

Esports between the Sports and Entertainment Industry: In Search of Division Lines¹

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Abstract: The growing popularity and expansion of esports have prompted an academic and legal debate, where its classification as either a sport or a form of entertainment remains unclear. This article explores the dual nature of esports, providing an

¹ This paper is the outcome of the implementation of a specific research project, funded by the internal grant scheme of the Palacký University Olomouc (IGA), no. IGA_PF_2023_008 “Lex Sportiva Digitalis—Legal Opportunities and Challenges of the Esports.”

overview of the legal and regulatory challenges it presents. It opens the discussion by addressing the space occupied by esports, distinguishing it from the traditional understanding of analogue sports while introducing the role of various stakeholders. The article then delves into the legal discussion taking place at the EU level, exploring also how the national legal reality of some Member States approach esports. The study highlights the urgency of finding a balanced approach that recognises esports as a hybrid entity, necessitating a regulatory model that draws from both sports law and entertainment law. Furthermore, the article complements the analysis by addressing emerging normative systems within esports, including autonomous governance structures and the potential need for state intervention to address issues such as doping, match-fixing, and the protection of minors. By analysing the existing legal frameworks in non-EU countries, particularly in Asia and North America, the authors suggest that esports needs to be approached as a new type of sport—a perspective that should be reflected in future EU regulations.

Keywords: *comparative law, digital law, esports, governance, EU law, regulation*

1. Introduction

Esports is booming throughout the world, helped by the proliferation of fast broadband connections. At a summit on October 28, 2017, in Lausanne, Switzerland, the International Olympic Committee (IOC) decided that “[c]ompetitive ‘esports’ could be considered a sporting activity, as the players involved prepare and train with an intensity which may be comparable to athletes in traditional sports” (Townley & Townley, 2018). However, representatives of esports themselves are not really certain whether they wish their activity to be considered a sport and to be involved in the sporting structures such as the IOC or national sporting movements (Kane & Spradley, 2017). This hesitant position is thereby particularly evident with regard to those esports actors that are specific for this sector in comparison to traditional sport—such as esports software (game) developers, hardware producers, or broadcasters of the matches—since streaming is in fact almost an inevitable part of all esports tournaments (Nixon, Geey & Madill, 2016),

generating the largest revenue in the sector (aside from the intellectual property (IP) rights in videogames and income from hardware sales).

Given the relative novelty of the issue, the relationship between esports and traditional sports, as well as the terminology used worldwide with respect to esports, has not been yet unified (Naraine, 2019). While the notion of esports (previously also spelled as “e-Sports”) seems to gain prevalence, it is still considered a broad concept encompassing various types of competitions for videogame players, only a part of which are games that imitate traditional sports in digital environments (“digital sports”) (Brenda, 2017). That is also the reason why one may have doubts as to whether the industry should be rather called the eGames industry. The varying types of games themselves (action games, action-adventure games, adventure games, role-playing games, simulation games, strategy games, music games, party games, sports games, etc.) thereby currently pose the greatest obstacle to the attempt to have esports industry recognised as part of the sporting family under the umbrella of International Olympic Committee or of the SportAccord (GAISF) organisation (Holden, Edelman & Baker, 2020). The main reason is namely the fact that many of the games are rather violent in nature. The industry itself prefers non-violent games in its events and league competitions (Tang *et al.*, 2023). Still, international sports federations (such as FIFA) attempt to take over a part of the esports sector by officially recognising and organising their own events and leagues. What sets esports competitions apart from other gaming activities is primarily because they involve organising professional tournaments where players and teams compete against each other, rather than playing for leisure and amusement. This is probably the main feature of esports that could be considered a definitional criterium that distinguishes esports from gaming.²

Despite the mentioned particularities and soft conflicts, it is true that esports are profiled as an independent social phenomenon of a global nature which has a huge economic potential and almost unlimited territorial application (Dominteanu *et al.*, 2023). In addition, the relationship between esports activities and classical sports is evolving robustly from a virtual supplement through an equivalent alternative to a possible substitute, as could be observed in connection with the coronavirus pandemic since 2020 (Heinrich, 2020).

