



## POSITION ON THE CLASSIFICATION AND REGULATION OF ESPORTS AS A SPORT

**Video game competitions (also known as “esports”) are an important and growing part of the video games industry. Esports are leagues, competitive circuits, tournaments, and other structured competitions in which individuals play video games, also in collaboration with other players (teams).**

Video games – and therefore the competitions organised with them – rely on intellectual property (IP) and creative endeavour for their development. Esports are an example of how the investment in video games creates new and innovative economic opportunities, based on the IP in the video games.

Today there is an ongoing debate in some territories, including in some European Union Member States, on the potential classification of esports as sports. As representatives of the video games industry in Europe, we are concerned by this potential conflation between sports and esports, as video games exist in a different ecosystem and legal context than sports. Imposing a sports-like framework on the video game sector, including the classification of esports as a sport, is neither appropriate nor practical, would damage the sector, and would create confusion among citizens.

### **1. Sports law is not an adequate framework for esports, and de facto for video games**

Esports involve the use and communication to the public of a video game, in other words, of intellectual property. Each video game used in esports is the unique creation of a specific video game company, which owns and invests in the underlying IP of that specific game and franchise<sup>1</sup>. In contrast, the object of sport is not owned by anyone. Sports regulatory frameworks are not built around intellectual property or the licensing of creative works. However, in esports, games, tournaments, broadcasts and related content, all rely on IP rights and licencing agreements for their operation. As a result, prior approval from the rights holder is necessary to promote, host, and broadcast competitions, as well as to create video content or play the games in public: no one owns football or basketball, and you can go to a field, a court, or a park to play them without asking for permission, but someone does own the IP rights to the video games being played in esports and, as a result, enjoys significant control over how they can be played or communicated. Video game companies license widely to various stakeholders, both private and public, sometimes for free when appropriate. These licenses are based on the principles of prior authorisation and formal agreements and have contributed to a dynamic and growing market.

Inappropriate and unjustified regulation could harm the existing esports ecosystem and stifle innovation. In particular, applying sports regulation to esports would erect barriers that discourage investment and conflict with the realities of esports. These include (1) the intellectual property rights held by the video game creators, (2) the distinct value chain, rights exploitation, and

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<sup>1</sup> In the video games industry, a "franchise" is a set of video games belonging to the same series or universe for intellectual property purposes.



monetisation models within esports, and (3) issues around the access to competition and player data, particularly in regard to data privacy.

The European Parliament's 2022 resolution on esports and video games states that **“esports and sport are different sectors; not least because the video games used for competitive gaming or esports are played in a digital environment and belong to private entities that enjoy full legal control and all exclusive and unrestricted rights over the video games themselves”**<sup>2</sup>.

## **2- The regulation of esports as a single activity is exceedingly impractical**

The prevailing sports governance model in the EU assigns authority to a national governing body<sup>3</sup> (NGB) for each specific sport or group of related sports. These NGBs oversee rules, competition policies, standards for events and equipment, and the official sanctioning of recognised events. While this structure works for sports, it cannot be applied to competitive video gaming. “Esports” is an umbrella term encompassing competitions in numerous game genres and individual titles, each at a different stage in their lifecycle, with their distinct IP, licensing practices, rules, competitive structures, player bases, market availability and support. Each video game played competitively is unique due to the creative work involved, a dynamic that has no parallel in sports, where sometimes multiple disciplines fall under a single NGB. Beyond the fundamental inadequacy of sport law discussed earlier, attempting to regulate all esports as a single activity would overlook this complexity. **Such an approach would create regulatory uncertainty, disrupt a functioning ecosystem, and stifle the independent growth of individual esports communities.**

## **3- The classification of esports as sport would lead to market and regulatory fragmentation**

To date, no EU Member State has recognised esports as a sport<sup>4</sup>, and the European Parliament's 2022 resolution on esports and video games advises against doing so. The classification of video game competitions, or of video game titles, as a sport by a Member State would fragment the European market both from a regulatory and market perspective, disrupting the digital single market. Local stakeholders would be forced to adapt to different legal frameworks depending on the country, complicating operations across the Union. The inconsistency will also discourage international stakeholders from investing, reducing Europe's overall attractiveness for investment in esports.

National regulatory frameworks for sports differ significantly across Europe. In contrast, video games are regulated by the European legal framework, which has allowed for a thriving single market for consumers and companies alike. Contrary to some assumptions, esports – defined as

<sup>2</sup> European Parliament resolution of 10 November 2022 on esports and video games (2022/2027(INI)). Paragraph 28. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388_EN.html)

<sup>3</sup> Usually known as national sport associations or federations.

<sup>4</sup> Scholz, T. M. & Nothelfer, N. (2022). *Research for CULT Committee – Esports*. European Parliament, Policy Department for Structural and Cohesion Policies, Brussels. Page 18. Available at: [https://www.europarl.europa.eu/cmsdata/248295/PE699\\_635\\_Esports\\_Background%20Analysis\\_study.pdf](https://www.europarl.europa.eu/cmsdata/248295/PE699_635_Esports_Background%20Analysis_study.pdf)



the licensing of video games for competitions, is not an unregulated sector. EU laws on consumer and minor protection, consumer contract laws, intellectual property, data privacy, taxation, corporate governance and others all apply to esports. This regulatory environment has enabled an interconnected European ecosystem capable of competing with major global markets, such as China and the United States. The European Parliament, in its 2022 resolution on esports and video games, acknowledges that **“owing to the borderless nature of esports, the European Union is the appropriate level at which to address the challenges”**<sup>5</sup>. Applying a national sports regulatory framework to a licenced use of video games is simply not possible.

