

Sex Verification in Female Sport

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Published on idrottsforum.org 2026-05-19

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Immediately after the IOC announced its [new policy](#) about eligibility in the female category (no male physiological advantage permitted), there was – predictably – a lot of push-back from supporters of the previous, all-inclusive, IOC policy (the [Framework Document](#) from 2021). On closer inspection, their arguments don't stand up to scrutiny, as we (Jon Pike and Miroslav Imbrišević) have shown in our essay: [The Ethics of Sex Verification](#). We decided to expand our rebuttal and invite colleagues from other disciplines to help with debunking arguments that oppose the IOC policy. What follows is the result of this collaboration.

Where is the sport-specific evidence?

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A common objection to the IOC's new eligibility policy is that there is no credible scientific evidence to support it. Writing in [The Conversation](#), the authors claim that the policy is based on “generalized assumptions of performance advantage rather than robust, sport-specific evidence” and that “there is no independent, high-quality evidence showing that women with the SRY gene and sex variations have an athletic advantage”. In a BJSM editorial, [Camporesi](#) and colleagues describe that “there are no scientific data of acceptable quality regarding sport performance advantage of people with DSDs possessing an SRY gene”. The claim sounds damning until you examine the logic behind it.

The argument depends on a rhetorical manoeuvre. First, define “evidence” narrowly: only direct studies on athletes with specific DSD conditions or transgender athletes, competing in specific sports, will count. Second, note (correctly) that very few such studies exist, since these populations are small and controlled research is ethically and practically difficult to conduct. Third, conclude that the evidence is therefore “weak,” “inconclusive,” or absent altogether. It has the appearance of scientific

rigour. In reality, it is a strategy for making an entire body of established knowledge disappear.

As we have argued in a peer-reviewed [response](#) to the previous [IOC Framework Document](#) (2021), this demand for evidence represents a misapplication of the criteria of evidence-based medicine to a context for which they were never intended. The male performance advantage is not a tentative finding in need of sport-by-sport replication. It is one of the most thoroughly established phenomena in human physiology, supported by decades of convergent research across endocrinology, developmental biology, and sport science. Insisting that policy must wait for the perfect sport-specific study is a recipe for indefinite inaction that conveniently shifts the burden of proof onto the wrong side of the argument.

Consider why such studies are scarce. Elite athletes with 46,XY DSDs or transgender backgrounds constitute extremely small populations. Conducting well-controlled performance research in these groups is enormously challenging: small sample sizes, recruitment difficulties, and the impossibility of blinding or randomisation. The studies that do exist suffer from significant methodological limitations. So, to demand this specific type of evidence as a prerequisite for policy, while knowing it may never be available in sufficient quality, is to set up a standard designed to fail.

But here is the deeper problem with the “no evidence” objection: it misunderstands what a policy actually needs to do. If sport has a female category – and it does, for well-established reasons – then it must also have eligibility criteria for that category. This is not optional. You cannot have a classification without a rule for who belongs in it. And the logical default criterion for a female category is, plainly, that the athlete is female. A policy that defines eligibility in terms of biological sex is not an extraordinary intervention that requires extraordinary proof. It is the minimum coherent response to having a sex-based category in the first place. Even if we had zero studies, not a single data point on performance differences, sport would still need to answer the question: who is eligible for the female category? And the answer would still, logically, need to reference the basis for the category itself.

What critics are really asking for, then, is not more evidence. They are asking sport to maintain a female category while refusing to define what “female” means. Or, more precisely, to define it in a way that includes males who have undergone male development. That is not a scientific position. It is an ideological one, dressed up in the language of evidence-based policy. An athlete with 5-alpha reductase deficiency who has a 46,XY karyotype,

functional testes, and male-range testosterone has undergone male development. That individual is biologically male, regardless of how they were observed at birth. The advantage conferred by that developmental pathway does not require a sport-specific study to confirm. It requires only a basic understanding of human biology. The evidence is not absent. Critics are merely redefining it out of existence.

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The IOC's policy threatens the integrity of women's sport

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This is an objection that has been recently repeated in a number of venues and it is hardly a new one. See [here](#) and [here](#). The critics misunderstand the point of having women's sport at all.

