

Draft

Presidency Discussion Paper

Good Governance in Sport

Good Governance in sport has become an increasingly important issue for the sports movement and public authorities, both at national and international level, and is crucial for the further development of the sport sector. At the European level governance is defined as the framework and culture within which a sports body sets policy, delivers its strategic objectives, engages with stakeholders, monitors performance, evaluates and manages risk and reports to its constituents on its activities and progress including the delivery of effective, sustainable and proportionate sports policy and regulation. As was clear from the policy debate held at the meeting of the Education, Youth, Culture and Sport Council on 29 November 2011, good governance is considered by many as a precondition for the autonomy and self-regulation of sport organizations.

The European Union Work Plan for Sport for 2011-2014 identifies integrity of sport, in particular the promotion of Good Governance, as a priority theme for European Union level cooperation in sport, and establishes an expert group to deal with the subject. The work of this group has led to the preparation of a set of Good Governance principles which are reproduced in the annex of this note. These principles were discussed with the sports movement in the context of the EU Sport Forum in Vilnius, Lithuania on 30 September and 1 October 2013.

Given the importance of the matter, the Presidency has decided to allow European Union Sports Ministers to give their views on good governance in sport in the light of the work of the expert group, in the context of a policy debate at the EYCS Council on 26 November 2013.

During the debate Ministers will be invited to respond to the following questions:

- Are Member States content with the speed of progress within the sport movement in improving governance and implementing Good Governance principles?
 - What can governments do in this respect?
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PRINCIPLES FOR THE GOOD GOVERNANCE OF SPORT IN THE EU

DEFINITION OF GOOD GOVERNANCE

For the purposes of its recommendations, the Expert Group 'Good Governance' adopts the following definition of good governance in sport:

The framework and culture within which a sports body sets policy, delivers its strategic objectives, engages with stakeholders, monitors performance, evaluates and manages risk and reports to its constituents on its activities and progress including the delivery of effective, sustainable and proportionate sports policy and regulation.

This definition of good governance can be satisfied by the appropriate application of the principles set out below.

With reference to the following list of principles, it is important to underline that good governance essentially comprises a set of standards and operational practices leading to the effective regulation of sport. Therefore, whilst good governance must be distinguished from specific sports regulations, the application of good governance principles should facilitate the development and implementation of more effective sports regulation. Not all sporting regulations are part of good governance; however, the way sport is regulated is deeply affected by the governance of each discipline at both national and international level.

The sports movement and sports bodies are responsible for and should continue to build on the steps already taken to promote and support good governance at all levels. Higher-level sporting bodies (e.g. European and international federations) in particular should, where appropriate, support their (national or regional) member organisations in establishing and maintaining appropriate standards of good governance for the sports body concerned.

The following standards of good governance are applicable to all organisations throughout the spectrum of sport. However, higher standards are expected from professional elite sport, on grounds of its economic and social role. Sport is the source of large societal expectations, ranging from the fight against racism and violence, sustainable development, fight against discrimination and protection of children and young people. Sport organisations are better equipped to fulfil their social role when they abide by the standards of good governance that are included in the following list which should also contribute to tackling these wider societal challenges when they arise in a sporting context.

ROLE OF THE EU

Whilst sport is by definition a global phenomenon and good governance principles are not intrinsically linked to any particular territory, the European Union, for its particular role and mission, can provide guidance for the good governance of sport at national, European and international level.

For instance, the EU is an organisation based on values and on the rule of law which it has the task to promote. This includes the following:

- Decision making systems based on separation of powers between the legislative, executive and judiciary bodies;

- Public procurement based on the principles of impartiality, transparency and equal opportunities;
- Recognition of social dialogue and of the role of social partners in the fields of labour law and employment.

