



LEARNINGS FROM THE ON-GOING DISCUSSION ON INCLUSION OF TRANS WOMEN IN SPORT



Document published by ENGSO and initiated by the Equality Within
Sport (EWS) Committee in September 2022





Latest announcements

Earlier this summer, several international sport federations restricted and even banned trans women athletes from competitive sport.

FINA (Fédération Internationale de Natation) announced what is effectively complete exclusion to competitive swimming for trans women by imposing a new ruling that states that athletes can only compete "if they can establish to FINA's comfortable satisfaction that they have not experienced any part of male puberty beyond Tanner Stage 2 or before age 12, whichever is later."

The IRL (International Rugby League) immediately followed suit with a similar ban with their declaration that "male-to-female (transwomen) players are unable to play in sanctioned women's international rugby league matches". And other governing bodies have followed such as the Rugby Football League and the Rugby Football Union in the UK, or have suggested they will be taking the same path, for example the World Athletics and the World Netball Federation.

These bans come in a direct follow-up to more restrictive steps taken already by World Rugby and UCI (Union Cycliste Internationale), who announced the change from an exclusion period of 12 months to 24 months after the beginning of transition and cutting the maximum plasma testosterone limit threshold by half from 5mol/L to 2.5nmol/L.

In addition to the declarations coming from the sporting world, we have seen the debate inflamed further by political interventions such as that of UK Culture Secretary Nadine Dorries' urging other sporting bodies to follow the lead of FINA.

Contextualising and understanding the on-going discussion

A contextualised approach is necessary to understand how such decisions echo the long journey of women's participation in sport, and the polarised reactions they generated.



Women's participation in sport: femininity and body policing

The story of the modern sports movement starts with the first modern Olympics in 1896, the brainchild of Pierre de Coubertin, who described women's participation in sport as "impractical, uninteresting, unaesthetic, and we are not afraid to add: incorrect". Women have faced discriminatory and even abusive practices, and policing of their bodies since. In 1900 women were allowed to compete in restricted sports in the second modern Olympic Games, sex testing in sports was first introduced in the 1940s with "femininity certificates" and continues today, as does discrimination in terms of investment, equal pay, media coverage, uniforms (as highlighted by the Norwegian women beach handball team refusing to wear the imposed bikini to play at the European Championship (Radnofsky, 2021)), as well as in other spheres.

In a world - that of sport included - that is already acknowledged as hostile to the LGBTQI+ community, these recent announcements come as a particularly hard blow.

A survey conducted in Europe in 2019¹ discovered that 20% of respondents refrain from participating in sport and 5% have left sport altogether due to negative experiences based on their sexual orientation and/or gender identity. A trend that is even more alarming among LGBTI women, a "minority within a minority", as explained by a consortium of non-governmental LGBTQI+ organisations in 2021 (ILGA-Europe, EL*C, TGEU, OII Europe, EGLSF, 2021): "It is not surprising that women perceived as non-confirming in society at large, due their sexual orientation, gender identity and/or expression, or sex characteristics (SOGIESC), are exposed to additional stigma and societal pressure."

Human right organisations such as Human Rights Watch (Human Right Watch, 2020) and the United Nations office of the high commissioner denounce the policies of

¹ Out-Sport project, co-founded by the Erasmus+ program of the European Union.



certain international federations² because they allow and legitimise the violation of privacy and bodily autonomy of all women athletes. Among the risks identified by LGBTQI+ communities, Human Right activists and women in sport organisations, are the mandating of invasive testing, the random targeting or testing of all female athletes, the forced transition for children under 12 and the disparities of opportunities of individuals between countries in the world where transition processes are treated inequality.

Human Rights and equality principles

Trans people have been able to participate openly in the Olympic Games since 2004. Up until today, there have been four trans or nonbinary athletes to compete in the Olympics.³ However, until recently, the international federations had no guidance on how to ensure the fairness principle in their competition and avoid disproportionate advantages of one athlete over the rest in one category.⁴ In 2021, the IOC (International Olympic Committee) published its [IOC Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations](#), with the opening statement that: “every person has the right to practice sport without discrimination and in a way that respects their health, safety, and dignity” (IOC, 2021). Although the framework is clearly rooted in human rights and equality principles, the guidelines have limited impact and empower each sport federation to set its own rules.

Human Rights activists have acclaimed a progress update released by the IOC in May 2022, which makes commitment to “amending the Olympic Charter to better articulate human rights responsibilities” in perspective of the IOC Human Rights Strategic

² Namely the World Rugby and its “Transgender Guidelines”, which states that “transgender women may not currently play women’s rugby” and the IAAF and its “Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)”, which caps athlete testosterone levels at 5mol/L in women’s events from the 400m through the mile for differences in sex development (DSD) and transgender athletes.

³ Quinn (Tokyo 2020-1), Laurel Hubbard (Tokyo 2020-1), Alana Smithand (Tokyo 2020-1) and Timothy LeDuc (Beijing 2022).

⁴ See note on previous page about regulations from IAAF (2018) and World Rugby (2020)



Framework, scheduled to be launched in September 2022 (IOC, 2022). Among the recent decisions at the national and international level, federations are proposing a third “open” category⁵, which would still be based on arbitrary rules defining who can take part in women's sport and who is to compete in this additional one. This practice does not seem a step in the direction put forward by the highest sport governing body, the IOC.

