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**The necessity of EU regulation in Formula 1
Championship**

Diplomová práce

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Statutory declaration

I declare that I have developed and written the enclosed Master Thesis completely by myself and have not used sources or means without declaration in the text. Any thoughts from others or literal quotations are clearly marked.

Čestné prohlášení

Prohlašuji, že jsem magisterskou práci na téma The necessity of EU regulation in Formula 1 Championship vypracovala samostatně a citovala jsem všechny použité zdroje.

V Olomouci dne

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List of abbreviations and acronyms

| | |
|------|---|
| ECJ | European Court of Justice |
| EMAS | Eco Management Audit Scheme |
| EU | European Union |
| FIA | International Automobile Federation |
| FIFA | Fédération Internationale de Football Association |
| FOA | Formula One Administration ltd. |
| IIHF | Ice Hockey Federation |
| ICA | International Court of Appeal |
| IOC | International Olympic Committee |
| UCI | Union Cycliste Internationale |
| TFEU | Treaty on Functioning of European Union |

Introduction

The thesis follows my bachelor thesis. This thesis deals with the necessity of EU regulation in Formula 1 championship. Sport sector is coherent and self-contained and capable of self-regulation. State authorities usually do not intervene because of their lack of expertise.¹ However, EU decided to do otherwise and through the years developed a sports policy closely linked to the internal market and competition. European law very soon found its way to sport competitions and Formula One, as well. The question is, is the regulation on EU level really necessary for Formula One? The aim of this thesis is to prove that the European law endangers the existence of the competition by its lack of expertise in the field of motorsport. The European Union does not acknowledge motorsport in its sports policy, which leads to thoughtless and accidental interactions, resulting in a negative impact on motorsport. The research question is what is the EU regulation impact on the championship?

Concerning the climate change and EU's commitment to the climate neutrality by 2050 along with development of autonomous vehicles, the future of automotive industry and motorsport is a frequently debated topic. There is a great amount of literature concerning the EU law and competition. Other topics discussed in this thesis such as sponsorship and liability are not as thoroughly covered. In my opinion the role of motorsport in innovation and sponsorship of motorsport events have a potential for further research. In my thesis I worked with articles, theses, books, EU treaties, directives and press releases.

The thesis covers the relationship of EU and sport since the formation of EU sports policy until the beginning of 2021 Formula 1 championship.

Methods used in this thesis are analysis and case study. Analysis is used to give an outline of the relationship of EU and sport and EU's perception of motorsport. The information obtained in the analysis is then applied to Formula 1 championship in order to show the impact of EU regulation.

The thesis is divided into two parts corresponding with the chosen methods. The first chapter deals with organization of sport and the development of EU sports law and policy. My bachelor thesis lacked the outline of EU sports law and policy, which I now with a hindsight consider to be a shortcoming that really hurt the thesis. A comprehensive outline is important for both presentation of applicable law in the field of sport and comprehension of EU's relationship with sport. In my bachelor thesis I demonstrated the EU's relationship with sport via Parrish's sport policy subsystems, but those cannot wholly cover the complexity of the EU sports policy.

¹ POUND, Richard W. Sports Arbitration: How it works and why it works? *McGill Journal of Dispute Resolution*, 2015, vol. 1, No. 2, p. 78.

The second chapter of the thesis deals with Formula 1, its regulation and coping with EU's intervention. Specifically, in areas of competition, sponsorship, liability and environment protection. The introduction into Formula One is very brief as I paid attention to its functioning and organization in my bachelor thesis. This information could be useful for someone, who is not interested in Formula One and this is why I decided to include the information in my bachelor thesis, however the elaboration of the information was not very successful – the chapters contain a lot of unnecessary information. This information is not important for answering my research question or proving my aim, so I decided to omit the general information this time.

1 Sport organization and policy

At first it might seem that the European union and sport are miles away from each other. Those areas are so different that it is hard to believe they have anything in common, yet they do interact with each other and sports law even became a part of European law.

However, what is sport? Pound defines sport as a form of social conduct governed by a set of rules agreed upon by the participants. Such an agreement creates a social contract between participants and the rule makers that those rules will be respected as the rules determine the outcome of any competition. Without rules there would be no sport. Their objective is to establish a “level playing field”, which means that every participant will have the same opportunity to compete and to succeed although no one can legislate equal ability or certainty of the outcome as the uncertainty of outcome is essential.²

As Pound continues, the breach of the sport rules is inevitable, and the rules anticipate that. If an advantage is gained by the violation of rules, sanctions are applied. These sanctions vary and might be even escalating like temporary removal of a team member or penalty shots. Moreover, those breaches have to be dealt with quickly, sometimes even during the competition because later execution would be pointless. This requires impartial officials, who will ensure that the competition proceeds in accordance with the rules and the decisions of those officials are in effect front-line arbitration. Such need led to a structure of sport that is coherent and self-contained and capable of self-regulation.³

On a worldwide level sports are regulated by the International Sports Federations. Each sport has its own federation, e.g. soccer or football is governed by Fédération Internationale de Football Association (FIFA), cycling by Union Cycliste Internationale (UCI) and ice hockey by International Ice Hockey Federation (IIHF). However, there are some federations that govern more than one sport. Those federations establish the rules of a game as well as regulations governing players, agents and referees. The governance of international federations is further supported by regional sport organizations and national-level organizations. International Sports Federations are non-governmental organizations and are recognized by the International Olympic Committee (IOC) which makes sure that the activities of International federations comply with the Olympic Charter. International Olympic Committee divided sports into 3 categories: Summer Olympic Sports which are supervised by the Association of Summer Olympic International Federations, Winter Olympic Sports supervised by Association of International Winter Sports

² POUND, Richard W. Sports Arbitration: How it works and why it works? *McGill Journal of Dispute Resolution*, 2015, vol. 1, No. 2, p. 77.

³ Ibidem, p. 77–78.

Federations and recognized sports governed by the Association of the IOC Recognized International Sports Federations.⁴

As it was mentioned earlier, resolution of disputes in sport requires expedited hearings even in the middle of the competition so the legal process is unsuitable for dealing with the disputes. Moreover, state courts do not have the necessary expertise to deal easily with sport issues and many of the athletes do not have the financial resources to undertake legal procedure either. Another problem lies in the decision itself. A decision rendered by the state court is only effective in the country, where it was rendered. In order to become executive in other jurisdictions, it must be confirmed, homologated or exemplified, which in fact would mean endless local proceedings, enormous costs, risk of conflicting judgements and an overall uncertainty as to which rules and decisions might apply. In 1984, the IOC came with a solution of the problem by creating a Court of Arbitration for Sport, which is seated in Lausanne, Switzerland. Court of Arbitration for sport dealt mainly with disputes within the Olympic Movement, but it contemplated accessibility by non-Olympic sports, as well. Surprisingly, Court of Arbitration did not deal with decisions rendered by the IOC at first, which held itself out as the supreme authority of the Olympic Movement, but this changed and even those decisions can be appealed to Court of Arbitration. The Court is controlled by the International Council of Arbitration for Sport. It is important to mention that although state courts are not suitable for resolution of disputes in sport, they always remain a recourse of last resort for their citizens if there has been a denial of justice or due process.⁵

1.1 EU Sports law and policy

At first, the European union had no regulatory interest in sport. The early EU activities to sport were through the European Court of Justice and the Competition Policy Directorate that intervened in sport to correct free movement and competition restrictions and distortions with Single Market. These interventions were not connected to the EU main policy, which resulted into uncoordinated EU approach to sport. Later, the EU became involved in sport by pursuing a political interest in sport. According to Parrish sport was identified as a tool through which the EU could strengthen its image in the minds of European citizens. Those two different strands of EU involvement in sport created a tension which characterizes the EU sports policy.⁶

⁴ BURCHFIELD, Amy. WHALEY, Hunter, WITT, Martin R. *International Sports Law* [online]. Hauser Global Law School Program, April 2018 [cit. on 8th of November 2020]. Accessible at <https://www.nyulawglobal.org/globalex/International_Sports_Law1.html#_Governance_of_Individual_Sports>.

⁵ Litigant has to exhaust the obligation to arbitrate before coming to the courts, see Lance Armstrong case. POUND, Richard W. Sports Arbitration: How it works and why it works? *McGill Journal of Dispute Resolution*, 2015, vol. 1, No. 2, p. 78 - 80.

⁶ PARRISH, Richard. *Sports law and policy in the European Union*. Manchester University Press: 2003. p. 6.

The Court considered sport to be a subject to European Communities law in cases *Walrave*⁷ and *Donà*⁸. It stated that the practice of sport is subject to Community law if it constitutes an economic activity within the meaning of Article 2 Treaty. This meant that the Court could challenge the decisions of the sport governing associations. At the same time the Court indicated that the rule of non-discrimination does not affect the composition of sport teams, in particular national teams. The formation of teams is a question of purely sporting interest and as such has nothing to do with economic activity which suggests, as Vermeersch points out, that sport has some peculiarities that are exempted from the scope of EC law.⁹ The decision to make sport subject to European Communities law was unprecedented. The governments and courts rarely interfered with sport, instead they relied on the International federations or Court of Arbitration for Sport as those were experts in the field. This might be why European Communities decided to include sport in the Community law only under the condition of constituting an economic activity. However, this caused confusion, as there was no fine line between what was and what was not an economic activity and led to the uncertainty of Community law in sport. On the other hand, it gave space for the vast interpretation of “purely sporting interest”, where the autonomy of sport was preserved.

According to the European Olympic Committees, autonomy for sport entails a right to proper organisation and conduct of sport (competitions), right of independent management of internal affairs, right to establish and apply “sporting rules” necessary for the conduct of sport, right to draw up and define own legal norms (statutes), right to select representatives and decision-making procedures without interference from the third parties and right to sufficient financial resources, including the possibility to obtain adequate funds from public or other sources. The autonomy of sporting organisations and representative structures was acknowledged in the White Paper on Sport. The Commission strives for promotion of “good governance” principles in sport, such as transparency, democratic decision-making, accountability, etc.¹⁰ More to the sport organizations is mentioned in the Declaration on Sport annexed to the Treaty of Nice. The European Council notes that sport federations have a central role in sporting practice and must continue to be the key feature of a form of organisation providing a guarantee of sporting cohesion and participatory democracy.¹¹

⁷ C-36/74 *Walrave a Koch v. Association Union Cycliste Internationale etc.*, ECLI:EU:C:1974:140.

⁸ C-13/76 *Dona v. Mantero*, ECLI:EU:C1976:115.

⁹ VERMEERSCH, An. All's Fair in Sport and Competition? The application of EC Competition Rules to Sport. *Journal of Contemporary European Research*, 2007, vol. 3, No. 3. p. 238–239.

