

# Ethical and Legal Implications of Third-Party Incentives to Win Matches in European Football

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## ABSTRACT

In this paper, we examine the legal case involving the Court of Arbitration of Sport (CAS), the Union of European Football Associations (UEFA), and the Turkish team Eskişehirspor to analyze the legitimacy of third-party incentives to win in European professional football. We first present arguments for the legalization of such incentives. Then, we analyze four ethical arguments, namely the equivalency argument, the conventionalist argument, the integrity argument, and the fairness argument. We conclude that none of the arguments provides enough ground for the legalization of third-party incentives in European professional football.

## 1. Introduction: Third-Party Incentives to Win. A Common Practice in European Football?

Suspicious of match fixing in European club football, especially in countries such as Spain, Italy, Turkey, and Greece, often surround the final fixtures of the season when relegation, promotion, European competition places, and championship titles are at stake. The paradigm of match fixing (i.e. manipulating the outcome of a game to one's advantage)

revolves around referee bribery or participants' voluntary underperformance (i.e. match throwing).<sup>1</sup> These practices are one of the greatest, if not the greatest, threats to the integrity of football (see Harvey 2015). Moreover, in the last decade, online gambling has intensified the probability of match-fixing frauds by providing sport-related people with more betting opportunities and arguably anonymity (McNamee 2013; Pérez Triviño 2018). Online gambling activity not only has a higher potential than traditional betting practices to affect the overall outcome of games. It also heavily promotes micro-betting, a type of betting that targets specific game elements, such as the score at the end of halftime and the number of goals, corner kicks, fouls, and yellow cards that a specific player or team would get.

These cases do not, however, exhaust the catalogue of what scholars and sport governing bodies refer to as 'event manipulation' (United Nations Office of Drugs and Crime 2016). Less obvious, but no less serious, are third-party incentives to win, that is, promise or delivery of cash, or cash equivalents, to motivate somebody else to achieve a positive outcome for the party making the offer. Thus, this kind of monetary exchange is the focus of our paper (see Article 82 of the Disciplinary Code of the Royal Spanish Federation of Football). Sport ethics scholars, however, have devoted little attention to the use of third-party incentives to win. The scarce scholarly literature on this topic contrasts with the attention journalists and sport-interested people have given to it (see Álvarez and López-Fonseca 2019). Extant discussion on the topic is polarized (Corrigan 2014). On the one hand, some argue that sport governing bodies should sanction teams

that offer or receive third-party incentives to win. Indeed, such incentives are against the sport law in some countries. For example, in Spain, Article 82 of the Disciplinary Code of the Royal Spanish Federation of Football and Article 286 bis of the Spanish Penal Code regulate the use of such incentives. Whereas the former penalizes: 'third parties 'promise or delivery of cash or compensations with monetary value as a motivation to get a positive score ' (Royal Spanish Federation of Football, RFEF 1990), the latter states:

1. Anyone who promises, offers or grants to directors, managers, employees or collaborators of a commercial enterprise or a company, association, foundation or organisation a benefit or advantage of any kind that is not justified in order to favour them over others, failing to comply with his obligations in the purchase or sale of goods or in the contracting of professional services, shall be punished with imprisonment from six months to four years, special disqualification from the exercise of industry or commerce for a period of one to six years and a fine of three times the value of the benefit or advantage.

4. The provisions of this article shall be applicable, in their respective cases, to the directors, administrators, employees or collaborators of a sports entity, regardless of their legal status, as well as to the sportsmen, referees, or judges with respect to those behaviours that have the purpose of deliberately and fraudulently predetermining or altering the result of a professional test, match, or competition.

Sport lawyers doubted whether these articles applied to third-party bonuses for winning. However, the ruling of the Navarra Provincial Court in the so-called 'Osasuna Case' resolved the sport lawyers 'doubt (Court ruling 111/23 April 2020, Sección Segunda de la Audiencia Provincial de Navarra).<sup>2</sup>

Similarly, rule E5(b) of the English Football Association regulations establishes:

A Participant shall not, directly or indirectly, offer, agree to give, give, solicit, agree to accept or accept any bribe, gift or reward or consideration of any nature which is, or could appear to be related in any way to that Participant, or any other, failing to perform to the best of their ability, or to that Participant or any other person (whether a Participant or not), directly or indirectly, seeking to influence for an improper purpose, the result, progress, conduct or any other aspect of, or occurrence in, a football match or competition.

