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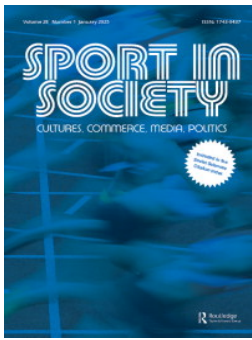
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Jan Andre Lee Ludvigsen & Seamus Byrne

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# Towards a children's rights-based approach to EU sports policy: further room for development?

Jan Andre Lee Ludvigsen<sup>a</sup> and Seamus Byrne<sup>b</sup>

<sup>a</sup>School of Humanities and Social Science, Liverpool John Moores University, Liverpool, UK; <sup>b</sup>Manchester Law School, Manchester Metropolitan University, Manchester, UK

## ABSTRACT

This conceptual article adopts a normative approach and argues the case for a children's rights-based approach to European Union (EU) sports policy. Such a proposition, it is contended, remains especially important in the contemporary context of academic and policy debates surrounding both (1) human rights breaches in sport, and (2) the evolution of EU sports policy. Despite these debates, however, the role of the EU within the sport and children's rights continuum has been given little attention so far. This is remarkable, because the Lisbon Treaty encompassed an EU competence on sporting issues, fairness, openness and co-operation in sport. By synthesizing literatures from the sociology of sport, human rights and EU law, it is contended here that the Lisbon Treaty provides a clear, legal and textual basis for the development of a robust EU policy that pays specific attention to children's rights in the future development of EU sports policy. Overall, this paper advances a pathway within the EU whereby children's rights are foregrounded within sports policy whilst extending the literature on EU law, sports policy and the sociology of human rights.

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EU sport policy; human rights; children's rights; sports law; European Union

## Introduction

This article examines the intersections between European Union (EU) sports policy and children's rights. In doing so, it argues for, and maps the contours of what, a children's rights-based approach to EU sports policy might look like. In recent years, debates and scholarship on the relationship between sport and human rights have proliferated. Significantly, debates have centered around whether sport and, in particular sport mega-events, harm or promote human rights (Koenigstorfer et al. 2023), and which legal and political reforms that could generate more human rights compliant cultures within global sport contexts for athletes, spectators and other social groups, including children and young people (Schwab 2018; Byrne and Lee Ludvigsen 2023a; Veal 2023; Næss 2020). Adding to these debates, the concept of 'sportswashing' – a strategy often used by countries to distract international audiences from poor human rights records (Næss 2020; Boykoff 2022) – has

**CONTACT** Jan Andre Lee Ludvigsen  [J.A.Ludvigsen@ljmu.ac.uk](mailto:J.A.Ludvigsen@ljmu.ac.uk)  School of Humanities and Social Science, Liverpool John Moores University, Liverpool, UK.

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surfaced as a key term in academic and media discussions. However, despite the continual growth in academic work on not only the intersections of sport and human rights, but also on EU sports law and policy (Parrish 2003a; 2003b; Anderson, Parrish, and García 2018), the position – and potential – of the EU within the wider sport and human rights context have seldom been unpacked in-depth within the existing scholarship (e.g. Boyes 2018). More specifically, the overlap – which we focus on – of sport and the EU, from a children's rights perspective, has similarly evaded critical academic examinations despite the increased acceptance that the EU has attained 'the high point of its engagement with human rights' (Búrca 2011, 649).

This is striking given the EU's legally enshrined commitment to contributions towards the promotion of European sporting issues and developing a European dimension in sport based on fairness and openness (Article 165(1) TFEU), and also the fact, as Garcia, De Wolff, and Yilmaz (2018) observe, that after the Lisbon Treaty, the EU was given specific legal competence on sport which facilitated the development by EU institutions of sports policy on a dedicated budget line. Undoubtedly, given that the EU remains concerned with sport's societal role, its economic dimensions and its political and legal frameworks (European Parliament 2023a, 2023b), this opens up the discursive and legal parameters related to the organizations' position within the wider human rights discourses in sport, including children's rights and sport, which, hitherto, have mostly revolved around sport's governing bodies, civil society actors and Council of Europe (Byrne and Lee Ludvigsen, 2023a, 2023b; McGillivray et al. 2022). The necessity of interrogating the EU's approach to children and sport is also underscored by the fact that not only has children's rights law arguably come to increasingly exert a persuasive influence over EU law and policy itself (Stalford and Drywood 2011), but the changes brought about to the EU's constitutional framework pursuant to the Treaty of Lisbon, now explicitly gives legal effect to children's rights (Stalford and Schuurma 2011). Therefore, the amalgamation of the EU's legal duties in the fields of both sport and children's rights converge to outwardly incentivize a strong children's rights-based approach to EU sports policy. Moreover, the EU Commission has committed itself, in the most recent iteration of the *EU Strategy on the Rights of the Child*, to ensuring that 'a children's rights perspective is mainstreamed in all relevant policies, legislation and funding programmes' and further that 'a child-friendly culture in EU policy-making' is created at Union level (European Commission 2021, 23). However, despite such an outward embrace of children's rights, the EU's recent strategy on the rights of the child is, however, somewhat opaque on the issue of children's sport. Despite highlighting the impact which Covid-19 had on the ability of children to play sport (3), the stereotypical gender barriers which often impede some children from participating in sports (4), and the acknowledgment that children's overexposure to online digital environments, which consequently reduces their time playing sports, subsequently impacts their overall health and well-being (17), the strategy is otherwise muted on the overarching significance of sports from a children's rights perspective. This is notable in view of the strategy's clear thematic emphasis on various other children's rights such as health and education, of which access to, and participation in sport, is an important enabler.