Women's sport exists as a separate category because of the physiological differences between men and women, and boys and girls, and because women matter just as much as men do. Sport categories in general exist for reasons of fairness and so that the measurement that sport competition involves tells us something reliable about its participants, namely, facts about what they can accomplish, and which are then the basis for how we value these achievements. Achievement in sport depends a lot on the kind of body a person has and males and females have bodies that are structured differently in a way that matters for sport. Socially, there are also, often, good reasons for participating separately so that we can perform at our best. If males and females compete together, there is a very good chance that very few women will be able to achieve what they could in single sex sport. But since sport is a good that should be available for anyone who wants to participate, the most effective and the most democratic solution is to have categories that allow more, and more different, people

to flourish. Separate categories allow for many different body types to excel, and a distinct women's category ensures that women's achievements are seen and recognised as the achievements of women.

The [Sport and Rights Alliance](#) claims that the new IOC policy would roll back “gender equality and set women's sport back 30 years”, declaring that it “harms all women and girls”, “undermines the very dignity and fairness the IOC claims to uphold”, and abandons “the safe sport infrastructure that actually provides protection for women and girls”. Such statements lose credibility by ignoring the importance of physical bodies in physical activity and competition. Sport has sex rather than gender categories because gender has no more relevance to sport achievement than does, for example, religious affiliation, whether or not one is same-sex attracted, or one's political allegiances. A person would be treated unjustly if prevented from participating in sport on the basis of the latter characteristics, but in sport the primary injustice is if one's opponent possesses an unfair advantage, however they have come by it. Justice depends upon like being treated with like and in sport, this means like bodies being treated alike, because bodies and physical achievement constitute the fundamental matter of sport. Identity is often important to persons and their affiliations, but how fast one can run, swim, or cycle, or how far one can throw an object, does not depend on one's identity but on what kind of body one has, how well-trained it is, and how well one has developed the basic physical (bodily) skills that are measured by one's chosen sport.

The IOC's Policy imposes gender stereotypes

The complaint that the IOC policy is a policing of women's gender involves a misunderstanding, not only because *gender* is not at issue, but because universal sex-screening is itself a means of finally putting an end to exactly the policing of women's appearance and self-presentation that is irrelevant and to which female sportspersons have been subjected for years. Again, this is not anything new and if critics of the IOC policy were serious about the hateful abuse and whispers about female athletes' “[femininity](#)” they might welcome the opportunity for women to be able to compete without having to endure such gender-based expectations. Women deserve to be celebrated in sport for what they have done, first and foremost.

The claim that sex-screening harms all women is unsustainable, not least since surveys show that women do, in fact, favour it by a considerable majority when they are asked, e.g., 82% of 928 female athletes [surveyed](#) at the 1996 Atlanta Games were in favour, and 94% said they were

not made anxious by the prospect of continued cheek-swab testing, with similar percentages reported in [Devine and Howe \(2022\)](#). The result of the IOC's [Athlete Survey](#) (more than 1,100 responses) was that “there is broad consensus among Female athletes, and other Olympic Movement constituents, in favour of eligibility rules for the Female Category based on biological sex.”

Those who [maintain](#) the view that sex-screening harms all women need to state specifically how it does so, not least since such a large proportion of those women who are directly affected are so overwhelmingly in favour of it. It doesn't seem plausible that 82% of women simply don't understand that the inclusion of athletes with a male genetic profile in women's sport is actually to their own advantage. To claim that sex-screening is a violation of women's privacy and consent requires ignoring the significant injustice and violation of privacy that this inclusion also involves and to which most women do not consent. There are consent and privacy issues here, but these do not only arise at the point of a swab; in fact, at least some are settled by it.

This policy is an important step in protecting female athletes from undue physical harm, which is a responsibility of sports federations, as well as the preservation of fairness. If the critics of the IOC policy really cared about women's safety and diversity, and diversity in sport, this policy is one they should be supporting.

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‘The new policy is unfair and the process has been opaque’

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One [criticism](#) of the IOC position rests on a profound philosophical misunderstanding of the nature of fairness. Some critics (many of whom, to be fair are not philosophically trained) get into a terrible muddle on this because they try to define ‘fairness’ abstractly without thinking about what we have already decided, at least implicitly. They start to raise the ‘Phelps Gambit’ – something I’ve written about [here](#). Or they argue that variables other than sex (here, whether someone has the SRX gene) play a part in determining athletic performance. Of course they do. But that’s not the point.