On the other hand, others defend the legalization of third-party incentives to win, sometimes offering a weaker argument that regulation is so fraught with difficulties that implementing a ban on third-party bonuses for winning would be hardly successful. For instance, Luis Rubiales, former President of the Association of Spanish Footballers (AFE) and current President of the Royal Spanish Football Federation, laid out a strong claim for the legitimacy of third-party incentives to win. According to him, a third-party incentive to win 'is not the same as fixing a game . . . You cannot identify an incentive to achieve a goal with a crime.'<sup>3</sup> (Corrigan 2016)

In sum, scholars and football-interested people such as administrators, former players, and journalists disagree on the legitimacy of using third-party incentives to win. To shed light on the debate, in what follows, we center on the Court of Arbitration of Sport (CAS) Report 2014/A/3628, involving the Turkish team Eskişehirspor. Subsequently, we identify

potential reasons for legalizing third-party incentives to win and critically examine the most ethically relevant arguments. We conclude that none of them are sufficiently robust and propose practical solutions to reduce or eliminate third-party incentives from professional football.

## **2. The Eskişehirspor Case and CAS on Third-party Incentives to Win**

In the 2010–11 Süper Lig Season, the Union of European Football Associations (UEFA) filed a disciplinary action against Turkish club Eskişehirspor on the basis that their coach, D. Bülent Uygun, and team captain, D. Sezer Öztürk, had been involved in a match-fixing incident. According to the Turkish police investigation, both received a bonus from a third team, Fenerbahçe, to 'play well 'in a game against Trabzonspor. The Turkish Football Federation absolved the club from any responsibility. Moreover, when the Turkish police arrested Eskişehirspor's coach and captain in 2012, the club immediately rescinded their contracts. Subsequently, the 16th Istanbul High Criminal Court and the 5th Istanbul Appeal Chamber also absolved the club from any wrongdoing. UEFA officials, however, thought otherwise.

In the 2013/14 season, Eskişehirspor had qualified to participate in the 2014/15 edition of the UEFA Europa League (UEL). In order to take part in the competition, the club submitted a registration application, where they stated that the police had arrested their coach and captain on charges of match-fixing in the Turkish league in 2011 and, as noted above, denied all involvement in the matter. Nevertheless, the UEFA General Secretariat transferred their registration application to the UEFA Disciplinary Board for review under Article 2.13 of the UEFA Europa League Regulation 2014/2015 because the application failed to meet the UEL admission requirements. After evaluating the TFF and the 16th Criminal High Court investigations, the UEFA Disciplinary Inspector (DI) issued a report requesting the UEFA Disciplinary Committee to proceed with the following actions:

- (1) submit the case to the UEFA Appeals Committee (UAB) in accordance with Article 34.3 of the UEFA Statutes and Article 2.08 of the UEL Regulations;
- (2) declare Eskişehirspor ineligible for the 2014/15 UEL based on Article 2.08 of the UEL Regulations; and
- 3) ban the club for an additional season and impose a €300,000 fine by applying Article 2.09 of the UEL Regulations.

Drawing on Article 2.08 of the UEL Regulation, UEFA stated that, although the Article makes no explicit reference to incentives to win in the behaviors that fall under 'arranging or influencing the outcome of a match, 'a third party offers an incentive to 'play well 'with the intent to influence the outcome of a match. According to UEFA, match fixing is one of the biggest threats to sport because it goes against the principles of loyalty, integrity, sportsmanship, and fair play (art. 7, UEFA Statutes).

Hence, UEFA's statement pointed out, there should be zero tolerance with regard to any non-sporting way of influencing the outcome of a football game.<sup>4</sup>

Eskişehirspor filed a statement of appeal to CAS against the UEFA DI's ruling, requesting the annulment of the ruling and declaring itself eligible to participate in the 2014/15 UEL. In particular, they challenged the following two points of the UAB ruling:

1. The coach was considered a representative of the club with legal authority, which made the club responsible for the coach's wrongdoing (Article 6 of the 2008 DR).
2. The non-application in the field of disciplinary sanctions of the 'principle of individual guilt' or 'personal culpability' (nulla poena sine culpa).

Moreover, in addition to these two objections, Eskişehirspor presented the following set of arguments against the accusation that third-party incentives qualify as match fixing:

- (1) The moral equivalency argument: incentives to win and other monetary rewards widely accepted in professional football (e.g. salary and performance bonuses from their teams) are morally equivalent. Thus, if the latter are morally acceptable, so too are the former;
- (2) The conventionalist argument: third-party incentives to 'play well' are justified because they are a widespread and widely accepted practice in European football;
- (3) The integrity argument: third-party incentives to win cohere with the goal of sport, by providing athletes with additional motivation to strive for victory;
- (4) The fairness argument: sport governing bodies should accept as legitimate and legalize third-party incentives so that every team benefits from them equally, not only risk taking undeterred by sanctions;
- (5) No specific regulation prohibits third-party incentives to win; and
- (6) On a different tack, additional incentives to win may fail to achieve their intended purposes in that achievement is not guaranteed.

