



BDK

Advokati

eSports in Serbia and Montenegro

Selected legal issues



eSports

Video gaming has come a long way from controlling simple geometric shapes on-screen half a century ago to immersing into lifelike shooter games of nowadays. Development of internet in the nineties opened new horizons for gaming and brought numerous titles that could be played with or against other players from all around the world. **Playing video games has become "the most important unimportant thing" for the new generations**, like football or other "real" sports were for the generations before, making video games the biggest global industry in the entertainment sphere.

The popularity of multiplayer video games led to organization of online or local matches, tournaments, competitions, attracting young people and even transforming their leisure activity into source of income, and eventually creating the industry of professional competitive video gaming, known as the eSports.

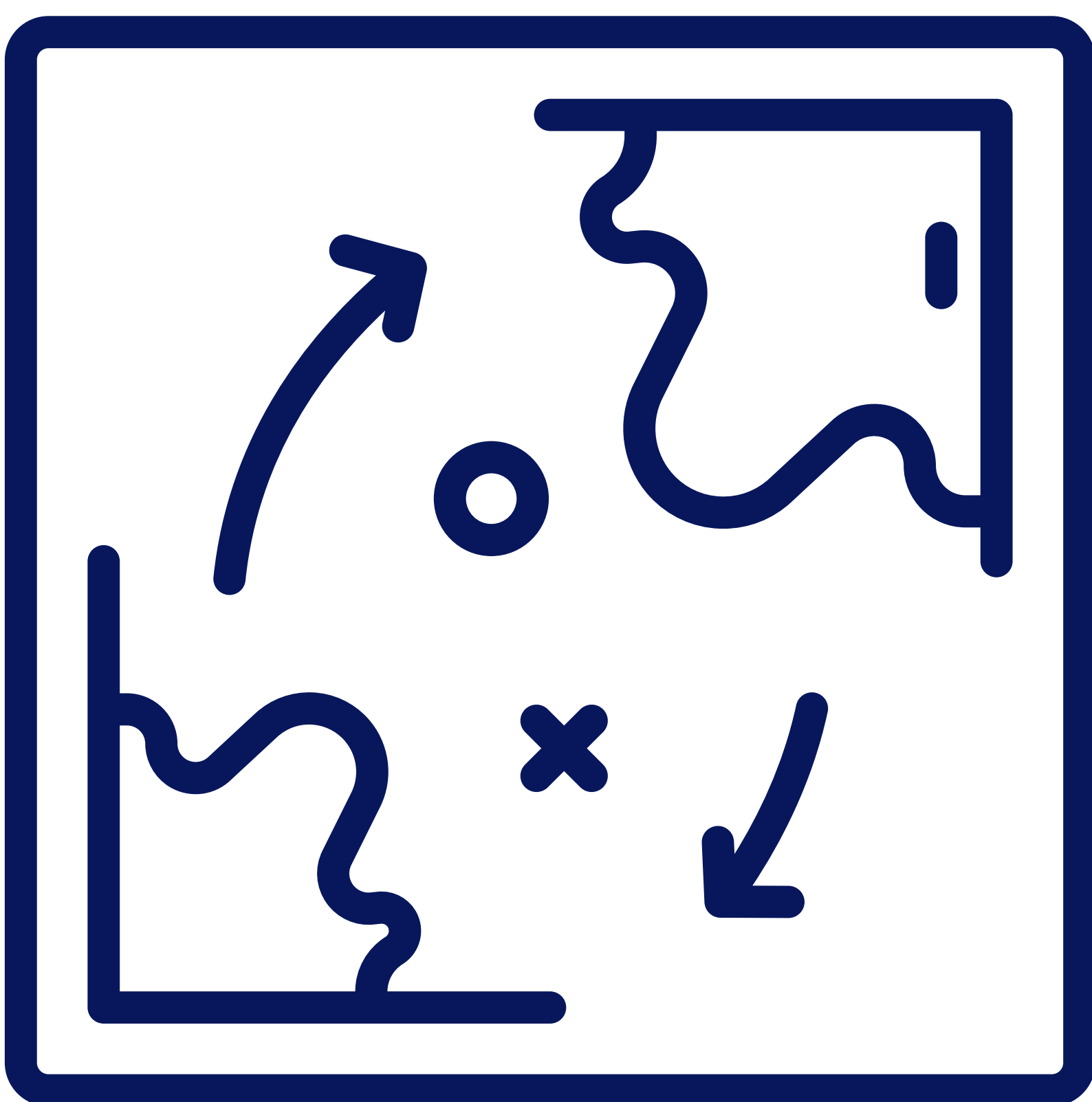


Is eSports a sport?