Nevertheless, the professional esports industry revolves around somewhat different stakeholders than is the case with traditional sports (Watanabe *et*

² See similar conclusions of Bozkurt-Yüksel, 2021.

al., 2023; Hiltcher & Scholz, 2017). These include publishers, developers, private event organisers (such as the Intel Extreme Masters), streamers/broadcasters, in addition to traditional stakeholders such as players, teams, and leagues (de Carvalho, 2015). The interests of these new actors, many of whom hold private intellectual property rights to the games and the matches, certainly shape the esports industry and need to be taken into account as a basic specificity of the esports sector. Here, division lines need to be identified or drawn between the sporting elements of traditional sporting actors in esports, on the one hand, and entertainment business elements in the form of the rights and interests of specific stakeholders in the gaming industry, on the other. This twofold nature of esports influences both the concept and notion of esports and its position in the world of traditional sports, while at the same time it strongly affects the normative system of governance and regulation in esports, being at the same time an important legal issue (Heidenreich *et al.*, 2022). That is why we specifically focus on the legal aspects when defining esports and introducing its governance and regulatory system.

2. Legal challenges in the esports sector

Digital technologies and legal frameworks have a complex relationship, especially considering the fast pace of the former and the slow movement of the latter (see, in this regard, Kesa & Kerikmäe, 2020). The issue of esports is a multidimensional field. As such, it is beginning to stimulate the interest of scholars in many areas of social science research (Jordan-Vallverdú *et al.*, 2024). However, it should be pointed out that it is only in its early stages. According to a research report published in the *Games and Culture* journal in April 2019 (Reitman *et al.*, 2020), which examined the state of the art in esports research from 2002 to 2018, only 150 relevant scholarly papers addressed the issue of esports directly. This report confirms that esports research has many layers. According to the presented results, current research can be divided into eight scientific areas: business, sports science, cognitive science, informatics, law, media studies, and sociology. Only 8% of the total number of studied articles addressed specifically legal issues in esports. The few studies deal only with specific legal issues (e.g., copyright issues, business and marketing issues, see Finch, 2019) or general comparisons to traditional sports (Cerqueira *et al.*, 2020). Despite the low level of research undertaken so far (although the situation has been steadily

improving since 2020), it clearly shows the main features that represent the greatest challenges to esports in legal terms—the specificities in comparison to traditional sports and the entertainment law aspects concerning some of the esports stakeholders. The interest in these issues naturally grows along the further proliferation of esports industry.³ This represents a huge opportunity for businesses, but also a lot of challenges to legal regulation and expanding regulatory attempts to complement the autonomous governance systems in esports which are currently also only in their beginnings (for a comprehensive overview, see Jacobson, 2021). Still, based on the experience of traditional sports, commercialisation necessarily leads to the need for a legal grasp of the phenomenon sooner rather than later. The most important tasks standing before the legal scholars thereby fall into three basic areas of interest:

1. *Defining esports as a legal concept.*⁴ The question here is whether and to what extent it is a sporting activity, part of the entertainment industry, or even a form of performing art realised in a virtual environment. In this regard, the discussion is framed by two contradictory viewpoints. While the Asian or generally non-European countries and slowly even the international sports movement (including the IOC) are inclined to consider esports as a member of the sporting family (Naraine, 2021; Tang *et al.*, 2023), in contrast, according to some authors, such as Parry (2018), esports is not a sport because it is inadequately human; it lacks direct physicality; it fails to employ decisive whole-body control and whole-body skills, and cannot contribute to human development as a whole. Parry also claims that esports patterns of creation, production, ownership, and promotion place serious constraints on the emergence of stable and persisting institutions characteristic of sports governance. Parry (2018) suggests that competitive computer games, despite, what “resemblances” may be claimed are just that—games. This article seeks a more nuanced approach, claiming that there are both sporting features as well as private entertainment law and intellectual property law features involved in the esports sector, which allows to draw a line

³ According to the European Parliament Resolution of 10 November 2022 on esports and video games (2022/2027(INI)), “the video game ecosystem has become a leading cultural and creative industry (CCI) all over the world, with an estimated European market size of EUR 23.3 billion in 2021, including more than 4,900 game studios and 200 game publishers.” See also the Explanatory Statement in Report on Esports and Video Games (2022/2027(INI)).

⁴ The construction of new legal notions is a phenomenon indivisible from the fast-paced digital revolution currently undergoing in modern societies. See, in this regard, Vardanyan, Stehlík and Kocharyan, 2022.

between the two sectors, while maintaining the best of both worlds in the definition and subsequent governance and regulation of esports.