In addition, the EU is uniquely positioned to facilitate the exchanges of good practices, transfers of knowledge and the networking of stakeholders active at national and international level. In this respect, the EU institutions have a role to play in ensuring that good governance principles adopted at EU level are recognised and implemented in all the Member States. The EU can also facilitate the promotion of principles of good governance in sport beyond its borders with both sporting bodies and public authorities of third countries.

1. CLARITY OF PURPOSE/OBJECTIVES

a) Role, function and objectives

Absolute clarity on the proper role, function, responsibilities and objectives of sports bodies is a critical first step to good governance. It is not possible to establish the appropriate governance arrangements for a sport body if there is no clarity of purpose.

- The precise role, function and objectives of each sports body should be clearly set out in its foundation and constitutional documents and incorporated into the vision, strategic plan and communication protocols adopted by the sports body concerned.

b) Goals and principles

The particular objectives of sports bodies will vary, and may be influenced by international federation requirements as well as local, regional or national factors. Generic objectives are likely to include expanding participation, promoting development initiatives and improving sporting infrastructure.

- All sports bodies should, in any event, formally commit to the fight against doping and discrimination, the maintenance of sporting integrity and the adoption of ethical practices.

c) Vision and strategic plan

- Sports bodies should, wherever practicable, look to adopt and publish a vision and strategic plan aligned to their long term objectives and reflecting evolving short term priorities.

This approach aids planning and may assist in removing short term and reactive sports governance practice. It will also promote accountability and transparency.

d) Consensual strategy

- Sports bodies should seek to develop their strategic plans and priorities (including proposed regulatory adjustments) in a consensual way and ensure that such plans are endorsed by the relevant decision making bodies within the organisation. Once approved such strategic plans should be circulated to all members, stakeholders and participants and preferably made public.

e) Monitoring and oversight

- Sports bodies should seek to implement an appropriate level of monitoring and oversight to verify progress of the strategic plan against measurable key performance benchmarks to ensure value for money is being achieved from their investments and that the plan is working effectively.

2. CODE OF ETHICS

a) Development of a code of ethics

- Sports bodies should develop a code of ethics binding on all members, stakeholder, participants, staff and volunteers. It should embrace a range of ethical practices and inform the conduct and culture of the organisation as a whole by instilling values of integrity, equity and transparency and an appreciation of acceptable conduct.

b) Basic rules on the content and enforcement of the code

- The terms should be agreed across the sports body so that it reflects the views of all levels of the organisation. The code should incorporate the general ethical values of the sports body, but also address specific areas of risk for example by making express provision for the disclosure and registration of gifts and/or acceptance of hospitality and setting suitable financial limits. The Code should incorporate an effective implementation and enforcement protocol and be subject to regular review.

3. STAKEHOLDER IDENTIFICATION AND ROLES

a) Involvement of stakeholders

Each sports body will have different stakeholders reflecting its particular range of participants and interested parties. Such stakeholders may include players/athletes, managers, owners, coaches, leagues, clubs, supporters, agents, match officials. Sports bodies should also as appropriate liaise with commercial partners and equipment manufacturers.

- Each sports body should evaluate how best to utilise the input and expertise of its stakeholders in its activities, consultation processes and decision making procedures. Stakeholders may be given different levels of involvement depending on the sports body concerned.

b) Minimum standards for stakeholders' representation

- Sports bodies should establish minimum representation and democratic standards that stakeholders should meet in order to participate in consultation and/or decision making.

c) Commitment from stakeholders

- A commitment from relevant stakeholders should also be sought confirming that they support the overall objectives and vision of the sports body concerned and will make decisions and generally act in the best interests of the sport, without prejudice to the definition of labour relations between social partners through social dialogue.

d) Formalisation of role of stakeholders

Clarity on the role of members, stakeholders and participants in consultation processes and decision making is critical. The formalisation of roles promotes accountability and should assist in minimising the prospects of any party exceeding their powers, avoiding consultation on key decisions, duplicating resources and/or generating tensions associated with unbalanced policy or decision making.