In what follows, we analyze the concept of 'incentive' and distinguish between legitimate and illegitimate varieties to provide a critical analysis of the arguments (1), (2), (3), and (4).

### **3. Arguments for Legalizing Third-party Incentives to Win**

#### **3.1. The Moral Equivalency Argument**

The colloquial use of the term 'incentive' is void of normative content. People use it broadly as a synonym with 'motivation.' For instance, they say: 'I have no incentive to wake up in the morning' or 'the youth do not feel incentivized to participate in politics,' meaning 'I have no reasons, or desire, to get up in the morning' or 'the youth do not feel motivated to participate in politics.' (Grant 2002). In professional sport, incentives are commonly referred to as 'bonuses' 'compensations' or 'rewards' indiscriminately. For example, when asked about third-party incentives to win, Manuel Sanchis, former Real Madrid captain and current journalist, said: 'I am in favor of the bonuses to win . . . It just means an extra-on to what is the player's normal job, which is nothing else but going out to win the game'. Similarly, when confronted with a similar question, former English

Premier League coach, Michael Laudrup, declared that a third-party incentive to win is 'just a bonus . . . match-fixing is somebody pays someone to lose a game . . . In Spain . . . where there's one or two matches left in a season we always talked about the suitcases . . . But the suitcases is to win—I don't see anything bad about that . . . we have to define very well what is match-fixing because there's different levels. '(Michael Laudrup has no problem with rivals paying teams to win, '2012)

Incentives, however, are hardly mere reasons or motivations, let alone rewards or compensations. Incentives have an exceptional character. They refer to specific situations where somebody (the incentivizer) aims to alter an ordinary course of action (Grant 2015). That is to say, an incentive is an offer of something of value, often with a cash equivalent, with the intention to influence the payoff structure of a utility calculation so as to alter a person's course of action. In other words, the person offering the incentive attempts to make one choice more attractive to the person responding to the incentive than any other alternative (Grant 2002). Take the example of compensations understood as an offer that 'makes up for an effort or loss '(Grant 2002). The amount received for the effort or loss is the normal outcome of a course of action. Given their expected character, it makes sense to speak of 'fair compensations '(such as a jury member would receive), but talk of 'fair incentives 'is misplaced. For instance, a salary is the expected outcome of work: workers complete tasks in exchange for a wage or salary. Employees share a set of mutual expectations with their employers about expectations in their work activity. In contrast, incentives fall outside the realm of what is expected; their character is exceptional. This is part of the reason why bribery or blackmail are unethical. A common, though problematic example, arises in pharmaceutical trials where participants receive payments to take on heavier risks to their health with exploratory pharmacologies than they would ordinarily have been allowed to accept under appropriate legislation (Elliot 2014). They are given to employees to motivate them to perform beyond what is usual or expected (Grant 2002, 135).

Third-party incentives to win are offers of something valuable, sometimes with a monetary equivalent and sometimes not, to influence the payoff structure of athletes' utility calculation. The offer intends to alter athletes 'or coaches 'course of action and motivate them to make an extra effort to win, an effort that they would not make in the absence of the incentive. When football teams have achieved their pre-competition goals in a season, they are certainly still expected to play to win their games. When nothing significant is at stake, such as a mid-table position, they may also be expected to place more emphasis on long-term goals and less on winning.<sup>5</sup> For instance, coaches often play young players to help them develop and use athletes who do not play regularly to decide if they should stay on the roster.<sup>6</sup> Likewise, post-season international fixtures (often referred to as 'friendly games') do not strive for maximum performance in games with nothing significant at stake.

The goal of employing third-party incentives is to motivate coaches and players to do what they might not (normally) do in the absence of an extra monetary incentive. Yet, the exceptional and manipulative character of incentives makes them morally problematic. This does not mean that every incentive is necessarily illegitimate. For instance, governmental research grants motivate scientists to follow a particular research agenda (especially where success is monetized). Likewise, parents offer incentives to their children for complying with parental goals.<sup>7</sup> Some cases are more problematic: parents incentivizing their children to pursue a certain career pathway raise more moral concerns and politicians who offer monetary incentives to journalists in exchange for favorable treatment may raise concerns (Grant 2011; Sandel 2013).