#### **4- The classification of esports as sport would impact citizens’ perception**

While we welcome the growing recognition of esports as a legitimate and dynamic form of competitive entertainment, we believe that conflating video games with sports could lead to confusion about the nature of both among European citizens. Specifically, **we are concerned that classifying esports as sports could lead some to perceive playing video games as comparable to physical activity.**

It is important to note that, as stated in the European Parliament resolution on esports and video games, “video games and esports can provide significant mental health benefits for many players and have the capacity to disseminate positive values”<sup>6</sup>. The resolution also recognises the potential of video games for “increasing youth participation in physical activities”<sup>7</sup>. Indeed, sports-simulation video games are known to increase interest and participation in real sports. Video games, as an important part of modern European culture, can grow the love of sports in younger generations.

**However, the recognition of video gameplay’s positive contribution to healthier lifestyles, both physically and mentally, should not obfuscate the fact that video gameplay and sports are different spheres of human activity, with different foundations, and objectives that do not coincide.** In our opinion, classifying esports as sports obscures this important distinction.

It is worth noting that the video games industry, through its regular campaigns on safe and responsible gameplay<sup>8</sup>, informs and raises awareness about good video game playing habits. Conflating video gameplay with sports could undermine our industry’s efforts to inform parents and consumers on responsible gameplay, and to motivate individuals to pursue a well-rounded lifestyle, including encouraging physical activity.

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In conclusion, sport laws and structures are not appropriate for esports and should not be applied to the sector. Doing so would create barriers that would harm esports stakeholders by limiting their ability to compete within the interconnected global esports market. It would also reduce the

<sup>5</sup> European Parliament resolution of 10 November 2022 on esports and video games (2022/2027(INI)). Paragraph 29. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388_EN.html)

<sup>6</sup> Ibid. Recital V.

<sup>7</sup> Ibid. Paragraph 34.

<sup>8</sup> See <https://www.videogameseurope.eu/responsible-gameplay/responsible-gameplay-in-your-country/>.



incentive for video game companies to invest, ultimately weakening the competitiveness of Europe and its Member States.

VIDEO GAMES EUROPE encourages continued dialogue between the video games industry and policymakers to ensure the sustained growth of the sector, including on innovative licencing practices such as esports. National and international industry-wide associations can support, coordinate and facilitate this dialogue by providing an authoritative voice for the sector, and offering reliable information about esports. They can also provide access to the relevant stakeholders in every territory.

We would welcome further discussion on how Europe and its Member States can lead in creating a robust framework for video game development and esports.

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## **ANNEX: EUROPEAN CONTEXT OF VIDEO GAMES AND ESPORTS**

The video games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. The European digital single market area is the third-largest market for video games globally. All in all, there are around 5,000 game developer studios and publishers in Europe, employing close to 115,000 people, 90,000 in the EU. In 2023, Europe's video games industry was worth €25.7bn.

Esports are leagues, competitive circuits, tournaments, or similar structured competitions in which individuals or teams play video games, for entertainment, prizes, or money, typically in front of spectators, either in-person or online<sup>9</sup>. Video games are at the centre of the esports ecosystem. Without compelling video game content, there would be no esports.

It is important not to confuse esports with training software, sport tech or virtual sports. The following elements characterise esports:

- Esports revolve around the use and communication of intellectual property (IP) – i.e., video games. Video games are complex creative works, where the software has an interactive relationship with and/or between users of the program through the display of elements such as images, text, and sounds, all of which can be protected independently by copyright<sup>10</sup> and other intellectual property rights.

<sup>9</sup> See European Parliament resolution of 10 November 2022 on esports and video games (2022/2027(INI)). Recital P. Available at : [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0388_EN.html)

<sup>10</sup> European Court of Justice (C-355/12): The Court of Justice of the European Union was asked for a preliminary ruling on the interpretation of Article 6 of the Copyright Directive (Directive 2000/29/EC) in proceedings before the Italian courts between Nintendo and PC Box concerning the sale by the latter of so-called 'mod chips' and 'game copiers'. In the course of its ruling, the Court said that video games "constitute complex matter comprising not only a computer program but also graphic and sound elements, which, although encrypted in computer language, have a unique creative value which cannot be reduced to that encryption. In so far as the parts of a videogame, in this case, the graphic and sound elements, are part of its originality, they are protected, together with the entire work, by copyright in the context of the system established by Directive 2001/29."



- Esports is not a singular activity but comprises dozens of genres and many more individual games. Each esports title is at a different stage in its product life cycle, and has its own distinct rules, competitive structure, and player base.
- Esports are made possible by a significant upfront investment by video game publishers and developers, who rely on IP rights to protect that investment, market their games, and grow their audiences.
- Esports use the network infrastructures of the video games companies. This “always connected” nature applies to both online and in-person competition.
- The rules of video games are indivisible and inseparable, from the art design and the programming of the games, and so they are part of the IP. Rules are also constantly adjusted by the video game companies to keep their titles competitive, fun, secure, and even playable.

## About Video Games Europe

Since 1998, Video Games Europe has ensured that the voice of a responsible games ecosystem is heard and understood. Its mission is to support and celebrate the sector’s creative and economic potential and to ensure that players around the world enjoy the benefits of great video game playing experiences. Europe’s video games sector is worth €25.7bn, and 53% of Europeans are video game players. We publish a yearly [Key Facts](#) report with the latest data on Europe’s video games sector.