There is a dilemma whether eSports should be treated as "traditional" sport and the eSports players as athletes, which would imply the application of general sports regulations in this field. Globally, **eSport is not treated as traditional sport** and remains generally unregulated. Some regulatory efforts are at inception in certain jurisdictions, but most countries do not have specific legislation on eSports. There are even efforts to recognize eSports as an Olympic sport but the chances for that to happen in the near future are slim.

Serbia and Montenegro define sport or sports activity in a similar fashion. The Montenegrin regulations define sport as *any form of physical and mental activity which, through unorganized or organized participation, has as its aim the expression or improvement of one's physical or mental capability or achievement of results at competitions at any level*. Similarly, the Serbian regulations define "sport activity" as *any form of physical or mental activity which, through unorganized or organized participation, has as its aim the expression or improvement one's physical capability or mental wellbeing, creation of social relationships or achievement of results at competitions at any level*. If we analyse eSports through the prism of these definitions, we can conclude that **eSport is a mental activity**, or at least predominantly a mental activity as one also has to physically manipulate the controller, is played through organized participation, and aims at achieving results at competitions (additional aims could also be improvement of one's mental capability or mental wellbeing, or creation of social relationship).

The traditional sports regulations in Serbia and Montenegro are not applicable to eSports, so the eSports industry remains unregulated.



Accordingly, eSport could fit into the notion of sport under national legislations of Serbia or Montenegro. However, although the statutory definition of sport is broad enough to cover the eSport, the statutory requirements for entities pursuing sport activity, being either sports organizations in Montenegro or sports associations and sport companies in Serbia, are tailored for traditional sports and in certain segments are not applicable to eSport. For example, in order to obtain a license for sport activities, sport entities must employ coaches and other sport experts with formal educational background in sport sciences or physical education.

This requirement is clearly not relevant to eSport.

Equally inapplicable to eSports are various spatial and technical requirements the sports organizations must fulfil.

Therefore, the current sport legislation does not extend to eSports. There is no comprehensive regulation of eSports in Serbia or Montenegro, which pretty much mirrors the situation in other countries. This means that in practice there is a lot of flexibility for the eSports participants in arranging the key matters such as the competition formats and rules, prize policy, or the relationship between the players and their teams, players rights.

eSports participants and their relations (teams, players, leagues)

In traditional European sports, the relationship between the sport clubs and the professional athletes and the participation of sport clubs in competitions is regulated by national laws and the rules of national and international self-regulated associations for specific sports (**e.g. FIFA for football, FIBA for basketball, IHF for handball, etc.**). In contrast, **there is presently no association strong enough to impose itself as the rule maker and eSports integrity promoter.** The role of the regulator is usually taken by the competition organizers, in particular the game publishers.

A distinct feature of eSports is that the game in which the players are competing is intellectual property of the game publisher. The relationship between the game user and the game publisher is typically regulated under a license agreement or end user agreement entered into during the game installation process. **Those agreements typically restrict commercial use of the game.** Competitions built around a video game from which teams and organizers are generating money (prize money, sponsorship agreements, etc.) do involve commercial use of the video game. For that reason, the competition organizers normally want to secure the game publisher's approval to of the competition. This gives the game publishers a significant role in the eSports ecosystem (imagine a real football game where the ball is controlled by a manufacturer who can decide to turn it into a cube). For example, in **2020 Evolution Championship Series tournament (EVO)**, the biggest global tournament in fighting video games, key games (**Mortal Kombat, Tekken, Street Fighter**) were pulled from the tournament by their publishers following the sexual misconduct allegations **against EVO's president**, which eventually led to the cancellation of the entire event.