In this context, this article explores the compatibility between EU sports policy and human rights and, specifically, the connection between EU sports policy and children's rights. This conceptual and normative article will hence cross-pollinate insights from EU sport policy, human rights and the sociology of sport, to engage with the following two

research questions. First, how does the current EU sports policy align with children's rights? Second, how can the EU increasingly embed children's rights within its future sports policies? By adopting a socio-legal approach, synthesizing literatures from the sociology of sport, wider EU constitutional law and human rights, this article argues, in response to these questions, that the Lisbon Treaty offers a clear legal and textual basis for the development of a robust sports law policy. In view further of the explicit treaty-based protections which exist in relation to children's rights, this article argues that specific attention should be accorded to the articulation and inclusion of children rights standards in any future development of EU sports policy. This argument remains salient for the construction of more rights-compliant cultures, whilst extending pre-existing insights on EU sports policy, sports law and sport/human rights.

This article proceeds as follows. First, we unpack the key tenets and evolution of EU sports law and policy. Second, we review existing work on sports and human rights in order to highlight the emerging debates in this specific field which is uniquely typified by the multilayered legal overlap of both public and private bodies. With our specific focus on children's rights, we argue that any legal, regulatory and/or policy developments which are effectuated within a sporting context must take account of, and give effect to, children's rights law as outlined in the UN Convention on the Rights of the Child (CRC) (1989). Finally, the article elucidates our main argument that makes the case for a *children's rights-based approach* to EU sports policy by focusing on mainstreaming children's rights, and the human rights responsibilities which fall of sports federations across EU member states in the context of children's rights.

## **EU sports policy: a work in progress?**

### ***The legal origins and development of EU sports law***

Prior to the entering into force of the Treaty of Lisbon on 1 December 2009, the issue of sport occupied a nebulous constitutional foothold within the EU legal architecture. Nebulous in the sense that, although the issue of sport was bereft of an explicit treaty-based provision, it did nonetheless enjoy oblique and indirect Union protection, provided it was deemed to constitute an economic activity. This position was made clear in a series of (then) European Court of Justice rulings, but most notably the *Bosman* judgment.<sup>1</sup> This ruling from 1995, as De Witte and Zgliniski (2022, original emphasis) submit, 'is probably the best-known example of the way in which EU law constrains the autonomy of football in Europe.'

Here, the Belgian footballer Jean-Marc Bosman successfully challenged Union of European Football Associations' (UEFA) use of 'nationality restrictions and the international transfer system' (Parrish 2003b, 252). Central to the case was the contention that the rules, established by UEFA, pertaining to transfer fees and nationality clauses, which in effect limited or restricted the number of foreign players which could be recruited for a football team, violated the then Treaty of Rome and, in particular, the sacrosanct Union principles of free movement and the prohibition of discrimination. In finding such rules inconsistent with EU law, the Court stated that:

In so far as participation in such matches is the essential purpose of a professional player's activity, a rule which restricts that participation obviously also restricts the chances of employment of the player concerned. (*Bosman*, para 120)

Whilst the *Bosman* ruling generated profound shockwaves within the European sporting and football worlds, notably because it 'dealt a serious blow to the traditional legal autonomy' (Serby 2016, 39) of sport governing bodies, it also demonstrated that the actions and activities of private sporting organizations were not completely impervious to EU law. As McArdle (2000, 59) succinctly summarized it: 'Nobody is above European law. Individual states are not above European law, so you can't have a private organisation like UEFA saying that they are'.