In general terms, people often regard incentives as morally unproblematic when they perceive incentives as voluntary trades (Grant 2011). Here incentives seem to raise no moral concern because the parties that enter the exchange consent to it and end up being better off than they were before. Grant (2011), however, opposes the idea that incentives are economic exchanges to be regulated solely by market mechanisms and principles. Incentivizers may aim at manipulating people's expected behavior towards some social or politically 'engineered' alternative (Idaszak and Carnevale 1989).

Understanding the contexts of such engineering is crucial to determine their normative legitimacy. The moral assessment of third-party incentives to win in European football requires understanding the nature of the social practice that they affect, namely sport in general and football in particular.

### 3.2. The Conventionalist Argument

The conventionalist argument aligns with the eponymous philosophical theory of sport that takes socially constructed views, beliefs, prejudices, and behaviors that determine how people play, talk, and think about sport to be the key defining elements of sport practices. Fred D'Agostino's (1981) refers to these socially constructed features as the 'ethos of sport.' From a conventionalist perspective, understanding the ethos of sport is crucial to adjudicate moral issues in sport, that is, to establish what should count as part of a sport practice. Thus, third-party incentives to win could be morally justified if sport practitioners regard them as such. Sanchis 'and Laudrup's declarations above illustrate this position. Nevertheless, the conventionalist argument is problematic for several reasons. First, the acceptance of third-party incentives in professional football is far from universal. Only some European countries accept and use third-party incentives to win. For instance, the practice is uncommon, if not nonexistent, in the English Premier League and the Dutch Eredivisie. Thus, different practice communities in European football adopt opposing attitudes to the use of third-party bonuses for winning. Yet, football is a transnational activity so that what conventional only in some countries does not confer universal legitimation. Secondly, even if it were true that third-party incentives to win are universally accepted, they are far from being morally justified. Even if third-party incentives

to win were constitutive of all European football ethoi, becoming a defining element of how European professional clubs practice football, the conventionalist justification of the acceptability of third-party incentives would remain problematic. Justifying the moral acceptance of a practice by appealing to its wide acceptance or recurrence implies incurring in what philosophers call 'naturalistic fallacy', that is, the mistake of deriving ought statements from descriptive ones. 'Is' does not imply 'ought.' The logical leap from existence to moral legitimacy is unjustified.<sup>8</sup> If this was the case, immoral practices like slavery and gender exclusion that certain communities widely adopted and practiced in the past are morally justified instead of condemnable. For instance, in the sport arena, this would mean that the win-at-all-cost mentality dominant in professional sports must not be countered or criticized because sport people widely accept it (Morgan 2012). Sport philosophers such as Morgan (2020) and Bogdan Ciomaga (2012) have responded to these challenges and salvaged conventionalism from some of them. For instance, Ciomaga argues that conventionalism is a powerful descriptive philosophical theory of sport that bases ethical positions on the prevailing ethos of sports practices. Yet, he posits, '[t]here is no reason to believe that . . . conventionalism about language [descriptive] entail[s] normative conventionalism.' (Ciomaga 2012, 412) Thus, as per Ciomaga, conventionalism does not necessarily incur in the naturalistic fallacy because conventionalist analyses are primarily descriptive. They center on what the case is, not what it ought to be. Therefore, that the use of third-party incentives is a widespread convention in professional football should not automatically legitimate such a practice. Conventionalism, as both Ciomaga and Morgan argue, is not a sterile normative theory. It includes criteria to conduct normative evaluation that are not derivative of mere widespread acceptance. Morgan understands such acceptance under the label 'deep conventions' (Morgan 2012) or 'ethical conventions' (Morgan, 2020) as definitive of the ethical outlook of practice communities. That is to say, ethical conventions are 'the shared background understanding and norms that are embedded in and inform the various social practices that gain an institutional foothold in society' (Morgan, 2020, 157). They significantly shape how sport practitioners think and act within their communities, and their purpose is 'to hold members of athletic communities ethically accountable to one another' (Morgan, 2020, 159). Conventionalists would use these deep conventions, as more normatively dense than the merely widely accepted character of third-party incentives, as their main tool to evaluate the legitimacy of such incentives. For instance, the win-at-all-costs mentality permeates most aspects of the professionals' ethical outlook. This mentality produces an emphasis on training, in-game strategy, instrumental thinking, and often gamesmanship (Morgan, 2020, 24). From an instrumental perspective, third-party bonuses would be justified as strategies teams can use to advance their long-term sporting goals. The problem with this more refined version of conventionalism is that it fails to provide normative guidance in cases where communities with opposing ethical outlooks collide. Individuals from different moral communities, in Morgan's view, can

hardly resolve their normative differences through rational inquiry (Morgan, 2020, 28).

