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## INTERVENTIONS

# The Scope for Greater Alignment between the Council of Europe and the European Union in Sport through the Saint-Denis Convention

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The intersections of security, safety, and wider human rights concerns have long accompanied the hosting of global sport mega-events. This was highlighted in clear unmistakable terms following the chaotic scenes which came to characterise the Champions League Football Final in Paris, 2022. Against this wider context, this intervention paper argues for greater legal and regulatory alignment between the Council of Europe (CoE) and the European Union (EU) through sport, which we suggest can be achieved by greater adherence by the latter organisation to the CoE's Saint-Denis Convention. Underpinning this suggestion is the two-fold contention that in view of sport representing a shared priority for both organisations, in addition to Europe being a site of key global sport mega-events, more cohesion and consistency between both organisations in terms of their approach to sports law and policy would contribute to greater European-wide legal unity and certainty from a sporting perspective.

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### Introduction

This intervention paper argues for greater legal and regulatory adherence by the European Union (EU) to the Council of Europe's (CoE) Saint-Denis Convention to generate greater European-wide legal unity, and certainty from a sporting perspective. To illustrate this, this paper will first set out the wider political, and policy context to demonstrate how sport is a subject matter of mutual legal concern of both the CoE and the EU then, second, outline the legal status and importance of the Saint-Denis Convention itself. This paper will proceed to make the two-fold argument that in view of sport representing a shared priority, for both organisations, in addition to Europe being a site of key global sports mega-events, greater adherence by the EU to the Saint-Denis Convention is required. This paper ultimately concludes that such an alignment would result in improved cohesion and consistency between both organisations, in terms of their approach to sports law and policy, which would contribute to the creation of a 'pan-European' approach to the regulation, and ultimately, consequent enjoyment of sport.

### Political and Policy Context

In recent years, there has been a renewed policy and political interest in the linkages between safety, security, and human rights in the context of major sporting, and cultural events in Europe. This was recently exemplified by the chaotic scenes outside *Stade De France* in Paris, for the 2022 Champions League final, where many football supporters' basic safety was placed at risk following the failures of the Union of European Football Association (UEFA) and domestic French authorities to ensure that rudimentary safety procedures were followed and implemented. Culminating in the publication of the independent review panel's report, in February 2023, it was unambiguously affirmed that: 'It is thus of crucial importance that sporting events meet the standards that people – and its supporters, in particular – expect and are respectful of all dimensions of Human Rights' (Rodrigues 2023: 7). The above-mentioned independent panel review shone a prominent spotlight on how UEFA and the French authorities failed to meet their obligations during the Champions League final. Indeed, following the subsequent 2023 UEFA Champions League final in Istanbul, it was again reported that numerous disabled fans encountered several accessibility issues throughout the match-day (Palmer 2023). Beyond football, and in anticipation of the 2024 Summer Olympics in Paris, the complex relationship and delicate balancing-act between security, safety, and human rights in sport has emerged again as a key talking point due to the planned deployment of Artificial Intelligence (AI) surveillance technologies. These have been opposed by human rights organizations who have articulated their concerns about the technology's ramifications for democracy

and privacy (Zirin and Boykoff 2023). As Zirin and Boykoff (2023) argue, following the authorisation of such technologies, 'with the new and invasive law, the Olympics are creating legal structures that could entrench potentially massive privacy violations.'

More widely, however, within a sporting context, international agreements exist to ensure and protect fans' safety and security at major events with an international dimension. This includes, for present purposes, the CoE 2016, "Convention on an Integrated Safety, Security and Service Approach at Football matches and Other Sports Events" (CETS No. 218). As an international treaty which sets out the operational, procedural, practical, and logistical measures, designed to ensure fan safety at both football and other sporting events, the Convention:

Reflects widespread European experience which evidences that focusing only on security risks in isolation does not provide an appropriate or effective means for reducing risks or ensuring a safe, secure, and welcoming atmosphere in stadiums (CoE 2016: 4).

