism and thus the emergence of new resonant and decision-making spaces; (b) a typification of the resulting central (new) media players and (c) the ever-increasing internationalisation of the sports media complex and its relationship with necessary growth strategies. These are all highlighted here, facilitating (d) identification of the growing importance of non-journalistic key actors.

From the point of view of media management, it is important for sports organisations to pay attention to the rapidly growing sports media complex with its diverse logics of action, if they want to achieve the highest possible, optimally balanced reporting for themselves.

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## 2 The Sports Media Complex: Between the Dissolution of Boundaries and Demarcation

One can speak of a paradox in the sports media complex. The contradiction lies in the reference to the most important groups of actors in the sports media complex. A temporally parallel dissolution of boundaries and demarcation can be determined. On the one hand, the sports media industry is moving closer together, yet the sports and media industries are also moving away from each other at the same time. These two movements are clearly reflected in the ongoing developments in PR (=corporate communication) and journalism (=public communication).

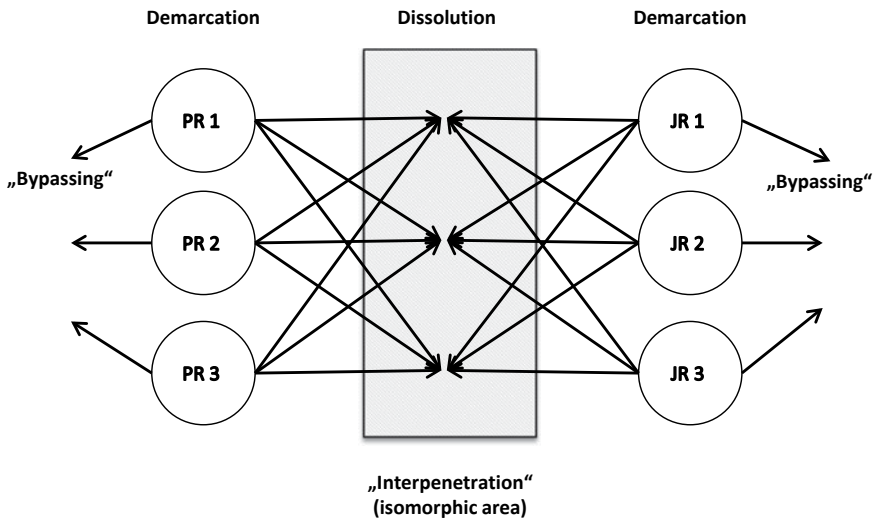
The term “dissolution of boundaries” stands for the removal or resolution of boundaries. Such dissolution of formerly clear borders is described has been numerous scientific publications concerning public relations and journalism (Baerns 1991; Bentele 2008; Ruß-Mohl 1994). Such theoretical assumptions lead among other things to an interpenetration model. Roughly speaking, it is assumed that PR and journalism are no longer separate areas. PR provides story events, and journalism provides increased publicity. This model recognises the current trend that

journalism and PR are becoming increasingly blurred, despite being largely differentiated fields in the past. This creates an area that can no longer be attributed exclusively to PR or journalism, instead being described as “isomorphic zones” (see Weber 2004).

The term “demarcation” stands for the creation or strengthening of boundaries and is shown by so-called bypassing strategies (see Ruß-Mohl 2017). Journalism is completely circumvented by PR and private media companies, and sports content itself is disseminated. Through such a strategy, on the one hand, exclusive sports broadcasts can be processed or distributed in the media as high-quality entertainment products, without journalistic criteria and claims. On the other hand, a particularly strong demarcation against PR influences can lead to a form of investigative journalism that sheds light on critical aspects in the sports media complex.

The graphically prepared model in Fig. 1, which visualises the dissolution of boundaries and demarcation, is to be understood as processual. There are constant changes and numerous hybrids between the three main areas.

In two areas, the dissolution of journalism and PR and the demarcation of the PR sector’s central journalistic quality criteria are at risk. It is important to formulate what is meant by journalism and not to use this term as a synonym for editorial processing and/or media. This is the only way to show the scope of the described negotiation processes between PR and journalism.



**Fig. 1** Demarcation and dissolution of boundaries between PR and journalism (Bertling 2019, p. 363)

In a functional system-oriented perspective, journalistic quality is seen in the fact that “the public actors are informed about the current happenings in the social subsystems” and therefore has the function at the macro level of enabling a self-observation of society that is as coherent as possible via a certain type of topic generation” (Altmeyen et al. 2004, p. 501). Accordingly, the key qualities are diversity, topicality, relevance, credibility, independence, research, criticism and accessibility (Schatz and Schulz 1992). From a normative democracy-oriented perspective, deliberative, political-legal and socially integrative functions are in the foreground (Habermas 1990; Imhof 2006). Only with journalistic bypassing strategies, i.e. the third case, are such journalistic quality criteria particularly important. In all other areas, these journalistic quality criteria are partially or completely nullified.

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### **3 Generation XXL: Typology of Media Actors**

Numerous new media players have emerged with the opposing movements of the dissolution of boundaries and demarcation, using sports media content for various strategic considerations.

#### **Type 1: The Classic Publicist**

This area comprises classic journalistic editorial offices, which mainly focus their mass media products on a national market. Selection procedures are essentially based on two judgment components: (a) message factors and (b) message values. Message factors are the object features and characterise the relevant features of each message. The respective values of the message factors, which define the relative importance of the individual object features, represent the selection criteria in journalism. In their interaction, news values and news factors not only form the basis of the decision as to whether a contribution will actually appear, but where it will be placed and in which spatial/temporal scope (Schierl and Bertling 2007). The central task of these representatives is to select and communicate current information on public communication (Blöbaum 2016). The aim is to “enable, stimulate and secure the participation of all citizens and social groups in the formation of public opinion on relevant social questions and issues” (Kiefer 2017, p. 694). Accordingly, transparency, traceability and the most objective possible transmission of information are set. In sports, a classic representative is the Frankfurter Allgemeine Zeitung (FAZ) or the Neue Züricher Zeitung (NZZ).

#### **Type 2: The Product Policy Media Strategist**

This area tends to include sports journalistic editorial offices, which align themselves with their mass media products on a national market audience effect. Although selection procedures, as described for Type 1, are also taken into account, they are strongly influenced by product policy. Sports broadcasting rights are procured cost-effectively and are not understood as independent reporting objects,

but rather as media products that are to be marketed as attractively to a mass audience as possible. Accordingly, there are also numerous links with other reference groups (such as associations, clubs and legal agencies), and there is a strong mix of PR and journalism content. Numerous examples can be found on TV channels. For example, in football, Formula 1 and the Olympic Games, there is the common practice that externally produced live footage is broadcast and only the commentary is edited by the sports department. This happens with public and private broadcasters. On the other hand, there is a disproportionately large increase in reporting in the overall programme from a journalistic perspective. This has been observed in Formula 1 and the TV channel RTL for years. Selection procedures thus follow a strong degree of audience appeal (Schierl and Bertling 2007).

