

Controlling Major Sports Governing Bodies – A Case to Confer Further Competences on the EU

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Nowadays, sports are organized globally through the respective sports governing bodies. These bodies operate without much interference through regulation from single states despite several scandals becoming public each year. This article advocates for further conferral of competences on the EU to regulate these bodies. The EU would be in a perfect position to do so and it would ultimately not only benefit fair sports organization but also the EU and its values internally.

Since Antiquity, sports has not only embodied impressive physical strength, but above all also values. The ideal of sports in its pure form makes it a powerful tool to overcome differences. On the other hand, this power can also be used as a means to manipulate and to abuse.

A lot of this power is bundled at the top of a pyramid of sports governing bodies (SGBs). These are the organizations governing a certain sport globally such as FIFA or for Olympic sports the International Olympic Committee (IOC). These organizations often escape regulation through individual states and essentially operate in a system of rules that they created themselves.

The problem is that there is hardly an Olympic cycle where no scandals in sports are made public. There are however hardly any resulting consequences as there are no entities that are either capable or willing to regulate SGBs and to enforce certain governance standards. This is especially the case for individual states and ordinary international organizations (IO). Therefore, the only entity that matches the SGBs not only in terms of power but also in terms of its supranational setup is the European Union (EU). But currently, the EU is not competent to explicitly regulate such global SGBs.

In the following, a case will be made to confer more powers upon the EU to do so. For this, the status quo will be examined by looking at the current regulation of SGBs through the Union (A.) and at the current competences of SGBs to self-regulate (B.). Afterwards, the possible consequences of further conferral of competences will be described (C.).

A. Regulation of SGBs by the Union

The EU is an important actor in the regulation of SGBs even though the term “sport” only found its way into the Treaties in Art. 165 TFEU in 2009. This long-lasting lack of a specific Union competence for sports led to the EU finding, intentionally or not, other ways of acting in the field of sports.

I. Direct Regulation

Even before the inclusion of sports into the Lisbon Treaty, the Union set up a sort of sports policy by making use of related competence fields such as culture, education, or health.¹ Nowadays, the benefits of sports and its contribution to public interest objectives are recognized by the EU institutions as policy goals.² These are pursued on the one hand by means of legislative action and, on the other hand, by means of cooperation or soft regulation.

The competence to regulate sports lies with the Member States (MS) and is only delegated to the Union by means of a conferral of competences through Art. 6 TFEU which makes it a complementary Union competence.³ This means that the EU is only to a very limited extent entitled to legislate as the competence lies primarily with the MS.⁴ Accordingly, the Union is only allowed to provide “incentive measures” and harmonization is prohibited.⁵ This mirrors the idea of the concept of complementary competences being deeply rooted in the principle of subsidiarity.⁶

Interestingly though, the ultimate wording of Art. 165 TFEU was the result of extensive lobbying efforts on the side of SGBs.⁷ It seems like SGBs have come to realize that they cannot push so far as to get a blanket exemption from EU law. Therefore, the second-best alternative was to empower the Union to a certain extent in order to restrain it by having the special nature of sport included in the

¹ *Van den Bogaert/Vermeersch*, *European Law Review* 31 (2006), 821 (822).

² *Mataija*, *Private Regulation and the Internal Market*, 2016, p. 160.

³ Art. 4(1), 5(2) TEU.

⁴ *Schütze*, *European Law Review* 31 (2006), 167.

⁵ Art. 165(4) TFEU.

⁶ *Eichel*, *Der Sport im Recht der europäischen Union*, 2013, p. 28.

⁷ *García/Weatherill*, *Journal of European Public Policy* 19 (2012), 238.

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Treaties.⁸ But instead, it seems that the Commission now sees Art. 165 TFEU as a means to expand the EU's role in sports.⁹ On the other hand, it still might give greater weight to the specificities of sports that the Court of Justice (CJEU) needs to take into consideration when conducting its proportionality assessment.¹⁰ Apart from that, the most important result is an increase of the legitimacy of action by the Union in the field of sports.