However, the extent to which the obligations of the Convention (often referred to as the 'Saint Denis Convention') – although still in its relative legal infancy – are acknowledged, or indeed, implemented, is a source of genuine practical concern. This is further underscored by the fact that the Convention itself has thus far evaded sustained academic scrutiny, the consequences of which have arguably curtailed the discursive, legal and operational requirements, and potential which the Convention places on its signatories (Byrne and Lee Ludvigsen, 2023).

Although both organisations operate under distinctly separate legal apparatuses (Bond 2010) and possess their own idiosyncratic legal identity and judicial structures, it is contended that much scope exists for the provisions of the Saint-Denis Convention to better inform, influence, and underpin EU Sport law and policy in a more consequential and impactful manner. Although it has been previously noted that the similarities of both organisations, in relation to their respective mandate pertaining to human rights law, has given rise to concerns 'about duplication of activities and waste of resources' (Joris & Vandenberghe 2008: 3), the conclusion of the 2007 Memorandum of Understanding (MOU) between both organisations, nonetheless, pledged greater institutional cooperation, cohesion, and collaboration between them. In particular, the MOU stated that both entities would 'develop their relationship in all areas of common interest, in particular the promotion and protection of pluralistic democracy, the respect for human rights and fundamental freedoms, the rule of law, political and legal co-operation, social cohesion and cultural interchange' (EU & CoE 2007: para 9). Brummer (2012: 408) reminds us that the purpose of the MOU was 'to further consolidate the inter-institutional cooperation' between both establishments, while Grogan et al (2022, 27) argue that the mutual and reciprocal institutional effect from the operational and legal overlap between both organisations should be viewed as part of a 'progressive crystallisation of a shared, substantive and holistic European understanding of the rule of law'.

Therefore, against this backdrop, it is contended that sport represents a key critical site, which not only traverses the legal reach of both the CoE and the EU, but does so in a manner whereby more concrete adherence by the latter organisation to the Saint-Denis Convention could better drive forward a more unified and cohesive "pan-European" approach to fan safety at football and other sporting events. As evidenced by Cleland and Cashmore (2018) following the attempted terrorist attack at the international friendly football match between France and Germany on November 13, 2015, at the *Stade de France* in Paris, based on an online survey, which received 1500 responses, the relationship between sporting security services and fans has undeniably undergone a significant transformation. They noted that 82% of the respondents stated that 'fans can find ways in assisting the police and security services' (p. 462), which included *inter alia*, a heightened willingness to report any suspicious behaviour at football matches and an increased readiness to accept checks, observe new rules, and comply with the directions of security personnel at football events. These findings evince an acceptance within a sporting context of the need for increased security in light of escalating threats to the staging of various sporting events. Giulianotti and Klauser (2010) have previously distilled the security threats – and their connected counteractive strategies – associated with sport mega-events as falling into three distinct areas. These include the risks deriving from terrorist threats, spectator and political violence, and lastly, the security risks originating from the combination of poverty, social divisions, and urban crime.

Therefore, the extent to which fans can enjoy sporting events in a safe and accessible manner assumes increased importance. It is against this backdrop that it is contended – within a European context – that the Saint-Denis Convention should become the central legal axis around which European sports law and policy should revolve. Therefore, after briefly setting out the overarching legal provisions which typify the Saint-Denis Convention, the piece will then outline two core reasons which, we contend, necessitate greater legal and regulatory alignment between the EU and the Saint-Denis Convention itself.