Following *Bosman*, a number of significant legal and policy developments occurred which solidified the significance of sport within an EU context. First, the *Declaration on Sport*, annexed to the 1997 Treaty of Amsterdam recognized the 'the social significance of sport, in particular its role in forging identity and bringing people together' (Treaty of Amsterdam 1997, 136). Although recognizing the importance of amateur sports, the Declaration, which was silent on the issue of sport and human rights, was otherwise sparse and noncommittal in both its linguistic and legal resonance. Three years later, the Nice Declaration of 2000 – albeit in similarly vague tones – gave further elaboration on the Union's relationship with sport. This declaration highlighted that sport was an intrinsic factor 'for integration, involvement in social life, tolerance, acceptance of differences and playing by the rules' (Nice Declaration 2000: Annex IV para 3).

Significantly, however, specific reference was made to children and young people with the Declaration, noting 'the benefits of sport for young people', and 'for special heed to be paid, in particular by sporting organisations, to the education and vocational training of top young sportsmen and –women' (Nice Declaration 2000: Annex IV para 12). Whilst such references were undoubtedly welcome, they failed to situate sport within an explicit human rights or children's rights context. Indeed, writing shortly after the formalization of the Nice Declaration, Parrish (2003b, 247) stated that sport was an EU policy area that had 'experienced considerable agenda expansion in recent years', while elsewhere noting that the Nice Declaration was the closest the EU came 'to granting sport a special status within the EU's Treaty framework' (Parrish 2001, 195). However, as García and Weatherill (2012, 244) observed, both declarations were 'formally non-binding' and their contents were 'vague and aspirational'. That said, the ultimate 'creeping juridification of sports' (Parrish 2003b, 249), eventually came full circle when the EU was granted explicit formal competency in the field of sport pursuant to Article 165 of the Treaty of Lisbon.

Whilst the relationship between EU law and sport has been subject to academic commentary elsewhere (Pearson 2015; Parrish 2003a), current EU sports policy must, however, be situated within a 'post-Lisbon' context. This is because the Treaty of Lisbon, which entered into force in December 2009, included an 'explicit competence' for sport within the Treaty's framework (Rogulski and Miettinen 2009) and explicitly subjected the field of sport to a conferred Union competency, pursuant to Article 6(e) of the TFEU for the first time (Weatherill 2010). Additionally, through Articles 165, 165(2) and 165(3), it is stipulated that the EU would contribute to European-wide sporting issues; promote fairness and openness in sport; cooperation between sport's governing bodies; and, finally, foster cooperation with third countries and international organizations like the Council of Europe who possess a competence in education and sport (see García and Weatherill 2012).

For Weatherill (2010), the impact of the Treaty of Lisbon on sport across Europe was described as both ‘profound’ and ‘trivial’. As he noted, it was *profound* insofar as it was the first time that sport was directly referenced within EU’s governing and establishing Treaties. Concurrently, the Treaty’s influence was described as *trivial* because:

[T]he content of the new provisions has been drawn with conspicuous caution, so that the EU’s newly acquired powers in fact represent a most modest grant made by the Member States. And second because, notwithstanding the barren text of the pre-Lisbon Treaty, the EU has in fact long exercised a significant influence over the autonomy enjoyed by sports federations operating on its territory. So the Lisbon Treaty reveals a gulf between constitutional principle – where it seems to carry great weight – and law- and policymaking in practice, on which its effect is likely to be considerably less striking. (2011, 1)

Adding to this, it is important to highlight that the EU’s sporting competence remains contested. For example, it was recently emphasized that ‘[t]he Treaties give the Union only an ancillary competence in the field of sport, which is limited to measures that support, coordinate or supplement the actions of the Member States’ (De Witte and Zgliniski 2022, 313). More widely, it is clear, that when taken together, Article 165 concretizes the EU’s position as a promoter of, and advocate for, sport’s social goods, which in many ways reinforces the earlier EU declarations which espoused the objective ‘social significance’ of sport. Indeed, as the EU Commission itself highlights in its communication to the EU Council, EU Parliament, the European Economic and Social Committee and the Committee of the Regions, on developing the European dimension in sport:

Sport has a strong potential to contribute to smart, sustainable and inclusive growth and new jobs through its positive effects on social inclusion, education and training, and public health [...] It contributes to social cohesion by breaking down social barriers, and it improves the employability of the population through its impact on education and training. (European Commission 2011a, 2)