Besides “hard” law-making, there are also other, maybe “softer”, forms of regulation such as classic soft law but also cooperation with SGBs. Soft law plays an important role in creating the framework for decisions taken by the CJEU and the Commission as enforcers of EU law.¹¹ The teleological approach of interpretation in EU law is framed and influenced by soft law or the general policy objectives set out by the EU. Therefore, the importance of non-binding documents concerning the conduct of SGBs in the Union or concerning the sports policy of the Union more generally should not be underestimated. Also, the MS acknowledged early on the importance of sports and the need to act jointly.

Another approach taken by the Commission in influencing the conduct of SGBs is through cooperation with SGBs. Examples for such approaches are the involvement of the Commission in the drafting process of the FIFA transfer system¹² or the FIA statutes¹³ and the cooperation agreements with UEFA¹⁴.

There is a certain development towards SGBs realizing that cooperation with intergovernmental organizations and states can be beneficial as it might lead to facilitated control of action taken by those states or organizations. But also, the EU institutions have come to realize that cooperation might be in their interest, creating “a constant interplay between the Commission and sporting bodies, avoiding confrontation while negotiating certain reforms”.¹⁵

All this shows that even though the competences conferred by Art. 165 TFEU are limited, the EU nevertheless has significant powers in the direct regulation of SGBs although these rely mostly on alternative ways of regulation as opposed to legislative control.

II. Indirect Regulation

Besides direct regulation, sports is one of the areas where the Union heavily relies on indirect regulation. This was originally mainly influenced by the progressing European integration and by the increasing commercialization of sports which brought it in the realm of the single market.¹⁶ When it comes to indirect regulation, the most impactful are internal market and competition law¹⁷ with the decisions of the CJEU and the Commission as enforcers of EU law.

In relation to internal market law, it was a sports law case where the Court stated that not only public acts but also acts of private entities having big regulatory power are covered by the free movement of persons Treaty provisions.¹⁸ On the other hand, the Court equally recognized that sports are special in saying that there are some limitations which are necessary for the proper conduct of sporting competitions which may not be impeded by EU law.¹⁹ The problem for internal market law cases is, however, that they rarely make it to the CJEU and are therefore not apt to further the development of EU sports law.²⁰

Therefore, in recent years, competition law has proven to be more effective in the regulation of SGBs and is sometimes called “a sort of administrative law” for SGBs.²¹ The European Sports Model and especially its principle of one federation per sport²² leads to the creation of “monopolies” and “dominant positions” when speaking in terms of competition law. The Court even expressly stated that “it seems unrealistic to claim that FIFA, [...], does not hold a collective dominant position on the market”.²³ And, by acting as the supreme governing body, FIFA prohibits any kind of outside competition by means of its statutes²⁴, which was held to be contrary to competition law by the Court.²⁵ However, also under competition law rules, the Court has upheld many rules implemented by SGBs by stating that they are “inherent in the organization and proper conduct of competitive sport”.²⁶

The argument that sports are special and therefore needs special treatment is raised by SGBs in every case. Sports are indeed special for several reasons and this has also been recognized by policy-makers, legislators, and courts alike. Many standards do not fit the way, especially professional sports, is organized. An example is the segregation of com-

⁸ *García/Weatherill*, (Fn. 7), 248.

⁹ *Mataija*, (Fn. 2), p. 166; see also Commission Staff Working Document of 18 January 2011, Sport and Free Movement, SEC(2011) 66 final.

¹⁰ *Duval*, *European Law Journal* 19 (2013), 822 (839 f.).

¹¹ *Mataija*, (Fn. 2), p. 164.

¹² *European Commission*, Commission closes investigations into FIFA regulations on international football transfers, Brussels, 5 June 2002, IP/02/824.

¹³ *European Commission*, Press Release: Commission closes its investigation into Formula One and other four-wheel motor sports, Brussels, 30 October 2001, IP/01/1523.

¹⁴ Most recently: Commission Decision of 9 June 2022 on the adoption of the Arrangement for Cooperation between the European Commission and the Union of European Football Associations (UEFA), C(2022) 3721 final.

¹⁵ *Mataija*, (Fn. 2), p. 184.

¹⁶ *Tokarski*, *Two Players – One Goal? Sport in the European Union*, 2002, p. 79.

¹⁷ *Mataija*, (Fn. 2), p. 159.

¹⁸ *CJEU*, 15 December 1995, C-415/93 – *Bosman*, paras. 82 f.

¹⁹ *CJEU*, 11 April 2000, C-51/96 – *Deliège*, para. 64.