Here’s a thought experiment: Without thinking about sport at all, imagine a random bunch of naked humans, of all shapes, sizes, ages, and disabilities from all over the world. Some will be taller than others, older, fitter, smaller than others, and so on, some will have advantages over others at ordinary physical challenges, like running: the babies and toddlers will not be very good at all at this. Philosophers sometimes call this a ‘brute’ picture. They sometimes refer to such a picture as representing the ‘natural lottery’. It is just a matter of the way things are, of contingencies, with no deep justification. Now, *just using this picture*, try to say which advantages are *fair* and which are *unfair*. I think you will struggle. I think we see *differences*, but we don’t see *unfairness*.

However, recall the famous picture of Lia Thomas, at the NCAA standing alongside three female competitors, one in a cowboy hat. The picture is often used to show that 6’4” Thomas competing against the much shorter women is *obviously* unfair: ‘Just look!’ And I think this works - we can ‘see’ unfairness here. So, there is some important difference between these two pictures. That’s because the second picture is of a specific sports event: a women’s swimming race. We have women’s swimming races because we’ve *decided* that the sex advantages of males should be considered unfair, and so should be excluded from one sort of competition so that we can find out who is the fastest person with a particular sort of body: a female body. This

is just based on the decision to have women's sport. In doing that, we've already *decided* what counts as fair and what counts as unfair. We have *constructed* a theory of fairness. Once we decide to have women's sport and a women's category, it doesn't make sense to consider a *second* question about whether we allow men into the category. The construction sits on and is derived from pre-social physical features of human beings, and it draws its strength and plausibility from the fact that we are a dimorphic species. So, it's constructed, but it's not constructed *ex nihilo*. Rather, it's based on an understanding of physical differences. Physical differences on their own, abstracted from any kind of social arrangement, are neither fair nor unfair, they are 'mere' differences. But once we get into categorisation for sport, we distinguish (primarily) between sexed bodies, and integrate this into our understanding of fairness. I think, of course, we make a good and reasonable decision when we do this, though it could conceivably go the other way.

This means that male advantages – the advantages of people with male bodies – are *unfair in women's sport*. This is not because of anything *particular* male-bodied athlete can do. A few are faster (stronger, have more endurance etc.) than all women, but most are not, though they all have male advantages. This is not a matter of individual performance metrics *at all*. If this is true, then the dozens of research papers that show the effects of 'GAHT' (Gender-Affirming Hormone Therapy) are beside the point, whatever they show. I think it's been tremendously important, in policy terms, to show that GAHT does not remove male advantage, but it's also, strictly in one sense, beside the point. It is, of course, possible to reduce the performance of males in many ways, until their performance is in the female range of performance metrics. Lead weights, appropriately placed, would do the trick, and could certainly reduce performance metrics in the lab and on the field. But performance metrics are not what counts. Once we remember this, all the ink spilled over discussion of what was a 'proportionate' or 'disproportionate' advantage by the advocates of the 'Framework Document' can be revealed as wasted. It was never the *size* of the advantage that mattered, always its *nature* – that these advantages were caused by the athlete in question being *male*. It is, as a result, not necessary to know *anything* about the performance metrics of any particular male in order to exclude them from female sport. It is enough to know that they are male. And the Cheek swab tells us this.

These philosophical arguments about the construction of 'fairness' are, of course, up for grabs, in the journals and the seminar rooms. I'm pret-

ty sure they are right, and I don't think they are particularly radical. But consideration of them throws some light on another part of the pushback against the IOC policy. It's notable that some of the criticism (such as [here](#)) focusses almost entirely on the process of policy formation rather than the policy itself. Krech and Duval inveigh against the confidentiality of the process, the anonymity of the working group, and the absence of a bibliography. (I'd bet we'll get one eventually from the IOC.) Oddly, the process leading to the 'Framework Document' was even more opaque than this one, but critics of the new policy often argue for a return to that incoherent document, despite this. Well, it would have been lovely to have had an open and transparent process, where Public Reason was on display.

But I can guess why that hasn't happened. The process was kept confidential in order that those taking part in it could engage in frank discussion, without being subject to intimidation and browbeating. There has been a sometimes-frenzied debate in this area, and many of the contributions have not been made in good faith. Granting anonymity to decision makers was essential, then, to ensure that the process was genuinely driven by scientific and ethical considerations. It was necessary to cocoon the process to ensure that it was not distorted by lobby groups, as had been the case heretofore. It's not, therefore, surprising that those same lobby groups are upset. Hence, the lack of transparency is regrettable in the sense that I wish the world – and this debate – wasn't like this. But it is, and so anonymity has become essential. Those who protest at the opacity of the process should perhaps reflect on their part in making this necessary. It's also worth reminding ourselves that, whatever we might say about process, objections to process don't necessarily carry over to substantial objections to a policy.