However, in addition to the wider societal aspects of sport, the influence of children’s rights law, pursuant to the CRC, on the development of EU law is an important consideration. Although noting the ‘incremental evolution of children’s rights within formal EU law and policy’ (Stalford and Drywood 2011, 202), Stalford and Drywood further remind us that that since the ‘turn of the millennium [...] references to specific elements of the CRC have begun to creep into specific constitutional texts’. For instance, Article 3(3) of the Treaty of the European Union explicitly obliges the EU to protect ‘the rights of the child’. Meanwhile, the EU Charter of Fundamental Rights, which became binding on the EU upon the entering into force of the Treaty of Lisbon, makes explicit reference to children’s rights in Article 24 thereof, with Article 24(2) giving direct legal cover to the child’s best interests principle, itself a fundamental tenet of the CRC (Freeman, 2007; Stalford, 2017). Hence, from a children’s rights perspective, the development of EU sports law and policy must not, and should not, be viewed solely through the prism of the constitutional frameworks pertaining to sport alone. Instead, as recently affirmed by the 2022 EU Council conclusions on the *EU Strategy on the Rights of the Child*, the CRC ‘must continue to guide EU policies and actions, which have an impact on the rights of the child’ (EU Council 2022, 2). This, by extension, applies to the EU’s approach to sports policy, in view of the impact which sport possesses in relation to several children’s rights, such as health,



education, and the right to play, amongst others. However, as the succeeding section demonstrates, despite the explicit treaty-based competencies and protections which exist in relation to both sport and children's rights, EU sports policy has largely developed in a manner whereby the influence and inclusion of children's rights has been disjointed and incontiguous.

### **Current EU sports policy**

EU sports policy is a 'domain in which the EU holds only a supporting competence' (Geraert and Drieskens 2017, 87). However, despite the limitations of that competency, it is equally pertinent to remember that supporting or limited competency is not tantamount to no competency. Therefore, the objectively constricted legal parameters in which EU sports policy reside do not absolve the EU from its wider children's rights commitments when activating its competency within the sports policy field. However, since the seminal promulgation of the 2007 EU Commission's *White Paper on Sport*, the EU has exerted significant strategic, operational, and priority-setting influence in the field of sport. Described by Hill (2009, 254) as the Commission's 'first comprehensive statement of its philosophy on sport', the White Paper set out the EU's vision on the societal, economic, and organizational dimensions in relation to sport. In recognizing the impact which sport exerts across diffuse areas including public health, education and training, the promotion of voluntary work and an active citizenship, social inclusion and integration, the prevention of racism and violence, the promotion of sustainable development and the strengthening of the EU's external relations, the White Paper, in many respects, represents the trans-boundary and multifaceted nature of sport itself. However, Rogulski and Miettinen (2009) remind us that the White Paper was introduced *prior to* the assumption of formal legal Union competency in the field of sport, but they did nonetheless prophesies that any EU future directional travel in the field of sport would likely 'remain modest in size, with a societal orientation' (Rogulski and Miettinen 2009, 251).

From a rights-based perspective, the White Paper made some wider – albeit oblique – references to human rights standards (Platts and Smith 2009). When considering the 'protection of minors' within a sporting context, it does place 'particular importance on implementing a range of strategies to tackle the abuse of young athletes and to protect their welfare and rights by, amongst other things, enhancing their education and training' (Platts and Smith 2009, 337). However, direct references to international human rights treaties or standards – with the exception of free-movement and the prohibition against discrimination, both of which are fundamental EU principles – are notably absent. Crucially, no reference is made to the CRC, children's rights specifically, nor the congenital overlap between many of the priorities within the White Paper with broader human rights standards. In their assessment of the White Paper, García and Weatherill (2012, 251) observe that it was effectively framed in terms which devolved overall responsibility for sport regulation away from the EU, recognizing that 'sporting organizations and Member States have a primary responsibility in the conduct of sporting affairs'. This supplements García's (2009) earlier contention that the White Paper represented an approach to EU sports regulation which could be classified as one falling within the realms of 'supervised autonomy' (García 2009, 281). The practical outworking of this approach would ensure the concentration of regulatory and governance autonomy within the hands of sport organizations within the



member states, whilst the EU would retain an overarching supervisory role to ensure EU law is being complied with. Whilst such an approach aligns with the EU's sacred principle of subsidiarity, it is nonetheless contended that the White Paper could have outlined more concrete guidance and advice in relation to the human rights obligations of domestic and regional sport governing bodies, and in particular how their actions impact children and young people.