²⁰ *Mataija*, (Fn. 2), p. 183.

²¹ *Mataija*, (Fn. 2), p. 159.

²² *Sennett et al.*, *Study on the European sport model – A report to the European Commission*, Publications Office of the European Union, 2022, p. 21.

²³ *CJEU*, 26 January 2005, T-193/02 – *Piau*, para. 115.

²⁴ Art. 71 FIFA Statutes.

²⁵ *CJEU*, 21 December 2023, C-333/21 – *Superleague*.

²⁶ *CJEU*, 18 July 2006, C-519/04 P – *Meca-Medina*, para. 45.

petitions as to gender, nationality, or disability.²⁷ In order to have exciting competition between nations, it is even necessary to justify discrimination on grounds of nationality which is perfectly adequate in sports but in hardly any other area of EU law.²⁸

Even though the specificity of sports is often invoked by SGBs and mentioned in decisions of the Court, it was never properly defined. The White Paper on Sport merely identifies some key features that are: the interdependence between competing adversaries, the uncertainty as to the result, the freedom of internal organization and sports' educational, public health, social, cultural, and recreational functions.²⁹

This has also been recognized by the EU and has caused the development of the so-called "sporting exception". In short, this means that the EU institutions grant a certain degree of autonomy to SGBs that exceeds their normal freedom of association.³⁰ Importantly however, this does not mean that sporting practices fall outside the scope of the Treaties.³¹ It is rather the opposite: while sporting practices will usually fall within the scope of the Treaties, the importance lies in the determination of which violations are considered to be legitimate due to their importance for the special nature of sports and can thereby justify a certain measure.³² Generally, the sporting exception comes down to a proportionality analysis where the Court grants certain liberties to SGBs provided that they justify the measures with them being necessary for the proper conduct and organization of sports.³³ Thereby, SGBs get conditional autonomy from EU law which is contingent on them respecting the core norms of the Treaties.³⁴

B. Competences of SGBs

Besides regulation by the EU, there is a vast net of legal rules that is set by SGBs themselves. It can well be considered as its own legal system with a hierarchy of laws and its own court.³⁵ In this picture, SGBs take the role of the legislative and the executive branch at the same time. Only the judicial branch is separated either to special committees within the organizations or to the Court of Arbitration for Sport (CAS). Ultimately, SGBs are eager to claim this system including full autonomy and immunity from any outside regulation.

Many of the major SGBs operate on a basis of coercion and seduction in order to sustain a system that ultimately benefits themselves the most.³⁶ And a majority of decisions is taken on a transnational level by the SGBs with few considerations of national rules.³⁷ In short, SGBs claim self-regulation which they derive from the special nature of sports. But "the simple assertion of the adequacy of self-regulation cannot on its own suffice."³⁸

I. System of Self-Regulation of SGBs

The hierarchical structure of sports with SGBs operating on different levels leads to a lot of top-down decision-making. Deriving from this hierarchical structure, SGBs at the top have a lot of regulatory power. They set at least de facto binding rules for the organizations further down the pyramid.³⁹

If the sport-specific global SGBs and the IOC act as the important regulatory powers in the world of sports, another important player is the CAS. The CAS is an arbitral tribunal seated in Switzerland, which was created to handle sporting disputes and thereby exclude state intervention also in the field of dispute resolution. Its seat in Switzerland makes it subject to limited review by the Swiss Federal Tribunal and largely excludes it from the jurisdiction of the CJEU.⁴⁰

Swiss law, as the law of incorporation of many of the major SGBs, has traditionally been very reluctant to interfere with SGBs' business. Even after scandals concerning corruption within FIFA, the Swiss authorities considered the regulations in place to be sufficient.⁴¹ This assessment did not even change after another inquiry in the Swiss Federal Assembly in 2022 in the context of massive human rights violations during the FIFA World Cup in Qatar and the Olympic Winter Games in Beijing 2022.⁴²

²⁷ *Mataija*, (Fn. 2), p. 158.

²⁸ *Eichel*, (Fn. 6), p. 285.

²⁹ Commission Staff Working Document of 11 July 2007, *The EU and Sport: Background and Context*, Accompanying document to the White Paper on Sport, SEC(2007) 935, p. 36.

³⁰ *Mataija*, (Fn. 2), p. 161.

