

PROMOTION OF GOOD GOVERNANCE IN SPORT



Legal instruments

Recommendation CM/Rec(2018)12
and explanatory memorandum

COUNCIL OF EUROPE



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PROMOTION OF GOOD GOVERNANCE IN SPORT

Recommendation CM/Rec(2018)12
adopted by the Committee of Ministers
of the Council of Europe
on 12 December 2018
and explanatory memorandum

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Recommendation CM/Rec(2018)12

of the Committee of Ministers to member States on Promotion of good governance in sport

*(Adopted by the Committee of Ministers on 12 December 2018
at the 1332nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and of facilitating their economic and social progress;

Having regard to its Recommendations No. R (92) 13-rev on the Revised European Sports Charter, No. R (92) 14-rev on the Revised Code of Sports Ethics, Rec(2005)8 on the principles of good governance in sport and CM/Rec(2011)3 on the principle of autonomy of sport in Europe;

Recalling the Criminal Law Convention on Corruption (1999, ETS No. 173), the Civil Law Convention on Corruption (1999, ETS No. 174), the Additional Protocol to the Criminal Law Convention on Corruption (2003, ETS No. 191) and the Convention on the Manipulation of Sports Competitions (2014, CETS No. 215);

Recalling the 11th Council of Europe Conference of Ministers responsible for Sport (Athens, Greece, 2008), which identified corruption as a new challenge to sport;

Having noted the work and conclusions of the 13th Council of Europe Conference of Ministers responsible for Sport (Macolin/Magglingen, Switzerland, 18 September 2014), in particular on the risk of corruption in sport, and of the 14th Council of Europe Conference of Ministers responsible for Sport (Budapest, Hungary, 29 November 2016), on the theme of better governance in sport through enhanced co-operation between public authorities and sports organisations;

Welcoming the two resolutions adopted at the 15th Council of Europe Conference of Ministers responsible for Sport (Tbilisi, Georgia, 16 October 2018) on “Protecting human rights in sport: obligations and shared responsibilities” and on “Fighting corruption in sport: scaling up action”;

Considering its Recommendation Rec(2005)8, which specifies minimum requirements with regard to the governance of sports organisations and stressing its belief that the consistent application of the principles of good governance in sport would be a significant factor in helping to eradicate corruption and other malpractice in sport;

Considering its Recommendation CM/Rec(2014)7 on the protection of whistle-blowers, stressing the importance of their protection and their role in preventing and identifying offences, and in strengthening democratic accountability and transparency;

Welcoming the national and international initiatives to implement gender mainstreaming in sport in line with its Recommendation CM/Rec(2015)2 on gender mainstreaming in sport, because gender equality is key to promoting diversity in and through sport, but also to improving sport governance;

Considering Parliamentary Assembly Resolutions 1875 (2012) “Good governance and ethics in sport”;

2053 (2015) “The reform of football governance”, 2199 (2018) “Towards a framework for modern sports governance” and 2200 (2018) “Good football governance”;

Convinced that the successful implementation of effective good governance policies within sports organisations, including codes of ethics and adherence to international standards, would contribute to the strengthening of their position with respect to governmental authorities and the general public, on the basis of mutual respect and trust;

Having noted that deficiencies in the governance of sports organisations are hindering their capacity to prevent and respond to threats to their integrity, such as corruption, doping and manipulation of sports competitions and are creating an uncertain, unsafe and unfair environment for athletes;

Acknowledging that the legitimacy and autonomy of the sport movement depends on upholding the highest standards of ethical behaviour and good governance;

Acknowledging that public authorities have a key role to play in promoting the implementation of good governance principles;

Being aware that effective prevention of and response to corruption in sport may call for changes in legislation and policies, but also in social attitudes towards corruption in the private sector,

Recommends that the governments of member States facilitate, support and follow up the implementation of good governance in sport, in particular in order to strengthen the fight against corruption in sport and by taking the following steps:

1. ensure that their national legislation effectively allows for investigation, prosecution and mutual legal assistance, including police and judicial co-operation, in cases of corruption offences in sport;
2. apply a zero-tolerance policy regarding corruption in sport;
3. ensure that the competent authorities use the relevant anti-money laundering and anti-corruption provisions and mechanisms to prevent and respond to cases in the field of sport;
4. monitor directly or indirectly progress towards the implementation of good governance principles by their national sport movement;
5. consider introducing compliance with good governance principles as criteria for the awarding of public grants to sports organisations and for sports events;
6. encourage the leaders of their national sport movement to comply with and actively promote good governance principles while acting within the framework of international sports organisations;
7. encourage sports organisations acting on their territory to:
 - apply the principles of democracy in their decision making and operations, and further strengthen their transparency, inclusiveness and democratic ways of functioning, as well as their accountability;
 - develop and implement appropriate good governance measures within their own regulations and procedures;
 - foster a good governance culture through educational initiatives;
 - achieve a balanced representation in the diversity of their members – including gender equality – within their decision-making processes;

- co-operate with independent experts reviewing the good governance of sports organisations, where appropriate;
 - publish the results of any self-assessment on good governance;
 - establish external evaluations and audit policies, as appropriate;
 - share information on corrupt practices with law-enforcement authorities;
8. encourage co-operation with all key stakeholders to address any kind of corruption in sport;
9. prevent conflicts of interest within bodies – public or private – which are in charge of both elite sport performance and sport integrity, particularly as regards the fight against doping and the manipulation of sports competitions;
10. make sure that whistle-blowers benefit from effective protection, and in particular are covered by national frameworks for protection, as defined in Recommendation CM/Rec(2014)7, irrespective of their contractual relation with their organisation.

Explanatory memorandum

Sport benefits society in many ways. It is important to acknowledge and preserve its contribution to the promotion of tolerance and respect, to the empowerment of women and young people, to the development of individuals and communities, as well as to the achievement of health, education and social inclusion objectives.

These social benefits from sport are mostly provided in an autonomous way by sports organisations, which enjoy the right to freedom of association but must comply with the applicable laws. Sport does not operate in a vacuum and is not beyond the reach of justice. The values of human rights, democracy and rule of law also apply to sport.

Clearly, deficiencies in the governance of sports organisations are hindering their capacity to prevent and respond to threats to sport integrity, such as corruption, doping and manipulation of sports competitions, and are creating an uncertain, unsafe and unfair working environment for athletes and other participants in sport. Good governance in sport is needed to preserve sports ethics and to ensure that sports organisations live up to their responsibilities.

Governments have the obligation to promote and protect human rights and to guarantee respect for the rule of law also in the context of sports organisations. They also have a vested interest in promoting good governance in sport, in particular because:

- governments are involved in preventing and responding to threats against the integrity of sport and to violations of the human rights of those participating in sports activities;
- governments support sports activities and the participation of athletes or teams representing national sports organisations in international competitions;
- governments invest in hosting events or bidding to host events;
- public broadcasters buy certain broadcasting rights.

When governmental authorities give support to sport, either directly or indirectly, by committing State funding, they have a duty to ensure that these resources are managed properly, according to their objectives.

The Council of Europe addressed the issue of good governance in sport at its 10th Conference of European Ministers responsible for Sport (Budapest, 2004); it published a European survey on this topic and the Committee of Ministers adopted Recommendation Rec(2005)8 on the principles of good governance in sport.

The 14th Council of Europe Conference of Ministers responsible for Sport (Budapest, 2016) focused on the promotion of good governance in sport at national level and invited the Enlarged Partial Agreement on Sport (EPAS) to prepare a recommendation with measures to enable governments and competent authorities to promote good governance in sport. The promotion of good governance was also at the core of the last Conference of Ministers responsible for Sport (Tbilisi, 2018), as highlighted in its resolution “Fighting corruption in sport: scaling up action”.