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Hormonal interventions eliminate male advantages and screening is inaccurate

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The [claim that](#) “the best available data ... shows that transgender women receiving gender-affirming hormone therapy are not meaningfully different from cisgender women in key performance-related measures” does not withstand scrutiny.

The appropriate starting point is a basic biological fact: humans are either [male or female](#). There is [no third](#) reproductive category. The International Olympic Committee’s [2026 policy](#) reflects this reality by defining sex based on biology and reserving the women’s category for females. This clarification addresses much of the conceptual confusion underlying claims of equivalence.

Male biology confers [well-documented performance advantages](#). As acknowledged in the IOC policy, these advantages range from approximately 10% to over 100% depending on the sport or physiological attribute. Importantly, [sex differences](#) in performance are [observable](#) even prior to puberty, when circulating testosterone levels [are similar](#) between boys and girls. In competitive settings, [boys run faster](#), [jump farther](#), and [throw](#) farther than girls of the same age. These findings indicate that performance differences are not solely attributable to adult testosterone levels, but reflect broader [biological differences](#) between the sexes.

Against this backdrop, the claim that reducing testosterone in adult males eliminates these differences is an extraordinary one, and it is not supported by the available evidence. Testosterone suppression produces some changes in physiology, but these do not reverse male development.

Several fundamental characteristics illustrate this point. Adult males are, on average, approximately 12 cm [taller than](#) females, a difference that persists regardless of hormone intervention and confers advantages in many sports. Males also typically weigh more, a factor that can influence performance in contact and collision sports. In addition, males possess approximately 30–40% [greater muscle mass](#). While testosterone suppression

[may reduce](#) muscle mass [modestly](#), reported reductions are around four to five percent, most of the male advantage remains intact.

The same pattern is evident in muscle strength. Males exhibit strength advantages ranging from approximately 30% to over 100%, depending on the muscle group and movement assessed. Longitudinal studies indicate that testosterone suppression may reduce strength by zero to nine percent. The [majority of the male advantage persists](#).

Endurance-related physiology shows a similar pattern. Measures such as VO_2max differ by 25-50% between males and females, reflecting differences in hemoglobin concentration, cardiac output, and other factors. While testosterone suppression [may reduce](#) hemoglobin levels, there is no evidence that it reverses other structural determinants of aerobic capacity. Consequently, reductions in [endurance performance](#) are partial, not complete.

Claims that hormonal intervention level the playing field rely on studies that, upon closer inspection, do not provide valid comparisons. In [one recent](#) cross-sectional study of volleyball players, recreational transwomen training approximately four hours per week were compared to females training at near-elite levels for roughly fourteen hours per week. Despite this substantial disparity in training volume, the authors reported no clear performance advantage. However, such a comparison does not demonstrate equivalence; rather, it highlights the magnitude of underlying sex differences when substantially less-trained males (i.e., transwomen) perform similarly to highly trained females.

A similar issue arises in an IOC-funded [cross-sectional study](#) comparing physically active transwomen and females. The transwomen were taller and heavier, yet the authors concluded there was no meaningful advantage, in part by emphasizing relative measures of performance adjusted for body size. However, in absolute terms, the transwomen demonstrated higher values in strength, power, aerobic capacity, and lung function. Adjusting these outcomes relative to body mass or height can obscure differences that are directly relevant in sport, where absolute force, speed, and power often determine outcomes.

Taken together, the evidence does not support the claim that transgender women are “not meaningfully different” from females in performance-relevant traits. Instead, it consistently shows that testosterone suppression produces only partial attenuation of male advantages. These advantages, arising from differences in size, strength, and physiological capacity, are not eliminated.

The relevant question, then, is not whether some changes occur following hormone therapy, nor whether those changes are sufficient to erase the performance gap between males and females (the current evidence indicates that they are not). Rather, the central issue is whether a person can change sex; from a biological perspective, they cannot. Accordingly, the claim that transgender women are “not meaningfully different” from females is not a conclusion derived from scientific evidence but reflects a conceptual or philosophical position about the meaning of sex. The IOC’s updated policy reflects this understanding by maintaining a protected female category based on biological sex.