2. The second issue that puzzles a legal scholar, specifically a sports law scholar, might be the problem of *conceptual model of approach* that should be applied to esportsing phenomenon in its sporting aspects (Hong, 2023; Marelić & Vukušić, 2019)—that is, whether it is the American or European model of sports that best describes the autonomous system of governance of esports in sporting terms (keeping the entertainment and IP law aspects outside this time). Based on the analysis of the actual playground of esports, we suggest that it is rather the North American model of sports that could serve as a governance model for esports.
3. Still, it is important to realise that besides the autonomous governance, with growing commercialisation of esports, *heteronomous* (state-made) *esports legal regulation* necessarily comes into play, where the key issue is the ratio between self-regulation and rules determined by public authorities (Martinelli, 2019). The most relevant issues in esports that pose challenges to its regulation are currently the following: gender equality, technological neutrality/equality, equality for disabled individuals, protection of minors, cyberbullying and harassment in esports, doping (Adderall substance abuse), match-fixing, and cheating. Autonomous harmonisation of rules at the global level and at the leagues level should be the goal of the esports actors to guarantee the safe and equal environment in esports. So far, this is being done by the International Esports Federation (IESF), the Global Esports Federation (ELS Play, 2023), and specifically the Esports Integrity Coalition (ESIC) committee of the Electronic Sports League (ESL). All these autonomous rules must nevertheless be analysed also in legal terms to prevent any possible conflict with the generally binding national and international regulations—which are slowly shifting their attention also towards esports, trying to introduce specific legal regulations for esports both within the EU as well as outside Europe.

3. Esports and sports: The main differences

Generally, the sporting nature of esports is ambiguous, being allegedly closer to the entertainment industry than to the sports industry (Siuda *et al.*, 2023). However, we argue that this rather means a dual nature of the sector, with actors and areas of governance and regulation belonging to both sectors. This does not preclude treating them as part of both the sports and entertainment industries simultaneously. In this context, it is crucial to identify the significant differences, compared to traditional sports.

The sporting nature of esports depends not that much on the content of the games, their IP regulation and development (which is a part of the entertainment law sector), but rather on the activity the players are performing in order to play the esports games—they need to train for the games, have their coaches, travel to international events, and win huge prize money while being watched via streaming by millions of fans worldwide.⁵ This is the actual sporting aspect which resembles traditional sport.

Interestingly, nevertheless, in comparison to traditional sports there also arises an argument of esports players (besides to being players) being actually also performing artists, especially since their achievements streamed publicly are often themselves works of art—protected by the intellectual property rights, if they achieve a certain level of originality and creativity—for example, some dance moves or specific names and mottos (Ramos *et al.*, 2013). The player/gamer can thereby be considered an artist performing the art (game) and, in some cases, that art might receive legal protection (Smuts, 2005). From this point of view, the distinguishing between esports and sports features might paradoxically be beneficial for esports, since playing traditional sports is not considered protected under intellectual property law—as confirmed by the Court of Justice of the EU in the *Murphy* case (joined cases C-403/08 and C-429/08 *Football Association Premier League v. QC Leisure and Karen Murphy v. Media Protection Services Limited* [2008]): “sports events such as football matches cannot be considered intellectual creations or works and so cannot be protected by copyright” (Townley & Townley, 2018). In contrast, in case of esports, the event and the actual performance of a player may be protected by IP rights, which, again, represents a feature falling rather under the scope of entertainment law aspects of esports, not directly affecting the sporting features of esports. That is the aspect of esports where one can also find the actors of esports

⁵ In this regard, see the largest overall prize pools in esports (Esports Earnings, n.d.)

such as publishers and developers of the games who are currently the most important stakeholders in esports, being the actual rights holders to games and most of the events and leagues. Their relationship with the gamers is mostly regulated by the terms and conditions of the game (Scholz, 2019). Hence, even from the perspective of IP law, it is the publishers who have the greatest say in the industry, as if the rules of football were developed and legally protected by a private entity, entitled to change the rules at any time, while granting consent under specific terms and conditions to the players, clubs/teams and leagues. Another difference between traditional sports governance and esports governance is also the fact that there may be many competing games produced by a number of publishers, while there is and will be only one FIFA in the world of football (see, in this regard, Wilson, 2020).

Still, this specific feature does not represent any serious challenge to the fact that esports in its sporting aspects is indeed based on features that are very much similar to traditional sports—players and teams competing against each other. This holds true despite the fact that esports players are in a substantially different position than players of traditional sports, sportspersons. Esports namely lacks any sportspeople in the traditional sense, the actual competition taking place both between the digital avatars within the game and the gamers themselves living in an analogue world, possibly not even being present in the same continent (Tang, 2018). Still, the absence or presence of players in the sporting venue (which in fact is rather the case in esports industry, in order to be able to control the equal rights and chances of players, making sure they have the equal equipment and environment to compete against each other) do not represent an obstacle in considering the esports an actual competitive undertaking very much similar to traditional sports. What is thereby being challenged the most, is rather the absence of the physical element of movement in esports and possibly the lack of its social function in comparison to traditional sport (Papaloukas, 2018). However, out of the manifold types of videogames, esports is focused mostly on games where the physical activity and movement of players is often involved (via augmented reality or virtual reality features), in addition to the necessary hand-eye coordination to be trained by players since their childhood. It is thus rather the issue with selecting videogames that involve physical movement in order to do away with this potential obstacle to considering a large part of esports industry as being equal to traditional sport. Denying the social aspect of esports is out of the question too nowadays, since, apparently, the autonomous esports governance is paying attention

also to these aspects of esports industry, as can be witnessed in introducing both internal rules as well as matching the internal rules with the state-made law trying to get hold of esports (Nyström *et al.*, 2022).