The promotion and enforcement of good governance principles are considered to be key to preventing and addressing the issue of corruption in sport. By improving their governance, organisations become more inclusive and efficient. Transparent, accountable and democratic governance includes stakeholders in strategic decision-making processes. Moreover, a system of checks and balances encourages trust.

Recommendation Rec(2005)8 on the principles of good governance in sport states that effective policies and measures of good governance in sport include as a minimum requirement:

- democratic structures for non-governmental sports organisations based on clear and regular electoral procedures open to the whole membership;
- organisation and management of a professional standard, with an appropriate code of ethics and procedures for dealing with conflicts of interest;
- accountability and transparency in decision making and financial operations, including the open publication of duly audited yearly financial accounts;
- fairness in dealing with membership, including gender equality and solidarity.

Besides their direct interest in sports, governments also bear the responsibility, through criminal law, for preventing and responding to breaches of or threats to human rights, the rule of law or the public order, health and safety. Criminal

cases in a sport-related context must be investigated and prosecuted as in any other field, to establish the truth and bring to justice anyone responsible for breaking the law.

As previously mentioned, governments are involved in supporting their national sport movement and therefore can influence, to some extent, sport at national level. As most decision makers in international sports organisations come from national sports organisations, the governance culture and mindset are shaped at local and national level, and governments can contribute to their improvement.

EPAS is gathering good practices on the promotion of good governance, from governments and umbrella sports organisations, and sharing them with national sports organisations. In addition to the promotion of good practices, EPAS has worked on the role that governments can play in supporting the implementation of good governance in sport. This support could cover areas such as monitoring good governance of sport at national level; supporting awareness-raising campaigns, training and advice for sports organisations; conditioning the awarding of public grants to sports organisations on compliance with all good governance criteria; ensuring that national criminal law is applicable to acts of corruption in sport and enables its prosecution; and facilitating the exchange of information between the sports movement and public authorities.

This Recommendation concerns those aspects of the activities of governments and national umbrella sports organisations which can significantly improve the governance of sports organisations located on their territory and which can limit opportunities for corruption in sport. It comprises a number of general rules that should underpin the legislation, policies and practices of States on this subject.

Paragraphs 1 to 10 cover the various recommendations directed at the governments of Council of Europe member States.

Paragraph 1 refers to appropriate legislation which would allow for investigation, prosecution and mutual legal assistance, including police and judicial co-operation, in cases of corrupt behaviour in sport. Monitoring reports and a recent typology study by GRECO have highlighted that the scope of application of criminal provisions on private corruption is sometimes limited to business activities. Therefore, sports organisations, which are often established as non-profit associations, may fall outside the remit of these provisions. Governments are recommended to ensure that investigations, prosecution and mutual

legal assistance with police and judicial co-operation are effectively allowed in cases of corrupt behaviour in sport.

Paragraph 3 refers to appropriate provisions on the fight against money laundering and corruption in the field of sport. These provisions include those recommended by the Financial Action Task Force (FATF). However, governments can decide to go even further and request that their financial institutions consider some leaders of sports organisations to be “politically exposed persons”, requiring enhanced risk mitigation measures.

The good governance principles referred to in paragraphs 4, 5 and 6, should be understood in light of Recommendation Rec(2005)8 on the principles of good governance in sport, which specifies the minimum requirements with regard to the governance of sports organisations.

Paragraph 4 refers to the monitoring of the implementation of good governance principles by the national sports movement; such monitoring can be done directly in cases where governmental authorities collect information on the implementation of good governance by sports organisations, by means of reports, questionnaires, hearings or audits. It can be done indirectly in cases where the governmental authorities entrust, for instance, an umbrella sports organisation with the task of ensuring that its member organisations comply with good governance principles and gather information so as to document such compliance.

Paragraph 5 recognises that economic incentives can be used to encourage the implementation of good governance principles while respecting the autonomy of the organisations concerned. Criteria for the awarding of public grants should be inspired by internationally recognised good governance standards and principles.