- The respective roles, responsibilities and objectives of sports bodies and their stakeholders should be collectively acknowledged and codified within its statutes.

In this way, a sporting body can have greater confidence in producing fair, credible, affordable, and proportionate sports policy and regulation which is more likely to be accepted and complied with across the sport concerned.

4. DEMOCRACY AND MINIMUM STANDARDS

a) Clear organisational framework

- Sports bodies should establish a clear organisational framework for membership and decision making via appropriately representative, inclusive and competently populated bodies implementing fit for purpose, democratic procedures and acting in pursuance of the objectives, strategic plan and vision of the sports body concerned.

b) Identification of decision making organs

- The organisational framework should identify all decision making organs of the sports body and their interrelationship. The statutes of sports bodies should clearly set out the various responsibilities and decision making authority of the different organs including, where applicable, congress (council or general assembly), the executive body or board, technical or standing committees and disciplinary/judicial bodies.

c) Identification of procedural rules

- For all decision making organs, sports bodies should clearly identify procedural rules and the rights of members/stakeholders to participate in consultations, debates and/or decision making processes.

d) Role and rights of members and stakeholders

- Ordinarily, the constitution of a sports body should include details of the entitlement of relevant members, stakeholders and participants to vote at meetings, majorities required for particular decisions, regularity of meetings, the right to receive notice of meetings, order of business under consideration, and the opportunity to make representations. Once established, there should be strict compliance with the constitution and procedural rules.

e) Minimum democratic principles for appointment to decision making bodies

Within Europe there are many different types of democratic system in operation and it is not practicable to be prescriptive over the adoption of any particular democratic process. In key decision making areas all relevant personnel should be involved as determined by the sports body.

However, whilst an appropriate degree of flexibility is needed to allow sports bodies to apply a suitable and proportionate democratic structure, based on its particular needs and resources, whatever system of democracy is adopted or appointment practices implemented there are some minimum good practice principles that should be respected by all sports bodies when identifying their processes and appointing personnel to their sovereign decision making bodies. These include the following:

- 1) A commitment and requirement to hold free, fair and regular elections;
- 2) Ensuring that broad stakeholder consultation and/or representation exists;
- 3) A requirement to hold regular meetings to fulfil allocated responsibilities and functions;
- 4) Clarity over the role and powers of the President or Chairperson and Board Members;
- 5) The enforcement of a code of conduct or by-law which includes an express obligation for decision makers to:
 - i. Adopt the highest ethical practices;
 - ii. Act independently in the interests of the sports body as a whole;
 - iii. Not make decisions in which they have a business or personal interest;
 - iv. To declare conflicts of interest.

- 6) Ensuring that the appropriate level of inclusivity, diversity and sports representation is achieved and maintained across decision making bodies;
- 7) Adopting fixed terms of office to allow regular refreshing of decision making bodies.
- 8) Utilising a credible and suitably transparent basis and process for voting.
- 9) Where appropriate making public the decisions reached

The above checks and balances and procedural safeguards may need to be re-enforced and/or supplemented for major decisions of a sporting, financial or commercial nature. For instance the awarding of major event hosting rights and changes to fundamental governance structures may be regarded as so significant in terms of the wider consequences and direction of a sport that a higher level of accountability and transparency is justified.

5. DELEGATION AND COMMITTEES

Clarity of responsibilities for the different organs that make decisions within a sports body is critical to promoting the efficiency of policy development and effective governance.

a) Delegation of tasks to members and stakeholders

- Appropriate delegations of tasks to members and stakeholders should be permitted subject to a proportionate level of monitoring and supervision by the sports body and provided always that such members or stakeholders possess the relevant expertise to fulfil the delegated responsibility and, if applicable, that they possess a mandate for the stakeholder group they represent.

b) Appointment of technical and/or expert committees

- Sporting bodies should allow for the appointment of technical or expert committees (whether standing or ad hoc) and/or working groups for specialist work and advice on relevant issues. The terms of reference, reporting lines and status of committee decisions or recommendations should be clearly identified and communicated to all members, stakeholders and participants.

c) Composition of committees

- Appropriate selection policies should be in place for committees or working groups to ensure that suitable experts are appointed and there is a balance of views, gender equality and diversity.