### **Type 3: The Aggressive Rams**

This type of media is predominantly composed of foreign, privately oriented media companies. The main entrepreneurial goal is to penetrate a new national media market through audience-attractive, exclusive sports content. Aggressive measures attempt to enter the nationally relevant set (=most popular TV channels) of the media audience in a very short time. Accordingly, exclusive top sports rights in the premium sector must be secured. In-house production is not as important as exclusive, mass appeal. Journalistic criteria play a minor role. Only the basic legal provisions of the respective market are taken into account. The media company News Corporation acts to a great extent, for example, in the German market with the TV station TM 3 and the securing of Champions League football rights in the 1999/2000 season, as an aggressive ram.

Type 1 to Type 3 enter into links with journalism or use it as PR camouflage (=a process of dissolution of boundaries). By contrast, with the following types, PR and journalism increasingly separate (=a process of demarcation).

### **Type 4: The Old Media Giants and New Sports Giants**

In this area, the main focus is on integration strategies. These focus on expanding the range of services (Wirtz 2009, p. 93). Depending on the value chain and the value-added stage, a distinction is made between three integration strategies. For the present case, two are important: horizontal and vertical integration. As part of a horizontal integration strategy, media companies try to “extend their range of services to existing value creation levels” (Wirtz 2009, p. 94). They aim to fill new markets or market segments. Here, synergy effects are to be activated. One example is the formation of transmitter chains and thus the ability to broadcast content multiple times. In contrast to horizontal integration, the focus of vertical integration is on “extending the range of services by upstream and downstream stages” (Wirtz 2009, p. 94). In the integration of the upstream stage (backward integration), the media company is active in business units that provide “input factors for their previous business processes” (Wirtz 2009, p. 94). The integration of downstream value chains (forward integration) follows the opposite path and expands business activities to fields that use the company’s previous range of services as input” (Wirtz 2009, p. 94).

Such integration efforts can often be observed in large, global media companies as well as in global sports organisations. Media companies try to integrate upstream stages by, for example, buying up numerous sports clubs and stadiums. A classic early example was the so-called Packers Revolution. With the introduction of colour television, Australian media giant Kerry Francis Bullmore Packer noticed the extraordinary success of the live broadcasting of cricket to his company's public sector counterpart ABC. After Packer, despite making high bids, failed to secure the transmission rights of the Australian Cricket Association, he bought the broadcast rights to the jubilee test series between England and Australia in 1977 and was able to record a wide range of achievements. In a second step, he teamed with agents and signed up 50 of the world's top cricketers to play in an international tournament called the World Series of Cricket (WSC) in Australia. This idea was then strategically expanded. Australian top teams were now playing against world selections and attracting millions of people. Through numerous measures, Packer shaped the sport more and more to a media-exploitable content. Instead of competitions taking several days, one-day competitions were arranged and played. The games were scheduled for the evening and played under floodlights. As a further change, colourful jerseys were introduced, and matches were played in large arenas rather than in exclusive clubhouses, as was traditional. The great public success of about 50,000 spectators per game finally put the Australian Cricket Association under such pressure that it not only cooperated, but awarded all TV rights from the 1979/80 season to Packer's media companies.

Many media companies followed similar strategies in the subsequent years. News Corporation purchased shares in the Los Angeles Lakers (National Basketball Association, NBA), Los Angeles Kings (National Hockey League, NHL) and the Staple Center Stadium in Los Angeles. Time Warner bought into Atlanta Braves (Major League Baseball, MLB), Atlanta Thrashers (NHL) and Atlanta Hawks (NBA). British Sky Broadcasting (BSkyB) founded its own cycling team in 2009 with Team Sky. The declared goal was to win the Tour de France with a British cyclist for the first time within five years, a goal that would be achieved as early as 2012.

While such backward integrations (upstream) have become more and more popular over a period of almost 50 years since the 1970s, so-called forward integrations (downstream) in the sports media complex have only increased significantly since the turn of the millennium. This shows that numerous international sports organisations secure themselves upstream value creation stages. This is very clear from the International Olympic Committee (IOC), Formula One, Fédération Internationale de Football Association (FIFA) and Union of European Football Associations (UEFA), which have all built their own media and data services.

### **Type 5: The Networkers**

Network strategies "involve the formation of corporate groups that work together and cooperatively on a value-added process" (Wirtz 2009, p. 95). This type of strategy thus differs in many ways from vertical and horizontal integrations. It is possible to offer cooperative services in the market. Such cooperation can be

observed in the sports media complex in the global context of major media companies, in the traditional media sector and in the newer Internet sector.

In the classic media sector, the Asian sports TV network ESPN Star Sports provides an example. This transnational TV broadcaster has built up exceptional market power in just a few years. The company reached over 310 million viewers in Asia in 2011. It broadcasts content on 17 TV channels in 24 countries, including in India, Hong Kong, Malaysia, Taiwan and China. Its strategy, which was established in a 1994 TV broadcasting chain, is special in that the main owners Walt Disney and News Corporation are not only among the world's largest media companies, but in the United States (USA), media market very clearly demarcates and competes for numerous sports rights. In this context, one can speak of a method that is referred to in the Asian region as "Keiretsu". This term originally describes Japanese groupings of companies or entrepreneurial groups (Andrews 2003). By agreement at management level, a common corporate policy is pursued. This provides a good opportunity for the two media companies in the Asian market, as they can jointly exploit their sports rights here and reach a larger crowd through their common platform. The two companies—including through their subsidiaries ESPN, Fox Sports and Sky Sports—have the largest sports rights package in Western premium sports.

The Internet sector is increasingly showing similar structured alliances. In doing so, networks are built on competences in different value creation stages. For example, Amazon Prime recently entered into Eurosport collaborations to gain more Prime customers with exclusive content. Facebook offers national associations such as the National Football League (NFL) and Major Soccer League (MSL) the opportunity to distribute content with the use of Facebook pages on their digital platforms (see also Table 1).

### **Type 6: The Resourceful, Dynamic Entrepreneurs**

The enterprising entrepreneur achieves profits through his or her ability to recognise and realise "untapped opportunities for profit" (Kiefer 2002, p. 491). The dynamic entrepreneur is characterised by an ability "to break out of routine, to calm the competition with new products, new technologies or new organisational forms" (Kiefer 2002, p. 491). Here the arbitrage function plays a central role. It is therefore important to recognise price differences between procurement and sales markets (arbitrage), i.e. "price differences resulting from temporal and/or local differences or from differences in production structures" (Kiefer 2002, p. 492).

The live streaming platform DAZN of the Perform Group provides an exemplar. Its rights portfolio is particularly strong. In this case, almost exclusively live third-party productions are purchased and placed on a digital platform. Editorial works are greatly minimised. A very large global audience willing to pay seeks to redeem the very high procurement costs or generate surpluses. Such an arbitrage business has become possible only through the increased content production of the old media giants and new sports giants, as meanwhile a large proportion of outside media production shares can be purchased through the market.