¹⁰ EOC EU Office. *Guide to EU sport policy* [online]. EOC EU Office, September 2011 [cit. on 13th of November 2020]. Accessible at <https://www.euoffice.euolympic.org/files/guide_to_eu_sport_policy_final_versionwithlinks.pdf>.

¹¹ GONZÁLEZ DÍAZ, Enrique F. *Competition Law and the Specificity of Sport* [online]. Coleurope, 24th of November 2016 [cit. on 13th of November 2020] Accessible at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi50tjryv_sAhVSPBoKHfsIA6wQFjABegQIAxAC&url=https%3A%2F%2Fwww.coleurope.eu%2Fsites%2Fdefault%2>

For sport authorities all rules in question were of purely sporting nature. The case by case approach soon showed to be untenable. European Communities either had to dive deep into sport or leave it. The change came with Meca-Medina ruling.¹² In Meca-Medina Court declared that Competition and internal market rules are applicable in sport as there is a threat of misuse of regulatory power to the profit by sporting authorities. Furthermore, rules of “purely sporting interest” do affect sport as well as the economic activities coming with it. No rule then is exempted from the scope of the Treaty. This decision enabled more coherent approach in sport. Including sport into Community law was also important for the function of single market as professional sport also touches the four freedoms – free movement of goods, free movement of capital, freedom to establish and provide services and free movement of persons.

Meca-Medina case also presented a challenge for the Court of Arbitration for Sport. The Court of Arbitration upheld the decision of international swimming federation, which imposed a two-year ban on long-distance swimmers David Meca-Medina and Igor Majcen for doping. The men decided to appeal to the lower courts, but it failed so they decided to take the case to the European Court of Justice. The European Court of First Instance stated that doping rules were outside the scope of EU law because of the non-economic objective, but the Court of Justice ruled otherwise. The ruling of ECJ showed that it would exercise appropriate oversight of Court of Arbitration for Sport and similar sport bodies when the rights of EU citizens were at stake. Infantino, at that time Head of the Union Européenne Football Association’s Legal Affairs and Club Licensing division, however, criticized this step of ECJ as he considered Court of Arbitration for Sport to be a far more appropriate forum for sport related disputes than the ECJ.¹³

Free movement of persons, particularly workers, and its ties to sport were defined in the Bosman case, where the Court held that: “*rules which are laid down by sporting associations which determine the terms on which professional sportsmen can engage in gainful employment are captured by the treaty provision on the free movement of workers*”¹⁴. Bosman case also changed the transfer system for footballers. Before Bosman a footballer could only be transferred to a new club if the club paid the old club a transfer fee. In 1990 Bosman signed a contract with a French club. However, Bosman’s Belgian club, for which he played until that day, never filed the certification papers required to finalise the transfer, which in fact prevented him from playing the entire season.¹⁵ Bosman brought several actions until

Ffiles%2Fuploads%2Fevent%2Fgclc_lunch_talk_-_competition_law_and_sport_24.11.2016.pdf&usg=AOvVaw1KVLva18hI3dqJAeC2YzMu>.

¹² C-519/04 *Meca Medina and Majcen v Commission*, ECLI:EU:2006:492.

¹³ LENSKYJ, Helen. Sport exceptionalism and the Court of Arbitration for Sport. *Journal of Criminological Research Policy and Practice*, 2018, vol. 4, no. 1, p. 12-13.

¹⁴ C-415/93 *Bosman*, ECLI:EU:C:1995:463, para. 87.

¹⁵ *Ibidem*, para 28–33.

the case was finally referred to ECJ for a preliminary ruling. The Court indicated that the transfer fee system did not maintain the legitimate objective of financial and competitive balance by preserving a certain degree of equality and uncertainty as to results, because the rules neither prevented the richest clubs from monopolising nor reduced the decisive impact of finances on the strength of competition. Those goals could be achieved by less-restrictive means, which did not impede worker's freedom of movement.¹⁶ The Court also ruled that rules laid down by sporting associations, e.g. football clubs that restrict the number of foreign players in national teams cannot be deemed to be in accordance with article 45 TFEU because they cannot be justified by a legitimate objective as participation in official matches constitutes the essential activity of professional players, any rule limiting such participation also restricts the employment opportunities of the players.¹⁷ That in fact goes against the Walrave¹⁸ ruling. However, in the case of Walrave the clause concerned the constitution of the team while in the case of Bosman the clauses limited the number of foreigners in team, which is also considered discriminative under the Walrave ruling. The Bosman ruling astounded the international sports organisations. The organisations did not expect the EU law to have such consequences for their rules. The sporting organisations were also convinced that the transfer rules constitute a legal uncertainty regarding EU law as the ECJ could only decide on the conformity of rules that were referred to it through the preliminary ruling procedure.¹⁹ This limitation of ECJ supports Infantino's opinion on Court of Arbitration for Sport being the better forum for dispute resolution and constitutes a reason why there should be a dialogue between Court of Arbitration for Sport and ECJ. Although EU developed a more coherent approach in sport, it still lacks the necessary expertise to deal with sport related issues as it considers cases only in the relation to internal market and competition.

Sport is a service where the economic activity has the character of remunerated service and does not fall under one of the other fundamental freedoms.²⁰ Sport organizations both national and international, sport clubs and individual athletes are considered to be undertakings within the meaning of Article 101 TFEU as long as they pursue economic activity, which is generally perceived as offering goods and services to the market. It is not relevant whether the sport is carried out on professional or amateur level.²¹

¹⁶ C-415/93 *Bosman*, ECLI:EU:C:1995:463, para 110.

¹⁷ *Ibidem*, paras 129 and 137.

¹⁸ C-36/74 *Walrave and Koch v Association Union Cycliste Internationale*, ECLI:EU:C:1974:140.

¹⁹ GEERAERT, Arnout. *Limits to the Autonomy of sport: EU law* [online]. Play the Game, January 2013 [cit. on 11th of November 2020] Accessible at <<http://www.playthegame.org/knowledge-bank/publications/aggis-limits-to-the-autonomy-of-sport-eu-law/9023e6c1-691a-4df1-a70d-a3bc00c5b7e0>>.

²⁰ *Ibidem*.

²¹ Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

In 2007, post Meca-Medina ruling, EU adopted the Staff Working Document Accompanying the Commission’s White Paper on Sports²², where it listed types of rules that constitute examples of organizational sporting rules that are not likely to breach Articles 101 TFEU or 102 TFEU and a list of rules that are more likely to violate the concerned articles. Perhaps in order to deal with the uncertainty regarding sport. Article 101 prohibits any agreements, decisions and concerted practices which have as their object or effect the prevention, restriction or distortion of competition and in particular those which apply dissimilar conditions to the trading partners thereby placing them at competitive disadvantage or make the conclusion of contracts or supplementary obligations which by their nature have no connection with the subject of such contracts. Article 102 prohibits any abuse of one or more undertakings of a dominant position²³ in particular consisting of applying dissimilar conditions to the trading partners thereby placing them at competitive disadvantage or make the conclusion of contracts of supplementary obligations which by their nature have no connection with the subject of such contracts.²⁴ The rules that constitute the legitimate objective and are less likely to breach articles 101 TFEU or 102 TFEU are so called “rules of the game”²⁵, rules concerning selection criteria for sport competition or rules preventing the multiple ownership in club competitions. Among the rules with a higher likelihood of problems concerning compliance with articles 101 TFEU and 102 TFEU are rules protecting sports associations from competition, rules excluding legal challenges of decisions by sports associations before national court if the denial of access to ordinary courts facilitates anti-competitive agreements or conduct or rules concerning nationality clauses for sport clubs or teams.²⁶

The sport became recognized by the Treaty in 2009 with the adoption of Treaty of Lisbon, specifically in the Article 165 TFEU. The first paragraph of this article says: “*The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.*”²⁷ The second paragraph expresses that “*Union action shall be aimed at [...] developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting*

²² Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

²³ Dominance is defined as a position of economic strength enjoyed by an undertaking, which enables it to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers. *C-27/76 United Brands v Commission*, ECLI:EU:C:1978:22.

²⁴ Consolidated Version of the Treaty on the Functioning of the European Union art. 101 and 102, 2012 O.J. C 326/47.

²⁵ E.g. the rules fixing the length of matches or the number of players on the field.

²⁶ Commission of the European Communities, The EU and Sport: Background and context, accompanying document to the White Paper on Sport, COM (2007) 391 final (July 2007).

²⁷ Consolidated Version of the Treaty on the Functioning of the European Union art. 165 (1), 2012 O.J. C 326/47.

*the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.*²⁸

According to The Commission's Communication on Developing the European Dimension in sport the "specific nature of sport" means all characteristics that make sport special like interdependence between competing adversaries or the pyramid structure of open competitions. The document also declared that legitimate objectives pursued by sport organisations may relate to the fairness of sporting competitions, the uncertainty of results, the protection of athletes' health or the "rules of the game".²⁹

Sporting activities are financed by a public funding, without it such activities would be hard to finance. The EU law considers the funding for sport infrastructure to be state aid as sport clubs engage in economic activities, which is strictly controlled by European Commission. The state aid is an aid that fulfilled following conditions: aid must be granted by an EU member state or through the state resources, such aid should distort or threaten to distort competition and such aid should favour certain undertakings, in other words it has to be selective (see Article 107 TFEU³⁰). The conditions for a financial support that do not constitute state aid are laid down in paragraphs (2) and (3) of the article 107 TFEU. In the Communication on Sport the Commission points out that state aid to sport is not covered by the general exemption regulation of the Lisbon Treaty. However, it might fall under derogations under certain conditions.³¹ Financial support provided by the state with a total amount of 200 000 EUR over a three-year period does not constitute state aid and does not need to be reported. European Commission should be informed via a notification procedure over public financial support to undertakings. The Commission will submit comments and assess whether such plan is compatible with article 107 TFEU.³²

Besides public funding, the sport is financed via sponsorship deals. Sport sponsorship deals form majority share of sponsorship deals and is often connected to advertising. It is also a source of revenue for federations, clubs, teams or sportspersons. Event sponsoring is equally important. Regulations on sponsorship and patronage differ from state to state and the Commission along with Expert Group consisting of two representatives appointed by each Member state concluded that there was no need for harmonisation in this field. Sponsorship, however, must be seen in connection with policies aimed at protecting the public or the consumer, e.g. protection of public

²⁸ Consolidated Version of the Treaty on the Functioning of the European Union art. 165 (1), 2012 O.J. C 326/47.

²⁹ Commission Communication to European Parliament, the Council, the European Economic and social committee of the regions on Developing the European Dimension in Sport, COM (2011) 12 final (January 2011).

³⁰ Consolidated Version of the Treaty on the Functioning of the European Union art. 107, 2012 O.J. C 326/47.