Video games are intellectual property of game publishers, and any unauthorised commercial use of video games is typically prohibited. Competition organizers are hence advised to secure the game publisher's consent for using their video games in competitions.

Game publishers are often competition organizers.

For example, the higher-level competitions in the League of Legends, such as the **League of Legends European Championship - LEC**) are run solely by the game publisher **Riot Games**, while some regional competitions, which includes the **eSports Balkan League**, among others, are run together with local partners.

The publishers thus have significant control of the matters such as the structure of the competition and various conditions the teams who wish to participate must satisfy. For example, the publisher decides whether the competition would be based on the promotion and relegation system, which is widely used in the **European traditional sports** (a system where teams can move between lower and higher league tiers depending on their performance and result at the end of the season), or a closed league system with fixed participants (such as the franchise system of the USA professional sport leagues **NBA, NBL an NHL, e.g.**).

The publisher may also impose requirements in terms of the manner of the players' engagement with their teams, i.e. the eSports organizations who own teams, minimum age, residency requirement, certain player protection measures, team ownership restrictions etc.

Engagement of eSports players

The sport regulations in Serbia and in Montenegro require professional athletes to be employed with their sport organizations. Other forms of engagement are not permitted. Employment is for a fixed term, not exceeding five years in Serbia and three years in Montenegro. The status of employee confers on professional athletes' rights under the labour legislation. They are entitled to social security insurance, can form trade unions, engage in collective bargaining, etc. This is not the case with the eSports players. **Employment of players is not mandatory**, and they can be engaged under a flexible format, such as a service agreement, although the employment requirement may be a part of the competition terms and conditions set by the organizer. **LEC rules, for example, require the team owners to employ the players from their roster.** They even prescribe minimum wage the team owners must pay to the players. The lack of specific regulation regarding employment of eSports players can create issues given that the general employment legislation is not adequate. For example, general labour law in Serbia and Montenegro allows fixed-term employment (as opposed to indefinite employment) only if there are objective reasons justifying such employment and for a maximum period of 24 months in Serbia and 36 months in Montenegro. It is not entirely clear whether the circumstances of eSports competitions would qualify as an objective reason justifying fixed-term employment. On the other hand, under both Serbian and Montenegrin law, an organization cannot engage individuals on service agreements for jobs that form part of the organization's core business. **Accordingly, if the player and the team owner enter into a service agreement (or a similar agreement), the question that lingers is whether there is a potential risk of recharacterization of such arrangement as employment relationship since the players are engaged to perform tasks that represent the core business of the hiring organization.**

Employment of eSports players is not mandatory and players may be engaged under a different arrangement such as a service agreement, but due to lack of regulation in some cases there may be a risk of recharacterization of such arrangement as employment relationship.

Since professional gamers are generally young people, the competition organizers and team owners would have to take into account that the **minimum age for employment in Serbia/Montenegro is 15**. An interesting question is whether the game's own age rating must be taken into account when creating the competition rules, as there are many video games where the content is marked as not suitable for persons under certain age, mostly because of the violent content. The age rating system is voluntary, created by the gaming industry itself, and although there is no statutory requirement to that effect, once the rating is assigned it is reasonable to observe it at competitions as well.

An important aspect of sports competition systems, including eSports leagues, is **the player transfer process**, a situation where the player and the team agree to terminate their agreement allowing the player to sign with a new team. **The transfer usually involves a compensation** that the new team pays to the team releasing its player. Ideally, the rules on how and when a player can shift the team colours should exist as frequent team changes could make any competition meaningless. In traditional sports this is typically regulated by the rules of national and international sports associations. In the eSports world the well-established competitions generally do have an appropriate regulation of this matter.

Player transfer may be even a business model for some team owners where the primary goal is not to become a champion but rather to have a feeder team which develops players and then "sells" them to other teams.

Taxation

Earnings that eSports players receive from their teams are subject to taxation and, to certain extent, contributions for the social security insurance. **The structure of earnings of the eSports players typically resembles the structure of earnings of professional athletes in traditional sports** in that it comprises a fixed portion and a bonus. Some agreements require the split of the prize money between the team owner and the players.

The general sport regulations in Serbia and in Montenegro, which require professional athletes to be employed with the sports organizations (see Section "Engagement of eSports players"), distinguish for the purpose of taxation, between salary and other earnings the professional athletes make.