**Table 1** New media: new media actors and their strategic positioning in the sports media complex<sup>11</sup>

<i>Facebook</i>	
Procurement market	Facebook has acquired some exclusive rights in the sports rights market in recent years For example, in March 2017, Facebook secured 22 live MLS matches In May 2017, Facebook secured 20 live MLB games In 2017, Facebook also secured near-live content from the NFL It also has contracts with celebrities, media companies and athletes who want to use live streaming on Facebook
Media production	Live content is enhanced with Facebook-specific commentators and interactive graphics. Thus, there is third-party production and in-house production Some live productions are broadcast in cooperation with local rights holders
Media exploitation	MLS and the World Surf League were broadcasted on live stream in 2016 The live streams will be accompanied by live videos, current postings in text form and pictures, interviews and short videos Dissemination of PR messages Strong interactive elements are interspersed: user, comment and exchange functions
Media distribution	Broadcasts of live content on own Facebook sports pages as well as on the Facebook pages of the respective leagues
Media strategies	Increasing activity in the sports law market Partial strong use of external content production (foreign material) Content network strategies: resorting to content and providing PR platforms Revenue sharing model: marketer pays a specific percentage of revenue to Website owners Companies can advertise (e.g. mid-rolls)
Success indicators	Growth rates in the advertising and consumer market for sports media content Strong external digital content deliveries
<i>Yahoo sports</i>	
Procurement market	Yahoo has acquired some exclusive rights in the sports rights market in recent years and has been operating here for more than a decade In 2006, Yahoo Sports was the first online platform to broadcast an NFL match live. Further partnerships exist with the Professional Golfers' Association of America (PGA) Since the beginning of 2016, Yahoo Sports has the rights to live stream up to four NFL games a week as well as to broadcast other highlights Since the 2016/17 season, Yahoo is partially the copyright holder of MLB
Media production	Yahoo cooperates with the NBC Sports Group, integrating all content such as news articles and live streams of the NBC News Group In 2016, Bayern Munich concluded cooperation. On Yahoo Sports, users can access insights from behind the scenes of the German football record champion, with contributions provided in English, Spanish and German
Media exploitation	MLB shows 180 matches live and free per season PR material from clubs/associations and journalistic companies is provided digitally on Yahoo Sports

(continued)



**Table 1** (continued)

<i>Facebook</i>	
	<p>The respective contents are adapted to be country-specific. For example, on the German Yahoo Sports page, there is a separate section on handball. This cannot be found on the US Website. There is no heading to the NFL on the German side</p> <p>The sports content is used in many ways: in addition to videos and live streams, articles, pictures and statistics as well as a results service are all available</p>
Media distribution	<p>Multimedia distribution with external media partners (e.g. NBC Sports Group)</p> <p>The acquired sports rights are usually provided free of charge</p>
Media strategies	<p>Long-term strategy with rights and fantasy sports leagues</p> <p>Partial strong use of external content production (foreign material)</p> <p>Content network strategies: resorting to content and providing PR platforms</p> <p>Revenue sharing model: marketer pays specific percentage of revenue to Website owners</p> <p>Companies can advertise. The transition between content and advertising is usually fluid</p> <p>Further income through paid fantasy league games and betting portal</p> <p>Yahoo acts as an all-in-one Website to keep the user on the site for as long as possible and to maximise the number of clicks</p>
Success indicators	<p>Growth rates in the advertising and consumer market for sports media content</p> <p>Strong external digital content deliveries</p>
<i>YouTube</i>	
Procurement market	<p>YouTube is increasingly active in the sports law market</p> <p>For example, in October 2015, the media rights were purchased to broadcast the Copa del Rey (Spanish football)</p>
Media production	<p>Sports content is usually used as video and not produced by YouTube</p>
Media exploitation	<p>HD live streaming of the Copa del Rey in Belgium, Great Britain, Ireland, Italy, North Macedonia, the Netherlands, Portugal, Russia, CHE, Ukraine, Hungary, Asia and Latin America</p>
Media distribution	<p>Media distribution focuses heavily on video content</p>
Media strategies	<p>Most sports are offered by subscription or pay-per-view and are controlled by geoblockers</p>
Success indicators	<p>Growth rates in the advertising and consumer market for sports media content</p> <p>Strong external digital content deliveries</p>
<i>DAZN</i>	
Procurement market	<p>DAZN operates with a very broad sports rights portfolio</p> <p>Live rights: Bundesliga, Champions League and Europa League in Japan</p> <p>Three big European football leagues (Italy, Spain, England) in Germany, Switzerland and Austria as well as the French top league in Germany and Austria</p> <p>Secondary use: highlights in 1st and 2nd Bundesliga, from 40 min after the end of the game</p>

(continued)

**Table 1** (continued)

<i>Facebook</i>	
	FIFA World Cup qualifiers (for example, Sweden vs. Italy) NFL American football (50 regular season games, 10 playoff games, the Super Bowl, NFL Red Zone, selective pre-season games and the 24/7 NFL Network Channel) Basketball (over 250 games of the NBA) Darts (Professional Darts Corporation events, including the World Cup and Premier League) Ice Hockey (NHL, Champions Hockey League), Deutsche Kreditbank (DKB) Handball Bundesliga Tennis (Association of Tennis Professionals, Women's Tennis Association, Davis Cup, Fed Cup) as well as minority sports such as rugby
Media production	It mainly takes over third-party productions and places them on its own digital platform
Media exploitation	Mainly live content is shown without further elaborate editorial editing
Media distribution	The content is shown on the Internet as a kind of "Netflix of Sports" with an on-demand character Content is streamed via Internet streaming on stationary and mobile devices such as desktop and laptop computers, streaming boxes, smart TVs, smartphones, tablets or game consoles
Media strategies	It shows a network strategy with top leagues and media houses Axel-Springer receives finished highlight clips European top leagues go to Sport 1 and Laola TV and partly to Pro Sieben DAZN has its own platforms such as Goal and Spox as well as highlights clips that are produced in addition to the live game and that can be distributed very quickly online (primarily Facebook)
Success indicators	Strong dependence on top partners and third-party productions as well as a rapid global growth rate on the paid public market

### **Type 7: The Innovative Sponsors**

Sports and non-media companies have recently positioned themselves in the field of the sports media complex and have delivered new strategic approaches. Two innovative approaches are briefly described here because of their significance.

Deutsche Kreditbank AG (DKB) bought the rights for the live broadcasting of Handball World Cup 2017 games and offered them on a live stream on its homepage. The company had already been active for several years as the namesake of the national handball league and as a partner of the German Handball Federation and some top clubs. Given that the rights holder beIN Sports could not agree with either public or private TV stations in Germany, the DKB stepped in at short notice. At that time, the DKB had been working for years with the French sports marketing company Lagardère Sports, whose sports and entertainment division belongs to

<sup>1</sup>At this point, I would like to thank the cohort 2017/18 of the master's programme in Sports, Media and Communication Research of the German Sport University Cologne for their research services regarding their new media player.