³¹ EOC EU Office. *Guide to EU sport policy* [online]. EOC EU Office, September 2011 [cit. on 13th of November 2020]. Accessible at <https://www.euoffice.eurolympic.org/files/guide_to_eu_sport_policy_final_versionwithlinks.pdf>.

³² Consolidated Version of the Treaty on the Functioning of the European Union art. 108, 2012 O.J. C 326/47.

health. Some areas of public health like tobacco or alcohol goods are addressed at EU level.³³ Tobacco advertising and thus sponsorship was banned by the Directive 2003/33/EC with the utmost implementing period to 1st January 2007. This ban was introduced as research and studies proved the effect of tobacco advertising on public health. According to those studies, this type of advertising affected mostly younger viewers who considered smoking attractive as it was a part of motorsport image.³⁴ Alcohol advertising has not been banned yet. However, this ban would be welcomed by many. As per experts alcohol advertising works pretty much as tobacco advertising did – it makes alcohol attractive to the youth.³⁵ Alcohol advertising at EU level is regulated by the Article 22 of the Directive 2010/13/EU³⁶. According to this article, alcohol advertising should be neutral. It should not be depicted as a stimulant, sedative or its consumption having positive effects towards social or sexual success. More importantly though it shall not link the consumption of alcohol to driving.

The European union also examines sport in the relation with environment as it pursues the environment-friendly policy and promotes sustainable development. While sport promotes good health and well-being, provides means of social contact and ample opportunity for intensive experiences, it can also cause a considerable damage to nature and environment. The damage does not only have to be the direct result of sporting activity but can be caused by indirect factors such as the use of cars to travel to and from sport activities.³⁷ The need for making sport activities environmentally friendly is expressed in White Paper on Sport. The Commission will encourage sport entities to participate in Eco Management Audit Scheme (EMAS) and Community Eco-label Award schemes.³⁸ EMAS was established as a voluntary instrument facilitating the implementation of organisational environmental policies and management of environmental aspects. EMAS plays an important role in the promotion of pollution prevention strategies, continuous improvement,

³³ Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

³⁴ GRANT-BRAHAM, Bruce. Motor racing, tobacco company sponsorship, barcodes and alibi marketing. *Tobacco control*, 2011, vol. 21, n. 9, p. 529–535.

³⁵ O'BRIEN, Kerry. *Alcohol Advertising and Sponsorship in Formula One: A Dangerous Cocktail* [online]. Monash University, May 2015. [cit. on 25th June 2020]. Accessible at <http://www.ias.org.uk/uploads/pdf/IAS%20reports/ALCOHOL_ADVERTISING_AND_SPONSORSHIP_IN_FORMULA_ONE__A_DANGEROUS_COCKTAIL_MAY_2015.pdf>.

³⁶ Directive 2010/13/EU of the European Parliament of the Council of 10 March 2010 of the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services, 2010, O.J. L 95/1.

³⁷ SCHEADLER, Travis et al. Sports and the Environment: Ways towards achieving the sustainable development of sport. *The Sport Journal*, 2004, no. 1.

³⁸ EOC EU Office. *Guide to EU sport policy* [online]. EOC EU Office, September 2011 [cit. on 13th of November 2020]. Accessible at <https://www.euoffice.eurolympic.org/files/guide_to_eu_sport_policy_final_versionwithlinks.pdf>.

and public disclosure of environmental performance in organisations.³⁹ Community Eco-label Award schemes aim to promote products, which are less environmentally harmful and have less environmental impact than other related products.⁴⁰

1.2 Motorsport

If we try to define motorsport, we can say that motorsport is a type of sport involving motor vehicles such as automobiles and motorcycles. However, some does not consider motorsport to be sport. Critics say that sport is an activity involving physical exertion and skill in which an individual or team competes against another or others for entertainment. While motorsport involves an individual or team competing against another or others for entertainment, it lacks the physical exertion – a driver does not have to use such physical effort as an athlete.⁴¹

EU sports policy is formed by aims that EU wants to achieve in this field, so there is no mention of motorsport in the outlying documents like the European Union Work plan for sport (2021-2024)⁴², White paper for sport⁴³ or the Communication on developing the European dimension in Sport⁴⁴. However, it is apparent that the EU's main interests in sport are its economic dimension related to the four freedoms and societal role of sport, where equality and health are the main topics. The aforementioned documents are mostly relevant to motorsport in the economic dimension as the societal role of sport is focused on athletes. There is continuous emphasis on physical activity and doping. The recent Workplan for sport brings new priorities in environmental dimensions of sport, which could be considered crucial for motorsport as most of the racing vehicles use combustion engines that contribute to the carbon emissions. The European union set a goal to become climate-neutral by 2050 and the intermediate target of an at least 55% net reduction in greenhouse gas emissions by 2030.⁴⁵ Apart the climate neutrality EU committed to achieve more environmentally friendly sports practice, to improve facilities and events especially in the light of climate change and sustainable planning construction and maintenance of sport

³⁹ TOURAIS, Patrícia. VIDEIRA, Nuno. Why, How and What do Organizations Achieve with the Implementation of Environmental Management Systems? – Lessons from a Comprehensive Review on the Eco-Management and Audit Scheme. *Sustainability*, 2016, vol. 8, no. 3.

⁴⁰ *Community Eco-label award scheme* [online]. European Commission, 29th April 1992 [cit. on 25th February 2021]. Accessible at <<https://cordis.europa.eu/article/id/885-community-ecolabel-award-scheme>>.

⁴¹ MUSOLINO, Adrian. *Is motorsport a sport? The debate goes on and on* [online]. The Roar, 10th January 2011 [cit. on 22nd of November 2020]. Accessible at <<https://www.theroar.com.au/2011/01/11/is-motorsport-really-a-sport-the-debate-goes-on-and-on/>>.

⁴² Council resolution of 4th December 2020, 2020 O.J. C 419/1.

⁴³ Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

⁴⁴ Communication from the Commission to the European Parliament, the Council, the European social committee and the committee of the regions on Developing the European Dimension in Sport, COM (2011) 12 final.

⁴⁵ *CO₂ emission performance standards for cars and vans (2020 onwards)* [online]. European Commission, [cit. on 22nd of November 2020]. Accessible at <https://ec.europa.eu/clima/policies/transport/vehicles/regulation_en#tab-0-0>.

facilities.⁴⁶ The priorities set in environmental dimensions of sport however are not explicitly aimed at motorsport either although being the most relevant to it.

The EU explicitly touched motorsport in the proposal of the amendment of Directive 2009/103/EC concerning the extending of the third-party insurance in order to ensure higher level of protection of victims of car accidents and discourage people from driving uninsured cars.⁴⁷ The document was published in 2016. The proposal of the amendment of Directive 2009/103/EC stated that all vehicles were subject to the third-party insurance irrespective of the terrain on which the motor vehicle was used, whether it was stationary or in motion and irrespective of the vehicles characteristics if the vehicle was used as a means of transport.⁴⁸ This act suggest that EU includes motorsport in road safety policy rather than a sports policy.

There is no doubt that motor racing is extremely dangerous despite all the security precautions, but would the directive be better than the current liability settings in motorsport? The situation in motorsport is so specific that it would create problems and obstacles to other vehicles to include them in the directive – driving on the closed circuit is not the same as on the public road. In 2019 the European Parliament came to the same conclusion. It published an article stating that motorsports will be omitted from the scope of the directive as they are covered by other forms of liability.⁴⁹ This omission probably saved motorsport in Europe as cost of such insurance could make motorsport unviable. Another question was whether there would be any insurance company that would be willing to take the risk of insuring a racing car.⁵⁰ As in this case was a need to recognize the specific nature of motorsport in contrast to common traffic, a question arises whether the same should be done in sports policy. Should EU expressly dedicate a place to motorsport within the sports policy? If that would be the case, there would be no doubt that

⁴⁶ Council resolution of 4th December 2020, 2020 O.J. C 419/1.

⁴⁷ *Car insurance: new EU rules to better protect victims of road accidents* [online]. European Parliament News, 13th February 2019 [cit. on 30th June 2020]. Accessible at <<https://www.europarl.europa.eu/news/en/headlines/society/20190130STO24607/car-insurance-new-eu-rules-to-better-protect-victims-of-road-accidents>>. JASKIRAT, Arora. *New EU Law a Threat to the Existence of Formula One* [online]. EssentiallySports, 6th November 2018 [cit. on 30th June 2020]. Accessible at <<https://www.essentiallysports.com/eu-law-threat-existence-formula-one/>>.

⁴⁸ European Commission, Proposal for a Directive of the European Parliament and the Council amending the Directive 2009/103/EC of the European Parliament and the Council of 16th September relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability, COM (2018) 336 final (May 2018).

⁴⁹ *Car insurance: new EU rules to better protect victims of road accidents* [online]. European Parliament News, 13th February 2019 [cit. on 30th June 2020]. Accessible at <<https://www.europarl.europa.eu/news/en/headlines/society/20190130STO24607/car-insurance-new-eu-rules-to-better-protect-victims-of-road-accidents>>.

⁵⁰ MORGAN, Sam. *Formula One at risk from new EU insurance rules?* [online]. Euractiv, 4th June 2018 [cit. on 30th June 2020]. Accessible at <<https://www.euractiv.com/section/transport/news/formula-one-at-risk-from-new-eu-insurance-rules/>>.

motorsport is a sport despite the “noticeable” lack of physical exertion.⁵¹ On the other hand, it could be viewed as a violation of the principle of subsidiarity and the autonomy of sport, which brings us to the question of necessity of EU regulation in motorsport. The fact that motorsport is not explicitly mentioned in the EU sports policy does not mean that EU ignores motorsport or any other kind of sport although it may seem that EU favours the sports, where the physical activity prevails.⁵² The generality of EU sports policy is in fact an advantage for motorsport because the EU might not intervene in the field that often.

Although motorsport events and the associated interests of businesses contribute to the carbon emissions, motorsport also plays a role in low-carbon innovation in the automotive sector mostly because its rapid prototyping ability.⁵³ Since 2008 automotive industry manufacturers have cooperated with motorsport industry in order to meet the emission targets set out by the European Union.⁵⁴ The cars are intentionally built for one race, then the cars are revised, so although they may look the same, they are not. Historically, motorsport have come with many technological innovations that were adapted to road cars.