Thus, although there are certainly specific features of esports that rather belong to the scope of private law sector, IP law sector, or specific entertainment law sector, there is a vast area of highly sporting features in esports (if narrowed down to some specific types of videogames). Still, even the narrower, undoubtful sporting aspect of esports, leaves space for numerous legal issues that are to be settled yet: for example, if the player is a minor (a usual problem in esports), can the player participate in the events abroad, can the player conclude contracts and collect the prize money? What is the legal basis of the relationship between a player, the esports team, the organisers, and the developers and publishers? What is the legal status of the teams' leagues, events, streaming companies and platforms, producers and sellers of merchandise, gamers, and their user-generated content? What are the legal relationships and contractual terms and conditions to be applicable to these relations? A handbook of esports could be built upon these numerous legal issues. In addition, one could also ask whether models adopted from traditional sports governance should and could be introduced in esports as well, including specific regulations on transfer of players, transfer fees and training compensations, as well as measures to fight against negative phenomena widely present in traditional sports, such as doping, match-fixing, etc. None of these questions is yet satisfactorily researched and analysed in the context of national laws of Europe, nor in the context of EU law and international law. Suffice to say that the European Esports Federation was only established in early 2020. The esports scene is thus just about to set foot in Europe and its legal environment, which offers numerous interactions between the autonomous rules and the legal system of the EU and its Member States, promising a rich array of legal issues to be researched and solved, while being part of the process of establishing the autonomous structures of esports in Europe. The first step, however, is to address the actual concept of esports at the crossroads of sport and entertainment, which so far has apparently remained a puzzle for the EU.

3.1. Esports as non-sport in the EU

While the esports industry is mostly concentrated in Asian countries, where the term esports itself was first coined,⁶ the European Union should not be too hesitant about this sector of entertainment industry, or risk losing the huge potential of this creative industry.⁷ The actual evidence of the need to address esports in the EU itself can already be seen in two separate European Parliament resolutions, that specifically focus on this business sector—the European Parliament Resolution of 10 November 2022 on esports and video games (2022/2027(INI)) and the European Parliament Resolution of 18 January 2023 on consumer protection in online video games: a European single market approach (2022/2014(INI)).⁸

The two resolutions well reflect the debatable status of esports, which needs to be settled first, in order to address the remaining legal issues of esports and to potentially even introduce regulatory measures that best match the needs of the industry. The position of esports is somewhat paradoxical—on the one hand, the legislator can resort to sports regulation, while on the other hand, esports might be considered as different from sports and closer to culture and media, or the creative and entertainment industry. The former Resolution 2022/2027(INI) thereby points explicitly to Articles 6 and 165 of the Treaty on the Functioning of the European Union, which specify the competences and actions of the Union in the area of sports, which could mean that the EU considers esports to be a part of the sporting sector. However, at the same time the Resolution speaks of the cultural and creative industry, realising that

the video game industry brings together a wide range of skills and know-how for writing, design, artistic creation, digital development, publishing, distribution and localisation; whereas a video game is first and foremost a work of intellectual property (IP) on which the value

⁶ In South Korea as the brainchild of Park Jie-Won, a former Minister of Culture, Sports and Tourism (Sumpiputtanadacha, 2023).

⁷ “Half of all Europeans consider themselves to be video game players, of whom almost half are women, and the average age of a video game player in Europe is 31.3 years; whereas over 70% of young people aged 6–24 in the EU play video games, although the majority of players are over 18.” (Sumpiputtanadacha, 2023).

⁸ The latter Resolution builds on previous documents addressing video games—the Council Resolution of 1 March 2002 on the protection of consumers, in particular young people, resolution of 12 March 2009 on the protection of consumers, in particular minors, in respect of the use of video games, resolution of 20 November 2012 on protecting children in the digital world. See also Explanatory Statement in Report on esports and video games (2022/2027 (INI)) and Cerulli-Harms *et al.*, 2020..

chain is based; whereas the issue of IP ownership and control has an impact on the complexity of the legal structure of the ecosystem, and creates new legal challenges for streamers, developers, publishers and third-party content holders. (Resolution 2022/2027(INI))

Thus, apparently, the twofold nature of esports is very well recognised by the European Parliament as well, comprising both sporting elements as well as those associated with the entertainment and creative industry.