Qatar Sports Investment. At the time, this state fund was also involved in Al Jazeera Sports on the Qatari pay TV offshoot beIn Sports. For technical support, YouTube was acquired as a partner and played the international signal of the host broadcaster on its own platform.

New marketing strategies can also be observed in the field of football in Belgium. The Belgian second division team A.F.C. Tubize has been owned by the South Korean businessman and owner of the sports marketing company Sportizen Shim Chan-Koo since 2014. The aim is to give young Asian players the opportunity to gain a foothold in European professional football. Such a philosophy is marketed by the club's leadership with the help of a specially produced TV series in South Korea, accompanying the development of Asian talents in the Belgian second division. Millions of South Koreans watch the TV series and its Facebook page alone has over 10,000 followers (Smith 2017).

If one looks at the various types of media that are now moving in the sports media complex, it is striking that many new media players are not just of a journalistic character, but sometimes only function as a digital distribution platform. As a result, they are essentially dependent on third-party production in order to be able to implement their business models. This is especially evident in the concept of DAZN.

It is also noticeable that the new media sector is now very strongly represented in the sports media complex and operates in competition with classic large media companies. This additionally necessitates a closer look at central new media actors and their actions in the areas of: (a) the procurement market; (b) media production; (c) media exploitation; (d) media distribution; (e) media strategies; and (f) success indicators (see Table 1).

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## 4 Implications

From the point of view of sports media management, it is interesting to take a closer look at some of the implications of the fast-growing and increasingly complex sports media complex:

1. The sports media complex is no longer predominantly determined by journalism but has become much more complex and multi-layered in its logics of action and strategic orientations due to its many journalistic and/or entrepreneurial interests.
2. All media actors seem to crucially depend on fixed-cost degressions or strong attention and thus must try to reach as many recipients or consumers. Due to limited attention potential, this creates a ruinous competitive situation, especially if one assumes only national space.
3. For the best possible fixed-cost degression, a particularly strong international (perhaps even global) orientation seems increasingly important.

4. In line with this basic prerequisite for media economy, national markets are increasingly influenced by international media companies.
5. The basic considerations presented here will increasingly lose relevance to nationally limited actors, and international players will become more and more important. Public law institutions such as ARD/ZDF seem to have decreasing potential.
6. In recent years, investigative national journalists have found an increasingly hopeless situation. Due to numerous economic links, they were extremely difficult to enforce. In its own editorial offices, there were strong rejections, as product political media strategists overreached.
7. Interesting counter-movements have been observed for some years now. There are international, investigative research and publication networks, which nevertheless still represent a small counter-movement. Noteworthy are the revelatory stories and international collaborations of Sportleaks.com and Football Leaks. In turn, these platforms are closely linked to the research network European Investigative Collaboration (EIC), founded in 2016. From a strategic point of view, it seems important to be aware of the necessity and possibilities of digital content production and marketing in association marketing and management.

This article has shown how the sports media complex is spreading more widely and provides for new business areas, production and selection procedures in addition to classic journalism. This has a very important implication: For all actors, especially in an international context, more and more communicative possibilities are emerging. The biggest danger seems to be an excessive focus on classic journalism while neglecting the multiple new communication options available.

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### Comprehension Questions

1. What is meant by the dissolution of boundaries and demarcation between PR and journalism?
2. What types of media actors have developed and what are their characteristics?
3. What recommendations would you give to the manager of a team sports organisation to increase media attention for their club?

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# Media and Personality Law

Michael Schmittmann

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## Abstract

From the perspective of athletes, sports event organisers and the media, the chapter shows the rights and obligations as well as their limits in connection with media and personal rights. The practical significance of these rights and the claims and consequences arising from their violation are presented.

## Learning Outcomes of the Chapter

1. You will know the defensive claims athletes have available in the event of a violation of media and personal rights.
2. You will be aware of the rights and restrictions of sports event organisers with regard to media and personal rights.
3. You will be aware of the restrictions on advertising and sponsorship in the context of reporting on sporting events.

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## 1 Introduction

The sporting performance of an athlete does not constitute a work of literature, science or art within the meaning of §§ 1, 2 of the German Copyright Act (UrhG).<sup>1</sup> Rather, it concerns physical skills, strength and perfection, but not the expression of thoughts or feelings. At best, works of dance art are conceivable as a subset of pantomime (§ 6 No. 3 UrhG).

Therefore, the athlete, the sports event and its media exploitation are not without rights and protection. Rather, various areas of law, such as regulatory and civil media and advertising law, antitrust law and copyright and gambling law interlock like a cogwheel and thus produce a multi-layered finding.

This chapter outlines the main relevant legal sources and their practical relevance. We first examine the perspective of the athlete, then that of the organiser and finally that of the media, in order to finally provide some useful hints on the drafting of contracts.

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## 2 Athletes and Media

### 2.1 Basic Rights of Communication According to Article 5 of the German Basic Constitution Law (GG)

Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. (Article 5, Paragraph 1, sentence 1, GG).

The fundamental rights of freedom of expression and information are among the “noblest human rights of all” (Federal Constitutional Court (BVerfG) 69, 315, 344) and are reflected in Article 11 of the European Charter of Fundamental Rights and Article 10 of the European Convention on Human Rights (ECHR) at the level of the European Union (EU) and the Council of Europe. Athletes also enjoy these freedoms in their dealings with the media, although in terms of employment contracts, restrictions can be effectively agreed with the duty to refrain from criticising the employer. The prohibition of any political statements as laid down in Rule 51 (3) of the Olympic Charter is likely gone too far. Although fundamental rights are primarily directed against the state, they also have a radiating effect in private law (the so-called third-party effect, cf. BVerfGE 42, 163, 168), hence they must also be observed in relation to federations and associations.

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<sup>1</sup>The following information is mainly based on the legal foundations in Germany, to which reference is also made in the text. Due to the different country-specific legal regulations, deviations may occur in the countries concerned.

## 2.2 The General Right of Personality According to Article 2, 1 GG

The fundamental rights of Article 1(1) (human dignity) and Article 2(1) (general freedom of action) grant the so-called general right of personality.

### 1. Core Area

The media must respect the private affairs of the athlete. The latter are thus protected from falsifying or misrepresenting their person in public (BVerfGE 99, 185, 194). In addition to protection against defamation and the protection of names, it is above all the private sphere, including protected spatial areas beyond the public sphere, which must be guaranteed (BVerfGE 101, 361, 382 f.; 120, 274, 311). The same applies to the privacy of the intimate and sexual sphere (BVerfGE 96, 56, 61; 116, 243, 264; 121, 175, 190). These rights are under attack as the amount of information and images available and disseminated at any time on the Internet, on social media and via mobile phones increases. The more the athlete reveals of themselves and the closer the media coverage reference to the competition, the less the right of personality weighs. For example, an athlete can take action against the publication of a marriage intention (BVerfGE 97, 125—van Almsick), not against their depiction on crutches after surgery following an accident.