The scientific debate

The latest developments undertaken by FINA, IRL, UCI, and other sport federations are backed up by science⁶, but the results of these studies are challenged within the scientific community. There is no clear scientific consensus on this debate. For some scientists the number of studies is too few to be conclusive and the set of data used in the existing studies is also under question. For example, the “chromosomal sex testing” being introduced by FINA has already been tried and abandoned by the IOC as unreliable. How testosterone suppression and Hormone Replacement Therapy (HRT) affect trans women still need further examination. Some issues raised commonly in the debate about fairness and advantage can be found in the resources of this document.⁷ Among the scientific community, voices are raised to express their concern on the latest developments.⁸

⁵ FINA and British Triathlon (Ingle, 2022)

⁶ Hilton EN, Lundberg TR. (2021) and publications from Joanna Harper, Doctoral Researcher at the University of Loughborough University.

⁷ Burnett, 2021 and Middleton, 2022

⁸ Note Tweet from Dr Bekker (2022): <https://twitter.com/i/notes/1539265748828409856>



The responsibility of the European grassroots sport movement

The human lives at grassroots level, beyond the policies

The governing of elite sports has historically set the framework for grassroots clubs and practices. In the absence of official guidelines for grassroots sport, it has followed the example set for elite sport, so these exclusion principles might be implemented and legitimised at local level. Over the last years and beyond the framework of the Olympics, the right for trans women in sport has been personified by elite athletes such as Lia Thomas (swimming), Laurel Hubbard (weightlifter) and Emily Bridges (cyclist). The recent policies will impact directly their career, but also the lives of women and girls around Europe and the world.

Our voluntary-based model of sport in Europe goes beyond the health benefits of sport (physical and mental). It can build communities, create safe shelters, build a sense of belonging and drive for equal opportunities for all. It can be a powerful tool for social change, development and inclusion of minorities. The exclusion (temporary or permanent) of trans women and girls in sport at the grassroots level will increase the risk of isolation, mental and physical harm.

Limitation might lead to discrimination: recommendations of the Council of Europe

The rules recently defined by FINA and IRL, which other national or international sport federations adopted or are tempted to adopt, do not follow the recommendations published by the Enlarged Partial Agreement on Sport (EPAS) of the Council of Europe.

Indeed, over the last four decades, the Council of Europe has led the conversation, advocating for fair play and respect in sport and has provided a platform for intergovernmental sports co-operation between the public authorities of its member states.



Before listing its latest recommendations, it is worth mentioning that European states are bound to respect the Revised European Sports Charter (Council of Europe, 2021) which states in its Article 10: “No discrimination on the grounds of race, colour, language, religion, gender or sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status, shall be permitted in the access to sports facilities or to sports activities.”

A year and a half before the recent announcements, EPAS organised a Diversity Conference (September 2021) where it was stressed that sport is not exempted from respecting universal, inalienable and indivisible human rights, and that sport bodies and agencies should be held accountable for any violation.

Among the recommendations that were drawn from the conference, EPAS encouraged the international sport federations (IFs) to “recognise the impact that eligibility regulations and the way they are implemented can have for athletes as well as for culture, ideas and norms within a sport, and particularly how this can give rise to discrimination. IFs are encouraged to establish action plans to build a culture of trust rather than a culture of suspicion and ensure that processes and actions take culture into account” (Frossard, 2021).

EPAS also urges to take into account the voices and experiences of transgender and intersex athletes within the development of sports policy. It advocates for their better representation in decision-making, and their full access to legal support and protection mechanisms.

ENGSO: building bridges

ENGSO stands alongside EPAS recommendations in urging sport federations and public authorities to map and prevent the negative and irreversible impacts on the lives and rights of women and girls before publishing new limitations.

ENGSO urges its members to build bridges and open their doors to organisations and consultations outside of the field of sport. Sport shall not be misguided by fear and



politics, nor by misinformation when human lives are at stake. ENGSO believes in the potential of sport to build stronger and more inclusive communities.

ENGSO advocates for transparency and dialogue to carve a path toward full inclusion, fairness and safety. Women were excluded from the decision-processes in sport in the last century, having to fight back decisions taken by people who did not tolerate their participation in sport. Sport can do better now. Decisions of such importance cannot be made without the inclusion and consultation of the individuals concerned since they are directly and deeply affected.

Finally, ENGSO is a signatory of the Brighton Declaration (1994) and the Brighton plus Helsinki Declaration (2014) which “commit to upholding the 10 principles that enable women and girls to freely and safely participate, compete and build careers in sport and physical activity” (IWG, 2014)⁹. ENGSO is dedicated to supporting the organised sport movement in improving women’s sport, this comes with acknowledging the diversity of women’s bodies, improving access and participation, increasing media coverage, denouncing violence, targeting fundings for training facilities and sport venues, and driving toward the inclusion of all women and girls in sport.

⁹ Read more: <https://iwgwomenandsport.org/brighton-declaration/>



Resources

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Terminology

All terms used in this paper are standard terms used by the Council of Europe:

<https://rm.coe.int/glossary-on-sogiesc-because-words-matter-en/1680a1f110>