

# Kluwer Arbitration Blog

## Paris Arbitration Week Recap: Keeping our Eye on the Ball with Sports at Paris Arbitration Week

Iulia Anghelescu, Giovanni Dall’Agnola, William Alexander Smith-Burnand · Friday, April 15th, 2022

Paris Arbitration Week 2022 demonstrated the arbitration community’s increasing interest in sports-related disputes, with three events dealing with sports arbitration. This post is a non-exhaustive account of those events. Panelists covered different topics, ranging from the venues of sports arbitration to diversity in arbitration panels, sports and competition law, the impact of Covid-19 and economic sanctions on sports disputes, the future of esports and the resolution of esports disputes.

On Tuesday, 29 March 2022, Accuracy hosted a panel entitled “**Sports Disputes: Past, Present & Future**”. The panel, moderated by [Anthony Theau-Laurent](#) (*Accuracy*), was composed of [Philippe Bärtsch](#) (*Schellenberg Wittmer*), [Pierre Viguiet](#) (*Gaillard Banifatemi Shelbaya Disputes*), [Marie-Cécile Rameau](#) (*Bredin Prat*), [Jean-Luc Juhan](#) (*Latham & Watkins*), and [Henri Philippe](#) (*Accuracy*).

Similar topics were covered in a conference on “**Sports Arbitration**” held on Thursday, 31 March 2022, by the BVI International Arbitration Centre. [Hana Doumal](#) (*BVI International Arbitration Centre*) moderated the panel, which included [Chriraz Abid](#) (*Advant Altana*), [Hervé Le Lay](#) (*Brown Rudnick*), [William Sternhimer](#) (*Morgan Sports Law*), and [Victor Bonnin](#) (*VB Arbitration*).

In the meantime, the surge in interest around arbitration in the virtual space has become visible in the sports field. On 29 March 2022, [Louis Degos](#) (*K&L Gates*) and [Sarrah Saïdi](#) (*K&L Gates*) hosted a session on “**Esports & Arbitration**”.

### I. Back to Basics in Sports Arbitration

Panelists emphasised the importance and role of the **Court of Arbitration for Sport** (“CAS”) in relation to sports arbitration. During the Accuracy event, Mr. Bärtsch, for example, provided an overview of CAS. Established in 1984 by the International Olympic Committee (“IOC”), CAS deals with disciplinary and commercial disputes directly or indirectly linked to sport. Its two main divisions are the Ordinary Arbitration Division, which functions as a court of sole instance, and the Appeals Arbitration Division, which hears cases brought to it on appeal from federations and sports organisations (Article S.3 of the **Code of Sports-related Arbitration**).

This was echoed during the BVI conference. Ms. Abid emphasised the localised nature of first

instance decisions, with CAS maintaining an overarching presence for appeals. The necessity for speedy dispute resolution was highlighted: sportspeople have very short careers, and the timing of competitions is set in stone, as demonstrated by the FIFA World Cup and Olympic panels during those events.

Sports arbitration beyond CAS was also placed in the spotlight. Mr. Sternhimer, for example, addressed sports law outside of CAS, with mentions being made of **Sport Resolutions** in London, the **Qatar Sports Arbitration Foundation**, and the **Basketball Arbitral Tribunal**. In many contractual disputes within sports, generalist arbitral institutions are used. Nevertheless, CAS remains the most prominent institution within sports arbitration.

Panelists also discussed the importance of ensuring sports arbitrators have the relevant expertise to hear such disputes. Mr. Bonnin, in particular, dealt with the importance of expertise in sports arbitration. CAS provides a **closed list** of around 400 arbitrators from nearly 100 jurisdictions. The closed list has faced criticism, but it was agreed that it met the need for expert arbitrators. The virtues of the closed list were further highlighted by anecdotes illustrating that arbitrators sometimes do not know which party has appointed them.

Mr. Le Lay expanded on the nature of sports arbitration in practice and how it differs from commercial arbitration. Provisional measures, for example, are available within the framework of CAS, but are uncommon. *Ex parte* hearings are in principle available, but in practice are almost never used. Tribunals will always give the other party an opportunity to be heard, even if the timeframe is only a few hours. Mr. Bärtsch emphasised that the standards of due process and consensus reached in commercial arbitration are higher than those granted by CAS, where athletes' consent is not required.

## II. Hot Topics in the Sports Sector

### Diversity

At the BVI conference, the topic of diversity in sports arbitration was raised. The panel agreed that sports arbitration did well in geographical diversity and many of the arbitrators had a varied range of backgrounds from both sports and the law. In gender diversity, there is still work to be done, although the list of CAS arbitrators is becoming more representative over time.

### Sports and Competition Law

At the Accuracy event, Ms. Rameau assessed the applicability of EU competition law to the activities of sports federations. Some activities, such as broadcasting, clearly fall under its scope of application. Others, such as the definition of sports rules, do not have an economic nature and thus fall outside it. Sports rules might, however, limit access to competition. That is the case with eligibility provisions. Those rules comply with competition provisions if (i) they pursue a legitimate objective, (ii) they are inherent in the organization of that sport, and (iii) the limitation imposed is proportionate to the goal.