### 2. Right to Informational Self-Determination

This right developed by the BVerfG in the Population Census Judgement grants the individual the right “to decide for themselves on the disclosure and use of personal data” (BVerfGE 130, 1, 35; 118, 168, 184). This also applies beyond intimacy and privacy. Even the mention of age, left-handedness or right-handedness as well as tax or telecommunications data are included (cf. also III. 3 below).

### 3. Right to one’s own Picture, § 22 German Art Copyright Act (KUG)

The right to one’s own picture has reached a special stage of development in §§ 22, 23 KUG. Indeed, according to § 22 KUG, portraits of athletes may only be distributed or published with the consent of the person depicted. Consent can be detailed in association and federation statutes, employment contracts or other licence agreements. Consent can also be declared conclusively (implicitly) by mere participation in a sporting event. In the case of minors, legal guardians and the minors themselves are required.

### 4. Portrait from the Field of Contemporary History within the Meaning of § 23 Paragraph 1, No. 1 KUG

However, no rule is without exception. According to § 33 Paragraph 1, No. 1 KUG, no consent of the person concerned is required if the distribution/display of “portraits from the field of contemporary history” takes place. This refers to all phenomena in the life of the present, which are noticed by the public, which attract their attention and which are the subject of participation or



curiosity of wide circles (RGZ 125, 80 f.; LG Hamburg, AfP 1999, 523). Publicly accessible sports events are thus covered, even if they only have local significance (BGH NJW 2013, 2890 ff.—ice princess Alexandra).

For pictures and reports outside the sporting event itself, a new case law has been introduced in Germany in which “the personal rights interests of the persons concerned and the public interest in information are weighed in each individual case” (according to the guidelines of the European Court of Human Rights (ECtHR), ZUM 2004, 651, 662—Caroline of Monaco I).

This was not entirely voluntary on the part of the BVerfG and the Federal Court of Justice (BGH), as there was a common distinction in Germany between *absolute individuals of contemporary history* and *relative individuals of contemporary history*. In the case of the former (stars, celebrities), the freedom of the media always had priority and the protection of personality was not granted, while in the case of the latter, the depiction of a portrait without consent was only permitted if the person was brought into the public eye because of a certain event (cf. in more detail Dreier and Schulze 2015).

Following a series of trials at the ECtHR by Princess Caroline of Monaco, this overly far-reaching restriction was declared the private interests of well-known personalities in legal practice and case law in Germany as a violation of the ECHR for inadmissible (ECHR, loc. cit.). Photographs of Caroline for representative obligations as daughter or sister of the prince are possible without consent, but not when she goes on holiday as a private person or shops with her children. This also applies to athletes who enjoy media awareness.

The children, partners and companions of “celebrities” can also rely on their protection of personality (cf. OLG Hamburg ZUM RD 2011, 589). Here as well, weighing can occur at their expense. The use of athletes’ portraits for advertising or other commercial purposes is not covered by § 23 KUG, because the public interest in information worthy of protection is lacking (BGHZ 20, 345, 351; BGH GRUR 1979, 732, 733—Football goal).

### 2.3 Defence Claims/Claims for Damages

If a publication is not authorised by the athlete and infringing their rights is threatened, the athlete must act quickly and efficiently in accordance with the rules of press law and civil procedural law. This is done by issuing warnings with short deadlines and/or by applying to the civil courts for interim injunctions. According to the principle of *flying jurisdiction*, athletes can do this anywhere the medium is receivable or available by purchase. If things have already gone wrong, *repair attempts* or a claim for damages can still help.

### 1. Injunctive Relief from §§ 1004, 823 ff. of the Civil Code (BGB)

The legal basis for a right to an injunction with regard to the threatened publication is the law of tort in the BGB. Injunctive relief (apart from portrait protection) exists primarily against incorrect factual claims (cf. OLG Karlsruhe, NJW 1994, 1963—Steffi Graf). The claim is based on the obligation not to publish or to no longer publish certain statements.

### 2. Correction, Revocation and Counterstatement Rights under State Press Law

It may also follow from the standards mentioned that the media company is obligated to correct, revoke or supplement its false factual claims.

A well-known but not very efficient right due to formalistic legal remedy is the so-called right of counterstatement according to the respective state press laws of the 16 German federal states or according to § 56 of the Interstate Broadcasting Agreement (RStV). This should enable the individual concerned to correct the factual claims made by publishing their own statement of facts in the same place and with a corresponding degree of publicity (BVerfG NJW 1998, 1381—Counterstatement by Caroline of Monaco on the title page) through the media that disseminated the factual claim, thereby correcting the image created of them (BGHZ 66, 182, 192). According to the “all-or-nothing” principle, it must be formulated free of defects, immediately invoked and signed by hand.

Not many people succeed in doing all these.

### 3. Data Protection Law

The Federal Data Protection Act (BDSG) and, as of 25 May 2018, the European Data Protection Basic Regulation (DSGVO) provide for a ban, subject to permission, on the collection, processing and use of personal data. In principle, this also applies to media, but the so-called media privilege (§ 41 BDSG) means that the media is exempted from a large number of data protection obligations, in particular for journalistic and editorial purposes. According to the old law, the standard of § 22 KUG applies more or less; how it develops after May 2018 still has to be assessed (Lauber-Rönsberg and Hartlaub 2017).

## 2.4 Indemnity

Claims for indemnity against the perpetrators of media reports may arise from § 823 ff. BGB. Material damage must be proven, e.g. in the event of the termination of an athlete or coach after incorrect reporting and subsequent loss of earnings. The mere violation of the right of personality only causes material damage if it is also *commercialised*. This can be proven, for example, by printing a photograph for advertising purposes in the amount of a licence fee customary in the market, i.e. in the amount of what the athlete would have received in the case of voluntary photocopying on the basis of an advertising contract. “Fictitious licence fees” can also be used to determine the amount of damage caused by a fictitious interview.

Intangible damages can only be considered in the case of considerable personality violations; here German law is very petty in the allocation of compensation compared to the USA, where so-called punitive damages must be paid in maximum sums in order to guarantee satisfaction and deterrent prevention.

## 2.5 The European Dimension of Sports

### 1. Free movement of individuals and cross-border freedom to provide services according to Articles 45 and 56 of the Treaty on the Functioning of the European Union (TFEU)

Sports and the media always have a European law dimension when it comes to cross-border issues within the EU. European law takes precedence over national law; the interpretive privilege lies with the European Court of Justice (ECJ), which all national courts must follow. The so-called Bosman judgement of the ECJ of 1995 (ECR 1995, I-4921) remains unforgettable, where the application of the free movement of workers provision of Article 45 TFEU to the Belgian football transfer system for licensed football players led to the collapse of the entire European transfer system. In the Bosman ruling, the ECJ affirmed the cross-border dimension of Belgian transfer law because it constituted a *de facto* obstacle to the economic activity of the economic operator (licensed player) in another member state. This meant that so-called foreigner clauses existing with protective provisions in favour of national players in association statutes could no longer be held.