Indeed, subsequent EU sport policy initiatives demonstrate further the curious imbalanced rights-based vacuum within which the EU has continued to anchor their sport-focused priorities. Whilst admittedly, reference to the EU's free movement and anti-discrimination principles are clear, children's rights principles are notably lacking. For instance, the 2011 EU Commission Communication *Developing the European Dimension in Sport* makes no reference to CRC, nor to its underpinning principles, such as the child's best interests' principle or the right of the child to participate in matters affecting them (Lundy 2007). Whilst it does make explicit reference to the UN Convention on the Rights of Persons with Disabilities, its silence on children's rights is particularly remarkable, especially coming two years after the Treaty of Lisbon, and at a time when the then European Court of Justice had already stated that children's rights law pursuant to the CRC were among 'those international instruments [...] concerning the protection of human rights of which it takes account in applying the general principles of Community law.'<sup>2</sup> Similarly, the inaugural EU *Work Plan for Sport for 2011–2014*, despite including the 'protection of minors' (European Commission 2013, C 162/2), as one of its key priorities, failed to delineate the legal or policy contours of how that protection should be implemented, or what remedies should be available should such protection be found wanting. Indeed, the subsequent publication in 2013, of the *Principles of Good Governance in Sport* (European Commission 2013), as an output from the Work Plan, again made no reference to internationally protected human or children's rights. While referring to the 'protection of children and young people,' and the need for wider inclusivity within sport governing bodies, such remarks are bereft of an identifiable legal or right-based foundation, the consequence of which denudes them of a persuasive or tangible legal influence.

However, the second iteration of the EU *Work Plan for Sport 2014–2017* did include the 'protection and safeguarding of minors' as one of its key thematic priorities. Resulting in the 2016 publication of the *Recommendations on the Protection of Young Athletes and Safeguarding Children's Rights in Sport*, the EU now clearly appeared to be centralizing children's rights within its sport policies. While focusing predominantly on the protection of children and young people from violence in sport, in addition to encouraging national sport governing bodies to develop child protection strategies, the recommendations were a welcome step forward, for they brought children's rights directly on to the supranational playing field for the first time in an unequivocal fashion. The subsequent 2017–2020 *Work Plan for Sport* again limited the references to children and young people along the lines of safeguarding and young athletes, while the most recent iteration of the EU work plan (1 January 2021–30 June 2024), due to expire in 2024, again makes limited references to children's rights beyond safeguarding and the position of children as athletes. While such references are of course welcome, the interface of sport and children's rights is much more multi-faceted and complex in nature and extends far beyond its distillation into safeguarding issues and children as athletes. For instance, the omission of important overarching procedural standards such as ensuring the child's best interests is a primary consideration in all

matters affecting children within a sporting context (Article 3 CRC), or making provision for their views and opinions to be heard (Article 12 CRC), are curiously absent from the EU's current suite of sport policies.

Despite the promotion of good sporting governance being 'high on the EU agenda' (Chappelet and Mrkonjic 2019, 15), the translation of such intent into a consistent and authoritative line of legal and policy guidance at EU level has been less assured. While progress has undoubtedly been made in the field of safeguarding and the protection of violence, more scope remains to foreground children's rights in the sporting domain, in a more consequential manner. It is by directly utilizing the CRC, and the provisions therein, as the legal canvas against which to situate the EU's sports policies, insofar as such policies polices affect or engage children and young people, that can provide a legal robust and ascertainable basis to the future development of EU sports policy.

Brought together, however, the White Paper and the aforementioned legal and policy initiatives have generated a considerable scholarly interest in EU sports policy (Vermeersch 2009; Garcia, De Wolff, and Yilmaz 2018) and EU sports law (Weatherill 2017; Parrish 2003a). However, despite this undeniable momentum within EU sports law and policy, scholars are yet to fully explore the relationship between EU sports policy and human rights as situated within a sports world where debates around human rights breaches, 'sportswashing' and the role of international organizations have proliferated in recent years (Næss 2020). In a way, this resonates with the more general viewpoint that '[t]he role of sport as an expression of EU normative power is largely under-explored' (Parrish 2022, 1516). In particular, we argue that the EU's stance on children's rights, as promoted or hindered through sport, requires further socio-legal analysis and interrogation. Although it has been suggested that we, over the last decades, have 'witnessed a sudden and surprising flurry of activity at EU level in relation to children's rights' (Stalford and Drywood 2009, 143), this is yet to transfer fully over to the realm of EU sport and leisure. As such, scholarly exercises bringing together EU sports policy, children's rights, and literature on sport/human rights – the latter two which we unpack in the next section – have, so far remained underdeveloped.

## Contextualizing sport, human rights and children's rights

It is well-established that sport and human rights are inherently linked. Internationally, sport is viewed as 'an important enabler of sustainable development' pursuant to the *UN 2030 Agenda for Sustainable Development*. In setting out 17 sustainable development goals (SDGs) and 169 targets across several important areas including health, education, the eradication of poverty, and gender equality, amongst others (MacNaughton 2017), they have been described as 'as a policy and governance roadmap for promoting a holistic view on social, economic and environmental sustainability worldwide' (Immler and Sakkers 2022, 262). From an EU perspective, then, the SDGs have become embedded within the political and legal architecture of the Union's internal and external actions (European Commission 2010), such that the EU have professed full commitment to their implementation (EU Commission 2019). Therefore, against this backdrop, and the role which sport assumes as an important contributory factor towards the attainment of global sustainable development, the approach of the EU towards sport warrants particular scrutiny.