Salary is subject to personal income tax at the rate of **10% in Serbia (9% in Montenegro)**, and to contributions for the social security levied at the rate of **25.5% for pension and disability insurance (20.5% in Montenegro), 10.3% for health insurance (10.8% in Montenegro), and 0.75% for unemployment insurance (1% in Montenegro)**.

Other income of professional athletes, such as performance bonuses or transfer fees, is taxed in **Serbia at the rate of 20%**, whereby the taxable amount is the gross income reduced for the deemed expense of 50%. **Since eSport players are not considered professional athletes**, their income not qualifying as salary is taxed at the rate of 20% with the deduction of 20% from the gross income on the account of deemed expenses.

In Serbia, both salary income and other income are subject to mandatory social contributions, although there are annual and monthly caps on income that can be taken as base for social contributions (**currently in Serbia EUR 41,000 annually and five times average monthly salary in Serbia monthly**).

In Montenegro, if the player is not employed with the team owner, his income would be taxed at the rate of 9% and subject to the contributions for the pension and disability insurance and for the health insurance if the player is not already registered for social security on another grounds. **The annual ceiling on the tax base for social security contributions is around EUR 53.000 and is adjusted annually.**



Anti-doping

Anti-doping rules for traditional sports and standards are not directly applicable to eSports. Nevertheless, they can be a good guidance for combating abuse of substances that may give unfair advantage in eSports games.

Antidoping obligations of sports organizations and sports associations are primarily regulated by international conventions, namely the **1989 Anti-Doping Convention of Council of Europe and the 2005 UNESCO International Convention against Doping in Sport**, adhered to by both Serbia and Montenegro, and by the **World Anti-Doping Code of the World Anti-Doping Agency (WADA)**. The Serbian and Montenegrin regulations require national sports association to apply the antidoping rules in compliance with the international conventions and **WADA** rules and standards. The list and classification of the prohibited substances are published by **WADA** with updates on a yearly basis.

Sanctions that may be applied against athletes in case of breach of antidoping rules include disqualification, ineligibility for competition during a specific period (and even a life ban in case of multiple violations), financial sanctions such as a monetary fine or forfeiture of prize money.

National and international anti-doping rules and standards are not directly applicable to eSports, but they can be a good guidance, especially with respect to substances that boost alertness and focus (such as **Adderall**).

Combating the misuse of performance-boosting substances in the eSports world is especially a challenge when the games are played on-line. Nevertheless, **anti-doping rules must be a part of any serious eSports competition**, and the tournament organizers should have to provide for a set of anti-doping rules in their terms and conditions. The key matters that should be regulated are:

- ▶ The list of the prohibited substances
- ▶ The manner of control of misuse of the prohibited substances
- ▶ Obligations of the teams and players with respect to the control
- ▶ The sanctions in case of violation of the anti-doping rules.

The team owners also must secure that their players explicitly accept the tournament anti-doping rules.

Sponsorship

A sponsorship agreement creates an obligation for the sponsor to provide cash, goods or services to the sponsored party who in return has to advertise the sponsor. The advertising is typically done by putting the sponsor's name/logo on the players' uniforms or by adding the sponsor's name to the team's name.

eSports companies are generally permitted to have sponsorship agreements in Serbia/Montenegro. There are no special requirements in terms of the form or content of mandatory elements of the agreement. However, there are certain advertising limitations that must be observed.

Sponsorship agreements in eSports are permitted subject to general advertising limitations, mostly related to advertising of tobacco products and substitute products, alcohol, and games of chance.

Serbian regulations restrict advertising of certain categories of products and services. For example, any form of **advertising tobacco products or substitute products such as electronic cigarettes is not permitted**. There is also a limitation on advertising offshore gambling operators and their offering.

Furthermore, tobacco producers, alcohol producers and games of chance providers in Serbia cannot sponsor children or underage people, their activities, or the persons or activities whose target audience is predominantly under age.

This prohibition is clearly applicable where there are minors in a team. It is, however, not certain that minors are pre-dominant target audience of the eSport industry.