### 3.3. The Integrity Argument

Sport philosophers have formulated an antithetical theory of sport—mutualism or interpretivism—to overcome the limitations of conventionalism. Focusing on the internal goods and logic of sport, mutualists argue that their position is preferred over conventionalism on the grounds that the logic of sport provides critical criteria from which to criticize the conventions at the heart of specific sport communities. The logic of sport comprises essential, transcontextual elements that define all sport practices (e.g. excellence, play, fairness). Thus, these elements serve as yardsticks to evaluate every social practice and community, regardless of their specificity. For instance, the legitimacy of using third-party incentives depends on whether this practice aligns with or clashes against the internal logic of sport.

Integrity is one of the elements that sport philosophers have identified as intrinsic to sport. The integrity argument above can be understood to support the legitimacy of third-party incentives to win because they help advance the intrinsic goals of football by giving players a further motivation to try their best, particularly in circumstances where sporting motivations are absent. In this sense, incentives to win are a source of motivation similar to tactical speeches, salaries, and thirst for victory. They pose no risk to the integrity of the sport, as incentives to lose do. If anything, they help advance the goals of sport. Nonetheless, the argument that third-party incentives cohere with the integrity of the game by aligning with its goals or purpose is problematic.

Mutualism, as a philosophical theory of sport, criticizes the identification of sports as non-zero-sum games whose primary goal is victory. From a mutualist perspective, the primary focus of sport should not simply be victory but excellent performance, that is, the way in which athletes achieve victory. In this sense, the outcome of sport performance takes a secondary role and performance itself comes to the forefront. Sport should not be mainly about victory but about the athletes' struggle for acquiring sport-related physical excellence and intrinsic goods. By focusing on performance, every sport competition becomes a win-win activity or a 'non-zero-sum game' where every participant gets something out of the competition (Simon, Torres, and Hager 2015, 43). Participants are mutual cooperators or facilitators instead of mere opponents or obstacles to be overcome. Through mutual cooperation, participants learn new strategies, discover new weaknesses in their play, and push themselves harder to develop their physical skills. Sport activities are 'cooperative quests for physical excellence' (Simon, Torres, and Hager 2015, 43). From this perspective, winning must be neither the most important thing nor the only thing of competitive sport. Rather, it must be dependent upon the mutual development of physical excellence.

The utilization of third-party incentives corrupts the mutualist view of sport as a cooperative search for excellence. Consider the following hypothetical scenario. In the



last fixture of the season, Real Madrid F.C. needs F.C. Barcelona to drop at least one point in order that they can win the La Liga title. Barcelona plays at home against F.C. Mallorca, a team that has already achieved their club's lusory goal of avoiding relegation. Satisfied with this achievement they have no motivation to pursue an unlikely victory over their heralded opponent. Statistics reveal that Barcelona rarely drop points when playing at home, so Real Madrid officials offer Mallorca an incentive for 'playing well.' It is the case that Mallorca plays the best game of the season. Still, they lose the game in the ninetieth minute. Despite the excellent performance of Mallorca's players, Real Madrid does not give them any reward because they were unsuccessful at forcing Barcelona to drop points. In this case, the sole focus of the incentive is clearly on the score, on victory, not the performance. Third-party incentives are conditional on the achievement of victory. Teams that play well but fail to win get nothing. From a mutualist standpoint, prioritizing the score over the quality of performance goes against the intrinsic nature of sport, that is, against the view that what should matter most in sport is the quest to embody and develop the excellence.

Incentives to win are highly problematic and difficult to justify with regard to the integrity of players. As Robert Audi (2015) argues, ethical decision making should be evaluated based on three dimensions: what, why, and how. Hence, ethical analyses that attend to the three dimensions are 'thick,' as opposed to 'thin' evaluations that only focus on one aspect. Audi's criteria align with Grant's standards to differentiate legitimate incentives from illegitimate ones, namely purpose, voluntariness, and character. The moral evaluation of third-party incentives to win, thus, not only requires taking into account incentives and their effects (what), but also the motivation of the party offering them (why), and finally the way in which footballers are treated (how).