6. MANAGEMENT

In most sports bodies, the board constitutes the executive organ providing a supervisory and monitoring role over the day to day activities and management of the organisation. The board therefore represents an essential component of good governance in sport. The successful implementation and acceptance of good governance in a sporting body is influenced by whether and how well the board and the management embrace good governance. The board and management should seek to promote a culture of good governance throughout the entire organisation, for example by conducting appropriate training and qualification measures, among other things.

Important requirements for a board to be effective are as follows:

a) Requirements for the board

- 1) The governing documents (including committee structures) must be fit for purpose, available at all times to members and other stakeholders.
- 2) The chairperson should possess strong leadership skills.

- 3) Decision making powers should be clearly identified along with delegated responsibilities and authorisations granted by the board.
- 4) Board members should act independently in the best interests of the sports body as a whole and in accordance with their legal and fiduciary duties.
- 5) Where proportionate and justified, an appropriate number of The board should be independent and appointed via open procedures.
- 6) The board must promote equality and diversity and actively work to attract a diverse range of members, including, in particular but not limited to, an appropriate gender balance at board level as part of an overall inclusivity programme.
- 7) Board members must have the necessary attributes, skills and competence required to carry out the role effectively with skills being regularly assessed and performance evaluated.
- 8) Appropriate term limits for board members should be in place as part of succession planning processes.
- 9) A board must not be too large or small and must hold an appropriate number of meetings to reflect the needs of the sports body.
- 10) The board should have an appropriate policy on conflict of interest declarations and management.
- 11) There should be a clear policy and process for the removal of board members for misconduct.

It is important that the relationship between the board and management of a sports body is well structured including regular engagement, oversight policies and the setting of key performance indicators for managers. This is an integral part of the overall strategic operation of the sports body with management and staff implementing policies determined by the board or sovereign body of the organisation. In this regard the CEO or General Secretary has a critical role to play in promoting staff and management performance that is in accordance with board expectations and can deliver the strategic plan of the sports body and its longer term objectives.

7. JUDICIAL/DISCIPLINARY PROCEDURES

a) Need for an appropriate judicial/disciplinary framework

- Sports bodies should put in place a suitable judicial/disciplinary framework that meets their particular needs (and any requirements of its international sporting family). The framework should be proportionate to the size, membership and type of cases on which it is required to adjudicate.

b) Need for a separate judicial/disciplinary code

- It is preferable for a separate judicial/disciplinary code to be developed incorporating clear disciplinary rules, sanctions and procedures. Members, stakeholders and all participants should agree to be bound by the code and the sanctions imposed.

Members, stakeholders and participants should, where practicable, be educated on key rules and obligations under the code so they are aware of what is expected of them and the consequences of non-compliance. Interactive web-based initiatives can be used for this purpose.

c) Impartiality of adjudicators

- Adjudicators should be impartial.
- Sports bodies should monitor legal requirements in this regard as well as any minimum standards imposed by their international, national or regional bodies.

To mitigate risk of challenge appropriate codes of practice can be developed for judicial personnel providing guidance on when it may not be appropriate for them to sit in judgement.

d) Skills and expertise of adjudicators

- Adjudicators must possess the necessary skills and expertise to evaluate evidence, assess credibility of witnesses and make reasoned decisions.

To aid transparency it is preferable if adjudications are supported by written reasons and where possible made public. Training in disciplinary procedures, the application of rules and production of written reasons should where possible be undertaken by adjudicators.

e) Fair trial

- Basic procedures to ensure the right of the defence should be established in accordance with general principles of law.

f) Appropriate appeal framework

- An appropriate appeal framework should be put in place by sports bodies.