³¹ *CJEU*, 14 July 1976, Case 13-76 – *Donà*, paras. 14 f.

³² *Weatherill*, in: Biondi/Eeckhout/Ripley (eds.), *EU Sports Law: The Effect of the Lisbon Treaty*, 2012, p. 403 (404).

³³ *Duval*, (Fn. 10), 839.

³⁴ *Weatherill*, (Fn. 32), p. 405.

³⁵ *Duval*, (Fn. 10), 827 f.

³⁶ *Sugden/Sheps/Sugden*, *International Journal of Sport Policy and Politics* 15 (2023), 473 (474).

³⁷ *Mataija*, (Fn. 2), p. 158.

³⁸ *Weatherill*, *European Business Law Review* 9 (1998), 217.

³⁹ *Mataija*, (Fn. 2), p. 157.

⁴⁰ *Mataija*, (Fn. 2), p. 257 f.

⁴¹ Swiss Parliament, Motion 15.3604 zum Gesetz über die Aufsicht und Kontrolle internationaler Organisationen, insbesondere der Sportverbände, 17 May 2015, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20153604>, retrieved 3 May 2024.

⁴² Swiss Parliament, Postulat 21.4444 "Wie sorgt der Bundesrat dafür, dass die Fifa und das IOC ihren Verpflichtungen nachkommen?", 15 December 2021, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20214444>, retrieved 3 May 2024.

II. Public Level Powers of SGBs

The powers of SGBs rarely stem exclusively from their private autonomy⁴³ but they more often exercise a form of public level power as well. In that sense, SGBs are a mixture of a commercial and a public organization⁴⁴, also exercising powers similar to governmental powers.⁴⁵ This shows that it is also in the common interest to ensure effective governance of such organizations.⁴⁶

Amongst the powers of SGBs is the rule-setting capacity for its subordinate bodies. These rule-making powers are not conferred to them from any kind of public body “in connection with a recognized task in the general interest concerning sporting activity”⁴⁷ but they are simply taken for granted and derived from their freedom of association. The case can be made that SGBs derive their regulatory power merely from the fact that they are actually exercising it. This was also called into question by the Court of First Instance without however further developing on this point.⁴⁸

III. Legitimacy of the System of Self-Regulation of SGBs

As SGBs are exercising public powers, the question remains under which circumstances such exercise is legitimate. In this regard, it makes sense to hold SGBs accountable to the same standards as other, ordinary, public or private bodies. The need to ensure certain governance standards in the major SGBs is not disputed, even amongst themselves.⁴⁹

As SGBs contain private as well as public features, it makes sense to combine elements of corporate governance with democratic governance to achieve “sports governance”.⁵⁰ It can be defined as “the creation of effective networks of sport-related agencies, sports non-governmental organizations and processes that operate jointly and independently under specific legislation, policies and private regulations to promote ethical, democratic, efficient and accountable sports activities”.⁵¹

One of the main governance problems is that effective decision-making power within SGBs lies in the hands of a comparatively small group of people. As those are private bodies, these persons are not democratically elected or in

any other way subject to public scrutiny.⁵² Even where elections are held internally, they often struggle with irregularities and corruption suspicions. In that regard, a cautionary tale is the attempted reform of FIFA in 2016 which is described as at first promising but then all the more disappointing by *Maduro* and *Weiler*. They concluded that FIFA as an organization is not reformable from the inside. According to them, “FIFA works as a political cartel with a high concentration of power at the top. Such power requires checks and balances.”⁵³

Adding up to these issues is the creation of a special court system for sporting matters, embodied by the CAS and the common practice to remove disputes from the jurisdiction of domestic courts to delegate them to private dispute resolution bodies. For example, the FIFA Statutes expressly prohibit recourse to ordinary courts of law, including recourse to such courts for provisional measures.⁵⁴

Even though the CAS is recognized by the Swiss Federal Tribunal as an independent judicial tribunal⁵⁵, there are still several peculiar aspects of the set-up of the CAS, such as the financial dependence on the Olympic Movement.⁵⁶ Furthermore, the CAS operates with a closed list of arbitrators. This feature is explained by the CAS by the need to ensure professionalism among arbitrators and it is also recognized by the Swiss Federal Tribunal⁵⁷ and the ECtHR⁵⁸ as legitimate. The use of arbitration, in general, is another point of criticism as the free consent to arbitration can be doubted at least on the side of individual athletes. In the case of Claudia Pechstein, even the ECtHR recognized that the submission of the dispute to arbitration in the case of a professional athlete seeking to participate in the Olympics cannot be considered to be given freely and unequivocally.⁵⁹ Generally, the fact that there are contradicting decisions in the Pechstein-Saga between the German Constitutional Court⁶⁰, the German Federal Court⁶¹ and the ECtHR decision with its two dissenting opinions shows how controversial the system is.