Screening is Inaccurate

A common claim about the IOC sex verification policy is that the screening is an [“inaccurate test of both sex and athletic advantage.”](#) While this criticism may appear technical, it conflates several distinct issues that must be addressed separately to properly evaluate the policy.

The first is the implicit suggestion that sex is not a [meaningful category in sport](#). However, the physical differences between males and females are both readily observable and [extensively documented](#). As stated above, when comparing equally aged, trained, and talented individuals, males, on average, possess greater body size, muscle mass, larger hearts and lungs, stronger bones, and higher aerobic capacity. Consistent with these differences, [males](#) can lift more weight, run and swim faster, jump higher and farther, and throw farther than females. These performance differences have been thoroughly established in scientific literature. Across essentially all sports, males outperform females by margins large enough to justify separate competitive categories. These differences are not the result of training disparities or social factors alone, but of well-established biological characteristics. The entire structure of sex-segregated sport is built on this reality. Accordingly, critiques that downplay the importance of sex are misaligned with the foundational rationale for protecting the female category.

The second issue is the claim that sex is difficult to define because it exists on a [spectrum](#) rather than as a binary biological classification. This argument often draws on differences of sex development (DSDs) to suggest that clear categorization is not possible. However, while DSDs are real and [medically important](#), they are [rare](#) and do not negate the underlying biological organization of sex. Only 0.02% of individuals have conditions that make their sex ambiguous. In humans, [sex is fundamentally](#) defined by

reproductive anatomy and function—organized around the production of either large gametes (eggs) or small gametes (sperm). This binary framework is [reflected genetically](#), developmentally, and physiologically. Variations in development do not create additional sexes; they represent atypical pathways within the same system. Importantly, sport does not require a perfectly exhaustive taxonomy of every biological variation; it requires a functional classification that preserves fairness and safety in competition. Rare edge cases do not undermine the validity of broader categories. Indeed, the routine classification of [research subjects](#) as male or female across biomedical science reflects the practical clarity and utility of this framework.

The third issue concerns the accuracy and relevance of Sex-determining Region Y (SRY) [gene screening](#). The [SRY gene](#), located on the Y chromosome, plays a critical role in initiating male development, and its presence is a [reliable indicator](#) that the male developmental pathway has been activated. While no single biological marker captures every aspect of sex or athletic performance, SRY screening is not intended to do so. Rather, it serves as a practical, evidence-based method for identifying individuals likely to have experienced male development and its associated performance advantages.

Critics [often point](#) to rare conditions, such as complete androgen insensitivity syndrome (CAIS), in which an individual has an XY karyotype but does not respond to androgens and therefore does not develop typical male physiological traits. The IOC policy explicitly accounts for such cases by incorporating follow-up medical evaluation rather than relying solely on a single screening result. SRY screening is therefore not a final determination, but an initial screening tool used to flag cases for further assessment, balancing scientific rigor with practical implementation.

It is also important to clarify what SRY screening is not intended to do. It is not a direct measure of athletic performance, nor does it attempt to quantify individual advantage. Instead, it functions as a classification tool – similar to age categories or weight classes – designed to group athletes in a way that promotes fair competition. No classification system is perfect at the individual level, but that does not negate its effectiveness at the population level.

Ultimately, the claim that SRY screening is an “inaccurate test of both sex and athletic advantage” rests on conceptual misunderstandings. It conflates rare biological variations with the absence of meaningful categories, treats classification tools as if they must perfectly predict individual

outcomes, and overlooks the well-established role of sex in shaping athletic performance. When these issues are disentangled, the rationale for the IOC's approach becomes clear: it is not an attempt to reduce sex to a single gene, but to implement a workable, evidence-based system that protects the integrity of the female category in sport.

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Re-stating the simple case for a sex category

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Since Kirsty Coventry announced the IOC's new policy on sex (not gender) verification there has been much criticism of the various historical sex verification strategies, from (horrendous) visual inspection to (medicalised) procedures such as hormone testing, and now gene swabs. This has been described as "[a step backwards](#)" to 1999.

However, the commentary is often simply negative – providing many reasons why such-and-such a 'test' is impossible or unreasonable or will never capture all cases. One can sympathise (agree with) many of these criticisms but that does not mean we have to give up on the sex category. Here's why:

We have tried to approach the sex category issue by exploring the nature of categorisation as a wider issue in sport, to do with eligibility. Who is eligible – by age, height, weight, nationality, sex, etc. to participate in this particular contest, in this sport?