According to Skeete, once the racing engineers met the limits of their technologies, they understood that failure to explore promising new technologies in other areas could result in missed opportunities and this pushed them to further innovation in order to gain a competitive advantage. Also, the settings of motorsport governance push this approach by so called technology-forcing. This happens when the regulator sets an objective for the future that cannot be met by existing technologies. As in any other kind of sport, the rules have been changing fast and in motorsport this concerns mostly specification changes either for safety reasons or to address unfair advantages. Innovation in motorsport is driven by two groups of stakeholders: sponsors (from the outside and the inside of the industry) and the constructors. Sponsors from the inside of the industry are automakers and related organisations that seek to capture innovative products and knowledge acquired from racing.⁵⁵ However, Amey highlights two caveats concerning the transfer of

⁵¹ The research conducted by Musolino proved that motorsport requires an immense physical effort. There is a huge pressure on the driver’s neck, a physical strength is required to drive the cars at such high speeds and immense amount of concentration is needed to get through the race. In other words, drivers develop a physical effort equal to the athlete, but in a different way. MUSOLINO, Adrian. *Is motorsport a sport? The debate goes on and on* [online]. The Roar, 10th January 2011 [cit. on 22nd of November 2020]. Accessible at <<https://www.theroar.com.au/2011/01/11/is-motorsport-really-a-sport-the-debate-goes-on-and-on/>>.

⁵² See for example: Communication from the Commission to the European Parliament, the Council, the European social committee and the committee of the regions on Developing the European Dimension in Sport, COM (2011) 12 final.

⁵³ SKEETE, Jean-Paul H. *Motorsport and Autonomous Vehicles: Examining the EU’s regulatory framework for energy-efficient Innovation (EEI) in the automotive industry* [online]. Semantic Scholar, 2017 [cit. on 22nd of November 2020]. Accessible at <<http://etheses.whiterose.ac.uk/19758/1/JPS%20PhD%20Thesis%20minor%20correcitons%20accepted%20final.pdf>>.

⁵⁴ Ibidem.

⁵⁵ Ibidem.

knowledge and technology from motorsport to automotive industry. Firstly, the transfer of technology and knowledge might not be a result of a racetrack innovation but might be influenced by something external. Secondly, even if the technology is a direct result of the racetrack innovation there are multiple factors involved as it is not possible for automakers to be both an innovator and an adopter of all current dominant design technologies. This could be illustrated on the Williams company, where engineers benefit from the knowledge by moving back and forth between motorsport and automotive production and at the same time, they also benefit from jointly working on projects with other engineers from different backgrounds.⁵⁶

Respondents from the motorsport industry in the research conducted by Skeete stated that despite the fear of losing sponsorship and patronage under the newly agreed EU emission targets, they became acknowledged as experts in the efficient use of energy e.g. aerodynamics and light weighting. However, many also believed that restrictive regulations in motorsport subsequently limited a scope of possible innovations, which rendered motorsport technologies less relevant to automotive industry. Not all innovations are valuable to the automotive industry as well e.g. use of titanium in race cars. Titanium is as strong as steel, half of the weight of steel, but far more costly to be used in the production of high-volume economy vehicles. Rapid prototyping that is possible in motorsport is also a direct answer to the automotive industry's weakness – to react quickly to changes in technology. Porsche road cars models are very similar to their racing cars and thus the company can carry over a lot of technology from the race cars. Audi went even further as there is no separate development for race cars and road cars. The head of Audi's Le Mans Prototype development, Chris Reinke, said that Audi races for the sole purpose of improving its road cars.⁵⁷

Recently, some new alternatives have emerged, like electric racing series, virtual races or even robo-races with autonomous vehicles⁵⁸ and although those series are now mostly unknown, it might pose a threat to the traditional motorsport series especially with the forthcoming Union's commitment to become climate-neutral by 2050.

⁵⁶ AMEY, R. G. Automotive component Innovation: development and diffusion of engine management technologies. *Technovation*, 1995, vol. 15, no. 4, p. 211–223.

⁵⁷ SKEETE, Jean-Paul H. *Motorsport and Autonomous Vehicles: Examining the EU's regulatory framework for energy-efficient Innovation (EEI) in the automotive industry* [online]. Semantic Scholar, 2017 [cit. on 22nd of November 2020]. Accessible at <<http://etheses.whiterose.ac.uk/19758/1/JPS%20PhD%20Thesis%20minor%20correcitons%20accepted%20final.pdf>>.

⁵⁸ BURG, Jennifer. PLANING, Patrick. *The future of motorsport? – An analysis of the attractiveness of motorsport for the Generation Z.* [online]. PSYArXiv Preprints, 8th of November 2020 [cit. on 22nd of November 2020]. Accessible at <<https://psyarxiv.com/9p24e/>>.

2 Formula 1

Formula One is an international auto racing sport taking place on a closed circuit. What sets Formula One apart from other closed-circuit competitions, is the form of a racing car. It is a single-seat, open-wheel and open-cockpit car. Formula One World Championship is the highest level of single-seat, open wheel and open-cockpit cars competitions.⁵⁹

Formula One is governed by the International Automobile Federation (FIA). FIA sets rules, imposes sanctions and makes all crucial decisions concerning race calendar, licences or circuits.⁶⁰

2.1 Competition

The European Commission have conducted several investigations into the practices of FIA and Formula One. The first and the most famous one was opened in 1999. The complainants claimed FIA to be abusing its dominant position and restricting competition.⁶¹ In 2009 the Commission received a complaint from the BRV company that claimed FIA violated articles 101 and 102 TFEU by banning the use of rotary valves. The complaint was rejected.⁶² In 2012 the Commission investigated the state aid provided to Nürburgring circuit and adjoining leisure park, where Formula One took place almost annually. The Commission found this state aid incompatible with the EU state aid rules as Nürburgring complex was in insolvency.⁶³ The latest case for the European Commission competition policy concerns the revenue allocation scheme that favours popular and long-lasting teams over those successful in competition.⁶⁴

While most of the proceedings were insignificant, the proceedings in 1999 could be marked as revolutionary for FIA. The Commission found that articles 101 and 102 TFEU were violated. FIA misused its power to acquire all television rights to international motorsport events. It forced the participating teams to transfer any broadcasting rights they might have and then transferred them once more to another company Formula One Administration Ltd. (FOA). This is called a joint selling. Joint selling is when clubs assign the selling of their media rights to their association. Such

⁵⁹ *Formula One – A Racing Sport* [online]. Tutorialspoint, [cit. on 5th of December 2020]. Accessible at <https://www.tutorialspoint.com/formula_one/formula_one_quick_guide.htm>.

⁶⁰ *Ibidem*.

⁶¹ Commission press release, IP/99/434 (June 30, 1999).

⁶² BRV, COMP/39732, Commission decision, [2011], s. 2–4.

⁶³ The state aid can be provided only under specific conditions and one of them is that it should be one-off aid. This is so-called “one-time, last time” principle. It does not mean that the undertaking cannot receive another aid in the future though. The undertaking should not obtain state aid more than once in a decade. The state aid is meant for helping the undertakings out of the temporary crisis so the undertaking could continue its business. Nürburgring however, was no longer capable of running without external help. Commission press release, IP/14/1067 (October 1, 2014).

⁶⁴ BUDZINSKI, Oliver, MÜLLER-KOCK, Anika. Is the Revenue Allocation Scheme of Formula One Motor Racing a Case for European Competition policy? *Contemporary Economic Policy*, 2018, vol. 36, no. 1, p. 215–233.

behaviour is prohibited by the Article 101 (1) TFEU.⁶⁵ FIA also protected Formula One championship from any rivalling competitions. Drivers could have been banned from the championship by participating in other competitions, contracts with racing circuits could have been cancelled and broadcasters could have been fined. The Commission also found an evidence of FIA using its power to force other competing series out of the market, which could be considered as anti-competitive foreclosure. Anti-competitive foreclosure is a situation where effective access of actual or potential competitors to supplies or markets is hampered or eliminated as a result of conduct of the dominant undertaking.⁶⁶ A competing promoter of GTR organisation was forced by FIA's abusing power out of the market and FIA subsequently replaced the GTR series with the FIA GT championship.⁶⁷ FIA probably forced the championship out of the market by the threat of cancelling the contracts with racing circuits or the threat of fining the broadcasters, who were both involved in Formula One and GTR championship. FIA and Commission agreed to make changes that would limit FIA. FIA for example had no more influence over the commercial exploitation of the Formula One Championship.⁶⁸

While the proceedings turned out to be quite unflattering to FIA, it was welcomed by the drivers and racing circuits owners. FIA rules contained clauses that were nearly bullying and disproportionate. Before the adoption of changes owing to the Commission's proceedings the drivers, teams and racing circuits were almost "trapped" by the sport federation as they had no access to the unbiased authority.⁶⁹ The decisions made by FIA could be appealed to International Court of Appeal (ICA), which is a body created by FIA, but challenging the decision of ICA in the civil courts was not possible. The changes following the Commission's investigation increased the transparency of the ICA. The hearings were open to the media, the number of judges elected to the Court increased and the position of Secretary General of the Court became elected and thus was no longer a part of the internal management of FIA. FIA does not utilise the facilities of the Court of Arbitration for sport because it believes that a combination of legal qualification and specific motorsport expertise is a vital necessity for its appeal court given the technical complexity of the sport. Also, the Court of Arbitration appeal procedure may take four months while ICA hearings are frequently required to be held at short notice, usually between the rounds of championship. Despite ICA consisting of independent judges and highly specialized jurists and

⁶⁵ TOFT, Torben. *EC Competition Law aspects: Sport Rights in a converging media technology environment* [online]. European Commission, 30th March 2006 [cit. on 21st March 2021]. Accessible at <https://ec.europa.eu/competition/speeches/text/sp2006_002_en.pdf>.

⁶⁶ Communication from the Commission on Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, 2009, O.J. C 45/7.

⁶⁷ Commission press release, IP/99/434 (June 30, 1999).

⁶⁸ Commission press release, IP/01/1523 (October 30, 2001).

⁶⁹ PARRISH, Richard. *Sports law and Policy in the European Union*. Manchester University Press, 2003. p. 136–137.

motor sport experts, manufacturers suggest that Court of Arbitration for Sport should be the only competent body to give an interpretation of the applicable regulations. The debate is very similar to the one comparing Court of Arbitration for sport and ECJ. Formula One however has no problem with cooperating with European Commission and EU considers ICA to be consistent with the Nice Declaration, the Statement of Good Governance principles, the Aarhus Declaration and the requirements of the EU competition law.⁷⁰ What is best for the sport dispute resolution?

The 1999's Formula One investigation is a very good example as to why the EU needs a sports policy and needs to engage in sport. FIA misused its regulatory power to increase its profit at the expense of those taking part in Formula One as well as those rivalling the competition. In the end it does not matter if it was Commission, state court or Court of Arbitration for sport, who pointed out "the unfair practices". Important is that the practice changed and that the decisions of the federation can be challenged before an independent body. FIA's overprotective approach to Formula One is very interesting. Is Formula One truly so endangered by other competitions? What could be considered its rival? Since Formula One World Championship was established in 1950⁷¹, it does seem to be quite rival resistant. According to Lange, Formula One's global TV audience is 471 million with a recent increase of US audience by 7%.⁷² Considering given numbers, are not EU policies more threatening to the sport?