In line with this, another way to provide an argument against third-party incentives to win would be to focus on the integrity of those involved in the exchange. Incentives to win would hinder the role intrinsic motivations should play in the players' motivation to engage in the activity. From a mutualist standpoint, players must take the development of excellence to be the main goal of their participation in football. Thus, they should regard competition as a site for cultivating human (athletic) excellence. If players regard competition merely as a means to pursue their self-interested goals, they disregard the inherent value of sport. In such a psychological disposition, competition is reducible to extrinsic values/external goods such as monetary reward (Brown 1984). As Michael Sandel (2013) claims, 'the expansion of the market, and of market values, into spheres of life where they don't belong' is one of the most worrisome ethical issues of our time (p. 8). Thus, the intrusion of the market into areas where it does not belong is a corrosive power of a particular economic rationality, reified in the market, that attempts to put 'a price on the good things in life' (Sandel 2013, 13), that is, on the athletes' pursuit for excellence.<sup>9</sup> The use of incentives to win in football promotes what economists call 'crowding out' of intrinsic value,<sup>10</sup> which leads to the colonization of intrinsic motivations (i.e. the development

of excellence) for extrinsic ones (i.e. monetary reward). Being primarily motivated by the pursuit of extrinsic goals goes against the normative nature of sport. Therefore, the crowding effect must be avoided to protect the integrity of the practice.

If one rejects the validity of the mutualist position and reduces the goal of professional sport merely to victory, incentives to win would remain morally problematic from the standpoint of the players' moral integrity. Third-party incentives to win are offers of something of value (monetary or otherwise) aiming to influence the payoff structure of a utility calculation to alter football players' course of action and motivate them to make an extra effort to win; an effort that they would not make in the absence of the incentive. Thus, the incentivizer intends to manipulate the incentivized. The goal of offering an incentive to win is to change somebody's motivation in order to achieve an egoistic goal. As Kant posits, people should never be treated solely as means to one's ends. Contra Kant's famous dictum, by offering professional players a bonus for winning, incentivizers treat players precisely in such an instrumentalizing way. Indeed, players often view the incentive as an offense to their professionalism and integrity (Anderson 1990; Green 2001; Kerstein 2009). These players regard the bonus for winning not as a good thing but rather as an insult. This is not romantic idealism. In another (real) match where the situation was similar to the other above mentioned, Granada F.C. representatives exemplified this attitude when asked about an incentive from Real Madrid to win against Barcelona. Quique Pina, President of Granada F.C., said: 'We know that Barcelona and Madrid are playing for the title, and I am convinced that my players want to win this game for the great importance it has, while they are also obliged to do so' (Corrigan 2016). Several Granada players remarked that 'they were not on sale.' For instance, David Lomban said: 'We had to work very hard to play in games like this, against Barcelona and Madrid, in La Liga. We have enough motivation and don't need money or incentives' (Gil 2017).

We will not discuss whether the instrumental relationship ends up with the incentivized party being treated merely as a means. Suffice it to say that the instrumental, self-interested motivation of the party that offers the incentive shows that there is something dubious about incentives. Indeed, if incentives became universalized, the exultation of self-interested behavior would be accepted as the rule, which would be detrimental to the functioning of cooperative enterprises like professional competitive sports. For instance, exaggerating self-interested goals would give primacy to victory and would add further support to a win-at-all-costs mentality, which would turn competitive sports into a Hobbesian state.

### 3.4. The Argument from Fairness

Third-party incentives to win are morally problematic from a fairness perspective. Defenders of their utilization argue that prohibition is the reason incentives create inequality. If they were legitimated or even legalized, then every team would be able to utilize them, which would not have a detrimental effect on competitive balance. From this

perspective, if incentives were legalized, they would promote fairness by giving all teams equal access to the same means to gain a competitive advantage.

When submitted to critical analysis, the argument from fairness fails. First, it is not clear who should be paid: Should it be the striker who is most likely to score a goal?; Or the center back from a corner kick?; Or ought one to pay the goalkeeper to make sure the opposition did not score?; Or ought all those who put in (apparently) additional efforts be paid, or only those engaged in the successful delivery of the desired outcome? These simple points register the problem of further deciding rationally and fairly who ought to be incentivized in what is quintessentially a team game.

Secondly, and relatedly, incentives to win are unequally distributed throughout the season. Teams only use them at the end of the season. Moreover, they only do it in very specific cases. Incentives to win are highly dependent on contingent and exceptional reasons. Only a few teams would have the opportunity to benefit from their use.

Given the contingent and exceptional nature of incentives to win, not all teams would be able to benefit from them, which means that legalization would fail to promote fairness.