SGBs may well be compared to state-like entities considering their regulatory power, their budget and, at least in the case of the IOC, its status as a subject of public inter-

⁴³ *Mataija*, (Fn. 2), p. 178.

⁴⁴ *Chappelet*, *Sport in Society* 20 (2017), 1 (2).

⁴⁵ *Foster*, University of Westminster School of Law Research Paper No. 12-10, <https://ssrn.com/abstract=2014694>, p. 6, retrieved 26 April 2024.

⁴⁶ *Pielke*, *Sport Management Review* 16 (2013), 255 (256).

⁴⁷ *CJEU*, 26 January 2005, T-193/02 – Piau, para. 74.

⁴⁸ *CJEU*, 26 January 2005, T-193/02 – Piau, para. 76.

⁴⁹ *Pielke*, (Fn. 46), 258.

⁵⁰ *Chappelet*, (Fn. 44), 2.

⁵¹ *Siekmann/Soek*, *The International Sports Law Journal* 9 (2010), 93.

⁵² *Duval*, (Fn. 10), 832.

⁵³ *Maduro/Weiler*, in: Geeraert/van Eekeren (eds.), *Good Governance in Sport*, 2021, p. 129 (135).

⁵⁴ Art. 58(2) FIFA Statutes.

⁵⁵ *Swiss Federal Tribunal*, Judgment of 27 May 2003, 4P.267/2002, para. 3.3.3.2.

⁵⁶ Art. 3 of the Agreement Related to the Constitution of the International Council of Arbitration for Sport (ICAS).

⁵⁷ *Swiss Federal Tribunal*, Judgment of 27 May 2003, 4P.267/2002, para. 3.3.3.2.

⁵⁸ *ECtHR*, 4 February 2019, Application 40575/10 and 67474/10, *Affaire Mutu et Pechstein c. Suisse*, paras. 150-159.

⁵⁹ *ECtHR*, 4 February 2019, Application 40575/10 and 67474/10, *Affaire Mutu et Pechstein c. Suisse*, para. 147.

⁶⁰ *German Federal Constitutional Court*, Judgment of 3 June 2022, 1 BvR 2103/16.

⁶¹ *German Federal Court of Justice*, Judgment of 7 June 2016, KZR 6/15.

national law.⁶² However, they mostly lack the basic governance structures that we see as essential for liberal democratic states. Notwithstanding all of these problems, SGBs are generally seen as legitimate as long as they comply with existing EU law.⁶³ “Neither the Commission nor the Court have deeply challenged the legitimacy of sporting bodies as sports regulators.”⁶⁴ This can be seen as a trade-off between regulatory autonomy on the one hand and submission to EU law on the other hand.

C. Desirability of Further Conferral of Competences to the EU to Regulate SGBs

No single entity can regulate sports on its own,⁶⁵ and as sports is highly dependent on a functioning system of SGBs that organize sporting activities from grassroots to professional level, the question is not one of abolishing SGBs but more a question of how much regulation is necessary.

For regulation by the EU speaks that it does not have to fear repercussions such as exclusion of its national team from a competition. This is a threat commonly expressed by SGBs. FIFA, for example, frequently suspends national federations if there is too much interference by the state.⁶⁶ Often the threat to exclude teams from the FIFA World Cup suffices to provoke a change in politics. This was for example the case in Greece, where FIFA demanded legislative changes that were then agreed upon by Parliament in the shortest possible time.⁶⁷ In a sort of anticipatory obedience, the UK stopped its opposition to the textual propositions of Art. 165 TFEU once it realized that this might hurt its bid for the 2012 Olympics.⁶⁸ In essence, no government wants to have to sell it to their voters that their national team was suspended because of its regulatory involvement. The EU is not in a similar position of power asymmetry with global SGBs as are the MS on their own, which puts it in a prime position for regulation.⁶⁹ This is further corroborated by the structure of the EU as a supranational organization which fits the profile of major SGBs.