### **The Saint-Denis Convention**

Opened for signature on 3 July 2016, and entering into force on 1 November 2017, the Saint-Denis Convention has since been ratified by 27 member states of the CoE, with Sweden being the most recent country to have ratified it in April 2023. Whilst we have analysed the 'Saint-Denis Convention' and some of its provisions in more depth elsewhere (Byrne and Lee Ludvigsen, 2023), the Convention sets out an all-embracing array of duties, obligations, and requirements for contracting states to comply with, across 22 substantive articles which are built on a three-fold framework encompass-

ing safety, security, and service. As outlined by the CoE itself, the overarching and collective function of the Convention is to make 'sporting events safer, more secure and welcoming, thus contributing to the protection and promotion of sport, the rule of law and human rights in and through sport' (CoE 2021; 2). From a human rights perspective, the CoE's clear articulation of the direct legal nexus between the Saint-Denis Convention – as a legal instrument exclusively focused on the enjoyment of sport in a safe manner – and wider human rights law is to be welcomed, especially since 'sport as a human right is relatively neglected in the academic literature on sport' (Veal, 2023; 144).

Indeed, permeating the operational and legal ambit of the Convention, and building upon its predecessor Convention (namely the CoE's (1985) *European Convention on Spectator Violence and Misbehaviour at Sports Events* as adopted on 19 August 1985) is its predominant focus on fan safety (Byrne and Lee Ludvigsen, 2023), and the requirements for contracting states to ensure all procedural, logistical, administrative, and legal measures have been complied with to ensure that fan safety is upheld and maintained at all times. For example, the aims of the Convention make explicit reference to fan safety, and for all relevant stakeholders – both public and private – to adopt a multi-agency approach to safety, security, and service at football and other sporting events (Article 2). Additionally, Article 5 mandates that 'national legal, regulatory, or administrative frameworks require event organisers, in consultation with all partner agencies, to provide a safe and secure environment for all participants and spectators'. While in furtherance of this, Article 6(1)(b) mandates contracting states to engage with all relevant domestic authorities to ensure a safe and welcoming space for fans to gather both before, and after the sporting event in question. Moreover, Article 8 imposes a broad consultative duty of engagement on contracting states to confirm that all relevant sporting stakeholders, supporters, and local communities are in dialogue with one another ensuring the peaceful enjoyment of the sporting event in question. Indeed, underpinning the Convention in its entirety is the need for contracting states to engage with all relevant stakeholders to minimise disruption, violence, and spectator or communal unrest, whilst simultaneously maximising fan safety and enjoyment at the event in question.

### **Towards a Greater Alignment between the CoE and the EU**

The following section outlines the two primary justifications which necessitate greater legal and regulatory cross-fertilisation between the EU and the CoE's Saint-Denis Convention, in the context of the former's approach to sports law and policy.

#### **Sport as a shared organisational priority**

The first reason underpinning the contention for greater legal and regulatory alignment between the EU and the CoE's Saint-Denis Convention, derives from the fact that the practice and enjoyment of sport represents a mutual and shared organisational priority, which traverses the operational reach of both organisations. As outlined in the preceding section, the Saint-Denis Convention itself, and the provisions therein, demonstrate in unmistakable terms the CoE's commitment to the enjoyment of sporting events in a safe manner. From an EU perspective, the assumption of formal legal Union competency within a sporting context was placed on a prescribed legal basis by virtue of Article 6(e) of the Lisbon Treaty 2009, which as Garcia and Weatherhill (2012: 250) argue, brought sport 'within the explicit reach of the founding Treaties for the first time'. Additionally, Article 165 (2) of the Lisbon Treaty further mandates the EU to develop 'the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen'. Although sport previously fell within the indirect purview of EU law, on the basis that it constituted an economic activity (Parrish et al. 2010), its formal inclusion within the Lisbon treaty offers multiple progressive opportunities for an expansive, cohesive, and progressive EU-wide approach to sport regulation, which also extends to the provision of 'safe' sporting events for all stakeholders involved. Indeed, Parrish et al. (2010: 61) argue that the wording of Article 165 bequeaths the EU the competency 'to directly carry out actions to support, coordinate or supplement the actions of the Member States in the field of sport and this competence grants the EU a potentially wide field of action'.