Firstly, we emphasise the *Desirability Condition* – do you want a sex category in some particular sport? If not, and if you have good reasons, there's no problem. Sports without a sex category would be maximally sex/

gender-inclusive, like equestrianism. We should ask other sports if a sex category is really required (think of curling, or archery – is there a sex advantage here?) In such sports, there would be no trans or DSD issue – no reason to think that someone’s sex or gender is relevant.

However, for good reason, a sex category is thought desirable in many sports, from tennis to rugby. Without a sex category, there would be no female champions in tennis, for example. [Serena Williams](#) says she wouldn’t get in the top 100.

So, *secondly*, wherever the desirability condition is met, the next step is to specify the category. We need a *Demarcation Criterion* because, if there is to be a ‘protected’ category, we have to know precisely who is eligible for it. For the sex category, we have to specify who is ‘female’. There is no logical escape from this: if you want a category, you must say what it is.

Then, *thirdly*, you must police the category, to ensure that demarcation criteria are met, so as to *ensure eligibility*. Those who employ state-sponsored doping seek to evade WADA’s criteria. What is to stop them from similarly exploiting the sex category, unless it is policed?

Compare the example of the age category. We have good reasons for desiring an age category in some (all?) sports. We want to separate people at different levels of maturation or ageing into sub-categories, since this gives an opportunity for competition with relatively equal participation. But it is so difficult to specify ‘maturity’, so we settle for ‘age’ as a proxy for ‘maturity’.

But this is grossly unfair, as everyone can see. Age as a ‘measure’ of maturity is very imprecise. Some boys aged 16 might rightly be described as boys, but some might be regarded as more mature - maybe as men. In an ‘age-group’ system, some will be almost a year ahead of others – a huge advantage in early years. We see that the age category is unfair, but we don’t throw our hands up, and scrap the category – because we WANT an age category, even with its ‘arbitrariness’, and so we put up with ‘injustices’ for the sake of a practical demarcation criterion. Age is relatively ‘objective’ and very convenient in practice – much better than ‘maturity’.

Back to the sex category: it, too has its difficulties – but we can’t give up on it. That would be to give up on the Desirability Condition, which we presupposed.

So the challenge to critics is: in addition to criticising whatever proposals the ‘science’ of the day can offer, can you suggest a better alternative – that is well-demarcated and checkable? If you can’t, the category collapses,

and that's the end of female champions. To fail to offer a criterion is to deny the category.

The point is: all categories come with inclusions and exclusions; they all have advantages and disadvantages; and they are all open to criticism and fault-finding. But, if we WANT a category, and we think we have to have it (for good reasons), then we must also look for the 'best' test available with which to demarcate it, and to check for eligibility.

From this perspective, if we see trans and DSD inclusion as a simple matter of eligibility rules, much of the heat can be taken out of the debate.

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The IOC's new policy raises the prospect of a conflict with national legal systems

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It has been [argued](#) that the new IOC policy on the Protection of the Female Category could lead to a conflict (not so much potential as actual) with national legislations, particularly those laws that expressly prohibit (e.g. Norway's 1997 Biotechnology Act) genetic testing for sporting purposes, because such testing infringes genetic privacy and/or personal dignity. Is that really the case? There is certainly a risk that the scenario described above could materialise, and sporting competitions might be decided by state judges rather than 'on the field', precisely because state laws take precedence over sporting regulations.

However, the recurring conflict between legal systems, at least in European case law, has made it clear that a 'sporting exception' can be established, particularly where there are no characteristics that would equate sporting activity with an economic activity and, as such, bring it within

the competence of the European Union. It is important to emphasise that the autonomy of sports organisations remains intact despite the introduction of EU competence in the field of sport under [Article 165 TFEU](#). This provision, in fact, reaffirms what was already stated in the [White Paper on Sport](#), namely that sport constitutes an important tool, particularly for the younger generation, to help them grow in their awareness of democratic values. It is an educational tool designed to foster respect for the rules and for others, to be experienced in competitive situations not as an adversary, but as an essential partner in one's own development. In line with this approach, for example, Italy has adopted [Law No. 280/2003](#), which reaffirms the autonomy of sport, albeit with restrictions in cases of disputes, particularly in the economic or labour spheres.