Another advantage of the EU is that Europe is home to some of the most powerful SGBs and most important leagues and competitions globally.⁷⁰ These cannot simply be excluded from competition without the SGB seriously hurting itself. The fact that most of the main sponsors of the

UEFA Euro Cup 2024 were Chinese companies further demonstrates the importance of the European market in sports internationally.

But more competences for the EU would equally lead to a loss of powers on the side of SGBs and of the MS. Therefore, opposition does not only come from the SGBs in arguing that the EU is not fit for the purposes of regulating sports and instead refer to their longstanding tradition of self-regulation.⁷¹ Also the MS still see sports as a sensitive issue, comparable to health or education, and usually refer to the subsidiarity of EU law. This point was explicitly raised in the Bosman case⁷², which was however rejected by the Court in stating that the freedom of SGBs to adopt their own rules cannot go so far as to restrict the exercise of individual rights conferred by the Treaties.⁷³

Another aspect that needs to be taken into account as an argument in favor of conferring more powers to the Union is the identity building function of sports and the way it would support the promotion of the interests of Art. 3 TEU that can be achieved through an effective regulation of SGBs. This was already early on recognized⁷⁴ as well as its facilitating capacities for the mutual understanding amongst nations⁷⁵.

In conclusion, there are multiple reasons for conferring more competences on the Union when it comes to the regulation of SGBs, even though most measures of SGBs are already now under the scrutiny of EU law, at least to a certain degree.⁷⁶ What needs to be taken into consideration is, however, that the big steps in the process of regulation have not come from the European Parliament, the Commission, or the Council, but they have come from the adjudication of the Court.⁷⁷ This “creeping juridification”⁷⁸ is not only problematic in terms of legitimacy but on a more practical note also creates legal uncertainty for the SGBs concerned.⁷⁹ Shifting the decision power to the law-making institutions would again strengthen its democratic legitimization. It would also further consolidate the self-image of the EU as a protective power of the rule of law as well as democratic and human rights standards. Ultimately, it could have a similar effect to the first inclusion of sport in the Treaties with Art. 165 TFEU which was most importantly one of constitutional recognition.⁸⁰

Lastly, on a more practical level, there are many issues that need to be addressed in the context of sports that can only be addressed effectively on a supranational level. This was already recognized with the creation of WADA for the fight

⁶² *Ettinger*, *Pace International Law Review* 4 (1992), 97 (107).

⁶³ *Mataija*, (Fn. 2), p. 180.

⁶⁴ *Mataija*, (Fn. 2), p. 174.

⁶⁵ *Mataija*, (Fn. 2), p. 185.

⁶⁶ *FIFA*, *FIFA suspends Chad and Pakistan football associations*, 7 April 2021, <https://inside.fifa.com/about-fifa/organisation/fifa-council/media-releases/fifa-suspends-chad-and-pakistan-football-associations>, retrieved 3 May 2024.

⁶⁷ *Stekmann/Soek*, (Fn. 51), 102.

⁶⁸ *Garcia/Weatherill*, (Fn. 7), 249.

⁶⁹ *Duval*, (Fn. 10), 838.

⁷⁰ *Sugden/Sheps/Sugden*, (Fn. 36), 475 f.

⁷¹ *Weatherill*, (Fn. 38), 217.

⁷² *CJEU*, 15 December 1995, C-415/93 – Bosman, para. 72.

⁷³ *CJEU*, 15 December 1995, C-415/93 – Bosman, para. 81.

⁷⁴ *Van den Bogaert/Vermeersch*, (Fn. 1), 822.

⁷⁵ *European Parliament*, Resolution of 13 April 1984 on sport and the Community, OJ C127/142.

⁷⁶ *Mataija*, (Fn. 2), p. 186.

⁷⁷ *Mataija*, (Fn. 2), p. 184.

⁷⁸ *Parrish*, *Journal of European Public Policy* 10 (2003), 246 (249).

⁷⁹ *Weatherill*, (Fn. 32), 407.

⁸⁰ *Van den Bogaert/Vermeersch*, (Fn. 1), 839.