However, the media has also been subject to Union Law since the ECJ held that cross-border broadcasting is subject to the principle of freedom to provide services and thus to the guarantee of its non-discriminatory provision between the member states of the EU (as has been the case law since Case 155/73 Sacchi [1974] ECR 409). Since then, programme law has been harmonised in the Union (cf. E. I. below) and restrictions on cross-border broadcasting by national regulations in the receiving state are not permitted if a broadcast from another EU member state (broadcasting state) complies with the harmonised law.

### 2. The Significance of the ECHR

The Council of Europe, an international organisation of European states independent of the EU, drew up the ECHR in the 1950s. It is now in force in 47 signatory states, *de facto* taking precedence over German law, among other countries' national laws. Although it has only simple legal rank in Germany, the Basic Law actually takes precedence in the hierarchy of norms as constitutional law. However, in order to comply with the obligations under international law arising from the ECHR, German case law follows the judgements of the ECtHR in Strasbourg (see above in the cases of Caroline of Monaco). The meaning of the ECHR is not to be underestimated.

### 3 Sports Organisers and the Media

#### 3.1 Rights of the Sports Organiser

The organiser is of paramount importance in the media exploitation of sporting events, which includes clubs, federations, leagues and sports facility operators. German law does not assign to sports organisers, nor to athletes, an absolute right comparable to copyright, i.e. effective and exclusive to everyone (BGH NJW 1990, 2815, 2817—Sports broadcastings). In contrast to the Anglo-American legal system and other countries around the world, here the organiser must use legal “crutches” to ensure the economic evaluation of their investments and the popularity of the sports presented.

##### 1. Sanctity of the home, §§ 1004, 903 resp. 862, 859 BGB

The organiser of the sports competition shall have the right of ownership or possession (in the case of the rights of use, such as leasehold) of the venue. This right is seen as the starting point for the fact that it is also entitled to use the service provided by it in the media (BGH NJW 2006, 377—radio rights; BGH GRUR 2011 436—Hartplatzhelden.de). Every non-professional recognises that the construction of the householder’s right (which, e.g., a front garden owner may invoke against a neighbouring dog for defecating) is not suitable as a basis for legally secure investments and income from TV broadcasting rights costing billions. The legal consequences arising from domestic law also do not suffice to take action against images of sporting events via Internet platforms by paying spectators after the event or even against recordings from outside the sports facility. Instead, they currently only apply to unauthorised live recordings.

##### 2. Defence claims under competition law pursuant to §§ 3, 4 of the Act against Unfair Competition (UWG)

In the Hartplatzhelden.de ruling, the BGH (GRUR 2011, 436 ff.) stated that making the scenes from amateur football matches recorded by private individuals in Stuttgart accessible via an Internet platform does not constitute an “imitation” in the sense of the prohibition standards of §§ 3, 4 No. 3 lit. b) UWG. The marketing of the pictures is therefore not unfair. Furthermore, a protection corresponding to the economic facts does not result from the tort law of § 823 BGB, sub fall of the so-called intervention into established and practised business enterprises (Frey 2017, p. 633, 641).

##### 3. Trademark, Name and Image Rights

However, promoters are regaining legal ground where absolute rights are granted, such as in the areas of trademarks, names and images. The use of such rights without consent, e.g. for computer games, interferes with the asset allocation content of the respective right and, in the event of a lack of licensing, leads to an obligation to refrain from use and, if necessary, to compensate for commercialised

damage (cf. e.g. OLG Frankfurt, judgement of 22nd November 2015—11 U 6/05, not published; LG Frankfurt, SpuRt 2009, 207 ff.).

## 3.2 Antitrust Regulations

The German Act against Restraints of Competition (GWB)—also known as anti-trust law (see also ► Chap. 3)—and the TFEU in its competition law provisions provide guidelines for the marketing of the organiser’s media rights. The first question remains to whom obligations under antitrust law are addressed. The answer helps elaborate the criteria of what makes involved entities an “organiser of sports events”.

Already in the 1990s, the BGH and the Regional Court in Frankfurt made this dependent on who equips the product with marketable quality and thereby considered the leagues, not just the clubs (Federal Court of Justice JR 1998, 327, 330—Euro Cup home matches; Regional Court in Frankfurt, SpuRt 1998, 195 f.). The EU Commission even wanted to include the away club (COMP/37.398 Abl. EU No. L 291/25 of 8th November 2003, § 1188—UEFA Champions League). According to the prevailing opinion, the “sanctity of the home” has also had its day in this question as a civil law determinant of the concept of the organiser (Frey 2017, p. 644). A legal regulation, as has long existed abroad, would also be necessary in Germany.

### 1. Market Foreclosure Effects Pursuant to Article 101 TFEU

The key question is who grants the TV broadcasting rights to whom and under what conditions. The prohibition of cartels in Article 101 TFEU declares incompatible with the internal market: “all 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”.

Federation statutes and their central marketing models of media rights are subject to this substantive provision, the infringement of which can be prosecuted by complaint to the EU Commission, to the national cartel authorities (in Germany the Federal Cartel Office, BKartA), or to the ordinary national courts. If an infringement is identified as having been committed, the invalidity of the provision of the statutes complained of is established from the outset. Legal transactions based on this are null and void in their entirety.

In applying the prohibition of cartels, the first priority is to define the product and concerned local market. For example, in its resolution on the marketing of Bundesliga picture rights for 2017/18, the BKartA defined a market for national media rights to football competitions held throughout the year (Bundesliga and 2. Bundesliga) (BKartA, 11th April 2016—B6—32/15, Paragraph 86).

Once the market has been identified, the Federal Cartel Office or the EU Commission examine whether the respective regulation forecloses the relevant

market, while also taking into account whether potential competitors' access is restricted to upstream or downstream markets (Frey 2017). Exclusive agreements of a particularly long duration or the exclusion of certain distribution channels run the risk of becoming so-called vertical restraints of competition. A small distribution of rights packages and the requirement for several bidders to act together are likely to prevent one bidder from achieving a unique position (Football Association, FA Premier League 2006). The sublicensing requirement has also enabled the European Broadcasting Union (EBU), the coalition of public service broadcasters in Europe, to avoid strengthening EBU members as competitors and has thus escaped the prohibition of cartels (cf. Commission, COMP/M. 2876—Newscorp/Telepiu, Rdnr. 246 ff. and EBU Sublicensing Rules).

## 2. Central Marketing

The question of whether media rights should be marketed decentrally by the clubs or centrally by the leagues was controversial under antitrust law and handled quite differently in national practice. While Spain has a decentralised marketing of football rights (relevant especially for Real Madrid), in Germany the bundled marketing by federations—also against the initial resistance of the BKartA—has prevailed (constructive: OLG Düsseldorf, 16th September 2009—VI—Kart. 1/09 (V)). Both the European Commission—most recently in the FA Premier League case (decision of 22nd March 2006, COMP/38.173—FA Premier League)—and the BKartA (cf. BKartA 12th January 2012—B6—114/10—Central marketing of media rights) are releasing marketing models and are working with so-called commitments by the federations. The no-single-buyer rule is intended to ensure that different packages are allocated to several competitors, above all separately according to the distribution channels satellite, terrestrial, cable/IPTV and OTT (over-the-top) (Frey and Burkamp 2017). Eurosport's participation in platform-neutral live TV in addition to Sky was in line with the ban on sole acquisition in the award round from 2017, supported by sublicensing obligations.