In *International Skating Union v. Commission*, both the **European Commission** and the **Court of Justice** held that the eligibility rules of the International Skating Union (“ISU”) violated Article 101 TFEU due to the disproportionate restrictions on skaters’ freedom to take part in events not authorized by ISU.

### **Covid-19 and Sanctions**

Panelists at the Accuracy conference also covered the impact of Covid-19 and economic sanctions on sports disputes. According to Mr. Bärtsch, the one-sided nature of several sports related contracts, such as hosting agreements, favoured international federations in the disputes arising from events cancellation, postponement, or change of format as a result of the pandemic due to the limited contractual remedies available.

In addition to Covid-19, sanctions imposed as a result of the geopolitical situation between Russia and Ukraine are also impacting sports. Mr. Bärtsch and Mr. Juhan provided two examples: first, the case of Nikita Mazepin, a Russian F1 driver whose contract was terminated ; second, the case of Chelsea Football Club, no longer controlled by Roman Abramovi?. The latest geopolitical developments raise a sensitive question: if a party terminates a contract for ethical or reputational reasons, are there legal grounds for justifying that termination? This question is unanswered but several disputes are likely to arise in the coming future.

### **III. Is Attention Shifting to Esports?**

In the meantime, the global debate around blockchain, the metaverse and all things virtual might account for an increasing interest in esports.

During the event on “Esports & Arbitration”, Louis Degos and Sara Saïdi took the discussion on sports arbitration closer to the realms of virtual reality. They outlined the challenges and incentives for admitting esports as an Olympic discipline and discussed the suitability of arbitration as a mechanism to resolve esports disputes.

Esports is understood to refer to any type of **organised computer gaming**, ranging from simulations of real sports (as is the case with virtual cycling games like Zwift) to the more traditional video games involving a console (Fortnite, LoL, CS:GO).

### **Young and Virtual: the Increasing Relevance of Esports**

The panelists emphasised that esports attract a young audience, which is precisely what has been missing from recent Olympic games: the Rio Olympics attracted the oldest audience since 1960. By contrast, most of the esports global audience is under 35 years old. In addition, the financial stakes are often comparable to those in traditional sporting competitions. For instance, the 2019 Fortnite World Cup prize was €27 million, compared to €45 million at Wimbledon.

Crucially, esports and related IP rights are owned by private companies called “publishers”, who as

key stakeholders have been advocating for esports to have Olympic status. The main issue, however, remains the continued absence of an international esports federation, despite a few unsuccessful attempts (such as a recent **WESA** initiative).

### **Getting Esports Closer to Olympism**

To become an Olympic sport, esports would need to fulfil five major criteria, the most important one being institutional compliance with the Olympic Movement (composed of the IOC, the International Sports Federations and the National Olympic Committees).

The panelists agreed that the absence of an international esports federation remains a crucial obstacle to joining the Olympic Movement. Mr. Degos also pointed out that certain video games might not be compatible with the **Olympic Charter** (in particular, the prohibition against violence).

In **2020** the IOC replaced the word “esports” with two distinct categories: gaming (which can be either casual or competitive) and virtual sports. Gaming includes video games not requiring any physical ability. By contrast, there are both physical and non-physical forms of virtual sports (*e.g.*, cycling in Zwift, or playing FIFA).

### **The Resolution of Esports Disputes**

Arbitrable disputes arising from esports are currently being dealt with as typical commercial arbitrations, as opposed to via the CAS system. This will probably remain the appropriate forum for gaming, since most video games are subject to end user license agreements.

As for virtual sports, dispute resolution is currently dealt with internally. However, the panelists pointed out that as virtual sports become more professionalised, especially with the launch of the “**Olympic Virtual Series**” in 2021, it is likely that CAS or a similar institution will take an interest. The panelists ultimately advocated for the creation of a new arbitral institution for esports, conducting fully virtual proceedings based on the CAS *ad hoc* model. The authors of this post agree with the proposal: if cryptocurrencies benefit from a tailored dispute resolution **platform**, why shouldn't esports?

## **IV. Concluding Remarks**

Sports disputes is a growing field with more firms, individuals and organisations getting on board. The panelists offered advice to aspiring practitioners and emphasised the two Sports Arbitration Mooting Competitions that students can get involved in.

A few issues are unique to sports arbitration, such as the short time frame for hearing a dispute and the closed list of arbitrators at CAS. At the same time sports arbitration faces many of the same issues that are relevant within the wider arbitration community, such as diversity of arbitrators, specialist arbitral institutions and costs.

As for arbitration of esports, this topic has been gaining traction under the auspices of **AIAC**, in Asia, but it being discussed at Paris Arbitration Week is a first. Its relevance is bound to grow exponentially, in synergy with developments such as dispute resolution in the metaverse.

The varied nature of the events demonstrates the breadth of topics within sports disputes. Adjudicators addressing the impact of Covid-19 and economic sanctions on sports events and athletes' employment will have to deal with sensitive and unexplored issues and their rulings will likely have an impact beyond the sports sector.

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