2.2 Sponsorship

The overall sponsorship motives in motor racing are the advertising potential increased with television coverage, obtaining coverage for a product, to cash in on the image of the sport or nationalistic pride.⁷³ Formula One is a sport, where money go hand in hand with success. The more money you can invest in the car and testing, the better results you can get. That is why the introduction of tobacco advertising and sponsorship ban was so controversial.

The introduction of tobacco advertising ban resulted in immediate cancellation of Formula One Francorchamp grand prix in 2003 as tobacco company Marlboro was the main sponsor.⁷⁴ Tobacco companies were common sponsors of racing circuits and racing teams and teams were often associated with specific brands. Marlboro was associated with Scuderia Ferrari, West with

⁷⁰ WARD, David. *Sports governance and FIA Court* [online]. F1network.net, 24th May 2005 [cit. on 23rd February 2021]. Accessible at <<https://m.f1network.net/main/s169/st73784.htm>>.

⁷¹ BURG, Jennifer. PLANING, Patrick. *The future of motorsport? – An analysis of the attractiveness of motorsport for the Generation Z.* [online]. PSYArXiv Preprints, 8th November 2020 [cit. on 22nd November 2020]. Accessible at <<https://psyarxiv.com/9p24e/>>.

⁷² LANGE, David. *F1 – Statistics & Facts* [online]. Statista, 3rd December 2020 [cit. on 6th December 2020]. Accessible at <<https://www.statista.com/topics/3899/motor-sports/>>.

⁷³ Ibidem.

⁷⁴ Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

McLaren and British American Tobacco with B.A.R (present Mercedes-AMG Petronas Motorsport).⁷⁵ Since the Directive 2003/33/EC⁷⁶ came into force, the tobacco companies started using more subliminal advertising techniques or continued sponsoring without any advertisement. Marlboro used a trademark diversification technique by using a red barcode design on Ferrari cars, which became a subject of many disputes as Ferrari claimed that barcode had no connection to the tobacco company. The design was finally removed in 2010. Marlboro, however, has not stopped experimenting with subliminal advertising.⁷⁷ In 2018 Scuderia Ferrari concluded a four-year agreement with Phillip Morris. It was the Formula One biggest team deal of 2019.⁷⁸ Instead of the infamous bar code or any other subliminal sign, the company placed a slogan on the car: “Mission Winnow”. Mission Winnow is an initiative focused on innovation and research for better future. It can be said that Mission Winnow depicts the situation from the other side, namely the purpose of sport sponsorship. Money received from the sponsorship are used for seeking cutting-edge, innovative solutions that do not have to be useful just for Formula One cars.⁷⁹ McLaren signed a similar deal with British American Tobacco to promote a slogan: “A Better Tomorrow” that referred to reduced-risk alternatives to tobacco.⁸⁰ These practices did not escape the attention of European Commission, who discussed the situation during the meeting of the group of experts on tobacco policy in June 2020. Commission advised Member States to undertake the necessary monitoring and enforcement actions regarding sponsorship and promoting activities at Formula One and motorsport events and advertising in information society services, in particular social media platforms and including indirect forms of advertising.⁸¹ The majority of Member States have not observed any major advertising infringement during the 2020 season.⁸²

⁷⁵ GRANT-BRAHAM, Bruce. Motor racing, tobacco company sponsorship, barcodes and alibi marketing. *Tobacco control*, 2011, vol. 21, n. 9, p. 529–535.

⁷⁶ Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, 2003, O.J. L 152.

⁷⁷ GRANT-BRAHAM, Bruce. Motor racing, tobacco company sponsorship, barcodes and alibi marketing. *Tobacco control*, 2011, vol. 21, n. 9, p. 529–535.

⁷⁸ PARTINGTON, Will. *Sponsorship in Formula One, 2019* [online]. Sport Business sponsorship, 29th May 2019 [cit. on 24th June 2020]. Accessible at <<https://sponsorship.sportbusiness.com/2019/05/free-sponsorship-in-formula-one-2019/>>.

⁷⁹ MISSION WINNOW. *Scuderia Ferrari Mission Winnow: A transformative partnership* [online]. Mission Winnow, [cit. on 28th June 2020]. Accessible at <<https://www.missionwinnow.com/en/scuderia-ferrari/the-story-of-scuderia-ferrari.html>>.

⁸⁰ PARTINGTON, Will. *Sponsorship in Formula One, 2019* [online]. Sport Business sponsorship, 29th May 2019 [cit. on 24th June 2020]. Accessible at <<https://sponsorship.sportbusiness.com/2019/05/free-sponsorship-in-formula-one-2019/>>.

⁸¹ *Summary report – Expert Group on Tobacco Policy established under Commission Decision C (2014) 3509 – 15th meeting (26 June 2020)* [online]. European Commission, [cit. 22nd February 2021]. Accessible at <https://ec.europa.eu/health/sites/health/files/tobacco/docs/ev_20200626_sr_en.pdf>.

⁸² *Summary report – Expert Group on Tobacco Policy established under Commission Decision C (2014) 3509 – 16th meeting (24 November 2020)* [online]. European Commission, [cit. 22nd February 2021]. Accessible at <https://ec.europa.eu/health/sites/health/files/tobacco/docs/ev_20201124_sr_en.pdf>.

According to the Flor's study⁸³ the control of tobacco use led to an important reduction in smoking prevalence between 2009 and 2017. The highest relative decreases were among people aged 15-29 years. So, we can say that the tobacco ban is an effective tool along with other precautions. It would be inaccurate to say that motorsport is more important than health and if EU has to interfere in sponsorship, there is no better reason than public health although nobody in motorsport industry asked for it. In the end it is true that regulation had only a little impact on the competition as the tobacco companies return to Formula One recently, although in different form and it might be debatable how much fair their initiatives are. Nevertheless, the initiatives, whether it is "A better tomorrow" or "Mission Winnow", represent a compromise. Teams can have their sponsors and the negative advertising is gone. Also, the initiatives are not visually connected to the tobacco companies, so the regular viewer might not connect them without the knowledge of the initiative's background.

In 2018 there were 202 different sponsors across the 10 Formula One teams that covered 64 different industries. Those industries included: computing and software, aftermarket and auto parts, athletic clothing, internet and IT services and engineering. While most of the Formula One sponsors are either IT or automotive industry related, the largest sponsor is an alcohol company Heineken, whose logo is fairly exposed during the races.⁸⁴ In 2014 the Institute of Alcohol Studies of Monash University conducted an alcohol advert frequency analysis of a Formula One Monaco Grand Prix. During the grand prix the average number of references to alcohol per minute was 11, which means that the audience was exposed to an alcohol brand every five seconds.⁸⁵ Another study on alcohol advertising in Formula One was conducted three years later by Baker. The results of this study showed that alcohol branding occurred in 39% of race footage (the footage consisted of the first six races of the 2017 Formula One championship). The branding consisted mostly of billboard advertisements or branding on the side of cars or racing suits. The brands Heineken and Johnnie Walker were the most popular.⁸⁶

For the purposes of this chapter, I decided to do my own analysis of alcohol advertisement frequency in Formula One. I analysed the first race of 2020 the Austrian Grand Prix. As in Baker's

⁸³ FLOR, Luisa S. et al. The effects of tobacco control policies on global smoking prevalence. *Nature Medicine*, 2021, vol. 27, p. 239.

⁸⁴ SPORTCAL. *Sponsorship Data Report: Formula One team sponsors 2018* [online]. Sportcal [cit. on 24th June 2020]. Accessible at <<https://www.sportcal.com/Reports/Search/54>>.

⁸⁵ O'BRIEN, Kerry. *Alcohol Advertising and Sponsorship in Formula One: A Dangerous Cocktail* [online]. Monash University, May 2015. [cit. on 25th June 2020]. Accessible at <http://www.ias.org.uk/uploads/pdf/IAS%20reports/ALCOHOL_ADVERTISING_AND_SPONSORSHIP_IN_FORMULA_ONE__A_DANGEROUS_COCKTAIL_MAY_2015.pdf>.

⁸⁶ BAKER, A. B et al. Alcohol audio-visual content in Formula 1 television broadcasting. *BMC Public Health*, 2018, vol. 18, no. 1155.

study the logo of Heineken company was fairly exposed however this time with a supplement “0.0”, which refers to a non-alcoholic beer. I observed the same in case of Estrella Galicia, which was the second most exposed beverage advert. Another logo that referred to alcohol company was Singha. However, this company also produces umbrellas and that is why the logo is tolerated during the races by the Arabian countries, where the alcohol ban is already in force.⁸⁷ In the end, the only alcohol present was Moët & Chandon champagne used in the podium ceremony. Due to the pandemic of COVID-19 the following race in the calendar took place on the same circuit as the Austrian Grand Prix so observation of the second race should bring the same results.

While advertising might go unnoticed and be overlooked by many, there could be people who react to it and it can shape their personal view. Teams and drivers are some sort of influencers e.g. Ayrton Senna or Niki Lauda. In this sense it is good that the EU decided to take an action in order to protect public health. On the other hand, it takes away the biggest sponsors on the market. The initial idea was that the departure of those sponsors would create a gap attractive to other sponsors. However, this is not what quite happened⁸⁸ and the same reaction can be expected if the alcohol advertising ban would be approved. Motor racing is an expensive sport and not every sponsor can afford to invest so much money as giants as Phillip Morris, British American Tobacco or Heineken. Tobacco advertising ban was not destructive and neither alcohol advertising will (if there will be any), however, what is misunderstood is that teams do not pick their sponsors in order to create an image, they seek sponsors for the sake of their existence and restricting the number of potential sponsors poses a threat to smaller and less known teams. Article 22 of the Directive 2010/13/EU⁸⁹ that regulates alcohol advertising seem to be sufficient and there is no need for another ban. Considering the connection between driving and alcohol, the alcohol company sponsorships seem to be on the edge of acceptability, however non-alcoholic beverage advertising is a great alternative to the ban.

While the Commission’s investigation into the practices in Formula One brought positive changes to the championship, EU activities in advertising and sponsorship seem to be quite off-hand despite being based on research. There is no doubt that smoking has a negative impact on health. There is however no doubt that the tobacco ban had a negative impact on the Formula One championship as well. Considering the motorsport’s role in the innovation, the tobacco ban and

⁸⁷ BOHUSLAV, Tomáš. *Za absencí Force Indie na obrazovkách stojí zřejmě reklama na alkohol* [online]. F1sport.cz, 22nd April 2012 [cit. on 22nd March 2021. Accessible at <<https://f1sport.auto.cz/clanek/za-absenci-force-indie-na-obrazovkach-stoji-zrejme-reklama-na-alkohol>>.