### **3.3 Performance Protection Right of the Manufacturer of the Basic Signal According to § 94 UrhG (German Copyright Act)**

More and more sports federations are following the example of Formula 1, producing the TV basic signal of a sports event themselves and “selling” only its exploitation by broadcasting companies. The latter no longer have access to the venues and can no longer record their own signals. This is clever in terms of copyright, because the filming of sporting events can constitute “work” in the sense of the Copyright Act, depending on the camera work, editing and scene selection. In this way, filming is protected by copyright, but in any case it is a moving image for which the legislator has provided a so-called ancillary copyright of the producer in § 94 UrhG. The above-mentioned shortcoming of the lack of copyright protection

of a sports event itself is thus remedied if it is presented in the form of the organiser's own production of the live pictures (Dreier and Schulze 2015 cit., § 94 UrhG (Copyright Act) No. 31).

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## 4 The Granting of Sports Broadcasting Rights

### 4.1 Audiovisual Rights

The secret to the success of rights marketing, not only under antitrust law but also in order to avoid disputes, lies in a clear definition. The German Football League failed to achieve this in 2006 when it licensed *Internet rights* to the Deutsche Telekom AG (DTAG) and *television rights* to Arena, then a subsidiary of the cable network operator Unitymedia. In the age of convergence, television could well be Internet and Internet could well be television. The parties argued about the possible uses under the contracts and, after a long dispute, agreed that DTAG would only use the images within its own high-speed network, not via cable and satellite, although the Internet could and should also be used in this context (Frey 2017). It is unknown whether some of the payments were suspended.

#### 1. Recycling Forms and Scope

The first step is to define the temporal component of the form of exploitation, i.e. live, near-live or time-shifted. A distinction may be made whether the exploitation takes place in pay TV or free TV. The scope can be differentiated according to full length or only in excerpts, according to individual games during a season or sports at the Olympic Games.

#### 2. Copyright Exploitation Rights

Two forms are available here: the right to broadcast (§ 20 UrhG) and the right to make available to the public (§ 19a UrhG) for retrievals independent of time and place.

#### 3. Transmission Structures and Techniques

According to the BKartA, a distinction must be made between cable, satellite, terrestrial, IP-TV, web-TV and mobile TV, these all being separate markets (decision of 11th April 2016—B 6—32/15, Paragraph 15). This way of thinking contains the weakness of a blurred definition and is quickly technically outdated and above all contradicts the intention of the EU to treat the media and copyright law classification in a technology-neutral way (cf. Commission proposal for a regulation on copyright in online transmissions of 14th September 2016, COM (2016) 594 final.).

## 4.2 “Radio Rights”

Only since the BGH decision on radio rights (NJW 2006, 377, 380) has it been clear that a sports broadcaster can also demand an access fee from live audio reporters on the basis of the sanctity of the home. This type of exploitation, however, plays a rather subordinate economic role.

## 4.3 Reproduction in Electronic Games

In contrast, the “right to gamble” is becoming more and more important. It is understood to mean the right to reproduce an event by adopting its essential features in electronic games for game consoles, computers and mobile telephones. The personal rights of the athletes are also relevant here; bundling in federation instruments such as statutes is possible and already customary.

## 4.4 Live Ticker

In addition to the use of radio, the tracking of the competition in texts differs from TV. Anyone who feeds a live ticker from the event location will probably have to buy a permit, as is true of radio rights from the organiser. However, whoever edits their text service from a live TV picture will probably have a free ride according to current legal findings (not yet decided, see Strauß 2007).

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# 5 Sports and Advertising in the Media

Let us thus turn to the legal framework that must be observed when the media product is broadcast to the public, i.e. disseminated.

## 5.1 Broadcasting: A Fundamental Right in Chains

In accordance with Article 5(2), sentence 1 of the GG, the fundamental right of freedom of broadcasting favours the public and private broadcasters of media, provided that they fulfil the concept of broadcasting. This is understood to mean the organisation and the distribution of performances of all kinds for an indeterminate group of persons with the aid of electronic oscillations (Jarass and Pieroth 2014). This also includes sports reporting and advertising. However, the fundamental right is only shaped by simple broadcasting law (so-called broadcasting regulations) and, according to Article 5(2) of the Basic Law, it is also subject to the limits of general laws, the protection of minors and the protection of honour (Jarass and Pieroth 2014, Paragraph 55). One can therefore confidently speak of a “fundamental right in chains”.



The framework is essentially determined by two sources: The State Treaty on Broadcasting and Telemedia (RStV), an instrument of state law with which the 16 German federal states have harmonised their state broadcasting law, and the European Directive of 10 March 2010 on Audiovisual Media Services (AVMD Directive, OJ 2010 v. 15th April 2010 L 95/1 ff.), based on the Television without Frontiers Directive of 1989. The Directive itself is transposed into the RStV by Germany as a member state and is thus part of national law. A successor directive is expected in the near future, so some aspects will change. However, the status quo 2018 still forms the basis here.

The broadcasting company must first be licensed by the state media authorities or, in the case of public service broadcasters, be commissioned by law. Freedom of programme allows sports reporting to be integrated into the programme.

“Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed”.

## 5.2 Reporting Rights of Broadcasters

### 1. Short Reporting/Major Events Pursuant to § 5 of the RStV

In the implementation of the AVMD Directive, Article 5 of the RStV provides a free short reporting right in favour of all European TV broadcasters on events and occurrences that are publicly accessible and of general interest.

The practical significance of this right of access to the venue for the recording of short news sequences is low, as the effort involved is too great. In addition, the BVerfG also grants a “cheap fee” for this purpose (NJW 1998, 1627, 1630) and the ECJ at least reimburses the technical costs (ZUM 2013, 202). In practice, therefore, broadcasters prefer to purchase the images themselves from their exclusive competitors for short reporting or leave it at that rather than sending a camera team to the stadium at great expense.

### 2. Events of Considerable Social Importance, § 4 RStV

According to § 4 RStV, the transmission of major events must ensure that an exclusive pay TV provider allow free TV providers to provide live coverage on reasonable terms. The background to the regulation was, in addition to that of the AVMD Directive, an attempt to make the FIFA World Cup rights 2002 exclusive for pay TV providers to people around the world. Major events in Germany are exclusively sports events (Par. 2), whereas the New Year’s Concert of the Vienna Philharmonic in Austria and royal occasions in England has similar levels of significance.