Accordingly, to the extent team players are not under age, sponsorships from tobacco producers, alcohol producers and games of chance are not clearly prohibited, albeit such arrangement would be of limited effect for the tobacco and alcohol producers as they would still not be able to advertise their products.

Montenegro totally banned advertising of tobacco products, including electronic cigarettes.

The ban applies to any form of advertising, and the producers or distributors of tobacco products are generally not permitted to sponsor any event if the aim is to promote the use of tobacco products.

This heavily limits the possibility for tobacco producers or distributors to sponsor eSports teams.

Gambling perspective

eSports industry is frequently discussed in the context of gambling. There are two different dimensions of this matter. The first one is the applicability of gambling regulations on eSports, that is whether eSports events can fall under the notion of game of chance under the local law and thus require a gambling license, and the second one is the permissibility of betting on eSports events.

A game of chance is a game where a player can make a stake to participate and win money or money's worth (goods, services), and where the outcome of the game is determined by chance or a random event. The stake, the winning, and the chance/random event are thus three mandatory elements of any game of chance. The "chance" element differentiates the games of chance from the "games of skill", where the game result is determined by one's skill. Uncertainties arise when the game's result is affected by both the chance and the skill. In that case, the question arises to what extent the chance factor must be involved in the game outcome for it to qualify as a game of chance. **The regulators in Serbia or Montenegro have not dealt with this question so far.** The risk of qualification as a game of chance likely exists only for the games where the chance is a predominant factor for its result. **In eSports, however, the result predominantly depends on the player's game expertise, focus, alertness etc. Accordingly, eSports should be characterized as a game of skill and the organization of eSports events should not trigger the application of any gambling-related rules.**

eSports games are not considered games of chance and no gambling permit is required for the eSports events.

According to the Serbian betting regulations, betting group of games of chance comprises three categories: betting on sport event outcomes (including match results, horse races, dog races, and similar), betting on outcomes of "other real events", and betting on virtual events. The notion of sport events in this sense includes a wider spectrum of games than traditional sports and is broad enough to include eSports.

Betting on eSports events is permitted in both Serbia and Montenegro.

There is a special prohibition in Serbia for the sport club owners or co-owners to organize betting games on results in the type of sport and in the league where their club competes. This is an important principle the purpose of which is to prevent result manipulation. It can be applied by analogy to eSports. **Accordingly, betting operators who own eSports teams should not be able to offer betting on the games in the competitions where their team participates.**

Montenegro permits betting on any type of uncertain event, with the exemption of betting on the results of political elections. Accordingly, eSports result betting is permitted. As in Serbia, there is a prohibition for owners or shareholders of sports clubs in Montenegro to offer sports betting on the results of the sport and the league in which their club is competing. By analogy, the restriction should apply to eSports team owners/shareholders.

Ownership restrictions

One of the staple principles for the competition in traditional sports is the restriction on having ownership interest in multiple teams that are competing in the same league or even in the same branch of sport. This principle is reflected in both the Serbian and Montenegrin sport regulations. **The idea behind this rule is to prevent match fixing, i.e. the situation where teams agree to play to a predetermined result.** Similar restrictions apply to the managers or sport teams who cannot own other teams or betting businesses.

Although these rules do not automatically apply to the eSports world, it is important to incorporate them in the terms and condition of an eSports competition, as they are important for safeguarding the competition integrity.

It is also important to have a broad enough definition of ownership in this context in order to cover any direct or indirect ownership or control of an eSports team.

Conclusion

eSports is a fast-growing industry, and the number of its fans is steadily increasing on a global scale. It is a safe bet that this growing popularity will eventually lead to the regulation of this field. Players' rights, taxation rules, prohibition of use of stimulants, player transfer rules, team ownership restrictions, are only some segments of eSports that would benefit from a regulation. The lack of a central governing body on the global scale is evident and there are competing umbrella organizations aspiring to become global regulators and promoters of eSports standards, but we are yet to see one to be widely accepted as the major international governing authority.

Montenegro and Serbia are no exception, and the lack of industry-specific regulations means investors and enthusiasts looking to venture into any segment of the eSports world must carefully analyse the local regulations in order to tailor the structures that are both compliant with the local law and most efficient business-wise.