The resolution clearly focuses first and foremost on the economic aspect of the industry, which calls for regulation to introduce protective measures on the market:

whereas the monetisation of video games through micro-transactions, in game currencies and loot boxes containing random in-game content are common in some video games; whereas loot boxes can sometimes also be paid for with real money; whereas aggressive design could potentially have harmful financial consequences for players, especially minors or those who are most vulnerable, through unwanted or uncontrolled spending; whereas in some cases, loot boxes can be considered a ‘pay-to-win’ mechanism; [...] a uniform EU approach is needed in order to ensure robust consumer protection [...]. (Resolution 2022/2027(INI))

Besides important social and legal aspects, the Resolution also calls for regulations as follows: “cross-border enforcement of the IP rights of game developers and artists must be adequately protected” and “fair remuneration must be ensured,” as well as it is necessary “to safeguard esports from problems with match-fixing, illegal gambling and performance enhancement, including doping (Xiao, 2020, pp. 439–440).” This, in fact, means again returning to the sporting roots of esports. In addition, the very EU-based areas such as data privacy and cybersecurity challenges should also not be overlooked (Žárská & Mesarčík, 2021).

Despite speaking of players, the European Parliament concludes that

esports and sport are different sectors, not least because the video games used for competitive gaming or esports are played in a digital environment and belong to private entities that enjoy full legal control and all exclusive and unrestricted rights over the video games themselves. (Xiao, 2020, pp. 439–440)

This conclusion can be considered somewhat unfortunate, given the previously enumerated shared features with the sporting sector. Certainly,

more fitting and advisable at the EU level might be an approach to esports as a sector combining both the sporting as well as digital agenda elements (Vardanyan & Kocharyan, 2022).

However, this hesitant and unclear approach to esports can be observed also at the level of national legislation within the EU, where France, Germany, and Austria are particularly noteworthy with regard to their regulation of esports (Scholz & Nothelfer, 2022, pp. 51–52). In six out of nine Austrian federal states, betting on esports events may be offered legally as “society bets,” that is, bets outside the scope of sports. Even though a working group was set up by the Federal Ministry of Arts, Culture, Public Service and Sports in 2021 to clarify the legal framework for esports in Austria (*EntschlieÙung v. 11.12.2020 betreffend Prüfung des rechtlichen Rahmens für den E-Sport*, 123/E 27. GP), the report has not yet resulted in any legislative action. The status of esports is thus still unclear.

Germany has currently two laws that explicitly regulate esports: § 22 no. 5 BeschV from 2020 (*Verordnung über die Beschäftigung von Ausländerinnen und Ausländern*, 2020), which regulates visa facilitation for professional esports athletes and § 15 III RennwLottDV from 2021 (*Rennwett- und Lotteriegeseß-Durchführungsverordnung*, 2021), which equates esports with sports, so that betting on esports events becomes taxable (Report on esports and videogames, 2022). Still, the terminology is not uniform and it remains overall unclear whether esports is a part of the sports sector or not.

Finally, in France, provisions of Article L. 321–8 et seq of the French Code of Internal Security related to video game competitions refer to Article 220 *terdecies* of the French General Tax Code for the definition of video games. Thus, a video game is defined as any leisure software made available to the public in a physical medium or online, and including elements of artistic and technological creation, offering to one or several users interactions relying on a written frame or simulated situations and resulting in moving images, with or without sounds.⁹ As for video game competitions, these are defined as competitions that bring together, depending on a game, at least two players or teams of players for a score or a victory. Additionally, two relevant pieces of legislation were introduced in 2016 and 2017 in France: Law no. 2016-1321 of October 7, 2016, for a Digital Republic consists of