### 5.3 Broadcasting Regulations for Advertising and Sponsorship, §§ 7, 8 RStV

The core of the advertising regulation is the principle of the separation of advertising from programming and the prohibition of misleading advertising (section 7 (1) RStV). In order to safeguard the independence of the broadcasting company, the advertiser must refrain from exerting any influence (Paragraph 2). Paragraph 3 stipulates special separation and labelling requirements. In addition to the RStV, the joint advertising guidelines of the regulatory authorities for private broadcasters contain detailed regulations. In addition to the RStV, public service broadcasting follows the ARD and ZDF guidelines (all printed at Hartstein et al. 2018, § 7, appendices 1–4).

Paragraph 7 prohibits surreptitious advertising and product placement in certain types of games (reference to § 2 Paragraph 2, nos. 8 and 11), but with relaxation for sports programmes.

#### 1. Forms of Sponsorship

Sponsors are indispensable for sports financing. A distinction is made between event sponsorships, broadcast sponsorships and graphic sponsorships. § 8 RStV does not cover the first form, whereas the standard for programme sponsorship requires a reference at the beginning and at the end (Paragraph 1). The green sailing ship from Beck's beer advertising, although also known from the advertising blocks, is a permissible moving image hint. Result and time lists under sponsorship are permissible as long as there is a functional connection between the graphic service and its insertion in the competition (§ 12 Paragraph 2 Joint guidelines).

#### 2. Split-Screen Advertising

Previously controversial, but today clarified in section 7(4) of the RStV, the division of the screen into programme and advertising is clearly separated optically and labelled as advertising for as long as is relevant. This also applies to so-called ticker advertising (crawl) (Hartstein et al. 2018, § 7, Paragraph 32b).

#### 3. Virtual Advertising

In virtual advertising, real images (e.g. of the stadium, the boards and the pitch) are transmitted differently by computer-controlled manipulation. The insertion of such advertising allows for target group and country-specific placements. According to § 7 Paragraph 6, it is only permitted if it is referred to and if an existing advertisement on the site is replaced. If the playing field at the venue is free of advertising, then no virtual advertising may be displayed on the ground in the TV picture.

#### **5.4 Advertising Restrictions on Tobacco, Alcohol and Pharmaceuticals, Miscellaneous**

Sponsorship by the tobacco industry is prohibited (§ 8 Paragraph 4 RStV), whereas sponsorship by the pharmaceutical industry is restricted. Bans on alcohol advertising to children and adolescents result from the Interstate Agreement on the Protection of Minors in the Media (section 6 (5) JMStV). Tobacco advertising bans also result from the media-unspecific Tobacco Production Act.

It should be mentioned that advertising time restrictions are regulated in different temporal dimensions by public (§ 16 RStV) and private broadcasters (§ 45). There are no sport-specific details to acknowledge in this respect.

#### **5.5 Sports Betting Law Under the State Agreement on Gambling (GlüStV)**

Similar to broadcasting law, the federal states also regulate gambling law uniformly in the form of a state agreement (currently: State Agreement on Gambling—GlüStV; GlüStV 2012 of 15th December 2011). While lotteries are permitted in broadcasting (§ 8 a RStV), the GlüStV is characterised by particularly strict regulations that are intended to maintain the monopolies of the state lottery companies. However, the GlüStV has repeatedly been declared invalid in its various variants by the BVerfG, EuGH and BKartA as well as by the civil and criminal courts for being unconstitutional and contrary to EU law (cf. instruktiv Frey 2017). The background to this dynamic is the obvious preference given to state providers by the legislature, which incidentally takes incoherent action against competitors' online offers, but neglects the advance prevention of addiction in stationary sales and gaming offers by companies and state providers established in Germany.

Relevant to sports, existing advertising bans on jerseys, boards and so forth are currently not enforced, leading to a “Wild West” situation. A plan was in place to grant 20 licences for the organisation of sports betting (§ 10 a GlüStV), but the selection made by the Hessian Ministry of the Interior in autumn 2014 was subsequently annulled by the courts (see VG Wiesbaden, WiVerw. 2016, 223, and VGH Kassel, NZBau 2016, 111). The states' reactions will become apparent in the coming months.

For the time being, sports betting offers from abroad may be offered and used online and offline in Germany, provided that they are organised and distributed in the country of origin (this is the result of the freedom to provide services under the TFEU). However, even though the courts apply the “how” of sports betting under the GlüStV, the “whether” is unclear. § 21 (combination and individual bets on the outcome of sporting events or sections) is decisive. Whoever broadcasts sports may not offer any bets (Paragraph 4). Apart from the final result, live betting during an event is prohibited. Bets on individual events during a sporting event are also excluded.

## 6 Marketing Structures and Media Marketing Agreements

### 6.1 Intermediaries and Agencies

It is conventional for rights holders to use the professional assistance of agencies to market audiovisual rights. The advantages of optimal market knowledge are offset by the disadvantages of the agency surcharge (Frey 2017). In addition to a pure mediation model and a commission model (with the agency's own interim acquisition of rights), buy-out models are also conceivable. Here, the agency *buys* all rights for a fixed fee and can then get itself sublicensed like the owner. However, some federations have already returned to self-marketing and have built up their own expertise.

### 6.2 Checklist Exploitation Contract

Finally, the essential provisions of an exploitation contract should be mentioned in brief, without which a contract would be incomplete and which may serve as a memorandum of understanding in practice.

#### 1. Performance Object

Main service obligation of the licensor: provision of access to the venue.

Licensee's main performance obligation: payment, terms of payment.

#### 2. Definition of Rights

Definition of the rights to be licensed according to form, scope, transmission infrastructure and technology, other technical parameters, evaluation cascades.

#### 3. Exclusiveness

Concerning individual categories of rights, free TV or pay TV, temporal.

#### 4. Territoriality

Local distribution: caution due to internal market concept of TFEU, case-by-case examination. In the case of *Karen Murphy* (EuGH 4th October 2011, verb. Rs. C-403/08 and C-429/08, MMR 2011, 817), the ECJ has granted priority to the freedom to provide services over the territorial restriction of exclusive rights for pay TV; the instrument of "geoblocking" is also likely to retain even less validity in the sports sector than in copyright for film exploitation.

#### 5. Broadcasting Guarantee/Transmission modalities

The recycler must broadcast specifications for sponsoring and virtual advertising and so forth may be made within the framework of the RStV.

#### 6. Contract Period/Termination

A short time limit is less objectionable under antitrust law than a long time limit. Indeed, a special right of termination in the case of misconduct of sports organisers and athletes (e.g. doping) by broadcasters makes sense.

## 7. Rights Guarantee/Exemption Agreement

The licensor must guarantee his/her ability to perform the main contractual obligation, i.e. to be entitled to conclude the contract. He/she is liable for the claims of third parties against the licensees to this extent in the internal relationship (*inter partes*).

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# Correction to: Funding of Professional Team Sports Organisations

Kim Lachmann and Johannes Struckmeier

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In the original version of the book, the following belated correction incorporated: In chapter “Funding of Professional Team Sports Organisations”, the author K. Lachmann’s affiliation has been updated from “Deloite” to “Deloitte”. The correction chapter and the book have been updated with the change.

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