Thirdly, legitimating or legalizing third-party incentives to win would lead to a situation of formal equality, where all teams would be given the same opportunities to use incentives to win. Yet equality of opportunities (formal equality) often fails to produce substantive fairness. Allowing all clubs to use incentives does not imply that they all would be able to benefit from them. Clubs with a larger budget would have more economic resources to spend on incentives, obtaining more benefit from the legalization of third-party incentives to win. Therefore, it is doubtful that legalization would lead to substantive fairness. If anything, it would lead to the opposite. Contrast, for example, the unfairness of formal equality regulations in sport competitions in the North-American National Basketball Association (NBA) with regard to penalties for spending over the salary cap (Thurman 2016). All NBA franchises are given the opportunity to spend over the salary cap in exchange for 'luxury taxes,' yet only rich franchises with big markets and budgets can, in reality, afford to do it. In this way, teams from big cities like Los Angeles, San Francisco, and New York obtain more benefit from the legalization of spending over the salary cap. A similar situation would occur if third party incentives to win became the norm.

Going back to the 'Osasuna case,' the judges who issued the ruling condemned third-party incentives for winning on the grounds of protecting integrity. They argued that the incentives significantly undermine competitive equality and the essential values of sport. Given that bonuses for winning are prohibited, the athlete's obligation is not simply to try to win, but also to ensure that their sporting performance is in accordance with rules that all participants know and accept, without conditions external to the rules affecting the outcome. The ruling explicitly states that

"in all competitions there are a number of determining factors that may influence the

outcome of the match or encounter, such as the different economic budgets of the clubs, television rights, the quality of their staff, but these are all circumstances already known at the time of the match. However, agreements that can be reached in a clandestine and hidden way and that imply a breach of the principle of trust that governs competition are not. It cannot be defended that these confidence and integrity required when a team is relegated from a category are not altered when, in the final days of the league, third parties encourage their opponents to win.” (Court ruling 111/23 April 2020, Sección Segunda de la Audiencia Provincial de Navarra)

#### **4. What to Do about Removing Third-party Incentives to Win? Prohibition or Reform?**

As none of the arguments for the legitimacy of third-party incentives stand critical analysis, such incentives should be eliminated from professional football. To do so, a ban would be the most direct and fair solution. Realistically, however, the sole implementation of a ban is unlikely to solve the problem. Given that professional teams most often do what it takes to achieve their goals, they would disobey the prohibition and offer third-party incentives. For instance, although third-party incentives are banned in Spain, rumors about their use are commonplace. Moreover, thinking that a ban would by itself correct misbehavior in professional sports is naively idealistic. For example, the World Anti-Doping Agency’s anti-doping prohibitions have not deterred cycling teams from developing doping programs to increase their racers’ performance. Likewise, disobedience might be a common response to the regulation prohibiting third-party incentives to win in professional football. To reduce and eliminate such incentives, other practical solutions must complement the ban. Such practical solutions must seek formulas to incentivize players to play every game of the season at their best.

One of these possible solutions would be to redesign competitions to increase the likelihood that there is something at stake for teams in every game, especially in games at the end of the season. The increment of the number of teams that are granted access to European competitions is a good example. In a similar vein, increasing the number of teams relegated to a lower division would have a similar effect of adding reasons for all teams to play at their best. Another way to raise the stakes for which teams play would be to offer monetary incentives for each victory or goal scored. This formula is already used in the UEFA Champions League, LaLiga, and the English Premier League. In the former, teams receive performance prizes per win, draws, and qualifying round appearances. For instance, a win during the group phase of the Champions League is awarded 1.5 USD m (UEFA 2016). In the latter, teams get merit payments based on their position in the table at the end of the season (Premier League’s payments to clubs in 2015/16, 2016).

In a different vein, given that the use of third-party incentives to win involves a lack of integrity among administrators and players, educational programs to promote integrity would help administrators and players reflect on the motivations and consequences

underlying the use of third-party incentives to win. In line with this solution, additional measures would be required to incentivize players to do their best when their teams have nothing to lose or gain. One possible solution would be to offer individual incentives or prizes for performing well and developing the excellences of the game. These prizes could involve a monetary reward, but they could be based on public recognition. For instance, a weekly prize for the midfielder with the most completed passes or the defense with the most blocks would help players build their reputation in the league at the same time that they promote intrinsic values of the game. This solution could be applied to teams as well so that the development of the excellences of football—such as passing, positioning, and teamwork—are showcased and less emphasis is placed on the score. Professional leagues already award players with ‘man of the season’ and ‘player of the month’ prizes; the prizes proposed here would be more specific than the ones being used nowadays. They would be aimed at rewarding the development of the specific excellences of the game.<sup>11</sup>

Finally, the mere existence of a rule, in the absence of compliance checks or enforcement, is no more than paying lip-service to the rule. If it is genuinely important to remove third party incentives not only must their sanctions for its use, there must also be checks to see that the rules are promoted and protected. Investigative processes would need to be developed along with whistleblowing ones too. The ‘Osasuna case’ illustrates this point. The Osasuna manager confessed to LaLiga and the judges in the oral proceedings.