Paragraph 7 refers to measures that the sports organisations themselves should be encouraged to implement. Since these measures may depend on the institutional setting of the organisations, they should be prepared in an inclusive manner and take into consideration the opinions of the organisations’ stakeholders, such as athletes, clubs and international or national umbrella organisations to which the organisation is affiliated. Other stakeholders such as sponsors and anti-corruption and governance experts may also be involved. The legal requirements applicable to associations and to sport in general should also be respected. Appropriate good governance measures may include, in the case of members of the Olympic Movement, the International

Olympic Committee (IOC) Basic Universal Principles of Good Governance¹ and, in the case of summer olympic sports, the Association of Summer Olympic International Federations (ASOIF) key governance principles.² The Sports Governance Observer indicators, Recommendation Rec(2005)8 on the principles of good governance in sport and the set of principles developed by an expert group from the European Union,³ are other pertinent reference documents.

The reference to a balanced representation of their members within the decision-making processes is one of the requirements of inclusive and democratic governance. Paragraph 7 underlines the need for the decision-making bodies within an organisation to reflect upon the entire composition of its membership, not only in terms of sociological categories (for example, women, men, language or people from a migrant background) but also in terms of interest groups within the organisation (for example, clubs, athletes or grassroots sport).

The reference to co-operation with independent experts on reviewing good governance covers actions such as the involvement of independent experts in supporting self-evaluation procedures, as well as the provision of information to national or international analyses run by academics or independent organisations, which can complement the results gathered by the sports organisations themselves. Co-operation with independent experts in these matters can help to review the situation in the light of experience from other organisations, to consider things from a new perspective and to promote transparency and trust.

Paragraph 8 stresses the importance of co-operation with other key stakeholders. This is particularly important for the fight against corruption in sport, as highlighted in the Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215).

Paragraph 9 refers to structural conflicts of interest which organisations can come across when they are in charge of promoting a sport or a sporting nation aiming for high-level results, and at the same time in charge of protecting the

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1. IOC (2008), Basic Universal Principles of Good Governance of the Olympic and Sports Movement (BUP), Seminar on Autonomy of Olympic and Sport Movement, 11-12 February 2008; IOC (2016), "The Consolidated minimum requirements for the implementation of the basic principles of Good Governance".
 2. ASOIF Governance Task Force (GTF), 1st Report to ASOIF Council, February 2016.
 3. Expert group "Good Governance", Principles of Good Governance of Sport in the EU, September 2013, EU Work Plan for Sport (2011-2014).

integrity of the same sports activities. For example, if it is in an international federation's interest to see its most famous champions involved in an international competition and it is at the same time responsible for guaranteeing that the anti-doping rules apply to those same athletes, the federation could find itself in a conflict of interest situation. In the same way, a competition organiser could have a commercial and media interest in having certain competitors participate in its event, while also playing a role in protecting the integrity of the sport by applying eligibility criteria or by ensuring that sanctions are imposed. This same type of conflict of interest can also apply to a governmental agency (such as a ministry in charge of sport), which may have performance objectives to be achieved by national teams and which in parallel is responsible for upholding the integrity of its athletes. In order to prevent this type of conflict of interest, it is important to guarantee the operational independence of those bodies in charge of investigations, anti-doping testing and test distribution plans, analysing samples, managing the results and the disciplinary procedures which could ensue. However, the question of conflict of interest between development or performance goals and the protection of sport integrity needs to be understood in a more general way. Indeed, such a conflict of interest can concern fields other than the fight against doping, for example the manipulation of sports competitions.

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<http://www.suweco.cz>

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Fax: + 45 77 66 60 01
E-mail: reception@gad.dk
<http://www.gad.dk>

FINLAND/FINLANDE

Akateeminen Kirjakauppa
PO Box 128
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FI-00100 HELSINKI
Tel.: + 358 (0)9 121 4430
Fax: + 358 (0)9 121 4242
E-mail: akatilaus@akateeminen.com
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The Recommendation CM/Rec(2018)12 concerns those aspects of the activities of governments and national umbrella sports organisations which can improve the governance of sports organisations and limit opportunities for corruption in sport.

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