This supports overall due process and provides a further layer of risk management as erroneous decisions can be rectified.

Where appropriate, a sports body may also consider appointing an ombudsperson.

Where legal challenges to the decisions of governing bodies in national state courts are likely a sports body may also consider, subject to applicable national and EU laws, adopting a suitable binding internal arbitration mechanism. Such alternative dispute mechanisms should deliver swift, cost effective, expert sports specific resolutions.

8. INCLUSIVITY AND YOUTH ENGAGEMENT

a) Inclusivity of sports bodies

- Sports bodies should be inclusive and represent the diverse nature of society and their sports whether by reference to gender, race, sexuality, disability, age or otherwise. By selecting from the widest possible talent pool for all positions and at all levels the most skilled, experienced performers can be identified and engaged by sports bodies.

b) Adoption and implementation of an inclusivity strategy

- Having appropriate regard to applicable laws, sports bodies should develop and implement robustly an inclusivity strategy incorporating recruitment, selection and appointment procedures. This strategy should be monitored and steps taken to identify how any issues of under representation can be suitably addressed at all levels of the organisation.

c) Engagement with youth groups

- The long term viability of sport and sports bodies depends on future generations of participants being attracted to sport as competitors, match officials, volunteers and

administrators. In developing sports policy and promotional initiatives it is good practice for sports bodies to engage and consult with representative youth groups as a form of future proofing for the sport to minimise generational disconnects. For example, establishing Youth Boards respecting gender balance and diversity may assist in promoting engagement and succession planning. In this context, particular attention should be paid to the issue of protecting the physical and moral integrity of young sportspeople, notably against sexual harassment.

Sports bodies must also recognise that to attract new generations of administrators, technology and IT will play an important part. Increasingly mobile and remote video conferencing will need to be utilised for governance ,disciplinary and sports administrative activity and those sports bodies which embrace such technology are more likely to encourage ongoing participation in administrative and related matters by future generations. Technology will also be crucial in attracting and retaining volunteers.

9. STATUTES, RULES AND REGULATIONS

a) Availability of statutes, rules and regulations

- The statutes, rules and regulations of sports bodies should be available as public documents, be clearly drafted and identify the process for amendment.

b) Consultation for amending statutes, rules and regulations

- When amendments to statutes, rules, regulations or key policies are being contemplated an appropriate and proportionate consultation process should be put in place with relevant members and stakeholders within a suitable timeframe. Wherever possible the rationale for any adjustment should be available along with supporting evidence. It should also be made clear which particular objective and part of the strategic plan is being advanced by the proposal so that fully informed decisions can be taken.

In addition to representing best practice it is notable that the process adopted by sports bodies and the consultation undertaken in such scenarios is assuming increasing importance in legal challenges to sports rules/regulations both nationally and at European level. Accordingly, an inclusive, evidence based consultative approach to regulatory change also represents effective risk management.

To promote transparency and accountability the web sites of a sports bodies is an ideal place to set out statutes, rules, regulations, vision, strategic plan and other policy positions as well as information concerning proposed adjustments. The web-site can also be used as a means for consultation with members, stakeholders and where appropriate other groups.

10. ACCOUNTABILITY AND TRANSPARENCY

a) Establishment of accountability standards / Checks and balances

- Sports bodies should establish clear levels of oversight and accountability for their various decision making bodies to ensure that powers are exercised appropriately and consistently with the objectives and functions of the relevant body. Proportionate checks and balances should be developed by the sports body concerned.

b) Performance indicators

- Key performance indicators and evaluation procedures commensurate with the size of the sports body should be set at all levels of the organisation to promote efficiency and good management.

c) Internal control measures

- Sports bodies should adopt proportionate, fit for purpose internal controls, reporting requirements, data protection policies and financial management strategies to at least the level required by applicable laws. Such policies should include clear financial authorisation limits and formalisation of agreements in legally enforceable form.