This confession was relevant because it violated one of the essential elements of corruption and bribery, in particular the pact of silence established by the parties involved in the agreement. Reporting channels play a key role in breaking this kind of pact. Thus, clubs and federations must ensure that the protection and promotion these channels are more than mere ornaments in their compliance policies by including mechanisms that guarantee protection for the reporter.<sup>12</sup> In sum, an appropriate model of prosecuting bonuses for winning would include the active participation of all interested parties to promoting integrity and prevent event manipulation. These parties must include players and their

agents, those responsible for good governance within the clubs and leagues, officials, and crucially state parties in the form of criminal intelligence systems and national betting platforms (Pérez Triviño 2020). Finally, offering a sentence reduction to the party that first discloses an illicit offer is an effective mechanism to combat third-party incentives. This mechanism has proven useful in cases of oligopolies and bribery scandals.

## **5. Conclusions**

In this paper, we have identified and presented the main arguments for the normative legitimacy of third-party incentives to win, drawing initially on the legal case of the Turkish team Eskişehirspor, but expanding from there to a philosophical critique of the principled existence of such incentives. Among all the arguments, we have selected four as the most ethically relevant. By critically analyzing these four arguments, we have argued that none of them makes a compelling case for the acceptance and legalization of third-party incentives to win. Moreover, we have argued that third-party incentives to

win are morally condemnable because they corrupt both the nature of sport and the integrity of administrators, coaches, and players alike. In an attempt to show how this integrity-preserving posture could be implemented, we have presented several strategies to tackle the problems related to the use of third-party incentives to win in professional focus and pointed to the responses to match fixing that might serve as a model.

## Notes

1. For a review of the history of match fixing, see Hill 2003 and Huggins (2018).
2. In the 2013–14 season, when Osasuna was in the relegation zone, several of the club's administrators extended monetary offers to two Real Betis players who would face two of Osasuna's most direct rivals for avoiding relegation. One of the offers was to lose to their opponent; the other for beating Real Valladolid. The ruling condemned the players and managers involved for both types offers, establishing a precedent for applying the Penal Code to third-party incentives for winning (see Garcia 2020; Pérez Triviño 2020).
3. Interestingly, despite his belligerent attitude against bonuses for winning, he he has not made any move to modify the regulation such bonuses ever since he became president of the RFEF.
4. CAS subsequently supported such a consideration: 'Match-fixing activities constitute one of the most serious breaches of sport principles and, in particular, those of loyalty, integrity, sportsmanship and fair play, and thus clearly jeopardizes the most essential objectives of UEFA. Consequently, to protect the essence of football competitions, it is necessary to be extremely inflexible with match-fixing '(Court of Arbitration of Sport, CAS 2015).
5. Suppose the team receiving the monetary offer has already won the national league and is scheduled to play a European tournament final within the next three days. The incentive to win, provided the receiving party accepted it, would alter the expected course of action (i.e. the coach would rest the team's best players for the upcoming European final).
6. This is not however to be confused with a coach's strategy to threaten players with exclusion or demotion in the regular part of the season where they will worry if they can get back if the replacement plays well.
7. Of course, steering, nudging, or incentivizing behaviors draws us into issues of paternalism that are beyond the scope of this essay.
8. We note the naturalistic fallacy merely to point out the problematic in moving from factual premises to normative conclusions, but we do not commit ourselves to it as a logical position, merely an argumentative strategy. For philosophical critique of the move, see Midgley and Clark (1980) and Putnam (2002).
9. To be clear, this does not mean that extrinsic values must remain irrelevant in the participants' motivation. Rather, mutualists take extrinsic values to be important but argue that they should not be the primary motivation for engaging in sport. External values have a place in sport but only when competition is understood as a mutual quest for excellence. Of course, payment of elite athletic performance is not in itself some barbarian intrusion (McNamee 1995).
10. See McNamee (1994).
11. In the statistics-mad world of American sport this hardly seems a contrivance (Steinberg, 2015).
12. In the context of the European Union, whether the entry into force of European Directive 2019/1937, on the protection of individuals who report violations of EU law, will provide a real boost in this direction is still open to question.