⁸⁸ GRANT-BRAHAM, Bruce. Motor racing, tobacco company sponsorship, barcodes and alibi marketing. *Tobacco control*, 2011, vol. 21, n. 9, p. 529–535.

⁸⁹ Directive 2010/13/EU of the European Parliament of the Council of 10 March 2010 of the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, 2010, O.J. L 95/1.

possible alcohol ban play in fact a negative role in achieving the EU's climate neutrality goal. Without sponsors the teams will not have enough money for innovation and this could slow down the development of sustainable fuels or zero-emission technologies. This particular case brought me the idea that EU's actions in sport and especially motorsport are thoughtless and purely accidental.

Bans are not the only things affecting sponsorship in Formula One though. Sponsorship can also be affected by sanctions. After the Russian annexation of Crimea there has been a pressure to cancel the 2014 Russian Grand Prix as it was well known that the driving force behind the race was Vladimir Putin himself. While the World Motorbike Federation cancelled the superbike race, FIA decided to hold the race stating that Formula One does sport and not politics. It was wildly discussed if Formula One could be ordered to cancel the grand prix. It was even speculated that the teams might have been sanctioned for taking part in the grand prix as most of them were Europe based, but it remained a mere speculation until this very day.⁹⁰ Whereas Russian Grand Prix was saved the financial crisis in Formula One continued. Small independent teams struggled to find sponsors and two teams were lost during the season. Russia, being the 4th largest market, seemed to be hope for the teams until the western powers started imposing sanctions on many Russian individuals and companies. One of the sanctioned companies was SMP bank, who was in the middle of negotiations with Sauber team (now Alfa Romeo Racing).⁹¹ The European Parliament went even further. In its open letter to all EU governments calling on boycotting the 2018 FIFA World Cup in Russia the Parliament stated that EU cannot pretend the World Cup is just like any other major sporting event as long as Russian president Putin is illegally occupying Crimea and keeps bombing schools, hospitals and civilian areas in Syria. Raising awareness of human rights violations is a moral responsibility of the EU.⁹² And Amnesty international pretty much thinks the same as it keeps criticizing Formula One for holding races in Bahrain and Azerbaijan, where the human rights were repeatedly violated.⁹³ According to the Amnesty international there are two ways of human rights violation in relation to sporting events, namely violations directly related to the

⁹⁰ JOHNSON, Daniel. *Russian Grand Prix: Leading politicians pile pressure on F1 to cancel October's race* [online]. Telegraph, 22nd July 2014 [cit. on 9th July 2020]. Accessible at <<https://web.archive.org/web/20150726164053/http://www.telegraph.co.uk/sport/motorsport/formulaone/10984317/Russian-Grand-Prix-Leading-politicians-pile-pressure-on-F1-to-cancel-October's-race.html>>.

⁹¹ JAMES, Neil. *How Sauber Have Become Formula 1's Forgotten Team* [online]. Bleacher report, 23rd June 2014 [cit. on 9th July 2020]. Accessible at <<https://bleacherreport.com/articles/2084114-how-sauber-have-become-formula-1s-forgotten-team>>.

⁹² SALM, Christian. *Major Sporting Events Versus Human Rights* [online]. European Parliamentary Research Service Blog, 14th June 2018 [cit. on 9th July 2020]. Accessible at <<https://epthinktank.eu/2018/06/14/major-sporting-events-versus-human-rights/>>.

⁹³ *Bahrain: What lies behind the scenes of the Formula One Grand Prix* [online]. Amnesty International, 27th March 2019 [cit. on 2nd July 2020]. Accessible at <<https://www.amnesty.org/en/latest/campaigns/2019/03/bahrain-what-lies-behind-the-scenes-of-the-formula-one-grand-prix/>>.

staging or hosting the event and human rights violations not directly related to the event, but where is a risk of increased violations during or in connection with the event e.g. the host state repressing the freedom of expression because the authorities do not want insurgents to attract attention once the eyes of the world are on the country. Responsible for these violations are the host state, organizing bodies such as FIA or International Olympic Committee, sponsoring companies and companies involved in a sporting event.⁹⁴ Amnesty International continues that the state or non-state actors organizing the event must respect human rights in a manner consistent with the UN Guiding Principles on Business and Human rights as well as all companies involved in the event and ensure they are respected through their subcontracting and supply chains.⁹⁵ As a reaction to the complaints Formula One companies issued a Statement of Commitment to Respect for Human Rights in 2016. Formula One then committed to identify and assess any actual or potential adverse human rights impacts with which they may fully be involved either through activities or business relationship and seek ways to honour them. The company also committed to respect rights of their employees e.g., the freedom to associate and organise, the right to engage in collective bargaining and the elimination of discrimination in employment and occupation.⁹⁶ Formula One surely made a progress from “doing sport and not politics” to openly supporting human rights. In November 2019 the Formula One launched a strategy to make the sport zero carbon by 2030 and improve diversity and inclusion in Formula One. Following year, the drivers chose to show support for the Black Lives Matter protest by wearing black T-shirts with words like “end racism” and “black lives matter” by congregating on the start line before the Austrian Grand Prix⁹⁷ as a part of #WeRaceAsOne initiative. This is a new long-term initiative created in support of #PurposeDriven movement launched by FIA to fight challenges of COVID-19 and global inequality.⁹⁸

If we have a look at tobacco and alcohol advertising policy along with economic sanctions it becomes apparent that sponsors are very crucial for sport and its outside perception. While research proved that tobacco ban is useful, the same cannot be said about the sanction regime,

⁹⁴ *Violations of human rights at sporting events: who is responsible* [online]. Sport and Human Rights, [cit. on 7th July 2020]. Accessible at <<http://www.sportandhumanrights.org/wordpress/index.php/2015/06/18/violations-of-human-rights-at-sporting-events-who-is-responsible/>>.

⁹⁵ *Human rights and sports: Amnesty's recommendations* [online]. Sport and Human Rights, [cit. on 7th July 2020]. Accessible at <<http://www.sportandhumanrights.org/wordpress/index.php/2015/06/18/human-rights-and-sports-amnestys-recommendations/>>.

⁹⁶ *Statement of Commitment to Respect for Human rights* [online]. Official Formula 1 Website, April 2016 [cit. on 2nd July 2020]. Accessible at <<https://www.formula1.com/en/toolbar/statement-of-commitment-to-respect-for-human-rights.html>>.

⁹⁷ GREZ, Matias. *Formula One drivers divided as several chose not to kneel in support of Black Lives Matter movement* [online]. CNN, 6th July 2020 [cit. on 9th July 2020]. Accessible at <<https://edition.cnn.com/2020/07/05/motorsport/f1-austrian-grand-prix-drivers-kneel-and-stand-hamilton-bottas-spt-intl/index.html>>.

⁹⁸ *Formula 1 launches #WeRaceAsOne initiative to fight challenges of COVID-19 and global inequality* [online]. Formula 1, 22nd June 2020 [cit. on 9th July 2020]. Accessible at <<https://www.formula1.com/en/latest/article.formula-1-launches-we-race-as-one-initiative.3s2AhNDzrCoQDc1RY8.html>>.

especially considering the sanctions against Russia. Those actions take away the money from championship and as the crisis in 2014 showed there are not endless possibilities of sponsorship. However, the image of sport should be taken into a consideration as well. There should be a line between entertainment of people and health and fair treatment of both the audience and people participating in the sporting events.

It is expected that the global health crisis will have an impact on Formula One as well as many companies find themselves caught in a downpour and will have to consider the validity of their investment. Manufacturers do not explicitly blame the crisis; however, they also point to an increasing pressure on full-electrification and not just hybridisation. Current situation is very similar to a global economic crisis in 2000s when companies like Honda, Toyota, BMW and Renault withdrew from the championship.⁹⁹

2.3 Road traffic and other liability

As it was mentioned in the chapter dedicated to the motorsport¹⁰⁰, a proposal of the amendment to the Directive 2009/103/EC¹⁰¹ required all cars to have a third-party insurance regardless of its usage. The proposal was modified in 2019 in favour of motorsport as European Parliament noted that it is covered by other forms of liability.¹⁰²

Current practice in Formula One is that the promoter of an event, grand prix, is responsible for procuring that all competitors are covered by third-party insurance thus liability is governed by the place of an accident. Insurance policy must comply with the national laws in force as well as the FIA requirements. Drivers taking part in the event are not third parties with respect to one another.¹⁰³ Most of the Formula One races take place on the closed circuits so normal road traffic liability would not apply as the circuit is not part of the public road, however, grand prix of Monaco, Canada and Singapore include parts of public roads. Singapore issued a special act concerning the grand prix, where unregistered motor vehicles such as Formula One cars are exempted from the traffic liability if they are used on the designated roads (the circuit) for the purpose of the grand

⁹⁹ MITCHELL, Scott. *A warning from F1's last crisis* [online]. The race, 13th April 2020 [cit. on 25th February 2021]. Accessible at <<https://the-race.com/formula-1/a-warning-from-f1s-last-crisis/>>.

¹⁰⁰ See chapter 1.2. Motorsport.

¹⁰¹ European Commission, Proposal for a Directive of the European Parliament and the Council amending the Directive 2009/103/EC of the European Parliament and the Council of 16th September relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability, COM (2018) 336 final (May 2018).

¹⁰² *Car insurance: new EU rules to better protect victims of road accidents* [online]. European Parliament News, 13th February 2019 [cit. on 26th December 2020]. Accessible at <<https://www.europarl.europa.eu/news/en/headlines/society/20190130STO24607/car-insurance-new-eu-rules-to-better-protect-victims-of-road-accidents>>.

¹⁰³ FIA. *2021 Formula One Sporting regulations* [online]. Federation Internationale de l'Automobile, 19th June 2020 [cit. on 2nd July 2020]. Accessible at <<https://www.fia.com/regulation/category/110>>.

prix. This exemption will not apply if the designated road is open to the public.¹⁰⁴ Those acts in fact show us that sport and traffic should not be mixed together even when taking place at the same road.

Moreover, Formula One cars are covered by the third-party insurance as the European Union wanted, although by different one every time. Uniform insurance might save some time and perhaps even money, but its development would be extremely difficult considering the rules that apply on the closed circuits and common roads. Also, there are no signs that the current practice would be insufficient and even if the current practice would be insufficient, I still not think that it would be a task for EU to solve. Those issues should be solved by the relevant sport organization, in this case FIA as this is what the sport organizations were made for.