Additionally, EU policy and guidance further underscores the importance of sport within a Union context. For example, the most recent EU Work Plan for Sport (1 January 2021-30 June 2024), outlines the EU's key priorities for its vision for sport. This Plan also includes the EU's stated intention to 'protect integrity and values in sport' (EU 2020: c/419/2), which additionally includes its professed commitment to a: 'Safe environment in Sport' (EU 2020: c/419/4). In relation to this, the EU outline the 'prevention of harassment, abuse and violence, including sexual violence and any form of discrimination' (ibid.) as a core thematic area falling under this operational priority. However, of note is that on this distinct area pertaining to safe environments within a sporting context, no reference is made to the Saint-Denis Convention, despite its wholesale emphasis on safety at football and other sporting events. It is therefore, contended that such an absence represents a missed opportunity at EU level to embed the Saint-Denis Convention within the everyday lexicon of the EU's legal, regulatory, and policy approaches to sport. Indeed, a Parliamentary resolution passed in February 2021 on the impact of COVID-19 on youth and sport emphasised the importance for safety as regards the EU's approach to the interface of COVID-19 and sport. In urging the EU to 'engage in coordinated dialogue between European and international sporting federations and the Member States in order to discuss the possibilities for the safe continuation of major international sporting events and competitions' (EU, 2021; para 29, emphasis added). This

resolution centralised the broader importance of sporting safety as an inseparable component of EU sporting law and policy. More widely, the significance of sporting safety can be inferred from the 2007 EU Commission *White Paper on Sport*, which in recognising the multifaceted nature of sport itself, accepts that the:

emergence of new stakeholders (participants outside the organised disciplines, professional sports clubs, etc.) is posing new questions as regards governance, democracy and representation of interests within the sport movement (EU 2007: 12)

Therefore, against this context, the recognition of the intrinsically evolutive and multi-party nature of sport necessitates a deeper analysis of how the safety of all stakeholders can be protected at all times. In view further of the wider societal, economic, and indeed political ramifications which ensue when basic safety procedures at sporting events collapse, as evidenced by the previously mentioned UEFA report, the need for the EU's current sporting policies to recognise, acknowledge, and give effect to the Saint-Denis Convention becomes apparent. Indeed, in his evidence to the independent UEFA investigation following the calamitous situation which followed the 2022 Champions League Final, Julien Zylberstein, UEFA Director of European Affairs and Governance, was unequivocal in his consideration of the significance of the Saint-Denis Convention, when he stated that it was:

‘the most successful legally binding instrument at the international level for the security, safety and services of major sports events. In particular, it allows for a structured collaboration between the various competent players, public authorities, event organisers and fan organizations’ (quoted in Rodrigues 2023: 36).

However, despite the accepted centrality, which the Saint-Denis Convention occupies within an international sporting context, its omission from the EU's approach to its competency within a sporting context appears as both anomalous and irregular. Therefore, with the most recent iteration of *EU Work Plan for Sport* due to expire within the next year, a clear opportunity now presents itself for the EU to concretise the Saint-Denis Convention more visibly within its wider legal, policy, and regulatory approaches to sport. Such an approach would, arguably, elevate the status and operational requirements of the Saint-Denis Convention within an EU context, and engender an integrated and harmonious pan-European approach to ensuring safety at football and other sporting events.

### Europe a site for global sport mega-events

The second important reason which underpins the call for greater legal and regulatory alignment between the requirements as outlined within the Saint-Denis Convention and EU sport law and policy, is the fact that Europe will continue to remain a critical location for global sport mega-events. In fact, the broader EU-wide beneficial effects of sport were recognised as far back as 2000, pursuant to the Nice Declaration, when the EU Council stated that the EU ‘must, in its action under the various Treaty provisions, take account of the social, educational and cultural functions inherent in sport’ (EU 2000: Annex IV).