However, as Veal (2023) recently noted, the relationship between sport and human rights has predominantly been addressed in the sense of the institutions and practices of sport

facilitating or impeding human rights. As noted, '[t]his treatment has mostly been in the more restricted context of *citizenship* rights related to particular jurisdictions rather than internationally recognized human rights' (p. 144, original emphasis). Importantly, contemporary issues surrounding high-profile sport mega-events, such as the Olympic Games and the football World Cup, have revealed that various human rights breaches have taken place, and continue to exist, in or around sport. This includes, for example, the forced eviction of residents of event host cities (Kennelly 2016), labor right breaches around stadium constructions (Millward 2017), and restrictions on protest, free speech and freedom of expression (Kennelly 2016).

Yet, beyond the context of specific sport mega-events, too, human rights relevant questions around participation, social exclusion, and social injustice have also been raised (Donnelly 2008), with some scholars looking at the ways in which stakeholder organizations have taken actions or shied away from ensuring a more human rights compliant culture in sport (McGillivray et al. 2019). As we have argued elsewhere, however, within the wider discourses around human rights and sport, it is crucial that the rights of children and young people are foregrounded within the legal and policy planning and staging of sport mega-events. That is because children and young people occupy a centralized position within sport: as participants, as spectators, or even as residents of sport mega-event host cities (Byrne and Lee Ludvigsen 2022). Notwithstanding, Dowse, Powell, and Weed (2018, 98) recently argued that 'relatively little is known about how event processes impact children's rights and interests and their profile within related discussions and planning activities is low'. Such a claim can be extended beyond mega-events and into the wider sporting world where the study of children's rights still remains underdeveloped as one important section of the human rights/sport couplet. As David (1999, 56) has argued, from a children's rights perspective pursuant to the CRC, children's rights within a sporting context must 'be fully taken into account by all partners involved in sports: 'parents, trainers, federations and especially public authorities'. From an EU perspective, David's acknowledgement of the multi-party nature of children's involvement in sport assumes increased legal significance, not least because of the diffuse obligations and responsibilities that each of those parties directly shoulder. This, in turn, demands a more exhaustive response by the EU in relation to the overlap of sport and children's rights, beyond its current approach which can be characterized as narrow, ad-hoc and disjointed. That is not to say that current guidance thus far issued by the EU is either immaterial or trifling. On the contrary, what is now required is a more *cohesive* and *unified* response which gives effect to the wider interconnected, substantive, and procedural obligations that arise within a children's rights and sporting context.

From a children's rights standpoint, the right to sport can be inferred from CRC's Article 31(1). This recognizes 'the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts'. Although this provision does not explicitly refer to 'sport', it is axiomatic that access to, and participation in sport is a central determinant to its realization. In their guidance to states parties, the UN Committee on the Rights of the Child, the treaty monitoring body for the CRC has stated that one of the key factors necessary for the realization of children's Article 31 CRC rights was being able 'to participate with other children in games, sports and other recreational activities, supported, where necessary, by trained facilitators or coaches' (UN Committee on the Rights of the Child 2013, 11). Although Article

31 CRC has not endured a comparable level of scholarly scrutiny compared to other CRC provisions (Hughes 1990; Lott 2022), such academic neglect is now giving way to a more nuanced appreciation of the wider indivisible significance of children's Article 31 rights (Aine, Muhonen, and Toivonen 2022). For example, Lott (2022, 5) argues that the participation in play activities 'has a distinctive value in supporting children's cognitive, social, emotional and physical development'. Such sentiments reinforce the voluminous academic and clinical literature which has long upheld the reciprocal benefits between sport and wider children's rights such as health and education for example (Nieto-López et al. 2020). Indeed, access to physical education has long been viewed as central to children's wider health, education and overall well-being. Bailey (2017, 3) recalls how 'regular physical activity leads to improvements in a range of cognitive functions, including information processing, attention and executive function', the consequence of which 'can enhance the quality of learning at school' (15). Moreover, Öhman and Quennerstedt (2017, 318) argue that physical education is 'essential for children's learning, development and growth, both as individuals and as members of society', thereby affirming the wider relational benefits which sport brings to children and young people.