⁹ In the original, “*Est considéré comme un jeu vidéo tout logiciel de loisir mis à la disposition du public sur un support physique ou en ligne intégrant des éléments de création artistique et technologique, proposant à un ou plusieurs utilisateurs une série d’interactions s’appuyant sur une trame scénarisée ou des situations simulées et se traduisant sous forme d’images animées, sonorisées ou non.*”

two articles—Article 101 legalises offline video games competitions and sets the requirements for the organisation as well as the minimum age for participation. Article 102 defines professional players and protects them as fixed-term employees; the esports organisation they are playing for needs the approval of the minister in charge of digital technology. In 2017, Decrees no. 2017-871 and no. 2017-872 were passed to regulate the issues in greater detail. The decrees stipulate, among other things, requirements for timely and proper notification regarding the intention to organise an esports competition, requirements for the authorisation by the minor's legal representative, for the minimum age for participation (from the age of 12), and for the protection of minors in general, requirements for the awarding of prize money, requirements for the employment of a professional player, and requirements for the approval of the respective minister regarding esports organisations that employ players. There is also a national strategy about esports for the years 2020 to 2025 by the ministry of economy and the ministry of sports to create a framework for grassroots esports (see Law no. 2016/1321; Decree 2017-871). Thus, it seems as if France was the first from among the EU Member States to realise the potential, but also the risks and the need to regulate this sector, which is thereby apparently being regulated in terms close to the sports sector, just as it has been done outside Europe for quite a long time.

3.2 Outside the EU—What sort of sports?

The hesitant attitude of the EU Member States somewhat contradicts the approach adopted by non-EU countries, where esports is often considered as being a sport. China's General Administration of Sports included esports as an official sport in 2003 (Yue *et al.*, 2020). Similarly, for example, South Africa and Namibia recognised esports officially. Northern Macedonia became the 66th country to recognise esports as a sport in 2022. In contrast, to this day, no EU Member State has fully recognised esports as a sport; at most, esports have been granted partial legal equivalence in rare cases, such as in France (Scholz & Nothelfer, 2022, p. 18). This may have to do with the specific model of sport prevalent in the EU and in Europe, in contrast to the model of sport being present outside of Europe, first and foremost in North America (USA and Canada).

In traditional sports law, we distinguish between two main approaches, which are referred to as the European and the American model of sports regulation, depending on the territorial application.

The dominant theory claims that the European model of sports is based on the following basic features:

- Pyramidal structure (hierarchy) of organisation within a sports sector.
- Promotion and relegation principle, with clubs moving between the leagues.
- Grassroots involvement—national associations also comprise the amateur level of sports.
- National identity, providing support for national teams.
- International competitions between national teams.
- Negative aspects—hooliganism and racism often distort the image of sports in Europe.

In contrast, the (North-)American model is claimed to be different in the following aspects:

- The distinction between amateur and professional sports leads to separate organisations.
- Schools and colleges have their own competitions and sports teams.
- Closed system of competition means that there is basically no moving of clubs between the leagues, based on the victory or loss in the competition.
- Commercialisation of sports.
- Team and player restraints are being imposed on the clubs, such as draft system, salary cap, etc.
- Collective bargaining is relatively strong, leading to strikes and lockouts in sports.

While esports does not fully align with all the features of the European model nor of the North-American model of sport, in its nature, it seems be closer to the North-American model. A major difference in comparison with the North-American model of sports is the fact that in esports there are no actual clubs, only teams with a high fluctuation of gamers (Scholz, Völkel & Uebach, 2021, pp. 3–7). The level of stability of teams is thus not to be compared with professional sporting teams in traditional sports. On the other hand, a common feature specifically with regard to the North-American model is the large commercialisation of the esports industry, with millions of fans/viewers watching the streamed games (Esports Charts Team, 2023). Advertisement and sponsorship are therefore a huge source of revenue for the organisers of the events and league competitions. Additionally, esports share with the North-American model also the idea of a closed system of competitions. On the other hand, there are also several features common with the European model of sport—first and foremost, the national and

international elements, as well as the presence of negative phenomena—although these are occurring also in the American model nowadays.

It is thus possible to argue that a new, third model of sport is emerging, based on the specific esports model rising in Asia, which combines features of both previously discerned models of sport. Therefore, it is necessary to pay closer attention to this regulatory and governance model, potentially serving as a model to follow in Europe (with possible adaptations considering the values and principles of EU law). Asian countries are gradually developing their own regulatory approach to esports, which can be of interest also for the rest of the world.¹⁰

Of Asian countries, one can introduce here, for example, South Korea's Act on Promotion of E-Sports (Electronic Sports) from 2012, last amended in 2022, which regulates the following:

Art. 4: The State and local governments shall establish and implement policies necessary to promote e-sports. Art. 5: In order to invigorate e-sports activities so that local residents enjoy leisure time and promote amity among themselves, a local government may create an environment for e-sports facilities, etc. establish and operate e-sports organizations, and hold e-sports events. Art. 6: In order to achieve the purpose of this Act, the Minister of Culture, Sports and Tourism shall formulate and implement a master plan as a basic and comprehensive plan for the medium/long-term promotion of esports (hereinafter referred to as "master plan") and an Esports background analysis annual implementation plan for each type of esports in detail (hereinafter referred to as "implementation plan"). Art. 8: The State and local governments shall endeavor to secure funds required for effectively implementing the master plan and implementation plan. Art. 13: In order to develop the e-sports industry, the Minister of Culture, Sports and Tourism may designate an institution that falls under any of the following subparagraphs as an e-sports industry support center. Art. 15: In order to promote the development of e-sports and facilitate healthy leisure activities for people, the State shall seek measures necessary to promote professional e-sports and e-sports for all. Art. 18: The Minister of Culture, Sports and Tourism may select individuals, organizations, enterprises, etc. that have significantly contributed to the development of e-sports to reward them for their contributions. (Act on Promotion of E-sports, 2022)

¹⁰ Among others, the Asian Electronic Sports Federation signed a Memorandum of Understanding in 2022 to promote a regulation on esports in 2022, aiming at the 2022 Hangzhou Asian Games (see Mackay, 2022).

This means that the law basically formulates general framework competences to support the development of esports, since the purpose of this Act according to its Article 1, is to establish infrastructure for the culture and industry of esports, enhance competitiveness in esports, and contribute to increasing people's opportunities to enjoy leisure time with esports and the robust development of the national economy by providing for matters necessary to promote esports.

More detailed and even closer to sporting regulations is legislation from Thailand, where already in 2017, the board of Sports Authority of Thailand (SAT) decreed that esports be classified as a sport and registered as a sport association. As a result, the Thailand E-Sports Federation (TESF) was established. Subordinate legislations issued by the TESF are for arranging esports tournaments and enable to send players to participate in international esports tournaments. However, at present, there is only a policy (TESF Policy, see TESF, 2017) issued by the TESF for its members and no code or regulation has been issued yet.

This is, however, compensated for by supranational esports organisations, mostly seated in Asia as well, which currently work on the codes and policy documents to establish a proper basis to social responsibility in the esports sector. The normative system of esports is thus a work in progress.

4. The normative world of esports

Some legal problems related to esports and its ecosystem can and should only be solved through state intervention (Sztobryn, 2020). For example, copyright issues concerning games and players, protecting game mechanics (the method of playing a game), problems with the “pastiche”—use of copyrighted figures in other settings), the status of virtual objects from the games and loot boxes being sold and bought within or outside the game, but also the regulation of employment of players, sponsorship, advertisement, user-generated content, contracts, ticket sales, cybersecurity, match-fixing, gambling and betting, may count among the issues that definitely need efficient legal rules.

Health concerns, especially the risk of a “gaming disorder,” primarily draw the legislators' attention to esports (Ramella-Zampa *et al.*, 2022). The disorder, classified in the 11th Revision of the International Classification

of Diseases (ICD-11) since 2018 as a pattern of gaming behaviour (“digital gaming” or “video gaming”), is characterised by impaired control over gaming, increasing priority given to gaming over other activities to the extent that gaming takes precedence over other interests and daily activities, and continuation or escalation of gaming despite the occurrence of negative consequences (WHO, n.d.). Already previously, since 2013, the internet gaming disorder (IGD) was included as a nonsubstance addiction in the appendix to the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published in 2013 by the American Psychiatric Association (Darvesh *et al.*, 2022).

For example, in Thailand, the Draft Regulation of Gaming Business and Supervision for the Protection of Children and Juveniles Act (“Draft Gaming Act”) was prepared by the National Health Commission Office and other relevant stakeholders, with the following three main principles guiding the drafting process (Schooneman & Sapsutthiporn, 2020):

- TESH shall establish the safety standards for esports contests and protect minors in their gameplay behaviour (which includes game rating, if applicable);
- The Ministry of Social Development and Human Security shall set up a public meeting forum to conduct research and exchange ideas and knowledge to accurately understand the concept of “games” and “esport”; and
- Surveillance and supervision of the behaviour of game players in Thailand to ensure that game playing does not negatively impact their health to the degree that may cause social problems.

In contrast, some other issues can clearly be efficiently regulated through the autonomous rules of esports organisations alone—these include first and foremost the issues of organising the gaming community, fans, leagues, relations with developers, broadcasters, merchandising, etc. Finally, there is also an intermediate category of regulation, found in-between autonomous and heteronomous (state-made) rules. These are the rules on doping, more specifically e-doping, which are being discussed and approved by the World Antidoping Agency (WADA, 2023). An example of such a Code might be the International Esports Federation Anti-Doping Rules (based upon the 2021 WADA CODE) (IESF, 2021). Similarly to battling the negative phenomena in traditional sports, the need to fight these phenomena is also present in esports (Schöber & Stadtmann, 2022). So far, however, this is being done mostly on the autonomous level of the industry (Czegledy, 2021), since

combatting doping and match-fixing are part of the tasks and responsibilities of ESIC (LawInSport, 2016).¹¹ The ESIC Programme consists of five key elements: Principles, Code of Ethics, Code of Conduct, Anti-Corruption Code, Anti-Doping Code (ESIC, 2023b).