It is important to note, in this regard, that the traditional binary distinction (male/female) is the result of a social achievement, brought about after decades of struggle to achieve emancipation in sport as well. The creation of exclusively female categories was essential to enabling female athletes to compete on an equal footing, and to gain visibility, funding and recognition. In short, women's sport is viewed as a form of affirmative action, or positive discrimination, which could be undermined by the participation of transgender athletes (biologically male) or XY-DSD athletes who retain biological advantages (the presence of the SRY gene, '[typically found on the Y chromosome](#)', initiates male sex development). The new IOC policy is therefore not a discriminatory act, but a necessary safeguard for female athletes and their fundamental right to fair sporting competition.

This does not in any way rule out the possibility of a conflict between legal systems: how might such conflicts be resolved? What are the possible solutions? This seemingly intractable conflict could probably only be resolved by drafting an international treaty on fairness in sport, aimed at harmonising state law systems, allowing for a sporting exception based on the principle of competitive fairness, and recognising the autonomy of sporting organisations.

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The legal barriers are insurmountable

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“The legal barriers are insurmountable”; this view has been put forward [before](#) – in response to the World Athletics policy. It is an odd view of law. It frames law as something that is set in stone, like the Ten Commandments in the Old Testament. Human-made law, on the other hand, changes and adapts to societal change. In the 20th century, marriage legislation could not handle same-sex marriages; we have changed this. The critics pretend that existing legislation and international conventions, although framed decades ago, have a purchase on the *new* IOC policy. Why would they? The law-makers of old knew nothing about recent controversies about eligibility in female sport. So, if state legal systems and international conventions clash with the IOC policy, then we need to realise that it is reasonable to make an exception for that policy. And this holds *a fortiori* because state legal systems and international conventions accept that sport is largely an independent domain.

Sports, and sports legal systems that govern sport, enjoy a far-reaching autonomy from state legal systems. Sometimes, there is some overlap: the use of steroids is banned in sport and banned in many countries. In boxing, two people basically beat the hell out of each other – occasionally leading to death. The state does not interfere here. If I did that to my annoying neighbour, I would be arrested and would probably go to prison. WADA anti-doping regulations require that somebody watches an athlete while they give a urine sample. In many state legal systems this would be a crime: voyeurism. So, if the policy of the IOC (or of the local federation) clashes with state law, that doesn't mean that state law can and should supersede sports regulations. It might mean that state law ought to be altered to accommodate sports regulations. Either way, an *argument* is required, not a simple statement of a clash.

The [Convention on Human Rights and Biomedicine](#) (Council of Europe, Oviedo 1997) aims to protect ‘the human rights and dignity of the human being with regard to the application of biology and medicine’. In the Pre-

amble we read that the treaty members are conscious of ‘the accelerating developments in biology and medicine’ and ‘that the misuse of biology and medicine may lead to acts endangering human dignity’. So, these are the motivations for the treaty.

We now have to ask ourselves: Is the new IOC policy a ‘misuse of biology and medicine’ that ‘may lead to acts endangering human dignity’? Does the IOC have sinister motives? The rationale for the policy is the protection of the female category and the SRY screen is the best - and least invasive - procedure to achieve this (see the entries by Lundberg and Brown). And this is in line with the Oviedo Convention: ‘Affirming that progress in biology and medicine should be used for the benefit of present and future generations’.

Critics of the IOC policy maintain that athletes with male advantage ‘belong’ in the female category because they identify as a ‘woman’ (i.e., trans women) or were brought up as a ‘woman’ (athletes with [male DSDs](#)). This means sacrificing fairness for inclusion, and this was the underlying ethos of the [IOC Framework Document](#) from 2021. Current IOC officers realised that this effectively made the female category into an ‘open’ category, rather than a protected category. Consequently, they have changed course. In this context ‘progress in biology and medicine’ does benefit present and future female athletes.

Could the current policy ‘lead to acts endangering human dignity’? It is actually the previous, ‘inclusive’, policy that led to speculation about the sex and DSD status of athletes (including Caster Semenya, but also the two boxers at the Paris Olympics). By having a once in a lifetime cheek swab, young athletes with XY-DSDs avoid such public spectacles later in life. Furthermore, it would be medically important for all athletes with DSDs (male or female) to be aware of their status, thus, the gene test actually benefits this small number of athletes, as well as ensuring fairness for all women. Contrary to what the critics claim, the IOC policy is a necessary, reasonable, and proportionate step to achieve a legitimate aim: fairness in women’s sport.

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