Aside from the substantive overlap between sport *per se*, and various other children's rights such as health and education, the CRC imposes distinct procedural obligations, which underpin the delivery of children's rights. Known as the CRC's four guiding principles, and stemming from the Committee on the Rights of the Child 1996 *communiqué* on the 'General Guidelines for Periodic Reports', the four existent general principles of non-discrimination (Article 2), the best-interests principle (Article 3), the right to life, survival and development (Article 6) and the right of the child to be heard in matters which affect them (Article 12), have assumed an important function in holding contracting states answerable for their agreed commitments. Importantly, these principles 'have a well-established and widely accepted position in the reporting on and monitoring of the CRC' (Doek 2005, 38). As individual entitlements, in addition to their status as general principles, they must underpin the delivery of all other convention rights, including children's Article 31 CRC rights (Lundy and Byrne 2017). Therefore, in occupying an important procedural and supporting role, they ensure that the meaningful delivery of children's rights is infused with the fundamental standards which they embody, and which are now, arguably, universally synonymous with children's rights law.

Considering this, we may see how current EU sports policy is found wanting in both its content and substance. While much of the emphasis to date has centered on the protection of minors within a sporting context, it is now imperative that the EU widen its policy gaze to, more fully, take account of the interconnected nature of sport and wider children's rights, in addition to the incorporation of important procedural CRC standards in their consideration of the obligations which fall to all stakeholders – public and private – who are involved in children's sporting activities across EU member states. This requires a deeper, more exhaustive, approach to any future children's rights strategy, espoused by the EU, to give effect to the legally contiguous nature of sport and how it affects children's rights as a whole. Additionally, in their specific sport-oriented policies, it warrants the EU to engage also with the children's rights responsibilities which fall to domestic sport federations and organizations. Taken together, as the next section demonstrates, more concrete and expansive engagement with children's rights is required to comprehensively children's rights-proof the future development of EU sports policy.

## Towards a children's rights-based approach to EU sports policy

This section argues the case for a greater alignment between EU sports policy and children's rights. In doing so, this section is divided into two subsections, which, when taken together, demonstrate how greater adherence to the CRC and the provisions therein, within the field of EU sports policy can be achieved. These include (1) greater adherence to mainstream children's rights and (2) a clearer articulation of the human rights responsibilities of domestic sports federations.

### *Children's rights mainstreaming*

As apparent, EU sports policy does not endure within a seamless policy paradigm at EU level. Equally evident has been the *ad hoc* nature of the influence which children's rights law pursuant to the CRC has had on the development of that policy. More widely, references to sport are at best tangential when it comes to the EU's more substantive children's rights strategies, or their specific sports-oriented policies as referred to earlier. The cumulative result of these disparate and incidental approaches to sport and children's rights at Union level is that children's rights has not been able to exert the substantive or procedural traction it inherently possesses to fully guide the current – and future – development of EU sports policy. Further to this, it is contended that children's rights mainstreaming, recently described 'as a strategy for making children's rights, including their meaningful participation, an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes' (UN 2023, 2), should become a central plank upon which the future development of EU sports policy is configured upon.

As part of the wider family of human rights mainstreaming, children's rights mainstreaming ensures that the CRC, and the provisions therein become the key legal and operational focus around which policy and legal developments are developed. Some scholars observe that 'mainstreaming of fundamental rights into EU policies is an established principle of EU law' (Ferreira 2011, 582). Meanwhile, others remind us, importantly, that 'the design and content of child rights mainstreaming vary greatly between policy sectors, reflecting variations in actor preferences, policy competences and resource exchanges with child rights organizations across sectors' (von Bahr 2017, 511–512). Drywood (2011, 425), however, offers cause for optimism at EU level regarding the integration of children's rights within Union law and policy. She highlights the fact, that within the immigration and asylum arena, for example, 'young people are successfully embedded in the conscience of the institutions, with the result that frequent references to their needs and rights are found within legislation'.

Thus, it can be argued that the 'most important reason for effective mainstreaming of children's rights in EU policies and legislation is that this would lead to better compliance with the CRC' (Schuurman 2015, 54). Indeed, as far back as the EU Commission's first Children's Rights Strategy in 2006, a commitment was made then to 'mainstream children's rights when drafting EC legislative and non-legislative actions that may affect them' (EU Commission 2006, 8). Thus, within the sports policy context, our argument is that mainstreaming children's rights would centralize the CRC within the EU's approach to sport. This would not merely be consistent with the children's rights objectives introduced following the Treaty of Lisbon, but also facilitate the development of a robust, rights-based, cohesive sports policy, beyond the current peripheral and incidental references to children's rights.