However, as a sporting location, Europe undeniably represents a key focus of scholarly and legal inquiry. In the forthcoming years, and in addition to European championships and tournaments within various sports, several key global sporting events are due to take place. Across Europe, these events are again likely to draw further legal, sociological, and wider interdisciplinary attention, while simultaneously increase media and political interest in the creation of ‘safe events’. This includes, of course, the 2024 Paris Summer Olympics where *Stade De France* (where, coincidentally, the Saint-Denis Convention was opened for signature) features as one of the arenas, as well as, the 2026 Winter Olympics due to take place in Milan and Cortina d’Ampezzo, Italy.

Whilst every sport mega-event is impacted by sets of external threats depending on their geographical and political situation, the recent events alluded to earlier demonstrate that organizational failures and mismanagement also significantly impact spectators’ safety, security, and service. Indeed, as Lee Ludvigsen (2023) argues, these events speak to how those with the power to define ‘safety’, ‘security’, and ‘service’ may, merely increase levels of insecurity within the relevant context. It is, therefore, paramount that the provisions as enshrined within the Saint-Denis Convention, become the operational bedrock of all sporting events in Europe which naturally, extends to the hosting of an Olympiad. Indeed, an examination of the Paris 2024 Olympic Host City Contract states that all activities related to the Olympic Games shall ‘the protect and respect human rights and ensure any violation of human rights is remedied in a manner consistent with international agreements, laws, and regulations applicable in the Host Country’ (IOC 2017: 16). Having ratified the Saint-Denis Convention in February 2017, this also, by logical extension, extends to France. However, it is contended that greater alignment between EU sport law, policy, and guidance with the provisions of the Saint-Denis Convention – coupled with increased academic attention – would give rise to a more central appreciation and awareness of the Convention, such that its provisions would apply to all sporting events across Europe.

Additionally, in the context of the Convention, it is also central to remember that the Men’s European Championships in football (which occur under the auspices of UEFA, are often referred to as the Euros and take place every four years) are commonly considered to be the third largest sport mega-event globally (Lee Ludvigsen, 2021). Mittag and Legrand (2010: 719) argue that since the 1950s, the development of a ‘European dimension in football’ cannot be

separated from the ‘increasingly integrated, framework of institutional and rule-based interactions’, which have typified the wider acceleration of European integration. This, they argue, was best illustrated by the development of the CoE on the one hand, and the historical legal antecedents of the EU on the other. As the example of the Men’s European Championships’ 2020 edition shows, the preparation for this tournament presents an opportunity for various stakeholders to work together and meet through consultative visits in host cities, as exemplified by the Council of Europe (n.d.) ‘Euro 2020 Working Group’. Thus, the myriad of global sporting events due to be staged in Europe provides another opportunity for the CoE and the EU to establish closer legal, regulatory, and operational alignment in terms of their approach to safety and security in sport. Hence, we argue that the Saint-Denis Convention provides a ready-made Europe-wide legal framework to underpin such an important and necessary alliance.

### Concluding remarks

Without doubt, the 2022 Champions League final in Paris has brought the interface between sport and human rights into sharp focus (Byrne and Lee Ludvigsen, 2023). Against this backdrop, this intervention piece has argued for greater legal and regulatory alignment between the CoE’s Saint-Denis Convention and the EU’s approach to sport law and policy. Underpinning this argument has been the twofold contention that in view of sport representing a shared priority for both organisations, in addition to Europe being a site of key global sport mega-events, more cohesion and consistency between both organisations in terms of their approach to sports law and policy would contribute to greater European-wide legal unity and certainty from a sporting perspective. Although the Saint-Denis Convention is very much in its legal infancy, it does provide a durable and acknowledged legal framework upon which to influence and reinforce wider EU sports law and policy. In view further of the wider international acceptance, which the Saint-Denis Convention assumes within a sporting context, its present anomalous omission from current EU sports law and policy would be rectified somewhat by a closer legal and regulatory alignment by the EU to the Convention’s provisions within its future approach to sport, and its regulation.

### Competing Interests

The author has no competing interests to declare.

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