For example, in terms of its anti-doping policy, the respective Code follows the goal of providing: (a) an effective means to deter any participant from engaging in doping whilst participating in esports competitions; (b) clarity about the definition of prohibited substances in esports (prohibited substances in esports are listed on the ESIC Esports Prohibited List); (c) a mechanism for approval of prohibited substances as part of a verified therapeutic regime (details are specified in the ESIC Anti-Doping Code); and (d) a disciplinary process pursuant to which an anti-doping rule violation can be dealt with fairly, with certainty and in an expeditious manner (as regulated in the Anti-Doping Code).

In addition to ESIC, organisers of competitions, mostly international esports organisations (such as the IESF, see IESF, n.d.) and the ESL (ESL Play, n.d.) have also introduced global rules that apply to all its competitions and in all disciplines. For example, the ESL defines the sanctions if a cheating incident¹² or match-fixing is discovered (Schöber & Stadtmann, 2022). The ESL has also developed a guideline against doping together with Germany's national anti-doping agency, which, among other things, provides for doping controls at competitions. Furthermore, since the ESL is a member of the ESIC, the ESIC rules also apply to ESL events. The ESL also cooperates with licensees, who are cooperation partners of ESL responsible for organising national competitions (e.g., Freaks 4U Gaming, n.d.). The licensees cooperate with the publishers, both having their own set of rules. The rules exist also at national levels, being introduced by the national esports' organisations. Finally, the "clans" and teams to which players are contracted may introduce their own internal rules, and at least some rules are laid down in players' contracts, which in general resemble an employment relationship with obligations on both the employer and employee sides.

¹¹ "We were established in 2016 to take responsibility for disruption prevention investigation and prosecution of all forms of cheating in esports, including, but not limited to, match manipulation and doping" (ESIC, 2023a).

¹² Cheating is defined also in the 15th IESF World Esports Championships Competitions Regulations as: "This includes but is not limited to macros, changes in game files, usage of third-party software providing an unfair advantage, hardware cheats, collusion or any other means to gain an unfair advantage."

So far, the industry is thus predominantly in the hands of private actors, being in fact guided by the interests of publishers rather than the players and teams. Their national and international federations are namely just in their formative process. Hence, it is time to pay closer attention to the degree to which the regulation of esports should be vested in the hands of autonomous governance mechanisms created by the stakeholders themselves, or to the state. The final outcome will most probably be close to the existing interaction between heteronomous state-made legal rules and autonomous internal normative rules, as witnessed in the world of traditional sports. A traditional sporting normative system (involving law applicable to sports, as well as autonomous extra-legal sporting rules) can thus possibly serve as a model for the normative system of esports, to be distinguished as follows:

1. Law applicable to esports (the norms of international law, European law and national law);
2. Esporting rules in a broad sense, which are further subdivided into:
 - a) Rules of the game (*lex ludica*), which automatically include the ethics of esports and the principle of fair play (good morals);
 - b) Esporting rules in a narrow sense (*lex sportiva digitalis*), namely:
 - National esporting rules (created by national esports organisations), and
 - Global esporting rules (established by international esports organisations).

Certainly, the internal autonomous rules are to be always tested against the legal standards, so as to make them compliant with the law and especially with basic human rights (Shinohara, 2021; Stivers, 2017).

Conclusions

The newly emerging field of esports in the European Union Member States remains underexplored by legal scholars, despite presenting a number of legal challenges to various branches of law. In order to tackle them, as well as to be able to legally assess the internal structures and normative systems of esports, it is first necessary to address the general issues of the legal nature of esports and of regulatory models. In this article, we have argued for a non-reductionist approach, acknowledging esports as a combination of phenomena of sports and entertainments, which necessarily needs to differentiate between those entities and relations (legal problems) that

can be solved by analogies to traditional sport, and those where measures applicable in entertainment industry are the best regulatory choice. Even in its sporting nature, esports, however, demonstrates certain specificities that warrant its considering a third model of sport, which shows features that need to be taken into account in legal regulation of this sector. While the prevailing method of regulation so far is that of autonomous governance, this leaves wide gap for legal control and assessment of the compliance of autonomous normative systems with the standards applicable in the EU.

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