2.4 Environment

As Skete mentions in the 1930s Formula One gave us adaptive suspensions and the introduction of reinforced carbon fibre in race car construction in 1981 was one of the most significant developments in the history of Formula One racing. The carbon fibre allowed to build lighter, faster and safer cars and this technology is now used in private road cars. Formula One teams have also developed an engine management system that increases fuel efficiency – lower emissions and fuel economy. In 2008 EU emissions regulation brought a great focus on low-carbon innovation and subsequently brought much more research and development in the areas of electrification and hybridisation. Since 2014 all cars in Formula One are fully hybrid and the engine reproduces a quieter sound, which was not very pleasing for the audience at first, but once again it contributed to the fuel efficiency.¹⁰⁵ Before the hybrid engines many felt that Formula One was one of the most wasteful and damaging sports on the planet. The average road car emitted 4600 kilograms of carbon dioxide yearly and the average Formula One race car emitted about 12350 kilograms of CO₂ per season. According to the Trucost study Formula One race cars were the biggest CO₂ producers in sport, however only 3% of the CO₂ produced in Formula One were actually produced by race cars. The rest was produced by the trucks, travel or electricity usage. The emissions had reversed by 7% between 2009 and 2011 and the number of emissions produced by Formula One continues to decrease since.¹⁰⁶

¹⁰⁴ The Motor Vehicles (Third party risks and Compensation) (2015 Formula One™ Singapore Airlines Singapore Grand Prix) (Exemption) Notification 2015.

¹⁰⁵ SKEETE, Jean-Paul H. *Motorsport and Autonomous Vehicles: Examining the EU's regulatory framework for energy-efficient Innovation (EEI) in the automotive industry* [online]. Semantic Scholar, 2017 [cit. on 22nd of November 2020]. Accessible at <<http://etheses.whiterose.ac.uk/19758/1/JPS%20PhD%20Thesis%20minor%20correcitons%20accepted%20final.pdf>>.

¹⁰⁶ SHEA, Brenden. *How terrible is Formula 1 for Our Environment?* [online]. Feelgoodcars, 4th November 2019 [cit. on 25th February 2021]. Accessible at <<https://feelgoodcars.com/how-terrible-is-formula-1-for-our-environment/>>.

A senior FIA regulation official said that two years of development in Formula One are equivalent to eight years of normal research. The development of technology is accelerated by competition and this is what makes motorsport so valuable to automotive industry. Moreover, by capturing an additional value from racing than just pure marketing enables manufacturers to justify their racing budgets as engineers can be moved back and forth between automotive and racing industry. Nevertheless, some view motorsport as too restricted by its regulation which prevents them to come with something innovative. A former Formula One aerodynamics chief supports this view in reaction to the prohibition of moving or adaptive parts for braking system: “*If motorsport wanted to guide or become more relevant, they could look at regulation design as an opportunity to contribute more thoroughly.*”¹⁰⁷

In 2019 Formula One announced ambitious sustainability plan to have a net-zero carbon footprint by 2030 (EU committed to climate neutrality by 2050).¹⁰⁸ How will it be achieved? A logical step concerning the past development from combustion engine cars to hybrid cars would be full electrification. However, this might mean the end of Formula One. In 2014 Formula One met its first real rival – Formula E. Formula E is a first fully electric motorsport racing series taking place in international street courses in major city centres. Burg and Planning assume that due to the increasing environmental awareness and the higher consumption of online media by younger generations Formula E along with the virtual Sim Racing series will become the most attractive racing series in the future.¹⁰⁹ If Formula One becomes fully electric, how would it hold next to the Formula E? Would it be consumed by Formula E? Or would Formula E be consumed by Formula One? Considering the overprotective approach of FIA, the latter might be true, but only if FIA would still value Formula One as it did in the past. So far, the popularity of Formula One, especially for the younger generation, lies in being the best-known racing series. The “mere-exposure-

SYLT, Christian. *Is Formula One the World's Most Sustainable Sport?* [online]. Forbes, [cit. on 25th February 2021]. accessible at <<https://www.forbes.com/sites/csylv/2015/08/25/is-formula-one-the-worlds-most-sustainable-sport/?sh=13baf3be2952>>.

¹⁰⁷ SKEETE, Jean-Paul H. *Motorsport and Autonomous Vehicles: Examining the EU's regulatory framework for energy-efficient Innovation (EEI) in the automotive industry* [online]. Semantic Scholar, 2017 [cit. on 22nd of November 2020]. Accessible at <<http://etheses.whiterose.ac.uk/19758/1/JPS%20PhD%20Thesis%20minor%20corrections%20accepted%20final.pdf>>.

¹⁰⁸ *Formula 1 provides update on sustainability, as Red Bull announce „NO BULL“ sustainability drive* [online]. Formula 1, 12th November 2020 [cit. on 26th December 2020]. Accessible at <https://www.formula1.com/en/latest/article.formula-1-provides-update-on-sustainability-as-red-bull-announce-no-bull.1vg65PmpOqqa2ilgMdHrts.html?utm_keyword=WRAO&utm_medium=email&utm_source=Ogilvy&utm_campaign=20201112_Announcement_WeRaceAsOne&utm_content=Final&utm_term=20201112_Announcement_WeRaceAsOne>.

¹⁰⁹ BURG, Jennifer. PLANING, Patrick. *The future of motorsport? – An analysis of the attractiveness of motorsport for the Generation Z.* [online]. PSYArXiv Preprints, 8th of November 2020 [cit. on 22nd of November 2020]. Accessible at <<https://psyarxiv.com/9p24e/>>.

effect”¹¹⁰ can also be considered as an additional factor to its popularity. Formula One performed in Burg’s and Planing’s research especially well when explicitly asked.¹¹¹

Under the sustainability plan, Formula One created a working group of Formula One and FIA personnel to investigate sustainable fuels. In the future the engines should combine hybrid technology with sustainable fuels. Formula One has also reduced travelling staff by 36% and freight by 34%.¹¹² By 2025 the sustainable materials will be used at all Formula One events with single-use plastics being eliminated and all waste reused, recycled or composted. Formula One also wants to provide more opportunities for local people, businesses and causes to get involved in the action during Formula One race weekend and offer every fan a greener way to reach the race.¹¹³

EU’s emission targets played a role in the move of automotive industry to a low-carbon innovation, but this was not the only factor in the move to hybridisation and electric drive. Formula One and other motor racing series would explore those areas even without the stimulus from EU in order to achieve fuel efficiency. It is debatable though if the automotive industry would follow the same direction or if it would try to achieve the low-carbon emissions and fuel efficiency as fast. Although not all technologies introduced in motorsport were convenient for automotive industry, motorsport and Formula One are important for the car manufacturers, which showed not only in 2008, but in the interest in the team sponsorship as well. The more money team receives the greater room for innovations and also a chance to end up on the podium. However, some teams are more attractive to sponsors than the others so Formula One decided to introduce a Cost cap for the 2021 season. Cost cap is nothing new in the terms of sport, but this is the first time it has been introduced to the Formula One. The aim of this rule is to ensure a more competitive championship.¹¹⁴ Cost cap is the amount of money the team can spend during a calendar year and it is set up at \$175m. This sum was consulted with teams to ensure a long-term sustainability,

¹¹⁰ Individuals evaluate stimuli that are neutral for them more positively after repeated perception.

¹¹¹ BURG, Jennifer. PLANING, Patrick. *The future of motorsport? – An analysis of the attractiveness of motorsport for the Generation Z.* [online]. PSYArXiv Preprints, 8th of November 2020 [cit. on 22nd of November 2020]. Accessible at <<https://psyarxiv.com/9p24e/>>.

¹¹² *Formula 1 provides update on sustainability, as Red Bull announce „NO BULL“ sustainability drive* [online]. Formula 1, 12th November 2020 [cit. on 26th December 2020]. Accessible at <https://www.formula1.com/en/latest/article.formula-1-provides-update-on-sustainability-as-red-bull-announce-no-bull.1vg65PmpOqqa2ilgMdHrts.html?utm_keyword=WRAO&utm_medium=email&utm_source=Ogilvy&utm_campaign=20201112_Announcement_WeRaceAsOne&utm_content=Final&utm_term=20201112_Announcement_WeRaceAsOne>.

¹¹³ *Formula 1 announces plan to be Net Zero Carbon by 2030* [online]. Formula 1, 12th November 2019 [cit. on 25th February 2021]. Accessible at <https://www.formula1.com/en/latest/article.formula-1-announces-plan-to-be-net-zero-carbon-by-2030.5IaX2AZHy7jql6wra6CZ.html?utm_keyword=BreakingNews&utm_medium=email&utm_source=Ogilvy&utm_campaign=20191112_BreakingNews_Sustainability_Unengaged&utm_term=20191112_BreakingNews_Sustainability_Unengaged>.

¹¹⁴ BARRETTO, Lawrence. *What is the 2021 cost cap and how will it be enforced?* [online]. The official home of Formula 1, 31st October 2019 [cit. on 27th June 2020]. Accessible at <<https://www.formula1.com/en/latest/article.what-is-the-2021-f1-cost-cap-and-how-will-it-be-enforced.4l0LPbfFgBhDxjccMseCHO.html>>.

stability and promoting the competitive balance while preserving the unique technology and engineering of Formula One. Cost cap does not cover all team expenditure. It covers only expenditure related to the car performance. Thus, marketing costs, race driver fees, the cost of the team's three highest personnel, fees to enter the championship and purchase of superlicences are exempted. An independent auditor will monitor all team's expenditure and if the team breaches the rule it can be penalised. Interim account must be submitted every year by the end of June. There are several types of penalisation in case of violation of cost cap. Firstly, the team can receive a financial penalty, which amount will be determined on case-by-case basis. Secondly, a combination of reprimand and deduction of constructors and/or drivers points, a ban for certain number of races, limitations on testing and/or reduction of their cost cap. Thirdly, all the mentioned earlier will apply plus the team will be excluded from the championship. This solution will be applied if the team would exceed the cost cap by more than 5%.¹¹⁵

Cost cap gives a chance to smaller and newer teams to level the odds with richer teams, but the limit could affect the relationship of Formula One and the automotive industry. It could limit a scope of possible innovations, which subsequently renders motorsport irrelevant for car manufacturers. It is apparent that cost cap will mean layoffs for many of the hired staff in Formula One teams. It is estimated that Formula One is going to lose 1 244 employees from Britain based teams after the introduction of cost cap. Driver's salaries, marketing staff and employees who work on the design, development and manufacture of the engines are exempted from the restriction. Mercedes, the biggest Formula One employer in Britain, has 849 staff, after the cost cap they would have to lay off more than 400 of those employees. Most of the personnel will probably be relocated within the companies or other racing series. There is also a possibility that the surplus staff will be absorbed by the smaller teams like Haas, who might employ another 14 personnel or Force India.¹¹⁶ Mitchell notes that cost cap could also help to outlast the departure of sponsors caused by the global health crisis and the increasing pressure on full electrification,¹¹⁷ which might not be the direction Formula One wants to follow.