d) Financial information

- Financial information (produced in accordance with applicable laws and subject to appropriate auditing standards) should be made available to members, stakeholders and the public wherever possible. All such financial information should be clearly presented and preferably form part of an annual report of the activities of the sports body.

e) Distribution of funds

- If the sports body makes financial distributions to members and/or stakeholders such distributions should be documented and made subject to appropriate terms and conditions and on-going reporting requirements to the distributing body on the ultimate deployment of such funds.

f) Risk management

- Sports bodies should adopt effective and proportionate risk management arrangements designed to identify, assess, control, manage and mitigate risk across all of their activities. This should include evaluating the optimum legal form for the sports body and/or its members to operate under and putting in place appropriate insurance arrangements.

g) Confidentiality

- Sports bodies should develop appropriate confidentiality protocols and codes which are capable of rigorous enforcement. They should also have clear policies on who may speak with the media and in what circumstances. Where possible sports bodies should develop rapid, crisis response protocols to be deployed in specific scenarios.

h) External and internal communication

- In addition to developing transparent external communication policies, effective and transparent internal communications for staff, members, volunteers and stakeholders should be developed so they are aware of important developments, events, meetings, policy changes and opportunities.

i) Professional development of staff and volunteers

- Continuing professional development for all personnel and volunteers within sports bodies should be promoted wherever possible along with clear guidelines for staff conduct.

IMPLEMENTATION OF THE PRINCIPLES

As a result of the significant changes that have occurred in the sports sector, the existing contractual and regulatory powers of sports bodies are no longer sufficient to address all challenges related to the governance of sport. Increasingly, it will be the case that sporting bodies, governments and pan European institutions will have to co-operate and develop effective working relationships recognising their respective competencies.

Where required, sporting bodies and governments should look to consult and co-ordinate activities in a positive and constructive way and seek to develop a culture of trust and good governance based on education, identification of best practice and building complementary relationships whilst appropriately respecting the autonomy of sport. For instance, in the areas such as match fixing and doping, sporting bodies should continue to develop and apply relevant rules, codes of conduct and educational programmes for its participants and take other steps to minimise the prospect of misconduct by adopting sound financial management principles whilst governments should ensure that relevant laws are fit for purpose and the resources exist that enable law enforcement bodies to take appropriate action when required.

Consistent with this culture it is important that good governance principles are embraced voluntarily by sports bodies in the wider interest of promoting effective sporting regulation and development. Enforcement by national governments or European institutions via contract and/or funding conditions might have the potential to compromise the autonomy of sports bodies and create tensions in the wider international sporting framework.

Autonomous self-regulation by the sport movement remains the best option and is consistent with the structure of the international sport movement. All parties should have an interest in ensuring effective governance structures are in place as this is more likely to result in better sports policy and minimise disputes or challenges both from within a sport or outside.

The role of the EU should consist in encouraging compliance with the agreed principles and rules.

It is proposed that for the implementation and monitoring at EU level of the principles laid down in this document, funding available under the Sport Chapter of the 'Erasmus +' programme be made available to projects covering different EU countries. Organisations taking part in those projects should carry out activities to inform and educate relevant stakeholders about the existence and nature of the agreed principles.

In addition, monitoring and benchmarking activities could be undertaken to ensure that the principles receive the necessary attention and are correctly implemented at all levels by sporting organisations across the EU.

It also proposed to assess how the implementation of the principles progress over a period of years in order to give the time to relevant parties to inform their members and adapt structures and behaviours according to the standards included in this document. This assessment may also consider the way in which the governance practices of sports bodies at different levels interlink.

After this period of adaptation, if the application of good governance principles is considered as being not satisfactory, it may be appropriate to evaluate other alternatives such as the so-called 'comply or explain' principle or whether other measures such as applying the conditionality of EU and/or national funding subject to respect for the agreed good governance principles may need to be contemplated.