### ***The human rights obligations of domestic sports federations***

The second area where EU sports policy can align more clearly with children's rights standards is in relation to the Union's guidance to domestic sports federations within individual member states. Whilst not transgressing the principle of subsidiarity, it is contended that much scope exists for more comprehensive guidance to be issued to bring the actions, policies, and decisions of domestic sports federations into line with CRC standards. However, such a move would arguably transcend the longstanding EU position which traditionally accorded a high level of institutional deference to the role and persuasive influence of EU sports bodies. As Parrish (2011, 215–216) wrote, the position adopted by the EU has been one where a:

more protectionist vision of sports governance is preferred, with the law encouraged to take a deferential view of the expertise a governing body possesses and a pragmatic view of the nature of the sports market which gives rise to natural monopolies held by regulators.

Indeed, the unequivocal acceptance that domestic sport federations 'still enjoy a wide-reaching autonomy from government intervention' (Mittag and Naul 2021, 18), was recently affirmed from an analysis of the EU's current suite of sport policies. Admittedly, whilst private organizations – including sports federations – are not directly subject to human rights obligations on account of their non-state character, the proliferation of academic and supra-national interest in the role and reach of the private sector *vis-a-vis* their human rights obligations have undeniably altered the paradigmatic legal structures, which once delimited human rights duties within a state-centric framework (Byrne and Lee Ludvigsen 2023a; Glinski 2017). That is not to say, however, that are now directly subject, from an enforceability perspective, to the obligations contained within international human rights treaties. Rather, the widespread acceptance of the 'corporate duty to respect' human rights, as expounded in the seminal work of John Ruggie, and contained within the '*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*' (United Nations Human Rights Office of the High Commissioner, 2011), commonly referred to as the 'Ruggie Principles', lay out clear obligations that the private sector – including sport organizations – should follow. Central to these is the need for the private sector to engage in human rights due diligence exercises to ensure that their actions and policies do not have an adverse impact on wider human rights. As argued elsewhere, commercially oriented sport governing bodies clearly fall within this category (Byrne and Lee Ludvigsen 2023a). Thus, from a children's rights perspective, the UN Committee on the Rights of the Child has previously stated that:

States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations. (UN Committee on the Rights of the Child (CRC) 2013, 17)

From an EU sporting perspective, the need for the corporate duty to respect human rights to be foregrounded more visibly within EU sports policy becomes an immediate concern. At present this is not the case and EU guidance towards domestic sports federations is deficient and non-existent from a children's rights standpoint. Considering that current EU sports policy has been described as 'fragmented' and where 'the characteristics of the



European dimension of sport need to be clarified' (European Commission 2021, 109), the direct inclusion of children's rights principles, and in particular for the need for domestic sports federations to engage in children's rights due diligence practices, would bring legal and operational coherence to the future development of EU sports policy.

## Conclusion

This article has adopted a normative stance, and argued for greater alignment between EU sports policy and children's rights. This, we argue, can pave the way forward for a children's rights-based approach to EU sports policy. Such an approach, in turn, could contribute further towards human rights compliant cultures in sport, whilst also concretizing the EU's position within the sport/human rights *nexus*, as well as its sports policy. Thus, within the context of the Lisbon Treaty and Article 165, which has received some academic attention recently, we demonstrate how there is a clear, legal and textual basis for a more robust EU policy aligned with children's rights.

In making these points, this article contributes to two significant and contemporary scholarly debates. First, it extends existing scholarship on the inter-relationships between sport and human rights during a time where human rights breaches in sport figures centrally on the political, media and academic agenda (Boykoff 2022; Næss 2020). Second, this article ties into the continually evolving research on EU sports policy in a post-Lisbon context (Vermeersch 2009; Garcia et al. 2018). Whilst this article connects these insights, it must, however, be remembered that EU sports policy is not disassociated from wider EU policy and discourses. This is an important point, because it means that this article contributes academically to our knowledge of the EU's approaches to children's rights, using sport as *one* prominent case example to understand this.

At the time of writing, it is over a decade ago since Stalford and Schuurma (2011, 381) contended that the Lisbon Treaty presented the 'most important opportunity' for developing children's rights in the history of the EU. This may be echoed in sport, which composes a socio-politically illuminating area in EU contexts. And, by making the case for a children's rights-based approach to EU sports policy, this paper has showcased *how* this may develop as an important, child-rights based legacy of the Lisbon Treaty. Concerning future work, we contend that research could seek to add to our argument by utilizing specific case studies located within member state contexts or associated with specific sporting events or activities, which would further shine a spotlight on how the actual translation of children's rights standards is influencing domestic sports events at the national or local levels.

## Notes

1. Case 415/93, Union Royale Belge des Societs de Football Ass'n ASBL v. Bosman, 1996 CEC (CCH) 38, 118 (1996).
2. CJEU, C-244/06, Dynamic Medien Vertriebs GmbH v. Avides Media AG, 14 February 2008, para 39.

## Disclosure statement

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