Formula One did a good job in reducing its carbon footprint. It became one of the most sustainable sports and there is no doubt that it will reduce the carbon emissions to zero by 2050, however it is yet not clear how it is going to be done. For Formula One it would be better to come

¹¹⁵ BARRETTO, Lawrence. *What is the 2021 cost cap and how will it be enforced?* [online]. The official home of Formula 1, 31st October 2019 [cit. on 27th June 2020]. Accessible at <<https://www.formula1.com/en/latest/article.what-is-the-2021-f1-cost-cap-and-how-will-it-be-enforced.4l0LPbFFgBhDxjccMseCHO.html>>.

¹¹⁶ SYLT, Christian. *Revealed: F1 Spending Limit Could Fuel 1,200 Job Losses* [online]. Forbes, 20th September 2018 [cit. on 14th July 2020]. Accessible at <<https://www.forbes.com/sites/csylt/2018/09/20/revealed-f1-spending-limit-could-fuel-1200-job-losses/#21ca84c255a9>>.

¹¹⁷ MITCHELL, Scott. *A warning from F1's last crisis* [online]. The race, 13th April 2020 [cit. on 25th February 2021]. Accessible at <<https://the-race.com/formula-1/a-warning-from-f1s-last-crisis/>>.

up with sustainable fuel that would help the championship to differ from Formula E. Formula E is not as popular as Formula One now, but it can be expected that once it gets into the consciousness, the younger generation might find it more attractive. While it might pose a threat to Formula One, we must not forget what FIA did to the GTR series. Formula E might be held by FIA, but Formula One has greater profit so far.

Conclusions

The aim of this thesis was to prove that the EU regulation endangers the Formula One championship by the EU's lack of expertise in the field. Thesis assumed that EU does not acknowledge motorsport in its sport policy, which leads to interactions that are thoughtless and accidental resulting in a negative impact on motorsport. My research question was what the EU regulation impact on the championship is.

It is true that the EU does not explicitly mention motorsport in its key documents for sport, but that does not mean that EU does not acknowledge motorsport. As the competition cases showed, the EU is aware of its existence although their relationship mostly limits to economic dimension of the EU sports policy, or does it? Tobacco ban and sanctions imposed on some undertakings affect also the image of Formula One and its internal functioning e.g. Statement of Commitment to Respect for Human Rights,¹¹⁸ which also reflects the societal role of sport as stated in the Communication 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.*”¹¹⁹ The EU's sport policy is not a tool, but set of goals that can be achieved by all means EU has available. This is why there are many areas affecting Formula One like competition, environment, public health or human rights protection.

The interactions between the EU and Formula One might seem thoughtless and accidental from the Formula One's point of view as it seems not to follow any logical pattern. It is just another regulation Formula One has to take into consideration and to adapt. It is debatable, whether the EU officials gave thought to motorsport, or Formula One when working on the regulations, but surely it was not their primary focus as the EU has a competence only to carry out actions to support or supplement the actions of Member States in sport.¹²⁰ As Formula One and FIA are considered to be undertakings within the meaning of Article 101 TFEU as long as they pursue economic activity¹²¹, they are subject to the rules of internal market and competition. Other

¹¹⁸ *Statement of Commitment to Respect for Human rights* [online]. Official Formula 1 Website, April 2016 [cit. on 2nd July 2020]. Accessible at <<https://www.formula1.com/en/toolbar/statement-of-commitment-to-respect-for-human-rights.html>>.

¹¹⁹ Communication from the Commission to the European Parliament, the Council, the European social committee and the committee of the regions on Developing the European Dimension in Sport, COM (2011) 12 final.

¹²⁰ ISKRA, Katarzyna Anna. *Fact sheets on the European Union: Sport* [online]. European parliament, February 2020 [cit. On 24th February 2021]. Accessible at <<https://www.europarl.europa.eu/factsheets/en/sheet/143/sport>>.

¹²¹ Commission of the European Communities, the EU and sport: background and context accompanying document to the White paper on sport, COM (2007) 391 Final (July 2007).

mentioned regulations like Directive 2009/103/EC¹²², Directive 2003/33/EC¹²³, sanctions against Russia or climate strategies and targets were in compliance with articles 2 and 3 of the Treaty on European Union¹²⁴ and international commitments like Kyoto protocol.¹²⁵ So the actions of EU were certainly not accidental.

The EU law touched and formed Formula One in various ways. The competition investigation in 1999 changed the dispute resolution system in the championship and significantly helped to improve the position of drivers or circuit owners towards FIA.¹²⁶ The EU actions and commitments in the area of environment drew attention of automobile manufacturers to motorsport as the automobile industry lacks the ability of rapid prototyping, which is essential for fast technology innovation. The subsequent cooperation of motorsport and automobile industry therefore ensures smooth fulfilment of the targets set by the EU although lately the cooperation seem to be marked by the global health crisis caused by COVID-19. Formula One itself was long drawn to the low-carbon emission technologies as it helps to increase fuel efficiency. Hence EU's commitment either to reduce gas emissions or climate neutrality did not pose a problem. On the contrary it might help to increase the interest of manufacturers to invest in Formula One teams and get engaged in sponsorship. Sponsorship is very important for Formula One and mainly for the smaller teams that are sometimes barely surviving in the Formula One environment. This is a problem that FIA is trying to tackle for quite a while now. Restrictions on sponsorship imposed by EU are in other words those that are hurting Formula One the most and have a negative impact on the championship. However, the impact was not serious. The affected sponsors were either replaced or found a way back to the championship by finding the way around the EU law e.g., by restructuring. Proposed alcohol sponsorship and advertising ban would have another negative impact on Formula One and it is hard to say whether it would be as insignificant as the tobacco ban because it depends on the overall situation in Formula One, but as we could see on my analysis of 2020 Austrian Grand Prix Formula One already took steps to reduce alcohol advertising by promoting non-alcoholic options. The best solution for reducing inappropriate advertising would

¹²² European Commission, Proposal for a Directive of the European Parliament and the Council amending the Directive 2009/103/EC of the European Parliament and the Council of 16th September relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability, COM (2018) 336 final (May 2018).

¹²³ Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, 2003, O.J. L 152.

¹²⁴ Consolidated Version of the Treaty on European Union art. 2 and 3, 2012 O.J. C 326/13.

¹²⁵ Kyoto protocol operationalizes the United Nations Framework Convention on Climate Change. Under the Kyoto protocols industrialized countries and economies commit to limit and reduce greenhouse gases emissions in accordance with agreed individual targets. *What is the Kyoto protocol?* [online]. UNFCCC, [cit. on 24th February 2021]. Accessible at <https://unfccc.int/kyoto_protocol>.

¹²⁶ See chapter 2.1 Competition and Commission press release, IP/99/434 (June 30, 1999).

be to find a compromise, where the negative advertising disappeared, but the partnership did not need to be broken.

The EU regulation that affected Formula One championship had mostly positive effect either on functioning of the championship or improving its image. It is necessary that the EU continues to monitor activities of sport federations and promote social values in sport, because sport events especially those as popular as Formula One can reach audiences all over the world and influence their personal views. EU's actions in the area of sponsorship, however, should be more careful as it (along with the external factors, that are not very favourable lately due to the current global health crisis) has the potential to destroy the championship. While the current settings might not seem ideal further bans and sanctions are unnecessary if not undesirable.

My aim was to prove that EU lacks the necessary expertise to intervene in the sport sector and mainly motorsport. However, EU never claimed to be the expert and its careful steps in the field suggest otherwise, therefore that EU was aware of its nescience in the field and that's why EU limited their actions in the sport sector only to the distortions of competition and internal market. The following development of EU sports policy that resulted into the adoption of Article 165 TFEU¹²⁷ in the Treaty of Lisbon showed that EU perceives the importance of sport federations and other responsible bodies for sport. The Meca-Medina ruling showed that EU would exercise appropriate oversight of Court of Arbitration for sport and similar sport bodies like International Court of Appeal when the rights of EU citizens were at stake.¹²⁸ The transformation of ICA after the 1999 Commission's investigation¹²⁹ prove an existence of a dialogue between the EU and sport federations. As I mentioned earlier the impact of EU regulation is mostly positive and imposed regulations are neither thoughtless nor accidental. Does EU endanger the existence of the competition? EU's actions in the area of sponsorship have the potential, but not alone. Therefore, the theory I had at the beginning turned out to be wrong. EU's intervention into sport brought more benefits than harm. In my opinion the dialogue between Union and sport federations could be deeper, but I am fully aware that sometimes it is not possible. I appreciate the EU's involvement in sport and especially the careful approach the EU chose to the sports policy.

¹²⁷ Consolidated Version of the Treaty on the Functioning of the European Union art. 165 (1), 2012 O.J. C 326/47.

¹²⁸ LENSKEYJ, Helen. Sport exceptionalism and the Court of Arbitration for Sport. *Journal of Criminological Research Policy and Practice*, 2018, vol. 4, no. 1, p. 12-13.

¹²⁹ Commission press release, IP/01/1523 (October 30, 2001).

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Abstract

The diploma thesis deals with the necessity of interventions of EU law into the Formula 1 championship. The sports sector is considered by the state authorities to be too specific to engage in. For this reason, the administration of the sector has been entrusted to sport federations and specialized courts, as the experts in the field work. In order to protect the four fundamental freedoms, the European Union has decided to take action in the field of sport, thus developing an EU sports policy. Soon, European law began to manifest itself in the Formula 1 championship, which began to change under its influence. But is this regulation necessary? The work is divided into two parts, which correspond to the research methods used. The first deals with the EU sports policy and its perception of motorsport. The second part deals with the effects of European law on the championship.

Key words: sport, motorsport, Formula One, F1, International Automobile Federation, Fédération Internationale de l'Automobile, FIA, European Union, European law, EU sports policy, competition, environment, sponsorship

Abstrakt

Diplomová práce se zabývá nezbytností zásahů evropského práva do šampionátu Formule 1. Sportovní odvětví je státními orgány považováno za příliš specifické na to, aby se v něm angažovaly. Z toho důvodu byla správa odvětví svěřena sportovním federacím a specializovaným soudům, kde působí odborníci v daném oboru. Evropská unie se za účelem ochrany základních čtyř svobod rozhodla přijmout opatření v oblasti sportu a vytvořila tak sportovní politiku EU. Zanedlouho se evropské právo začalo projevovat i v šampionátu Formule 1, který se pod jeho vlivem začal měnit. Je však tato regulace nezbytná? Práce je rozdělena do dvou částí, které odpovídají použitým výzkumným metodám. První část se zabývá sportovní politikou EU a jejím vnímáním motorsportu. Druhá část se zabývá účinky evropského práva na šampionát.

Klíčová slova: sport, motorsport, Formule 1, F1, Mezinárodní automobilová federace, Fédération Internationale de l'Automobile, FIA, Evropská Unie, Evropské právo, Sportovní politika EU, soutěžní právo, životní prostředí, sponzorství